

# MONTHLY *Digest*

IN CONVERSATION WITH:

## ARCH. FLORENCE NYOLE

**President**

*Architectural Association  
of Kenya (AAK),  
Newly appointed  
board member of NCA*



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# CM PROPERTY DIGEST: SHAPING KENYA'S BUILT ENVIRONMENT WITH AAK - AN EXCLUSIVE INTERVIEW WITH FLORENCE NYOLE, PRESIDENT OF THE ARCHITECTURAL ASSOCIATION OF KENYA (AAK)

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## An exclusive interview with Florence Nyole, President of the Architectural Association of Kenya (AAK)

### INTRODUCTION

Welcome back to **CM Property Digest**, your premier source for engaging conversations and expert insights into Africa's real estate and built environment. From sustainable architecture and urban planning to construction innovations and regulatory frameworks, we continue to explore the key trends shaping Kenya's property landscape. Along the way, we've had the privilege of featuring leading voices and game-changers in the industry.

Today, we are thrilled to present an exclusive interview with Florence Nyole, whose recent appointment as a Board member of the National Construction Authority (NCA) on October 25th 2024, marks yet another milestone in her distinguished career on top of her recognition in the 2024 Women's Top 40 Under 40! Florence previously served as President of the East Africa Institute of Architects, and is currently leading as President of the Architectural Association of Kenya (AAK).

She brings a dynamic vision for the future of architecture in Kenya, blending innovation with community engagement. In this interview, she shares her thoughts on the opportunities for growth, the challenges of Kenya's fast-paced urbanization, and the essential role architects play in shaping sustainable and inclusive spaces. We also explore her leadership journey, her passion for projects that uplift communities, and her perspective on how AAK is poised to steer the industry into the future.

**1. HELLO FLORENCE, IT'S A PLEASURE TO HAVE YOU WITH US AT CM PROPERTY DIGEST. FIRST OFF, CONGRATULATIONS ON BOTH YOUR RECENT APPOINTMENT TO THE BOARD OF THE NATIONAL CONSTRUCTION AUTHORITY AND BEING NAMED IN THE 2024 WOMEN'S TOP 40 UNDER 40! WHAT DO THESE MILESTONES MEAN TO YOU PERSONALLY, AND HOW DO THEY INSPIRE YOUR VISION FOR THE FUTURE OF ARCHITECTURE AND CONSTRUCTION IN KENYA?**

Thank you so much for the kind wishes. I am excited to have been recognized out of almost 2000 exemplary women who were submitted for nomination this year. This is a great honour not only for me but also for the entire industry and I was the only one from the Construction industry and Architecture to be precise. Personally, I am feeling honoured that what I do in three parts; as an architect, a leader and an academic on a daily basis has been recognized. This is a testament that excellence is a habit, it is what we do everyday that is noticed and rewarded. I encourage those in practice to keep it. It will pay off one day.

My vision for the future of architecture is to have a profession that is well known such as the field of Law, Medicine and Accounting. For a long time, architecture has been seen as an ambiguous profession to many, yet our work affects the lives of every single human being and all living things. Our work shapes the environment and brings to life from simple structures to large cities. Every human being is a consumer of architecture everyday. So why not make sure it is well known and people can then demand for better architecture. This is what the nomination is all about.

Further, this opportunity which gives the profession a limelight also means that young girls can dream and aspire to become architects and achieve greatness to the highest levels by seeing one of their own. I am also hoping that many more will be nominated and look forward to seeing the industry gain more recognition for the work that we do.

**2. WHAT WOULD YOU SAY ARE YOUR HOPES IN TERMS OF POSITIVE IMPACT THAT YOU HOPE TO BRING TO THE TABLE WITH THE NEW APPOINTMENT?**

I will simply start by continuing the work we have done with the Authority. Whether its the Je Una Mjengo Campaign or the #MulikaMjengo Initiative or to see to it that the Building Code is implemented alongside Development Control policies. Best way will be to see how far the Authority has come, its Strategic Plan and to generally improve the construction sector for the country with greater surveillance, compliance and enforcement of existing policies and regulations.

**3. YOU'VE WORKED ON MANY TRANSFORMATIVE PROJECTS THROUGHOUT YOUR CAREER SUCH AS THE DESIGN OF MARA GIRLS LEADERSHIP SCHOOL AND WON AN AWARD FOR IT IN THE AAK AWARDS OF EXCELLENCE IN 2017. WHAT MOTIVATED YOU FOR THIS INITIATIVE AND ARE THERE SIMILAR PROJECTS YOU ARE CURRENTLY WORKING ON THAT YOU'RE PARTICULARLY EXCITED ABOUT THAT AIM TO UPLIFT AND ENGAGE LOCAL COMMUNITIES?**

Schools are in some way community centres, and even in a privately sponsored project such as this, the community was at the centre of it all and that was our first point of motivation. As the name of the school suggests this is a leadership school that was envisioned to ensure that only 45 girls from the Maasai community at the point of finishing Class 6, 7 & 8 in the 8-4-4 system and now CBC's Junior Secondary School, are given a chance to focus on their studies while still balancing their day-to-day activities as required by cultural norms. They are also trained with leadership skills to ensure that even as they excel, they are able to lead on matters negotiation and conflict that is rife in the community. The design was inspired by the Maasai Boma that is oblong-shaped. We also derived cultural elements of colour, courtyard and community to produce the overall masterplan. The acacia trees in the courtyard were also incorporated to create a pleasantly shaded inward looking space. Designed for rainwater harvesting and solar power the maintenance-free building was built using local stone for masonry to ensure that the school is sustainable. You may here it being called the Green Centre in Talek because of that. I was particularly pleased to have won the award for the school which has transformed the girl child in Talek.

Currently, we have embarked on school projects in Nageli, Oloitoktok and a community library in my village back at home. We have also built unique residential buildings that exemplify local architectural forms and use low impact technology to create beautiful spaces around Kenya at an affordable cost.

So far we have been recognized and first runners up for two residential projects in Kitale and Karen. We hope to also submit a completed resort project located on a very hilly site in Machakos and an upcoming hotel in Uasin Gishu. In all these , I draw a lot of motivation from my work with Classroom Africa under the African Wildlife Foundation where we built and maintained schools in remote places across Africa using the locally available materials. This also ensures technology transfer on the use of new materials for the locals to ensure easy and affordable maintenance of the schools.

#### 4. HOW HAS YOUR EXPERIENCE TRANSITIONING FROM PRESIDENT OF THE EAST AFRICA INSTITUTE OF ARCHITECTS TO LEADING THE ARCHITECTURAL ASSOCIATION OF KENYA (AAK) SHAPED YOUR LEADERSHIP APPROACH, AND WHAT UNIQUE INSIGHTS HAVE YOU GAINED IN NAVIGATING THESE TWO INFLUENTIAL ROLES WITHIN THE ARCHITECTURAL COMMUNITY?

The role at East Africa Institute of Architects is a rotational role that moves annually from one country to the next and it so happens that I was the Chairperson of the AAK Architects Chapter at the time when it was coming to Kenya. This was during COVID-19 in 2020 and my role was to simply keep the Institute running until the lock down was lifted. At that time, we were working on the Communication Strategy and the Mutual Recognition Agreement (MRA) for architectural services to encourage our fellow East African member states who were not yet party to the MRA to sign on. The major work I was involved in was at Chapter where I was the Chair of the AAK Taskforce on COVID-19 where I was co-ordinating our efforts as an association on response to the pandemic. These efforts are published in two editions which I am most honoured to have led.

The transition to President of AAK had me first becoming its Vice President where I chaired the research and advocacy committee and this was a training ground for what I am currently doing. In contrast with the East African role, to become President of AAK, I had to go through an election that was preceded by a rigorous campaign. My goal was to simply **ELEVATE AAK** because we were slowly being forgotten and were missing in the conversations, on decision making tables and general conversations on construction where there had been a shift towards the developer and contractor and less about the built environment professionals.

