

## FIRM PROFILE

Located in the heart of Nairobi in Kenya we are a leading Corporate & Commercial law firm positioned to provide high quality legal advice in East Africa. McKay Advocates is a leading corporate and commercial law firm focused on providing high quality advisory and transactional legal services.

We pride ourselves in catering for our clients' needs by combining a deep understanding of the business environment and the regulatory framework to provide commercially focused legal advice.

McKay Advocates offers legal services in Banking & Finance, Corporate & Commercial Law, Conveyancing & Property Law, Litigation & Dispute Resolution, Sports, Betting & Entertainment, Infrastructure and Projects, Debt Recoveries and Intellectual Property.

We cater for private clients, SMEs, regional and international companies and government agencies. We advise clients drawn from various target sectors including construction & engineering, entertainment, energy, financial services, manufacturing and real estate.



## Our team is well positioned to provide



Oiboo Morintat President and Partner oiboo@mckayadvocates.com

Oiboo specialises in corporate & commercial law practice with a focus on mergers & acquisitions, joint ventures, corporate finance, capital markets, debt restructuring, complex infrastructure projects, public-private partnerships and corporate governance. He is known for his team-oriented work ethic and building close client relationships to ensure timely, cost-effective legal advice to his clients.

Oiboo is an Advocate of the High Court of Kenya, a Commissioner for Oaths and Notary Public and a member of the Law Society of Kenya. In 2016, Oiboo attended the Northwestern University on a Mandela Washington Fellowship on Business & Entrepreneurship.

He holds an LLB from the University of Nairobi, a Post Graduate Diploma from the Kenya School of Law and a Diploma in Management of Information Systems.

Oiboo has acted as lead legal advisor to both local and international clients in numerous transactions in various target sectors including construction and real estate, financial services, energy and the public sector.

## specialist, bespoke legal solutions.



Paul Nyaosi Managing Partner mn@mckayadvocates.com

Paul specialises in commercial & civil litigation in all areas including banking law, property law, employment and labour disputes, debt recovery & management. He has represented numerous clients and is known for his track record in providing the best strategy with the client's goals and objectives in mind.

He also provides consultancy and transactional advisory services to institutions in both private and public sectors.

Paul is an Advocate of the High Court of Kenya, a Commissioner for Oaths and Notary Public. He holds an LLB from Moi University and a Post Graduate Diploma in Law – Kenya School of Law.

> Paul's appreciation of the judicial process enables him to provide tailor-made solutions geared towards solving the most complex of commercial disputes.



**Eva Wanja** Partner eva@mckayadvocates.com

Eva specialises in banking and finanical transactions, real estate, company secretarial and commercial transations. She acts for both local and international clients.

Eva is an Advocate of the High Court of Kenya, a commissioner of oaths, a notary public and a company secretary (CS). She holds an LLB from Moi University and Post Graduate Diploma in Law from Kenya School of Law.

Eva is known for her dedication and understanding of the unique needs of property and financial sector clients.\_\_\_\_



**Eric Kivuva** Partner ekivuva@mckayadvocates.com

Eric specialises in Litigation and Dispute Resolution. He advises and represents clients in alternative disputes resolution, debt recoveries & management, capital markets, sports, gaming & entertainment, employment and labour disputes.

Eric is an Advocate of the High Court of Kenya, a Commissioner of Oaths and a registered Patent Agent. He holds an LLB from University of Nairobi, a Post Graduate Diploma from the Kenya School of Law as well as a Post Graduate Diploma in Mass Communication from the Kenya Institute of Mass Communication.

Eric has represented both local and international clients in various industries including financial services, entertainment, energy and public sector.



David Sarinke Partner sarinke@mckayadvocates.com

David, specialises in corporate & commercial law with a focus on joint ventures, corporate restructurings, mergers & acquisitions, energy, legal & regulatory compliance, business set-up, gaming law practice, project advisory, general commercial law work and legal consultancy for both government and private institutions.

David has been involved in some of the region's most significant and important projects. His exposure to Energy and Public-Private Partnerships (PPPs) based projects enables him to provide clients with legal services which take into account the unique risks that projects face and rewards when successfully completed.

