Access to Civil Justice in Kenya: An Appraisal of the Policy and Legal Frameworks

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Abstract:

A diverse range of international human rights instruments prescribe minimum standards and essential elements of equal access to civil justice. Those ratified by Kenya form part of the municipal law by virtue of Article 2(6) of the Constitution of Kenya (2010). The Constitution guarantees the right of access to justice and establishes a hierarchy of national tribunals that exercise judicial authority in the adjudication of competing claims. It forms the foundation for the extant policy, legal and organisational frameworks for the administration of civil justice. The threefold purpose of this study is: (a) to conduct an appraisal of the policy and legal frameworks in Kenya; (b) to evaluate the level of consumer satisfaction in the civil justice system with particular reference to the principles of proportionality, party autonomy, expedition, fairness of process, extent and equality of opportunity to access; and (c) to recommend appropriate policy and legislative reform strategies for expeditious claim adjudication and the augmentation of equal access to civil justice. The study establishes that the current Kenya’s policy and legal frameworks are not well suited to guarantee the effective delivery of, and equal access to, civil justice, and that the system of procedural justice is not well suited to deliver quality outcomes and effective remedies. In response to these inadequacies, the study addresses pertinent conceptual issues and recommends various reform measures founded on what it considers as the conceptual imperatives for the efficient delivery of civil justice. The proposed reform strategies draw from beneficial examples of international best practices and from strategic interventions undertaken in other jurisdictions.