



FINANCIAL SERVICES SECTOR REPORT

Q3 2025



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Accolades



CHAMBERS AND PARTNERS

Firm Ranking

Banking and Finance - Band 3



LEGAL 500

Firm Ranking

Banking and Finance - Tier 2



IFLR 1000

Firm Ranking

Banking and Finance - Tier 4

Testimonials

"The professionals are all uniformly efficient, quick, comprehensive, and thorough. On technology too, I consider the firm as using the most modern tools."

Legal 500 2025 | Commercial, Corporate, and M&A

"Very dedicated, thorough, and knowledgeable."

Asset Finance | IFLR 1000 2024

"She's a very good lawyer, very knowledgeable, and great to deal with."

Suzanne Muthaura -Banking & Finance| IFLR 1000 2024



ABOUT US

MMAN Advocates is a leading Kenyan corporate law firm that aims to provide innovative and meaningful legal solutions for its clients.

Central to our culture is a commitment to deliver a superior experience for our clients by understanding their needs and exceeding their expectations.

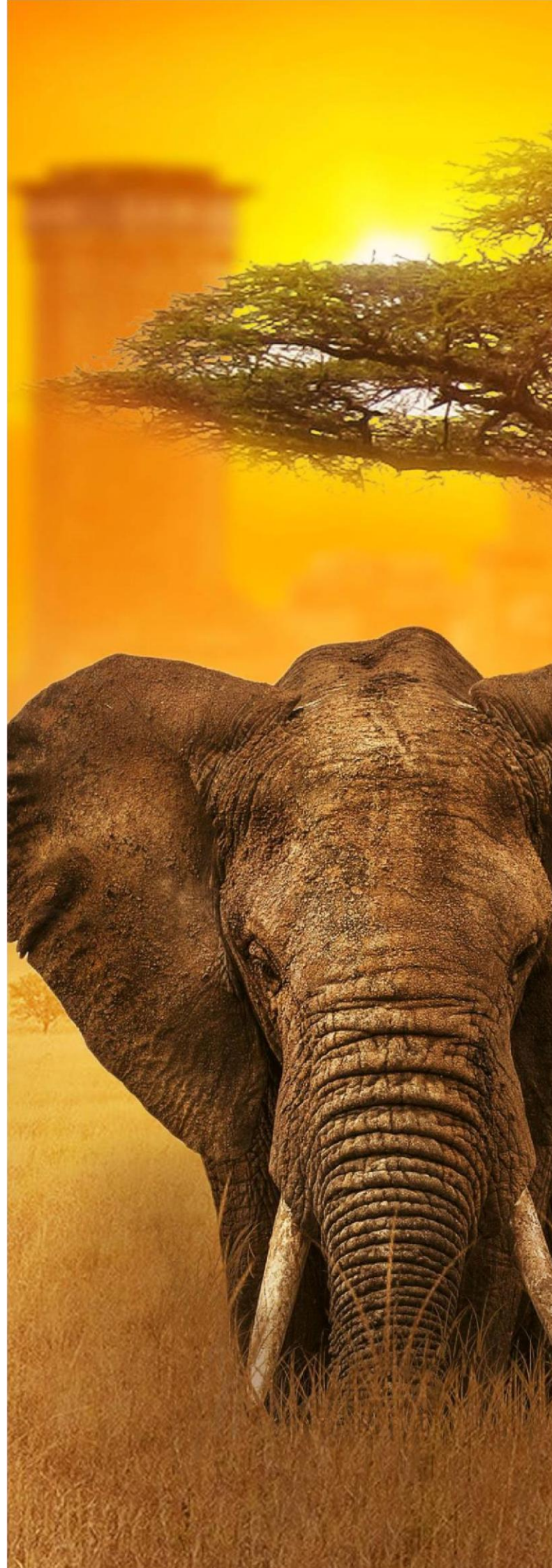
OUR REPUTATION

We are proud to be consistently ranked by internationally recognized legal directories, Chambers Global, IFLR1000 and Legal 500 as one of the leading commercial law firms in Kenya.

