



ORARO & COMPANY  
ADVOCATES

## Oraro & Company's Banking & Finance Brochure



## Introduction to Oraro & Company Advocates

Oraro & Company Advocates is a full-service market-leading African law firm established in 1977 with a strong focus on **banking and finance, dispute resolution, arbitration, corporate & commercial law, employment and labour, real estate and tax, restructuring & insolvency and infrastructure, projects & PPPs**. With a dedicated team of 12 partners, 13 associates and 41 support staff, the firm has an established and strong banking and finance practice with experience advising local and regional banks, regulators and international financial institutions.

With increased oversight in the banking sector and the advent of Islamic finance and fintech in Kenya, we leverage on the trusted legal advice we provide to regulators to help clients make sense of what may be complex transactions in an increasingly competitive market.

Our Banking & Finance practice area is well-known for its years of experience in advising clients in banking & finance law in contentious and non-contentious matters. The practice area actively advises on asset financing, structuring and drafting, lending and security documentation for corporate and retail clients including cross border and syndicated loans, structured finance and trade finance.

The practice area is also highly regarded for its expertise in handling and advising on insolvency matters based on the recently enacted Insolvency Act, 2015.

We provide both local and cross-jurisdictional legal services, either directly or through the extensive relationships that we have established with leading firms across the globe, which enable us to offer cross-jurisdictional legal advice in a seamless manner while maintaining the highest professional standards.

The firm has a robust team of lawyers and has over the years been consistently ranked by **Chambers Global, IFLR 1000** and **Legal 500** as a top-tier firm in Kenya.

Oraro & Company Advocates prides itself in its **deeply rooted client relationships** by providing quality legal services through its **partner-led approach**, drawing from **local knowledge** and **global perspectives**.

*"They're very pleasant to work with. They have a very collegiate atmosphere and a great work ethos."*

**Chambers Global 2019**

## Our Key Competencies

Our practice area encompasses the full spectrum of contentious and non-contentious matters, including:

- lending and securities
- corporate lending
- structured finance
- cross border and syndicated loans
- trade finance
- Islamic finance
- insolvency matters
- complex banking disputes, debt recovery and asset tracing
- Regulatory compliance

*“Highly adept in debt restructuring and insolvency, as well as project and asset finance. Notably skilled in the corporate restructuring of failing banks, with further activity in debt capital markets and a wide range of lending mandates...”*

**Chambers Global 2019**

## Our Market recognition



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## Our Experience

### PROJECT FINANCE

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Some of our recent project finance work highlights include:

- Advising an international private limited liability company (in the medical care business) in project finance worth USD 30.5 million for the construction of a hospital on land in Kenya. Our tasks involved drafting and review of the transaction documentation including the facility agreement, the sponsor support agreement, the memorandum of deposit of shares, the charge and the project documents assignment agreement. We also reviewed the recourse agreement, the irrevocable stand by letter of credit, the consent letter, and the project agreements with individual service providers.
- Advised and drafted financing and security documents for the construction of East African Development Bank's 10-storey, 3-tower office complex in Westlands, Nairobi.
- Advised Kenya Commercial Bank Limited (**KCB**) in relation to an annuity term loan facility worth USD 60 million to facilitate the 75% direct cost of road construction of the Ngong-Kiserian-Isinya Road and Kajiado-Imaroro Road.
- Drafted asset finance agreements for a pan-African trade finance institution on a USD 2 billion pre-delivery and delivery financing for a national airline.

### SECURITY DOCUMENTATION

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Some of our recent security documentation highlights include:

- Advising, a leading cement manufacturer in relation to financial facilities worth USD 35 million. We were involved in drafting and registering various security documentation, including various deeds of exclusion, debentures, subordination agreements, guarantees etc. for a manufacturing company for USD 35 million and obtaining consent from other lenders which had granted financial facilities to the company previously. Liaising with Mauritian counsel to ensure that the securities do not affect facilities granted to the Borrower, who had obtained additional facilities in Mauritius.
- Advising East Africa's leading manufacturer of Fast-Moving Consumer Goods, in their USD 50 million facility with several lenders including top tier banks in the country. This involved drafting several facility agreements for Bidco, worth USD 50 million for the development of its infrastructure and working capital. There were several lenders including a Bretton Woods institution

