

EXIT INTERVIEW

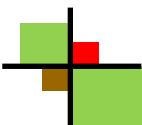


Ms. Alexia Njambi Waweru served at the Authority's Legal Department for a period of 5 years and 11 months. She joined the Authority as a Legal Assistant and at the time of her exit had progressed to a Senior Legal Officer. In addition, she served as the Acting Manager, Legal Department from September, 2019 to September, 2020. Her educational background is in Law and has received special training and certification in Arbitration and Aviation law. Her skills are in contract drafting, legislative drafting and litigation.

She holds a Bachelor of Laws degree, a Diploma in law from the Kenya School of Law and is pursuing a Masters in International Trade and Investment. Ms. Alexia, exited the Authority in February 2021.

In this second issue of the Knowledge Hub, Alexia tells us about her experience at the Authority; including the legal work procedures, external engagements and partnerships, research information and knowledge resources, challenges, and lessons learnt during her assignment with the Authority.

Enjoy the read!



ALEXIA NJAMBI WAWERU

What were your assignments on a normal working day 8.00 am to 5.00 pm?

I would normally draft Legal Opinions that would come in various formats, the second thing I would also do was reviewing laws, which affect competition and consumer welfare for example proposing amendments to Parliament on our own law or advising other government agencies. I would also draft contracts and prepare gazette notices, legal notices, carry out litigation management and doing a bit of legal audits.

Which Knowledge gaps did you identify/ encounter during your work processes? Which recommendations would you give on the same?

The key knowledge gap was mostly on the technical areas of analysis of, competition law.

The team at the Legal Department were lawyers, and I noted there was need for equipment of the lawyers in analysis relating to economic aspects. There is need for capacity building to enable them appreciate the technical aspects of economic analysis. There was also a gap in expertise when drafting technical contracts. There were quite a number of contracts which were relating to software issues in ICT, and the team had some

challenges in addressing those contracts since they had inadequate skill in those areas. The team pretty often had to go out of their way to carry out proper research to ensure that all elements are properly captured to address this gap. Legal drafting is a critical area where we needed to have skills and knowledge of the technical aspects. East Africa Law Institute offers course in legal drafting, and the Authority may consider this.

Which information/knowledge resources did you find most relevant during your work processes?

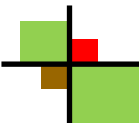
The resource center had quite some useful information resources and that was the first place I would visit when carrying out a research. I also found useful resources from international organizations such as the ICN, OECD, ICAO, government ministries and also the Journals that the Authority had subscribed to such as the Global Competition Review Journal and Concurrences.

I also made use of people as Information and Knowledge resources. They played a major role in enabling me fill the knowledge gaps that I had. From the enforcement department, the principal officer Mr. Benson Nyagol was very helpful in terms of guiding me to understand the technical aspects of cases and historical analysis information of cases by the organization .

The former Manager, Legal Department Mr. Boniface Makongo, was also very instrumental by virtue of having more experience in years and qualifications in the legal field. On matters Consumer Protection, Mr. Boniface Kamiti and Mr. Daina Kamau enabled me have in-depth understanding of cases.

What alternative steps would you take if you didn't get access to these resources?

I would look out to other competition authorities for further information; I would for example visit the websites of Australian Competition Commission, Consumer Protection Commission, the South African Competition Commission or other agencies such as FTC (US), CMA of UK or COMESA Competition Commission. I would equally reach out to external stakeholders for further assistance. For example, when carrying out the board secretarial function, I would collaborate a lot with other company secretaries such as the IRA, the PPRA among others. They provided me with a lot of insight on board governance issues. I also worked closely with the department of legislative drafting (Attorney General's office) whenever I had to do legal drafting matters. I also worked closely with staff from the National Treasury more so when we were reviewing regulations on buyer power and the competition rules. I also worked closely with staff from the Legal Departments of Ministry of transport, the Kenya Civil Aviation Authority, NTSA, among others.



Did you receive requisite training to perform your job as the Senior Legal Officer?

I would say I had an advantage because by the time I was, moved to the senior legal position, I had done, the Senior Management Course. So that really helped me a lot.

Did you receive requisite training to perform your job as the Ag. Head of Legal Department?

I would have loved the opportunity to have undertaken the Strategic Leadership Development course first. However, my former boss (Mr. Boniface Makongo) was a good mentor into the role.

Which key areas of training would you recommend for the team members who will take up your position as Senior Legal Officer?