David is an Advocate of the High Court of Kenya, and a Commissioner of Oaths. He holds an LLB from the University of Nairobi and a Post Graduate Diploma in Law from Kenya School of Law.

David offers advice in various corporate and commercial transactions. His clients appreciate his versatility when providing legal services specific to their needs.



# Our Practice Areas

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## **BANKING AND FINANCE**

McKay's Banking & Finance practice advises microfinance institutions, local and regional banks, credit companies, international lenders, crowdfunding companies, impact investors and private equity companies. We regularly advise on lending transactions including project finance, trade finance, mortgages, asset finance, crowdfunding debt financing, equity financing and real estate investment trust (REITs).

In line with steady growth in financial technology, McKay is well placed to offer trusted legal advisory services on mobile money, banking and online payments. In particular, we advise on setting up engagement with partners, regulatory compliance and other legal issues like liability, consumer protection and intellectual property.

#### **Experience Highlights**

- Acting for banks, micro finance banks and saccos in lending transactions where we handle due diligence with respect to borrowers, advising on all legal matters arising, structuring of lending transactions and perfection of all securities.
- Advising a lending company involved in supply chain financing in legal aspects of the lending and preparing facility agreements, security documents and all the documents executed/ to be executed between the lender and third parties.
- Advising various companies in debt structuring and preparation of securities to secure lending to third parties.

We regularly advise on lending transactions including project finance, trade finance, mortgages, asset finance, crowdfunding, debt financing, equity financing and real estate investment trust (REITs).



## **CORPORATE M&A**

McKay has extensive experience and expertise in structuring, advising and overseeing merger & acquisition transactions in diverse sectors and industries within Kenya and the larger East African region.

McKay advises both acquirers and target undertakings in all aspects of their pre-contractual negotiations, in the negotiations for the substantive contract documents for the implementation of the mergers & acquisition transactions and in all aspects of the necessary regulatory approvals for the effective implementation of the transactions including applying for and obtaining the approval of the Competition Authority of Kenya for national and international transaction and where applicable, the approval of the COMESA Competition Commission where the transaction have a regional perspective.

McKay also advises its clients on the legal issues relating to the post-acquisition or disposal integration or separation including employment issues, taxation and sector-specific licenses and regulatory approvals.

#### **Experience Highlights**

- Advised a large multinational company registered in Hong Kong in drafting and negotiating a share acquisition agreement and shareholders' agreement in respect of its intended acquisition of a majority stake shareholding in a Kenya-incorporated company which has a concession to finance, design, construct, install, operate and maintain a geothermal power plant.
- Advised a Kenyan-incorporated Chinese company on all aspects of its intended acquisition of 100% shareholding of a real estate company operating within the Westlands area of Nairobi at a value of approximately USD. 5 Million.
- Advised the sellers in the acquisition of all the share capital of a Kenya-registered company involved in research and development of bio-pesticides processes by a big multinational

Swiss company that produces bio-fertilizers and bio-pesticides.

- Advised the acquirer in the acquisition of all the share capital of a Kenya-registered company with an off-the-course betting licence from the Betting Control and Licensing Board.
- Advised an individual minority shareholder in a South Africanheadquartered company which is a leading African internet service provider offering solutions over satellite, fiber optic and wireless networks, in the intended disposal of his equity stake in the company to a Mauritian incorporated company as part of a global acquisition transaction of the company.
- Some of the members of McKay were part of the team that advised the existing shareholders of a mid-tier Kenyan bank in the collation of due diligence documents and in the negotiation

of a share purchase agreement for the disposal of a stake in the bank to a group of international private equity firms.

