

THE Weekly Review

For The Thinking Person

ISSUE NO. 15 | December 11, 2022 FREE WITH SUNDAY NATION



De La Rue takes on KRA

British currency printer using diplomatic channels to have President William Ruto intervene in its favour in long-running Sh3.8 billion disputes with the taxman, even as it seeks more business contracts in Kenya

The Nation ePaper NOW Available on the PlayStore anywhere, anytime.

Follow the link to subscribe

➤ epaper.nation.africa.

Scan to
Download



Or download from Google playstore



 Nation

 Nation

 Nation Africa

For customer support Tel: 0790 111 111

Email: epaper@ke.nationmedia.com

NATION 
→ ePaper

letter from the editor

Inside

7 RETURN TO MASS ACTION?

While Azimio leader Raila Odinga defines his latest engagements as public consultative forums, many see a long-drawn-out political standoff in the offing.

8 A HASTY ABOUT-TURN:

Afraid that top Luhya leaders might push him to the periphery in western Kenya politics, organised labour leader eats humble pie and changes tune from "Ruto will never be President" to platitudes for the Kenya Kwanza boss.

11 A WILD GOOSE CHASE?

Former South African president Jacob Zuma presses on with private charges against a top state prosecutor and a journalist in what analysts see as an effort in futility.

**15 MUSK IN LEGAL MUCK:**

The purge at Twitter that affected 7,500 workers may boomerang on Elon Musk, who is facing a cavalcade of lawsuits over the terms of the massive terminations after the Tesla and SpaceX tycoon took over the social media giant.

IEBC jobs need not be career killers; we need some political hygiene

Working for the IEBC is not for the faint-hearted.

The moment you take up a job as a commissioner for the Independent Electoral and Boundaries Commission (IEBC), you start preparing for your exit.

In the past six years alone, 16 commissioners have been pushed out before the end of their terms.

Every election is followed by loud calls for resignation of the electoral body's commissioners, particularly by the losing side.

They have all left under clouds of accusations, tainting careers and professions built over decades.

The IEBC is, of course, as political an organisation as it gets.

It is the body that adjudicates political contests, in effect determining occupiers of the highest political offices in the land.

In a country such as Kenya, where politicians are viewed as demigods, it is no wonder that the stakes are highest when it comes to selecting IEBC commissioners.

Every politician is suspicious of the commissioners' political leanings, making theirs a truly impossible job.

The latest fallout at the commission in the wake of the August 9 elections was a most dramatic one, even overshadowing the 2018 spectacle, when four commissioners resigned in concert.

Three commissioners, including the chairman, were seen to openly lean on one side of the



Washington Gikunju

In a country where politicians are viewed as demigods, it is no wonder that the stakes are highest when it comes to selecting IEBC commissioners. Every politician is suspicious of the commissioners' political leanings, making theirs a truly impossible job. Politicians must show goodwill and adopt a give-and-take attitude on selection of commissioners.

political divide while four others were seen to favour the other.

The divisions played out in public, to the bemusement of an anxious nation that followed the presidential election petition at the Supreme Court.

In the end, even the apex court declined to pronounce itself on the question of the legal effect of the split among the commissioners on the outcome of an election.

It would appear that even the learned judges, without saying it expressly, viewed the matter as a political

question that could only be resolved through political and not judicial processes.

In his Thursday letter of resignation to President William Ruto, Commissioner Francis Wanderi accused chairman Wafula Chebukati of "high handedness" and "dictatorial mannerisms", and said his leadership was "devoid of principles of good corporate governance". The accusations mirror those raised by former IEBC Commissioners who resigned in 2018, claiming under Mr Chebukati's leadership "the commission boardroom has become a venue for peddling misinformation, grounds for brewing mistrust, and a space for scrambling for and chasing individual glory and credit".

And therein lies the crux of the matter. Suspicions among the commissioners run deep, mainly because they are each seen to represent different sides of the political divide. President Ruto's administration must learn from the past in the current efforts to amend the laws relating to selection of commissioners.

The proposed IEBC amendments must be bi-partisan, punctuated by wide consultations, both in Parliament and with civil society.

In the end, politicians must show goodwill and adopt a give-and-take attitude to come up with an amicable compromise on selection of commissioners.

wgikunju@ke.nationmedia.com

the telescope

■ Interviews to be conducted this week

Havi in Solicitor-General race

Former Law Society of Kenya boss Nelson Andayi Havi is among eight people who will face the Public Service Commission (PSC) for the position of Solicitor-General as the commission seeks to fill the position currently held by Kennedy Ogeto, who was appointed during retired President Uhuru Kenyatta's era. The interviews will be on Tuesday and Wednesday this week, after which the name of the successful applicant will be submitted to President William Ruto, who will subsequently forward it to the National Assembly for vetting and approval.

Besides Havi, others set to face the PSC are former Kitutu Masaba MP Shadrack Mose, as well as Marykaren Kigen Sorobit, Beatrice Adhiambo Akuno, Paul Lilian, Beatrice Mugeni Meso, Stephen Ochieng Mallowah and George Kithi.

The shortlist was revealed two weeks ago by the commission and the public given up to December 8, 2022 to submit memoranda on the shortlisted candidates.

The law provides that the Solicitor-General serves for five years with a window of renewal for another term. Mr Ogeto's term is thus set to end in March 2023.