From the two roles, I have gained so many insights. Where do I start? First is to have a clear plan of what you intend to achieve. These are drawn first from the membership, what do they want AAK to do for them, listen to them. Look at the Strategic Plan of the organization and the ongoing programs to ensure continuity and progress on new initiatives. Then compare and contrast with what is practical for you to achieve the points in the manifesto. With a plan, bring your team onboard to believe in your vision because teamwork makes the dream work. I must give a big shout out to the leaders I work with at AAK both at the Governing Council and the Secretariat. As a leader, you need to lean in on your team to deliver the full mandate of your tenure. It is not possible to do everything even though we carry the burden of responsibility to deliver. Delegation to a great team is key. In the advocacy space,

one needs to gather courage to speak up and speak out. My voice matters in all the issues affecting the industry where I serve. AAK being an umbrella body has been called upon severally to give opinion and thought leadership on current affairs affecting the industry. I have had to learn to speak out despite being soft spoken as some would say. Collaboration has also been a major boost to my leadership. We have signed several MoUs with like minded organizations where we leverage on each other's strength and competencies. Finally, always rest to recover. Find a working balance and an outlet for your stress. This position is not easy but with continuous rest, it can be done.

#### 5. EVERY INDUSTRY HAS ITS CHALLENGES. YOU HAVE OVER A DECADE OF EXPERIENCE IN THE INDUSTRY. FROM YOUR PERSPECTIVE, WHAT DO YOU THINK ARE THE BIGGEST HURDLES CURRENTLY FACING KENYA'S ARCHITECTURE AND CONSTRUCTION SECTORS, AND HOW DO YOU PLAN TO ADDRESS THEM THROUGH YOUR WORK WITH AAK?

The voice and the value of the professional is diminishing. Many people are building without architects and therefore the crop of buildings that are coming up are devoid of basic architectural designs that make the built environment beautiful. Further, the pay for professionals has been seen as an expensive cost, yet the value of not having them leads to even greater losses. The government needs to lead by example and pay fees at scale as per the law. We are also building without planning. Many Counties lack spatial plans for their headquarters which are fast urbanising and where they do the plans have not been cascaded to the local level. The supporting policies for development control are also lacking. In short, we are consistently and constantly building chaos into our future. The cost of construction also continues to skyrocket due to lack of control on the pricing of materials in use within the industry but more so because when items like cost of fuel and foreign currency fluctuate, the building industry suffers the most. Quality is also questionable. We have recently heard of reports on sub standard cement that is being used in the industry. How can this be allowed when we have a standards bureau? These occurrences and many others are detrimental to construction as materials are the foundations of structural elements. AAK advocates for professionals through the **Je, Una Mjengo?** Campaign and the **#MulikaMjengo initiative**. We also collaborate with the Kilimani Project Foundation (KPF) and the Kenya Alliance of Residents Association (KARA) on Local Reas Plans and Development Control policies. The NCA recently launched mobile testing blades for materials on site, we hope that this will curb the issue of substandard materials on site.

## 6. THE ESG FRAMEWORK IS NOW A KEY FOCUS FOR MANY INDUSTRIES. HOW IS AAK (ARCHITECTURAL ASSOCIATION OF KENYA) MANAGING THE PRESSURE TO COMPLY WITH THE SOCIAL COMPONENT OF ESG?

AAK recognizes the growing importance of the ESG framework and is fully committed to all three components. In 2021, we launched the Safari Green Building Index which is a green building rating tool to advance the agenda of green buildings. Our other advocacy initiatives the #MulikaMjengo, Grow-A-Classroom provide a platform for the association to contribute to social impact to the society. Partnerships like those we have with the KPF, KARA and the Women In Real Estate (WIRE), also promote and advance inclusive practices, community well-being, equitable working conditions, protection and conservation of the environment. We also advocate for socially responsible practices among our members by encouraging transparency, stakeholder engagement, and adherence to labour standards in construction projects. Through our regular forums, trainings, and representation in various Liaison Committees and National taskforces, we endeavor to promote good governance, participatory decision making and ensure that public interest is protected.

## 7. IS THERE A WIDESPREAD AWARENESS AMONG YOUR MEMBERS ABOUT THE IMPORTANCE OF CREATING UNIVERSALLY ACCESSIBLE SPACES IN MODERN ARCHITECTURAL DESIGN? HOW IS AAK PROMOTING DESIGNS THAT ACCOMMODATE ALL INDIVIDUALS EQUITABLY, ESPECIALLY THROUGH FEATURES LIKE RAMPS, ELEVATORS, WIDE DOORWAYS, AND BRAILLE SIGNAGE?

Yes, awareness is growing among our members, but there is still much work to be done. AAK actively promotes universally accessible design. The recently launched National Building Code 2024 under Section 20 now includes Universal Access as an updated code. This will ensure that all developers include important features for universal access. Through continuous professional development programs and design competitions like a **Futuristic Bus Shelters Design** we're running in partnership with the Kenya Urban Roads Authority (KURA). In this competition we promote the use of the **3IF** and the **HerCity#HerStreets** principles by The GoDown Arts Center.

The AAK in collaboration with the University College London (UCL), Arup, and Akiba Mashinani Trust, has developed the **Integrated and Inclusive Infrastructure Framework (3IF)** for Kenya. This is a design framework for infrastructure development that ensures inclusivity and sustainability as the key guiding principles and is intended particularly for use in infrastructure-led

upgrading projects in informal settlements.

In addition, the AAK in collaboration with the Habitat for Humanity International developed the **Healthy Homes Guidelines and Checklist (HHGC)**. These global planning principles provide for the creation of sustainable living with adequate access to proper housing and basic essential infrastructure within the neighborhoods, complete with guidelines for providing universal access. We train professionals on how to use this Healthy Homes Guidelines and we continue to advocate for its adoption by agencies like the National Building Inspectorate (NBI) during regularization of buildings and structures to promote safe and healthy living.

We are also members of the **Just City Working Group** that advocates for a city that caters for the invisibles who are unfortunately affected by the vulnerabilities in the society, women, children and persons living with disability are often forgotten when it comes to city planning. The publication, *Towards A Just City*, is in collaboration with the Friedrich Ebert Stiftung and the Civil Society or Urban Development Platform. This has spun off to some Just City work currently taking place in Nakuru under the City's Vision 2050 and has enabled the Working Group to engage on various platforms regarding universal access during the AfriCities Summit in 2022 and the recently inaugurated Africa Urban Forum.

## 8. HOW DO YOU THINK KENYA IS PROGRESSING IN EMBRACING SUSTAINABLE BUILDING PRACTICES, AND WHAT ROLE DO YOU SEE AAK PLAYING IN ADVANCING GREEN ARCHITECTURE ACROSS THE COUNTRY?

Kenya is making significant strides in embracing sustainable building practices, particularly with the increasing focus on green architecture and renewable energy solutions. AAK role is pivotal and we are actively involved in the efforts- internal and external that aim at making Kenya green ready. We are currently developing a local green rating tool, the **Safari Green Building Index (SGBI)**, which takes into consideration the local climatic conditions, local alternative building materials. Through our various forums, we do our best to mainstream green building practices in the Kenyan Construction Industry. Through partnerships with the **Kenya Green Building Society (KGBS)** we continue offering training in green building practices, developing green building guidelines and promoting sustainable urban planning.

We are currently working in collaboration with the **Global Buildings Performance Network (GBPN)** and Public Works to develop the **National Decarbonization Roadmap** aimed at achieving a NetZero construction industry by 2023.

