

THE VAGRANCY ACT: SOCIAL  
ECONOMIC ASPECTS WITH PARTICULAR  
REFERENCE TO NAIROBI.

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TABLES OF CONTENTS:

Acknowledgements . . . . .	(i)
Table of contents . . . . .	(ii)
List of abbreviations . . . . .	(iii)
List of tables . . . . .	(iv)
Introduction . . . . .	(v)
CHAPTER I: Historical background of the Law of Vagrancy . . .	1
SECTION A: Development of the Law of Vagrancy. . . . .	
SECTION B: Social economic conditions which influenced development vagrancy law. . . . .	4
SECTION C: Other factors which might have contributed to the vagrancy problem. . . . .	7
CHAPTER II: Salient Provisions of the Vagrancy Act and the machinery for implementation. . . . .	11
SECTION A: The police and the vagrants . . . . .	12
SECTION B: Vagrants in courts . . . . .	17
SECTION C: Vagrants and rehabilitation centres, detention and repatriation . . . . .	22
CHAPTER III: Control of vagrancy: an assessment . . . . .	25
SECTION A: Failure at enactment level. . . . .	26
SECTION B: Failure of the Act at the enforcement level . . . . .	27
SECTION C: Failure at Administration level . . . . .	30
SECTION D: Social economic factors as contributing to the failure of the Act . . . . .	32
CHAPTER IV:	
SECTION A: Conclusion . . . . .	35
SECTION B: Recommendations . . . . .	36



## LIST OF ABBREVIATIONS.

BOOKS.

Ghai & McAuslan, Public Land and Political Change in Kenya.

Sorrenson, Land Reform in Kikuyu Country.

ARTICLES

E.A.L.J., East African Law Journal

Joe Magazine, Africas Humour Monthly Magazine.

CASES.

D.M.'s Courts, District Magistrate Courts

E.A.(L.R.), East African Law Review

K.L.R., Kenya Law Review

S.R.M.'s, Senior Residents Magistrate.

## LIST OF TABLES.

TABLE OF CASES

Lubui Kingu & others.  
 Njoroge wa Kimani & another.  
 Nzia & Maindi v.R.  
 R.V. Aisa Masubagu.  
 R.V. Ibrahim Ali Hassan.  
 R.V. John S/O Ondengo.  
 R.V. Nyambura Ndirangu.  
 R.V. Osman.  
 R.V. Peter Ndirangu Muchai.  
 R.V. Wilson Malalu.  
 Wainaina v. Mulito.  
 Wangari Ng'an'ga v. Ng'ang'a.

TABLE OF STATUTES:

Africans courts (suspension Land suits) ordinance of 1956.  
 African Order in Council, 1889.  
 Crown Land Ordinance of 1915.  
 East Africa Order in Council of 1897, 1899 & of 1902.  
 Foreign Jurisdiction Acts of 1843 - 78.  
 Kenya (Annexation) order in council, 1921.  
 Native Passes Rules.  
 Registered Land Act of Kenya.  
 The Kenya Constitution.  
 The Local Government Act.  
 The Penal Code.  
 The Zanzibar order in council of 1884.  
 Vagrancy Act of 1968.  
 Vagrancy Ordinance, 1920.  
 Vagrancy Ordinance 1960.  
 Vagrancy Regulations of 1898.  
 Vagrancy Regulations of 1900 No. 3.



VAGRANCY ACT<sup>1</sup>; SOCIAL AND ECONOMIC ASPECTS

INTRODUCTION:

The meaning of vagrant is provided for in section 2 of the Act. It includes any person having neither lawful means of subsistence such as to provide him regularly with the necessities for his maintenance nor have lawful employment: Any person having no fixed abode and not giving a satisfactory account of himself, any person wandering abroad or placing himself in any public place, to beg or gather alms. Finally it includes any person who offers, pretends or professes to tell fortunes or using any subtle craft, means or device, by palmistry or otherwise to deceive or impose upon any person.<sup>2</sup>

The problem of vagrancy is most acute in urban areas, this is evidenced by the fact that, the various people styled as vagrants as indicated above are very many in big towns. The problem can be explained historically as well as by the social economic factors prevailing in the country. During colonial era, the enacting of vagrancy Regulations was one of the many Laws which were to enable the settlers and the colonial administrators to lead a good life. This piece of legislation was used, both to restrict African movement so that labourforce could be easily obtained from Native Reserves. It also ensured that land was available for the incoming settlers. It may be observed that the vagrancy law was also to keep Africans from the whites areas, unless he was doing productive work; This was because Africans were considered as primitive and unhygeinic. Moving Africans in the Native Reserves made the land disposible to Africans to be limited and hence not all could meet their daily needs from the limited land. This lead most of the Africans to move into towns in search of employment, so as to earn their living or supplement the meagre income from their land.

