USIU-AFRICA LEGAL DIGEST

SUMMER SEMESTER 2025

PREAMBLE

Welcome to your summer edition of the USIU-Africa Legal Digest!

From courts redefining what counts as a resignation to defamation without a name tag and from Artificial Intelligence (AI) risks to data privacy showdowns, this semester's Legal Digest is your guide to how legal principles are adapting to the times.

Why should students, staff, or faculty care? Because the lines between personal and professional, physical and digital, are blurrier than ever.

In this issue:

- Your boss doesn't need to fire you for it to be unlawful.
- You don't need to be name-dropped to sue.
- Posting a personal opinion could cost you your job but not your rights.
- Data belongs to people, not platforms.
- AI may be your new co-worker or compliance risk.

Whether you're in a lecture hall, a startup, or the boardroom, one thing's clear, staying legally literate is no longer optional.

Whether you're a student, faculty member, or staff let's dive into how the law is shaping the world around you.

1. YOU'RE FIRED, BUT NOT REALLY (CONSTRUCTIVE DISMISSAL GETS REAL)

Ever been so insulted at work that quitting felt like your only option?

An American builder recently found himself on the wrong side of employment law when he repeatedly swore at an employee, creating a toxic workplace. The court ruled that the worker's resignation wasn't really voluntary it was constructive dismissal. In other words, the workplace became so hostile that leaving was the only sane choice.

Legal expert Julie Garland McLellan called it out: if you're a leader, it's not enough to simply know the rules, you have to uphold a workplace culture that prevents harm. Harassment, bullying, or just persistently toxic behavior could turn your management style into a legal liability.

The Kenyan View:

The concept of constructive dismissal has been established in Kenyan law since a landmark Court of Appeal decision nearly a decade ago. It's defined as a situation where an employee resigns involuntarily because of unbearable working conditions created by the employer.

But the conversation is evolving.

In **Abdulah Firimbi t/a Sinai Hotel v Imungu [2025] KEEALRC 1283**, the Employment and Labour Relations Court flipped the script: this time, it was the employee's actions under scrutiny.

When a shift system was introduced during the pandemic, the employee refused to report to work despite repeated follow-ups. Eventually, the employer told her (informally) that her job was terminated. But the court found that this wasn't unfair dismissal. Instead, the employee's refusal to return amounted to constructive resignation.

This case introduces a fascinating twist: constructive termination can now go both ways. While traditionally the employer bore the blame, Kenyan courts are starting to recognize that employees, too, can constructively exit a contract through their own actions.

Takeaway: Constructive dismissal isn't always about shouting or harassment. It can also be about systemic changes, breakdowns in communication, or simply failing to engage. Whether you're an intern, a line manager, or a department head, culture still matters and so does the law.

2. THINK BEFORE YOU POST (YES, EVEN ON FACEBOOK, INSTAGRAM, X &TIKTOK)

A journalist lost their job after sharing a Human Rights Watch post on their personal Facebook. The employer wasn't pleased and fired them.

The court ruled the termination unlawful.

This case is a powerful reminder that even in the digital age, freedom of expression still matters. But it also asks a hard question: Where's the line between personal and professional online?

For USIU-Africa community: Whether you're posting memes, political takes, or social justice commentary, be mindful but don't let fear muzzle you. The Constitution has your back and you should be cognizant of your rights enshrined therein.

3. DEFAMED WITHOUT BEING NAMED? KENYAN LAW SAYS "YES"

You don't have to be name-dropped to be defamed. In Kenya, it's enough that people can reasonably tell it's you.

In **Phineas Nyagah v Gitobu Imanyara**, the High Court said: context is everything.

Whether it's in a WhatsApp group or a vague tweet, if it hurts your reputation and others can connect the dots, you could have a case.

What Exactly is Defamation?

Defamation refers to any false statement that damages a person's reputation. It comes in two forms:

- **Libel** – written or published falsehoods (including online content)
- **Slander** – spoken words or gestures that injure reputation

Under common law, defamation occurs when a statement exposes a person to hatred, ridicule, contempt, or causes them to be shunned by others. Kenya's Defamation Act, Cap. 36 provides a statutory framework for civil redress and includes protections specific to professionals, businesses, and the media.

