

Editorial

People need knowledge more than they need food and drink, because they need food and drink two or three times a day, but they need knowledge all the time. Imam Ahmad Ibn Hanbal.¹

A mother is a blessed being, a symbol of resilience and sacrifice. She faces countless challenges, determined and focused, ready to overcome every hurdle to ensure her child is born. Her tears turn into moments of joy, and her pain brings forth life, great individuals who go on to transform society.

But why draw a parallel between a mother and a publication? Because leadership, like motherhood, is not for everyone. Leadership is not a skill measured by hours in the gym or physical strength. Instead, it is a quality nurtured by even the slimmest among us, those brave enough to face adversity. True leaders are determined, focused, and willing to endure challenges. They lead with love, care for their figurative pregnancy, endure the sick mornings, and persevere to witness the joy of birth, the birth of ideas, progress, and transformation.

Behind every successful publication stands a united team of editors – a strong, unbreakable wall. This wall must withstand strong winds, scorching sunny days, and unrelenting storms. It serves as the umbrella to their leader, the leaders to their leader, and the advisors who clear the path toward their shared vision. This is how I choose to describe the most resilient force I have led in this battle. The battlefield was not for

¹ Ideal Muslim, '15+ quotes of Imam Ahmad Ibn Hanbal' Islam practice, < <https://islampractice.wordpress.com/author/hambrin/> > on 28 January 2025. Imam Ahmad Ibn Hanbal, Shaykh of Islam was a renowned Muslim scholar and jurist who dedicated his life to the search of knowledge in Islam.

the faint-hearted. Yet, these soldiers – the *Kabarak Law Review* Volume 3 board members – rose to the occasion. Their great advice and unwavering support became the cornerstone of our success. Together, we are witnessing the birth of *Kabarak Law Review* Volume 3 – a testament to determination, late nights, teamwork, and the unyielding pursuit of excellence.

The third volume of the *Kabarak Law Review* commemorates sixty (60) years of the Kenyan republic – which was declared in 1964 – providing a platform for scholars to critically examine the nation's journey. Through thought provoking contributions, authors explore whether Kenya has truly upheld the fundamental tenets of a republic. This volume brings together insightful contributions from scholars across diverse disciplines, each offering a novel perspective on Kenya's legal, political, and social landscape. Their collective work not only enriches contemporary discourse but also leaves a lasting scholarly imprint, shaping the understanding of Kenya's republican evolution.

Kabarak Law Review Volume 3 features eleven (11) scholarly articles. Six (6) full-length pieces form the first double blind peer reviewed section, laying ground for this year's theme. Two (2) articles in the 'Honouring our Elders' section celebrate the legacies of two great African titans, Ama Ata Aidoo and Salim Ahmed Salim. Continuing our tradition of paying tribute to Emmanuel Ndwiga, a former Kabarak law student and his brother Benson Njiru who died at the hands of rogue police officers on 1 August 2021, we publish two (2) pieces on our police accountability section. We close this volume with a case review.

Babere Kerata Chacha and Shahid Amin Mubari's open this volume with their historical appraisal of Kenya's executive power, *From imperial power to vulnerable authority: A historical study of the institution of the presidency in Kenya*. The authors extensively explore the evolution of the Kenyan presidency, its significant transformation, and expansion of executive power from 1963 to the present. Using archival primary historical sources, they critically examine the presidency's impact on democratic governance.

Barrack Onyango analyses the evolution of women's political participation in Kenya, from the pre-colonial era to the post 2010 Constitution period, highlighting women's fight for gender parity and representation. In his paper, *From seats to voices: Analysing the effective participation of women in governance in the Kenyan parliament*, Barrack advocates for the meaningful participation of women beyond numerical quotas. The author emphasises on the need for women in parliament to actively shape policies and governance rather than serve as symbolic representatives.

Beyond the theme specific contributions, this volume also features general articles, which like the theme centred pieces, have undergone a rigorous double blind peer review process.

Alex Melonye Tamei opens this section with his critical analysis, *A socio-economic rights centred evaluation of Kenya's law and practice on sovereign debt acquisition, servicing and restructuring*. He analyses Kenya's rising sovereign debt burden and its implications for constitutional socio-economic rights under Article 43 of the Constitution of Kenya (2010). Tamei elaborates how fiscal policies focused on debt servicing have worsened citizen welfare through increased taxes, budget cuts, and resource diversion. The author concludes by authoritatively calling for sustainable debt management practices linked to socio-economic rights, drawing from global best practices to address systemic challenges and guide future debt strategies in Kenya.

In their piece, *An assessment of the efficiency and effectiveness of compulsory mediation in Malawi*, Anastanzio Sitolo, Kariuki Muigua and Nkatha Kabira, assess the effectiveness of mandatory judge-led mediation in Malawi. The authors demonstrate how mandatory mediation, despite its intent, infringes on core mediation principles and struggles to fully achieve its objectives in Malawi.

Rachael Kipkoech's paper, *Decolonising Kenya's legal system: The role of legal education, philosophical foundations, and constitutional interpretation* in a novel manner explores the pivotal role of legal education in Kenya, aiming to decolonise the Kenya's legal system. She extensively demon-

strates this through the Kenya's colonial historical basis on legal education and advocates for a more complex educational approach that aligns with the nation's unique historical and cultural identity.

