

LEGAL DIGEST FALL 2023

Preamble

This edition of the quarterly Legal Digest highlights significant legislative changes in the finance and healthcare sectors, as discussed in the Acts of Parliament section. Some of the notable acts discussed include the Finance Act 2023, which brings about various adjustments to Kenya's tax regime, the Public Finance Management Act, which introduces a new borrowing threshold, and the Privatisation Act 2023, which amends the regulatory framework for public entity privatisation, among others. Additionally, the Section features the four Health Acts which were recently assented to and whose aim is the promotion of Universal Health Coverage.

The section on Bills features among others, the education sector, the environmental sector, and the employment sector. Some of the highlighted bills include the Kenya Sign Language Bill 2023 which seeks to advance the use of the Kenyan Sign Language in various settings including schools, workplaces, and court rooms, the Higher Education Loans Board (Amendment) Bill 2023 which seeks to introduce some changes to the Principal Act, the Insolvency (Amendment) Bill 2023 which aims to introduced a fast-tracked administration process for Insolvency cases, the Environment and Land Act (Amendment) Bill 2023 which seeks to enhance the effectiveness of the Environment and Land Court, and the Public Holidays (Amendment) Bill 2023.

The courts segment analyses evolving jurisprudence relating to data protection, land title matters, non-discrimination of sexual minorities, employment matters, and matrimonial affairs. These analyses span across both national and international perspectives. Lastly, the Fun Fact section highlights intriguing and noteworthy facts.

The aspects highlighted in this issue represent just a fraction of the legislative changes, developments, and legal insights which speak to and offer guidance on various areas of the law. It is our hope that you find this issue of the Digest informative and beneficial.

We would appreciate your feedback on this issue and previous issues of the Digest, as we continue our mission to disseminate local and global legal developments.

A. Acts of Parliament

Introduction

This section delves into some of the Acts of Parliament that have been assented to in 2023. These are: the Finance Act 2023, the Anti-Money Laundering and Combating of Terrorism Financing laws (Amendment) Act, 2023, the Privatisation Act, 2023, the Public Finance Management (Amendment) Act, 2023, the Climate Change (Amendment) Act, 2023, the Digital Health Act, 2023, the Social Health Insurance Act, 2023, the Primary Health Care Act 2023, and the Facility Improvement Financing Act 2023

1. Finance Act, 2023

This Act was passed on the 26th of June 2023. Some of the changes envisioned by the Act took effect on the 1st of July 2023, others took effect on the 1st of September 2023, and the rest will take effect on 1st January 2024. The Act makes changes to various legislations including: The Income Tax Act (Cap 470), the VAT Act 2013, the Tax Procedures Act 2015, the Excise Duty Act 2015, among others.

The Act introduces several key changes to Kenya's tax regime. The following section shall look into these amendments and some of their impacts:

A. Amendments to the Income Tax Act:

Effective date 1st January 2023:

Items exempt from taxation:

- a) Gains on transfer of property within a special economic zone enterprise, developer, and operator.
- b) Investment Income from a post-retirement medical fund, whether or not the fund is part of a retirement benefits scheme.
- c) Royalties and interests paid to a non-resident person by a company undertaking the manufacture of human vaccines.
- d) Royalties, interest, management fees, professional fees, training fees, consultancy fee, agency or contractual fees paid by a special economic zone developer, operator, or enterprise, in the first ten years of its establishment, to a non-resident person.
- e) Income earned by a non-resident contractor, sub-contractor, consultant, or employee involved in the implementation of a project financed through a 100% grant under an agreement between the Government and the development partner, to the extent provided for in the Agreement.

Impact:

These tax exemptions are beneficial for several reasons including:

- a) Reduction of tax burden for personal income tax such as in the case of travel allowances.
- b) Promotes research and development as it exempts royalties and interests for companies undertaking the manufacture of human vaccines.
- c) It supports retirees by exempting their investment income from taxation.
- d) It also supports non-profit organisations which aim to relieve poverty, distress, or any other charitable purposes.

Additionally, these exemptions have significant implications for institutions like USIU-A, particularly those offering post-retirement medical benefits. The tax exemption ensures that income generated from such funds remains untaxed. Consequently, institutions are empowered to provide more enticing post-retirement benefits to their staff. Furthermore, for entities operating within or collaborating with special economic zones, the exemption of various fees in the initial 10 years serves to diminish the cost of doing business. This, in turn, promotes collaboration with non-resident entities, acting as an incentive for talent attraction and expertise acquisition. Moreover, for institutions engaging non-resident individuals in government-funded projects, these tax exemptions alleviate financial burdens, fostering and encouraging such collaborations.

Effective date: 1st July 2023:

Amendments to the taxation of employment income:

- a) **Travelling Allowance:** The Act excludes taxation on amounts received by an employee as travelling allowance to perform official duties where such amounts are based on the standard mileage rate approved by the Automobile Association of Kenya.

Impact:

The exemption is beneficial for employees as it reduces their tax burden and increases their take home income. However, it is important to note that it only applies to the specific stipulated amounts. This means that any travel allowance that exceeds the stipulated amounts will be subject to taxation.

- b) **Club Entrance and Subscription fees:** The Act stipulates that club entrance and subscription fees paid on behalf of the employee by the employer will be treated as a benefit and will be taxed on the employee. It adds that the expenditure will be allowed against the employer's income.
- c) **Market value of shares:** The Act stipulates that the market value of a share for purposes of taxation as a benefit shall be when the employee decides to exercise the option as opposed to the date the option is granted.

Impact:

This amendment reduces the tax liability on employees who receive stock options as compensation; this is because the market value at the time of exercise is often higher

than the market value at the time of grant. Nonetheless, it could also increase complexities on the employee's end as they will be required to determine the market value at the time of exercise. This value is often affected by various factors such as the length of time between the grant and the exercise, the performance of the company and other market conditions.

- d) Deferment of taxation: The Act allows for deferment of taxation of the benefit of shares allocated to an employee where the employee is offered company shares instead of cash payment.

Impact:

This amendment increases flexibility as the employee who receives shares as compensation can choose when to exercise the option and pay the tax liability. This could also reduce tax liability as the employee could defer the tax payment until a later date when the tax bracket is lower. Nonetheless, it requires the employee to initiate tax planning which could be complex for some employees.

Withholding tax new introductions:

The Act has introduced withholding tax on the following payments:

- a) Digital content monetisation for residents at 5% and for non-residents at 20%
- b) Sales promotion, marketing and advertising services for residents at 5%
- c) Rental income received on behalf of the owner of a premises provided that only a person appointed by the Commissioner in writing shall deduct such tax.

The Act further provides that Withholding taxes should be remitted to the Commissioner within 5 working days after deduction is made.

Turnover Tax:

The Act lowered the upper threshold for turnover tax from 50 million to 25 million and increased the rate from 3% to 1%.¹

Impact:

This provision increases the tax liability for businesses within the new threshold. It also expands the tax base and increases revenue for the government.

Additionally, these new tax rates could influence how institutions approach digital content activities and marketing services, potentially impacting revenue streams and necessitating adjustments in financial planning and compliance measures. It would be advisable for institutions to conduct a thorough analysis of the specific implications and adapt their strategies accordingly.

Effective date: 1st September 2023:

Cryptocurrencies:

¹ Turnover Tax is a tax charged on businesses whose gross turnover is more than Kshs. 1 million but does not exceed or is not expected to exceed Kshs. 25 million during any financial year.

The Act introduced tax at a rate of 3% on the income derived from the transfer or exchange of digital assets such as cryptocurrencies, non-fungible tokens (NFTs), token codes, and any digital representation of value that can be exchanged, stored, or transferred electronically. This tax is to be deducted from the recipient of the income by the owner of any platform facilitating the exchange of digital assets. It will then be remitted to KRA within five working days of the deduction.

Impact:

The introduction of this new tax is a strategy for expanding the Kenya Revenue Authority's (KRA) reach into the digital economy. However, it remains uncertain whether the tax paid on digital assets can be utilised as a credit when computing and settling regular income taxes, which stand at 30% for corporate entities and vary from 10% to 35% for individuals based on their income.

Moreover, corporate entities like universities employ NFTs for various purposes, offering entitlements such as free courses, scholarship opportunities, discounts, and resource access. These institutions also tokenize educational content, art, and certificates. Consequently, they must factor in this new tax rate when making investment decisions, as it has the potential to dissuade the use of digital assets within these institutions.

Effective date: 1st January 2024:

Interest on Mortgages:

The Act provides that individuals can claim mortgage interest expense to a maximum of Kshs. 300,000 per annum as incurred on money borrowed from a co-operative society.

Impact:

The provision increases affordability for persons who borrow from co-operative societies as it reduces tax liability to mortgage interest expenses.

Filing of tax returns:

The Act stipulates that any expenditure or loss incurred shall not be deductible if the invoices of the transactions are not generated from electronic tax invoicing management (e-TIMS).

Taxation of repatriated income for non-residents:

The Act introduces taxation of repatriated income for non-residents who have a permanent residence in Kenya.² The rate will be at 15%. The act has also reduced their Corporate Income tax rate from 37.5% to 30%.

Impact:

² Repatriated income is income earned by foreigners in their country of residence and the sent overseas to their home countries.

This amendment has the potential to increase the revenue of the government by increasing the tax base. Furthermore, it could encourage investment by non-residents following the reduction of the Corporate Income tax rate.

