

# MUTHOGA GATURU & COMPANY ADVOCATES

## FIRM PROFILE

Prepared by:

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## **PART I**

### **PROFILE OF MUTHOGA GATURU & COMPANY ADVOCATES (MG&CO.)**

Muthoga Gaturu & Co. [MG&Co.] was established on 30<sup>th</sup> June 1975 by the two founding partners, Judge Lee G. Muthoga SC and Mr. Evans T. Gaturu. Currently, the firm a staff compliment of 45 person comprising of Six (6) Partners, Five (5) Associates, Support Staff and management staff. The firm's operations are based at its head office in Nairobi and its branch office in Nyeri Town.

MG&Co. has over the years established itself as a premier indigenous law firm with key competencies in the various areas of legal practice. The firm endeavours to provide solutions relevant and specific to the needs of the commercial environment subsisting in the economy. To achieve this goal the firm has striven to build in-house capacity in its resource persons, and when necessary has adopted a policy of partnering with like-minded entities, natural and legal. In particular, the firm has maintained very close associations with law firms within the COMESA which enables it to handle a client matter whenever it arises within the region.

The firm has achieved its present status in the market through the professionalism and vision of its leadership under the Founding Partner, Judge Lee G. Muthoga SC, currently a Judge with the United Nations International Criminal Tribunal for Rwanda (UNICTR), and its current Managing Partner, Mr. John M. Mutungi.

### **LEGAL SERVICES OFFERED BY MG&CO.**

MG&Co. prides itself in delivering quality legal services to its clientele worldwide. To achieve this, the firm focused its operations under two departments headed by Partners: Commercial and Conveyancing Department headed by John Mutungi, Managing Partner; and Litigation Services, headed by Patrick J. Mwiti, Senior Partner.

The firm's practice is diverse and focuses on the following practice areas:

- Civil and Contract Litigation
- Arbitration and Alternative Dispute Resolution (ADR)
- Labour Practice and Employment Law
- Maritime Law
- Privatization Law
- Mergers, Acquisitions and Joint Ventures
- Procurement Law
- Environmental Law and Regulations
- Bank Securities
- Conveyances and Property Law
- Bankruptcy and Insolvency Law
- Company Law
- Electoral Law



- Energy Law
- Patent and Trade Marks Law
- Family Law, Wills and Administration of Estates
- Insurance Law
- Intellectual Property Law
- Finance and Investments Law
- Technology Licensing and Franchising
- Preventive Law
- International Criminal Law
- International Commercial Contracts
- Building and Engineering Contracts
- Immigration Law
- Debt Collection

To enhance effective delivery of quality legal services, the firm has focused its service delivery under various practice areas, each under the leadership of a Partner.

### **THE COMMERCIAL AND CORPORATE PRACTICE**

MG&Co. has a long experience in its representation of major public and private companies and institutions, national, regional and international, on all aspects of commercial and corporate transactions, including mergers and acquisition, joint ventures, management buy-outs, commercial agreements, public-private partnerships etc. as well as all aspects of corporate restructuring and privatizations. The Firm has the competence to carry out extensive legal due diligence in all manner of commercial transactions.

### **THE BANKING AND FINANCE PRACTICE**

MG&Co. has extensive experience in all aspects of commercial banking and lending transactions. The department supports borrowers, lenders, issuers, lead managers and trustees on debt, syndicated lending, and trade finance. The practice also includes advisory services on debt management and recoveries. For instance, the firm consulted for Barclays Bank Kenya Limited in the creation of its Documentation and Securities Centre (DSC) charged with the responsibility of managing and controlling the Bank's lending and securitization portfolio. The Firm has acted for Barclays Bank of Kenya Limited since 1980 through the Bank's branch network before the centralization of the Bank's provision of legal services at the Head Office in 1995/96 when the Bank's Debt Recovery Unit (DRU) and DSC were established by the Bank.

### **THE INTELLECTUAL AND REAL PROPERTY PRACTICE**

MG&Co. is actively involved in handling applications for registration of trademarks and patents, licensing and franchising, trademark infringement, copyright and design right, confidential information disputes and protection for major clients such as Kenya Medical Research Institute (KEMRI).



The Firm has extensive experience in provision of legal and advisory services to commercial and private clients in a wide variety of transactions involving real property. The services include creation, perfection and application for registration of all types of conveyances and securities, preparation of title opinions and conducting title searches.

### **THE LITIGATION PRACTICE**

MG&Co. handles a wide variety of domestic and international commercial disputes relating to construction, defamation, employment, financial and corporate matters, insolvency, maritime law, professional negligence and malpractice, insurance, and other areas of law. Our litigation department has extensive experience in a wide variety of business and commercial litigation including creditors' rights, banking and financial claims, construction, communications, general business, insurance, professional liability defence and regulatory compliance.