- Advising a Lender on a suitable structure for the security documentation, which included preparation of the principal security contained in an all assets Debenture issued by the Borrower to the Lender, preparation of charge documents over land owned by the Borrower and a parent company as supplemental security.
- Advising a Lender on a suitable structure for the upstamping of the existing securities as well as advising the Lender on the additional security documentation to secure the Lender's interest. We were involved in the preparation and perfection of supplemental securities being an all assets Debenture, a Charge on land owned by the Borrowers and cross Corporate Guarantees, to secure the additional amount of USD 6 million that was being advanced to the Borrower by the Lender.
- Advising the Commercial Bank of Africa on the proposed security structure which included preparation and perfection of a security over the receivables due to the Borrower under contracts between the Borrower and Toyota Kenya Limited.
- Acting in the preparation and perfection of security documentation (debenture, charges, corporate guarantees and the relevant board resolutions) for a Kenyan commercial bank in respect to their lending to a horticultural firm to facilitate acquisition of a horticultural farm worth USD 4 million.
- Drafting a variety of security documentation for a large telecommunication company in Kenya operating and maintaining the infrastructure over which various telecoms service providers operate to secure lending worth USD 30 million from a bank based in the United Kingdom including inter-creditor agreements and facility agreements and conducting a legal due diligence. We also provided a legal opinion for the financier.
- Advising a Tanzanian bank in the preparation and perfection of securities. Our role included conducting a legal due diligence on the borrower and the corporate guarantors at the Companies Registries on the assets provided by the corporate guarantors as security. We drafted security documents being a debenture, charges and corporate guarantees together with the accompanying resolutions. We worked closely with Tanzanian counsel with regard to the due diligence on the Tanzanian borrower and obtained a legal opinion as to the capacity of the borrower and the enforceability of the security documents. The bank had advanced some facilities to the Tanzanian arm of a regional private educational institution to finance its expansion plans by opening a school in Dar es Salaam in Tanzania and for general working capital. The facilities would be secured by assets within Kenya owned by the Kenyan companies and by corporate guarantees to be issued by the Kenyan companies. The matter value is USD 5.23 million.

## BANKING DISPUTES

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Some of our recent banking disputes work highlights include:

- Acting for a multinational bank in a representative action challenging the levying of increased bank charges.
- Acting for a Kenyan investment bank in a USD 557, 000 suit in which a customer alleges that the bank failed to act in accordance with his instructions, with respect to a sale order on Safaricom shares that he had purchased. The bank contends that owing to certain discrepancies in the identity of the customer at the time the sale instructions were received, it was put on enquiry as to whether it was faced with a potential fraud, and took reasonable steps (Know Your Customer) in order to avert the same.
- Successfully represented a foreign commercial bank based in Kenya in a dispute with Intercom (a landmark case in banking law and illegality).
- Representing the National Bank of Kenya Limited against three separate class action claims in the Employment and Labour Relations Court, for the retabulation of terminal benefits arising from voluntary early retirement taken by the claimants.

## CLAIMS

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Some of our recent claims work highlights include:

- Representing the Kenyan and Nigerian subsidiaries of a Pan Africa bank in a claim worth USD 52 million arising from a facility of USD 300 million advanced to a Lebanese engineering firm to fund the construction of the Nairobi-Mombasa oil pipeline.
- Acted in a suit against ABN AMRO Bank and its officers, in a matter involving fraudulent claims and liability by officers of the bank in making advances to the bank.
- Successfully defended the Central Bank of Kenya (**CBK**) in a multimillion-shilling claim (against the bank) for payment of convertible foreign exchange bearer certificates.
- Acting in a claim seeking the tracing and recovery of approximately USD 340 million which was fraudulently siphoned from a Kenyan bank (It is one of the largest banking fraud disputes in Kenya). We successfully defended the client against a claim by the shareholders seeking to be enjoined in this suit, against stiff competition.
- Successfully represented a Pan-African bank in a claim of USD 25 million brought by a Zambian borrower who claims he never authorised the bank to disburse funds to the borrower. It was an ICC matter and the seat is in London.