Rental Income:

The Act has reduced Residential Rental Income from 10% to 7.5%

Advance Tax rate and reviews:

- a) Advance tax payable on saloons, station wagons, buses, mini-buses, and coaches has increased from Kshs. 60 per passenger capacity per month subject to a minimum of Kshs. 2,400 per year to Kshs. 100 per passenger capacity per month subject to a minimum of Kshs. 500 per year.
- b) Advance tax payable on vans, pickups, trucks, prime movers, trailers, and lorries (excluding agricultural tractors and trailers) has increased from Kshs. 1,500 per tonne of load capacity per year subject to a minimum of Kshs.2,400 per year to Kshs. 2,500 per tonne of load capacity per year subject to a minimum of Kshs. 5,000 per year.

Impact:

These two amendments will increase the cost of business for the listed operators. This reduces their rate of profitability and could affect their ability to provide affordable transport services for all Kenyans but specifically for low-income earners.

Additionally, for institutions such as USIU-A which own and operate vehicles such as buses, minibuses, vans or trucks for transportation services, the higher advance tax rates can directly increase the cost of operations. Therefore, these institutions may need to adjust their budgets in order to accommodate the increased advance tax expenses.

Corporate Income Tax Vaccines:

The Act has introduced a Corporate Income Tax rate of 10% for companies undertaking the manufacture of human vaccines.

Withholding tax on Immovable Property:

The Act has reduced the withholding tax on immovable property from 10% to 7.5%.³

Impact:

The amendment to reduce withholding tax on immovable property from 10% to 7.5% is advantageous for institutions such as USIU. This adjustment not only results in cost savings during property transactions but also prompts a reconsideration of financial planning and investment strategies. The reduced withholding tax contributes to a favourable environment for property-related ventures and impacts budgeting considerations for these institutions.

B. Amendments to the Value Added Tax Act 2013.

³ Immovable property is land, all buildings and all permanent improvements to land.

Effective date: 1st July 2023

VAT on Petroleum Products: The Act stipulates that VAT on petroleum products will be 16% an increase from the previous 8%.

Impact:

The increased VAT on petroleum products has already affected and is anticipated to persist in impacting the overall cost of living. This is attributed to the widespread use of petroleum products across various sectors daily. For organisations and institutions like USIU-A, which regularly operate buses and minibuses, this amendment directly affects their budgetary allocations. Consequently, they will need to allocate additional funds to the transport sector to accommodate the heightened daily costs associated with fuel and other petroleum products.

VAT on Liquefied petroleum gas: The Act has removed VAT on liquefied petroleum gas and has also placed a 0% rate on bioethanol vapour stoves.

Impact:

This will promote the use of clean energy sources.

VAT on Insurance Compensation: The Act states that the compensation for loss of taxable supplies will now be subject to VAT at the rate of 16%

Impact:

The newly imposed 16% VAT on insurance compensation for the loss of taxable supplies carries notable implications for institutions such as USIU-A. This development introduces a financial burden, and necessitates adjustments in budget allocations to accommodate the additional tax liability. The institution must undergo a thorough review of existing insurance contracts, engaging in negotiations where necessary to align with the updated tax regulations. Beyond immediate financial considerations, USIU-A is prompted to enhance its overall risk management and financial planning strategies to effectively navigate and mitigate the impact of this VAT amendment on insurance compensation

Zero rated VAT Services:

The following shall have 0 rated VAT:

- a) The supply of locally assembled and manufactured mobile phones.
- b) The supply of motorcycles of tariff heading 8711.60.00.
- c) The supply of electric bicycles.
- d) The supply of solar and lithium-ion batteries.
- e) The supply of electric buses of tariff heading 87.02.
- f) Inputs or raw materials locally purchased or imported for the manufacture of animal feeds.
- g) The exportation of taxable services.
- h) Inbound international sea freight services offered by a registered person.
- i) Liquefied Petroleum Gas (LPG).

- j) Inputs or raw materials locally purchased or imported for the manufacture of animal feeds.
- k) Bioethanol vapour (BEV) stoves classified under HS Code 12.00 (cooking appliances and plate warmers for liquid fuel)
- l) All tea and coffee locally purchased for the purpose of value addition prior to exportation subject to approval by the Commissioner General.

Exemptions from VAT:

The following shall be exempt from VAT:

- a) all aircrafts and their parts.
- b) local purchases of plant and machinery of chapter 84 and 85 by manufacturers of pharmaceutical products or investors in the manufacture of pharmaceutical products upon recommendation of the Cabinet Secretary for health.
- c) Taxable supplies for Companies under a SOFA incorporated for the purposes of undertaking other manufacturing activities including refining and whose capital investment is at least Kshs. 10billion subject to the approval of the Cabinet Secretary National Treasury
- d) Taxable supplies made to or by a school feeding programme recognized by the Cabinet Secretary responsible for matters relating to education.

Impact:

This amendment will be impactful for institutions which run school feeding programmes as it will reduce costs associated with providing meals and support for schools.

C. Amendments to the Excise Duty Act 2015

Effective Date: 1st July 2023

Excise Duty on Betting and Gaming:

The Act introduces a 24-hour timeline from the period of close of transactions for the day to remit excise duty on betting and gaming offered through a platform or other medium.

Excise duty on Alcoholic Beverages:

The Act requires all licensed manufacturers to pay excise duty within 24-hours of removal of goods from the stockroom.

Suspension of Licence

The Act stipulates a set timeline of not less than 14 days within which a licensed person should remedy any deficiencies stipulated in a notice of suspension of licence.

Adjustment of Inflation

The Act stipulates that the Kenya Revenue Authority no longer has the power to adjust the rates of excise duty once every year in accordance with inflation.

Impact:

The adjustment of inflation suggests that excise duty rates will no longer be pegged on the inflation adjustment formula as was previously the case. This will stabilise retail prices thus encouraging manufacturing in different sectors.

Introduction of new offences

The Act has introduced new offences related to the affixation of excise stamps or other markings on excisable goods. The offences shall warrant a fine not exceeding 5 million shillings or a prison term not exceeding 3 years, or both. They include:

- a) Being in possession of unauthorised printed excise stamps.
- b) Being in possession of goods with counterfeit stamps on them.
- c) Unauthorised acquisition of excise stamps or any such attempt.
- d) Unauthorised creation or printing of excise stamps.
- e) Defacing excise stamps affixed on goods or packages.
- f) Being in possession of excisable goods or packages without affixation of the stamp or an authorised exemption.

Impact:

The Finance Act now outlines distinct and clear offences, a departure from the previous blanket provision tied to contravention of the excise stamp section. This refined approach ensures that members of the public have explicit knowledge of the precise conduct that may constitute an offence.

D. Proposals to Amend other Acts:

Effective Date: 1st July 2023

Employment: The Housing Levy

One of these changes is the introduction of the Housing Levy which requires both employers and employees to make contributions of 1.5% non-refundable levy to the National Housing Development Fund. Failure on the employer's part to remit this sum will warrant a penalty equivalent to 2% of the unpaid sums. The Housing Levy is intended to fund the development of affordable housing and affordable home financing.

However, on the 28th of November 2023, the high court declared the housing levy unconstitutional as it lacks a comprehensive legal framework. Further, that its imposition on persons in formal employment to the exclusion of non-formal income earners without justification is discriminatory, irrational, and arbitrary and therefore a violation of Article 27 of the Constitution. This move to curtail the implementation of the Housing Levy is intended to take effect come January 2024.

Impact:

These provisions will result in additional deductions from both employer and employee salaries, consequently elevating the overall cost of employment in Kenya. This could potentially contribute to increased unemployment rates in the country.

Moreover, corporations will need to incorporate new budgetary allocations to accommodate these adjustments.

Amendments to the Retirement Benefits Act 1997:

The Finance Act has reduced the local ownership requirements from 60% to 30% for the registration of Retirement Scheme Administrators.

Impact:

This reduction will lead to an increase in foreign investment in the sector.

Amendments to the Betting Lotteries and Gaming Act:

The Act provides that betting tax, gaming tax, lottery tax and prize competition tax shall be administered by the Tax Procedure Act (TPA).

Impact:

This will simplify and provide uniformity in the rules for collecting and administering taxes in relation to the betting and gaming industry.

Amendments to the Statutory Instruments Act:

The Act has removed the mandatory requirement that required review of subsidiary legislation and that imposed an expiration of statutory instruments at the end of 10 years following their enactment. It now stipulates that there shall be no need for such review and there will be no automatic revocation of statutory instruments.

Impact:

This amendment is beneficial as it reduces the administrative burden on government agencies and legislative bodies to carry out regular reviews. Furthermore, the initial requirement for mandatory review after 10 years was time consuming, and this time could be utilised in the carrying out of other functions. Additionally, the funds that were used for these reviews can be allocated for other functions.

2. The Anti-Money Laundering and Combating of Terrorism Financing laws (Amendment) Act, 2023

This legislation was passed on the 1st of September 2023 and was effective on the 15th of September 2023. The Act amends various legislations including: the Anti-Corruption and Economic Crimes Act, Extradition Act, Limited Liability Partnerships Act, Insurance Act, Capital Markets Act, Prevention of Terrorism Act, among others. Its aim is to facilitate the fight against money laundering and terrorism financing in Kenya. Thereby enhancing financial security and combating illicit activities. The Act has brought about the following changes:

Changes to the Limited Liability Partnership Act

- a) Definition of Beneficial Owner and Nominee Partner: The Act defines a Beneficial Owner as *the natural person who ultimately owns or controls a legal person or*

arrangements or the natural person on whose behalf a transaction is conducted and includes those persons who exercise ultimate effective control over a legal person or arrangement It also defines a Nominee Partner as *an individual or legal person instructed by a Nominator⁴ to act on their behalf.*

Impact:

The Act provides these definitions in order to enhance understanding in latter sections and ensure cohesiveness.

