



**My Lords the Justices of Appeal present, My Lords the Judges of the High Court present, The Chairman and Council of the Law Society of Kenya, the outgoing Chairman and Council of the Society, Senior Counsel present, Your Excellency the American Ambassador, Mr Michael Rannenberger, distinguished Members of the Law Society, distinguished invited guests, Ladies and Gentlemen:**

When I received a letter inviting me to be the Guest of Honour during the Law Society's Annual Dinner and Dance this year, I was, understandably, flattered that the Law Society considered my company worthy of its Members' time on a Saturday night. My mind then turned to the possible unarticulated minor premise for the invitation.

I wondered whether it was because many members of the Society remember with nostalgia, my legendary dancing skills vigorously executed in my younger days as a practising lawyer and law don in the Society's past Annual Dinner and Dances. I also wondered whether the outgoing Chairman in his mischief-making mode wanted Members of the Society to observe at close range my fast-increasing crown of grey hair; or whether he had laid an elaborate trap where I would make some remarks which would be construed as Contempt of Court; or maybe he wanted the membership to see for themselves which fruit, as between Oranges and Bananas, I prefer for my dessert.

After long and deep reflection, I said to myself, never mind, where duty or danger calls I should never be found wanting there. So here I am!

**Ladies and Gentlemen:**

Allow me to begin by congratulating the incoming leadership of your Society, beginning with the Chairman-elect and the Council. It takes a high degree of demonstrated concern about the public interest, and a great deal of personal sacrifice, to convince the membership of a Society such as yours that one is deserving of the mantle of Chairman of the Society, or that one is fit to serve on the Council of the Society.

To the Chairman and Council, please accept my sincere congratulations and best wishes as you begin your term, remembering always the words of William Shakespeare that life is but a stage, and all men and women merely players on it, all having their entrances and exits. With the support of the Society, democratically



expressed through your election, you will no doubt leave your mark on the stage when the time for your exit arrives.

Congratulations are also in order to the outgoing Chairman and Council Members for their able stewardship of the Society's affairs in the last two years. They struck a cord of moderation in an otherwise politically turbulent period in our country's history. I am sure that they will not take their exit from the stage as a death sentence!

**Ladies and Gentlemen:**

I am fully aware that today has been a long day. I am also fully aware that the real business of the night lies ahead, with the Annual Dance, and that I should be careful not to mortify the members of the Society, particularly the younger ones, by delivering a long speech. I will therefore be brief.

As Director of the Kenya Anti-Corruption Commission, I cannot in good conscience pass up a golden chance, such as provided by this forum, to blow the Commission's trumpet and to share with you some of the challenges the Commission and the Director face in undertaking their mandate.

By way of background, we all understand what Corruption and Economic Crimes mean to us as individuals, and to the country as a whole. Kenya's tax shillings have always been nearly enough to build a proper, functioning, social, economic and physical infrastructure. Prudently managed and optimised, Kenya is a rich country with a hard-working, law-abiding, well-educated and entrepreneurial population.

As the world moves into the information and technological age, and as strenuous demands are placed on our economy requiring it to adapt from agriculture and primary production to service-provision and value-addition, it is increasingly vital that the management of our national resources be ever more prudent, ever more strategic and ever more jealously guarded.

Corruption and Economic Crime fly in the face of these necessary conditions for future success as a Nation. We are all witnesses to the effects of unabated, runaway corruption that had been the hallmark of the administration of public resources in Kenya for many years.

We suffer a poor physical infrastructure that adds tremendously to the cost of doing business and, in many cases, actually deters economic growth. We are forced



to pay tax twice over when we have no choice but to subsidise the State and provide, for ourselves, such services as security, garbage-collection, education and health.

On the international scene, we are reminded that in 1965, there was no significant difference in terms of economic potential between Kenya and the South East Asian Tigers. Today, those who attended the Annual Retreat in Thailand last year can testify that Kenya appears to not only have missed the bus, but the Bus Station altogether. And so it behoves us to rediscover the bus station and the correct bus!

As professionals, our success as lawyers and legal practitioners is premised on a thriving economy where wealth is generated and transferred constantly, putting bread and butter on our tables.

If Corruption and Economic Crime were allowed to continue running riot in Kenya, we will only continue being underachievers as a Country, and as professionals. This is why I take the position that it is in everyone's interest, whether directly or indirectly, to fight corruption whenever and wherever they encounter it in order to ensure that tax shillings are protected and applied in the most effective manner possible.

### **Ladies and Gentlemen:**

You will no doubt have heard comments attributed to me to the effect that the fight against corruption is not and should not be taken to be synonymous with the number of investigations conducted and prosecutions undertaken.

The reason for these comments is simple and quite straightforward. Looking at the issue chronologically, at the point where investigations need to be conducted and a prosecution for corruption launched, the horse has already bolted the stable.

As lawyers, we know and understand only too well how slow the pace of litigation can be. We know and understand particularly well, how slowly the wheels of Justice can be made to turn, or even to jam totally, when there is a 'good', prompt, fee-paying client who has given sufficient instructions to postpone an appointment with Lady Justice indefinitely.