## RECOVERY

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Some of our recovery work highlights include:

- Advised and acted for the Kenya Deposit Insurance Company relating to recovery of debts owed to several collapsed financial institutions.
- Acting for the CBK in the recovery of all amounts in the “Goldenberg” related cases, in excess of USD 1 billion.
- Advised and acted for the Deposit Protection Fund Board in matters relating to recovery of debts owed to several collapsed financial institutions.

## RESTRUCTURING

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Our recent restructuring work highlight includes:

- Advising in relation to the proposed restructuring of the target (in receivership). The scope of work includes advising on the power of the receiver under the proposed restructuring, alternative restructuring options and undertaking a limited vendor due diligence in respect of the target.
- Advising in the corporate restructuring of middle size Kenyan commercial bank (in receivership). Our role includes advising on the powers of KDIC under the Kenya Deposit Insurance Act, 2012 to undertake the proposed restructuring, including, the powers to require the shareholders in the company to sell their shares and the company to issue additional shares to third party investors.

## RIGHTS ISSUE

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Our recent rights issue work highlight includes:

- Acted as lead advisors to a leading commercial bank in Kenya on a rights issue which included providing a comprehensive legal due diligence, assisting the transaction advisor to draft the information memorandum to ensure full legal compliance, drafting a legal opinion for inclusion in the information memorandum for purposes of making independent decisions by investors. Assisting the client to obtain regulatory approvals from the CMA and the CBK. The matter is valued at USD 2 million.
- Advising on 3 (2006, 2007 and 2012) successful and heavily subscribed rights issues for a tier 1 Kenyan commercial bank.



## ACQUISITION

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Our recent acquisition work highlight includes:

- Advised a leading private bank in Kenya in the purchase of shares worth USD 92, 000 from a target company that provides insurance financing products. Our role involved advising the bank on the legal implications of the acquisition, including the applicable law and assisting in obtaining approval from the Competition Authority of Kenya with regards to the acquisition.
- Acting for the National Bank of Kenya Limited (**the Company**) in relation to the take-over of 100% of the Company's shares by KCB Group PLC. Our role included undertaking a detailed legal due diligence on the Company, advising on the proposed project structure, drafting and reviewing all the agreements and documents in relation to the transaction which included the statement of offer, the actual offer document, the shareholders circular, the notices to be released to the shareholders for consideration at the General Meeting, assisting in obtaining regulatory approval from the Capital Markets Authority, the Central Bank of Kenya and the Competition Authority, attending to and defending the Company in litigation and administrative proceedings arising from the transaction, advising on the proposed delisting of the Company and attending to all completion and registration formalities in relation to the transaction.
- Advising a Kenyan commercial bank and its shareholders in the sale and purchase of at least ninety three percent (93%) shares to a Nigerian multinational commercial bank. Our role involves reviewing and negotiating the Heads of Agreement, drafting/reviewing and negotiating the Share Purchase Agreement and other transactional documents, including the tax deed, disclosure letter, related party deposit side letters/bilateral agreements, escrow agreement, assisting with fulfilment of the conditions precedent including assisting in applying for regulatory approvals from the CBK and CAK, drafting and reviewing the completion documents and assisting with completion of the transaction.
- Advising Prime Bank Limited on and assisting in obtaining regulatory approvals from the CBK, CAK and the Insurance Regulatory Authority in connection with the acquisition of a significant minority stake in the Bank by AfricInvest and Catalyst Principal Partners.

## Our Banking & Finance Lawyers

### George Oraro SC, Senior Partner



George ([goraro@oraro.co.ke](mailto:goraro@oraro.co.ke)) is the Senior Partner at Oraro & Company Advocates. With over 42 years of experience, he is held in high esteem for his arbitration, mediation and litigation expertise in Kenya. He specialises in banking & commercial litigation, administrative and judicial law, corporate & commercial law, employment and labour disputes, international trade and tax disputes.

He has practised in the International Criminal Court, International Chamber of Commerce (**ICC**), the London Court of International Arbitration, the Supreme Court, Court of Appeal, the High Court, Employment & Labour Court, and various Tribunals.