### **ARBITRATION AND ALTERNATIVE DISPUTES RESOLUTION (ADR) PRACTICE**

MG&Co. has a vibrant practice in Arbitration and ADR and the majority of the firm's lawyers are members of the Chartered Institute of Arbitrators – Kenya. Three of the firm's senior partners are qualified Arbitrators with wide experience in adjudicating on disputes in various areas. The firm's Advocates have represented clients in arbitral proceedings relating to disputes in varied fields such as commercial, financial, construction, etc.

## **PART II OUR SERVICES**

### **CONVEYANCING AND COMMERCIAL LAW PRACTICE**

#### **CONVEYANCING PRACTICE**

Our Conveyancing and Corporate practice has spanned over 30 years and we have provided legal services to local and international commercial, trading, manufacturing, educational, technological, insurance, banking and financial institutions as well as government departments. Our services traverse a wide range of commercial and legal matters such as property leases, sale and transfer of property, sale agreements and contracts, hypothecation of immoveable property, transaction evaluation and documentation, negotiating and restructuring financing facilities, securitization, project management, property syndication, joint ventures and acquisitions and evaluating, training and developing compliance manuals and best practice codes for service providers.

#### **CONVEYANCING AND PROPERTY LAW PRACTICE**

MG&Co.'s property and Conveyancing services are diverse and comprehensive. Our services in this practice area include:



- Hypothecation of immovable property
- Advice on and drafting of commercial and residential leases
- Property sale and acquisition agreements
- Property sub-divisions and consolidations
- Property syndications
- Management of developed properties
- Advice on and drafting of building and construction contracts
- Administration and registration of mortgage securities in respect of corporate housing schemes
- Advice on financial structuring of property transactions
- Advice on and implementation of deceased and insolvent estate property transactions
- Registration of transfer of residential, sectional title and commercial properties
- Trusts, including formation and administration of trusts, and drafting of trust deeds
- Planning and Project management

### **COMMERCIAL CONVEYANCING**

Our practice in commercial Conveyancing envisages dealings in commercial property which includes rendering legal advisory services to planners and developers Of Large Estates, Malls and Shopping Complexes developing, building, licensing, leasing and transfer of commercial property. Under this arm of our Conveyancing practice, we have been involved in large scale housing development projects. For instance we acted as legal counsel to the Housing Finance of Kenya Limited (the financiers), and BAT Kenya Limited (the developers), in the Imara Daima Housing Development Project involving the development of 950 housing units in Nairobi.

### **FINANCE**

We act for major banks, insurance companies and other commercial institutions in handling of mortgages, legal charges and other secured lending. We advice on, prepare and register mortgage agreements as well provide due diligence services to financial institutions regarding secured lending. We also handle staff mortgage schemes for corporate clients such as British American Tobacco and Madison Insurance Company Limited.

### **LANDLORD AND TENANT**

Our practice here covers advice on, preparation and registration of leases, tenancy agreements for residential and commercial premises, surrenders, assignments and rent reviews as well as related aspects touching on any of these.



## **BUSINESS TRANSFERS**

We have significant experience in handling business acquisitions and transfers together with related transactions. We have expertise on joint ventures, assignment and innovation of contracts, transfer and assignment of shares, advice on development options, sale agreements, consultancy contracts and sale and leaseback arrangements. Our notable experience under this head is our role as legal advisors in the global acquisition of the Diversey Lever business in Kenya in 2002.

## **CORPORATE AND COMMERCIAL LAW PRACTICE**

MG&Co. offer legal advisory services in a broad range of corporate and commercial transactions where day-to-day operating issues are a principal concern. We are equipped to expeditiously handle basic corporate housekeeping matters, such as corporate organization, shares offers and annual stockholder solicitations and stockholder and director meetings, for either publicly held or private corporations. Our Firm has structured and negotiated substantial domestic and transnational agreements, including purchases and sales of goods, secured and unsecured financings, equipment finance and major supply contracts, licensing and distribution agreements, joint venture and technology sharing agreements.

We have extensive experience in secured financing bank credit agreements particularly in secured lending. Our firm predominantly represents lenders and creditors in renegotiations and work-outs of their bank agreements.

We have assisted foreign parties in "cross-border" transactions such as acquisitions and business partnership with a domestic entity. Our Firm's experience in insolvency matters and practice, enable us to provide substantial insight into protecting the economic interests of our clients under various commercial laws.

We have experience in the negotiation of employment agreements, advising on Collective Bargaining Agreements (CBA) and structuring of compensation incentives and bonus plans on behalf of companies and executives. We have assisted partnerships and corporations in various aspects of commercial law transactions including financing, joint venture, agency, distribution and licensing agreements.