- b) Duty to keep, lodge, update and maintain records on Beneficial Owners and Nominee Partners: The Act requires every Limited Liability Partnership (LLP) to keep a register with information relating to the beneficial Owners and Nominee Partners. Each LLP will be required to lodge these documents with the Registrar; within 60 days for existing LLPs and upon submitting documents for proposed LLPs. In case of any updates, the LLP will be required to lodge these amendments with the Registrar within 14 days of making them. All LLPs will be required to keep these records for at least 10 years following the date the Beneficial Owners and Nominee Partners cease their duties. Failure to carry out the above duties shall be met with penalties ranging from monetary penalties to striking off of the specific LLP from the register and dissolution.

Impact:

This Section of the Act will ensure openness and transparency in the conduct of business.

Changes to Foreign LLPs under the LLP Act

- c) Mandatory Registration: A Foreign Limited Liability Partnership shall not carry on business in Kenya unless it has been registered under the Limited Liability Partnership Act. Failure to do so shall warrant a fine not exceeding Kshs. 250,000 or a jail term of 3 years or both.
- d) Appointment of a Local Representative: The Act requires that every Foreign LLP shall have at least one local representative who is a permanent resident in Kenya, or a Kenyan citizen residing in Kenya. The particulars and consent of this local representative will then be required to be lodged with the Registrar.
- e) Duty to have a registered office and file returns: Every foreign LLP is required to have a registered office in Kenya where all communications relating to it are addressed. The Foreign LLP shall also be required to file annual returns within 30 days of the day in which it was registered.

Impact:

⁴ A Nominator is an individual or legal person that issues instructions to a Nominee to act on their behalf.

The changes that the Act introduces to Foreign Limited Liability Partnerships are important because they ensure that Foreign LLPs have a known presence in Kenya and can therefore be monitored and held liable for their actions. Additionally, they ensure that Foreign LLPs are compliant with the laws of Kenya.

Changes to the Company Act

- f) Private Limited Liability Company (LLC) must have a Company Secretary or Contact Person: Section 243A of the Act requires Private LLCs with a paid capital of less than Kshs. 5 million to appoint a Company Secretary or a contact person. Such a person has to be a natural person with permanent residence in Kenya.⁵

Impact:

This amendment will promote transparency and accountability in the operations of Private Limited Liability Corporations in Kenya

Changes to the State Corporations Act, Cap 446

- g) Independence granted to the Financial Reporting Centre (FRC): The Financial Reporting Centre was a government institution that was created by the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) of 2009. This Act provides an amendment that confers operational independence on the Financial Reporting Centre by exempting it from the definition of a State Corporation. Furthermore, the Act stipulates that entities are required to promptly report any suspicious transactions or any such activities. These reports shall be filed on all cash transactions exceeding Kshs. 1,500,000. The FRC then has the duty to analyse these reports and share intelligence with the relevant law enforcement agencies which will initiate investigations and take the necessary actions.

Impact:

This amendment will strengthen the FRC's authority, and capacity in the combating of money laundering in Kenya.

- h) Enhanced Scope of Definition: The Act provides for a broader definition of money laundering offences to include *proceeds from domestic and international criminal activities, terrorism, financing, and the laundering of the proceeds of corruption* now classified as *economic crimes*. The definition also includes threats in the digital and cryptocurrency space, and financing of weapons of mass destruction.

Impact:

This definition of money laundering offences aligns with that which is provided under the Financial Action Task Force (FATF) Standards, this ensures cohesiveness between

⁵ A natural person is a living human being.

the two definitions. It also encompasses a wider range of activities that make it more comprehensive.

- i) Supervision by CBK and Enhanced Customer due diligence: The Act stipulates that the Central Bank of Kenya shall have the authority to supervise all financial institutions. Furthermore, these institutions will be required to conduct thorough customer due diligence in accordance with the Know Your Customer (KYC) standards.⁶

Impact:

Supervision by the Central Bank of Kenya will ensure compliance with the regulations and guidelines set by CBK. Furthermore, it will allow CBK to identify, measure, monitor and control possible risks associated with money laundering. The enhanced customer due diligence will aid in identifying potential and known money launderers at an early stage.

- j) Consensual extradition: The Act has done away with lengthy extradition proceedings. Criminals sought by requesting states may now consent to extradition without the need for proceedings.

Impact:

This amendment aids in strengthening the concept of Mutual Legal Assistance, as well as in streamlining international cooperation in the combating of cross border crimes.⁷

3. Privatisation Act, 2023

This legislation was passed on the 9th of October 2023. It has repealed the Privatisation Act, 2005 which was considered to be restrictive. The Act has revised the regulatory framework for the privatisation of public entities in a bid to improve the efficiency and competitiveness of Kenya's productive resources. It addresses the inhibiting legislative and regulatory framework provided in the Privatization Act 2005 that led to long processes of approval for privatisation of State-Owned Enterprises.

It introduces four privatisation methods including:

- a) Initial public offer of shares.
- b) Sale of shares by public tender.
- c) Sale resulting from the exercise of pre-emptive rights.
- d) Any other method that may be determined by Cabinet.

The Act also provides for the establishment of the Privatisation Authority and removes the requirement of parliamentary approval for members of the Authority. The Cabinet Secretary shall be responsible for formulating the privatisation programme for approval by Cabinet.

⁶ KYC identifies and verifies customer identities to mitigate the risk of anonymous transactions and promote transparency in financial transactions.

⁷ Mutual Legal Assistance (MLA) is the process by which States seek for and provide assistance to other States in gathering evidence and servicing of judicial documents for use in criminal cases.

This is a step away from the provisions of the Privatization Act 2005 which required the privatisation programme to be formulated by the Privatization Commission then approved by Cabinet before being Gazetted. Additionally, the Act provides that the proceeds from the sale of direct National Government Shareholding shall be paid to the Consolidated Fund. Moreover, it stipulates that when disputes arise, the Privatisation Review Board shall determine them, as well as any appeals that may arise from the decisions rendered. Previously this was the function of the Privatization Commission. The difference between the Privatization Commission and the Privatization Review Board lies in the composition. The Commission was made up of several members including a chairman appointed by the President, the Attorney General, the Permanent Secretary to the treasury, the Executive Director, and seven members who are not public officers appointed by the Minister and approved by Parliament. While the Board is made up of a chairperson, the Attorney General or a representative, the Principal Secretary to the National Treasury or a representative, the Principal Secretary for matters investment promotion or a representative, four other persons appointed by the Cabinet Secretary who are not public officers, and the Managing Director of the Privatization Authority.

Additionally, the Act states that any ongoing privatisation under the Privatization Act 2005 will be finalised by the Privatisation Act 2023. It also reverses the Privatisation of state agencies that was conducted in 2009.

The Act will, however, not apply to:

- a) Sale of shares in the secondary market.
- b) Sale of shares by a social security fund, compensation fund, superannuation fund, insurance fund or endowment fund under public control for the benefit of its contributors
- c) Sale of new shares to existing shareholders through the rights issue
- d) Any balance sheet reorganisation which may lead to dilution of the percentage of shares held by a public entity.
- e) Sale or transfer of shares by a county government.

Impact:

This Act marks a significant departure in Kenya's privatisation strategy, aiming to improve efficiency and flexibility while consolidating authority under the Cabinet Secretary and Cabinet approval. It simplifies the process, introduces various privatisation methods, and establishes an independent Privatisation Authority.

However, concerns about transparency and accountability arise. Shifting the responsibility for formulating the privatisation program from the Privatization Commission to the Cabinet Secretary may lead to reduced oversight and checks and balances in the privatisation process. The Commission comprised several members, including a President-appointed chairman, the Attorney General, the Permanent Secretary to the Treasury, and non-public

officers appointed by the Minister and approved by Parliament. This structure provided an additional layer of scrutiny, expertise, and consultation in the formulation of the program.

4. The Public Finance Management (Amendment) Act, 2023

This legislation was passed on the 13th of October 2023. It was popularly referred to as *the debt-anchor Bill*. It introduces a new borrowing threshold of 55% of the Gross Domestic Product (GDP) in present value terms. This replaces the previous numerical debt ceiling, which was Kshs. 10 trillion. The Act also stipulates that the government will have the ability to surpass the debt threshold by up to 5% during challenging economic times. For instance, during natural disasters, extreme political events or any such event that leads to abrupt changes in exchange rates and domestic interest rates, thus affecting debt levels and repayment. It also mandates that the Cabinet Secretary for National Treasury shall implement measures to ensure that within 5 years of the Act's enactment, there is a substantive reduction in public debt to levels consistent with the required and defined debt threshold.

Impact:

The adjustment in the debt ceiling from a fixed rate of 10 trillion to 55% of the GDP in present value terms, enhances the sustainability of debt management. This change not only aligns Kenya with international best practices supported by the International Monetary Fund but also shields the nation from abrupt cuts in vital social expenditures like health, food, education, security, and infrastructure. Consequently, the Act ensures the preservation of Kenya's long-term development and economic initiatives even in challenging economic circumstances.