■ Head teachers' lunch break in Mombasa



Delegates sample roast meat on the second day of the 18th Kenya Primary Schools Head Teachers Association Conference at Sheikh Zayed Hall in Mombasa on December 6. KEVIN ODITI | NATION.

■ Producer prices rose 0.3 per cent last month

US stocks slide as prices soar



Wall Street stocks slid on Friday after wholesale prices in the United States came in stronger than expected, fueling uncertainty on whether red-hot inflation will continue easing.

Shortly after trading began, the Dow Jones Industrial Average fell 0.2 per cent to 33,713.50.

The broad-based S&P 500 dipped 0.3 per cent to 3,953.36, while the tech-rich Nasdaq Composite Index lost 0.3 per cent to 11,045.39.

The losses came after the Labour Department reported that producer prices rose 0.3 per cent in November, slightly more than experts expected.

■ Kenya, World Bank launch partnership framework



World Bank Country Director for Kenya, Rwanda, Somalia and Uganda Keith Hansen speaks in Nairobi on December 6 during the Country Partnership Framework launch. DENNIS ONSONGO | NATION.

35,550 teaching jobs up for grabs

The Teachers Service Commission will begin this week recruiting more than 30,000 teachers in readiness to roll out the junior secondary level of learning in January.

The recruitment is expected to significantly reduce the staffing shortages in the country, with figures indicating that more than 116,000 new teachers are needed to attain the recommended teacher-student ratio.

The TSC has declared 9,000 vacancies in public secondary schools and 1,000 slots in public primary schools. These 10,000 tutors will be engaged on permanent and pensionable terms.

The bulk of the new teachers, however, will be interns. These, 21,55 in all, will teach in junior secondary schools which, according to an an-

nouncement made by President Ruto a week ago, will be domiciled in primary schools.

Another 4,000 interns will be hired to teach in primary schools.

Placing of junior secondary learners in primary schools is a major policy departure from the decision by the Jubilee government that Grade Seven, Eight and Nine learners should be hosted in secondary schools.

The planned recruitment of 30,000 new teachers is in line with the Kenya Kwanza Alliance's campaign promise of plugging the staffing gaps in the teaching profession.

The minimum qualifications for secondary school teachers is a diploma in education with two teaching subjects.

■ Pan-Arab unity brewing in Doha, Qatar

Morocco Cup run erases rivalries



The T-shirt on sale at Doha's main market declares "Our blood is Arab", and that is the mood buoying Morocco, which became the first Arab nation to play a World Cup quarter-final.

Regional rivalries are being forgot-

ten. Morocco's red flag with a green star was a best-seller across Doha ahead of their clash with Portugal.

The flag — along with those of Qatar, Tunisia and Saudi Arabia — features on the "Our blood is Arab" T-shirt selling at Doha's Souq Waqif market.

Organisers of the first World Cup in the Middle East have long portrayed the tournament as a chance to build up Arab fervour, which they seem to have done with considerable success.

kenya lens

■ BATTLE FOR GOVERNMENT STAMP BILLIONS

• By JAINDI KISERO

Diplomacy is always in a state of flux, and its latest economic version is playing out in Kenya and elsewhere in Africa. Rather than face international competitive bidding to win contracts in Africa, it seems more and more that European multinationals are now resorting to diplomatic pressure on governments to win contracts.

It has emerged that the British currency-printing conglomerate, De La Rue PLC, is now applying diplomatic pressure on the new administration of President William Ruto to intervene in its favour in long-running tax disputes with the Kenya Revenue Authority currently valued at Sh 3.8 billion.

The tactics by the multinational currency printer have raised eyebrows because it is rare to find multinationals resorting to high-level diplomatic lobbying to resolve tax disputes, especially over matters that are not covered by tax treaties and in circumstances where some of the matters are the subject of pending court cases.

De La Rue is clearly taking advantage of what would appear to be a new era of improved diplomatic relations between the UK and Kenya following recent high-profile diplomatic engagements between President William Ruto and UK Prime Minister Rishi Sunak, where the two leaders promised to fast-track British investments in Kenya. That was followed by this week's visit to Nairobi by UK Foreign Secretary James Cleverly.

According to correspondence seen by *The Weekly Review*, top officials of the company recently visited the Kenya High Commission in London to lodge complaints against KRA. Consequently, the Ministry of Investment, Trade and Industry has weighed in by putting pressure on KRA to provide an update on the currency printer's lamentations.

Correspondence shows that the CEO of De La Rue, Mr Clive Vacher, is expected to be in Nairobi this week to meet top officials of the new administration to discuss the multinational's legacy issues with the domestic tax authority. The fact that the visit was planned to coincide with Mr Cleverly's visit to Nairobi is clearly not coincidental.

One of the cases at issue is a long-running VAT case where De La Rue insisted it should not have been required to pay VAT, but on which the Tax Tribunal ruled against the UK firm in May 2021. The case, valued at Sh 1.2 billion, was due to be heard at the High Court on December 8.

The second case, a long-running corporation tax case for the years 2013–2017, which was valued at Sh1.1 billion, was heard at the High Court in March 2022 and a decision is due any time now. KRA won at the Tax Tribunal on this matter in May 2021.