Our corporate and commercial experience covers listed and unlisted domestic and international corporations, banks and financial institutions, light and heavy industrial firms, state owned enterprises and government departments where we have advised on the following transactions:

- Asset based finance



- Commercial contracts such as Lease agreements, License agreements, Service and Management agreements
- Corporate finance
- Mergers and acquisitions
- Contested and uncontested dispositions of controlling shareholdings in listed corporations
- Schemes of arrangement, as well as the sale and purchase of private corporations and businesses
- Public offers
- Tender submissions
- Raising of capital
- Corporate restructuring and rationalizations
- Joint Ventures
- Sale and lease backs
- Due diligence exercises
- Privatization and restructuring of state assets
- Public and private partnerships
- Commercial Property

### **OVERVIEW OF RELEVANT CONVEYANCING AND COMMERCIAL LAW EXPERIENCE**

We have undertaken major projects in relation to restructuring, liquidating and/or management of non-performing financial institutions such as Thabiti Finance Limited, Meridian Biao Bank Limited, Continental Bank Limited, Continental Credit Finance Limited, Jimba Credit Corporation Limited and Nationwide Finance Limited.

We have provided legal consultancy services to the Central Bank of Kenya (CBK) in the restructuring of Meridian Biao Bank Limited, and to the CBK Deposit Protection Fund in the subsequent liquidation of the Bank. In addition we consulted for the CBK Deposit Protection Fund on debt recoveries and bank liquidations. We consulted on the creation and implementation of the Barclays Bank of Kenya Limited Documentation and Securities Unit, now the Documentation and Securities Centre, their Debt Recovery Unit as well as the Kenya Commercial Bank Debt Recovery Unit. The firm's Founder Partner, Judge Muthoga SC, consulted for the Central Bank of Kenya on the establishment of a Debt Factoring Trust to address the non-performing loan portfolio in the Banking and financial sector in Kenya.

Between the years 1998 to 2000, we were engaged in the restructuring of Mzata Investments Limited, a multi-billion shillings Japanese FDI undertaking in Kenya, which owns and operates, amongst its various investments, the world renowned members-only Mzata Safari Club in the Maasai Mara game reserve. Among the many complex renegotiations this entailed was the renegotiation of crucial Riparian Agreements with the relevant diverse parties thereto.



From 1994 to-date, we have provided and continue to provide general legal advisory services to the Eastern and Southern African Trade and Development Bank (PTA Bank) in its operations, and have acted and continue to act on behalf of the PTA Bank in litigation and arbitration proceedings, both national and international.

The Firm has conducted comprehensive due diligence work for the Kenya Airports Authority. This consultancy ran from November 2000 to August 2002 when the Final Report was presented and comprised a thorough and comprehensive legal auditing of all the Authority's activities, an assessment of the attendant risks therein and recommended ways of managing the legal risks arising from the operation of an entity charged with the statutory duty of managing the 200-plus national airports and aerodromes, and having an operational presence throughout the country. This exercise included an exhaustive review of over 20 pieces of legislation comprising the legal regime governing the operations of the Kenya Airports Authority and advising on the effect and possible difficulties arising from the effects of these laws. The report compiled included recommendations on necessary statutory and regulatory reform for the better functioning of the Authority, and discharge of its obligations.

In 2002, we were the Kenyan Legal advisers of Project Sweep – the global acquisition of the Diversey Lever business. This entailed the sale of Diversey Lever business requiring a myriad or multiplicity of transactions by way of Mergers, Acquisitions, Share sales, Asset purchases and/or company reorganizations in over sixty (60) countries across the globe. Due to conflict of laws, the primary Purchase Agreement was entered into in USA by and among Johnson Professional Holdings Inc. (JPH), S.C. Johnson Commercial Markets, Inc. (CMI) (together, “the Buyers”) and Conopco, Inc. (“the seller”), the seller being an indirect subsidiary of Unilever. It was then the responsibility of the legal advisers in each country to interpret and implement the primary Purchase Agreement to suit and comply with the laws and regulations of the relevant country. In Kenya, the primary transaction involved the transfer of shares by Unilever Overseas Holdings B.V. (a subsidiary of the seller) and Marga B.V. (a subsidiary of the seller) in the target company, Diversey Lever East Africa Ltd. (DEAL). To achieve this goal the buyer (primarily CMI) set up in Kenya a local acquisition vehicle named Johnson Diversey Kenya Ltd. (JDKL). As JDKL had not traded and therefore did not have capital, it borrowed funds from Johnson Diversey Cayman Inc. to enable it finance the transaction.