5. Climate Change (Amendment) Act, 2023

This Act was passed by the President on the 1st of September 2023. It builds upon the foundations of the Climate Change Act, 2016. But more specifically, it aims to assist Kenya in the realisation of her obligations under the Paris Agreement. It aims to regulate Kenya's participation in domestic and international carbon markets. The Act makes provision for the establishment of a carbon registry that is easily accessible to the public. This registry would include information relating to carbon credit projects as well as the amount of carbon credits transferred or issued in Kenya. Additionally, it includes offences that will warrant a fine not exceeding 500 million or imprisonment for 10 years, or both. These punitive measures shall be held against any person who:

- a) Fails to maintain public records.
- b) Engages in money laundering through carbon trading.
- c) Knowingly sells carbon credits to unauthorised entities.
- d) Manipulates carbon credit measures in order to claim additional measurements.
- e) Willingly conducts unauthorised trade in carbon credits.

- f) Knowingly gives false information regarding environmental or financial gains from the carbon market investment.

The Act has also outlined the procedures for public consultation on matters relating to climate change policy, programme, plan, action or strategy. It significantly reduces the period of submission of comments or objections from 60 days to 28 days.

It also makes provision for Dispute Resolution Mechanisms for disputes that arise from carbon markets projects. It states that disputes that arise from land-based projects shall be subject to the dispute resolution mechanism specified in the Community Development Agreement and should be resolved within 30 days of lodging the dispute. Any other dispute that is not land based shall be resolved through Alternative Dispute Resolution.⁸ Where there is failure to resolve the dispute within the stipulated 30-day period, it shall be referred to the National Environmental Tribunal.

Impact:

This Act will assist in filling the legislative gap that exists in matters dealing with the regulation of carbon trading in Kenya. It will also encourage the stimulation of greater investment in carbon projects in Kenya. Carbon markets offer a dynamic approach to addressing climate justice while balancing economic prospects. Furthermore, the Act emphasises the need for Public Consultation by reducing the period of consultation from 60 days to 28 days.

6. The Health Acts

The Government of Kenya in a bid to accelerate the goal of universal health coverage released four new health bills: The Digital Health Bill 2023, the Social Health Insurance Bill 2023, the Primary Health Care Bill 2023, and the Facilities Improvement Financing Bill. These bills were passed into law on the 17th of October 2023. Nonetheless, their implementation has since been put on hold following a High court ruling on the 27th of November 2023.

i. Digital Health Act, 2023

This Act is also referred to as the E-Health Bill. It is intended to serve as a means for the furtherance of Digital Health Data Governance in Kenya. The Act makes provision for the establishment of an integrated telemedicine and m-health system⁹. The system addresses

⁸Land based projects are projects that are required to include a provision in the Community Development Agreement for annual social contributions of at least 40% of the project's aggregate earnings. Non-land-based projects are projects which are required to include at least 25% of their aggregate earnings as the annual social contribution to the community.

The Act defines aggregate earnings as: *the total of all income in a carbon project without adjustment for inflation, taxation, or types of double counting.*

⁹ Telemedicine is the remote diagnosis and treatment of patients by means of telecommunications technology. While m-Health is mobile health, which is the general term for the use of mobile phones and other wireless technology in medical care.

the need for interactivity among health systems and devices. It also includes measures to address and ensure data accessibility, security, privacy, accuracy, and ownership within the healthcare system. For instance, in order to access information for medical research, an individual will be required to submit an application in a prescribed form. For National level data, the application goes to the Cabinet Secretary, while for County level data, the application is to be submitted to the respective County Executive Committee member.

The Act stipulates the purposes for which the collection, usage or divulging of information relating to the health of a patient should be allowed. Furthermore, it stipulates that both national and county governments will be required to establish e-Health centres as required for effective healthcare delivery. These centres are required to be equipped with the required resources and train the necessary healthcare personnel through collaboration with the Ministry of Health.

Patients will also be entitled to timely and efficient medical services, access to their data, and the ability to decline the inclusion of sensitive data and/or references. Lastly, the Act also makes provision for the regulation of e-waste handling and health tourism within the healthcare system.

Impact:

The progression and adoption of an e-health system is likely to rapidly improve accessibility, increase efficiency, improve data management as well as improve patient experience. Nonetheless the digitization of health care services could also come with challenges regarding data security and privacy, cost implications, as well as infrastructural limitations such as reliable internet connectivity and power supply.

ii. The Social Health Insurance Act, 2023

The Act establishes a Social Health Authority and a Primary Health Fund to replace the National Insurance Fund (NHIF). It outlines the plan to reform Kenya's health financing by fixing the problems that have plagued the National Health Insurance Fund (NHIF), and by expanding the health insurance coverage. Here are some of the aspects of the Act and the impacts that will arise from them.

Amendments and Impact:

The Act seeks to allocate resources to cater for emergency and chronic care. This will be beneficial as it will provide quick relief to persons in need of emergency care and persons with chronic illnesses. The Act also seeks to improve the speedy access to emergency care. This will be an important aspect as it will assist in avoiding situations where persons seeking emergency care such as accident victims, are turned away because they lack the means to pay for the healthcare service.

The Act also seeks to ensure the allocation of resources to primary healthcare (PHC). This is an important turning point from the NHIF whose main focus was tertiary and secondary care. This is beneficial and more equitable because the majority of Kenyans seek medical

care from PHCs. Additionally, the Act seeks to propose that the limit to administrative costs should be 5% of the health insurer's expenditures. Imposing a specific cap will ensure that the efficiency gains are sustainable.

Nonetheless, the Act also entails some aspects that could prove to be challenging for most Kenyans. It requires taxpayers to be deducted a mandatory 2.75% of their salaries to fund the health scheme. This will be a steady increase from the previous range of Kshs. 150 to Kshs. 1,700. This will be a further deduction to the take home income of Kenyan workers. Furthermore, the Act is not clear on whether the newly introduced funds, the Primary Healthcare Fund and the Chronic and Emergency Care Fund, will benefit all Kenyans or only the ones who have contributed to the Social Health Insurance (SHI) scheme. If the latter were the case, the Act would be encouraging inequities by benefitting the minority of Kenyans who have the means to pay for the SHI scheme.

iii. Primary Health Care Act 2023

This Act establishes a framework for delivering, managing, and accessing primary healthcare services. These services will include services provided by the 100,000 community health promoters commissioned by the President to begin working in October. The primary healthcare services will be accessed at the community or at a health facility in accordance with this Act or any other written law. These services shall include health promotion, prevention, curative, rehabilitation, and palliative services. The community health care services will commence at the household while the facility health care services will commence at the health facilities. Additionally, the Act provides that each county government shall facilitate the service delivery of primary healthcare by adopting modern approaches for disease identification, monitoring and surveillance as well as research and education, providing community and stakeholder support to the respective primary health care facility, ensuring continuous community engagement, enhancing the availability of quality services and guaranteeing the primary health care services are optimally financed and resourced.

The Act also provides for a Primary Healthcare Workforce which includes health care providers, and community health promoters. Additionally, the Act establishes a Primary Health Care Advisory Council appointed by the Cabinet Secretary which shall consist of 9 members. Some of the functions of the Council will include: the advisory of the Cabinet Secretary regarding matters relating to delivery of primary health care services, monitoring and conducting periodic reviews of the primary health care services, providing guidance and recommendations for effective delivery of primary healthcare services.

Impact:

The Act encourages access to primary healthcare services for all. It also encourages community engagement and support by mandating county governments to engage the community and stakeholders in healthcare delivery. Additionally, the provision for periodic

reviews and monitoring will lead to better accountability and improved service delivery and quality. This aligns with the broader goal of achieving universal health coverage.

iv. The Facility Improvement Financing Act 2023

This Act seeks to provide for public health facility improvement financing as well as the management and administration of facility improvement financing and other connected purposes. The Act makes provision for the retention of all monies raised or received on behalf of public health facilities, and that these monies shall be put into a facility improvement financing account. The Act then provides that these resources shall be used for the support, enhancement, guarantee and sustainability of the daily operations in public health facilities.

Furthermore, the Act provides that the Cabinet Secretary in charge of Health will be required to provide a policy framework for the administration of the Facility Improvement Funds, and this will be in partnership with the County Executive Committee which will oversee support and implementation of the Facility Improvement Financing. The Act also stipulates that the Chief officer of the respective facilities shall be the accounting officer and will therefore have the authority to allow for the incurring of expenditure to support the respective facility. The Act then provides that within three months after the end of each financial year the chief officer will be required to make a report which shall include the financial statements of the county health facility in accordance with the Public Audit Act. This report shall be delivered to the Controller of Budget and the Commission on Revenue Allocation.

Impact:

Previously, public health facilities have relied on funding from the county treasury in order to function. This has led to delays in service delivery. With the enactment of this Act, all public health facilities will have a steady, regular, and predictable source of funding for operations. They will be self-sufficient thus ensuring speedy access to medical care if the funds are properly utilised.

7. Refugee Identification Documents in Kenya: A turning Point.

On the 19th of September 2023, the government through the Cabinet Secretary of interior and Local Administration declared several documents as Refugee Identification Documents for the purposes of acquisition of services provided by the Government of Kenya. These documents include:

- a) Asylum Seeker Pass
- b) Proof of Registration
- c) Movement Pass
- d) Letter of Recognition
- e) Refugee Identity Card
- f) Conventional Travel Documents

This declaration is pursuant to section 28(7) of the Refugee Act which states that, “Without prejudice to the generality of the foregoing, and subject to the special circumstances of refugees, the Refugee Identity Card shall at a minimum have a similar status to the Foreign National Registration Certificate issued under section 56 (2) of the Kenya Citizenship and Immigration Act (No. 12 of 2011) for the purposes of accessing the rights and fulfilling obligations under this law.”

