

Law Society of Kenya



Mr. Isaac Kitur
The Clerk
Bomet County Assembly
P.O. Box 590 - 20400
BOMET.

Lavington, opp Valley Arcade, Gitanga Road
P.O Box 72219-00200 Nairobi, Kenya
Dropping Zone 149 - Revlon Plaza
Tel: +254-20-3874664, 3865013/4,
020-2625391, 0208155295
Cell: +254 720 904983
Fax: +254 20 387 5534
Website: www.lsk.or.ke

Our Ref: NPA/2019

Your Ref: TBA

Date: 4th November, 2019

Dear Sir,

RE: IMPLEMENTATION OF THE CIRCULAR ON PUBLIC SERVICE LEGAL SUB-SECTOR
REMUNERATION IN LIGHT OF THE JUDGMENT ISSUED IN ELRC NO. 540 OF 2018
ERASTUS GITONGA & 4 OTHERS VS NATIONAL ENVIRONMENTAL MANAGEMENT
AUTHORITY (NEMA)

The above refers.

Background:

The Ministry of State for Public Service under the Office of the Prime Minister (as it was then), through the then Permanent Secretary Mr. Titus Ndambuki, CBS, HSC issued a Circular (copy attached), on rationalization of remuneration for the public service legal sector. The Circular was issued to the Permanent Public Service Remuneration Review Board as part of a Consultancy Report on review of remuneration of public service legal practitioners.

The Board noting that there is significant disparity in the remuneration levels in the public service sector, agreed to the enhancement of the non-practice allowance as contained in the said Circular. These new rates have been applicable since 1st July, 2010 as highlighted in the following schedule:

Allen Waiyaki Gichuhi (President), Harriette Chiggai (Vice-President)
Herine Kabita, Maria Mbeneka, Roseline Odede (General Membership Representatives)
Borniface Akusala, Carolyn Kamende, Aluso Ingati (Nairobi Representatives)
Ndinda Kinyili, Bernhard Ngetich, David Njoroge, Jane Masai (Upcountry Representatives)
Eric Nyongesa (Coast Representative)

When replying please quote our Reference Number. When calling on us always carry this letter

Grade Level.	Rate Per Month (KSHS.)
Service Level 1 – Service Level 4.	15,000.00
Service Level 5 – Service Level 7.	20,000.00
Service Level 8.	40,000.00

We have however received concerns that the Circular has however been completely ignored or to a large extent, under-implemented by majority of the government agencies and public institutions.

Subsequently, In-House Counsel from the National Environmental Management Authority (NEMA) went to court over non-payment of non-practicing allowance, where the Law Society of Kenya was an Interested Party in the suit. The advisories and directives on payment of non-practicing allowances were recognized and established into common law by the recent landmark decision pronounced by the Employment & Labour Relations Court (Nairobi), in *ELRC No. 547 of 2018: Erastus Gitonga & 4 Others-v-National Environmental Management Authority (NEMA)*. (Enclosed)

The Honourable Justice Byram Ongaya in his decision delivered on 10th April, 2019, held inter-alia;

- i. That the Respondent's actions of not paying the claimants non-practicing allowance was unlawful, wrongful and unfair.
- ii. That the Respondent's subjected the claimants to unequal treatment amounting to discriminatory and unlawful labour practices by denying them the subject allowances.

Notwithstanding the foregoing, it is noted with concern that most institutions in the public sector have chosen not to abide with, or are not aware of the policy directives or common law decisions pronounced by both the Executive and Judicial arms of the Government of Kenya. This is a legal obligation, a duty which must be adhered to and implemented forthwith by all parties concerned.

Secondly, there are reports that there is discriminatory implementation of the said circular and policies amongst legal officers within the same and different institutions with some legal officers receiving the non-practicing allowance and others not receiving the same at all.

Allen Waiyaki Gichuhi (President), Harriette Chiggai (Vice-President)
 Herine Kabita, Maria Mbeneka, Roseline Odede (General Membership Representatives)
 Borniface Akusala, Carolyne Kamende, Aluso Ingati (Nairobi Representatives)
 Ndinda Kinyili, Bernhard Ngetich, David Njoroge, Jane Masai (Upcountry Representatives)
 Eric Nyongesa (Coast Representative)

When replying please quote our Reference Number. When calling on us always carry this letter

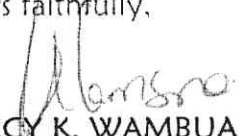
Recommendation:

There is an urgent need to review and streamline the remuneration of legal officers working in the public sector. As things stand, legal practitioners in the public sector are remunerated under no proper structure as regards their non-practicing and other allowances occasioning discrimination, imbalance, inequities and inequality among legal practitioners in the public service sector.