They definitely need to have an appreciation of the technical aspects of mergers, and enforcement, to be equipped with skills in analysis, as this will help them have a wider view on both the legal and technical aspects involved. Secondly, they would need skills in contract drafting with respect to technical areas. I would put emphasis on training in ICT and software licensing issues because the Authority is now, automated and there are issues that are likely to arise from software licensing. The team will equally require training in trial advocacy, since the officers will be going to court more frequently than before hence they need capacity in litigating competition matters.

What was your experience as the acting head of the

Legal department for about two years?

I was expected to provide legal advice hence this meant giving opinions to different departments in order to assess matters and give direction that the Authority should take in line with the provisions of the Law. I was also expected to draft various contracts, which meant working closely with the Procurement department and other User departments. During the period, I realized that there is need to work closely with the technical departments, there were some few challenges due to different internal work mechanisms of the departments especially in times of delivery. There was therefore need for involvement of the legal team from the beginning of cases before a matter progresses too far, to ensure harmony and streamlining of processes and for addressing legal matters from the start. I also see the need for the legal department to be involved in the technical departmental activities such as field visits or investigations to enable the team understand cases in depth and be part of departmental processes.

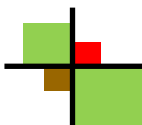
You supported many departments in their daily routines. What are the two attributes you'd expect your successor to have in order to deliver on this role?

Patience, they'll need to be patient with people so that, they can have an appreciation of the task that they've been handed. The person also should be inquisitive; have a hunger for knowledge and be able to go out of their way to ensure they gain knowledge. There is also the need for flexibility since a matter can come to you and if you strictly apply the law, you may miss out on the bigger pic-

ture which may need further consultation with the specific department to have an appreciation of the intended direction of the case. Finally, be a team player.

You took part in drafting many bills/laws/MoU/contracts, what's the process involved for each from initiation to completion? Please elaborate in full details.

Drafting an MOU, starts with a concept note when we are intending on approaching an organization one is interested in collaborating with. A meeting is then held and then a draft MOU is generated and reviewed by both parties. Once the draft has been agreed upon by both parties, a signing ceremony is organized. After which the legal team informs the Policy department who then take up the implementation. Contracts are usually done as part of the procurement process and they come in different forms. These start with the procurement process. The Procurement Department sends a request to the department to draft the contract, after which a copy is shared with the user and the Procurement Department. A negotiation meeting would be held with the other party either before or after the contract has been drafted. The final draft of the contract would be shared with the Procurement Department forwarding to the supplier. For Bills, liaison with the AG's office and Parliament. We would make proposals for amending our law, which would be shared with the technical departments for their input. These would then be forwarded to the AG's office for drafting through the National Treasury.



You were also involved, together with the Policy Department, in reviewing policies and legislations? Tell us more about what this entailed & what specifically should the team looking out for in order to make informed recommendations.

Yes, the legal team worked with the Policy Department on three or four assignments. We would share with the Policy team a law we were reviewing to give us their proposed recommendations which we would then combine with comments from the Legal team. Going forward there is need for processes and procedures for example who is to identify the laws that need to be reviewed and how the two departments should work together, since Policy Department has the advantage of research and economic analysis while the Legal department has the advantage of legal analysis.

You were also very instrumental in the amendment of the Competition Act, what was involved in the process? Elaborate the steps.

We amended the law in 2014, 2016 and 2019. I was involved in the 2016 and 2019 process. In 2016, the legal department requested departments to give submissions on areas in the law which they felt needed amendments. We got submissions from all the technical departments and then formed a matrix which was presented to the National Treasury indicating the rationale for amendment and with all the sections of the law indicating where the amendment was required. And we also, as the legal team, we looked at international best practices.

This matrix was an annexure to a letter addressed to the CS - National Treasury summarising the proposed amendments. This then went to the Budget Committee who asked for a meeting to better understand the proposal since the amendments were to be part of the Finance Bill. The approved amendments were then forwarded by Treasury to the AG's office for inclusion in the finance bill. Since the amendments were many they drafted a separate Competition amendment Bill 2016. When the Budget was being read, the amendments were highlighted. After which the process continued between Treasury, Parliament and the AG's office to the end until when the Competition Act was enacted. For the 2019 amendments, we were invited by the Parliamentary Finance Committee to justify the amendments and Parliament published on their website inviting comments as required by procedure. The amendments were also published in the daily newspapers inviting the public to give input. We also submitted responses to the submissions by stakeholders.