Impact:

Refugees in Kenya have long encountered obstacles due to government policies that restricted their ability to work, move freely, and access essential services, including financial services. Consequently, this policy shift represents a significant and positive change for refugees, as it promotes their social and economic integration, granting them access to critical services such as communication and financial services, and the opportunity to seek employment. Moreover, this policy adjustment aligns Kenya with international obligations regarding refugee rights, emphasising the importance of social and economic cohesion. Nevertheless, the introduction of this policy may raise concerns about job competition, given that Kenya's job market already faces challenges, such as high levels of unemployment and underemployment. It is imperative for the government to implement fair employment policies, stimulate job creation for both refugees and Kenyan citizens, and foster economic growth that benefits all stakeholders.

B. Bills (Proposed laws)

Introduction

This section provides an overview of some of the bills that have been proposed in parliament and their potential implications. For the purpose of this digest, the Bills discussed are the Kenya Sign Language Bill, 2023, the Higher Education Loans Board (Amendment) Bill 2023, the Employment (Amendment) Bill 2022, the Insolvency (Amendment) Bill, 2023, Environment and Land Court Act (Amendment) Bill, 2023, and, the Public Holidays (Amendment) Bill, 2023.

1. The Kenya Sign Language Bill, 2023

This Bill seeks to give effect to Article 7(3)(d) of the Constitution of Kenya on the Promotion and Development of the Use of Kenyan Sign Language, to give effect to Article 54(1)(d) on the use Sign Language as a means of communication, and to provide for the use of Sign Language in Legal Proceedings.

Amendments and Impact:

- a) Recognition of Sign Language as an Official language: The Bill emphasises the recognition of the Kenya Sign Language as a language in Kenya and grants deaf persons the right to use and preserve the language.

Impact:

The recognition of Sign Language as one of the official languages in Kenya will allow for its use in government offices, and schools. This will be in line with Article 54(1)(d) of the Constitution of Kenya which recognises Sign Language as a mode of communication. Additionally, this will emphasise the objectives of the United Nations Convention on the Rights of Persons with Disabilities which Kenya ratified in 2008, and which mandates member states to eliminate all forms of discrimination against persons with disabilities.

- b) Use of Sign Language in Legal Proceedings: The Bill proposes that where a person's first or preferred language is the Kenyan Sign Language they are entitled to use it when acting as: a member of a court or tribunal or body before which proceedings are conducted, as a party or a witness in a legal proceeding, as an Advocate of the High Court of Kenya representing a party in proceedings, and when given leave by a judicial officer to use the Language. The Bill also states that it is the function of the judicial officers to determine the accuracy of any interpretation from the Kenyan Sign Language into spoken or written language or vice versa. It finally adds that notice of intention to use Sign Language will be required prior to the commencement of the proceedings, and that failure to do so may warrant an award of costs. However, no

one shall be denied the right to use the Kenyan Sign Language in any legal proceedings owing to failure to provide prior notice.

Impact:

This is a positive step for the judicial system as it will ensure equal access to justice for the members of the deaf and dumb community. Nonetheless, it will be imperative for all appointed Sign Language interpreters to file a current practising certificate to prevent instances of unqualified persons acting as qualified sign language interpreters in legal proceedings.

- c) Registration of Sign Language interpreters: The Bill proposes that any person who wishes to act as an interpreter should apply for registration by the ministry responsible for establishing the required criteria and procedures for determining eligibility.

Impact:

This section will be important in determining whether a person is qualified to act as a Sign Language interpreter in a matter.

- d) Curriculum development: The Bill requires the Kenya Institute for Curriculum Development to develop, review and approve appropriate programmes, curricula and support materials for learners who are deaf and hard of hearing. The institute will also be required to carry out comprehensive assessments and review of these programmes to ensure their proper functioning. Parliament will also require a report a year after the commencement of the Act.

Impact:

The institution of a proper curricula, specific learning programmes and support materials will be critical for the learning process of the persons in the deaf community.

- e) Sign language at the workplace: The Bill provides that all National and County Governments shall take reasonable steps to promote and encourage the use of Basic Kenyan Sign Language among its deaf and hearing employees. Furthermore, the Bill requires that the national and county governments set aside adequate funds for activities for the promotion of awareness on the Kenyan Sign Language. Additionally, they shall provide sign language interpreters during conferences, meetings, cultural events, community affairs and any other activities conducted by government agencies. Lastly, the Bill requires the government to subsidise the acquisition of hearing aids and other ancillary services necessary for the deaf community.

On the employer part, the Bill requires that they shall create reasonable opportunities for persons who are hard hearing or deaf to be eligible for employment and career progression.

Impact:

This section of the Bill will be very important as it will allow members of the deaf community to contribute, engage and progress in their professional lives. It will also foster a positive, equal, diverse, and inclusive work environment. Nonetheless, rather than limiting this section to national and county government offices, it could be more impactful if the section applied to Employers in both the public and private sector.

- f) Promotion of Sign Language among the hearing community: The Bill proposes that the National and County governments take all the necessary steps to promote Sign Language competency and understanding among the hearing community. This is proposed to be done so through its inclusion into the mainstream curriculum.

Impact:

This will be a necessary step towards ensuring effective communication between the deaf community and the hearing community.

2. The Higher Education Loans Board (Amendment) Bill, 2023

This is a proposed Bill to amend some sections of the Higher Education Loans Board Act, Cap 213 A, hereinafter referred to 'the Principal Act'. The Bill proposes the following changes:

Amendments and Impact:

- a) Inclusion and definition of the terms disability and youth: The Bill under Section 2 includes the definition of the term disability as *any physical, sensory, mental, psychological, or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day to day activities*. It also defines youth as *a person who has attained the age of eighteen years but is yet to attain the age of thirty-five years*.

Impact:

This section of the Bill is included to act as a reference for later sections that include the terms provided and defined above. It also aids in ensuring clarity and cohesion.

- b) Removal of the terms "rate of interest": The Bill proposes the removal of the terms '*rate of interest and*' from Section 6(c) of the Principal Act which stipulates that one of the functions of the Board shall be... to set the criteria and conditions governing the granting of loans including *the rate of interest and* recovery of loans.

Impact:

This proposed amendment prevents the Higher Education Loans Board (HELB) from imposing high interest rates on student loans. The Board had previously attempted to charge student loans using the rate prescribed by the Central Bank of Kenya, which was 9.5%. However, this was unsuccessful. Such a high interest rate will lead to an increase in the number of loan defaulters as it would prove to be a financial burden on the graduates.

- c) No interest for youth and persons with disabilities until employed: The Bill proposes to amend Section 15(1) of the Principal Act to stipulate that no interest shall be charged on the principal amount¹⁰ advanced to the youth and persons with disabilities until they have secured their first employment upon completion of studies. Furthermore, it seeks to amend Section 15(2) of the Principal Act which reads as follows: reads as follows: Any loanee who fails or neglects to satisfy the requirements of subsection (1) *within the stipulated time* shall, in addition to any other action that the Board may take against him, be guilty of an offence and liable to a fine of not less than five thousand shillings in respect of each loan deduction that remains unpaid in accordance with provisions of subsection (1), and such fine shall be payable to the Board.

The amendment seeks to replace the words *within the stipulated time* with the words *upon securing employment or within five years after completion of his studies*. Section 15(2) of the Principal Act.

Impact:

This amendment aims to extend the repayment period of the HELB loan. This will positively impact the graduate as it will ease their financial burdens especially for those graduates who are yet to be employed. The current state of affairs is that both employed and unemployed graduates are required to begin paying their HELB loans within a year after graduation.

- d) Interest rate cap at 3%: The Bill seeks to introduce a new section just after Section 14 which stipulates that the maximum interest to be charged by HELB on the principal amount advanced to a loanee shall not exceed 3% per annum.

Impact:

This Section will be beneficial as a lower interest rate reduces the financial burden born by the loanee/graduate. Nonetheless, to further reduce the financial burden, the government could opt to stipulate a specific point at which the interest on the loan could cease to accrue. For instance, in *Anne Mugure and 2 others v the Higher Educations Loans Board* (2022) eKLR, the court applied the *duplum rule* as envisioned

¹⁰ The Principal Amount is the initial sum of money borrowed from a lender.

by Section 44A of the Banking Act. It provides that the interest on a loan ceases to accrue once it is equal to the principal amount. Therefore, if passed this section could be amended to include the provisions of this judgement.

3. The Employment (Amendment) Bill, 2022

This proposed Bill aims to provide for the right to disconnect in the digital age. The right to disconnect for the purposes of this Bill means: an employee's entitlement not to be contacted by the employer during out of work hours as per the employer's policy. It seeks to address employee burnout. It takes note of the challenges that have arisen with digital connectivity. It has eroded leisure time for employees hence affecting their work life balance. The Bill therefore aims to strike a balance between work and private life.

Proposed Amendment:

The Bill introduces the right to disconnect under Section 27A. It states that an employer will be required to put in place a policy that indicates the circumstances under which an employer may contact an employee during out of work hours. The policy will also indicate when electronic devices can be used to send or receive information relating to work outside of work hours, and finally it will indicate when the right to disconnect may be waived.

The Bill also requires employers to specify the nature of compensation for employees who work during out of work hours.

It adds that the right to disconnect shall only be limited to the extent necessary to address an emergency arising out of the work falling within the scope of responsibility regarding a specific employee.