**9. TECHNOLOGY IS RESHAPING ARCHITECTURE IN EXCITING WAYS, WITH INNOVATIONS LIKE BUILDING INFORMATION MODELLING (BIM) AND SMART CITY PLANNING LEADING THE CHARGE. HOW IS AAK HELPING ITS MEMBERS STAY AHEAD OF THE CURVE IN ADOPTING THESE NEW TOOLS?**

AAK actively supports the adoption of emerging technologies like Artificial Intelligence and BIM by offering specialized training and workshops. We recognize that tools like BIM are changing the way professionals design, collaborate, and manage projects. In addition, AAK is always expanding its reach by partnering with different companies and organizations to advance its members' skillsets through Continuous Professional development (CPDs) and acquiring discounted rates for members seeking to advance their skills. Our goal is to ensure that our members not only stay updated on the latest advancements but also integrate these technologies into their everyday practice to enhance productivity and project outcomes.

**10. FROM URBAN REGENERATION TO AFFORDABLE HOUSING, THERE ARE IMMENSE OPPORTUNITIES FOR ARCHITECTS TO CONTRIBUTE TO KENYA'S DEVELOPMENT. HOW DO YOU SEE LOCAL ARCHITECTS MAKING A MEANINGFUL DIFFERENCE IN THESE KEY AREAS?**

Local architects play a critical role in Kenya's urban regeneration and affordable housing initiatives, contributing significantly to the country's development. The Architectural Association of Kenya (AAK) has been at the forefront of ensuring that members are deeply involved in key government-led programs like the Kenya Slum Upgrading Programme (KenSup), and the Kenya Informal Settlements Improvement Projects (KISIP 1 and KISIP 2). In the current dispensation, we have created and Affordable Housing Program Forum (AHP Forum) together with the Institution of Engineers of Kenya (IEK) and the Institute of Quantity Surveyors of Kenya (IQSK) to ensure that our members participate effectively in the ongoing work. We are the ones to build this country and help the government to achieve the goal of Housing for All in a professional way. This alone has elevated the status of professionals.

Through thoughtful and innovative design, built environment professionals contribute to the transformation of derelict urban areas into vibrant, liveable spaces. Their expertise is essential in improving physical infrastructure in informal settlements, focusing on road networks, drainage systems, and public spaces that enhance the quality of life for residents.

**11. WITH THE RECENT INTRODUCTION OF THE 2024 NATIONAL BUILDING CODE, COMPLIANCE HAS BECOME A FOCAL POINT OF DISCUSSION IN THE INDUSTRY. WHAT ARE YOUR THOUGHTS ON THE HITS AND MISSES OF THE NEW REGULATIONS, AND HOW ARE ARCHITECTS ADJUSTING TO ENSURE COMPLIANCE WHILE MAINTAINING INNOVATION IN THEIR DESIGNS?**

The 2024 National Building Code introduces several important improvements, particularly in promoting safety, sustainability, and universal access. However, some areas may still need refinement, particularly on mainstreaming sustainable design, an element that the code has left to discretion of the developers- this should be mandatory! The code also fails to acknowledge the crucial roles of unregulated and emerging professions within the built environment, including Construction Project Management, Landscape Architecture, Interior Design, and Urban Design, which are integral professions taught in Kenyan universities, and excluding them from the Code is a significant oversight that undermines their contributions and advancements. It is imperative that the relevant legislation recognizing them are passed into law so that the National Building Code acknowledges them. Lack of recognition hinders the progress and inclusivity of the construction industry. The Code's structure should be reformed based on international best practices to ensure compliance and enforceability. This restructuring will make the Code more user-friendly, comprehensive, and easier to enforce. We have provided a statement and guidance on this to the National Construction Authority through the State Department of Public Works.

**12. HOW CAN AAK, IN COLLABORATION WITH OTHER KEY REAL ESTATE STAKEHOLDERS SUCH AS DEVELOPERS, PLANNERS, AND INVESTORS, ADVOCATE FOR BETTER POLICIES AND PLAY A LARGER ROLE IN INFLUENCING PUBLIC POLICY—PARTICULARLY IN AREAS LIKE URBAN PLANNING, ENVIRONMENTAL CONSERVATION, AND INFRASTRUCTURE DEVELOPMENT—TO DRIVE SUSTAINABLE GROWTH IN KENYA'S REAL ESTATE SECTOR?**

AAK is uniquely positioned to collaborate with real estate stakeholders to influence policy in areas critical to Kenya's growth. We work closely with state departments, county governments, developers, and planners through our Engineers and Town Planners Chapters to advocate for policies that promote sustainable urban development and environmental conservation. Through engagements with regulatory authorities, AAK seeks that the building code is inclusive

and enforceable and that zoning laws, and **Planning and Development control frameworks**, are developed and implemented through complete hierarchy of plans from the National level to the neighborhoods. We also promote the adoption of a One-Stop-Shop **approval system**, to increase transparency in the development approval processes to ensure that developers don't suffer from unjustifiable delays which often impact on their financial plans, especially when investors and financiers are involved.

**13. GENDER CONSIDERATIONS ARE INCREASINGLY SIGNIFICANT IN THE BUILT ENVIRONMENT. WHAT GENDER-TRANSFORMATIVE PROGRAMS HAS AAK IMPLEMENTED TO ENSURE THAT ITS MEMBERS INTEGRATE GENDER SENSITIVITY INTO THEIR WORK? AND AS A LEADER, HOW DO YOU HOPE TO INSPIRE MORE YOUNG WOMEN TO ENTER THE WORLD OF ARCHITECTURE AND DESIGN?**

AAK promotes gender-sensitive design that considers the needs of all users, particularly women and vulnerable groups. Additionally, we specifically track data on women in leadership positions or those who own firms, which builds on to a database/report submitted to the Women In Real estate (WIRE). Through this collaboration we have seen a significant awareness and increase in the uptake of gender mainstreaming activities in the industry.

As a leader, I must say that I am lucky to have stood on the shoulders of two past women presidents and I currently lead the association with more women than ever before. We are actively carrying out mentorship programs in high schools and at the Universities to inspire young minds to take up the course.

**14. HOW IMPORTANT IS THE ROLE OF LEGAL ENTITIES LIKE CM ADVOCATES IN GUIDING ARCHITECTS THROUGH COMPLEX FRAMEWORKS LIKE ZONING AND BUILDING CODES, AND HOW DOES COLLABORATION WITH LEGAL PROFESSIONALS ENHANCE BOTH THE SUCCESS OF YOUR PROJECTS AND DRIVE POLICY CHANGES IN AREAS SUCH AS SUSTAINABLE BUILDING PRACTICES AND AFFORDABLE HOUSING INITIATIVES?**

Legal entities like CM Advocates enhance our capacity to influence policy by helping our members understand, interpret and synthesize often complex regulatory frameworks that govern construction projects. By providing legal advice on zoning laws, building codes, and other statutory requirements, legal professionals help architects avoid compliance issues and potential disputes. Moreover, collaboration with legal experts strengthens advocacy efforts by ensuring that proposed policy changes, such as those related to sustainable building practices or affordable housing,

are legally sound and actionable. Such partnerships, therefore, enhance both the success of individual projects and the broader policy reforms that benefit the built environment. Contract issues are also critical in construction and many are the times when professionals in the built environment are not able to interpret certain clauses in the contract documents. Continuous training and sensitization needs to be done by advocates such as CM Advocates to capacity build our professionals.