In countries where the war on corruption has been successfully waged, it has not been achieved on the back of a one-track strategy of Investigations and Prosecution. The shooting to death on a public beach of former Heads of State in Ghana for corruption many years ago did not eradicate corruption there. On the



contrary, in these successful countries, a holistic strategy has been employed encompassing Corruption Prevention, Public Education and Law Enforcement.

Public education is a distinct, statutory mandate of the Commission. The ultimate objective of public education is not merely to ensure that Kenyans know and understand what corruption is, that it is greatly disadvantageous to our society, and that it is an enemy of social and economic development. That knowledge is peripheral to the ultimate objective of public education which is to foster and inculcate, in Kenyans, an ingrained sense of anti-corruption as well as personal attitudes and behaviour choices that shun corruption and corrupt conduct. This is a pillar of the anti-corruption effort which, if achieved, has a sustainable and self-perpetuating long-term effect.

The second main plank of the anti-corruption effort and strategy adopted by the KACC is Corruption Prevention. As I have just mentioned, even from a chronological point of view, prevention ought to follow education. You will agree with me that it serves no useful purpose to preach strenuously to a hungry man against greed, and then proceed to leave him in a meat house with fire and knife all around him.

What corruption prevention seeks to do is to ensure that the opportunities and loopholes that might tempt even Angels are sealed tightly. The KACC does this through the systemic analysis of processes, practices and procedures in public institutions that either facilitate corruption or are a conduit for it. Corruption prevention therefore comes in to ensure that the boundaries are clear, that honest public servants find it easy to be and remain honest, and that dishonest public servants find it extremely difficult to pilfer public funds and property.

In that regard, this week the Commission launched an Examination of the systems, processes and practices of the Pensions Department, with a view to improving its service-delivery as well as sealing all corruption-facilitative loopholes presently being exploited by unscrupulous public servants. The beneficiaries of this exercise will be the vulnerable social group of all Pensioners and their families.

Other institutions which have undergone a similar exercise include the Kenya Medical Supplies Agency (KEMSA), The Registration and Licensing of Motor Vehicles and Enforcement of Traffic Laws, the Department of Immigration in the Ministry of Immigration and Registration of Persons, the City Council of Nairobi, the Municipal Council of Mombasa, and, presently underway, an Examination into the Roads Sector and the Teachers Service Commission.



In corruption prevention, it is important to note that the work of the KACC is not completed when an Examination Report is handed over to the subject Ministry or Department. The KACC works in partnership with the examined institution to ensure that the recommendations are implemented and monitored regularly.

The third plank of the KACC's anti-corruption strategy is Law Enforcement. This comes in to punish those who have turned their backs on anti-corruption education, and to punish those who have succumbed to the irresistible temptation to take advantage of weaknesses and loopholes in the public sector to perpetrate petty and grand corruption. This is the province of Investigation and Prosecution, with the rider that under *The Anti-Corruption and Economic Crimes Act 2003*, the Commission has no powers of prosecution, but merely undertakes investigations in proper cases and makes recommendations to the Attorney General for prosecution where there is sufficient evidence. Other recommendations that may be made are administrative disciplinary action, or closure of an investigation file for one good reason or another. The charge that the Commission has singularly failed in its duty to prosecute in the face of the fact that it has no prosecutorial powers, cannot but be vexatious and incompetent!

Up to February 2007, the Commission has forwarded 254 files to the Attorney General with recommendations for prosecution in 185 files, administrative disciplinary action in 11 files and closure for lack of evidence in 58 files.

In the civil courts, there are 94 cases for the recovery of embezzled public funds amounting to Ksh 121,072,800.15, of which Ksh 12,585,583 has already been recovered; 37 suits for the recovery of illegally allocated public land valued at Ksh 909,000,000 and 48 applications for preservation of assets valued at Ksh 1.19 Billion.

Still on recovery, 48 land title deeds and deed plans with an acreage of 89.5 Hectares and a value of Ksh 144 million have been surrendered. Further, 58 Notices have been issued requiring their addressees to explain how their wealth was acquired. Those who have not complied with the stipulations in these Notices will shortly be in for a rude shock!

**Ladies and Gentlemen:**

These efforts by KACC have been complemented by a broad range of public sector reforms and administrative measures which have slowly but surely halted the march of corruption and forced it on the retreat.



Is there anybody in this room who has forgotten the scourge of land grabbing that was in vogue until Year 2002? Is there anybody who has forgotten Presidential Harambees and the ubiquitous receipt book in virtually every public office? Is there anyone who doesn't know that security procurement in Kenya had never been audited since Independence and had never been the subject of criminal investigations? Don't we all remember the days when corruption walked the corridors of Justice and had a large number of seats on the bench? Those were the days when corruption was Master across the land.

Well, all those things are now history. Those days are gone. The march of corruption has been halted. We are rolling it back. I mention those things because it is important to always keep an eye on history, as a reminder of where we have come from, and also as an encouragement to face the challenges of today. Juxtaposing yesterday and today, I respectfully submit to you that real evidence of serious, anti-corruption efforts by the Government generally and KACC in particular is palpably manifest.