The third case, a withholding tax matter valued at Sh1.5 billion, is currently under Alternative Dispu-

Continued on Page 6

DE LA RUE SAGA

British firm leveraging stronger diplomatic ties to resolve tax disputes and win contracts in Kenya



Britain's newly appointed Prime Minister Rishi Sunak's administration has recently sent a high-profile delegation to Kenya, led by Foreign Secretary James Cleverly.

kenya lens

UK firm's diplomatic charm offensive

Continued from Page 5

the Tax Tribunal. De La Rue has expressed interest in resolving the matter but the parties have yet to agree on the figures for payment of royalties.

The correspondence also shows that De La Rue is marshalling diplomatic muscle and lobbying to bear in its bid to break into the multi-billion business of printing tax stamps. *The Weekly Review* has seen correspondence where De La Rue has informed the government that it has not been able to make profits from the bank note printing contracts it has been exclusively getting from the Central Bank of Kenya.

The background to this aspect of the saga is the following: In 2019, the government closed a joint venture agreement with De La Rue, in

which the government paid Sh700 million for a 40 per cent stake in the company. But De La Rue is now telling the government that after the joint venture was concluded, the printing plant in Kenya has neither made a profit nor paid dividends to its shareholder, ostensibly because it has not had an opportunity for key domestic projects for printing security stamps for government entities, including KRA, Kenya Bureau of Standards (KEBS) and Huduma Cards.

Depending on how President Ruto responds to new diplomatic pressures from Kenya's former colonial power on the matter of tax stamp contracts, the stage will have been set for fierce competition with the Swiss conglomerate, Sicpa, that has dominated the space for many years. President Ruto has recently complained loudly about the number of tax stamps sold in Kenya, sparking speculation that the political support which the Swiss conglomerate enjoyed under the administration of former President Kenyatta was on the wane.

Last year, KRA quietly signed an addendum to the existing seven-year old contract with Sicpa that effectively co-entrenched the Swiss company's stranglehold over stamp printing contracts.

But perhaps what best illustrates the high level of political support and patronage the Swiss conglomerate has been enjoying under President Uhuru's Kenyatta's administration was a scheme by a committee that was co-ordinated from the Office of the President by the long-name Multi-Agency Technical Working Group on the Proposed Integrated Product Marking and Authentication System.

This committee proposed to introduce something called an "Integrated Government of Kenya Mark". That instead of the current situation, where multiple agencies, including KRA, KEBS, KEPHIS, and the Anti-Counterfeit Authority are involved in product authentication and issuance of tax stamps, what Kenya needed was new a system where issuance of product authorisation and tax stamps was centralised and run on one platform under the KRA-owned and Sicpa-managed Excisable Goods Man-



James Cleverly, UK Secretary of State for Foreign, Commonwealth and Development Affairs in an interview on December 8.

agement System (EGMS.)

To give legal effect to the proposal, the committee had gone to the extent of compiling the Integrated Government of Kenya Mark Bill, 2022, which was to be issued centrally by KRA, but Parliament was dissolved before discussing the Bill. Whether this was a deliberate scheme to give Sicpa the monopoly of printing stamps for all government agencies is an open-ended question, but the plan was going to benefit Sicpa.

The political support and patronage that the Sicpa contract enjoyed under former President Uhuru Kenyatta is further demonstrated by the fact that even before the plans to pass the law to introduce the proposed Integrated Government of Kenya Mark, Sicpa and KRA were allowed to go ahead and consummate a deal to secure exclusive deals for printing stamps for the Sicpa system.

Under the new deal, KRA and Sicpa committed to 'make the EGMS system available for use by other government agencies. The contract document also commits KRA and Sicpa to provide forensic services to support investigations and prosecutions by Kenya authorities and enforcement agencies.

The fact that Sicpa and KRA went ahead to unilaterally contract an arrangement where the Sicpa-managed EGMS would dominate and monopolise provision of stamps — including prices — to other entities is perhaps the most intriguing aside of the saga.



President William Ruto has in the recent past complained about the number of tax stamps sold by the Kenya Revenue Authority. How he responds to the diplomatic quest for a solution to the De La Rue tax matter will determine the future of the British firm's business in Kenya. NATION I FILE

opinion



■ TRADE UNIONIST EATS HUMBLE PIE

Atwoli's hasty about-turn for survival

Organised labour boss Francis Atwoli and the Hustler Fund have taken a great deal of heat and stick over the last two weeks. The one because he abruptly switched from the vitriolic critic of William Ruto the candidate to a supporter of Ruto the President, and the other because recipients expected loans amounting to 10 times what they have been given or are expecting.

In my view, when Ruto was declared President-elect on August 15, Atwoli wore his thinking cap and dived deep into examination of the new political dispensation in Kenya and among the Abaluyia, and what it portended for him as Omuluyia and as a trade union leader on national, regional, continental and global levels. At all these levels, Atwoli knows, charity begins at home.

Unceremonious ejection

His decision was clear; his and workers' interests will best be served if he shelters in Ruto's tent. As he told it, like it or not, Ruto is going to be President for the next five years and he may prove a tougher nut for the opposition to crack in 2027. Atwoli would be happier originating his own exit from the leadership of Kenya's workers than have State House orchestrate his unceremonious ejection.