- Some members of McKay were part of the team that advised a French oil giant, which was undertaking one of the largest acquisitions in the downstream petroleum industry within the East Africa region, in the acquisition of a stake in a local energy company with interests in the downstream petroleum sector and operating in Kenya, Uganda, Tanzania and Mauritius.
- Some members of McKay were part of the legal team that acted as local counsel to a Netherlands-incorporated company on the Kenyan competition law aspects affecting its acquisition of 100% shareholding in one of the world's largest breeders of cut flowers, pot plants, seasonal products and perennial plants which had 3 subsidiaries in Kenya.
- Some of the members of McKay were part of the legal

team that advised an independent card solutions company registered in Dubai, on all the Kenyan competition law aspects affecting its acquisition of the entire issued share capital of a global electronic payments services provider to banks, retailers, governments and consumer finance institutions across the Middle East and Africa.

- Some of the members of McKay were part of the legal team that advised a large state corporation in the disposal of part of its business in a heavily regulated asset disposal transaction.
- Some of the members of McKay were part of the team that advised a global telecommunication company in its sale of 267 Kilometers of fibre optic cable to a leading local telecommunication company.

McKay also advises its clients on the legal issues relating to the post-acquisition or disposal integration or separation including employment issues, taxation and sector-specific licenses and regulatory approvals.

## **COMMERCIAL PRACTICE**

Our Commercial practice has a track record of advising leading corporates in commercial transactions both locally as well as cross-border commercial transactions. We advise on compliance, preparation of contracts and agreements, joint venture transactions, and business establishment. We also advise on Kenya's governing business-related laws and regulatory frameworks.

#### **Experience Highlights**

- Advised on and drafted the security documentation for a Dutch-headquartered financial services company involved in receivables finance and factoring availed to its clients which are largely small and medium enterprises engaged in production, distribution and sale of agricultural produce. Also advised the company on all legal, corporate and tax matters relating to a capital injection and issuance of notes to an international capital firm.
- Some of the members at McKay were part of the legal team working under a consortium that advised the National Cereals & Produce Board on its restructuring.
- Advised a Nairobi Securities Exchange (NSE)-listed real estate company, on corporate restructuring, joint venture arrangements, Real Estate Investment Trusts (REITs) and on the need for and its continuous disclosure obligations to regulators as a public listed limited company.

- Also advised an NSE-listed real estate company on various commercial transactions and undertook the drafting of template legal documents comprising standard employee contracts, director contracts, joint venture agreements and checklists.
- Advised a County Government on and reviewed the Kenya labour laws, advised on a comprehensive Human Resource Management tool for the county and drafted the Human Resource Management Regulations.
- Advised an international Korean company in the consultancy and design of huge construction projects in Kenya, in the setting up of operations in Kenya and reviewed its commercial agreements.
- Some of the members of McKay were part of the team that advised on and undertook the legal structuring of the pioneer mixed-use development in Kenya, a work, live and play city currently still under development.

- Some of the members of McKay were in the team that advised a medical services provision company in two (2) rounds of investments by a private equity firm in investments worth more than USD. 3 Million. Also advised on several rounds of financing amounting to USD. 10 Million by the Finnish Fund for Industrial Cooperation Ltd by way of preferential redeemable shares including provision of legal advisory services in the drawing of the Investment Agreement, the Share Subscription Agreement, Shareholders' Agreement and in the review of the Memorandum and Articles of Association of the target company.
- Some of the members of McKay were part of the legal team that advised one of the largest financial services organisation in East Africa in terms of asset size, in its restructuring that involved the incorporation of a new bank and the hiving down of its operations to the new bank and concurrently restructuring to set up a non-operating holding company to oversee its banking business operations in the East African region.

We advise on compliance, preparation of contracts and agreements, joint ventures transactions, and business establishment.



## **CONVEYANCING & PROPERTY**

Our Conveyancing and Property practice has vast experience in advising on all aspects of conveyancing, property and construction law. With industry insight, our team of lawyers has the technical know-how to advise on all aspects of a real estate project including structuring of complex developments for commercial and residential properties, assisting in the acquisition and disposal of land including change of user, extension of leases, processing of titles, subdivisions and amalgamations as well as drafting of construction contracts and agreements with project consultants. Our clients include real estate investors and developers, owners and tenants of commercial and residential properties and private clients.