OUR GLOBAL PRESENCE

MMAN is the Kenyan member of the Eversheds Sutherland Africa Alliance, the largest legal network in Africa with firms in 37 countries. Eversheds Sutherland is a leading global legal services provider which has 66 offices across the world.

MMAN is also the Kenyan member of TerraLex, a leading international legal network with more than 155 independent law firms in 100 countries.





BANKING

I. Subsidiary Legislation

THE BANKING (PENALTIES) REGULATIONS, 2025

The Banking (Penalties) Regulations, 2025 issued as legal Notice No. 116 of 2025 gazetted in July 2025 under the Banking Act (Chapter 488 Laws of Kenya) sets out specific fines for breach of banking rules and regulation ([find the link here](#)).

The key purpose of this Regulations is to repeal the Banking (Penalties) Regulations, 1999 (**Repealed Banking Regulations**) in order to promote greater compliance with banking laws and enhance integrity of the Kenyan banking sector by providing a clear and more robust framework for assessing and levying monetary penalties to not only banks, financial institutions and mortgage finance companies but also individuals who are part of the management such as directors, shareholders and officers of such entities.

KEY VIOLATIONS AND PENALTIES

The draft Banking (Penalties) Regulations, 2024 previously broadly stated violations but under the Regulations, the violations are specific providing greater certainty and guidance for compliance purposes.

Notable institutional violations under the Regulations that were not previously explicitly captured or inferred under the Repealed Banking Regulations, and are now in alignment with the amendments to the Act introduced by the Business Laws (Amendment) Act, 2024 that carry a penalty of **KES 20 million or three times the benefit gained for non-compliance**, are as follows:

- failing to submit an undertaking to keep assigned capital within Kenya as required by law.
- providing banking services to customers outside Kenya without Central Bank approval.
- entering into asset or liability transfer agreements without the Cabinet Secretary's approval.
- failing to effect an approved amalgamation or arrangement sanctioned by the Cabinet Secretary.
- granting advances, credit facilities, or guarantees exceeding 25% of core capital to a single borrower.
- granting or permitting outstanding unsecured advances to employees or their associates.
- permitting unsecured or inadequately secured facilities to officers, significant shareholders, or their associates.
- granting advances to officers without full board approval, outside normal business, or without notifying the Central Bank.
- granting facilities or guarantees exceeding 20% or 100% of core capital.
- granting advances, loans, or guarantees in a fraudulent or reckless manner.
- allowing a person or associate to hold more than 25% of an institution's share capital without approval.
- allowing a non-operating holding company to hold more than 25% of an institution's share capital without Central Bank approval.

- failing to disclose the ultimate beneficial owner of a shareholder to the institution and Central Bank.
- transferring more than 5% of an institution's share capital without Central Bank approval.

Other key institutional violations under the Regulations that attract penalties of between **KES 10 -15 million or three times the benefit gained for non-compliance**, and more generally captured under the Prudential Central Bank's Prudential Guidelines are:

- contracting an unapproved agency to conduct banking business on behalf of the institution.
- failing to prepare financial statements in accordance with International Financial Reporting Standards and applicable consolidated accounting principles.
- opening a branch outside Kenya without prior approval from the Central Bank.
- appointing or electing a director or senior officer who is not certified by the Central Bank as fit and proper.
- transferring shares to make a person a significant shareholder without prior Central Bank certification of fitness and propriety.
- granting advances or credit facilities secured by the institution's own shares or those of its banking group.
- permitting advances or credit facilities to remain outstanding in favour of a company in which the institution holds more than 25% beneficial ownership.

The Regulations also provide that officials of institutions responsible for decision making may also be held personally liable if they have contributed to, aided, facilitated, or been negligent in the performance of their duties in connection with the above violations. The penalties for can reach up to KES 1 million for serious violations, with daily penalties reaching up to KES 100,000 per day.