**15. AAK PLAYS A ROLE IN DISPUTE RESOLUTION WITHIN THE INDUSTRY. BASED ON YOUR MEMBERS' EXPERIENCES, WHAT CHALLENGES HAVE THEY ENCOUNTERED, AND WHAT PROPOSALS HAVE BEEN PUT FORWARD TO SIMPLIFY AND IMPROVE THE DISPUTE RESOLUTION PROCESS IN ARCHITECTURE AND CONSTRUCTION?**

AAK's role in dispute resolution is crucial in maintaining professional standards and addressing conflicts that arise in construction projects. We are called upon to appoint arbitrators in the JBC Contract and this leads to several appointments of professional arbitrators from AAK. We recently partnered with the Chartered Institute of Arbitrators (CIArb- Kenya Chapter) to train professionals who want to take up arbitration and also on general knowledge on how to avoid getting into disputes in general. Common challenges include delays, cost overruns, and disagreements over design interpretation. To simplify the dispute resolution process, AAK has proposed the introduction of more streamlined mediation, adjudication before moving matters to arbitration mechanisms that reduce time and cost. We are also advocating for the inclusion of dispute resolution clauses in contracts to prevent escalation and ensure that conflicts are resolved amicably before they affect project timelines or quality. Through our membership and leadership of the Joint Building and Construction Council (JBCC) we have a new contract document that has made significant changes to the older Green Book by JBC to address these challenges. As for disputes arising from delays involving approvals from the various state agencies, we've proposed for all decisions made at all levels of approvals to be made public for all interested parties to access.

**16. INTERNATIONAL COLLABORATION OPENS UP EXCITING OPPORTUNITIES. HOW DO YOU THINK AAK CAN STRENGTHEN TIES WITH GLOBAL ARCHITECTURAL BODIES AND ELEVATE THE PROFILE OF KENYAN ARCHITECTURE ON THE WORLD STAGE?**

The Architectural Association of Kenya (AAK) is already a member of esteemed global bodies such as the Commonwealth Association of Architects (CAA) where



our member, Arch. Steve Oundo is currently serving as President. We are also active members of the East Africa Institute of Architects (EAIA) where AAK Architects Chapter Chairperson, Arch. Wycliff Waburiri is also serving as President. We are active in the International Union of Architects, the International Federation of Landscape Architects where we hosted the Congress in 2023, the Africa Association of Quantity Surveyors (AAQS), ISOCARP among many others. We recently hosted the President of the American Institute of Architects during our convention and are now members of the Sub-Saharan Section. All these provide members with valuable opportunities to engage with peers across the world. These partnerships enhance knowledge sharing, allowing Kenyan architects to access international best practices, emerging trends, and innovative technologies. By collaborating with global professionals, members gain exposure to diverse perspectives, helping them bring unique, culturally informed approaches to both local and international projects.

To strengthen ties with other global architectural bodies, AAK can expand its participation in international forums, conferences, and competitions. Actively contributing to global conversations on topics like sustainable urbanization, climate-resilient design, and inclusive architecture will elevate the profile of Kenyan architecture and showcase the country's expertise in addressing complex, context-specific challenges. Additionally, increasing opportunities for exchange programs, joint projects, and research collaborations with international firms and universities will open new pathways for growth. We participate in various international events such as World Urban Forum and the IFLA World Congress and AAQS General Assembly meetings to remain relevant and thought leaders globally.

## 17. AS THE WORLD RAPIDLY EVOLVES, HOW DO YOU ENVISION THE ARCHITECTURAL ASSOCIATION OF KENYA (AAK) GROWING TO BETTER SUPPORT ARCHITECTS AND PROFESSIONALS IN THE BUILT ENVIRONMENT? WHAT STRATEGIES DO YOU THINK WILL BE MOST EFFECTIVE IN ADAPTING TO THE SHIFTING DEMANDS OF THE INDUSTRY?

AAK is positioning itself to better support professionals in the built environment by driving the regulation of currently unregulated professions. We are working towards the adoption of an **umbrella legislation** that will bring together all built environment professionals—such as Construction Project Managers, Landscape Architects, and Interior Designers—under a unified regulatory framework. This initiative is being developed under the **Coalition of Built Environment Professions**.

The legislation will not only update existing laws like the Architects and Quantity Surveyors Act, but also enhance self-regulation, granting professional associations more power to ensure industry standards are upheld. AAK is also focusing on capacity building, promoting cross-border collaborations with neighbouring countries, and encouraging innovation in architecture through continuous professional development. By fostering unity within the built environment professions and advocating for policies that reflect the industry's evolving needs, AAK will remain a key player in Kenya's sustainable development while adapting to global trends and demands.



# Contributor Information

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Florence Nyole is the President of the Architectural Association of Kenya (AAK) and an award-winning architect at Ecospace Architects. Known for her dedication to advancing women in the built environment, she emphasizes mentorship and nurturing leadership.

Recently appointed to the Board of the National Construction Authority (NCA), Florence continues to play a pivotal role in shaping Kenya's architectural industry. She has been a strong advocate for safe building practices and has championed opportunities in affordable housing. Florence combines her passion for architecture with a dedication to empowering women entering the field, while also enjoying music and time with her family.

## NOTABLE ACHIEVEMENTS:

- **Board Member of NCA:** Appointed as a Board member of the National Construction Authority in October 2024, expanding her influence in Kenya's construction sector.
- **AAK President:** Leading initiatives such as the "Mulika Mjengo" campaign to promote safe building practices and has played a key role in securing architectural firms' participation in Kenya's affordable housing projects.
- **President of the East Africa Institute of Architects (2020-2021)**
- Recognized for her exemplary leadership, Florence has been named one of Kenya's **Top 40 under 40 Women in 2024**, underscoring her influence and contributions to the industry.
- **Award-winning Project:** Recognized for her work on the Mara Girls Leadership School.
- **Mentorship Advocate:** Actively involved in mentoring young women in architecture, ensuring a more inclusive industry.
- **Leadership in Women's Empowerment:** Florence is a vocal proponent of women's leadership in the architectural profession, fostering an environment where women can thrive.



IN CONVERSATION WITH:

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## THE CONCEPT OF ISLAMIC SHARIAH AND NAVIGATION OF RIBA OR INTEREST IN FINANCIAL TRANSACTIONS IN THE KENYAN CONTEXT



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Islamic banking also referred to as the Islamic finance or shariah compliant finance refers to financial activities that adhere to the shariah or the Islamic law and tenets. Fundamental principles guiding the concept of Islamic shariah compliance are the sharing of profit and loss in all operations and the prohibition of the collection and payment of interest by parties to a contract.

Charging or payment of interest, also known as “riba” in Islamic law, is prohibited for the following reasons:

- a. **Ethical Considerations:** The prohibition of interest in financial dealings is based on the belief that money should not generate profit on its own. Additionally, where financiers acquire interest from vulnerable borrowers, it is perceived as an unjust gain.
- b. **Risk-Sharing:** Unlike conventional banks, the Islamic lending model is that the lender shares the risk with the borrower. Where both parties share in the risk and rewards, it ensures that social justice practices as promoted in Islamic law are adhered to.

### REGULATION OF KENYAN BANKING LAWS IN LINE WITH ISLAMIC LAWS

#### 1. The Banking Act (Cap 488)

The Banking Act is the guiding statute for the operation of financial institutions in Kenya, which includes Islamic Banks. Due to the requirement for Islamic Banks to

operate in line with Shariah principles, there has been an attempt to regulate Islamic banking operations through the amendment of the Banking Act.

In 2008, Section 16A of the Banking Act was amended by including the words “or a return in the case of an institution carrying out business in accordance with Islamic Law” after the words “interest accruing” to accommodate the practices of Islamic financing.

#### 2. The Central Bank of Kenya Act (Cap 491)

The Central Bank of Kenya (CBK) is responsible for the licensing and regulation of banks in Kenya. An amendment was made to the CBK Act by the Finance Act No. 10 of 2010 in line with the amendments made to the banking act to allow the Central Bank to include the payment of a return for Islamic institutions because of the prohibition of “riba”.