Closing the double blind reviewed full-length article section, Rebecca Andeso addresses the urgent need for a universal legal framework to regulate surrogacy in her piece, *Towards a universal framework: The necessity of international legal regulation for surrogacy*.

The renowned 'Honouring our Elders' section features two outstanding pieces by Prof Rose A. Sackeyfio and Antony Karol Muma. Prof Sackeyfio's article, *Ama Ata Aidoo: Celebrating her legacy in the twenty-first century*, reflects on Aidoo's profound impact on African literature. She highlights how Aidoo redefined the portrayal of African women by crafting strong female protagonists who challenge societal norms and inequalities. Following this, Antony Karol Muma's piece, *Transforming African diplomacy: Salim Ahmed Salim's vision of non-indifference and the evolution from OAU to AU*, delves into the transformative role of Dr Salim Ahmed Salim in reshaping African diplomacy during his tenure as Secretary-General of the Organisation of African Unity (OAU) from 1989 to 2001.

Tekin Saeko's and Caroline Gatonye's papers authoritatively contribute to the *Police accountability* section, continuing the Kabarak tradition of documenting police brutality. Tekin's *An update of the Kianjokoma brothers' case and the struggle for police accountability in Kenya* and Caroline's *Critiquing police response to the right to peaceful assembly, demonstration, and picketing in light of the recent 2024 Finance bill protests* provide comprehensive insights into policing in Kenya.

Jabez Oyaro then closes the volume with his piece *A critique of the High Court's ruling in FOA v RAO and 2 others in reinstating Section 12 of the Births and Deaths Registration Act*. His analysis exposes inconsistencies in judicial reasoning and highlights the practical challenges of implementing the court's directive, revealing how outdated administrative procedures hinder its enforcement. His piece marks the last article of the volume.

This third volume would not have been possible without a few exceptional individuals. Those who gave their all, not just to bring this volume to life but to propel the *Kabarak Law Review* forward. My managing editor, Elvis Ongiri Mogesa, deserves a standing ovation. He led with passion, stepping in whenever a challenge arose. A true fighter. A warrior in every sense, with a keen eye for intellectual finesse. Pawi Fortune and George Njogu kept the writing spirit alive, tirelessly fostering student publications on the *Kabarak Law Review* blog. Esther-Blessing Nasimiya – your relentless drive left me speechless. Always at your inbox, drafting emails to peer reviewers and authors ensuring that the editing process ran seamlessly. When I grow up, I want to embody that persistence. Nasra Omar Abdalla and Uday Makokha, keep the fire burning. Keep turning dreams into reality. Uday, the academic training workshops you led stand as proof that resilience, passion, and determination make anything possible. Shukran sana kwenu nyote.

In addition to that, every unit on the battlefield has a commander whose duty is to lead, advise, correct, and ensure victory. The *Kabarak Law Review* is no different. It is led by exceptional commanders from the *Kabarak Law Review* Advisory Board, whose primary role is to provide guidance, expertise, and strategic direction to the editorial team.

This commanding unit, led by the chairperson Mr Delbert Ochola, played a pivotal role in bringing this volume to life. Their unwavering commitment and leadership has been instrumental in shaping this edition. Shukran za dhati to our esteemed Advisory Board members: Chief Justice (Emeritus) Prof Willy Mutunga, Lady Justice Teresia Matheka, Dr Jonathan Rindolmsom Kabre, Hon Yusuf Shikanda, Dr Rosemary Mwanza, Mr Abdullahi Ali, Mr Arnold Nciko, and Prof John Osogo Ambani. Your commitment and wisdom have been the driving force behind this publication.

To our peer reviewers from across the Global South – Dr Celestine Nyamu-Musembi, Prof Mwiza Nkhata, Dr Gautam Bhatia, Arnold Nciko wa Nciko, Dr Victor Chimbwanda, Dumisani Mlauzi, Wachira Maina, Dr Owiso Owiso, Dr Nerima Were, Walter Khobe, Dr Tesor Makunya, Chepkorir Sambu, Christable Eboso, Eurallyah Akinyi, Dr

Nona Tamale, Prof Attiya Warris, Dr Magalie Masamba and Prof Tomasz Milej – thank you. Your commitment and patience in keeping up with our constant reminders, late-night emails, and tight deadlines ensured that the quality of *Kabarak Law Review* Volume 3 remained uncompromised. Your diligence and expertise form the foundation of this journal's credibility. Shukran sana.

I also extend a special Shukran to my predecessor, Laureen Mukami Nyamu who has done an excellent revise edit of the final text. Thank you for continuing to set the highest standards, and for your advice and guidance.

Finally, this tireless journey would not have been successful were it not for our great able Dean, Professor John Osogo Ambani, who has seen the *Kabarak Law Review*, grow, the first steps it took, learning to walk. Now, I believe we are not just walking or jogging, we are flying. Shukran sana Mwalimu Sipalla, the man behind these great achievements. Your vision and mentorship continue to shape the legacy of the *Kabarak Law Review*. Shukran sana Mwalimu.

Thank you all for your readership of our journal and I welcome you to the 2024 third volume of *Kabarak Law Review*.

Nadya Rashid
Editor-in-Chief, *Kabarak Law Review*
Kabarak, January 2025