APPEAL PROCESS

The Regulations have also introduced a structured appeal process which requires the submission of a written request for a review of the Central Bank's determination within 14 days of receiving it. Such a determination can impose a penalty or require an assessment be undertaken to determine breach by an institution and/or official(s) of an institution. If parties to such action are dissatisfied, the Regulations further provides that the parties can appeal to the High Court.

CONCLUSION

It is imperative that financial institutions review their compliance standards and practices to avoid incurring penalties. The Regulations reflect the government's acknowledgement of the increased international scrutiny of Kenya's financial sector, particularly following the Financial Action Task Force grey listing of Kenya. Coupled with the reforms made to strengthen anti money laundering laws and regulations, such as assenting of the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act, 2025, financial institutions and their officials will be more closely monitored for compliance in an effort to align the financial sector with international standards.



II. Guidelines, Circulars, Notices, and Public Participation.

a) Guidance on Beneficial Ownership

In August 2025, the Central Bank of Kenya (CBK) issued the [Guidance on Beneficial Ownership](#). This guidance provides practical direction to financial institutions on the implementation of the legal and regulatory requirements relating to the identification, verification and documentation of beneficial ownership information.

The CBK defines a **beneficial owner** as a *natural person; who ultimately owns a customer; who ultimately controls a customer; on whose behalf a transaction is being conducted; and/or who exercises ultimate effective control over a legal person or arrangement.*

Financial institutions are required to;

- Implement policies and internal guidelines on the identification and verification of beneficial ownership for legal persons and arrangements.
- Take all reasonable measures to identify and verify their customer's beneficial owner and shall be satisfied that they know the ultimate beneficial owner.
- Conduct due diligence on the beneficial owner.
- To keep detailed records of all decisions and retain customer due diligence and related documents in a manner that is readily auditable.
- File a suspicious activity report with the Financial Reporting Centre where there are any discrepancies in the beneficial ownership data.

The effective date of this guidance is 1st September 2025.

b) Guidance on Customer Due Diligence

In August 2025, the CBK issued a [Guidance on Customer Due Diligence \(CDD\)](#). The purpose of this guidance is to assist financial institutions with tools to manage risks related to money laundering, terrorist financing and proliferation financing. The CBK defines **customer due diligence** as the *process through which FIs collect, identify, verify information customers with whom it intends to establish a business relationship or conduct a one- off occasional transaction.*

The CBK establishes the various obligations that financial institutions have regarding customer due diligence. These obligations include; identifying and verifying the identity of the person acting on behalf of the customer and ensuring that they are authorized to do so; establishing ultimate beneficial ownership in line with CBK Guidance on Beneficial Ownership; understanding the nature and purpose of the intended transaction or business relationship; conducting ongoing due diligence measures to assess and manage the risks associated with their customers throughout the business relationship.

Where a customer is unable to provide evidence to support CDD requirements, financial institutions should refrain from instituting or end any business relationship with the customer and file a suspicious transaction report with the Financial Reporting Centre. Further, where there is suspicion of money laundering or terrorism financing and there is reason to believe that conducting the CDD process will tip off the customer, a financial institution may discontinue the CDD process and file a suspicious transaction report with the Financial Reporting Centre. Financial institutions are also prohibited from; dealing with shell banks; opening anonymous or fictitious accounts and tipping off unauthorized parties on suspicious activity that is identified through the CDD.



The effective date of this guidance is 1st September 2025.

c) Guidance on Politically Exposed Persons (PEPs).

In August 2025, the CBK issued a [Guidance on Politically Exposed Persons \(PEPs\)](#). This guidance applies to commercial banks; mortgage finance companies; microfinance banks; money remittance providers; foreign exchange bureaus; payment service providers; non-deposit taking credit providers (formerly digital credit providers).