#### **Experience Highlights**

- Representing and advising a foreign-owned company in the comprehensive due diligence, legal advisory and structuring of an acquisition of a commercial building in Nairobi valued at approximately USD 5,000,000.
- Advising one of our clients in the structuring of a family estate, due diligence and negotiations and sale of agricultural land in Laikipia County valued at approximately USD 14,480,000;
- Representing a local company in the health sector in due diligence and purchase of part of land in a mixed use development in Kiambu in a transaction valued at USD 5, 900,000.
- Acted for a statutory corporation in legal due diligence, legal advisory and purchase of properties in Mombasa and Nyeri valued at approximately KES. 120 million.
- Acting for an international client in the due diligence and advising on the purchase of land in Upperhill valued at approximately USD 10,000,000 intended for mixed use development.
- Advising about 120 landowners in their negotiations with the Government of Kenya relating to the Government's compulsory

acquisition of their land for the Standard Gauge Railway (SGR) Project Phases 1 and 2A in which the land owners were awarded a total compensation of approximately USD. 36 Million.

- Acting for various real estate companies in structuring of real estate projects including preparation of project documents, joint ventures, setting up special purpose vehicles, preparation of all sale documents (including reservation forms, letters of offer, agreements for sale, leases and transfers), handling of sale transactions between developers and buyers, registration of interests (Leases and transfers) and handling closure of the projects.
- Representing clients in change of users, extension of leases and subdivision of land.
- Acting for many clients in the purchase, sale and disposal of various interests in land including bare land, apartments and office units.
- Acting for various companies and public bodies in preparation and execution of Leases and licences for units in commercial and residential buildings.



## **COMPANY SECRETARIAL SERVICES**

Our Company Secretarial Practice ensures that companies comply with the relevant legal and regulatory requirements of the Companies Act, 2015. We advise directors of companies in discharging their fiduciary duties and assist them in improving efficiency. We also act in the capacity of Company Secretary for several companies.

Our services include preparation and filing of statutory returns, updating and maintenance of statutory registers, attendance of meetings and recording of minutes of the company's meetings and goverance audits.

#### **Experience Highlights**

- Advising a company listed in the Nairobi Securities Exchange on corporate restructuring and compliance and acting for the company in updating the company records with the Registrar of Companies.
- Acted for a leading media company in the structuring and establishment of a charitable foundation.
- Acted for a religious organization in the structuring and establishment of a charitable foundation in the education sector.
- Eva Wanja (one of our partners) is the company secretary and a legal advisor of a charitable organization in Laikipia County focusing in wildlife management and environmental conservation.
- Eva Wanja (one of our partners) is the company secretary of many companies in various sectors including real estate, agribusiness, technology, education, construction and solar energy. Our portfolio includes private companies, public companies, companies limited by guarantee and branch offices owned by both local and international investors.



## DEBT RECOVERIES AND ADVISORY PRACTICE

Our Debt Recoveries and Advisory practice provide seamless legal advice relating to all types of debt management including auditing of securities, negotiation of payment plans, guiding debt restructuring, acting on behalf of our clients in court and through alternative dispute resolution.

With a robust team of lawyers, debt collectors, asset tracing managers and auctioneers we are ideally placed to collect debts in various sectors including the financial services sector.

#### **Experience Highlights**

- Currently advising a regional insurance company in the recovery of their debt amounting to USD. 1,400,000 in Uganda.
- Currently providing debt collection services to three major
  Insurance Companies in Kenya in relation to unpaid premiums of approximately USD. 5 Million.
- Successfully recovered USD.1.7 Million in unpaid premiums for a major Insurance Company.
  - Offering debt collection services to various Sacco's, Microfinance institutions and credit companies.

With a robust team of lawyers, debt collectors, asset tracing managers and auctioneers we are ideally placed to collect debt in all sector.



### **INFRASTRUCTURE AND PROJECTS**

McKay's Infrastructure and Projects practice have considerable expertise and experience in advising government and private entities seeking partnerships in public infrastructure projects in the health, transport, renewable energy, oil & gas and telecommunication sectors.