In 2003 - 2004, we provided legal consultancy services on corporate restructuring and management contracts to Hotels & Lodges Tanzania Limited after its US\$ 28 million acquisition of four world class hotels and lodges, i.e. Lake Manyara Hotel, Ngorongoro Wildlife Lodge, Seronera Wildlife Lodge and Lobo Wildlife Lodge, upon their divestiture by the Government of the Republic of Tanzania through the government-owned Tanzania Hotels Investments Limited. The consultancy included advising on all legal and transactional aspects of the restructuring of the hotels and lodges upon acquisition, and the negotiation and completion of a Management Contract with Three Cities Group, South Africa on behalf of Hotels and Lodges Tanzania Limited. In 2004, we further provided legal consultancy



services to Hotels and Lodges Tanzania Limited during its acquisition and re-development of the Zanzibar Safari Club. The consultancy included advising on the legal and transactional aspects the acquisition and re-development of Zanzibar Safari Club by Hotels and Lodges Tanzania Limited, and the negotiation of a Management Contract with Three Cities Group, South Africa.

In April 2004, we provided legal consultancy services to Habib Bank Dubai - United Arab Emirates, on its recovery options under, and enforceability of, two corporate guarantees of US\$ 3.5m and US\$ 1.927m given by two Kenyan companies to Habib Bank Dubai, United Arab Emirates. The consultancy involved conducting a due diligence on two Kenyan EPZ companies, review of all the securities in the transaction, advising on the applicable laws and recommending strategies on exercising the Bank's recovery options.

In 2004, we consulted for Barclays Bank Kenya Limited on a limited legal due diligence of a portion of the Bank's securities portfolio, which included a comprehensive review of the Bank's securities documentation for its corporate lending portfolio, auditing the Bank's contracts and securities, reviewing validity of titles held, preparation and submission of due diligence reports, and recommending appropriate remedial action where legal shortcomings were identified.

In 2005, and in association with Mkono & Co. advocates of Tanzania, MG&Co. provided legal advisory services in the corporate restructuring of Telkom Kenya Limited, including carrying out a comprehensive review of the Memorandum and Articles of Association, corporate status compliance issues, the legislative, regulatory and sector policy framework, and a comprehensive due diligence on material contracts, agreements, ownership and title to property, existing and potential litigation and disputes, intellectual property, employee and labour issues, pension funds and retirement benefits issues, health, safety and environment issues, etc. As part of the ToR for the provision of the legal advisory services, MG&Co. also advised and recommended on the appropriate vehicle(s) for GoK to divest its shareholding in Telkom Kenya Limited after the successful completion of the on-going corporate restructuring.

## **CIVIL LITIGATION EXPERIENCE**

Over the last 30 years, MG&Co. has acquired unrivalled expertise and experience in virtually the entire spectrum of all social, commercial and industrial activities. The strength of the firm lies with the skills, competencies and experience of its personnel in its various areas of practice.

## **LITIGATION PRACTICE**

MG&Co.'s Litigation practice encompasses corporate clientele in diverse sectors within the local economy as well as international organisations and individual clients. MG&Co. has become renowned for its provision of quality legal dispute



resolution services to local and international commercial, trading, manufacturing, educational, technological, insurance, banking and financial institutions in diverse practical areas which include commercial contracts disputes, partnership disputes, sale of goods, personal injury claims, workmen's compensation, patents and passing-off of trademarks, professional malpractice, public and product liability, liquidation and insolvency, commercial property disputes and related property disputes.

Our team enjoys an enviable reputation as litigators and have extensive litigation experience. They are equally adept at working with clients at the early stages of commercial relationships or disputes to prevent litigation and whenever appropriate, MG&Co. offers to guide clients to alternative dispute resolution methods, an approach to which we are wholeheartedly committed. Further to this, the litigation team is proactive in conducting and resolving disputes in the best interests of its clients and places much emphasis on the need to assist clients efficiently and on the most commercially expedient basis possible.

The team has a wealth of experience in managing complex, document-intensive, multi-party and multijurisdictional disputes. Our lawyers are assisted by experienced paralegals/law clerks and a solid research team. Clients benefit from substantial savings due to our use of litigation-support computer applications to facilitate case management of large briefs. A customized in-house data bank permits rapid retrieval of research, legal opinions, draft proceedings and contracts to ensure that mandates are carried out in the most efficient manner for the benefit of our clients.

### **OUR APPROACH TO LITIGATION PRACTICE**

Our general litigation practice touches on general liability lawsuits which cover a wide variety of matters ranging from motor insurance to commercial premises disputes, landlord and tenant disputes and general torts. Our practice in this respect involves defence in civil litigation as well as commercial, insurance and administrative litigation. All members of the litigation team are predominantly involved in general litigation. Our major clientele in general litigation practice include numerous major insurance companies where we are retained to defend various claims arising and touching on the policies of insurance.

