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Kenneth K. Mwenda

PhD, LLD, DSc(Econ)

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Thank you.

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DEDICATION

In loving memory of my father,
Mr. Joseph T. Mwenda Snr.

Your footprints remain indelible. You taught me to think critically about the virtues of honesty, integrity, love, faith and truth. You inspired in your children the values of continuous learning and erudition. You lived an exemplary life, with the highest standards of integrity and moral character. You will always be my greatest role model. And I know that you are up there teaching angels how to love. We miss you always and forever.

“A wise [man] will hear, and will increase learning; and a man of understanding shall attain unto wise counsels: To understand a proverb, and the interpretation; the words of the wise, and their dark sayings. The fear of the LORD is the beginning of knowledge: but fools despise wisdom and instruction.”

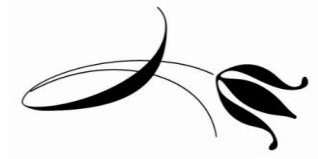
Proverbs 1:5-7

ACKNOWLEDGEMENT

To my many students and former students worldwide at the various international universities where I have taught, thank you for being promising leaders for the next generation. That a number of my former law students have gone on to become notable Supreme Court judges, Constitutional Court judges, Court of Appeal judges and High Court judges, including an eminent Chief Justice, while others continue to serve as law professors, diplomats and ambassadors, as well as judicial clerks and prominent Cabinet Ministers, is only the beginning of the story. For, there are also those that have held or continue to hold senior positions at the World Bank, the African Development Bank, the Common Market for Eastern and Southern Africa, and many other international organizations. I am truly humbled and grateful to God, Jehovah, Almighty, for all these blessings.

Special thanks also go out to all friends and colleagues (as well as my family members, including my wife and son) who provided comments on the various sayings, musings and metaphors in this book. Their tireless contributions helped to sharpen my views on a number of issues. My other thanks go

out to **Africa in Canada Press** for the timely and efficient publication of the book. **Diamond Books - Canada** is also hereby acknowledged for the excellent typesetting work and the preparation of the cover design.



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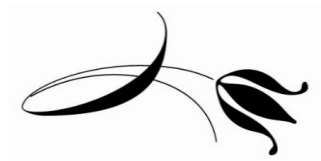


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PREFACE

While this book does not purport or pretend to have all the answers to the many social challenges that we face in life, it certainly does raise some thought-provoking questions for us to think through. I hasten to add, however, that the book is not a work of fiction. Neither is it about motivation like many motivational books that are on the bookshelves today. Rather, it is an example of public intellectualism in Law and the Social Sciences. The book distills complex ideas that are often confined to the academic world into more easily discernible ideas by everyone, including the laity. Such is a cardinal objective of the book – to provoke some critical thinking across a broad spectrum of society on certain topical themes pertaining to Law and the Social Sciences. With an inter- and multi-disciplinary focus, the book cuts across many contemporary themes in the Law and Social Science discourse.

What started out first as a series of short intellectually stimulating and thought-provoking articles published in a number of media outlets in Zambia and elsewhere culminated into the

publication of this anthology: that is, a collection of short articles in the Law and Social Science discourse. Over the years, I have made significant contributions to contemporary debate on various political, economic and social issues. Many individuals that have followed my scholarly and public contributions have encouraged me to bring together into a book a collection of some of my well-received media articles. And so, this is how the idea of this book came about. The writing of the book was a response to the increasing and growing demand from the readership. I have included in this book new and updated material whose 'footage' has not been seen before. It has not been an easy path to tread where you sometimes have to raise certain 'unorthodox' and out-of-the-box questions that many folks would rather ignore or pretend not to have some idea about. But avoiding a problem only provides temporary relief for you to face the same problem again tomorrow. So, to avoid facing the same problem the next day, it is best to confront it – like the taking of a bull by the horns!

In putting this book together, I carefully crafted the aforesaid material along the lines of certain themes examined in a number of my media articles. For example, the chapters on religion and the law follow one another in one section of the book. And while the book presents an eclectic taste of the Law and the

Social Science discourse, such that many a reader might find it hard to put the book down once they start reading, a deliberate effort is made to set the discussion in its proper socio-political and socio-economic contexts. Indeed, law does not exist or operate in a vacuum. It must be situated in its proper socio-political and socio-economic contexts. Thus, the book presents a valuable 'Law in Context' contribution. Much of the analyses are made through the prism of the social sciences.