We advise our clients throughout the PPP cycle from inception, due diligence, regulatory approvals to successful commercial close. We are well regarded for our expertise in advising independent power producers, project developers, investors, financial institutions and other key players in the renewable energy industry in off-grid and grid-connected solar, geothermal, wind and small hydro projects. In addition, our lawyers have advised oil marketing companies, drilling and service companies in the oilfield sector on all aspects of the complex importation and exportation process of petroleum products.

#### **Experience Highlights**

- Advised a large multinational corporation with interests in the energy sector on an Engineering, Procurement & Construction (EPC) contract for the development of a geothermal project in Kenya.
- Advised a large company operating in the highly regulated medical sector in its intended acquisition of land worth approximately USD. 6 Million in the larger Tatu City, a livework-play development with special economic zone status, and the first of its kind in the East Africa region.
- Some of the McKay team members were part of team that advised the Government of Kenya through the Privatization Commission on the proposed privatization of five (5) public sugar companies within the western region of Kenya.
- Advised landowners within Kajiado County in relation to the compulsory acquisition of their land by the Government for the

Standard Gauge Railway (SGR), resulting in compensation of approximately KES. 3.6 Billion.

- Acted as legal advisors to a consortium of international companies in their bid for a geothermal power plant under PPP and Public Procurement laws.
- Advising and partnering with a Norwegian based investment support company in relation to its business incubation business, investments and acquisitions of startups in the technology and renewable energy sectors in Kenya.
- Acted as the lead advisor to an international corporation on its proposed implementation of a 300 MW coal-fired power plant in a proposed public-private partnership (PPP) with Kenya Electricity Generating Company (KENGEN) which is the entity of the Government of Kenya responsible for energy generation in Kenya.

- Acted as lead legal advisor to a private entity in its bid for PPP lots under the Government of Kenya's 10,000KMs roads annuity program.
- Some of the members of McKay were part of the team that recently advised a Kenyan solar energy company with its headquarters in India by reviewing the term sheet and in the negotiation of the financing documents in project financing transaction of its kind for its solar power projects in an amount of USD 2,500,000 in which the financing was being provided by an American lender and arranger.
- Some of the members of McKay were part of the legal team that provided legal advisory services to a Chinese party that was the private party which was seeking to establish a 20-year wind power project in Marsabit County, Kenya,

modelled as a private-public partnership with the County Government of Marsabit; estimated to produce approximately 300 MW of wind power once it became operational, under the Feed-In-Tariff-System FiT in accordance with Kenya's FiT policy.

 Some of the members of McKay were part of the legal team that was advising a global diversified merchant and client solutions provider in the commodities space covering a range of agricultural, industrial, and energy products in a one-of-akind oil products sale and re-purchase transaction between the company and a Kenyan state corporation which imports oil products into Kenya through the open tender system (OTS)

We advise our clients throughout the PPP cycle from inception, due diligence, regulatory approvals to successful commercial close.



## **INTELLECTUAL PROPERTY**

Our Intellectual Property practise offers a wide range of IP services to start ups and established businesses including registration of trademarks, copyrights, patents, industrial designs, domain names, utility models and plant breeders' rights. We are part of an established network of IP practitioners in Africa enabling us to handle IP and related legal matters in other African regions including at the African Regional Intellectual Property Organisation (ARIPO) and the African Intellectual Property Organisation (OAPI). Our range of IP services includes application for registration of various IP rights, enforcement of IP rights through litigation and drafting and reviewing IP contracts like license agreements, deeds of assignment and franchise agreements.

#### **Top Transactions**

- Currently representing a leading multi-media organization in several media platforms in Kenya in an infringement claim in the KIPI tribunal.
- Advised Cheza Gaming, a betting Company on the trademark registration of eighteen (18) of their anchor product trademarks.
- Advised a leading gaming and betting company in South Africa in a legal opinion regarding a trademark infringement claim.
- Advised a leading multi-media organization in several media platforms in Kenya in the setup of their 24-hour news TV Station and registered all their IP rights.
- Advising Reliable Communications Limited, a mediumsized media company of IP rights during their setup and establishment of seven (7) trademarks.
- Advised a leading five (5) star hotel chain in industrial design for a 750ml water bottle.
- We also registered a patent for the "Flexible Clothes Drying Line"

We are part of an network of IP practitioners in Africa enabling us to handle IP and related legal matters in other African regions including at the African Regional Intellectual Property Organisation (ARIPO) and the African Intellectual Property Organisation (OAPI). □



### **LITIGATION & DISPUTE RESOLUTION**

Our Litigation practice focuses on dispute resolution relating to complex commercial disputes, environment and land disputes, employment and labour relations, property disputes, public procurement disputes, succession law and estate planning.

