



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 dispute resolution and corporate & commercial law. With a dedicated team of 10 partners, 4 senior associates, 10 associates, 1 lawyer and 36 support staff, the Firm has been consistently ranked by leading legal directories such as Chambers Global, IFLR 1000 and Legal 500 as a top-tier firm in Kenya.

We provide specialist legal services both locally and regionally in **Arbitration, Asset Tracing & Recoveries, Banking & Finance, Capital Markets, Conveyancing & Real Estate, Corporate & Commercial, Dispute Resolution, Employment & Labour, FinTech, Infrastructure, Projects & PPP, Private Client, Restructuring & Insolvency** and **Tax**. Over the years, we have represented both local and foreign clients, governments, regulators, and not-for-profit organisations from target industry sectors including retail, construction, education, energy, financial services, manufacturing & industries and the public sector.

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. Oraro & Company Advocates is a full Affiliate of **AB & David Africa**, a Pan-African business law network committed to ensuring that businesses and projects succeed in Africa by helping clients minimize the risks associated with doing business on the continent. This enables us to offer cross-jurisdictional legal advice in a seamless manner while maintaining the highest professional standards.

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**.

"The group is very thorough, and they take it upon themselves to do the extra work,"

Chambers Global 2021

Our Banking & Finance Expertise

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 **finance, structuring and drafting lending and security documentation for corporate and retail lending including cross border and syndicated loans, structured finance and trade finance** for local and regional banks, regulators and international financial institutions. In addition, our firm is the principal legal advisor to the Central Bank of Kenya.

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.

"...all-round superior legal firm that can cover a client in all possible respects."

Chambers Global 2020

Our Key Competencies

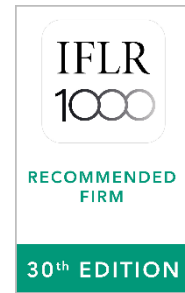
Our practice area encompasses the full spectrum of contentious matters, including:

- lending and securities
- corporate lending
- structured finance
- syndicated loans
- trade finance
- Islamic finance

"They've established quite a number of precedents in the market, they're in the group that has developed things and for that the entire market is grateful. As far as litigation is concerned, I think they're one of those firms where you sleep soundly."

Chambers Global 2020.

Our Market Recognition



Our Experience

ACQUISITION

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 (**CAK**) with regards to the acquisition.
- Acting for a publicly listed commercial bank (the “**Company**”) in relation to the takeover of 100% of the Company’s shares by one of Kenya’s largest commercial banks. 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 (**CMA**), the Central Bank of Kenya (**CBK**) and the CAK, 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 one of the leading private banks in Kenya 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 two private equity firms.

BANKING DISPUTES

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 an American software company (a landmark case in banking law and illegality).
- Representing a publicly listed commercial bank against three separate class action claims in the Employment & Labour Relations Court, for the retabulation of terminal benefits arising from voluntary early retirement taken by the claimants. The claimants are seeking for additional payments based on redundancy. The matter value is USD 8 million.

CLAIMS

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 one of the largest banks in the Netherlands 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 monetary authority of Kenya 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 International Chamber of Commerce matter, and the seat is in London.

PROJECT FINANCE

Some of our recent project finance work highlights include:

- Advising an international private limited liability company (in the medical care business) in a 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 a development finance institution's 10-storey, 3-tower office complex in Westlands, Nairobi.
- Advised one of the largest commercial banks in Kenya 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.

RECOVERY

Some of our recovery work highlights include:

- Acting for the monetary authority of Kenya in the recovery of all amounts in the "Goldenberg" related cases, in excess of USD 1 billion.
- Advised and acted for a state corporation that provides a deposits insurance system and for the receivership and liquidation of deposit taking institutions, in matters relating to recovery of debts owed to several collapsed financial institutions.

RESTRUCTURING

Our recent restructuring work highlight includes:

- Advising in the corporate restructuring of middle size Kenyan commercial bank (in receivership). Our role includes advising on the powers of a Kenya government corporation 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

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.

SECURITY DOCUMENTATION

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 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 a financial services provider headquartered in Nairobi, 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 the authorised automobile distributor and service provider in Kenya.

- 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.

Our Banking & Finance Lawyers

George Oraro SC | Founding Partner



George (goraro@oraro.co.ke) is the Founding Partner at Oraro & Company Advocates. With over 43 years of experience, he is held in high esteem for his arbitration, mediation and litigation expertise in Kenya. He specialises in administrative and judicial law, banking & commercial litigation, corporate & commercial law, employment and labour disputes, international trade and tax disputes.

He has practised in the International Criminal Court, LCIA, International Chamber of Commerce, the Supreme Court of Kenya, Court of Appeal, the High Court, the Employment & Labour Court, and various Tribunals.

In 2012, George was conferred with the rank of Senior Counsel for his exemplary service to the legal profession. He was also appointed to serve as a Commissioner of Assize to assist in expediting and determining criminal and civil matters. Similarly, in the Chambers Global 2021 Guide, he retained the prestigious ***‘Star Individual’*** accolade in Dispute Resolution which is accorded to lawyers with exceptional recommendations in their field. George remains the only lawyer ranked in this category in Kenya. He is also ranked a Band 1 lawyer in Dispute Resolution: Arbitrators, receiving a plethora of praise from the Kenyan legal community for being *“one of the best lawyers Kenya has”* and *“without a doubt among the leading individuals in litigation and arbitration.”*

In addition, the Legal 500 listed George among Africa’s leading arbitration practitioners in its Arbitration Powerlist: Africa 2021.

Aside from his legal practice, George has served as a board member for the Capital Markets Authority 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 | Managing Partner



Pamella (pamella@oraro.co.ke) is the Managing Partner at Oraro & Company Advocates and heads the Banking & Finance and Conveyancing & Real Estate practice groups. With over 19 years of experience, she has advised local and international clients in banking and finance, construction, 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 consistently highly ranked by leading legal directories such as Chambers Global, IFLR1000 and Legal 500 as one of the leading lawyers in Kenya. In 2020, IFLR1000 ranked Pamella as highly regarded for her Banking and M&A expertise. The directory commended her in 2018 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 Post-graduate Diploma in Law from the Kenya School of Law. Aside from her legal practice, Pamella lectures at the University of Nairobi School of Law. She also serves in her capacity as a Director on several boards.

James Kituku | Partner



James (james@oraro.co.ke) is a Partner at Oraro & Company Advocates in the commercial, conveyancing & real estate practice areas. With over 8 years of experience, James has advised local and international clients from the financial services and construction sectors.

James is well regarded for his conveyancing and banking expertise. He has advised on corporate lending transactions, drafting lending and security documentation, 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 a Bachelor of Laws (LLB) from the University of Nairobi and a post-graduate diploma in Law from the Kenya School of Law.



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