Highlights from Kenya's Defamation Law:

- **No Need to Prove Loss:** If someone falsely attacks your job or profession, the law presumes harm you don't need to prove financial loss.

- **Property Lies Also Count:** False claims about your goods or property is also actionable.
- **Media Protections:** Newspapers and broadcasters are protected when reporting truthfully on court or parliamentary proceedings but not if their stories are malicious, indecent, or seditious.
- **Right of Reply:** You can demand a correction within 14 days of discovering the defamatory article. If ignored, courts may award damages.
- **Damages Can Be Substantial:** Accusations involving serious crimes can attract damages as was held in court in the case of **Miguna Miguna v Standard Group and Hon. Elisha Odhiambo v Booker Omole** who were awarded Kshs. 6 million each in damages.

Defamation in the Digital Age

Under the Computer Misuse and Cybercrimes Act, (2018), knowingly publishing false information online with intent to damage someone's reputation or incite panic or violence is a criminal offence. Conviction could lead to KES 5 million in fines or up to 10 years in prison.

But this provision walks a tightrope: it protects victims from viral falsehoods, while also raising concerns about freedom of expression, especially for journalists, bloggers and influencers.

Free Speech vs Reputation: Finding the Balance

Article 33 of the Constitution of Kenya protects freedom of expression but with limits. Hate speech, incitement, or discrimination are not protected and courts are increasingly called upon to decide where speech ends and harm begins.

As digital platforms become public squares, expect more litigation, sharper debate and stronger calls for reform.

Takeaway for Students, Staff, and Faculty: Before you hit post, ask yourself: Is it true? Is it necessary? Could this ruin someone's name or career? Because whether you're retweeting or publishing a blog, the law is paying attention even if no names are mentioned.

4. THE DATA DIVORCE: WHAT THE MALI-ZIIDI SAGA TELLS US ABOUT TRUST

When tech and trust collide, things get messy.

Safaricom and Genghis Capital once teamed up to run Mali, a money market fund accessible through M-Pesa. It grew quietly—but fast. Then, Safaricom pulled a fast one: launching a new fund (Ziidi) without Genghis.

Genghis says it wasn't just a breakup it was data betrayal. They claim Safaricom shifted users from Mali to Ziidi without proper user consent, possibly breaching the Data Protection Act of Kenya.

Why this matters for innovators: In the digital economy, whoever owns the platform holds the power—not just the product. But with power comes legal responsibility.

At USIU-Africa's Innovation and Incubation Center, this case is your reminder: as you build apps and platforms, don't forget the law especially around data privacy, user Intellectual Property Rights and partner agreements.

Additionally, Safaricom's move shows why partner agreements that the innovators at the Innovation & Incubation Center enter into require mandatory exit clauses and data handling protocols.

5. ARTIFICIAL INTELLIGENCE: GAME CHANGER OR GOVERNANCE RISK? (KPMG INSIGHT)

AI isn't coming it's already here.

From ChatGPTs in class assignments to algorithm-driven decisions in healthcare, recruitment, and media, artificial intelligence is reshaping how we live and work. But as KPMG notes, with great power comes legal consequences.

What should legal professionals and institutions watch out for?

Five Key Legal Pitfalls of AI and Why They Matter to You

1. **Different Rules, Different Regions:** The EU has rolled out its AI Act, classifying high-risk systems and setting strict obligations. The UK? More hands-off, favoring industry-specific codes. In Kenya, regulation is still emerging but the ripple effects are already here.
2. **Ethics is Not Optional:** AI needs to be explainable, fair, and free from bias. If a system can't justify how it made a decision or it reflects real-world discrimination, that's a legal and reputational red flag.

3. **Third-Party Blind Spots:** Your AI might be safe but what about your supplier's AI? Whether it's your IT vendor or payroll provider, you're responsible for their risks too.
4. **Data Privacy Still Rules:** Even if there's no AI law yet, personal data must still comply with laws like GDPR and Kenya's Data Protection Act. That means informed consent, clarity, and transparency aren't just best practice they're the law.
5. **Who Owns What:** Can you train an AI on legal memos, client contracts, or classroom papers? It's complicated. IP laws and bar association rules are still catching up. But one thing is clear: the USIU-Africa Community must tread carefully.