The paperback edition of the book is arranged in **two (2) volumes** whilst the **electronic edition** is a **single publication** containing both Volumes 1 and 2. For those accessing the book as a paperback, you are encouraged to read both Volumes 1 and 2. For those accessing the electronic edition, you are encouraged to read the whole book. In this book, a number of themes pursued are closely interrelated. They cut across intertwined disciplines. Against this background, it would benefit the reader to get a good grasp of both Volumes 1 and 2 of the paperback edition or the whole of the electronic edition. Elsewhere, I have authored several scholarly books and journal articles that are now widely cited in academia and by major policy institutions as well as by the courts of law. The current book is, therefore, not my maiden effort at writing. The reader is encouraged to consult also, if need be, my many

scholarly works that are abundantly available in almost all of the world's leading academic libraries.

In this book, I endeavour to stand back from my notable scholarly work of authoring for an academic and intellectual audience. What I propose to do instead is to seek dialogue with a broader section of society, ranging from the most intellectually sophisticated to the least enlightened person. Very often, as scholars, our ideas tend to be detached from the real world, particularly when we use technical language and jargon or other forms of communication that only our fellow intellectuals can understand or decipher. Take, for example, the case of a PhD economist who is in the habit of using complex mathematical formula to write or report on contemporary economic issues in the media. How useful is such writing and information to the common man on the ground that has little interest in learning about complex mathematical equations?

A notable role of public intellectualism is to stand back from the intimidating language of a technocrat so as to avoid some kind of tunnel-vision where only you, the author, and your fellow technocrats are the ones who can understand what you are talking about. And this is exactly what this book endeavours to do. People from different walks of life will find the

book an easy read, whether they are travelling on a train or they are on a long flight. The book will give them a valuable companion. And even though some of the readers may not be in full agreement with some contentious arguments that the author advances in certain parts of the book, many a readers' thoughts are likely to be provoked to some greater degree. That, really, is what matters most. Indeed, it is that stimulation of debate that lies at the centre of this book.

Closely related to the foregoing, although the debate continues on the meaning of the term 'public intellectual', it is not far from a truism that such an individual cannot be pigeon-holed into a dogmatic or single way of expressing and communicating his or her ideas. A public intellectual often transcends the boundaries of academic pedagogy, while avoiding the chasm that divides scientific inquiry and intellectualism from the typical practitioner role of unscientific advocacy. A public intellectual often remains focused on translating complex theoretical and conceptual ideas into easily discernible scientific and objective analyses that even wananchi (*i.e.* the public citizens) can understand. In doing so, the public intellectual should try to communicate and speak the language of the common man, without stifling debate or intimidating the audience with all manner of intellectual sophistry. To that end, the

use of metaphors, adages, and illustrations becomes handy in breaking down certain ideas that would ordinarily be seen as too complex for the common man to understand. This book takes such an approach, breaking down complex ideas into easily discernible ideas.

Although some illustrations and examples provided in the book are drawn from specific jurisdictions and localities, a good number of them are of wider application to many other contexts and situations. This is not a book about Africa only or about America and Europe alone. Rather, it is a book about the human condition everywhere in the world. Every single reader will be able to relate to one or more illustrations and arguments contained in the book. For example, while the issue of tribalism is often rife in developing countries, the closely related issue of racism is often rife in the developed Western world. In tackling these issues, the book does so with honesty and critically insightful wit.

As noted above, a good many of chapters in this book have appeared as short articles in the media. However, I have made significant efforts to revise and update these articles, capturing now much of the feedback that has been received from many sections of the readership. The revised articles are

set alongside new material that has never been published before. And it is expected that a wide section of society will find the book a valuable read, irrespective of their level of intellectual sophistication or their race, gender, creed or ideological belief.

The analyses, arguments, interpretations and conclusions expressed in this book are entirely those of the author. They do not represent the views of any institution, person or body to which the author is affiliated.

Professor Kenneth K. Mwenda
PhD, LL.D, DSc(Econ).

Washington DC, USA.
Tuesday, March 1, 2016



CHAPTER**1**
**WHAT THEY DO NOT TEACH YOU
IN BUSINESS SCHOOL**


In Business School, they teach you many great things about how to manage and run a business. But they do not teach you how to get your dream job, how to grow a professional career, or how to get promoted at work. Neither do they teach you how to survive organizational politics and adverse corporate cultures at work. A spouse, for example, will sometimes not understand why her husband looks very tired and depressed when he gets home from work. She may not realize that it has to do with the politics at the office. Yes, organizational politics can be overwhelmingly de-motivating if not handled properly.

