



# Vivian M. Kerage

**Senior Associate | ALN Kenya | Anjarwalla & Khanna**

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## Background

Vivian Kerage is a Senior Associate at ALN Kenya | Anjarwalla & Khanna and a member of the commercial and real estate departments of Anjarwalla & Khanna, Mombasa. She focuses on advising on commercial transactions, property conveyancing, banking securities, probate and private client work.

## Professional Membership

- Law Society of Kenya

## Professional Qualifications

2013: Postgraduate Diploma in Law, Kenya School of Law

2011: Bachelor of Laws, LL.B, University of Nairobi, Kenya

## Career Summary

Jan 2020 – Date: Senior Associate, Anjarwalla & Khanna Advocates

Jan 2017 – Dec 2019: Principal Associate, Anjarwalla & Khanna Advocates

July 2013 – Dec 2016: Associate, Anjarwalla & Khanna Advocates

Jan – June 2013: Pupil, Anjarwalla & Khanna Advocates

Aug – Dec 2011: Intern, Anjarwalla & Khanna Advocates

April – June 2011: Intern, Legal Resources Foundation Trust

## Top Matters

- Acting for Helios Investment Partners in connection with the acquisition of 70% of the share capital of Telkom Kenya (TKL) from France Telecom and in connection with the acquisition of a shareholder loan from France Telecom. A&K's role included drafting and negotiating various documents with the Government of Kenya in respect of the transfer of 10% of Helios shares in Telkom Kenya to the Government of Kenya and transfer of 40% of the shareholder loan to the Government and negotiating a shareholders agreement, loan agreements and framework agreement. A&K also assisted with the application for various regulatory approvals and consents from the Competition Authority of Kenya and the Communications Authority of Kenya. The deal was unique because Telkom Kenya was a state corporation prior to its privatization and sale to France Telecom. Telkom Kenya is in a distressed financial situation and this makes it an unusual investment for a private equity fund, which is now implementing turn around strategy.
- Acting for a prominent businessman in the sale of 200 acre farmland in prime location, including advising on title matters, advising on efficient tax and succession planning and restructuring, monitoring surveyors and relevant local authorities on the subdivision process, reviewing of new titles, negotiating and drafting agreement for sale with foreign investor purchaser, advising on aspects relating to squatters and their relocation, handling all conveyancing aspects, handling the Land Control Board applications process and advising on all matters up to completion of the sale.
- Acting for a company on its development of two retail shopping malls in Mombasa County spread over 4.13 acres of land and comprising of nine godowns, thirty eight shops and a three storey office block with extensive parking space. The supermarket, East Africa's biggest, is the mall's anchor tenant. A&K tasks included advising on the overall leasing structure for these projects; advising on the legal, regulatory and compliance issues; and drafting the forms of letter of offer and lease agreements for the retail spaces at the malls.
- Acting for the State Bank of Mauritius, a Mauritian banking group listed on the stock exchange of Mauritius, in connection with its take-over and rescue of Fidelity Commercial Bank (FCB), a Kenyan bank in financial distress. Our role included undertaking a due diligence on FCB and its operations, drafting and negotiating a share purchase agreement in respect of an offer to purchase shares from the 43 shareholders of FCB, drafting and negotiating side deeds of indemnity from the major shareholders, initiating and running an offer to shareholders scattered across the globe, procuring signatures from the majority of the shareholders and issuing and running a statutory squeeze-out process. In addition, we obtained all requisite regulatory approvals from the Central Bank of Kenya, the Competition Authority of Kenya and the COMESA Competition Commission on an expedited basis, obtained the requisite approvals and fit and proper certification for shareholders, directors and senior managers of the State Bank of Mauritius and successfully ran a complex multi-jurisdictional completion as a result of the diverse jurisdictions of the purchaser and sellers. This is the first time that a 'Squeeze-Out' under the new Companies Act in Kenya has ever been used in order to acquire shares under minority shareholders who did not accept offers from SBM. Further, the proposed acquisition will mark the entry of SBM Group into Kenya's banking sector. SBM Group will bring its experience and expertise from Mauritius and other markets to enhance competitiveness and the resilience of Kenya's banking sector. SBM Group is pursuing an international expansion strategy, and for the African region, it is anchored on Kenya as the entry point for Eastern Africa.
- Acting for a private equity company on their acquisition of a majority stake in an EPZ entity, including conducting due diligence on the Export Processing Zone (EPZ) requirements compliance by the target, and advising the client on the processes and approvals required in connection from the EPZ Authority. The deal is important because the primary asset owned by the target entity is land and trees and the transaction therefore involved complex land issues in Kenya (whereby acquisition of any interest in agricultural land in Kenya is heavily regulated and we therefore had to devise innovative structures within the legal constraints to enable the transaction to take place). In addition, the target entity holds an EPZ licence and is therefore heavily regulated.
- Acting for Sheheena Enterprises, in connection with its high-end multi-purpose development off the Nyali Bridge, Mombasa known as "Sheheena Marina Apartments" a 23 storey building comprising of 42 four bedroom apartments, including advising on the legal and corporate structure (including tax), arranging