The CBK defines a **politically exposed person**, as *a person who has been entrusted with a prominent public function in Kenya or another jurisdiction.*

The CBK explains that financial institutions are required to; establish measures to determine whether a customer or a beneficial owner is a PEP; identify the PEPs who pose a higher risk and subject high-risk PEPs to enhanced due diligence measures

PEPs such as heads of state and diplomats who enjoy immunity from criminal prosecution, should still be subjected to enhanced due diligence measures. This allows financial institutions to identify accomplices such as family members and close associates who do not enjoy immunity and may be prosecuted for money laundering or terrorist financing.

The effective date of this guidance is 1st September 2025

d) Draft Central Bank of Kenya (Non-Deposit Taking Credit Providers Regulations 2025)

On 7th August 2025, the CBK invited comments from the public on the [Draft Central Bank of Kenya \(Non-Deposit Taking Credit Providers\) Regulations 2025](#).

The draft regulations apply to non-deposit taking credit business not regulated under any written law.

Some of the proposals in the 2025 draft regulation include;

- i) A person who seeks to conduct a non-deposit taking credit business in Kenya and whose initial capital is more than 20 million shillings shall apply to the CBK for a license
- ii) A person who seeks to conduct a non-deposit taking credit business and whose initial capital is less than 20 million shillings may apply to the CBK for registration as a non-deposit taking credit provider
- iii) Permissible activities for a non-deposit taking credit provider including; granting of loans and credit facilities; asset financing; credit guarantees; pay as you go arrangements
- iv) Prohibited activities for a non-deposit taking credit provider including; deposit taking business; taking cash as security for loans; collection of registration fees or membership fees; foreign exchange business; payment services and transfer of funds; trust operations and any other activity as the CBK may determine.
- v) A non-deposit-taking credit provider shall provide to the CBK evidence and sources of funds invested or proposed to be invested in the non-deposit-taking credit business and shall demonstrate that the funds are not proceeds of crime.
- vi) A non-deposit-taking credit provider shall conduct customer due diligence and shall take reasonable measures to satisfy itself as to the true identity of its customers and shall verify their identities using independent source documents.



The deadline for submission of comments was 5th September 2025

e) Guidance on Cross Border Movement of Physical Cash

In September 2025, the CBK issued [a Guidance Note on Cross- Border Movement of Physical Cash](#). This guidance applies to institutions licensed under the Banking Act. The CBK defines **physical cross-border transportation** as *any inbound or out-bound physical transportation of currency or BNIs from one country to another. The term includes the following modes of transportation: physical transportation by a natural person, or in that person's accompanying luggage or vehicle; shipment of currency or BNIs through containerized cargo; the mailing of currency or BNIs by a natural or legal person.*

The CBK explains that the board of directors and senior management of commercial banks are expected to formulate and implement, policies and procedures, transaction monitoring, training of employees and internal guidelines for cross border movement of physical cash. Particularly, they are required to tighten specific control measures aimed at preventing illicit financial flows.

The CBK has enhanced the existing AML/CFT/CPF Quarterly return to capture specific aspects of Cross-Border Movement of Cash as provided under Annex I of this guidance. Commercial banks and Mortgage Finance Company will be required to submit the completed returns within 10 business days from the end of each quarter. Failure to complete and submit the required returns or submission of inaccurate, false or incomplete information may result in sanctions.

The effective date of this Guidance is 15th September 2025.

f) Kenya Shilling Overnight Interbank Average (KESONIA).

On 26th August 2025, the CBK announced the issuance of a revised Risk-Based Credit Pricing Model (RBCPM) for the banking sector. The final revised RBCPM is anchored on the overnight interbank average rate, now renamed **Kenya Shilling Overnight Interbank Average (KESONIA)** ([Find Link Here](#)).

Under the revised RBCPM:

- **The total lending rate = KESONIA + Premium ("K")**, where the premium includes the costs related to lending, return to shareholders, and the risk profile of the borrower.
- **The total cost of credit = KESONIA + K + Fees and Charges.** (Fees and charges include origination, processing, negotiation and commitment fees)

KESONIA will be applicable to all variable rate loans except for foreign currency denominated loans and fixed rate loans. Where KESONIA is not practical, customers may be availed the use of the Central Bank Rate (CBR) as the alternative reference rate.