Therefore, there is a pressing need for a formal adoption and implementation of the cited Circular as well as the landmark decision by Hon. Justice Ongaya, as an immediate measure to redress the situation. Legal practitioners in the public sector play a crucial role in the delivery of public services and therefore should have the value of the work done by in-house counsel be recognized and accordingly, issues of their fair and equitable compensation be addressed.

The Law Society of Kenya therefore kindly but urgently, requests for immediate implementation of the Circular and the court decision.

Yours faithfully,


MERCY K. WAMBUA
SECRETARY/CEO

Allen Waiyaki Gichuhi (President), Harriette Chiggai (Vice-President)
Herine Kabita, Maria Mbeneka, Roseline Odede (General Membership Representatives)
Borniface Akusala, Carolyn Kamende, Aluso Ingati (Nairobi Representatives)
Ndinda Kinyili, Bernhard Ngetich, David Njoroge, Jane Masai (Upcountry Representatives)
Eric Nyongesa (Coast Representative)

When replying please quote our Reference Number. When calling on us always carry this letter

Law Society of Kenya



Mr. Isaac Kitur
The Clerk
Bomet County Assembly
P.O. Box 590 - 20400
BOMET.

Lavington, opp Valley Arcade, Gitanga Road
P.O Box 72219-00200 Nairobi, Kenya
Dropping Zone 149 – Revlon Plaza
Tel: +254-20-3874664, 3865013/4,
020-2625391, 0208155295
Cell: +254 720 904983
Fax: +254 20 387 5534
Website: www.lsk.or.ke

Our Ref: NPA/2019

Your Ref: TBA

Date: 4th November, 2019

Dear Sir,

RE: IMPLEMENTATION OF THE CIRCULAR ON PUBLIC SERVICE LEGAL SUB-SECTOR
REMUNERATION IN LIGHT OF THE JUDGMENT ISSUED IN ELRC NO. 540 OF 2018
ERASTUS GITONGA & 4 OTHERS VS NATIONAL ENVIRONMENTAL MANAGEMENT
AUTHORITY (NEMA)

The above refers.

Background:

The Ministry of State for Public Service under the Office of the Prime Minister (as it was then), through the then Permanent Secretary Mr. Titus Ndambuki, CBS, HSC issued a Circular (copy attached), on rationalization of remuneration for the public service legal sector. The Circular was issued to the Permanent Public Service Remuneration Review Board as part of a Consultancy Report on review of remuneration of public service legal practitioners.

The Board noting that there is significant disparity in the remuneration levels in the public service sector, agreed to the enhancement of the non-practice allowance as contained in the said Circular. These new rates have been applicable since 1st July, 2010 as highlighted in the following schedule:

Allen Waiyaki Gichuhi (President), Harriette Chiggai (Vice-President)
Herine Kabita, Maria Mbeneka, Roseline Odede (General Membership Representatives)
Borniface Akusala, Carolyn Kamende, Aluso Ingati (Nairobi Representatives)
Ndinda Kinyili, Bernhard Ngetich, David Njoroge, Jane Masai (Upcountry Representatives)
Eric Nyongesa (Coast Representative)

When replying please quote our Reference Number. When calling on us always carry this letter

Grade Level.	Rate Per Month (KSHS.)
Service Level 1 – Service Level 4.	15,000.00
Service Level 5 – Service Level 7.	20,000.00
Service Level 8.	40,000.00

We have however received concerns that the Circular has however been completely ignored or to a large extent, under-implemented by majority of the government agencies and public institutions.

Subsequently, In-House Counsel from the National Environmental Management Authority (NEMA) went to court over non-payment of non-practicing allowance, where the Law Society of Kenya was an Interested Party in the suit. The advisories and directives on payment of non-practicing allowances were recognized and established into common law by the recent landmark decision pronounced by the Employment & Labour Relations Court (Nairobi), in *ELRC No. 547 of 2018: Erastus Gitonga & 4 Others-v-National Environmental Management Authority (NEMA)*. (Enclosed)

The Honourable Justice Byram Ongaya in his decision delivered on 10th April, 2019, held inter-alia;

- i. That the Respondent's actions of not paying the claimants non-practicing allowance was unlawful, wrongful and unfair.
- ii. That the Respondent's subjected the claimants to unequal treatment amounting to discriminatory and unlawful labour practices by denying them the subject allowances.

