Kenneth Njuguna

Partner | ALN Kenya | Anjarwalla & Khanna

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Background

Kenneth is a Partner at ALN Kenya | Anjarwalla & Khanna (ALN Kenya) and a member of the tax department. He has specialist skills in Kenyan and cross border taxation.

Kenneth routinely advises clients on all tax aspects of mergers and acquisitions, disposals, joint ventures and corporate restructurings and on business and transaction structuring generally. He also assists clients in complex tax audits and disputes with the Kenya Revenue Authority. Prior to joining A&K, he worked in the tax practice at PwC in Kenya and the United Kingdom.

He works with a wide variety of multinational clients including power and utility firms, private equity funds, banking and insurance companies, real estate developers and public benefit organizations.

Kenneth is an Advocate of the High Court of Kenya, a Certified Public Accountant and a Certified Public Secretary.

Professional Membership

- Law Society of Kenya

Professional Qualifications

2014: Certified Public Secretary, (CPS) Graduate

2010: Postgraduate Diploma in Law, Kenya School of Law

2010: Certified Public Accountant, (CPA) Graduate

2009: Bachelor of Laws. LL.B, Second Class Honours (Upper Division), Moi University

Career Summary

2019 – Date: Partner, Anjarwalla & Khanna, Nairobi

2018: Secondee, Stephenson Harwood, London and Pump Court Tax Chambers (London)

2017 – 2019: Senior Associate, Anjarwalla & Khanna, Nairobi

2015 – 2016: Principal Associate, Anjarwalla & Khanna, Nairobi

2014 – 2015: Associate, Anjarwalla & Khanna, Nairobi

2010 – 2014: Senior Tax Consultant, PricewaterhouseCoopers, Kenya

2012: Tax Associate, PricewaterhouseCoopers United Kingdom

Awards and Recognition

- Kenneth has been recognized as leading tax lawyer in the Tax Law category by Chambers Global 2022 and 2023.
- Kenneth has been recognized as a 'Next Generation Partner' in the Commercial, Corporate and M&A category by Legal 500 in 2021 – 2023.

"Kenneth Njuguna provides tax advice to clients in the context of complex domestic and cross-border transactions. He has recently acted for significant clients operating in the hospitality and insurance sectors. – Chambers Global 2023

"Kenneth Njuguna provides tax advice to clients in the context of complex domestic and cross-border transactions" – Chambers Global 2023

"Kenneth Njuguna is effective and transparent. His high level of attention to detail and accuracy in the consultations is a great strength."

"Kenneth is polite, well researched, knowledgeable, and provides solutions when needed." – ***Chambers Global 2023***

"Kenneth Njuguna is knowledgeable, collaborative, professional and easy to work with."- Chambers Global 2022

"Kenneth Njuguna has been a stellar business adviser. He does not hesitate to resolve any identified issues in a timely manner. His commitment to customer satisfaction is noteworthy." – Legal 500 2021

Languages

- English
- Swahili

Top Matters

Tax Structuring and Advisory Work

- Acting for Actis and Westmont, through special purpose vehicles incorporated in Mauritius, Msafiri and Mkutano, (the SPVs) in connection with the proposed acquisition of the entire issued share capital of Elgon Road Developments, a private company incorporated in Kenya which owns and operates Radisson Blu Hotel in Upper Hill Nairobi, including providing specific assistance, conducting a tax due diligence review in respect of the Elgon Road Development and providing tax structuring advice in relation to the proposed