Second, Atwoli knows that the interests of workers in the National Social Security Fund and the National Hospital Insurance Fund, for example, and their collective bargaining are best defended from within or in close proximity to power than from a distance. Atwoli has served under and outlived Presi-



**KWENDO
OPANGA**

dent's Moi, Kibaki and Uhuru, a feat many a political juggler will envy. Third, if Atwoli remained outside looking in, then National Assembly Speaker Moses Wetang'ula and Prime Cabinet Secretary Musalia Mudavadi, whom he considers his political sons, might feel obliged to push him out of the mainstream, which is where he believes he belongs. Put another way, Atwoli is here driven more by practical politics than he is by high ideals.

Therefore, he is brave enough to eat humble pie in public and greet and embrace the man he said would commit suicide because he was going to lose the presidential election. And President Ruto is magnanimous enough in victory to appreciate the veteran trade unionist was perfectly in order to beat the drums of war for his preferred candidate.

But Ruto must do everything humanly possible to ensure that his pet project, the so-called Hustler Fund, succeeds. If it fails, the President will have to fight tooth and nail, root and branch, to be re-elected. The President and his favourite campaign mantra have been lampooned for loaning Kenyans "Sh500 to go for hair cuts rather than become barbers".

And Ruto has been accused of promising

interest-free loans and grants on the campaign trail, only to betray hustlers, believed to be the bedrock of his national support base, upon taking power. Opposition chiefs, led by ageless Raila Odinga, blunder-prone Kalonzo Musyoka and hard-as-nails Martha Karua, have smelt blood and found a rallying call to weaken a young administration.

Run into headwinds

Administrations, especially new ones, struggle when their signature projects run into headwinds and Ruto will have to pull out all the stops to ensure young people who received Sh500, Sh700 and Sh1,000 have indeed established trades from which they are paying their interests, borrowing more and growing. If not, it will be impossible to drown out voices celebrating his impending fall.

Odinga, Musyoka and Karua are rubbing their hands in glee and anticipation as the government ties itself in knots in regard to the interest levied, the mean amounts loaned, the fortnightly demand for payment of interest and the growing frustration, especially among young people.

kwendo58@gmail.com

opinion

■ In the long run, boarding schools at every level will wither and die due to cost

Make shift to day-schooling painless for parents



Magesha
NGWIRI

There is something quite disconcerting about the way the government is making important decisions and communicating them to the people who will be most affected. Perhaps there is an understandable explanation for such course of action; no government enjoys seeing its agenda being bogged down in puerile debate if it is convinced that what it is doing is right. However, the danger is that when the people conclude that anything, however popular, is being rammed down their throats, they tend to react very resentfully, and in extreme cases, reject the move altogether.

Good governance dictates that stakeholders always be consulted and a variety of views heard and weighed for merit, and if a policy shift is for the greater good, it is eventually accepted. A “take it or leave it” attitude in the conduct of public affairs is not healthy in a democracy for it, indeed, emits a rather pungent smell of diktat, even in a situation where whatever is being said or done may be good for society in the long run. The voice of the people matters; persuasion matters.

Seasoned technocrat

On Tuesday, Kenyans woke up to the news that boarding primary schools will be abolished from January next year when pupils resume learning. Basic Education Principal Secretary Belio Kipsang, a seasoned technocrat who is no stranger to matters education, having served in the same capacity since 2013 – albeit with a brief hiatus to another ministry in 2021 for reasons that are not relevant here – could not have come up with such a fundamental change in the education policy without consultation. Indeed, the reasons he gave for the change are cogent and meritorious.

The problem is that his precipitate announcement took almost everyone by surprise except, perhaps, his colleagues in government, the leadership of the Kenya National Union of Teachers, and head-teachers, who seem to have been in the know. Indeed, con-

sidering that making policy is not part of his job description, it must be assumed that his boss, Cabinet Secretary Ezekiel Machogu, was fully in the picture. In that case, it beats reason why it was left to the PS to announce such a *fait accompli*.

One can only conclude that this was a fire-fighting tactic caused by the troubled implementation of the education system change from the 8-4-4 model to the Competency Based Curriculum for which the country was not fully prepared. The first hint that this may be so was when the government decided that Junior Secondary, which starts from Grade 7 to 9, would be hosted in primary schools, meaning that the children, after graduating in Grade 6, would not be accommodated in secondary schools because few such schools have the capacity to do so.

This makes sense. You cannot herd thousands of pupils to secondary schools which are already bursting at the seams with congestion and expect them to be accommodated in dormitories. And since primary schools already have the basic facilities, why not just keep these fellows where there is no need for dormitories, dining halls, beds, food or dispensaries?

The debate on whether day schools are better than boarding schools has been raging for some considerable period and always there has been a consensus that sooner or later, day-schooling will prove to be a lot more practicable. Indeed, in more economically advanced societies, the boarding concept long ago became anachronistic, except in elite institutions traditionally meant for the scions of the ruling elite. But now that egalitarianism has replaced snobbishness, such

things are gradually becoming history. In any case, in such societies, day-scholars are not expected to walk to school and back home; they are transported by local authorities, or by the parents themselves.

In our case, especially in urban settings, that is not possible for the costs would be prohibitive, which has made day-schooling eminently preferable. In any case, in the long run, boarding schools at every level will wither and die due to cost. In fact, one cannot see where the issue lies, for only a tiny fraction of primary schools in Kenya offer boarding facilities.