It is such issues that are hardly captured in much of the literature on Organizational Behaviour and Industrial Psychology. One of the reasons for this lacuna is that there are no straight jacket-answers to these issues. At the outset, I must stress that while I do not subscribe to the culture of corporate

CHAPTER

2


TO WEAR OR NOT TO WEAR
SECONDHAND UNDERWEAR


In a book titled, “Salaula: The World of Second Clothing and Zambia,” published in 2000 by the University of Chicago Press, Prof. Karen T. Hansen observes that secondhand clothing business is wildly popular in many African economies, to the point of threatening the indigenous textile industry. Hansen advances a view that wearing secondhand clothes is about much more than imitating Western styles, and that it is about taking a garment and altering it to something entirely local, something that adheres to current cultural norms of etiquette. By unraveling how these garments become entangled in the economic, political, and cultural processes of contemporary Zambia, Hansen also raises provocative questions about environmentalism, charity, recycling, and thrift.

In this paper, we stand back from Hansen’s thesis to focuss instead on a particular type of secondhand clothing; that is, used underwear! Can it be argued

CHAPTER

3

**LEGALIZING MARIJUANA:
TO SMOKE OR NOT TO SMOKE?**

In a *Huffington Post* article titled, “Marijuana legalization: More 100 College Professors Express Support for Colorado’s Legal Plot Measure,” published Online on August 28, 2012, Matt Fermer reports that: “The more than 100 professors represent many different fields of study from law, health, economics and criminal justice from various universities around the nation including some professors from CSU as well as former colleagues of President Obama’s during his time as a professor at University of Chicago Law School.”

Fermer continues, as he cites a professorial source: “...‘The time has come to take a more rational approach to marijuana policy,’ Thomas Ginsburg,

CHAPTER

4


ALCOHOL AND CIGARETTES:
TO BAN OR NOT TO BAN?


In the early 2000s, I travelled to Libya at the invitation of the Libyan Government. During my stay there, I was privileged to have a couple of one-on-one meetings with the then Libyan President, the late Col. Muammar Ghaddafi. I was intrigued and humbled by his kind and patient demeanour, as I presented my technical paper before him.

I was approached and invited directly by the Libyan authorities after they had read some of my research work on stock markets in Africa. In Libya, they looked after me very well, especially that I was designated officially as a Guest of the Head of State. It was at a time when the African Union was being born. I was provided with a presidential jet to fly from Tripoli to Sirte where the African Heads of State were meeting.

On my way back from Sirte to Tripoli, I met a number of African Heads of State at the airport.

CHAPTER

5

CONTEXTUALISING POVERTY
OF THE MIND

Human mortality has no permanent state of existence, yet some people carry on with their lives as if they will live forever. Many years ago, I attended mass at a local Catholic Church in Lusaka, Zambia, and the presiding priest posited as follows: “Many people are obsessed with accumulating money and material things. They never cease to amaze us. If you ask them, ‘What next after all this?’, they will tell you that they need to make more money or to acquire many more other things. OK, let us assume that they make all that money, or that they acquire all those other things, then what? Will that make them happy? Or, will they continue with their greed to keep adding more and more to what they already have? When does it ever get enough?”

One anonymous commentator observes: “You see, in Zambia, it’s what you have, or what people think you have, that will draw them to you. The situation is worse with us women,...we get ourselves into a lot of

CHAPTER

6

**PLIGHT OF AN INSECURE BLACK
MAN IN A RACIALLY DIVIDED
WORLD**

We live in a racially divided world, although sometimes the social class stratifications in society, based on different people's income and wealth, tend to mask these divisions. But the divisions are there. How, then, does the insecure black man and/or black woman respond to the issue of race? The topic of race, like that of tribalism and other ethnic prejudices, is a very sensitive one. But, then, we cannot shy away from reality, even though we are mindful not to push stereotypes. No doubt, to every general rule there is an exception. And we must keep that in mind. Appreciating exceptions here can help us to avoid making unfounded generalisations as well as to avoid overreacting to arguments. For example, the use of the word 'negro' is generally frowned upon in many parts of the world as a derogatory and offensive term. However, in this paper, wherever the word is used, we do not intend

CHAPTER

7

WORKING FOR A LOUSY BOSS

WHEN some employees quit work, many leave not because they do not like the company. By contrast, they leave because of bad bosses. Indeed, it is the bad decisions of some bosses that force many employees to leave work or to quit the company. Often times, lousy bosses help in festering a lousy work-culture and bad work ethics in the workplace. As Greg Smith argues in an Online op-ed for the *New York Times*, dated March 14, 2012, and titled, ‘Why I Am Leaving Goldman Sachs’:

“TODAY is my last day at Goldman Sachs. After almost 12 years at the firm — first as a summer intern while at Stanford, then in New York for 10 years, and now in London — I believe I have worked here long enough to understand the trajectory of its culture, its people and its identity. And I can honestly say that the environment now is as toxic and destructive as I have ever seen it. To put the problem in the simplest terms, the interests of the client continue to be sidelined in the way the firm