The Bill also stipulates that where an employer contacts an employee during the period when there is no mutually agreed out of work hours, the employee shall not be obliged to respond and shall have the right to disconnect. Further, that if the employee chooses to respond, they shall be entitled to compensation. Nonetheless, the Bill stipulates that these provisions shall not apply to essential services.

Lastly, the Bill provides a penalty of a fine not exceeding Kshs. 500,000 or imprisonment for a term not exceeding 1 year or both to any employer who contravenes this section.

Impact:

This proposed Bill is important for employees because it promotes wellness and reduces burnout. It also increases employee engagement and helps them to deliver their best work which in turn is beneficial for organisations. Additionally, it promotes the concept of work-life balance which in turn reduces stress and improves the overall well-being of employees. However, on the 17th of October 2023, the Federation of Kenya Employers called upon the Departmental Committee on Labour to shelf the entire Bill. They stated that if enacted, the amendments will hamper development and operations of enterprises, job creation and the Labour Market. Furthermore, that it will jeopardize harmonious Industrial Relations in Kenya.

The Executive Director and CEO stated that the clauses in the Bill were retrogressive because they do not account for the changing work environment which incorporates virtual and homework stations. Additionally, she stated that Kenya seeks to formalise the informal sector in order to create more and better jobs. She stated that the Bill introduces changes that will make it difficult to persuade the informal enterprises to join the mainstream economy. Additionally, the Vice President of the Federation stated that the changes that the Bill introduces are covered in Collective Bargaining Agreements. He stated that employers are keen on initiatives that will address the future of work, progressive labour practices and enable the country to provide a competitive edge that can compare with global trends. If the proposed law is enacted, Kenya will become the first African country to implement the right to disconnect. Following the 2020 COVID-19 Pandemic several European countries including Belgium, France, Italy, Spain, and Portugal enacted such laws. Outside of Europe, Canada has also enacted this legislation. Nonetheless, while the idea of using legislation to protect employees from the adverse effects of remote working and demanding employers has been embraced by some, several nations are yet to embrace it.

4. The Insolvency (Amendment) Bill, 2023

Proposed Amendment:

The Proposed Bill seeks to introduce a fast-track administration process in the Insolvency Act. The aim of the Bill is to bring about the expedited, and fast-tracked administration process to Insolvency cases, for them to be completed within 18 months.

Impact:

The proposed Bill will have several positive impacts which will include:

- a) Swift resolution of financial difficulties faced by mid to small - size enterprises (MSMEs), this will provide them with the opportunity to promptly settle debts and prevent further financial losses.
- b) It will also allow businesses to make the most of their distressed assets by allowing for quick sales or restructuring thus benefiting both the shareholders and the creditors.
- c) Further, the prescribed time limit (18 months) makes the process both cost effective and efficient.

Nonetheless, the proposed Bill could result in a number of demerits. These include:

- a) The need for specialised insolvency practitioners, legal advisors, and administrative support. This could be heavily burdensome on some if not most businesses.
- b) Fast tracking may require significant allocation of resources to meet the tight timelines.
- c) Parties involved could challenge the decisions reached which could result in legal disputes and prolonged litigation. This will in turn delay the process which is contrary to the expected speedy resolution.

Other than these merits and demerits, the implementation of this Bill will have certain implications on institutions such as USIU-A who will need to reassess their credit risk assessment and lending policies, especially if they provide loans or credit to other entities. This Bill will require thorough credit evaluations.

5. Environment and Land Court Act (Amendment) Bill, 2023

Proposed Amendment

The Bill seeks to amend the Environment and Land Court Act 2011. It aims to enhance the effectiveness and efficiency of the Environment and Land Court. Consequently, the bill seeks to bring about the following changes:

- a) The establishment of the Environment and Land Court Advisory Committee which will be responsible for the making of recommendations to the Commission regarding judicial policy, practice, training and capacity building for judges and magistrates of the Court.

Impact:

This will improve professionalism, consistency, and skill development among judicial officers, leading to more effectiveness, efficiency and fair administration of justice.

- b) The introduction of the following divisions: The Chief Justice may establish different divisions including the Land Division, Environmental and Planning Division, and any other division as the Chief Justice may on the advice of the Principal Judge determine, for purposes of promoting effectiveness and efficiency in the administration of justice as well as judicial performance.

Impact:

Introduction of new specific divisions will improve the quality and speedy delivery of justice in these specialised fields.

- c) Establishment of a court station: The Chief Justice will be required to establish at least one court station in every county.

Impact:

This amendment ensures easy access to the court system for all litigants.

- d) Summary Disposition: The Court can summarily allow or refuse applications for temporary injunctions, conservatory orders, or interlocutory orders without a detailed ruling.

Impact:

Allowing the court to summarily allow or refuse certain applications without the need for a detailed ruling will expedite the legal process, reduce backlog of cases, and save on time and resources for both the courts and the litigants.

- e) Un defended suits: The Court may make orders in interlocutory or procedural applications in chambers without a hearing.

Impact:

This amendment will streamline the handling of straightforward cases, further reducing delays in the legal process.

f) Supervisory Jurisdiction: The Court shall have supervisory jurisdiction over subordinate courts, local tribunals, and administrative authorities within its jurisdiction. This means that it will be able to call for records and make appropriate orders.

g) Bilingual Proceedings: The Court shall be able to conduct proceedings in English and Kiswahili.

Impact:

Conducting legal proceedings in both English and Kiswahili accommodates the language preferences of litigants and legal professionals, making the legal process more accessible to the diverse population in Kenya.

h) Judicial Code of Conduct: The Bill requires every judge to sign and adhere to the Judicial Code of Conduct, monitored by the Principal Judge.

Impact:

This amendment will ensure high ethical standards within the judiciary thus enhancing public trust in the judicial system.

i) Performance Management: The Bill introduces a performance management system for judges that will comprise of performance contracting, appraisal, and evaluation.

Impact:

This amendment will promote accountability and ensures the judges meet the highest standards of judicial performance.

j) Case Management and the use of Technology: The Bill institutes policies to maintain the integrity of the registry and court stations through case management and the use of technology.

Impact:

This change will lead to more efficient court operations that lead to the reduction or paperwork, enhanced data management, and will improve the overall administration of justice.

6. The Public Holidays (Amendment) Bill, 2023

Proposed Amendment (Change)

The aim of this Amendment is to provide for the extension of Public Holidays. Just after section 3 of the act the following section has been proposed to be included; it states that:

i) When a public holiday falls on a Tuesday, the previous day (Monday) shall also be a public holiday.

ii) When a public holiday falls on a Thursday, the following day (Friday) shall also be considered a public holiday.

Impact:

Advantages

- a) Extended period for leisure and relaxation. This will be key in the promotion and improvement of employees' morale and motivation. It will also assist in maintaining work-life balance.
- b) It will also improve personal consumption expenditure (consumer spending) as Kenyans will have more time to take part in leisure =activities particularly in the retail sector.
- c) It will assist in the reduction of stress and employee burnout from work, hence improving productivity.

Disadvantages

- a) Inability to access government services due to the closure of offices during the extended holiday.
- b) Increase in costs on the part of the employers as they would still be required to pay their employees even though they are not reporting to work on those days.

Additionally, this Bill will have potential implications on institutions such as USIU-A which will be required to adjust their academic calendars to incorporate the additional public holidays. This could result in the extension of semesters, and rescheduling of classes. If this bill is enacted, such institutions will be required to incorporate appropriate adjustments to ensure that their academic and operational activities can continue smoothly while complying with the new public holiday regulations.

C. Hot on the Bench

Introduction

This section delves into some of the cases and legal issues that have arisen on both national and international fronts.

National Matters

1. Non-Discrimination of Sexual Minorities

Case: *Non-Governmental Organisations Coordination Board v Eric Gitari & 5 others and Katiba Institute as Amicus Curiae*, Supreme Court Petition No.16 of 2019 [2023]

The facts of the case were as follows: Eric Gitari (who was the first respondent in the matter) had applied to the Non-Governmental Organisations Coordination Board (hereinafter 'Board') for a proposed non-governmental organisation (NGO) that would address the violence and human rights abuses suffered by the (LGBTQIA)+ community in Kenya. He proposed 6 names which were: National Gay and Lesbian Human Rights Commission, National Coalition of Gays and Lesbians in Kenya, National Gay and Lesbian Human Rights Association, Gay and Lesbian Human Rights Council, Gay, and Lesbian Human Rights Observatory and Gay and Lesbian Human Rights Organization.

The Board rejected the application and informed him that the proposed names and objects of the proposed NGO were offensive to public policy, and stood in conflict with sections 162, 163 and 165 of the Penal Code. which outlawed same-sex liaisons. The Supreme Court in reaching a final decision with a 5-2 majority found that refusal to register an organisation of persons within the (LGBTQIA)+ community amounts to violation of the freedom of association and freedom from discrimination as enshrined in the Constitution of Kenya (2010). The majority expressed that the registration of an association to champion for the (LGBTQIA)+ community rights has no correlation with the offence of 'carnal knowledge against the order of nature' which is criminalised in the Penal Code

Impact:

The Supreme court's decision will bear a lasting impact as it will act as a precedent for the right to non-discrimination of sexual minorities who seek to exercise their freedom of association. This is despite Kenya's current stance on matters dealing with the decriminalisation of same-sex conduct. This case further highlights the importance of human rights advocacy and the role that non-governmental organisations play in promoting and protecting these rights.