The revised RBCPM took effect on September 1, 2025, for all new variable rate loans. As for existing variable rate loans, the revised RBCPM will take effect from February 28, 2026.

To ensure transparency, the banks will publish on their websites and on the Total Cost of Credit (TCC) website, their weighted average lending rates, weighted average premium (K), and fees and charges for each of their lending products.



III. Judicial Decisions

Consolidated Bank Finance Limited v Shah (Civil Appeal No. 77 of 2018) [2025] KECA 1479 (KLR) (12 September 2025) (Judgment) ([Find Link Here](#))

INTRODUCTION

In a ruling that serves as a stark reminder for lenders, the Court of Appeal has upheld a finding of malicious prosecution against Consolidated Bank Finance Limited (“**the Bank**”), stemming from its decision to pursue criminal charges over a secured loan default.

This judgment highlights the perils of blending debt recovery with criminal complaints, emphasizing that financial institutions must tread carefully to avoid liability for abusing legal processes.

The decision reinforces the boundaries between civil remedies and criminal actions in lending disputes, cautioning banks against initiating prosecutions without solid grounds. For entities in banking and finance, it underscores the need for rigorous internal checks to ensure complaints are based on verifiable facts, not merely as leverage for repayment. Ultimately, the case illustrates how overzealous enforcement can backfire, leading to damages awards and reputational harm.

BACKGROUND:

The dispute originated from a Kshs.940,000 loan extended by the Bank to Aberdare Oil Millers Limited (“**the Company**”) in 1989, secured by three motor vehicles owned by one Kapurchand Depar Shah (“**Shah**”), a director of the Company. The vehicles were registered in Shah’s name and pledged via a chattels mortgage.

The Company partially repaid the loan but defaulted after entering receivership, leaving an outstanding balance that accrued interest. In 1996, negotiations ensued for settlement. The Bank proposed Kshs.1.5 million as full satisfaction, but Shah countered with Kshs. 1

million, which was rejected. Shah nonetheless paid Kshs.1.5 million via cheque, which the Bank accepted without immediate protest.

Around the same time, the Bank reported Shah to the police, alleging fraudulent disposition of one mortgaged vehicle (KWD XXX), which had been cannibalized for parts to repair the others with the Bank’s alleged prior permission. Shah was arrested, charged under section 291 (1) of the Penal Code, and acquitted in 1998 after the magistrate found no intent to defraud.

PROCEDURAL POSTURE:

Shah sued the Bank in the High Court for malicious prosecution, seeking injunctions against interference with the vehicles, return of logbooks and transfer forms, special damages of KES 348,000, general damages, punitive damages, and costs. The Bank denied liability, counterclaimed for the outstanding debt (over KES. 10 million plus interest), and argued it merely reported a crime without malice.

The High Court (Nambuye, J.) ruled in Shah’s favour on 21 September 2012, finding malicious prosecution, granting the injunctions, awarding damages, and dismissing the counterclaim. The Bank appealed, challenging the findings on prosecution, settlement, and injunction.

BANK’S CASE:

The Bank contended that:

- (a) It did not instigate the prosecution; it only reported a suspected crime to the police, who independently charged Shah.
- (b) The acquittal did not prove malice or lack of reasonable cause, as cannibalization of secured assets justified the complaint.
- (c) No binding settlement existed for Kshs. 1.5 million, as negotiations failed, and Shah’s payment was partial; the debt remained enforceable against the Company.
- (d) The injunction was improperly granted based on temporary injunction principles,



and Shah's personal liability persisted via the chattels mortgage.