Come to think of it, most of us had to trek long distances to school and it did no harm. Today, it is possible for a child to attend school 20 kilometres away without appearing to be training for the marathon because a public transport “system” is available, even if it is not ideal for people of a tender age.

Psychological costs

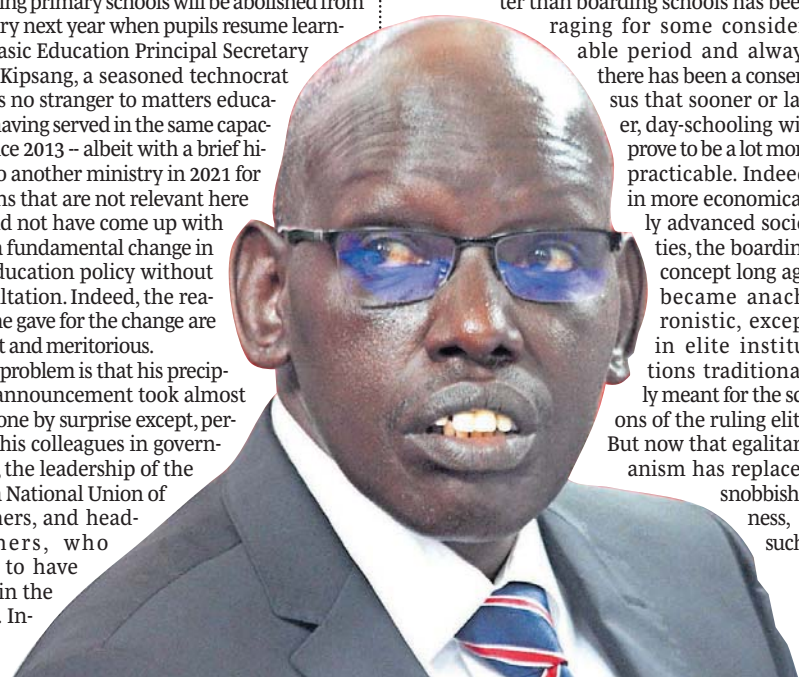
There are good reasons why doing away with boarding schools at every level will become increasingly attractive, and the exorbitant cost is not the only one. There has never been any sense in parents shrugging off their responsibilities and foisting them on teachers. A seven-year-old is too young to leave home for extended periods, for the psychological costs may be horrendous.

Some parents do, indeed, take their children to boarding schools to evade offering the necessary care, but there is grave danger of such children growing up disoriented and turning into rebels at a later age. In the memorable words of Dr Kipsang, “we must create a way in which we can be with our children and the only way is through day schooling. ...we cannot outsource our responsibility as parents; we only co-parent with teachers”.

Of course, there are exceptional cases where some parents are unable to look after their children because they are periodically posted away from home, but these are too few to inform or influence policy, and maybe something can be worked out to accommodate them. In the meantime, I am persuaded that the boarding concept at all levels of education – both secondary and tertiary – is on the way out, and the best thing the government can do is to make the phasing-out process as painless as possible for the parent.

andrewngwiri@gmail.com

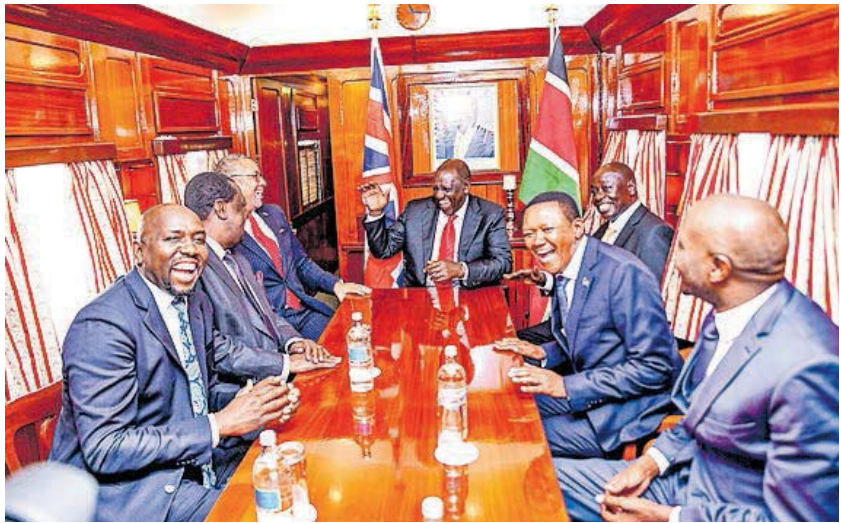
Belio Kipsang. NATION | FILE



the limelight



Prince Harry, Duke of Sussex, and Megan, Duchess of Sussex, arrive for the 2022 Ripple of Hope Award Gala at the New York Hilton Midtown Manhattan Hotel in New York City on December 6, 2022. PHOTO | AFP



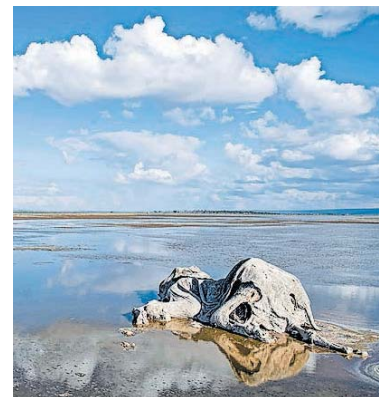
President William Ruto meets with James Cleverly, UK Secretary of State for Foreign, Commonwealth and Development Affairs, and DP Rigathi Gachagua, CSs Kipchumba Murkomen, Alfred Mutua and Moses Kuria, and Nairobi Governor Johnson Sakaja before the ground-breaking ceremony for the Railway City Project Nairobi. PHOTO | IPCS