Our litigators have the experience, skills and judgement to successfully guide our clients through the judicial and dispute resolution process.

#### **Experience Highlights**

- Currently representing a County Government in a dispute at the High Court of Kenya. Our brief is to safeguard the community and public interest in land claim valued over USD 300 Million.
- Acted as the lead defence counsel for a leading Kenyan university in a number of employment and labour disputes involving summary dismissals and unfair termination; the value of the claims was about USD 50 Million.
- Representing a flower farm in a land dispute over land valued over USD 50 Million.
- Representing a County Government in a land dispute over a parcel of land valued at approximately USD 30 Million.
- Acted as the lead defence counsel for a leading Kenyan telecommunication operator in a number of employment and labour disputes relating to retrenchment of staff.
- Successfully represented an international company in a procurement dispute with the Kenya Airports Authority over a high-value contract worth USD 10 Million.

- Reviewed the Kenya Public Procurement laws and advised the Public Procurement Oversight Authority on the criteria for handling and determining appeals on procurement decisions of state organs.
- Part of the team that reviewed the Kenya labour laws, advised a County Government Unit on a robust Human Resource Management tool and drafted the County Government's Human Resource Management Regulations.
- Part of the team that advised the Office of the President of Kenya on the structure of the executive arm of the Government under the new constitutional dispensation following enactment of the Constitution of Kenya, 2010.
- Part of the team that reviewed the legal and regulatory framework governing the Kenya agricultural sector and advised the Kenya government on the repeal of the law leading to the enactment of the Agriculture, Fisheries and Food Authority Act, 2013.



### **SPORTS, GAMING & ENTERTAINMENT**

McKay has developed sound expertise over the years to seamlessly tackle the myriad of legal issues in the sports, gaming and entertainment sector. We have advised individual athletes, sports executive, sports franchises, public sports authorities, betting companies and clients in the entertainment sector particularly in film and television.

Our advice relates to brand protection, merchandising and distribution. Through our IP practice, we are able to advise on the restructuring and execution and licensing strategies and agreements to enable them to safeguard brands as a result of sponsorship and endorsements.

In addition, our team of lawyers are well versed with the recent developments in the gaming sector which has seen them advise on licensing procedures, IP registration and enforcement and commercial litigation to bookmarkes and providers of gaming software and other service providers.

#### **Experience Highlights**

- Advised an online gaming company in Kenya on all legal aspects of operating an online betting business in Kenya including the licence application process, on a software licensing agreement with another company and on the legal aspects of capital injection from international partners into the Company and on the intellectual property aspects involving its business, amongst others.
- Advised a Kenya-registered company, and drafted the necessary reseller agreement for the grant of exclusive supplier rights in Kenya of a licensed gaming software from a Belize-registered company. Also advised the Kenyan company and drafted the software licensing agreements for the purchase of licensed gaming software by several online gaming operators.
- In partnership with a UK-based law firm, advised an international software developer company and gaming

operator that currently operates several online social and real money slots in the United Kingdom and other European countries, on all legal and taxation aspects of the Kenyan phase legal regulatory framework on gambling and gaming.

- Advised a Malta-headquartered company on all legal aspects of the establishment of a gaming business in Kenya and in three other African countries.
- In partnership with a UK-based law firm, advised several European companies on gaming and gambling laws in Kenya and in the licensing, permitting and regulatory framework on gambling and gaming in Kenya.
- Advising a Columbian gaming company on its business establishment in Kenya and assisted in compiling and presenting a technical application for a gaming license to the Betting Control and Licensing Board of Kenya.



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