- financing with lenders, drafting and preparing the legal documentation on the entire development, advising on and implementing organizational and management structures based on a thorough legal analysis of the project, advising on all regulatory approvals as well as drafting the form letter of offer, sales and lease agreements for the residential units. A novel marina project in Mombasa with a hotel cum luxury apartments makes this a most sought after development and is generating a significant interest in the East Africa market. Once completed, the development will be a first of its kind as it overlooks both sides of the Tudor Creek and the Indian Ocean and will offer access to a marina, a prestigious restaurant and conferencing facilities. One block of the development will contain fully furnished hotel apartments available for rental.
- Acting for Kathini Spring Mineral Water in connection with the disposal of 199 acres of land out of 205 acres of immovable property in Kilifi County to a Chinese investor, including advising the client on the subdivision of the 205 acres of land and obtaining all the consents required for the subdivision; advising on change of user of the portion of land being sold to the Chinese investor from agricultural to industrial use and obtaining the applicable consents required for the change of user; liaising with the National Land Commission on the surrender of certain portions of the land for the settlement of squatters; advising the client on the terms of such settlement such as the appropriate entity to own the portion of land on behalf of the squatters; liaising with the surveyor on the subdivision and issuance of new documents of title for the various portions of land; liaising with the Ministry of Lands, Housing and Physical Planning on the procedures for surrender of freehold title and issuance of new leases after a subdivision; advising on the tax issues to be taken into consideration such as stamp duty, capital gains tax and value added tax; preparing and negotiating the contract for the sale of the 199 acres of land to the Chinese investors. The deal is unique because of the large property acquired and transferred from agricultural to commercial use. Some portions of the land was also dedicated to settle the squatters making it useful for the surrounding community.
- Acting for a US based Private Equity fund, in connection with the sale of its stake in a leading coffee chain, (which includes its frozen yoghurt and pizza business), including preparing a report in respect of the real estate portfolio of the chain and in particular, conducting a thorough review of over 70 short term leases and licences in respect of all the locations where the coffee chain has an outlet and offices, liaising with the legal team to ensure that all the leases are up to date and preparing a detailed report setting out the details of each lease and key terms relating to the same, and liaising with our Rwandan and Ugandan counterparts on the review of the leases in their respective jurisdictions. The deal may potentially be the largest of its kind in the restaurant business as the chain has over 50 outlets across Kenya, Uganda and Rwanda. As the chain is in the restaurant industry, the strategic premises where its outlets are located is key to its business. The review was important as the marketability of the business hinges on the strength of its real estate portfolio.
- Acting for one of the largest flower farming companies and in Kenya a subsidiary of a global PE firm, in connection with a review of its immovable asset portfolio ranging over 3,800 acres and valued in excess of USD 75 million, including advising on the various laws that would apply; advising on the issues arising from the proposed restructure; advising on the land disposal within the group, such as user conditions of these parcels of land and compliance with the same; advising on the applicable consents that would be required including, inter alia, land control board consents; advising on the complex tax issues to be taken into consideration such as stamp duty and exemptions from stamp duty where applicable, capital gains tax and value added tax; and negotiating numerous transaction documents, including sale agreements, transfer forms and stamp duty exemption applications for the disposal of the non-core assets.
- Acting for a client to conduct a due diligence exercise in respect of the sale by an international electronics company intending to sell its businesses in several African countries.
- Acting for a UAE bank providing financing to a local company, advising the UAE bank on Kenyan laws, preparing the requisite securities and related documentation and advising on various matters arising.
- Advising international charitable organisations setting up in Kenya on land holding in Kenya, corporate compliance matters, repatriation of foreign currencies and the appropriate legal entity to suit their needs and purpose

- Acting for various lenders generally in relation to the perfection of securities as relates to financing of working capital, asset financing, property acquisitions, collateral management and the subordination of shareholders and/or directors loans. This included acting for *Shari'ah*-compliant banks in Kenya in connection these types of transactions.
- Acting for a local lender in relation to the financing of a Kenyan ship by the borrower. The transaction involved the negotiation, preparation and perfection of the first ship mortgage in Kenya under the Merchant Shipping Act.
- Acting for diverse private clients in relation to the negotiation, drafting and execution of private commercial agreements including shareholder's agreements and asset purchase agreements.
- Acting for local and international clients in relation to the setting up of businesses or operations in Kenya including advising the companies on the relevant Kenyan laws relating to, inter alia, employment, taxation and business licensing.
- Providing legal advice regarding Kenya's land tenure situation for the REDD+ Law Project, a research initiative managed jointly by the University of Cambridge in partnership with global law firm Baker & McKenzie LLP. REDD+ is an international climate change policy that requires clear land rights for successful national implementation.
- Advising a client dealing in petroleum products on its establishment in East Africa, including advising on employment and property acquisition matters and laws relating to banking, corporate compliance, energy and anti-money laundering.