2. No Forced Sterilisation

Case: *SWK and 5 Others v Medecins Sans Frontieres and 10 others* (2016) eKLR.

On the 21st of September 2023, a landmark judgement was delivered concerning the issue of forced sterilisation. The case involved four women who were living with HIV and underwent forced sterilisation from three institutions, Médecins Sans Frontières – France (MSF- France), Pumwani Maternity Hospital and Marie Stopes International. The court found that this constitutes a violation of their fundamental rights and freedoms, including, the right to human dignity, freedom from discrimination, right to the highest attainable standard of living and finally, the right to establish a family. The Court’s judgement emphasised that women living with HIV possess the inherent right to make informed choices regarding their reproductive system. Additionally, it mandated that all medical facilities must ensure that they obtain the consent of patients that seek medical assistance from their facilities.

Impact:

This case affirms and emphasises the importance of consent in healthcare facilities. It is important for the public to be aware of their right to consent to all forms of treatment.

3. The Burden of Proving Land Title Validity lies on the Buyer

Case: *Dina Management Limited v County Government of Mombasa and 5 others* (Petition No. 8 EO10 of 2021).

This was an appeal challenging the decision rendered by the Court of Appeal which had affirmed the judgement of the Environment and Land Court. In September 2017, the County Government forcefully entered the Petitioner’s (Dina Management Limited) property located along Nyali Beach, Mombasa. They demolished the entire beachfront perimeter wall and levelled the property to be the same height as the beach. Their argument was that they wanted to create a pathway to the beach. They claimed that the property in question was public land. They then proceeded to challenge the validity of the title to the Property that Dina Management Limited claimed to have obtained in 1989. They stated that it was obtained through illegitimate means as the property was public land designated for a public road. Dina Management Limited argued that they had acquired the Property in good faith for the value of Kshs. 18 million, and without any such irregularity. They also claimed to have done the necessary due diligence and investigation prior to obtaining the title. They further stated that they were not party to the alleged improper acquisition process.

The Supreme court in reaching a final decision upheld the decisions of both the High Court and the Court of Appeal. They stated that the property in question was a public utility and could therefore not generate private proprietary interest that could be legally and legitimately protected by the Court. They determined that the Petitioner (Dina Management Limited) could not claim the defence of being a purchaser in good faith as they ought to have exercised the highest level of caution while conducting their due diligence. They ordered that

the land would vest in the County Government of Mombasa in accordance with Article 62(2) of the Constitution of Kenya

Impact:

This decision marks an important precedent in relation to matters due diligence in property transactions. It will hold great implications for property investors and stakeholders in Kenya. They will be tasked with conducting thorough due diligence and investigation prior to purchasing any property. To determine a good title, one has to look into whether it includes a clear description of the property, the process followed in granting the title adhered to the legal requirements, and it does not raise any uncertainties or irregularity.

There are certain ways one could investigate a title. These include:

1. Conducting searches at the Lands Office and requesting to inspect files that pertain to the property you seek to purchase.
2. Ensuring that the property is not listed in the Ndung'u Report on Illegal/Irregular Allocation of Public Land in Kenya.
3. Where the question arises whether the property is public land- request for letters of allotment to prove whether the land is public or not.
4. One could also hire a surveyor who can conduct searches at the Survey of Kenya

4. Employee Compliance to Disciplinary Proceedings

Case: Paul Wanyagah v. Market Development Trust T/A Kenya Markets Trusts (2017) eKLR.

The facts of the case are as follows: The Appellant (Paul) was employed as the Chief Executive Officer (CEO) by the Respondent (MDT). Based on the findings of an Audit Report he was invited for a disciplinary meeting conducted by the Respondent's donor. He was informed of the meeting through a letter dated 24th October 2016, but later received email correspondence that the date had been shifted to 25th October 2016. The Appellant opted to attend the hearing on the wrong date and failed to attend on the correct date. They attempted to reach him on the 25th but he was out of reach. They then conducted the hearing without the Appellant and decided to terminate his employment.

The Appellant filed a suit at the Employment and Labour Relations Court (ELRC) claiming unfair termination. It was found that the termination was substantively fair as the Appellant had received reasonable opportunity to be heard, having received notice of the hearing date change via email correspondence. Therefore, his failure to seek clarity from the Respondent was viewed as negligence on his part.

The Appellant filed an appeal at the Court of Appeal challenging the decision made at the ELRC. Nonetheless, the Court of Appeal upheld the decision of the ELRC. They emphasised that the Appellant had been granted valid reasons for termination and had also been invited to a disciplinary hearing where he could plead his case, but he failed to attend. Therefore, he could not claim procedural and substantive unfairness before termination of employment.

Impact:

This case emphasises the need for employees to be proactive in ensuring that they seek clarity where information may not be clear to them. It also emphasises the importance of attending disciplinary proceedings as it allows the employee to have a fair hearing.

It also highlights the importance of access to information prior to such hearings, and effective communication between the employer and the employee. Employers should be able to provide all the necessary documents and ensure that their communication with the employee is transparent and fair.

5. Division of Matrimonial Property upon divorce

Case: JOO v MBO (2023) KESC eKLR.

In this case the parties were married under the Abagusii Customary Law in 1990. In 1995 they formalised their union per the Marriage Act Cap 150 (Now Repealed). While married, they had two children. They also acquired several properties, on one of the properties they had constructed rental units, and the Respondent claimed that she had applied for a loan of Kshs. 200,000 which she gave to the Appellant to complete the units. In 2008 they divorced, and the division of matrimonial property proceedings commenced. At the High Court the court awarded the wife 30% of the land and 20% for the rental units. She was dissatisfied and filed an appeal to the Court of Appeal; the court held that she had acquired a beneficial interest and divided the property at a 50:50 ratio. This time, the husband was dissatisfied and appealed to the Supreme Court. In reaching a determination, the court cited the maxim of equity which states that *equality is equity*. Furthermore, they cited Article 45(3) which emphasises that parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage. They noted that each party's contribution may not have been equal as one party may have contributed significantly more financially towards the acquisition of the property. However, the other party though not having contributed more resources, in one way or another through their actions, deeds, provided an indirect contribution that enabled the other party to have more resources to acquire the property.

The court emphasised that regarding the division of matrimonial property, it is not a question of quantitative contributions but rather any contribution, by any party, in any form; whether direct or indirect. It therefore upheld the Court of Appeal's 50:50 ratio. However, the Court added that Article 45(3) does not entitle the parties to 50% share. The share is in accordance with the parties direct or indirect contribution.

Impact:

This case emphasises the principles of equity and fairness in the distribution of matrimonial property upon divorce. It reaffirms that each party's contribution has to be recognised.

6. Compliance and Fairness in Employee Background Checks

Case: Harrison Kisaka v. Faulu Microfinance Bank Limited (No. 0586 of 2023).

On July 7th, 2023, the Office of the Data Protection Commissioner (ODPC) issued a determination on this matter. The complaint involved a job interview conducted by Faulu Bank, a series of assessments were carried out, Kisaka emerged as the appointed candidate for the position of Credit Quality Assurance and Compliance Officer. Nonetheless, his formal employment was pegged on the successful completion of comprehensive background checks, which involves a deep investigation into an individual's history. They look into employment records, criminal conduct, references, academic and professional qualifications, among other matters. In this case, the background check involved authentication of academic certificates, and vetting of character and reputation. Kisaka consented to the background check. The check revealed some adverse information, including an ongoing criminal case against him on conspiracy to defraud. Faulu then rescinded the employment offer. Upon being informed that the offer had been withdrawn, Kisaka requested for the forms that contained his personal data and that had been processed for the background check. Faulu declined to give them to Kisaka claiming that it was private information. Kisaka then filed a complaint with the ODPC claiming negative use of his personal data and discrimination with regard to accessing a job opportunity. He also sought to access the personal data that led to his disqualification from the position. The ODPC detailed his complaint into one issue: *Whether there was any infringement of the Complainant's right as a data subject as provided in the Data Protection Act, 2019.*

The ODPC in determining this case found that the information used in the background check constitutes personal data, and the data subject, Kisaka, had the absolute right to access it. This is in line with Section 26(b) of the Data Protection Act and Regulation 9(1) of the Data Protection (General) Regulations 2021 which grant data subjects the right to access their personal information when in the custody of a data controller or processor.

Impact:

This case is vital as it brings out the challenges associated with data privacy and background checks in the employment context. It serves as a reminder that all data subjects are entitled to access their personal data even in the context of background checks. It also emphasises the need for employers to recognise their obligations in the handling of personal data. Some of the key considerations include:

- a) Respect for data subjects' rights, including the right to access their personal data.
- b) Obtaining clear and informed consent from job applicants before conducting background checks.
- c) Applicants/Candidates should be informed of any adverse information and given a chance to respond.
- d) Employers should outline how adverse findings from their background checks may influence employment decisions.

7. Renewal of fixed term contracts

Case: Oyuga v Everett Aviation (Charter) Limited (Cause E037 of 2022) [2023] KEELRC 1136 eKLR.

In this case the issue before the court was on renewal of a fixed term contract. The court held that the requirement to issue an employee with prior notice of non-renewal of their contract was only necessary when it was provided for in the employee's employment contract or the employer's policies. Where it is provided, failure to inform the employee of the intention to terminate employment would constitute legitimate expectation on the employee's part that the contract will be renewed. Therefore, failure to renew such a contract would be deemed unfair termination of employment.