Notwithstanding the foregoing, it is noted with concern that most institutions in the public sector have chosen not to abide with, or are not aware of the policy directives or common law decisions pronounced by both the Executive and Judicial arms of the Government of Kenya. This is a legal obligation, a duty which must be adhered to and implemented forthwith by all parties concerned.

Secondly, there are reports that there is discriminatory implementation of the said circular and policies amongst legal officers within the same and different institutions with some legal officers receiving the non-practicing allowance and others not receiving the same at all.

Allen Waiyaki Gichuhi (President), Harriette Chiggai (Vice-President)
 Herine Kabita, Maria Mbeneka, Roseline Odede (General Membership Representatives)
 Borniface Akusala, Carolyn Kamende, Aluso Ingati (Nairobi Representatives)
 Ndinda Kinyili, Bernhard Ngetich, David Njoroge, Jane Masai (Upcountry Representatives)
 Eric Nyongesa (Coast Representative)

When replying please quote our Reference Number. When calling on us always carry this letter

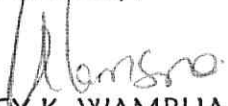
Recommendation:

There is an urgent need to review and streamline the remuneration of legal officers working in the public sector. As things stand, legal practitioners in the public sector are remunerated under no proper structure as regards their non-practicing and other allowances occasioning discrimination, imbalance, inequities and inequality among legal practitioners in the public service sector.

Therefore, there is a pressing need for a formal adoption and implementation of the cited Circular as well as the landmark decision by **Hon. Justice Ongaya**, as an immediate measure to redress the situation. Legal practitioners in the public sector play a crucial role in the delivery of public services and therefore should have the value of the work done by in-house counsel be recognized and accordingly, issues of their fair and equitable compensation be addressed.

The Law Society of Kenya therefore kindly but urgently, requests for immediate implementation of the Circular and the court decision.

Yours faithfully,


MERCY K. WAMBUA
SECRETARY/CEO

Allen Waiyaki Gichuhi (President), Harriette Chiggai (Vice-President)
Herine Kabita, Maria Mbeneka, Roseline Odede (General Membership Representatives)
Borniface Akusala, Carolyne Kamende, Aluso Ingati (Nairobi Representatives)
Ndinda Kinyili, Bernhard Ngetich, David Njoroge, Jane Masai (Upcountry Representatives)
Eric Nyongesa (Coast Representative)

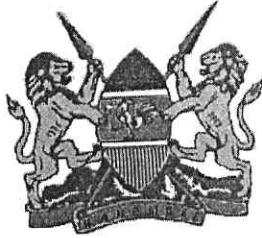
When replying please quote our Reference Number. When calling on us always carry this letter

PENDING BUSINESSES BEFORE COMMITTEES (Year 2019)

NO	DESCRIPTION	WHEN COMMITTED	COMMITTEE	TIMELINE GIVEN	REMARKS
1	Annual report of the County Public Service Board for the period ending 31 st December 2018	26 th February 2019 at 2.30pm	Labour and Public Service	14 days	Deadline 12 th March 2019
2	Reports of the Auditor General on the financial statements of Bometa County Executive & Assembly for the year ended 30 June 2018. (2 reports)	27 th March 2019 at 2.30pm	PAC/PIC	60 days	Deadline 28 th May 2019
3	Reports of the Auditor General on the financial statements of Bometa County Assembly for the year ended 30 June 2017.	19 th June 2019 at 2.30pm	PAC/PIC	60 days	Deadline 20 th August 2019
4	Reports of the Auditor General on the financial statements of Bometa Water Company Limited for the year ended 30 June 2018.	19 th June 2019 at 2.30pm	PAC/PIC	60 days	Deadline 20 th August 2019
5	Report of the Auditor General on the financial statements of Bometa County Executive for the year ended 30 June 2017.	16 th July 2019 at 2.30pm	PAC/PIC	60 days	Deadline 17 th September 2019
6	Bometa County Transport Policy, 2019	4 th June 2019 at 9.00am	Infrastructure	21 days	Deadline 25 th June 2019
7	Petition on the alleged updating of Valuation roll by the County Government	3 rd July 2019 at 2.30pm	Finance, ICT and Economic Planning	30 days	Committee to give progress within 15 days- on 23 rd July 2019 Final deadline is on- 6 th August 2019
8	Petition on demolition of businesses premises in Bometa town by the County Government	3 rd July 2019 at 2.30pm	Trade, Tourism & Co-operatives	30 days	Committee to give progress within 15 days- on 23 rd July 2019 Final deadline is on- 6 th August 2019
9	Petition on the alleged withdrawal of funds by World Bank due to alleged mismanagement of funds by the Bometa Municipal Board	3 rd July 2019 at 2.30pm	Land, Urban Planning & Housing	30 days	Committee to give progress within 15 days- on 23 rd July 2019