- transaction.
- Acting for the sponsors of the 300MW Turkana wind power project (the largest power generation project in Kenya, designed to provide at least 17% of the country's power demand) including providing tax structuring advice on the equity structure for the project as well as various tax advice matters relating to various engineering, procurement and supply agreements (EPC) with Vestas (turbine supply), Siemens (electrical connection networks and substations), Civicon (210 km of road contruction), and Seco (village construction) as well as interface with the Ministry of Finance, Ministry of Energy and the Kenya Revenue Authority on VAT issues relating to the project. This transaction won the Project Finance International (PFI) African Renewable Deal of the Year Award 2014.
- Advising Quantum Power in connection with the tax aspects of the development of a 30-35 MW modular geothermal power plant in Menengai, Kenya, including advising on the structuring of arrangements with the EPC Contractor and reviewing the EPC contract from a tax perspective.
- Acting for African Infrastructure Investment Managers, Craftskills Wind Energy International, and IFC Infraventures in connection with tax matters in relation to their 100 MW wind powered generation facility in Kipeto, Kajiado, the second largest wind project in Kenya.
- Acting for Vivo Energy Investments, a company incorporated in the Netherlands and listed on the London Stock Exchange and with operations in marketing and distributing petroleum products under the 'Shell' brand and Engen brand in 23 countries across Africa, in connection with a 50% acquisition of Kuku Foods, a company that operates fast food restaurants under the KFC (Kenturcy Fried Chicken) brand in various African countries including Kenya, Uganda and Rwanda which are part of the current acquisition, to create a joint venture between Vivo Energy and Kuku Foods.
- Advising Vodacom Group in connection with the acquisition, together with Safaricom, of the M-PESA pan-African money payments system, including advising on various tax considerations relating to capital gains tax impact, transfer pricing considerations on royalty payments, stamp duty issues, applicability of double taxation treaties and various international tax issues relevant to this matter.
- Acted for Royal Dutch Shell in connection with Kenyan tax law matters in relation to its successful takeover bid for British Gas, which created the world's biggest trader of liquefied natural gas (LNG).
- Acting for Helios Investment Partners, a leading Africa-focused private investment firm, in connection with the acquisition of 70% of the share capital of Telkom Kenya, a Kenyan telecommunications provider, from France Telecom, a French multinational telecommunications corporation, and in connection with the acquisition of a shareholder loan from France Telecom, including providing broad tax advice on various aspects of the transaction aimed at creating tax efficiencies on the acquisition.
- Acting for Helios Investment Partners, a leading Africa-focused private equity fund, in its entry into a joint venture with Acorn Group Africa, a property development and project management firm, for the identification, acquisition, construction and development of real estate properties in Kenya, involving the unwinding of a pre-existing joint venture between British American Asset Management by Acorn and simultaneous entry into the joint venture with Helios, including providing tax advice on the overall structure for the project.
- Acting for Emerging Capital Partners, a US based Private Equity fund, in connection with the sale of its stake in Java House, East Africa's leading coffee-led casual dining chain in Kenya, Uganda, Rwanda and Tanzania, to Abraaj Group, a leading investor operating in growth markets, including advising on the process of the group restructuring, including advising on the share structure in Kenya, Uganda, Tanzania and Rwanda to ensure that the structure was ideal before completion of the transaction; advising on the tax implications on the restructure; coordinating the lawyers in Rwanda, Tanzania and Uganda; providing competition law advice in relation to the transaction; obtaining regulatory approvals in Kenya; advising on Emerging Capital Partners' exit from Java's ESOP; and preparing a report on the real estate portfolio of Java House.
- Acting for WS Atkins International, a subsidiary of WS Atkins, a company listed on the London Stock Exchange and one of the leading design, engineering and project management consultancy services firms

- in the world, in connection with Atkins' acquisition of 100% of Howard Humphreys East Africa, an engineering consulting firm based in Kenya, and its wholly-owned subsidiary in Tanzania, including negotiating tax warranties and indemnities and providing tax advice on various aspects of the transaction.
- Advising Sankara Hotel Group in relation to various tax aspects relating to the conversion and operation of the Sankara Hotel in Nairobi, Kenya as an "Autograph Collection" (Marriott) Hotel.
- Advising Fedha Group, one of Kenya's leading real estate developers, in connection with the negotiation of hotel management and brand licensing contracts with Minor Hotels for the proposed Avani Nairobi Suites at Westlands, Nairobi, including providing tax structuring advice, and negotiating the hotel management and technical services contracts for the hotel opposite the operator, Minor Hotels Group.
- Providing tax and equity structuring advice to Kuramo Capital Management, an independent investment management firm, in connection with its proposed investment for 24.99% of the shares in Trans-century, a company listed on the Nairobi Securities Exchange.
- Acting for a global public relations focused group listed on the London Stock Exchange on the setting up of operations in Kenya, including advising on the inbound tax structure, setting up the legal entity and advising on various aspects relating to taxation of employee emoluments, transfer pricing regulations and certain tax aspects relating to contractual arrangements with the Government of Kenya.
- Advising Vivo Energy, Vivo Energy Holding B.V and Vivo Energy Kenya in connection with Vivo Energy's admission of its shares to the premium listing segment of the Official List of the Financial Conduct Authority of the United Kingdom and admission of the shares to trading on London Stock Exchange's main market for listed securities and admission of the Shares on a secondary inward listing basis on the Main Board of Johannesburg Stock Exchange.
- Acting for one of Kenya's largest conglomerates which holds controlling interests in motor vehicle sales and service, hospitality, investment and financial services, in connection with their reorganisation to establish a pan-African corporation, including reorganising and restructuring the group to internationalise its operations by creating an international group holding entity, creating an effective tax and legal structure for the implementation of the reorganisation, advising on the transfer of real property and intellectual property assets, analysing various international jurisdictions and implementing the overall reorganisation of the group.
- Advising AVIC International Real Estate Kenya, a subsidiary of Aviation Industry Corporation of China, a Chinese state-owned aerospace and defence company, in connection with tax structuring of one of the largest mixed-use state-of-the-art developments in East Africa.