RESPONDENT'S CASE:

On his part, Shah maintained that:

- (a) The Bank directly instigated the prosecution by summoning him, recording his statement, and escorting him to the police, knowing no crime occurred since it had authorized the vehicle modifications.
- (b) The Kshs. 1.5 million payment was accepted as full settlement, evidenced by the Bank's silence and failure to repossess the vehicles.
- (c) As guarantor, not borrower, he bore no personal debt; the Bank's actions were malicious, aimed at coercing payment rather than justice.
- (d) The injunction was warranted to protect his property rights, given the resolved debt and unlawful prosecution.

ISSUES FOR DETERMINATION:

The Court of Appeal identified the following key issues for determination:

1. Whether Shah proved malicious prosecution.
2. Whether the parties agreed to Kshs. 1.5 million as full and final settlement of the debt.
3. Whether the High Court erred in granting a permanent injunction.

HELD:

1. On Malicious Prosecution:

The Court of Appeal affirmed the High Court's finding, holding that the Bank instigated proceedings by actively involving itself beyond a

mere report i.e., by summoning Shah, recording his statement, and transporting him to the police.

There was no reasonable and probable cause, as the Bank failed to verify if parts were disposed of fraudulently, despite evidence of prior authorization for modifications. Malice was inferred from the improper motive of using criminal process for debt recovery. The acquittal satisfied the requirement of favourable termination, entitling Shah to damages.

2. On Settlement of the Debt:

No written agreement existed for full settlement, as offers and counteroffers were rejected. However, the Bank's acceptance of the Kshs.1.5 million cheque without protest, coupled with its inaction on repossession, barred enforcement against Shah personally. The Court noted Shah was not the primary debtor and provided no personal guarantee. Thus, liability could not extend beyond the realized security.

3. On the Permanent Injunction:

The High Court correctly applied principles for permanent relief, as Shah established a prima facie case, irreparable harm (loss of vehicles), and balance of convenience in his favour. The injunction was a final remedy to prevent interference, justified by the resolved dispute.

RATIO OF THE CASE:

A financial institution that reports a borrower or guarantor to the police without reasonable and probable cause [defined as an honest belief based on facts that would lead a prudent person to conclude guilt] commits malicious prosecution if motivated by ulterior purposes like debt collection.

Further, acceptance of partial payments without reservation, and failure to pursue civil remedies like repossession, may estop enforcement, particularly where no personal guarantee exists. Permanent injunctions are appropriate to protect secured assets once underlying claims are unfounded.



CONCLUSION & IMPLICATION:

This judgment is a cautionary tale for financial institutions, signalling that courts will scrutinize the use of criminal complaints in lending disputes. It expands liability for malicious prosecution by emphasizing the need for objective grounds before involving law enforcement, potentially deterring aggressive recovery tactics.

In the broader context, the decision aligns with evolving Kenyan jurisprudence on lender accountability, prioritizing fair dealing over unchecked enforcement. It may encourage more guarantors to challenge prosecutions as abusive, increasing litigation risks for banks. Notably, by upholding damages without quantifying them on appeal, the ruling affirms that reputational and economic harm from wrongful arrests is compensable, even decades later.

RECOMMENDED ACTION:

To mitigate risks highlighted in this case, we advise financial institutions to:

- (a) Implement clear policies separating debt recovery from criminal reporting, requiring legal review and evidence verification before police involvement.
- (b) Train recovery teams on the elements of malicious prosecution and the preference for civil remedies, such as repossession or suits, over criminal complaints.
- (c) Document all settlements explicitly, including reservations on partial payments, to avoid estoppel and preserve enforcement options.

INSURANCE

I. Guidelines, Circulars, Notices, and Public Participation.

a) Circular Number IC RE 13/2025: Guidance Notice on Independent Review of the AML Compliance Programme ([Find Link Here](#)).

On 14th August 2025, the Insurance Regulatory Authority issued a circular to life insurers and insurance intermediaries. Pursuant, to this circular, the IRA requires these reporting institutions to conduct an independent audit of the measures put in place to combat money laundering and terrorist financing referred to as AML Compliance Programme. They are required to conduct the independent review and submit the report with comments from the board not later than 31st January of every year.

b) Circular Number IB & MIP 08/2025: Renewal of License for the Year 2026 ([Find Link Here](#)).