					Final deadline is on- 6 th august 2019
10	The report of the Auditor General on the Financial Statements of Bomet County Car Loan and Mortgage scheme fund for the year ended 30 June 2018.	10 th September, 2019 at 2.30 p.m	PIC/PAC	60 days	10 th December, 2019
11	The report of the Auditor General on the Financial statements of Bomet County Bursary Fund for the year ended June 2018	10 th September, 2019	PIC/PAC	60 days	10 th December, 2019
12	Consolidated reports and financial statements for the Financial Quarter ended June 30th 2019.	10 th September, 2019	Finance, ICT and Economic Planning	21 days	2 nd October, 2019
13	The Department of Administration, ICT and Public Service Report on Budget Implementation for the Bomet County Information, Communication and Technology Sector FY 2017/18 -	24 th September, 2019 at 2.30 p.m	Committee on Finance, ICT and Economic Planning,	21 days	Deadline 15 th October, 2019
14	The Bomet County Equitable Development Bill, 2019	10 th September, 2019 at 2.30 p.m	Budget & Appropriation Committee	20 days S.O	Deadline 1 st October, 2019
15	The Bomet County Rating Bill, 2019	10 th September, 2019 at 2.30 p.m	Urban Planning, Land and Housing)	20 days S.O	Deadline 1 st October, 2019
16	The Bomet County Valuation for Rating Bill, 2019	10 th September, 2019 at 2.30 p.m	Urban Planning, Land and Housing)	20 days S.O	Deadline 1 st October, 2019

Prepared by Table Office on 22nd October, 2019.



REPUBLIC OF KENYA
BOMET COUNTY ASSEMBLY
SECOND ASSEMBLY – (FIFTH SESSION)
ORDERS OF THE DAY
WEDNESDAY 9th JUNE, 2021 AT 2.30 P. M

PRAYERS

Determination of Quorum

1. Administration of oath.
2. Communication from the chair
3. Messages
4. Petitions
5. Papers
6. Notices of motions
7. Statements
8. * **MOTION (Hon. Leonard Ngeny)**

AWARE that, Article 55 of the Constitution of Kenya, 2010 provides inter-alias that the State shall take measures, including affirmative action programmes to ensure that youth are protected from harmful cultural practice and exploitation; **FURTHER AWARE** that Article 21 (2) of the same Constitution dictates that all state organs and all public officers have the duty to address the needs of the vulnerable group within the society, one group being youths; **COGNIZANT** that Part 2 of the Fourth Schedule of the Constitution of Kenya 2010, provides for the functions and powers of the County Governments, which includes inter-alias Control of drugs and pornography; **DEEPLY CONCERNED** of a rising number of youth indulging, in drugs, substance abuse such as cannabis sativa amongst others, with reasons for such ranging from dysfunctional families, peer influence, uncontrolled alcohol trading environment, unemployment, social media influence, stress, depression to mention a few; **DISTURBED** that failure by all the relevant stakeholders to arrest the growing trend of youth involving in alcohol, drugs and substance abuse, would see the County and the Nation lose an entire generation with its advance effect on the moral fabric of the society as seen from the rising case of Sexual and Gender Based Violence, Suicides, Homicide, Femicide, Crime, Hopelessness, Unstable marriages; **ACKNOWLEDGING** that the existence of the National Authority for Campaign Against Alcohol and Drug Abuse (**NACADA**), a State Corporation under the Ministry of Interior and Coordination of National Government, mandated to undertake public education and awareness against drug abuse; **FURTHER ACKNOWLEDGING** the

need for top-bottom coordination approach by the National Government and the County Government as provided in Article 189 of the Constitution of Kenya, 2010 in mitigating the young generation from drugs and substance abuse; this **ASSEMBLY RESOLVES** that the County Executive moves with speed and:-

Engage with an aim of partnering with the National Authority for Campaign Against Alcohol and Drug Abuse (NACADA) in developing programmes and policy for creation of awareness, treatment and rehabilitation of the Persons with Substance Use Disorder (SUDs);

The Executive to initiate plans from establishment of an affordable Rehabilitation and Rescue Centre to be equipped with qualified personnel to offer medical care to those already addicted; and,

The said program and project be considered in the County's Budget Estimate for the FY 2021/2022 for its timely implementation.

*** Denotes Orders of the Day**