Impact:

This case aims to provide clarity regarding an employer's legal responsibility towards his employees. It establishes that when an employer is obligated to provide advance notice to an employee before ending a fixed-term contract, it is imperative to fulfil this obligation. Failure to do so would be regarded as unfair termination.

International Matters

1. Artificial Intelligence machines as possible 'Inventors'

Case: Thaler (Appellant) v Comptroller-General of Patents, Designs and Trademarks.

This case marks the first time ever that the issue: Whether Artificial Intelligence Systems can own and transfer patent rights, has been considered by a supreme - level court.

The facts of the case are as follows: The case concerns two British patent applications for two inventions that the appellant, Dr Thaler, stated were created by an Artificial Intelligence machine known as: DABUS (Device for the Autonomous Bootstrapping of Unified Sentience) in the absence of a traditional human inventor. The invention was the output of DABUS' various products and methods which resulted in an improved food container. Dr. Thaler is the sole owner, creator, and user of DABUS, and it is not in issue whether DABUS created the inventions autonomously.

On the 4th of December 2019, the Respondent refused to accept the designation of DABUS as the inventor of the applications pursuant to Sections 7 and 13(2) of the 1977 Act on grounds that DABUS is not a person. Dr Thaler appealed the Respondent's decision in the High Court and the Court of Appeal, both were dismissed. He then appealed to the Supreme Court and is awaiting judgement on the matter.

The issues for consideration by the Supreme Court are:

1. Does section 13(2)(a) of the Patents Act 1977 require a person to be named as the inventor in all cases, including where the applicant believes the invention was created by an AI machine in the absence of a traditional human inventor?
2. Does the Patents Act 1977 provide for the grant of a patent without a named human inventor?
3. In the case of an invention made by an AI machine, is the owner, creator and user of that AI machine entitled to the grant of a patent for that invention?

The Supreme Court is yet to issue a judgement on the matter; however, it is expected before the end of the year.

Impact:

The role of Artificial Intelligence is currently at the forefront of government policy in various countries. Its impact continues to increase worldwide. The case highlights the need for legal systems to look into the role of Artificial Intelligence in creating inventions. This entails considering key issues such as ownership and control. The outcome of the case is likely to have global implications as it touches on fundamental issues concerning patent law. It calls for regulatory clarity and guidelines regarding AI-generated inventions and how the law should treat them. Were Kenya to adapt to these changes, a holistic approach which is based on acquired evidence, research, and representation of all stakeholders will need to be adopted.

2. Data Subjects Right to Information about Recipients of their data.

Case: *RW vs Österreichische Post AG* (Case C - 154/21).

The cited case is about a data subject, RW, exercised his right to access under the General Data Protection Regulation (GDPR) against the Austrian Post, with an aim to find out which personal data concerning him was processed by them, and whom the recipients were. The Austrian post reverted back to him with categories of the recipients rather than the specific recipients. The case was brought under the Court of Justice of the European Union (CJEU) where it was decided that if data belonging to a specific data subject(s) has been disclosed to particular recipients, the controller, in this case (Austrian Post), is obliged to inform the data subject(s) of the identity of the recipients. The Court stated that this rule shall apply unless it is not possible to identify the recipients, or the controller proves that the data subject's requests for access are manifestly unfounded or excessive within the meaning of Article 12 of the GDPR.

Impact:

This case goes to the core of the protection of data subjects' rights. It highlights the obligation of data controllers to inform data subjects of the identity of the recipients of their personal information. This is key considering the changes facing the world as a result of technological

advancements. As Kenya advances in the field of technology and Artificial intelligence, this case could serve as precedence for issues concerning protection of data subjects.

3. The Israel-Palestine Conflict and its effect on Oil Prices

Following the attack launched by Hamas on Israel, the global oil market prices have risen rapidly. Brent Crude, which is the Global Benchmark, rose from \$3.50 to \$89, Murban oil, from which Kenya's petroleum imports are drawn, has risen from \$6.97 to \$93.11 a barrel. The rise in oil and gas prices has been fuelled by fears that exports from the energy rich Middle East region will be disrupted. After the 7th of October attack, Israel shutdown production at its largest gasfield – Tamar. This limited the flow of gas to neighbouring countries such as Egypt which exports gas to Europe.

Additionally, the fall of the US dollar against other currencies has aided in the rise in oil costs. If the conflict escalates the United States could enforce sanctions on Iran due to Tehran's close links with Hamas. This will cause a further strain on the already undersupplied oil market. The conflict as of now is threatening to draw in more actors from the Middle East, which is Kenya's main source of fuel imports as well as its key export destination for food and animal products.¹¹ Crude oil prices are threatening to hit a high of Kshs. 23, 636 (\$157) a barrel as a result of a possible escalation of the Middle East conflict. This is a significant geopolitical risk to oil markets.

This conflict directly affects Kenya, and a continued rise in crude prices is set to increase the prices of oil in Kenya. Recently, the price of petrol has risen to Kshs. 217.36 per litre and that of diesel to Kshs. 205.47. This was despite a subsidy aimed at cushioning consumers against the shock of high prices.¹² Moreover, a further weakening of the shilling as against the dollar could result in inflationary risk due to Kenya's position as a net importer. This leads to investors seeking safety in the dollar resulting in its appreciation, and the resultant depreciation of the shilling.

Nonetheless, on a more positive note, in the week ending October 26, 2023, international oil prices decreased, specifically Murban oil price dropped to \$90.23 from \$93.11.

¹¹ <https://nation.africa/kenya/business/how-israel-hamas-war-will-hit-kenya--4410288>, by Charles Mwaniki on 23 October 2023.

¹² <https://www.citizen.digital/news/pain-at-the-pump-petrol-price-up-by-ksh-572-as-govt-says-its-using-petroleum-development-levy-to-cushion-kenyans-n329297>, by citizen on 14 October 2023.

D. Fun Fact

1. British American Tobacco (BAT) Employee Benefits

In an article by The Business Daily published on the 30th of October 2023 by Kepha Muiruri, British American Tobacco (BAT) Kenya Plc revealed that it is now paying a minimum of Kshs. 57,812 as basic pay for its unionised staff. This is in comparison to Kshs. 28,487 which is the statutory pay for staff in the comparable peer group. Additionally, BAT offers Kshs. 27,500 as leave allowance and a minimum of Kshs. 28,850 housing allowance to its staff, against a comparable 15 percent of basic pay.

Moreover, it offers a shift allowance set at a maximum 17 percent of basic pay, and compensation from redundancy benchmarked at four days for every month worked. This is a premium to the comparable 15 days for every year worked in other companies.

In addition to this, the unionised members at BAT earn a minimum of 30 days of annual leave and 3 days of sick leave on full pay. Furthermore, 3 more months of sick leave can be offered but, on half pay, and a further extension of sick leave by three months can be offered on a third of pay in a given year. This is in comparison to the standard annual leave which is usually set at 21 days while sick leave is set at 30 days with full pay and an additional 15 days on half pay. Moreover, BAT offers Kshs. 610 as meal allowance, an acting allowance of 17 percent of basic pay and a responsibility allowance set at 19 percent of basic pay.

For non-unionised staff, BAT offers annual total compensation ranging from 70 percent to 120 percent of the market anchor.

In addition to all the aforementioned benefits, BAT also negotiates the collective bargaining agreements with its staff every 2 years. This has made BAT one of Kenya's best paying companies.¹³

2. AI Robot CEO

Is the future of the workplace headed towards Robot CEOs? Mika is the newest and first AI employee serving as the experimental CEO of Dictador Europe, a liquor company in Poland. Mika's daily tasks encompass selecting artists to design the brand's bottles, conducting background checks, verifying potential client lists, and delivering well-reasoned decisions to the Board of Directors. Her decision-making skills rely on extensive data analysis, aligning with the company's strategic objectives, and are free from personal bias, ensuring the organisation's best interests are prioritised. An additional benefit of having a robot CEO is that Mika never takes vacation days or weekends, remaining active around the clock. While

¹³ [BAT unionised workers get minimum salary of Sh57,812 - Business Daily \(businessdailyafrica.com\)](https://www.businessdailyafrica.com) by Kepha Muiruri, on 30 October 2023.

Mika wields power in decision-making, it's worth noting that her authority is well-balanced; she doesn't have the ability to hire or fire employees, leaving those decisions to the organisation's executive team. This robotic approach to leadership could potentially become the new normal in the ever-evolving landscape of technology in business.

3. A blow to state-controlled power distributor – Kenya Power

In recent years, Kenya Power has observed a growing trend where an increasing number of consumers are opting to establish their own energy generation facilities, particularly favouring solar and biomass technologies. An illustrative example of this shift is Carbacid Investments, a carbon dioxide manufacturer, which recently invested in three solar power generation plants. In an article by John Mutua published in the Business Daily, Carbacid Investments expressed its goal to reduce dependence on expensive and unreliable power supplied by Kenya Power, with plans to fully transition to solar power by 2024. These initiatives are anticipated to result in cost savings for the company, particularly in the face of significant electricity tariff hikes ranging from 15 to 20 percent.

Notably, other prominent consumers, including Mombasa International Airport, the International Centre of Insect Physiology and Ecology, and Africa Logistics Properties, have also made the switch to solar power. Additionally, in 2022, East African Breweries Plc announced its progress in constructing biomass plants to power its facilities.

This shift towards self-generation among major consumers has had a notable impact on Kenya Power, leading to a substantial reduction in its sales and adversely affecting its prospects of achieving profitability. As of June 2023, Kenya Power reported a net loss of Kshs. 3.19 billion.