A boat fires fireworks in Buenaventura, Valle del Cauca Department, Colombia, on December 7, 2022. PHOTO | AFP



An aerial view of fissure 3 erupting on the Northeast Rift Zone of Mauna Loa, at an elevation of approximately 3,510 m above sea level. PHOTO | AFP



The carcass of a female Elephant lies decomposing in a shallow pond after it succumbed to the effects of ravaging drought at the Amboseli National Park on November 29. PHOTO | AFP



Divers perform during a Christmas-themed underwater show at the Aqua Planet 63 aquarium in Seoul on December 8, 2022. PHOTO | AFP



An expert of the prosecutor's office examines collected remnants of shells and missiles used by the Russian army to attack the second largest Ukrainian city of Kharkiv on December 7. PHOTO | AFP

africa lens

■ FORMER PRESIDENT ON TRIAL FOR CORRUPTION

ZUMA GOES ON A WILD GOOSE CHASE



Former South African president Jacob Zuma appears before the Commission of Inquiry into State Capture that is probing wide-ranging allegations of corruption in government and state-owned companies in Johannesburg, on July 19, 2019. PHOTO IAFP

Legal analysts say the former South African president's private prosecution has almost no validity before the courts and literally no chance of success

● BY CHRIS ERASMUS

Despite South Africa's Constitutional Court ruling that former president Jacob Zuma had no grounds to remove senior state prosecutor Billy Downer from Zuma's long-running fraud, money-laundering and corruption trial, the former president is pushing ahead with efforts to privately prosecute both Downer and a leading crime reporter for supposed constitutional rights violations.

The bizarre and counter-running narratives of the two matters, linked by Zuma's avowed

dislike and distrust of Downer, whom he claims to be 'biased' against him and therefore should not be prosecuting him, read like a Hollywood crime drama.

Downer is the man who sent Zuma's former 'financial adviser' to jail on a 15-year sentence for the same 783 counts arising from a corruption-riddled 1990s arms deal, for which Zuma is now on trial.

The private prosecution of Downer and a leading court, crime and investigative journalist, Karyn Maughan, is supposedly based on an alleged violation of Zuma's constitutional right to privacy regarding matters of his health.

Zuma is claiming that Downer had "leaked" elements of his medical condition to Maughan, which information was then published in local media.

At the time, Zuma was arguing before the courts that he was too ill to attend court, and subsequently, his "ill-health" was cited as a reason, since rejected by the courts, for his early release from a 15-month term handed down to him by the Constitutional Court (Concourt) in July 2021 for contempt of that court's orders.

Zuma's lawyers in both of those instances and in others also before the courts, Zuma hav-

Continued on Page 9

africa lens

Continued from Page 8

ing several matters running in parallel, said the former president was “very ill”, requiring effectively 24-hour care and was at dire risk of his “life-threatening” but not openly disclosed condition worsening at any moment.

Zuma is making great deal of the partial detailing in the media of what ails him, describing it as a violation of his basic rights, that Downer violated these rights by conveying to Maughan the relevant details of his alleged medical condition, and that Maughan did likewise by publishing those ‘facts’.

But legal analysts believe the case has almost no validity before the courts, and literally no chance of success which will not then be appealed, even if a lower court can be persuaded to take Zuma’s case seriously and find against Downer and Maughan.

The problem for Zuma is that his private prosecution is predicated on a number of ‘non-facts’, which will likely see the case fail at the first hurdle – provision of reasonable and acceptable evidence against the accused.

Maughan has said the case is nothing but harassment and deflection on Zuma’s part, has named the prosecutor who provided her with Zuma’s medical details, that person not being Downer, and that she received and wrote about that condition entirely legally, having obtained the information from court papers, therefore from the public record.

In that regard, Maughan’s legal position has been that the charges against her are entirely spurious and aimed at being yet another element in Zuma’s famed ‘Stalingrad defence’ tactic when faced in the courts with difficulties.

Under South African law, private prosecutions are allowed in instances where public prosecutors opt not to do so – but the state must first provide a certificate to the effect that it has declined to prosecute.

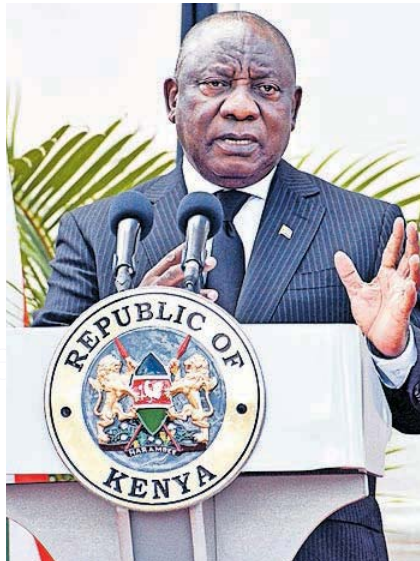
Insisting that his rights had been violated, Zuma has demanded such a certificate, after the National Prosecutions Authority declined to prosecute ‘co-accused’ Downer and Maughan on the rights violation allegations Zuma has made.