Legal function requires one to read a lot and also be aware of a number of relevant legislations, in order to advice and inform the other departments within the Authority. What resources did you make reference to mostly?

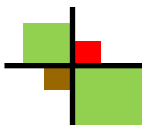
This can be in two levels, the case law aspect and there's the technical aspect. On the case law aspect, I found it very helpful to look at cases from other jurisdictions like the South Africa Competition Commission cases, the European Competition Com-

mission cases and other established competition agencies. For general legal work we could refer to the Kenya Law Reports or the East Africa law reports. Because you'll find some things are not strictly on competition but there may be aspects of procedural fairness or normal legal work. On the general competition law, I found it useful to look at publications which have been done by, the ICN, the OECD, the various working groups of the ICN, OECD.

I also referred to conference papers that have been prepared from international and regional meetings and various books by established scholars in Competition Law such as Richard Wish and the various books available at the resource centre of CAK. Some of these resources were dating back to the time the Authority was a Department of Monopolies at the National Treasury. I also made reference to resources shared by the Policy department and also materials from conferences, workshops and seminars.

At some point you may have handled a task or two which didn't quite go as planned; What project was it and what was the challenge? How did you correct this?

The ISO expectations vis a vis the other department's expectations. This is a general challenge, where before we streamlined it internally in the Department posed quite some difficulties. For example, our ISO processes provide that we should give legal opinions within 14 days, but you could find a user requesting a legal opinion to be given the same day. This created a lot of challenges in harmonizing the timelines of departments.



In order to address this, we developed internal timelines (beyond the ISO timelines) on timelines for Notice of Investigations, Notice of Proposed Decisions, among others in an effort to create harmony in processes between the Legal Department vis-à-vis Technical departments and to be able to meet expectations for both urgent, simple and complex cases.

What did you learn from this challenge?

The importance and benefits of being flexible, there clearly was need for the legal team to find a middle ground on conflict of timelines and expectations as this helped us come up with alternative ways of providing our services to other departments without compromising on quality.

What's the One leadership lesson you are taking away from CAK, and which advice can you give to CAK colleagues?

I think the most important lesson I learned as a leader is on input. There's no small input and there's no more important input than another. As a leader its important to take the time to also listen to the views of the people you're supervising and the people who are supervising you. Then take time to appreciate where those views are coming from, their expectations and at the end of day sit down, consolidate the views together and see, how an improvement can be made.

What 3 key pieces of advice/knowledge/information would you give with regard to your work processes/ assignments?

Team work within and between departments is

important from the beginning of a task or case. I think all departments, all the four technical departments, they should see how they can be involving the legal team from the beginning so that all the areas which need to be streamlined by legal are streamlined from the start. Secondly, teams need to grow together, if we're training the technical team, let's train them together with the legal department, because at the end of the day, the departments are expected to complement in processes hence the Legal team needs adequate knowledge and skills in order to deliver effectively. Third, there is need to streamline timelines and processes between departments to reduce back and forth and delays in submission of tasks.

The Authority has brought in quite a number of young officers. What advise on career growth would you give them?

I will share with them what has worked for me; do not wait for the system to grow you but instead look for opportunities both internally and externally to grow yourself. Take interest in what other departments are doing (consider requesting to join their activities, meetings) and learn from that. Take initiative, look opportunities and train yourself to improve on your expertise if the same is not available at the organisation level.

Invest in developing networks both through formal and informal engagements in order to get knowledge from people who have been in the industry much longer.

What two major achievements and lessons are you taking with you?

During my stay at the Authority, I was able to open the window for the authority to train lawyers. I proposed to the Authority, on how we can train lawyers in our annual competition law trainings through the Law Society of Kenya (LSK) platform. I was able to organise this after the same was approved by the leadership of the Authority, in order to make this a reality. Competition Law now features in the Calendar of training for the LSK both from special requests from the Authority through the LSK application process and due to the increased interest from the membership of the LSK. I also developed various online registers during my Acting role to enable the Department to monitor and track our work for example an online gazette notices register to track our submissions to the Government Printers and the Attorney General's office, an online contract register, online legal opinion register, and a parliamentary register. So in terms of lessons, I grew as a leader and learnt the benefits of listening to the team and be patient with others. Have emotional intelligence especially on how you approach your work and how you approach other people. I also learnt the importance of unity in a team and how as a leader you can motivate your team to deliver better services.

THANK YOU!

