

THE QUEST FOR JUSTICE AND THE LAWYER'S DILEMMA: TIME FOR A PARADIGM SHIFT

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We are told that Africa is on the threshold of a new beginning. We have remodelled our Organization of African Unity into the African Union and we have put in place the NEPAD initiative as the grand blueprint out of the economic and political bankruptcy we have suffered in the last quarter century. In Kenya, we are experiencing a renewed urgency to take charge of our affairs and confront the problems that continue to impede our efforts in nation-building: HIV/AIDS, corruption and abuse of executive power. It is therefore fitting and proper that **Strathmore University** has seen it fit to organize and host this conference on **Legal Ethics and Jurisprudence in Nation Building** so that we can resume the elusive quest for the great people of this country.

According to Holmes, man-made legal boundaries define only what a "bad man" can get away with. This is because the law is never concerned with the good or the bad. Consequently, it is possible that you may escape the sanctions of the law in your conduct but still remain a bad man. Morality, on the other hand, defines how a virtuous person should act. So it is with the law of professional responsibility and legal ethics.

Any attempt to define what "legal ethics" is in this conference is without doubt problematic – if only because lawyers rarely agree on the meaning of any word. For our purposes, however, let me suggest that we adopt a compromise and take legal ethics to mean the normative rules that guide human conduct in the legal profession; that body of rules by which the legal profession collectively regulates itself.

At the birth of our nation, there was always the need to train young Kenyan lawyers to take up the mantle of leadership and to engender the enjoyment the hard earned freedom. We played our role in nation-building with distinction. The Law Society was always the beacon of hope and the voice of reason that kept emergent autocratic tendencies at a minimum if not at bay. Imbued with the untainted sense of justice, the young legal profession measured up to the task of keeping the flame of justice alight. That was then. Today, the legal profession in Kenya celebrates its fifty-third anniversary on the stretcher reserved for invalid institutions in the ward of permanent mortal emergency. Bandaged and battered, like a victim of multiple mishaps, and with a thousand drips keeping the end out of sight, it is not a pretty sight at all. Wracked by an endemic and wearisomely familiar crisis of malpractice and unethical conduct of the latter-day breed of lawyers consumed by the pursuit of instant riches, the sirens have long ceased to announce its return to the casualty ward. It is a classic case of medical familiarity breeding clinical contempt. Our profession has therefore become a modern miracle of anarchic resilience. But how did we find ourselves here?

There can be only one answer: having come to regard itself as a superpower, the legal profession felt that it was above the requirements of professional ethics. The culture of survival for the fittest soon enveloped us and the rat-race acquired a new impetus – everyone for himself and God for us all. We became dehumanized robots seeking money

without any care or restraint. The end justified the means! And so when in the recent past we found that our judiciary had become too steeped in iniquity so that nothing short of a radical surgery could remove the cancer disguised as a judicial pen, we were making a rather belated admission.

Many lawyers I have talked to, whether they practice or not, want to live a valuable life, but they cannot see a way to do this and succeed materially at the same time. When the heat is on, people can often sacrifice their principles for the sake of expediency. For this reason, you have to have a lot of confidence in the power of your personal beliefs and convictions to do otherwise.

Now we know, as lawyers, that it is no longer tenable to depend on the Law Society of Kenya and other institutional mechanisms to whip us into embracing professional responsibility. Some of the rules of etiquette we have evolved are in any event followed only on a voluntary basis, and there is no means of enforcement. We must therefore move away from the existing norm and encourage individuals to take personal interest and responsibility in professional ethics. This is the only way in which we can completely bridge the dichotomy between what the rules allow and what the "good lawyer" will allow herself to do. Ethical practice is not only about the actions that can get one suspended or struck off the Roll; it is about the factors that a lawyer needs to consider if they want to uphold the highest standards of what an advocate should strive to be.

Granted, we must respect each client's moral autonomy, but we must also help each client understand the moral values and public policy choices embedded in the law itself. This is because the best lawyers also respect their own moral integrity and are willing to deliberate and, if necessary, argue with clients about their goals and interests.

It is also important to use this occasion for reflection, too on the work of the Law Society of Kenya itself, on how to improve our present tools. First we ought to be ever-vigilant about stamping out professional misconduct in bad lawyers who so tarnish our profession. This is our responsibility. But on the other hand as well, we should not be oblivious of our other very essential role in defending the good name of all the lawyers who are subject to non-meritorious complaints every year.

From there, we need to improve our capacity to appreciate the disciplinary issues affecting our profession in a more robust and proactive manner. This must of necessity entail listening carefully to concerns about how lawyer discipline must take into account the real life practice of law.

Thirdly, we seldom recognize our heroes in this part of the world. Yet memory, they say, is born of biological time! We need heroes/heroines to give meaning to time! It is therefore our challenge to honour our heroes/heroines for their good deeds. And to my fellow women lawyers, let us promise to give Kenyans and the world from amongst one of us another Wangari Maathai!

I can see amongst us in this important conference distinguished legal minds who no doubt know more about legal ethics than me. It is to them I must now turn with an impassioned plea that because I know they care very deeply about how the legal profession should contribute meaningfully to nation-building, they should lead the way in encouraging the legal fraternity to embrace legal ethics in their every engagement.