In 2012, George was conferred upon him the rank of Senior Counsel, for his exemplary service to the legal profession. Similarly, Chambers Global 2019 Guide ranked George a top-tier lawyer, noting that he has a "*brilliant legal mind*" and that he has "*attention to detail and extensive knowledge of law across jurisdictions.*" He was also appointed to serve as a Commissioner of Assize to assist in expediting and determining criminal and civil matters.

Aside from his legal practice, George has served as a board member for the Capital Markets Authority (**CMA**) in which he was instrumental in the development of the legal and regulatory framework for the Capital Markets in Kenya. He was also a member of the Nairobi Securities Exchange Technical committee. In 2015, George became the first honorary consul for the Republic of Lithuania.

### Pamella Ager, Partner



Pamella ([pamella@oraro.co.ke](mailto:pamella@oraro.co.ke)) is a Partner at Oraro & Company Advocates and heads the Banking & Finance and Conveyancing & Real Estate practice group. With over 18 years of experience, she has advised local and international clients in banking and finance, capital markets, conveyancing and real estate, M&A, and regulatory work but is well regarded for her capital markets and conveyancing expertise.

Pamella has been highly ranked by leading legal directories such as IFLR1000 and Legal 500 on several occasions. In 2018, for example, IFLR 1000 ranked Pamella as a leading lawyer for her banking, M&A expertise. The directory commended her saying "*[She has] superb quality, easily reachable with great communication skills and has the ability to get along well with all clients.*"

Pamella has a Master of Laws (**LLM**) from Auckland University, New Zealand, an LLB from the University of Waikato, New Zealand and a Diploma in Law from the Kenya School of Law.

Aside from her legal practice, Pamela lectures at the University of Nairobi School of Law. She also serves in her capacity as a Director on several boards.

### **Nelly Gitau, Partner**



Nelly ([nelly@oraro.co.ke](mailto:nelly@oraro.co.ke)) is a Partner at Oraro & Company Advocates in the commercial practice area and specialises in banking & finance, conveyancing & real estate. She has advised local and international clients for well over 11 years in securitisations, debt finance, project finance, real estate joint ventures, as well as the transfer of land.

Nelly has recently advised a leading Kenyan investments and real estate company in a real estate development joint venture with the landowners for the development of an integrated master planned multiple-use city located on approximately 1,000 acres of land in the Nairobi metropolis.

International directory IFLR 1000 ranked Nelly as a ‘Highly Regarded’ lawyer in Banking, Real Estate in 2019. Nelly has an LLB from the University of Nairobi and a Postgraduate Diploma in Law from the Kenya School of Law. She recently was on a secondment program to the global law firm – Stephenson Harwood in their London offices in the United Kingdom.

### **James Kituku, Senior Associate**



James ([james@oraro.co.ke](mailto:james@oraro.co.ke)) is a Senior Associate at Oraro & Company Advocates in the commercial, conveyancing & real estate practice areas. With over 6 years of experience, James has advised local and international clients from the financial services and construction sectors.

James is well regarded for his conveyancing expertise has advised on corporate lending transactions, drafting lending and security documentation but is well regarded for his expertise in the drafting of leases for both commercial & residential and transferring of land.

James recently advised a leading telecommunications company in a corporate lending transaction worth USD 10 million.

James holds an LLB and LLM from the University of Nairobi and a Postgraduate Diploma in Law from the Kenya School of Law.

### **Tesrah Wamache, Associate**



Tesrah ([tesrah@oraro.co.ke](mailto:tesrah@oraro.co.ke)) is an Associate in the conveyancing and real estate practice group. She specialises in advising clients in property law with an emphasis on conveyancing and drafting of residential and commercial lease agreements.

She has advised local clients on financial services, joint ventures, commercial and residential leases, licenses and transfer of land. Tesrah was part of the team that conducted a legal due diligence for a foreign bank that was acquiring an insolvent Kenyan bank.

Tesrah has an LLB from Kenyatta University and a Postgraduate Diploma in Law from the Kenya School of Law.



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