The case proceeds, though likely not for long, especially in the wake of Thursday’s Concourt ruling. The last step in this legal cul-de-sac for Zuma and his defence team, with the apex court finally dismissing Zuma’s efforts to have Downer formally removed from the role of prosecutor in his arms deal corruption trial.

Zuma has claimed bias by Downer as the reason for his animus towards this particular prosecutor, his lawyers unsuccessfully arguing before serial courts that Downer had, through this supposed ‘bias’, lost his “title to prosecute”. With the Concourt dismissing the case made by Zuma against Downer, a key element in Zuma’s attempted private prosecution, it is now certain that when his trial resumes on January 30, 2023, Downer will be his chief prosecutor.

Legal analysts are also almost of a mind in saying that attempting to privately prosecute both Downer and Maughan is nothing but another element in Zuma’s ‘Stalingrad defence’ strategy,

Zuma’s hopeless counter-offensive



President Cyril Ramaphosa of the Republic of South Africa at a press briefing at State House Nairobi on November 9, 2022.

PHOTO | FRANCIS NDERITU

which has seen the many charges against the former president dropped under a pro-Zuma prosecutions head, that decision overturned as “irrational” in the courts, and then the reopened matter ‘played for time’ through a variety of tactics.

But trial Judge Piet Koen, whom even Zuma’s own defence team have had to praise for his “even-handedness” and “fair” treatment of the former president, has several times made it clear that while he was personally exasperated at the repeat delays in the matter before him, he was awaiting only the Concourt determination on Downer’s status before his court, and that no further delays of any kind would be tolerated by Zuma and his defence team.

Downer has demanded, as is his right, that Zuma put down a large deposit to cover legal fees in the event of a loss of his case. With the case against him and Maughan scheduled for initial hearings only later in 2023 – by which time Zuma’s corruption trial will either be well under way, or even possibly completed – Zuma’s private prosecution of Downer and Maughan could be rendered moot, and likely never take place.

As for Zuma’s supposed ill health, the former president was seen in televised coverage this week, during a visit to his Nkandla residence in KwaZulu-Natal Province by a large church grouping, dancing enthusiastically in the spear-shaking, foot-stomping manner for which Zulus are famous, without any outward indication of physical frailty or incapacity.



Women wearing African National Congress regalia dance as they wait to be addressed by former South African President Jacob Zuma following the postponement of his corruption trial outside the Pietermaritzburg High Court in Pietermaritzburg, South Africa, on May 26, 2021. PHOTO | PHILL MAGAKOE/AFP

global lens

■ LIVING UNDER CONSTANT THREATS OF ATTACK FROM NORTH KOREA



This picture taken on November 18, 2022 and released from North Korea's official Korean Central News Agency on November 19 shows North Korea's leader Kim Jong-Un (C) as he inspects a new intercontinental ballistic missile (ICBM), "Hwasong Gun 17", at Pyongyang International Airport. Kim said he would respond to US threats with nuclear weapons, state media said, after he personally oversaw Pyongyang's latest ICBM launch. (PHOTO BY KCNA VIA KNS / AFP)

ISLAND ON THE FRONT LINE

Strategically located Baekryeong has long been a potential military flashpoint that South Korea is prepared to protect at all costs

● AFP

It is South Korea's westernmost territory, soldiers outnumber residents, and you can see North Korea from almost every barbed wire-lined beach: welcome to Baekryeong Island, a community on the front line.

Far closer to the North Korean mainland than it is to the South, Baekryeong is a fortress: tanks are

parked at the sides of roads, there are guard posts on every hill, and the picturesque beaches are covered in dragon's teeth -- concrete pyramid-shaped fortifications -- to deter invasion.

Seoul was awarded control over the approximately 45-square-kilometre (17-square-mile) island at the end of Korean War hostilities in the 1950s, but its 5,000 or so residents -- plus an

even higher number of soldiers -- live under constant low-level threat.

The island has long been a potential military flashpoint: North Korea's leader Kim Jong-Un claimed in 2013 that he could "rain down a sea of fire" on Baekryeong, and then staged amphibious mock invasion drills in 2017.

"Sometimes I have dreams

about the North Koreans invading, especially with what is happening in the news," said 64-year-old Baekryeong native Kim Keum-sook, referring to the record-breaking blitz of missile launches by Kim this year.

The island is of immense strategic importance for Seoul, as it helps determine control over vital Yellow Sea shipping lanes,

Continued on Page 14

global lens

Jitters over North Korea's missile menace

Continued from Page 13

without which its Incheon harbour would be cut off from the world.

When she was growing up on Baekryeong, located two kilometres from the de facto maritime border and just 14 kilometres from the North Korean mainland, Kim was regularly evacuated during periods of high tension.

"I'm still afraid," she said, although her husband, Choi Won-mo, 65, also an island native, said that they were "as well defended as can be".

South Korea's "marines, air force, navy and army are all in Baekryeong, always on high alert", Choi said.

The flashpoint maritime border has seen intermittent skirmishes, including an exchange of warning shots in the waters around Baekryeong in October after a North Korean vessel crossed the Northern Limit Line.

Choi said such events were a "common occurrence" but after 70 years in limbo people have learnt to live with constant tension; the Korean War ended with an armistice, leaving the two sides technically still at war.

