

STATISTICS | Only 15 per cent of Africa's corporate deals are handled by local lawyers

Top law firms to merge in rare strategy

Alliance seen as a scheme to counter big European and South African firms said to be keen on expanding into East Africa

BY SUNDAY NATION REPORTER
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Two of Kenya's most prominent law firms are planning a merger that could shake up the multi-billion-shilling legal services sector.

Inquiries by the *Sunday Nation* indicate that the deal to bring together influential Hamilton Harrison & Mathews (HHM) and Oraro and Company Advocates has been sealed and is only awaiting the approval of relevant State regulators before an official announcement is made.

"It's a rare move in local practice where splits or mergers of smaller firms are more common — not anything as exciting as this," said a source familiar with the deal.

Formed in 1902, HHM is arguably the oldest organisation of its kind in Kenya and has, over the years, been associated with the training and employment of some of the country's best legal minds. Its impending merger with an equally distinguished firm formed 35 years ago by respected lawyer George Oraro may leave observers searching for a motive.

Justice (rtd) Richard Kwach, Mr Paul Ndung'u who chaired the ground-breaking land commission, Justice Paul Kihara Kariuki, Mr Peter Le Pelley of the Goldenberg Commission and Parliament's Speaker in the 1960s, Humphrey Slade, once worked at HHM, while

Chief Justice Willy Mutunga, Lee Muthoga and William Maema are among prominent lawyers trained at the firm.

Some of the top lawyers who have gone through Oraro and Company include former partner Ambrose Rachier, Cecil Miller and Justice (rtd) Aaron Ringera.

When asked about the deal, Mr Oraro confirmed that talks were ongoing, but he did not give details. Long-serving HHM partner Richard Omwela also acknowledged the intention to merge.

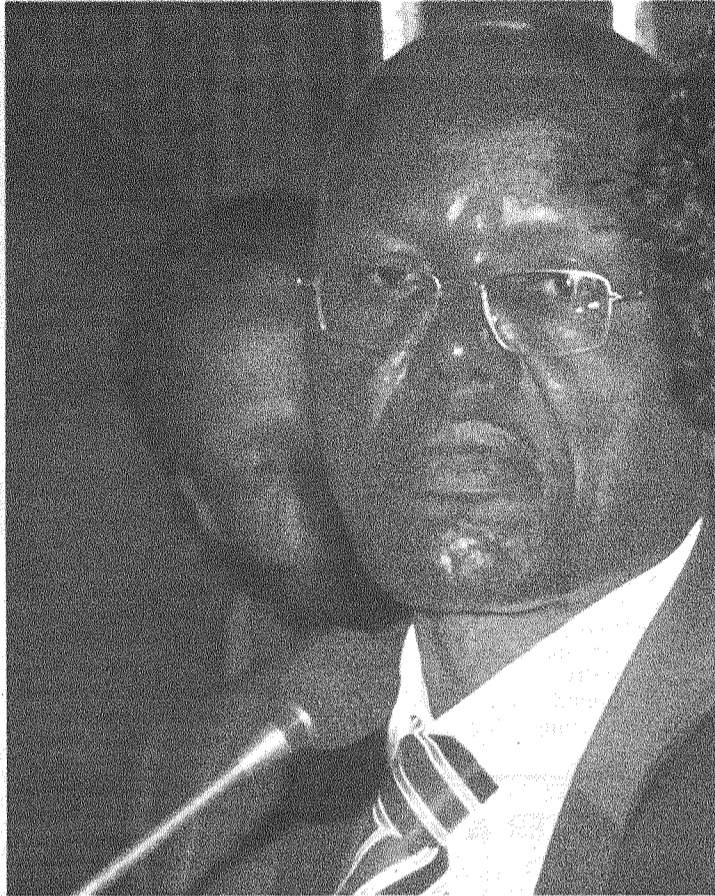
"Once we get the greenlight, the new firm will be bigger and better, allowing more lawyers to specialise," he said.

But Mr Omwela, who has also been in the public eye as a rugby administrator, said it would be premature to discuss the matter before it gets regulatory approval.

But the *Sunday Nation* has established that the new firm, which is likely to be known as HHM Oraro, with more than 50 lawyers in its stable, is positioning itself for local and regional mega deals in oil, infrastructure and various aspects of commercial transactions. Sources say the two firms have traditionally had little interest in criminal and civil cases, even though last year Mr Oraro represented Cord in the unsuccessful presidential petition at the Supreme Court.

Counter the 'big boys'

"Despite Kenya's current security and political problems, it remains a magnet for investments and a regional hub. There are many ongoing and proposed multi-billion-shilling investments, meaning clients in the private sector and



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Senior Counsel George Oraro whose firm, Oraro and Company Advocates, is working on a deal to merge with Hamilton, Harrison and Mathews.

the government require specialised legal services," said the source.

The merger is also said to be strategic at a time when big European and South African law firms are seeking to spread their operations to East Africa. The foreign lawyers with deep

pockets are thought to be keen on locking out local firms from handling major transactions — particularly those involving multinationals and international donors — or partnering with them only in some aspects.

"The thinking is that having a

LEGAL SERVICES

Firms target mega deals

■ The scope and scale of the legal profession has grown in recent years, with at least 10,000 more lawyers being registered in the past decade. As such, the anticipated merger will be watched keenly by other firms.