#### 3. Shariah Law

Borrowing and lending by people of the Muslim faith is mainly governed by Shariah law. To ensure that banks do not deviate from the Islamic practices, Islamic banks in Kenya are often required to establish a Shariah Advisory Board. This board is responsible for overseeing all banking operations to ensure adherence to Islamic law. The Shariah Advisory Board reinforces the commitment of Islamic financial institutions to operate within the boundaries of Islamic Law.

Banks and financial institutions have increasingly incorporated Islamic products and services into their service panels. For example, the products offered by both Islamic and conventional banks include Murabaha products and a Diminishing Musharakah products.

## EXAMPLES OF ISLAMIC BANKING PRODUCTS OFFERED IN KENYAN BANKS

### a) Murabaha

A Murabaha is an Islamic banking product where the bank or the seller and the buyer agree on the mark-up for the item being sold to the buyer by the seller. Instead of taking out an interest loan to buy the product, the customer requests the bank of choice which is Shariah compliant to purchase the item and sell to him or her at a higher price on instalment.

Under this type of transaction, profit is determined at the onset of the negotiation and the selling price cannot be increased once the contract is signed and where there is default or breach of contract then options such as third-party guarantee, collateral guarantees on the client's belongings or penalty fee to be paid to an Islamic charity since it cannot enter the bank's revenues are available options to be pursued.

### b) Ijara or Leasing

The concept of Ijara or leasing is also an Islamic financing model that parties can use to avert the use of interest in their operations. Here parties decide to enter into a leasing contract, instead of issuing a loan for a client to buy a product, the bank will purchase the product then leases it to the client and the customer only acquires the item at the end of the lease period.

### c) Diminishing Musharakah

Additionally, in the case of a diminishing musharakah arrangement, where a bank's client wishes to acquire property, the bank and the customer would own the property jointly. The ownership is divided into several units and the customer would periodically purchase the bank's units over time until such a time that the customer will fully own the property.

This arrangement however poses a challenge to effect under current banking laws in Kenya. Further, the Banking Act prohibits banks from purchasing or acquiring or holding any land or any interest or right therein except such land or interest as may be reasonably necessary for the purposes of conducting its business, or for housing or providing amenities for its staff, where the total amount of such investment does not exceed such proportion of its core capital as the Central Bank may prescribe.

Additionally, the Islamic Shariah compliance principles allow for parties to enter into an investment in which the bank will provide 100% of the required capital for the specific financial transaction and the bank will own the business or the investment and the customer can

provide the management and labor needed for such investment.

At the end of the transaction, the parties share the profits according to a pre-established ratio. And where the business fails then the bank bears all the financial losses unless it is proven that it was the customer's fault. This concept is called Mudarabah or profit share.

## CONCLUSION

It is worth noting that while this is a developing concept in Kenya, Islamic finance is not just for the Muslims as perceived, on the contrary, Islamic financial products have also proliferated in non-Muslim communities.





## WAGS: CHAMPIONS OF ACCOUNTABILITY AND TRANSPARENCY IN WATER SERVICE DELIVERY



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“Residential associations provide the ideal platform to organize Water Action Groups effectively. They offer structure, resources, and the ability to bring people together, making it easier to tackle water challenges through collective action. With their leadership, WAGs can create lasting, sustainable change in residential areas, helping communities manage water resources more responsibly and build resilience against future water challenges”

Water is life—a common phrase that resonates deeply, yet often oversimplifies our complex relationship with this essential resource. As the 2024 UN General Assembly concluded its assessment of progress on the Sustainable Development Goals (SDGs), it would interest us to know the status of achievement of Kenya's ambitious National Water Master Plan 2030. This plan aligns with SDG 6, whose goal is access to clean water and sanitation. Among its key targets are ensuring access to safe and affordable drinking water, providing adequate sanitation and hygiene, and improving water quality through the reduction of pollution and hazardous chemicals. These targets are more than just health or environmental objectives; they reframe water as a critical consumer issue, affecting rights, equity, and accountability within our socio-economic frameworks.

Article 43(1)(d) of the Constitution of Kenya, 2010, guarantees every person the right to clean and safe water in adequate quantities. This right places an obligation on the state to ensure water accessibility through policy imple-

mentation and infrastructure development. It prioritizes vulnerable communities, especially in informal settlements and rural areas. Water service providers must ensure equitable, non-discriminatory, and affordable services. The provision also empowers citizens to legally challenge the state or providers if their rights are violated, promoting accountability and sustainability in water management.

Access to clean water is a fundamental human right, but many still lack it, raising serious concerns about consumer rights and the obligations of water service providers to ensure equitable access, particularly for marginalized communities. Poor water quality not only jeopardizes health but also erodes trust in service providers, necessitating stricter accountability measures. Fair pricing is equally essential, ensuring that even low-income households can afford water without financial hardship. In urban settings, disparities in water access, especially in informal settlements, often fuel conflicts as residents accuse providers of favouring wealthier neighbourhoods.

Effective regulation is vital to ensure water service providers are held accountable. Complaints about service disruptions, quality, and pricing should be addressed promptly and transparently. Furthermore, the link between water management and environmental sustainability is increasingly recognized, with consumers demanding that service providers adopt sustainable practices to secure future water supplies.

Consumer participation in water governance promotes transparency and accountability. When individuals have a say in decision-making processes, they develop a sense of ownership over water resources. Additionally, educating communities about their rights and the importance of water management empowers them to advocate for better services and hold providers accountable.

The urgency of addressing these water challenges is heightened by climate change. Predictions indicate that water could soon become one of the most precious and contested resources, with conflicts over access intensifying in both urban and rural areas. In Nairobi, for instance, recent water rationing has sparked accusations of inequitable distribution, with informal settlements facing severe shortages. Moreover, water cartels have manipulated public supplies to create artificial scarcity, profiting from inflated prices while leaving low-income areas in desperate need.

Reflecting on Kenya's water management history reveals deep-rooted inequities. Before independence, indigenous water management practices prioritized collective use and conservation. However, colonial policies centralized control, marginalizing local communities in favor of settlers. Post-independence, Kenya has struggled to reform these imbalances, with outdated laws and corruption hindering progress. While the Water Act of 2002 and its 2016 revision, along with the 2010 Constitution, have laid the groundwork for decentralization and community involvement in water governance, significant challenges remain, especially in the context of climate change.

**After all has been said and done, the pressing question remains: where are the consumers of water services, and how can we engage them? What motivates their participation in this process?**

First things first, consumer involvement in water use is crucial for ensuring sustainable management and fair access to resources. By participating in decisions related to water use, consumers can hold service providers accountable for quality and distribution, encourage conservation through mindful consumption, and influence policies affecting water governance. Their involvement also promotes transparency, ensuring that water resources are managed equitably. Additionally, collaboration between consumers, providers, and regulators can lead to better solutions for water-related challenges such as scarcity and

infrastructure development, particularly in the context of climate change.

**How can consumers engage if they are unaware of their role? How can they participate without an organized platform? Is this where Water Action Groups (WAGs) can bridge the gap?**

In this water use and management landscape, Water Action Groups (WAGs) have emerged as voluntary community groups that emphasize consumer protection and oversight. Operating under the guidance of the Water Services Regulatory Board (WASREB), WAGs are committed to participatory governance, monitoring water service quality, reliability, and affordability. Unlike Water User Associations (WUAs), which manage water catchment areas, WAGs focus on service delivery and consumer protection. While their full impact remains to be seen due to their informal legal status, WAGs play a crucial role in ensuring accountability in water governance.

WAGs perform several vital functions, including monitoring service delivery, addressing community complaints, advocating for consumers in dialogues with service providers and regulatory bodies, and promoting public awareness about water rights and conservation. They also foster transparency by advocating for fair pricing and fund allocation, helping to combat corruption and promote sustainable water management practices.