CHAPTER

85



**LIMITATIONS OF THE ‘LAWYER-
CLIENT PRIVILEGE’ POSITION
AND THAT OF CLIENT
CONFIDENTIALITY BY BANKS AND
ACCOUNTANTS IN THE FIGHT
AGAINST MONEY LAUNDERING**



What happens in a case of suspected money laundering where a gatekeeper such as an accountant or lawyer is implicated? Does the Prohibition and Prevention of Money Laundering Act 2001 or the Bank of Zambia Anti-Money Laundering Directives 2004 say anything? Both the Prohibition and Prevention of Money Laundering Act 2001 and the Bank of Zambia Anti-Money Laundering Directives 2004 Act are largely silent on the need to regulate such gatekeepers against money laundering. Yet, time and again, we have seen that accountants do serve as financial and investment advisers to many corporations and individuals. Also, accountants and lawyers do provide trusts and company services to many business houses, and

CHAPTER

86



**STRENGTHENING THE
INSTITUTION OF MARRIAGE
THROUGH THE INTRODUCTION
OF ALIENATION OF AFFECTION
LAWS**



Having been away from Zambia for more than twenty (20) years, albeit my intermittent yearly visits to the country, I have often found myself at a loss when it comes to some Zambian lingua articulated amongst the Zambian socialites whenever I visit my beloved country. Although I have spent a good half of my life in Europe and the USA, I do miss my native country, Zambia, very much. A phrase or term that I heard recently in Zambia was that of “MBAs”, meaning a lady or man that is “Married but available.” Indeed, our world is either changing fast or it is getting crazier by the day. When I left Zambia soon after President Kaunda lost elections to President Chiluba, I would not have imagined that there would one day be phrases such as “Married But Available” or “MBAs”

PART - B

CHAPTER

87

UNEDITED EXTRACTS FROM
THE MEDIA

Hitherto, we have explored and examined critically a number of contemporary issues in the *Law and Social Sciences* discourse through the prism of public intellectualism. We have endeavoured to break down complex ideas and concepts into easily discernible but critically insightful analyses. In doing so, we have not compromised on the quality of the analyses, but have actually enhanced the value of the arguments with subtle and useful humour to help the average guy on the street appreciate the ideas coming from the ivory tower of academia. That said, we are mindful that some people can be too sensitive and, thus, may not take too kindly to some views and analyses expressed in this book. But, as Kanye West would say, “They say I talk with so much emphasis... Ohhh, they’re so sensitive!”

Before we turn to the concluding sections of this book, let me add that we are living in strange times. You may be wondering what I mean by this. You



Back in the days, the old folks would say, “Money talks!!!” But today, money actually shouts!!! We are living in strange times.

A headline of a leading Zambian newspaper, the *Post*, on Friday, January 24, 2014, read: “Police want law to criminalise sensual or suggestive dancing”. I am not, however, qualified to state whether or not the police were moving in the right direction. Suffice it to say, we are living in strange times. The *Post* newspaper article continued: “POLICE are waiting and crying for the day Parliament will enact a law to criminalise sensual or suggestive dancing, says

PART - C

CHAPTER

88



**POLITICAL ECONOMIC,
PHILOSOPHICAL AND SOCIO-
LEGAL INQUIRY THROUGH
METAPHORS AND MUSES**



“When the history books are written, and those in the life after us were to ask for the top ten (10) legal minds to have come out of Africa, there should be no question or contest whatsoever. The works should speak for themselves.”



“If you must learn, then learn from the best. And leave the worst to the worst.”



“There are some law schools where you simply go to learn the law, and others were you also learn to think critically about the law. Learning the law per se and thinking critically about the law are two

★ ABOUT THE AUTHOR ★



Prof. Kenneth K. Mwenda
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A distinguished thought leader and public intellectual, **Prof. Kenneth K. Mwenda** read law at Oxford as a Rhodes Scholar. He has also taught

- *Kenneth K. Mwenda*

law at top universities in the United States of America (US), the United Kingdom (UK) and South Africa. A Fellow of the British Royal Society of Arts (FRSA), Prof Mwenda is a recipient of several international academic awards, including a competitive fellowship from Yale University Law School in the US. Most recently, he gave the 2015 Distinguished Lecture at the University of Nairobi Law School in Kenya, and was appointed as Extraordinary Professor of Law in the Faculty of Law at the University of Pretoria, South Africa. He has also held previously the position of Extraordinary Professor of Law at the Centre for Human Rights, the University of Pretoria. Based in Washington DC, Prof. Mwenda is the Program Manager and Executive Head of the World Bank's Voice Secondment Program, a major capacity-building initiative of the Board of Executive Directors of the World Bank.