■ Proposed merger said to target nascent oil and gas sector, mega projects like the Lamu Port South Sudan Transport corridor (Lapsset), public private partnerships, real estate and various other transactions at the Nairobi Securities Exchange.

local law firm with the muscle and expertise to match the foreign 'big boys' is good for Kenya's legal fraternity," said the source.

Last December, the *Nairobi Law Monthly*, a magazine published by lawyer Ahmednasir Abdullahi, quoted statistics indicating that only 15 per cent of Africa's corporate and commercial deals are handled by local firms, with 85 per cent going to international lawyers.

After the expected regulatory approval is given, senior lawyers at HHM Oraro will have to work hard to manage the challenge of a potential clash of egos that has been known to cause break-ups.

“Once we get the greenlight, the new firm will be bigger and better, allowing more lawyers to specialise,”

Richard Omwela

Court dismisses case against KPC tender

BY PAUL OGEMBA
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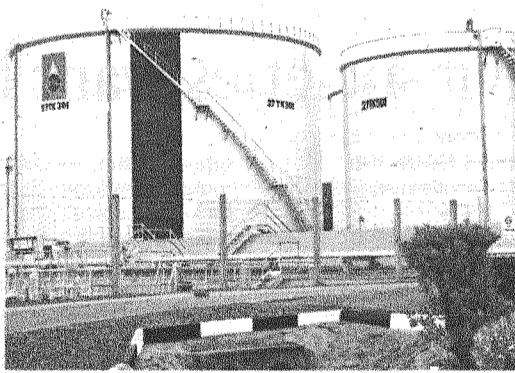
Construction of the multi-billion-shilling Mombasa-Nairobi pipeline will proceed after the High Court dismissed a petition challenging the tendering process.

Lady Justice Mumbi Ngugi ruled there was nothing unconstitutional about a decision by the Kenya Pipeline Company to advertise for the tender and award the contract for construction of the pipeline to transport petroleum products from Mombasa port to Nairobi.

"There is no demonstration of the unconstitutionality of the acts of KPC since it appears to have complied with the requirements of the Public Procurement and Disposal Act and satisfactorily answered the questions raised by the public oversight body," ruled Ngugi.

The corporation in January last year advertised for expression of interest for prequalification of contractors for the proposed Mombasa-Nairobi Petroleum Products Pipeline. Of the 40 companies that applied 13 were short-listed, but only nine went through the pre-qualification process.

The project, estimated to cost Sh43 billion and scheduled to begin next month, was awarded to Lebanese firm Zakhem International Construction-



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A Kenya Pipeline Company depot in Eldoret. Zakhem International Construction Limited, a Lebanese firm, won the Sh43 billion tender to build the new pipeline.

Limited.

KPC justified the award to Zakhem saying its bid was lower than the engineer's estimate of Sh53 billion and that the company had necessary capability, experience and resources to undertake the project.

Zakhem is among the companies that participated in the construction of the old pipeline which has been in use for 36 years.

One of the bidders, Rich Produc-

tions Limited, was locked out of the procurement process and went to court claiming that KPC invited separate financial and technical bids for the pipeline project which was unlawful.

It accused the corporation of discriminatory application of procurement procedures in a manner deliberately intended to exclude them and other qualified contractors from participating in the tender.

The company sought a declaration that the procurement proceedings are unconstitutional, illegal and irregular. They also wanted an order for the Public Procurement Authority to direct KPC to start a new tendering process.

But Lady Justice Ngugi dismissed the request, ruling that KPC acted within the law and that she cannot interfere with the duties of other bodies established by the Constitution.

"It cannot be open to a party which has not participated in a procurement process to then lodge a constitutional reference that in effect asks the court to enter into the mandate of procurement authority at the behest of a party that has not qualified for the tender,"

New law set to curb rising cyber crimes

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The economy loses Sh2 billion annually due to rising cyber crime, Director of Public Prosecutions Keriako Tobiko has said.

"The criminals are becoming increasingly sophisticated through the use of information communication technologies in and outside Kenya," the DPP said at a workshop to review existing laws and develop a comprehensive draft Bill on the crime in line with relevant international best practices.

The Cybercrime and Computer Crimes Bill 2014 gives local courts jurisdiction to try any person who commits an offence anywhere in the world using a Kenyan domain name.

The Bill that has been drafted by the Office of the Director of Public Prosecutions and which is set to be tabled in Parliament proposes actions for offences committed in Kenya and outside.

Previously, Kenyan courts were limited to trying of-

fences committed outside the country.

"Cyber crime is now recognised as a threat to national security, key ICT infrastructure and the enjoyment of constitutional human rights of Kenyans such as the right to privacy," said Mr Tobiko.

Last June, the government formed a committee to spearhead efforts against cyber crime under the Communications Act of Kenya.

According to Martin Luther Bwanga, a cyber crime investigator, the new laws, if passed, will help contain the vice since Kenya still relies on physical evidence rather than electronic.

"It is a fact that cyber criminals, especially in Kenya, take advantage of weaknesses in the law, and the nascent systems of law enforcement. This has led to a proliferation of illicit activities," he said.

Mr Bwanga identified the issue of jurisdiction as a big challenge under current laws, which cannot prosecute crimes outside Kenya.