The MG&Co. specialized litigation practice concentrates on developed and identified competencies on particular legal issues and practice that are not handled under general litigation. The capacities to handle matters under these categories are centred on specific partners who handle particular specialised practice areas. These practice areas invariably include election law, commissions of inquiry and parliamentary tribunals, import/export, maritime and admiralty law, constitutional and administrative law, judicial review, complex commercial contracts, passing-off of trademarks, libel and defamation, , environmental law, labour law, professional malpractice, arbitration and alternative dispute resolution.



## AREAS OF PRACTICE

The breadth of our experience is matched by a substantive depth of knowledge in numerous specialized areas of law, including bankruptcy, safety and environment, criminal investigations, election law, employment, government contracts, health care, insurance, communications, information technology and intellectual property. The team is well placed to offer clients outstanding advice, whether strategic or general, coupled with professional and efficient legal service in various dispute resolution fora including the courts, arbitration, tribunals or any alternative dispute resolution forum.

Our specialized litigation expertise, in tandem with our innovative and creative approaches to complicated legal issues, has resulted in a sustained client base to which MG&Co. provides litigation and dispute resolution services in the following areas:

- Administrative law and regulatory matters
- Advocacy
- Taxation of Advocate-Client Costs
- Arbitration - domestic and international commercial
- Banking and financial products
- Bankruptcy, insolvency and restructuring
- Civil law and common law
- Class actions
- Commissions of inquiry and Tribunals
- Constitutional law
- Construction and Development disputes
- Contract disputes
- Corporate and commercial
- Employment contracts
- Energy Law
- Patent & Trade Marks Law
- Advise on environmental law regulations and due diligence
- Injunctions and other exceptional remedies
- Insurance and professional liability
- Intellectual property litigation
- Judicial and administrative review
- Libel and defamation
- Medical malpractice and personal and bodily injury claims
- Privacy and access to information
- Land transactions
- Realization on secured assets
- Seizures before and after judgment
- Shareholders' disputes and oppression remedies



## OVERVIEW OF RELEVANT CIVIL LITIGATION EXPERIENCE

### GENERAL TORTS

MG&Co. has earned a reputation for excellence in the handling of tort cases. Our expertise encompasses the entire spectrum of liability issues, from negligence to intentional torts to strict liability in diverse factual contexts. We emphasize the defense of claims, with selective representation of injured parties. Our breadth of experience in the area of tort law enables us to effectively assess our client's potential exposure. We then devise timely, cost-sensitive strategies for achieving optimal results, and evaluate opportunities for resolving each case expeditiously, whether through out-of-court settlement, alternative dispute resolution, or trial. Among the numerous types of tort matters we handle are:

- Damage to personal and real property, including injury resulting from vehicular accidents, construction defect and nuisance.
- Personal injury claims involving motor vehicle accidents, bodily injury based on negligence and intentional torts such as assault, battery, false imprisonment, fraud, and damage to reputation and libel. We represent a wide range of businesses and individuals, emphasizing defense of these matters.
- Occupiers' liability and vicarious liability to employees. Our clients include landowners, and contractors.
- Commercial torts including Commercial defamation, interference with contractual or economic relations, breach of fiduciary duty, fraud and misrepresentation, and other conduct or claims that affect the operation and success of a business.

### COMMERCIAL LITIGATION

We handle disputes arising out of commercial transactions, corporate and partnership agreements, joint ventures, shareholder agreements, winding up of companies and dissolution of partnerships. We have a wealth of experience handling disputes relating to sale of goods, supply and delivery contracts and maintenance contracts.

### EMPLOYMENT AND LABOUR

We represent corporate management in the full spectrum of employment issues. Our expertise covers the preparation of employment contracts and separation agreements, including provisions for, non-competition, and non-disclosure of trade secrets. We also advise on preparation of policies in all employment areas, including the application process, employee handbooks, investigation and due process, discipline and termination, and grievance procedures, workplace regulations as well as litigation avoidance and defence of actions based upon wrongful discipline or



termination, constructive discharge, and related torts. We have recently been involved in advising on avoidance of litigation and defence of actions based on discrimination claims including sexual harassment, in cases arising out of hiring, promotion, compensation, working conditions, discipline, and discharge. With regard to labour disputes, our experience in this area covers advice and negotiation to corporate management regarding Collective Bargaining Agreements as well as representation of management in tribunals and other dispute resolution fora.