On 30th July 2025, the IRA issued a circular to insurance brokers, reinsurance brokers & medical insurance providers. Pursuant to this circular, Insurance brokers & Medical Insurance Providers are required to apply for renewal of their licenses for the year ending 31st December 2026 on or before 30th September 2025.

c) Circular Number IC RE 12/2025: Guidance Note on Institutional Risk Assessment ([Find Link Here](#)).

On 14th August 2025, the IRA issued a circular to life insurers and intermediaries. Pursuant to this circular, reporting institutions are required to undertake a risk assessment to identify, assess, understand, monitor, manage and mitigate the risks associated with money laundering, terrorist financing and proliferation financing. The deadline for conducting the risk assessment and submitting the report to the IRA is 31st March 2026.

d) Circular Number IC, MI & RE 15/2025: Continuous Monitoring of Insurers, Microinsurers and Reinsurers Risk Profiles and Premium Rates ([Find Link Here](#))

On 16th July 2025, the IRA issued a circular to all insurers, microinsurers and reinsurers. Pursuant to this circular;

- i) All insurers, reinsurers and microinsurers are required to submit to the IRA, an updated corporate profile for the company.
- ii) All life insurers are required to file life insurance premium rates. These rates should be submitted together with the Actuary's certificate.
- iii) All general insurers are required to file a schedule or manual of premium rates proposed to be used for each class of business including mega risks. These premium rates should be submitted together with the Actuary's certificate. The manual of rates if altered must be filed with the Commissioner at least 60 days in advance or within 30 days if a special rate has been implemented.
- iv) All insurers, reinsurers and microinsurers are required to pay a prescribed annual fee. The annual fee as prescribed is as follows;
 - a) In the case of an insurer, one hundred and fifty thousand shillings.
 - b) In the case of a micro insures, one hundred and fifty thousand shillings.
 - c) In the case of a reinsurer, two hundred and fifty thousand shillings.

The deadline for compliance with the above-mentioned requirements is 30th September 2025.

e) Circular Number IC IA-07/2025: To Insurance Agents: Renewal of License for the Year 2026 ([Find Link Here](#))

On 18th July 2025, the IRA issued a circular to insurance agents, to apply for renewal of licenses for the year 2026, on or before 30th September 2025.



RETIREMENT BENEFITS

I. Subsidiary Legislation.

The Retirement Benefits (Umbrella Retirement Benefits Schemes) (Amendment) Regulations, 2025, Legal Notice No. 126 Of 2025

The Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations 2025 Legal Notice No. 127 Of 2025
([Find Link Here](#))

On 25th July 2025, the Cabinet Secretary for the National Treasury and Economic Planning issued [Legal Notice No.126 amending the Retirement Benefits \(Umbrella Retirement Benefits Schemes\) Regulations, 2017.](#)

Regulation 12(2) as amended now reads; A trustee shall hold office for a period of five (5) years but shall be eligible for re-appointment for one more final term of five years."

On 25th July 2025, the Cabinet Secretary for National Treasury and Economic Planning issued [Legal Notice 127 amending the Retirement Benefits \(Occupational Retirement Benefits Schemes\) Regulations, 2000.](#)

The provision to Regulation 7(g) which reads; "Provided that, unless otherwise stipulated, the term of office of trustees shall not exceed three years but shall be subject to renewal for a further term of three years." has now been deleted.

Regulation 8(2A) as amended now reads; "Each trustee shall hold office for a term not exceeding five years and shall be eligible to be nominated for one further term of not more than five years."

The implication of the above-mentioned changes include;

- i) Trustees shall not serve more than two terms, regardless of the duration of each term
- ii) The term of trustees currently in office shall remain unchanged, unless expressly

extended through amendments to the instrument of appointment and/or the trust deed and rules.





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