Tax Disputes

- Acting for the Association of Kenya Insurers (AKI), an independent body for the Kenyan insurance sector with over 40 insurance companies operating in Kenya, in connection with a successful petition at the High Court of Kenya against the Kenya Revenue Authority (KRA) and the Government of Kenya concerning the introduction of Value Added Tax (VAT) on insurance brokerage fees. The High Court suspended the introduction of VAT on insurance brokerage services which was a significant development for the Kenyan insurance industry, since VAT on insurance brokerage services would have increased the cost of insurance in Kenya, significantly impacting insurance penetration in Kenya.
- Acting for a large wind power facility operator in Kenya in connection with a pre-assessment notice of approximately USD 32 million on withholding tax on professional and management fees paid to non-resident contractors under the Engineering, Procurement and Construction Contract (EPC) for the wind power project.
- Acting for OLA Energy Kenya (Libya Oil) in relation to a tax assessment by the Kenya Revenue Authority (KRA) for KES 20 billion (approx. USD. 200 million) in relation to customs duties on "product gains" on petroleum products and corporate taxes.
- Acting for a Kioo Limited, company incorporated in Tanzania, against the Government of Kenya, in

- connection with a trade dispute arising from the imposition of 25% excise duty by the Government of Kenya in respect of glass goods manufactured in Tanzania and imported into Kenya. A reference has been filed to the East African Court of Justice (EACJ) pursuant to the Treaty for the Established of the East African Community. The EACJ granted interim orders against the GOK staying further implementation of the 25% excise duty on glass bottles imported from other EAC Partner States into Kenya pending the hearing and determination of the reference.
- Acting for Heritage Insurance Company, a provider of insurance products in Kenya, in connection with a Tax demand and potential dispute with the Customs and Border Control (Kenya Revenue Authority) in relation to bonds issued by Heritage as a guarantor.
- Advising a telecommunications operator which has operations in Mauritius and East Africa, in connection with a potential assessment by the Kenya Revenue Authority amounting to USD 30 million on its operations in Kenya. An amicable settlement was reached following negotiations with KRA.
- Acting for an international contractor against the Kenya Revenue Authority's decision to reject a VAT refund application the company is entitled to as it was engaged on an aid-funded project, the value of the project being approximately KES. 13.6 billion.
- Representing Diamond Trust Bank in connection with an appeal at the Tax Appeals Tribunal in relation to a tax assessment by the KRA on withholding tax on fees charged on its overseas nostro accounts. The decision, which was not appealed to by the KRA, set a precedent on the applicability of withholding tax on fees charged on nostro accounts by foreign banks.
- Acting for a private equity investing firm operating in Africa, in connection with a tax demand by the Kenya Revenue Authority in excess of USD 14 million in relation to a Capital Gains Tax (CGT) demand on an exit from an investment in Kenya, including advancing technical arguments and successfully defending the client against the tax demand, which resulted in a reduction of the quantum of tax demanded by almost 80% which was then settled by the Client. The matter was the first high profile tax dispute in Kenya since the reintroduction of CGT in Kenya.

Digital Service Tax

- Acting for the Digital Economy Taskforce of AmCham Kenya, which advocates for the development of robust digital economies and is made up of all the large American technology companies operating in Kenya, in connection with the provision of advice on the Kenyan digital services tax regime and Value Added Tax on Electronically Supplied Services (ESS) and engaging with the Kenya Revenue Authority and the Kenyan Parliament on behalf of the Chamber, concerning the changes in the tax legislation.
- Advising an American mobility as a service provider entity listed on the NYSE in relation to the digital service tax and electronically supplied services (ESS) VAT regimes in Kenya, including engaging with the Kenya Revenue Authority in relation to various aspects of its operating structure.
- Advising an American subscription streaming service and production company listed on NASDAQ, in relation to its digital service tax and VAT obligations in Kenya.
- Advising an American communications technology company listed on the NASDAQ in relation to various tax aspects relating to its conferencing and communication services, and engaging with the KRA on various matters relating to its operating structure and products.
- Advising an American multinational technology company that focuses on e-commerce and digital streaming, in relation to certain aspects relating to VAT on electronically supplied services.
- Advising an American multinational technology company that specializes in consumer electronics, software and online services, in relation to its digital service tax obligations in Tanzania.
- Advising Google in relation to VAT obligations on electronically supplied services in Kenya.
- Providing tax advice to an American multinational technology conglomerate in relation to its digital service tax obligations in Tanzania.