Despite their successes, WAGs face challenges such as limited resources, coordination difficulties with service providers, and a lack of formal enforcement authority. However, with enhanced support, capacity-building initiatives, and stronger partnerships with government and private stakeholders, WAGs have the potential to revolutionize water governance in Kenya by driving improvements in water access, quality, and sustainability at the grassroots level.

To empower Water Action Groups (WAGs) and enhance their impact, Kenya must prioritize capacity building, increase funding, strengthen institutional support, and raise public awareness of WAGs' role in water governance. Article 43(1)(d) of the Constitution of Kenya, 2010, as already stated in this article places an obligation on the state to ensure water accessibility through policy implementation and infrastructure development.

To support this, legislative recognition of Water Action Groups (WAGs) is necessary to provide them with the legal backing to function effectively. As climate change exacerbates water issues, equitable access to water is not just a political or economic concern, but a fundamental human right. This calls for an urgent review or amendment of the Water laws to establish WAGs as a key component in shaping Kenya's future water governance.



## PRE-NUPTIAL AGREEMENTS AS AN ESTATE PLANNING TOOL



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### INTRODUCTION

Before saying "I do," some couples take an extra step to secure their future with a pre-nuptial agreement—a simple yet significant contract made before marriage that outlines each party's property rights. Think of it as a blueprint ensuring both partners have a shared understanding of their financial future. It's more than just legal protection; it's about fostering transparency and trust from the start of the journey. Pre-nuptial agreements;

1. Define the rights of the agreeing parties with regard to properties, investments, pensions, inheritance, wedding gifts and liabilities acquired before parties enter into a marriage.
2. May speak to alimony in case of divorce.
3. Allows parties define rights with regards to assets and liabilities acquired in previous marriages whether such marriage terminated by way of divorce or demise of a spouse.
4. Speak to rights and responsibilities in a marriage should the couple envision that either of them will be a stay-at-home parent.
5. Are often entered into when either party to the intended

marriage has substantially greater assets or income coming into the marriage.

6. Offers security for parties who are blending their families.
7. As an Estate Planning Tool.

A pre-nuptial agreement is a document by the parties and for the parties and thus their specific and legal needs can all be addressed in such agreement. It is advisable that parties enter into this agreement at least 21 days before the marriage and only after both parties have received independent legal advice, preferably from competent family law advocates.

### PRE-NUPTIAL AGREEMENTS AS AN ESTATE PLANNING TOOL

There are several estate planning tools in Kenya such as Wills, Family Trusts, Life Insurance, Power of Attorney, Pre-Nuptial Agreements among others.

One can use as many or few estate planning tools depending on the end-goal and need being addressed.

We opine that a Pre-Nuptial Agreement is an excellent estate-planning tool for the following reasons;

**a) Clarifies Ownership of Property and Assets**

A prenuptial agreement helps protect separate property by clearly specifying what each spouse considers their individual property. This can include assets they owned before the marriage, inherited property, or gifts received during the marriage. It ensures that these assets are not considered matrimonial property upon divorce, thus protecting individual estates.

**b) Protects Family Businesses and Inherited Wealth**

For spouses who own or intend to inherit businesses or valuable family assets including family heirlooms, a prenuptial agreement can act as an estate protection strategy by ensuring that these assets are excluded from being considered as matrimonial property and are not subjected to lengthy contest in case of divorce.

**c) Minimizes the Risk of Financial Disputes in case of divorce**

In the unfortunate case of divorce, assets catered for in the Pre-Nuptial Agreement will not be included in the pool of assets considered as matrimonial property at least if the parties upheld their initial agreement on dealing with such assets and liabilities such as the other person has not within the course of the marriage gained an interest in such assets.

As dissolution of a marriage causes uncertainty, having this agreement in place allows parties to maintain some control over their assets and financial health.

**d) Avoid matrimonial property dispute**

Clearly defining property types in a pre-nuptial agreement helps couples avoid misunderstandings and disputes during a divorce. By categorizing assets as separate or matrimonial and establishing criteria for future acquisitions, the agreement creates a solid framework for ownership rights, ensuring that each partner's estate remains protected.

**e) Setting Terms for Spousal Support (Alimony)**

Prenuptial agreements can address the issue of spousal support (alimony) in case of divorce. This clarity ensures that each partner's estate is well-organized and remains unaffected by future disputes, as they have already accounted for potential alimony in their overall financial strategy.

**f) Preserves family relations**

Marriage is not only an engagement of the immediate spouses, families too get married and for various reasons, the familial marriage which in the long run is beneficial to the health of the marriage, for the comfort of individual parties, the intended spouses can enter into a Pre-Nuptial agreement that caters for all parties' interests of course, without undue influence, coercion and threats being leveraged against either intended spouse.

**g) Provides security for blended families**

For parties contracting another marriage after the dissolution of previous marriage by way of death or

otherwise, there are several considerations that may arise from their experience, children or commitments arising from such former unions. In essence, while the marriage itself will be between two persons, either or may be liable to other parties or responsibilities and the extent of such can be clearly spelt out in such pre-nuptial agreements, offering protection to either spouse's estate.

**h) Provides a protection for stay-at-home parents**

Work-life integration is an important aspect to ensure that while the family thrives financially, the children of the marriage as they arrive also thrive socially, especially in their formative years and the presence of either parent at home nurturing the young ones is crucial.

Such presence at home would mean a sacrifice career-wise for the parent who would remain within the home for however long such full-time presence would be required.

Provisions on financial care for such parent in the course of the marriage in a pre-nuptial agreement would ensure that they also thrive economically as they put in the work for family health.

**i) Estate Planning Integration**

Pre-nuptial agreements can integrate with broader estate planning strategies. They can help ensure that wills, trusts, and other estate documents align with the couple's intentions and protect individual interests.

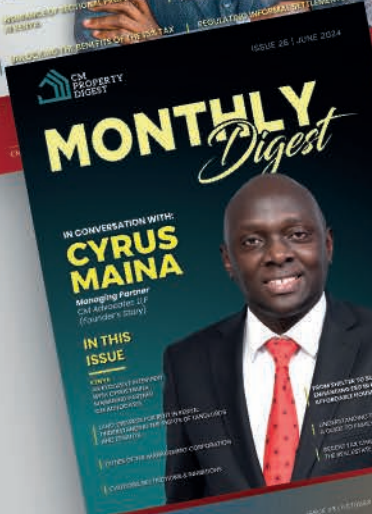
**CONCLUSION**

In conclusion, pre-nuptial agreements are vital estate planning tool whose benefits are not only legal but also social. Social benefits are crucial as they determine the quality-of-life of intended spouses once they enter into their marriage which translates to thriving families economically, socially, and in terms of family integration.





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## THE ROLE OF THE NATIONAL LAND COMMISSION IN DISPUTE RESOLUTION



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The Constitution of Kenya (2010) establishes the National Land Commission (NLC) under Article 67 (1), detailing its functions in Article 67 (2). Additionally, Article 68 mandates Parliament to revise and rationalize existing land laws while enacting new ones. This constitutional framework led to the enactment of key legislation, including the Land Act, 2012, the Land Registration Act, 2012, and the National Land Commission Act, 2012 (NLC Act).

Among its many responsibilities, Article 67(2)(f) of the Constitution empowers the NLC to encourage the use of traditional dispute resolution mechanisms in land conflicts. This approach is integral to the Commission's strategy for expediting the resolution of land disputes. Furthermore, the Constitution mandates the NLC to initiate investigations into historical land injustices, either on its own initiative or in response to complaints, and to recommend appropriate redress.

To operationalize these constitutional provisions, the NLC Act was amended through the Land Laws Amendment Act, 2016. This amendment established a framework for addressing historical land injustices, prompting the Commission to begin investigations into these matters.