Prof. Mwenda has had a stellar academic career as well as an outstanding professional life as a leading international development practitioner, travelling to more than thirty countries worldwide. His is a fine blend of theory and practice, with many years of international experience in both academia and international development. Prof Mwenda has maintained a parallel academic and professional life, publishing academic books and other scholarly work in top journals and law reviews as well as holding various senior academic appointments at leading universities internationally, while serving with the World Bank. A member of the editorial boards of several scholarly journals, including the *Journal of*

International Banking Regulation and the *Africa Finance Journal*, he is also an occasional editor of the *Journal of African Business*, and was until recently the joint Editor-in-Chief of the World Bank's *Law, Justice and Development Book Series*.

With sustained thought leadership in academia, in addition to valuable experience in international development practice, Prof Mwenda is a widely recognized authority in his field of expertise as well as a highly sought-after speaker that has been interviewed and quoted by numerous print and broadcast media, including the *New York Times* (US), the *Voice of America* (VOA, US), *CCTV* (US), the *Times* (UK), the *British Broadcasting Corporation* (BBC, UK), and *Sky TV* (UK). In 2008, after a rigorous and thorough examination of Prof Mwenda's selected scholarly books and peer-refereed journal articles by a distinguished panel of top international legal scholars, Prof Mwenda was admitted by Rhodes University, a leading university in South Africa, to the rarely awarded Higher Doctorate degree of Doctor of Laws (LLD). It was the first time ever in the rich academic history of that university that such an award was being conferred in the Faculty of Law! Six years later, in 2014, after another rigorous and thorough examination of Prof Mwenda's other substantial portfolio of scholarly books and peer-refereed journal articles by a distinguished panel of eminent international scholars, Prof Mwenda was admitted by the University of Hull, a leading British university, to the rarely awarded Higher Doctorate degree of Doctor of Science in Economics (DSc(Econ)). It is

important to stress that in the entire English speaking world, Prof. Mwenda is arguably the only senior legal scholar to have earned two Higher Doctorate degrees in two different disciplines! Higher Doctorates, it should be emphasized, are never the immediate step after a PhD. Rather, they are reserved for those internationally recognized senior scholars that have made exceedingly significant contributions to a science or body of knowledge through exceptionally insightful and distinctive scholarly publications, earning them recognition as international authorities in the field of research that forms the basis of the degree.

Further, Prof. Mwenda holds a PhD in Law from a leading British university, the University of Warwick. At the World Bank, he has served additionally as Senior Legal Counsel in the Legal Vice-Presidency as well as Senior Legal Counsel in the World Bank's Integrity Vice-Presidency. All in all, Prof. Mwenda has written more than twenty-five (25) scholarly books and over ninety (90) articles in leading law reviews and academic journals. Prior to joining the World Bank, he served as an Assistant Professor of Law at the Faculty of Law, the University of Warwick, in the UK. Prof Mwenda has also taught as Adjunct Professor of Law at American University Washington College of Law (WCL) in Washington DC. His scholarly work is cited frequently as authority not only in academia, but also by the courts of law, most recently by the Supreme Court for the Republic of Zambia in the case of *Ventriglia and Ventriglia v. Eastern and Southern Africa Trade and Development Bank and*

Robert Simeza SCZ NO. 13 OF 2010 (Appeal No. 11/2009). His other scholarly work has been seminal in some of the research work and country assessments carried out by the International Monetary Fund (IMF), the World Bank, the Asian Development Bank (ADB) and the Inter-American Development Bank (IADB).

In addition, Prof. Mwenda holds, *inter alia*, the prestigious BCL degree from the University of Oxford (UK) and an MBA degree from the University of Hull (UK), with subsequent executive leadership training from Cornell and Georgetown Universities, respectively. His first professional law degree, a Bachelor of Laws (LLB), is from the University of Zambia where he graduated in 1990 in the top one percent (1%) of his class. He was admitted to the Bar in Zambia in 1991, as the best Bar admission student. Prof. Mwenda is a US Certified Anti-Money Laundering Specialist (CAMS) as well as a Fellow of the British International Compliance Association (FICA). He has served as Visiting Full Professor of Law at a number of leading universities in Europe and South Africa, including the University of Miskolc in Hungary, the University of Cape Town (UCT), the University of Western Cape (UWC) and the University of Zambia. He has also given many lead lectures and presentations at major US universities, including George Washington University, the University of Maryland, Duke University, Temple University, and the University of South Florida.

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