The Opportunity

AI can improve workflows, supercharge research, and help students, staff or faculty do more with less. But it also demands new skillsets and sharper oversight. For students and emerging professionals, this is a chance to become tech-fluent and legally aware a winning combination in tomorrow's job market.

6. REGULATORY ROUNDUP: LAWS YOU DIDN'T KNOW YOU NEEDED TO KNOW

The law doesn't take a holiday and neither should your legal literacy. Here's what's new in Kenya's legal landscape and why it matters to you.

The Kenya National Qualifications Framework (NQF) Regulations, 2025

Effective 30 May 2025, these regulations represent a structural shift in Kenya's education and qualifications system. Universities, colleges, and TVET institutions are now legally required to align their programs with NQF standards — a framework designed to ensure clarity, comparability, and credibility of qualifications.

This isn't just an academic paperwork shuffle; it means your degree, diploma, or certificate will carry more weight both locally and internationally.

The newly established National Qualifications Database will centralize records of all qualifications awarded in Kenya, making verification faster and helping employers and recruiters combat credential fraud.

The Finance Act, 2025: Tax Reliefs where it counts

From 1 July 2025, employees on official duty away from their usual workstations can enjoy a tax-exempt per diem of up to KES 10,000 per day, a fivefold increase from the previous KES 2,000.

This change is not merely a travel perk; it's a recognition of the real costs of work-related travel and a policy shift aimed at easing the financial burden on professionals.

For institutions like ours, it may also influence budgeting for official assignments and academic travel.

Data Protection Gets Real: ODPC Says "Listen to Your Data Subjects"

In ODPC Complaint No. 0308 with the Ruling delivered on 31st May 2025 in **Millicent Achieng Obor v Muranga University of Technology** the Complainant lodged a complaint alleging that the University was processing her personal data (*email address*) without a lawful basis and in contravention of her right to object to processing of her personal data. The University had included her in the mailing list despite her not being a student there. Millicent had requested the University to rectify this numerous times. Upon determination, the ODPC found the Respondent liable for violation of the Complainant's right to object to the processing of her personal data, under Section 26 of the Data Protection Act, 2019, issued an Enforcement Notice, and awarded the Complainant KES 50,000.

This determination underscores the need for the University to ensure that personal data in its custody is up to date, and accurate. Additionally, where a data subject makes a request to enforce their data subject rights, it is critical that the same is aptly responded to and actioned.

Supreme Court Reaffirms Equality in Inheritance Law

On 30 June 2025, the Supreme Court of Kenya delivered a landmark judgement in **Fatuma Athman Abud Faraj v Ruth Faith Mwawasi & 2 Others.** This affirmed that children born out of wedlock are entitled to inherit from their deceased Muslim father's estate.

The Court interpreted Article 24(4) of the Constitution, which allows limited application of Muslim law in inheritance matters, and held that any deviation from the principle of equality must meet a strict proportionality test. It found that excluding children based solely on their parents' marital status was not justified thus violating constitutional rights to equality, non-discrimination and the rights of children under Articles 27 and 53 of the Constitution of Kenya, 2010.

The impact of this is that it reaffirms the position that the Constitution of Kenya is the basic norm and that personal laws or religious laws do not override fundamental human rights. By aligning religious autonomy with constitutional rights, the Court reinforced that Islamic law, while recognised under Article 170(5), must evolve in line with Kenya's commitment to equality and the best interests of the child. This Judgement further illustrates the role of the Judiciary in harmonizing the Kenyan legislative system, under the Constitution of Kenya, 2010.

CLOSING NOTE: THE LAW ISN'T STATIC AND NEITHER SHOULD YOU BE

From workplace dynamics to online speech, from data protection to AI ethics and from tax perks to inheritance rights, the legal landscape is shifting faster than ever. What might seem like niche court rulings or obscure regulations today could directly impact your studies, career, business or personal rights tomorrow.

The real advantage isn't just knowing the law it's understanding how it lives and breathes in the world you inhabit. That's why staying legally literate is no longer a box to tick; it's a skill set, a mindset and a competitive edge.

So read widely, ask questions. Challenge assumptions and above all, remember: in law, as in life, awareness is your best defense and sometimes, your greatest opportunity.

Until next semester, stay curious, stay informed and stay ahead!