However, the initial processes for reporting and conducting these investigations were often haphazard, leading to confusion and a lack of transparency. Recognizing this gap, there was a critical need for a clear framework for submitting claims and clarity regarding the investigation and determination processes.

In response, the NLC promulgated the National Land Commission (Investigation of Historical Land Injustices) Regulations, 2017, which outline a comprehensive procedure for investigating historical land injustices.

### PROCEDURES FOR CLAIM SUBMISSION

The Commission can initiate the claim process independently or invite the public to submit claims. Individuals may lodge claims orally, via a memorandum, through letters, or by completing the prescribed form. Upon receiving a claim, the Commission will vet it, deciding whether to admit or reject it. If a claim is admitted, the Commission may impose restrictions on the land in question.

Once a claim is accepted, the Commission will conduct

background checks, site visits, and public hearings as needed. Although the Commission adheres to the principles of natural justice, it is not strictly bound by conventional rules of evidence. After completing its investigations, the Commission is required to issue a written decision detailing the nature of the claim, summarizing the relevant facts and evidence, and providing a rationale for its determination. Additionally, it must recommend appropriate remedies for the parties involved.

## AVAILABLE REMEDIES

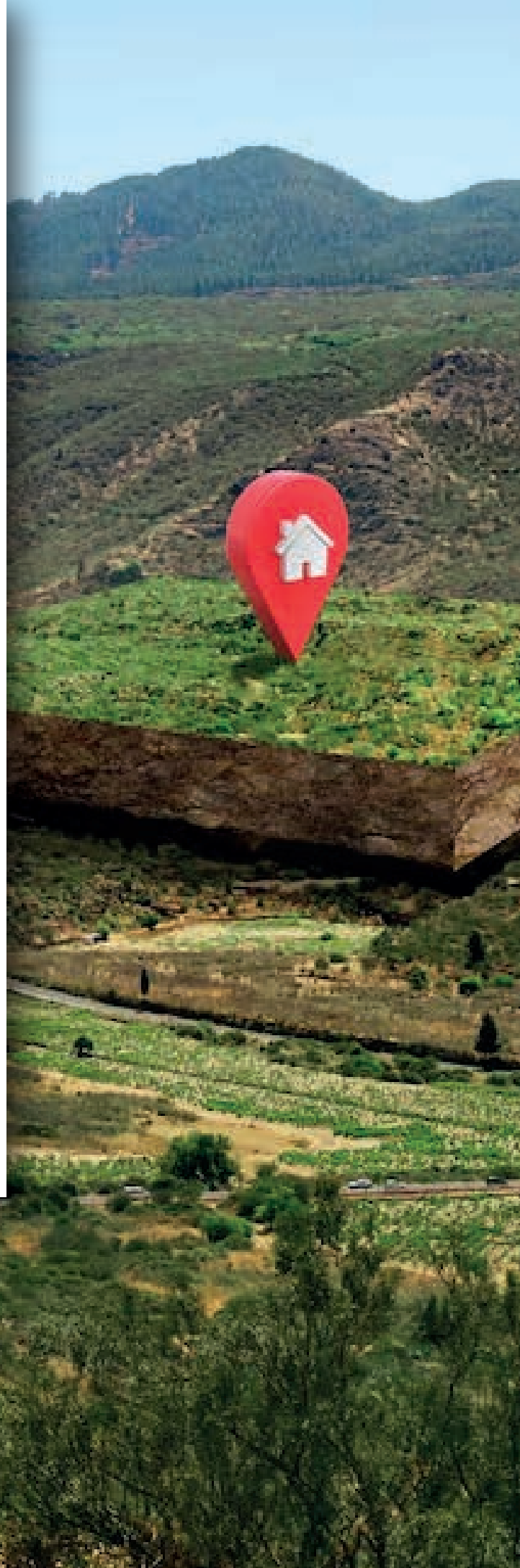
Claimants have access to various remedies, including compensation, restitution, resettlement on alternative land, creation of wayleaves, and refunds to bona fide third-party purchasers. While the Commission does not have the authority to implement these recommendations directly, it must forward them to the relevant authority, which is obligated to act on them within three years of receiving notice.

If a party is dissatisfied with the Commission's decision, they have the right to appeal to the Environment and Land Court.

## CONCLUSION

Although the Ndung'u Report does not possess legal force, it serves as a guiding document, suggesting that land identified as illegally allocated may be resolved through the NLC. This report highlights not only land that has been illegally or irregularly allocated but also land acquired due to historical injustices.

In practice, it is crucial for legal practitioners to investigate the Ndung'u Report and any notifications issued by the NLC when engaging in land transactions. Staying updated on the decisions and recommendations from the NLC is essential for protecting clients' interests. Furthermore, financiers who accept property as security must conduct continuous audits of the titles they hold to ensure that their collateral remains secure and free from disputes.





## THE CONCEPT OF WAQF IN KENYA



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The law governing Waqf in Kenya is the Waqf Act, CAP. 109 of the Laws of Kenya. Waqf is a religious, charitable or benevolent endowment and permanent dedication of property to be held in perpetual trust for the benefit of the society.

There are three types of Waqf. These are;

- 1. Waqf Ahli:** This is a Waqf made for the benefit of an individual or a family or for the performance of a rite or a ceremony that is recognized by Islamic law. Most of the times, this type of Waqf is created for the benefit of the settlor's own family and descendants. Waqf Ahli can loosely be translated to mean a family or a private or a specific Waqf.
- 2. Waqf Khairi:** This is a Waqf made for a public, religious or charitable purpose recognized by the Islamic law. Examples of Waqf Khairi is when a settlor dedicates his property to be used as a mosque or a school for the education of children from poor family backgrounds or as residence for teachers of a certain school or as a library. Waqf Khairi can loosely be translated to mean a public or a general Waqf.
- 3. Waqf Mushtaraq:** This is a Waqf which is made in part for

the benefit of an individual or a family and in part for a public purpose that is recognized by Islamic law. It is a mixture of Waqf Ahli and Waqf Khairi.

For a Waqf to be valid, the following conditions have to be met;

- The settlor must be a Muslim adult of sound mind.
- The settlor must have the capacity to create the Waqf i.e. the settlor must own the property which is to be dedicated as Waqf.
- The Waqf must be made in accordance with Islamic law for the benefit of the poor and vulnerable people within the Muslim community.
- The Waqf must be made freely and not under compulsion, undue influence, coercion or force.

There are different modes of creating Waqf. A settlor may create a Waqf by;

- a) dedicating the property immediately which is termed as inter-vivos. Once a Waqf is created through this mode, the Waqf is irrevocable.

- b) dedicating the property through a Will (Testamentary Waqf). This Waqf becomes operative after the death of the settlor and can be revoked at any time during the life of the settlor.
- c) immemorial user. This is where a Waqf is constituted by a continued use of any property for some religious or charitable purpose.

In the Waqf Act (Cap. 109), there is established a Commission known as the Waqf Commission which is vested with duties and functions for efficient administration of all Waqf properties in Kenya.

Once a settlor desires to designate a property as Waqf, the Waqf is created through a Waqf Deed wherein a trustee tasked with the management of the Waqf is appointed. The Waqf Deed must also specify the beneficiaries of the Waqf, the objects of the Waqf, the duties and powers of the trustee and any other relevant provisions.

The appointed trustee must register the Waqf with the Waqf Commission within three months of its creation. The trustee and or the beneficiaries of a Waqf may apply to the Waqf Commission for the Commission to take over the administration of such Waqf.

#### UNIQUE FEATURES OF WAQF PROPERTIES

- » An agreement purporting to lease or otherwise alienate Waqf property for any period exceeding one year shall be valid only if it is authorized in writing by the Waqf Commission.