Today, revenue collection is high. The country is able to finance 95% of its recurrent expenditure from internal resources. Parastatals are paying handsome dividends to the Treasury. The Stock market, despite the present dip, is otherwise booming. Investors, both local and foreign, are smiling all the way to the bank with handsome profits, and nobody in Government is demanding free equity in their companies. Service delivery has improved right across the board. I could go on and on. The point is, as a country, we have done a lot in the area of Governance and Anti-Corruption. And we hope to do much more in the years to come. There is every reason for hope and optimism. To those who permanently wear spectacles of melancholy, pessimism, cynicism, and despair, I say pole sana!

### **Ladies and Gentlemen:**

Lawyers are, and will always remain, a privileged and gifted lot. Even when the house is burning, it is our vocation to defend the suspected arsonists, even when they were caught running away from the scene of the fire holding smouldering match-sticks and empty jerricans of highly inflammable liquids. The defence of a person known to be guilty is not an offence under the laws of Kenya!

Where the house is not burning, you will find lawyers raising constitutional questions for interpretation by the High Court of Kenya, on such complicated and difficult questions of law as, for example, whether your Speaker tonight should use the title of Justice after his honourable retirement from the Bench. Indeed, Mr Chairman, it is sometimes contended that an Investigation File forwarded to the



Attorney General bearing my signature is such a frightening thing to a Judicial Officer that suspects are thereby, *ipso facto*, rendered incapable of enjoying their constitutional right to a fair trial.

I raise this topic to highlight the challenges that the war on corruption faces in Kenya. I am on record stating that under my watch, the war on corruption will be fought not on political exigencies, but only within the four walls of the Constitution of Kenya and the law of the land. I am on record stating for the avoidance of all doubt that under my watch, the KACC will recommend prosecution of suspected corrupt persons only on the wings of sound evidence as I discern it, and as I taught the subject for many years at the Faculty of Law in the University of Nairobi. Consequently, 'big fish', 'small fish', 'thin fish', 'fat fish' and all manner of fish will be fried, unapologetically, only in the oil of the Constitution of Kenya and laws made under it.

I am certain that the Law Society sympathises with this position in its role as a primary defender and champion of the Rule of Law and Constitutional Governance. On this, there can be no retreat, and no surrender, else anarchy will reign supreme.

Having said that however, I am of the opinion that there is a deeper, philosophical question that the Society needs to ask itself, and it is this; where is the boundary line to be found between vigorous, even robust, defence of suspects, and the crippling of the Judicial process through technical legal manoeuvres designed to do and achieve no more than to frustrate the Constitutional right to a fair and speedy trial before an independent, impartial and competent court of law?

I apologise if this question disrupts your peaceful digestion of an otherwise excellent dinner, but I think that it is a question your society and its membership as well as the Kenyan public must face sooner rather than later if the prosecution of corruption cases by the Attorney General is not to come to complete paralysis even before the suspects have had the benefit of being heard by Lady Justice.

The involvement of some of this Honourable Society's membership in corruption is also a source of great concern. Last year, I recommended the prosecution of a lawyer for corruption of the kind that is normally classified as 'low level' or 'petty' corruption. I imagine this Member is what might be called by the Press a "small fish". The case involved forgery of documents and collusion with public servants at the Lands Registry all aimed at denying the Government Stamp Duty of the



princely amount of Ksh 760,000/= . There is yet another case where another member of the Society has been charged with the offence of soliciting and receiving a bribe. Good Heavens!

**Mr Chairman, Ladies and Gentlemen:**

It should never be forgotten that the only true safety from the anarchy of men and women, is in the bosom of the law. Today's Prosecutor is tomorrow's Suspect, meaning that it is in everyone's interests that the full range of Constitutional and Legal rights be protected as vigorously and as robustly as possible. However, as Officers of the Court, lawyers must never be blind to the flip side of the coin, and that is that the Constitutional Right and Protection in Section 77 of our Constitution is to a fair and speedy trial before an independent, impartial and competent court of law. Surely, the rights and protections in Section 77 must cut both ways. The constitutional right and protection is not the avoidance of a fair and speedy trial!

In the context of an issue of such avowedly national importance as Corruption and Economic Crime, the contribution made by lawyers in the fight against corruption is in need of an honest, objective analysis. If you can't judge yourselves, the Judge above every other Judge will do so when the time comes to Judge thee.

Mr Chairman, the fidgeting that I see under the tables suggests strongly to me that should no longer be a stumbling block to members of your Honourable Society, some many of whom have waited a whole year since the last event to unleash themselves on the unsuspecting dance floor.

With your kind permission, I beg to leave the podium with the promise that as Director of KACC, I shall continue to generate **reasonable** levels of business for those of your membership who rejoice in the title "criminal lawyers", but certainly not to those who may be criminal lawyers. Some business should also be expected by civil practitioners.

I thank you all for your very professional attention.

**Justice (Rtd.) Aaron Ringera**  
**Director/Chief Executive**