### **ESTATE ADMINISTRATION, PROBATE, WILLS AND TRUSTS**

We have vast experience in family law and succession law. We undertake probate matters, administration of intestate estates as well as creation of trusts. Our litigation practice addresses issues of breach of fiduciary duties, petitions, asset management and accounting questions.

### **LANDLORD AND TENANT**

We represent our clients in disputes relating to residential and commercial tenancies touching on issues of rent, occupation, subletting, tenancy agreements and advising on statutory requirements relating to landlord-tenant relationships.

### **INSURANCE**

We represent insurers in defence of claims by insureds, negotiation and advice on mitigation of exposure on policy claims and settlements with claimants.

### **LAND LAW PROPERTY LAW**

Our litigation team addresses disputes relating to sale of land transactions, realisation of secured assets by banks and financial institutions, boundary and easements disputes and advise on development and regulatory issues relating to property.

### **TAXATION OF COSTS IN CIVIL ACTIONS**

In addition to our mainstream civil litigation practice, our litigation team has developed capacity and expertise in assisting our corporate and individual clients in the assessment of and in the negotiation of fair settlement of costs incurred as a result of legal services rendered to them in civil actions.

Our service package specialises in advocate-client taxation of costs in civil actions and is particularly tailored to meet the needs of corporate clients who have multiple firms of advocates in their legal services panel. The package presents a comprehensive mix of services targeted at identifying and quantifying potential risk and actual cost exposure as well as providing remedial and preventative controls that may be used in managing minimising such risk for corporate clients.



Our experience in this practice area has been broad and varied; we have represented and participated in the assessment of costs against corporate clients in various industries ranging from insurance, banking, automotive, public sector as well as private practice law firms.

### **PART III**

#### **PROFILES OF OUR PROFESSIONAL PERSONNEL**

##### **\*JUDGE LEE G. MUTHOGA SC.**

- \* Judge Muthoga is currently on a Sabbatical Leave, serving as a Judge with the United Nations at the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania. While serving as a judge, Judge Muthoga is retained by MG&Co. as its Chief Consultant.

##### **JOHN MURIUNGI MUTUNGI, MANAGING PARTNER**

John is a senior Partner and the current Managing Partner of MG&Co. and the head of the Commercial Law and Conveyancing Department. He was admitted to partnership in January 1986 and specialises in property transfers, securities documentation, cross border Mergers and Acquisitions, transnational transactions, corporate finance and international labour law. Additionally he undertakes litigation matters with a bias to commercial and contract law.

John is a Certified Public secretary and a member of the Institute of Certified Public Secretaries of Kenya (ICPSK) and also a member of the Chartered Institute of Arbitrators (MCI Arb).

He was the legal counsel for both Housing Finance Company Limited (the financiers), and BAT Kenya Limited (the developers), in the Imara Daima Housing Development Project involving the development of some 950 housing units in Nairobi.

He has been engaged in consultancies for the Central Bank of Kenya Deposit Protection Fund relating to the restructuring of Local Financial Institutions and also in syndicated international financing of Local Enterprises as the Local Counsel.

He has consulted for Barclays Bank Kenya Limited on its corporate securities review, including carrying out an overall analysis of the securities portfolio, due diligence and advising on the risk exposure/management of any risks.

He acts as the legal adviser to International Confederation of Free Trade Unions – African Region in all matters relating to employer's and worker's rights. He has served on the International Labour Organisation (ILO) Committee of Experts (2003) that debated and negotiated the amendment to Recommendation No. 150 of 1975 of the ILO on Human Resources Development; on the ILO Committee on



Human Resources and Development, as a workers' advisor delegate at the 91<sup>st</sup> ILO session conference, Geneva in 2003; on the ILO Committee on Migrant Workers; and on the working party of the Committee that drafted the final conclusions and recommendations adopted by the ILO 92<sup>nd</sup> Session Conference in Geneva, Switzerland in June 2004.

He was the Kenyan lead legal adviser in Project Sweep, the global business reorganisation of the DiverseyLever business. John was also the Deputy Team Leader of the Legal Advisory team in the corporate restructuring of Telkom Kenya Limited carried out between March 2005 and July 2005 in association with Mkono & Company Advocates of Tanzania. He was charged with the responsibility of supervision and coordination of the various work-streams, and also in charge of the legislative and regulatory review and comprehensive due diligence on the parastatal.

John led the legal advisory team in a consultancy for the financial restructuring of South Nyanza Sugar Company in preparation of privatization of the state owned sugar miller in 2006.

He was, and continues to be the Lead adviser to Yotam Communications E.A. Ltd. in matters of corporate structuring and setup, licence application procedure, Licence condition compliance, human resource policy, tax legislation compliance and general and overall legislative compliance.