- » A person who intends to sell Waqf Property must make an application to the Environment and Land Court whereupon the application may be allowed or the Court may issue any other order it deems appropriate.

For the Waqf property to be sold, the Waqf Commission has to satisfy the Court that the intentions of the settlor cannot reasonably be carried out into effect and it is expedient that the property be sold.

- » Waqf property intended to be used for a cemetery, burial ground or the construction of a mosque can never be sold.
- » No title to any Waqf Property can be acquired by any person by adverse possession.
- » Any dispute relating to a Waqf shall in the first instance be referred to the Kadhi's Court.
- » The income arising out of Waqf property is not subject to income tax or any other tax or penalty.

**In conclusion**, the creation of Waqf is an important aspect in the Kenyan Islamic society as it seeks to protect the well being of the family unit, the needy, the poor and the society at large through a perpetual trust.

When a Waqf is constituted, it is presumed that a gift of some property has been made in favour of Allah. As the ownership of the property is vested in Allah, the title to the property is detained forever and the income thereof is utilized continuously for the objects of the Waqf.





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## LEVERAGING TAX INCENTIVES FOR GREEN BUILDING PROJECTS



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As sustainability takes center stage globally, Kenya's real estate sector is increasingly embracing green building initiatives. But what does it really mean to build green? Green building—sometimes referred to as sustainable or eco-friendly construction—involves creating structures and applying processes that are resource-efficient and environmentally responsible throughout the building's life cycle, from design and construction to maintenance and eventual demolition.

According to a 2023 UNEP report, the building and construction sector is the largest single contributor to global emissions, accounting for 37% of worldwide carbon emissions. In Kenya, rapid urbanization and the demand for high-quality housing make it essential for the construction industry to adopt sustainable practices, aligning with the UN's Sustainable Development Goals and Kenya's Vision 2030. To encourage property developers to incorporate these eco-friendly practices, the Kenyan government offers a range of tax incentives.

### OVERVIEW OF GREEN BUILDING INCENTIVES

Despite the importance of sustainable construction, the uptake of green building in Kenya has been slow. Several challenges, such as high initial costs, lack of awareness, and insufficient knowledge of available policies, have impeded

this progress. However, the government has introduced numerous incentives and policies aimed at promoting sustainable and energy-efficient building practices, including:

- 1. Energy Efficiency and Conservation Programs:** The Energy Regulatory Commission (ERC) offers guidelines and incentives for buildings that integrate energy-efficient technologies, in line with national goals to reduce energy consumption and carbon emissions. One such incentive is The Kenya Green Building Society (KGBS) signed an agreement with the International Finance Corporation (IFC) in 2017 with an aim to promote the IFC's green building software which seeks to promote energy efficient construction procedures. Through this partnership, developers get access to credit from partner commercial banks, training, and subsidized energy audits.
- 2. Compliance with Green Building Codes:** Buildings that adhere to green construction standards established by the Kenya Bureau of Standards (KEBS) may qualify for tax relief. These standards ensure that design, construction, and operation are environmentally responsible.

## TAX DEDUCTIONS FOR ENERGY-EFFICIENT INVESTMENTS

Investing in energy-efficient technologies not only benefits the environment but can also reduce taxable income. Developers can claim tax deductions for expenses incurred in installing energy-saving systems, such as:

- 1. Solar Power Systems:** Solar panels are becoming an increasingly popular way to cut energy costs in Kenya. The installation costs can be treated as capital expenses, reducing taxable income for developers.
- 2. Energy-Efficient Appliances:** Costs associated with energy-saving lighting, air conditioning, and other appliances may also qualify for tax deductions, encouraging developers to integrate sustainable technology into their projects.

## VAT EXEMPTIONS FOR GREEN BUILDING MATERIALS

The use of eco-friendly materials in construction can yield significant cost savings through Value Added Tax (VAT) exemptions. These exemptions apply to specific environmentally friendly building materials, such as:

- **Recycled and Sustainably Sourced Materials:** While adoption has been slow, the government encourages the use of recycled materials by offering VAT exemptions on materials made from at least 40% recycled content or sustainably sourced resources. This not only reduces tax liabilities but also promotes the sustainable management of resources.
- **Green Insulation Products:** VAT exemptions are available for insulation materials designed to reduce energy consumption. Developers can significantly lower the costs of constructing energy-efficient buildings by using these products.
- **Solar Equipment:** Section 14(1)(e) of the VAT Act exempts solar panels, inverters, and other solar-related equipment from VAT. Additionally, Section 15(n) exempts machinery and equipment used in solar energy generation, such as solar PV modules and batteries. However, some VAT exemptions come with conditions, such as technical specifications or intended use, so developers should consult tax professionals or refer to the VAT Act for clarity.

## REDUCED CORPORATE TAX RATES FOR GREEN INITIATIVES

In certain cases, companies involved in green building projects may benefit from reduced corporate tax rates. Staying informed about changes in policy is crucial, as these incentives can substantially improve the financial viability of sustainable developments.

## ACCESSING FUNDING AND GRANTS FOR GREEN PROJECTS

In addition to tax incentives, developers can tap into various

local and international funding sources to support green building projects. These include:

- **Green Climate Fund (GCF):** This global fund offers financial support for projects that aim to reduce carbon emissions and address climate change. Developers can apply for grants or low-interest loans to help finance sustainable building projects.
- **Local Government Grants:** Some counties in Kenya have introduced programs to support green initiatives through financial aid and technical assistance. Developers should explore these opportunities to complement tax incentives and lower upfront investment costs.

## MAXIMIZING THE BENEFITS OF GREEN BUILDING INCENTIVES

To fully leverage the tax incentives available for green building in Kenya, developers should adopt the following strategies:

- **Conduct a Feasibility Study:** Before embarking on a project, assess which technologies, materials, and practices qualify for tax incentives. This ensures that sustainable solutions are both cost-effective and aligned with available incentives.
- **Maintain Detailed Records:** Accurate record-keeping is essential for claiming tax deductions and exemptions. Developers should maintain comprehensive documentation of all expenses related to energy-efficient systems, eco-friendly materials, and compliance with green building codes.
- **Consult Tax Professionals:** Given the complexity of tax regulations, developers should seek advice from tax experts who specialize in real estate and sustainability initiatives. These professionals can help navigate the intricate tax laws, ensuring compliance and maximizing available incentives.

## CONCLUSION

Green building projects in Kenya offer numerous advantages, both for developers and the environment. By taking full advantage of tax incentives, developers can lower their tax burden while contributing to the country's sustainability goals. The real estate sector in Kenya is evolving, with a growing emphasis on energy-efficient and eco-friendly buildings. Staying informed about policy updates, funding opportunities, and tax incentives will be critical for developers aiming to succeed in this competitive and rapidly changing market.

At CM Advocates LLP, we provide expert guidance to help developers navigate the complexities of tax compliance and sustainability, ensuring that their projects are both profitable and environmentally responsible.



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MILLION



# DESCRIPTION

Welcome to this landmark development redefining investment in Westlands. These meticulously designed 1 & 2 bedroom apartments set a new standard in contemporary living, seamlessly blending luxury with functionality. As the tallest tower in Westlands, this off-plan property offers unparalleled prestige and exclusivity. Residents enjoy seamless connectivity to the city center, prominent business centers, and local landmarks, making it the ideal choice for those seeking a sophisticated urban lifestyle.



## FEATURES & AMENITIES:

- ✓ 1 & 2 Bedrooms
- ✓ Cafe Lounge
- ✓ Ample Parking
- ✓ Business Lounge
- ✓ Residence Lounge
- ✓ Rooftop Pool
- ✓ Courtyard Pool
- ✓ Play Area
- ✓ Gym/Yoga
- ✓ 24/7 Security
- ✓ Central Courtyard
- ✓ Power Backup



CALL NOW FOR MORE INFO:



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