The worst such incident came in March 2010 just one kilometre off the island when a South Korean warship was sunk by what Seoul said was a North Korean torpedo, killing the 46 seamen on board.

Now, South Korean troops conduct regular artillery exercises on the beach.

"Just look at all the troops and weapons here, the government is committed to defending Baekryeong island at all costs," said Lee Chung-dong, a 71-year-old fisherman who lived there for half a century.

"It's because they know that if Baekryeong falls, so will Incheon."

Despite the dangers – the ferry to the island takes a roundabout route to make it less vulnerable to North Korean attack – Baekryeong is a niche tourist destination.

Hundreds of mostly domestic tourists visit each week, drawn by both the proximity to the North, and also the natural beauty of the location.

One of its most jarring attractions is a cliff formation known as Dumujin, described in the writings of one Joseon Dynasty scholar as "the last masterpiece of an old god".

Another is Sagot beach with its hard quartz-sand floor making it a natural airstrip, a purpose it fulfilled during the Korean War.

"Baekryeong's beauty lies in its natural landscape," said Kim Yong-sung, 50, who was visiting with some co-workers.

"I do sense some danger being so close to the border, but since this has always been the case, it's not going to stop me from enjoying the beauty here."

The island's ancient geological features hold



This undated picture released from North Korea's official News Agency on November 27, 2022 shows North Korea's leader Kim Jong-Un (front R) and his daughter (front L) posing with soldiers who contributed to the test-firing of the new intercontinental ballistic missile at an unknown location in North Korea. PHOTO | AFP



President William Ruto on arrival in Seoul on December 9 for bilateral talks with the South Korean government. PHOTO | PCS

a lesson for those worried about its frontline position, said Kim Chang-hee, 75, a park guide. "This island is over 10 million years old – old-

er than the dinosaurs," she said. "Korea has only been divided for 70 years. One day, this too will be a distant memory."

global lens

■ EMPLOYEES TAKE ELON MUSK TO COURT

TROUBLE@TWITTER

The stack of legal cases could force Musk to work towards a settlement, especially because his company is under huge financial stress



Tesla CEO Elon Musk speaks at the unveiling of the new Tesla Model Y in Hawthorne, California, on March 14, 2019. While his decision to pull Twitter off the stock market allows him to make major changes quickly, it takes the organisation deeper into debt. AFP

● AFP

The purge initiated by Elon Musk at Twitter when he took over the company left more than half of its 7,500 employees on the sidelines and now many of them are taking the SpaceX and Tesla tycoon to court.

The social media giant is facing a growing number of cases over the terms of those terminations – and even a complaint to the city of San Francisco that Musk has illegally converted office space into bedrooms so that workers can sleep on site.

“It’s very concerning that the richest man in the world thinks that he can walk all over employee rights and doesn’t have to follow the law. We intend to hold him accountable,” said lawyer Shannon Liss-Riordan.

Liss-Riordan is leading one such case against

Twitter – at its core, it argues that some employees are not receiving the severance and compensation promised to them prior to Musk’s takeover.

These assurances, which included bonuses and stock options, were made to keep employees at Twitter, guaranteeing an exit package as the arrival of the mercurial Musk loomed.

Other cases are taking Musk to task over his brash ultimatum that staff either sign up to his vision for the company and embrace a “hardcore” work ethic, or take three months of their salary and quit.

This, lawyers allege, was a disguised layoff plan that ignored California law by denying workers the compensation and 60-day warning time required by law.

Musk’s disdain for working from home is also being resisted, with employees with disabil-

ities or health concerns seeing orders to come back to the office as discriminatory.

“There was a blunt disregard for personal conditions such as relevant medical issues. All this was done while Elon Musk was abusing us in public on Twitter,” said a former senior employee at Twitter, Amir Shevat.

Shevat and other employees are represented by Lisa Bloom, a high-profile attorney in Los Angeles, who has represented disgraced Hollywood producer Harvey Weinstein.

Bloom is handling arbitration claims since many Twitter employees signed away their right to fight their plight in court when they joined the company.

“We will continue to file these claims, one by one, bombarding Twitter with claims,” Bloom told a press conference on Monday.

“We are prepared to bring hundreds if not thousands of individual arbitrations to make sure that the employees get what they’re owed,” she said.

This, experts said, could cost Twitter and Musk dearly.

Paying ex-employees

Twitter “could quickly resolve the matter by paying the ex-employees whatever they are entitled to under the law,” said Eric Goldman, a law professor at Santa Clara University.

“Or it could play hardball and make them work for it, which could take years,” he said.

The stack of legal cases could also force Musk to work towards a settlement, especially since his company is under huge financial stress after he paid \$44 billion to take full ownership.

The usually outspoken entrepreneur has said little specifically about legal cases, reserving criticism for a city inspection after Twitter conference rooms were converted into make-shift bedrooms.

“So city of San Francisco attacks companies providing beds for tired employees instead of making sure kids are safe from fentanyl,” Musk said in a tweet, lashing out at Mayor London Breed.

Musk was referring to a recent scandal of a 10-month-old boy who overdosed on fentanyl after ingesting the substance at a playground.



SPORTS TV!

JAMES
WOKABI

BERNARD
NDONG

HOSTS



NATIONFM 96.3^{FM}
WHERE GOOD MUSIC LIVES

SATURDAYS 3PM

