

Editorial

*To speak means to be in a position to use a certain syntax,
to grasp the morphology of this or that language...
but it means above all to assume a culture,
to support the weight of a civilisation
– Frantz Fanon¹*

In the profound wisdom of Frantz Fanon's words, we are reminded that language is a tapestry woven beyond the confines of grammar and basic communication. Fanon urges us to understand that language is the assumption of a culture and a pillar of civilisation. For *Kabarak Law Review*, language is a culture of diligence, excellence, academic rigour, cooperation and service. Language for us means breaking down frontiers and hegemonic structures thereby producing cutting edge Afrocentric legal research to support the weight of our African civilisation. To this end, *Kabarak Law Review* 2022-2023 Editorial Board is pleased to present the first double-blind peer reviewed issue of our journal, *Kabarak Law Review* Volume 2(2023). Within its pages, we invite you to reflect on the transformative power of language and immerse yourselves in the cadence of words, ideas and intellectualism that define our commitment to legal scholarship.

For sixteen months, we embarked on an odyssey to not only institutionalise, produce and disseminate quality legal scholarship but to also demystify and entrench a culture of legal research and writing at

¹ Frantz Fanon, *Black skins white masks*, Editions de Seuil, 1952, trans. Grove Press, 1967.

Kabarak Law School. Our journey began in June 2022 when our board was constituted under the guidance of Sharon Moraa Amwama, *Kabarak Law Review's* first Editor-in-Chief, and Arnold Nciko, our mentor and trainer. Over, the following three months, from June 2022 to August 2022, we received legal research and writing training from Arnold Nciko and concurrently formulated our policy documents including our constitution and editorial procedure. We also conceptualised the *Kabarak Law Review Blog (KLR Blog)*.

True to our culture and language of service, in September 2022, we actualised our commitment to demystifying and promoting a culture of legal research and writing in Kabarak Law School by holding weekly legal research and writing training sessions. This decision was motivated by the need to share the nuggets we had learnt during our training with Arnold Nciko. Since then, we have consistently conducted thirty-one (31) training sessions every Friday from 4 pm to 7 pm. These training sessions not only allowed us the opportunity to train our fellow students on the intricacies of legal research and writing, but also provided us with an opportunity to select committed students as editorial trainees.

I am extremely proud of our editorial trainees: Elvis Mogesa, George Murimi, Mercy Jebaibai, Jabez Oyaro, Victoria Okeke, Blessing Nasimiyu, Nasra Ali, Sylvian Pawi, James Ndung'u, Uday Keya, Wa Nciko Laetitia, Sandra Barendo, Kenya Komba and Christian Nciko for their commitment and hard work. From among these, the 2024 Editorial Board has been selected and installed. As they take over the reins of *Kabarak Law Review* for 2024, under the guidance of Nadya Rashid, I could not be more confident that they will scale the *Kabarak Law Review* to greater heights.

On 30 January 2023, we set up the *KLR Blog*. Since that pivotal moment, we have edited, and published insightful blog pieces contributed by both faculty and students. As of now, the *KLR Blog* proudly boasts a collection of thirty-four (34) thought provoking articles. We are grateful to Professor Willy Mutunga, Chief Justice Emeritus and Professor of Public Law at Kabarak University, for gracing our blog

with his thoughts, as well as Florence Shako, Senior Partner at Mitullah Shako and Associates.

This year, we also embarked on the commitment set forth by the *Kabarak Law Review* 2021-2022 Editorial Board – bringing to fruition a double-blind peer-reviewed journal. This meticulous process has not only tested our mettle but has instilled in us a profound appreciation for the conscientious effort required to produce scholarly work of the highest calibre.

We extend our heartfelt gratitude to our expert reviewers whose insights were critical in shaping this publication. We express sincere thanks to: Julie Lugulu, Cheptum Toroitich, Joseph Agutu Omolo, Melissa Mungai, Johannes Buabeng-Baidoo, Humphrey Sipalla, Delbert Ochola, Kiai Gachanja, Sidney Tambasi, Dr Rosemary Mwanza, Cedric Kadima, Dr Evelyn Asaala, Sandra Bucha, Sana Hussein, Dr Victor Chimbwanda and Edmond Shikoli.

Cooperation stands as an integral pillar within the foundation of the *Kabarak Law Review* (KLR). Student run law reviews play a pivotal role in advancing legal scholarship, underscoring the necessity for functional and well run law reviews in Kenyan law schools. This year, our vision extended to uniting all existing law reviews in Kenya to foster the exchange of best practices and mutual guidance for running effective publications. We extend our heartfelt gratitude to the *Strathmore Law Review*, *Moi University Law Journal*, and the *Kenyatta University Journal of the All-Kenya Moot Court Competition* for their collaboration. Their support and shared insights have undoubtedly enriched our journey. I look forward to 2024, hoping to witness more collaborative efforts among law reviews in Kenya.