Recently, he was engaged in the preparation and drafting of draft law for the prohibition and punishment of hate speech in Kenya on behalf of the Kenya national Commission for Human Rights as part of the Governance, Justice Law and Order Sector (GJLOS) Reform Programme of the GoK. The consultancy has yielded a draft hate speech bill that is pending introduction to Parliament for debate.

### **PATRICK MWITI, SENIOR PARTNER**

Patrick is a senior partner in the firm of Muthoga Gaturu & Co., he brings along vast experience in senior management, and in particular of quasi-governmental organizations. He joined the Kenya Wildlife Services (KWS) as their legal adviser at a time when the KWS was the governmental test-case in the setup, management, operation and organization of semi-autonomous ex-government institutions. He provided legal stewardship in the transition of KWS from a government department into a Parastatal body in charge of all its key management functions including human resource acquisition and deployment, capital mobilization, funds mobilization and allocation, strategic planning and asset management and utilization among other such key functions.

He provided legal guidance during a period when KWS was setting up its entire management structure, was dealing with human resource restructuring and asset and asset management transfer, gaining invaluable experience in numerous aspects of project formulation, oversight and implementation. In addition, he had the obligation of negotiating and vetting numerous international instruments that the



KWS was to become party to including funding agreements, concession agreements, treaties to which Kenya was to become signatory, as well as ensuring KWS' adherence to these covenants. Serving for a period in excess of nine years, he had the opportunity and occasion to superintend and oversee the workings of the many structures setup in the inception of this premier parastatal. His return to private practice brought him extensive exposure to civil, contract and commercial law and notably, he served under The Honourable Mr. Justice Lee G. Muthoga SC, the head of the Kenyan legal advisory team, during Project Sweep.

A holder of Masters Degree in Land and Environmental Laws, Patrick has extensive practical experience in procurement law and regulations, in particular as applicable to state owned and/or influenced statutory public corporations. During his tenure as the Legal Adviser to KWS, he was responsible for advising on and ensuring that all procurements were in full compliance with applicable procurement laws and regulations, and advising the organization on all procurement disputes.

He is a professional Arbitrator, and has specialized in Arbitration and Alternative Dispute Resolution (ADR), both as an arbitrator and as counsel representing parties in disputes. He is the firm's leading expert in Arbitration and ADR, and has extensive experience in national and international arbitrations.

#### **JAMES OKEYO, PARTNER**

Shortly upon admission to the Partnership on 1<sup>st</sup> January 2001, James was charged with the responsibility of restructuring the firm's branch office at Nyeri to give it a modern and corporate image in line with the firm's vision and mission. He was the Resident Partner at the Nyeri branch from April 2001 to 2004, during which period the branch experienced tremendous growth. He was in particular instrumental in setting up an Informational and Communication Technology (ICT) Department and institutionalizing benchmarked standards of service delivery at the branch level to improve the quality of legal services provided to our clients. He is currently with the firm's Litigation Department at the head office, but continues to oversee the operations of the branch level as a visiting Partner.

James is a senior partner of the Firm of Muthoga Gaturu & Co. and the head of the Litigation Department. He has extensive experience in case management, commercial and contract law litigation, securities and commercial instrument appraisal, trial methodology and planning, and carries with him significant experience in alternative dispute resolution practice. He is the firm's leading developer of Legal Opinions on an extensive range of commercial and contract issues developed in anticipation of, or in response to litigation action.

James was the lead legal adviser in the restructuring of Mpata Investments Limited, a multi-billion shillings Japanese FDI undertaking in Kenya, owning and operating the world renowned members-only Mpata Safari Club in the Maasai Mara game reserve. This entailed a thorough and comprehensive review of all its operations, and requisite reorganisation of key structures and the review and renegotiation of numerous environmental, management, supply and employment arrangements, and



notably the renegotiation of crucial Riparian Agreements with the relevant diverse parties thereto.

He was instrumental in founding and institutionalizing the firm's Professional Development Forum (PDF), the firm's in-house staff training vehicle, and was the PDF's first Convenor. He is presently the Partner in charge of the firm's ICT committee charged with developing our ICT department and competencies.

#### **DELLA MWIHAKI, PARTNER**

Della was admitted as a Partner in MG&Co. on 1<sup>st</sup> January 2001 after having served in the firm as a Legal assistant for 2 ½ years.

As a Partner with the firm, she is attached to the Litigation Department, and has specialized in civil litigation, insurance law, all aspects of commercial law litigation and professional negligence claims. She is currently a Legal Adviser to the Kenya Medical Practitioners and Dentists Board, charged with the responsibility of advising the Board generally on all legal as well as on disciplinary proceedings and litigation briefs.

Della chairs the Administration and Staff Welfare Sub-Committee of the Firm charged with Staff Training and Human Resources development to meet the challenges of the ever changing legal Practice scene.

In line with the firm's policy of providing innovative and practical legal solutions to meet our clients' needs, she is responsible for the firm's pre-litigation mediation and other alternative dispute resolution procedures within the litigation department, a mechanism designed to limit and manage our clients' exposure in litigious matters. She is currently the Partner in charge of the firm's Professional Development Forum (PDF), which is designed to ensure that the firm's staff benefit from continuous professional development.

#### **REMIGEO P. MUGAMBI, PARTNER**

Upon graduating from Moi University, Mr. Mugambi briefly worked with Kiogora Ariithi & Associates, Advocates of Meru and Muriungi & Company Advocates of Nairobi before Joining Muthoga Gaturu & Company Advocates in 2002 for formal pupillage. After admission to the bar on 20<sup>th</sup> May 2004, Mr. Mugambi was employed as a Junior Legal Assistant at the firm's Branch office at Nyeri, a position he held up to January 2006 when he was graded to Senior Legal Assistant. Besides being in charge of the Branch's administration, Mr. Mugambi has been in charge of non-litigious legal work as well active litigation in a wide variety of legal issues ranging from Criminal Law, Divorce & Family Law, Employment Law, Contract and Commercial Litigation, Succession and Land Law. He is also the serving Chairperson of the Nyeri Bar Association and the regional representative to the Council of the Mount Kenya Law Society. Mr. Mugambi was admitted to partnership in January 2009 and is at present the Partner in Charge of the firm's Nyeri Branch Office.



**CATHERINE MPUTHIA NKIROTE, SENIOR LEGAL ASSISTANT (ASSOCIATE)**

Catherine was admitted as an advocate of the High Court of Kenya on the 16<sup>th</sup> December 2004 and served as a Legal Assistant with the firm of Mboya Wangongu Advocates in their Commercial Department upto August 2005 when she joined MG&Co. as a Legal Assistant.

In January 2009, Catherine was promoted to a senior Legal assistant in the firm's Commercial and Conveyancing Department. She has gained extensive experience in commercial law matters including transfer of businesses and assets, joint ventures, incorporation of companies and all company law related issues, as well as legal matters relating to co-operative societies and non-governmental organizations.

Catherine's interest in Commercial and corporate Law was capped in July 2009 when she completed and graduated with Masters of Business administration (Strategic Management) from the Jomo Kenyatta University of Science & Technology (JKUAT).

Catherine is a registered Patent Agent and has beside registration of a number of Trade Marks on behalf of some of the Firm's listed clients, handle cases and/or disputes on Patent and Trade Marks.

**MARTIN MAINA WACHIRA, LEGAL ASSISTANT (ASSOCIATE)**

Martin was admitted to the bar on 16<sup>th</sup> October 2008. He is a legal assistant currently based in the firm's Nyeri branch office. His practice areas predominantly comprises of litigation on contract claims, personal injury claims, divorce & family law, bank debt recovery as well as judicial review. He has previously worked in the firms of Kamau Kuria & Kiraitu, Advocates and Mohammed & Kinyanjui & Co Advocates, in Nairobi where he was involved in a number of Corporate and Commercial Law based assignments. He has a developed know-how of Conveyancing, land law and corporate/business law.

**COLLINS OYOMBA, LEGAL ASSISTANT (ASSOCIATE)**

Collins is based at the head office in Nairobi. He has considerable experience in Commercial law litigation, insurance law and professional negligence claims among other areas of expertise stretching to registration of trademarks, incorporation of companies and all company law related issues.

**ANGELA J. KIPTOO, LEGAL ASSISTANT (ASSOCIATE)**

Angela is a legal assistant currently based in the Firm's Head office in Nairobi. Her practice areas include active litigation in claims concerning claims on common contracts claims, personal injury claims, bank debt recovery, commercial litigation and medical negligence matters.



**EVELYN MUCHOKI, LEGAL ASSISTANT (ASSOCIATE)**

Evelyn is a legal assistant currently based in the Nyeri branch office. Her practice areas include active litigation in claims concerning common contracts claims, personal injury claims, bank debt recovery, commercial litigation and medical negligence matters.

**CAROLINE NDUMIA, LEGAL ASSISTANT (ASSOCIATE)**

Carol is a legal assistant currently based in the Firm's Head office in Nairobi. Her practice areas include active litigation in claims concerning common contracts claims, personal injury claims, bank debt recovery, commercial litigation and medical negligence matters.

**DECLARATION**

I hereby confirm that the above information is correct and true to the best of my knowledge.

**DATED** this 30<sup>th</sup> June, 2010.



**JOHN MURIUNGI MUTUNGI**  
*(Managing Partner)*