This year we also commemorated the annual Kiswahili Day on 7 July 2023 through a webinar moderated by Nadya Rashid titled: *Matumizi ya Kiswahili katika sheria nchini Kenya*. This commemoration went beyond the mere acknowledgment of linguistic diversity, it was a testament to our commitment towards dismantling hegemony within the legal landscape and a reflection of our belief in the transformative

power of language to foster inclusivity. We are thankful for the participation of the eminent panellists: Harrison Kinyanjui, Dr Owiso Owiso, John Nyanje, and Honourable Yusuf Shikanda, who later joined our Advisory Board.

Another milestone for us this year was constituting our Advisory Board, whose advice has been instrumental in shaping our conviction and maintain our focus. I am grateful to our Advisory Board for this support, and the convening leadership of our chair, Mr Delbert Ochola.

Kabarak Law Review Volume 2 (2023) features nine articles from a diverse array of legal topics, divided into five sections. In the full length articles section, Samson Muchiri opens our volume with a reflection of the use of *res judicata* to resolve jurisdictional overlaps that arise in dispute settlement systems in international trade law. He concentrates his case study on the WTO DSB and the MECOSUR DSB. Kevin Kipchirchir revisits the problems of civilian protection in the changing nature of conflicts to an increase in non-international armed conflicts that are seemingly not covered by existing trite law. He reflects on how, given its drafting history and application, Common Article 3 can be used to fill this increasingly critical protection gap.

The second section covers a review of Professor Justice Willy Mutunga's thought on transformative constitutionalism. Flowing from disparate actions in response to Professor Mutunga's inaugural lecture at Kabarak University titled, *In search and defence of radical legal education: A personal footnote*,² this section features three reflections. Professor Issa Shivji, having responded to the inaugural lecture on the material day on 28 January 2022, has reduced his thoughts into a reflection piece where he primarily challenges Professor Mutunga to consider transformative constitutions as key players in advancing counter-hegemonic consciousness, over and above their use as legal instruments. Two Kabarak law students also issue their reflections on the inaugural lecture: Marion Joy Onchangwa engaged Professor Mutunga on a vibrant email exchange as she pushed him to clarify some of his

² This was issued by Kabarak University Press, 2022.

thoughts. Nadya Rashid critiques contemporary university education that promotes rote learning and, inspired by the model of the University Students African Revolutionary Front (USARF) at the University of Dar es Salaam in the 1960s and 1970s, calls for more critical legal education.

As is now the established custom at *Kabarak Law Review*, the last three sections feature short commentary pieces that do not undergo double-blind peer review but rather rigorous single-blind review: Honour Your Elders; the Kianjokoma Tribute, a section where students discuss police accountability law, in honour of our fallen classmate Emmanuel Mutura Ndwiga and his brother Benson Ndwiga Njiru who were victims of police extrajudicial killing on 2 August 2021; and the case review section.

Honour Your Elders in this volume covers contributions on the life and works of two African scholars of international law: Taslim Olawaye Elias and Bonaya Godana. This year, we commemorated the second anniversary of the deaths of the Kianjokoma brothers. To honour them, *Kabarak Law Review Blog* published two blog articles calling for reform and police accountability. In continuation of this tribute, Christine Wanjiku's article examines the investigative powers of the Independent Policing Oversight Authority (IPOA).

Marvis Ndubi's striking critique of the Supreme Court of Kenya's lacklustre determination of the vexing question of computation of contribution in matrimonial property division disputes in *JOO v MBO*, closes our Volume 2.

As we conclude this 2023 journey, I am grateful to the Almighty God for his grace and providence throughout this endeavour. I also like to extend my sincerest gratitude to my team members; David Arita, Alex Tamei, Patricia Cheruiyot, Caleb Sadala and Nadya Rashid for their commitment and dedication to this endeavour. I also extend my gratitude to Carson Kiburo, Hilda Chebet and Lorraine Koskei for their support in promoting the outreach and visibility of *Kabarak Law Review*. Finally, I wish to appreciate Professor J Osogo Ambani, (Dean, Kabarak Law School), Mr Humphrey Sipalla, (Editor-in-Chief, Kabarak

University Press), Mr Sam Ngiere, (Editor-in-Chief *Kabarak Journal of Law and Ethics*), Mr Joseph Agutu Omolo and Ms Melissa Mungai for their support in making this publication a success.

To the 2024 Editorial Board, I invite you to reflect on the profound wisdom in Habakkuk 2:2-3. This scripture encourages us to write our vision and carve out our aspirations. As custodians of the legacy of *Kabarak Law Review*, may the words of the Lord to Habakkuk resonate within your collective consciousness that you may set down your aspirations and dreams with clarity and conviction. Your collective vision, like an enduring beacon, will guide the *Kabarak Law Review* to a future marked by innovation, impact and scholarly distinction.

Laureen Mukami Nyamu
2022-2023 Editor-in-Chief, *Kabarak Law Review*
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