Ma Mau movement which came about when Africans could no longer tolerate the whites' man oppression, also contributed to the problem of vagrancy, During this period many people were crippled, so that, by the time when the movement ended, so many people were crippled and they moved



in towns where they were to earn their living mainly by begging. This was because, such people had been rejected by their families or because such crippled people could no longer cope with the mode of living in rural areas for they could not do manual work. Towards the end of the movement the colonial government introduced land adjudication and consolidation: This is relevant to the study in that, as a punishment to rebels and nationalists, their land was taken away. The process was seen as a punishment to such people while rewarding to those people who were loyal to the colonial government.<sup>3</sup> This was given legal effect by the African courts (suspension of land suits).<sup>4</sup> It provided that those people who lost their land during Adjudication and consolidation process which culminated to Registration, could not file a suit in court without leave of the relevant authority. It follows then that such people became landless.

Other factors which have contributed to the problem of vagrancy are such as, the education system. Students who are product of the education system aspire for white collar Jobs, this leads many of them to go into town. Most of them do not secure employment places. Localization of Industries in big towns has also contributed in aggravating the problem of vagrancy. The above discussion indicates that there is heavy immigration from rural areas to urban areas. Those people who do not get employed engage themselves in activities such as prostitution, selling drugs in open streets. These activities are styled by the Act<sup>5</sup> as unlawful employment hence such victims are called vagrants. Due to housing problem, such unemployed people cannot afford to hire houses, the law refers them as people of no fixed abode. Those people who are either mentally or physically disabled ends up in being beggars.

There are two main branches of laws which deals with the problem of vagrancy. The first is the Vagrancy Act.<sup>6</sup> Its aim is provided in the head note of the Act as:

"An Act of Parliament to make provisions for the suppression of vagrancy; for the detention of vagrants and for the care and rehabilitation of beggars; and for matters incidental thereto and connected therewith"

The second branch of law which deals with the problem is the PENAL CODE CHAPTER 63 of the Laws of Kenya. The relevant sections strives



to deal with idle and disorderly persons, who inter alia includes, every common prostitute behaving in a disorderly or indecent manner in any public place; or every person causing, procuring or encouraging any person to beg or gather alms.<sup>7</sup> The second section deals with Rogues and Vagabonds, this include persons endeavoring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence; and every person or reputed thief who has no visible means of subsistence and cannot give a good account of himself.<sup>8</sup>

The implementation of the Law of Vagrancy as provided for in the Vagrancy Act has failed due to various reasons. The ambiguous definition of "a vagrant", makes the police officer who goes out to arrest the vagrants, makes him not to be sure of the actual sort of person he is to arrest. Courts attitude towards vagrancy cases also contributes to the failure of the Act. This is because, they emphasize on the criterio of money in deciding who is a vagrant and who is not without caring whether such money was obtained by stealing or by begging. It is also observed that, the Act provides for establishment of rehabilitation centres by the relevant minister but it is not made mandatory for establishment of such centres. As a result no such centres has been established. Failure of the legislature to address itself to the root causes of the vagrancy problem in enacting the Act contributes to the failure of the Act.

The present study aims to examine the social-economic circumstances which influences the victims of the law of vagrancy. The study will be concentrated in Nairobi town due to various reasons. First the problem of vagrancy is more acute in big towns such as Nairobi, Mombasa, Kisumu, Nakuru. Nairobi being the capital of Kenya where most of the economy and main activities of the country are centred and not forgetting that it holds a very high population compared to other towns; It is obvious that a study of vagrancy problem in this area will reflect the problem in other areas. The writer also chooses Nairobi as his area of study, for it is convinience, especially with the limited time in which the research is to be carried out.

The study will take the following form:

In Chapter I, a brief historical background of the Law of Vagrancy will be examined. This will be in the light of the social economic conditions together with any other factors which might have influenced the development of the law of vagrancy. In Chapter II an examination of the salient provisions of the vagrancy Act and the machinery for implementation will be carried out. Control of Vagrancy and its assessment will be examined in Chapter III. In this chapter the discussion will centre on the various factors which have made the vagrancy Act to be ineffective. In Chapter IV a conclusion of the study will be offered, and an attempt will be made to recommend some of the changes in the Act so as to make it more effective.



INTRODUCTION

FOOTNOTES

1. CAPTER 58, LAWS of Kenya, Vagrancy Act, 1968 [Revised 1970].
2. For a detailed meaning of "a vagrant" see section 2 of capt. 58.
3. Sorrenson, M.P.K., Land Reform in Kikuyu country, [Oxford University Press 1968] Chapter 5.
4. Ordinance; 1956 No. 1 of 1957.
5. Section 2 of cap. 58.
6. Supra.
7. CHAPTER 63, Laws of Kenya, Penal Code, Section 182 (a) and (b) respectively.
8. *ibid.* section 183 (b) and (c) respectively.

HISTORICAL BACKGROUND OF THE LAW OF VAGRANCY.

The problem of vagrancy arises in a community which does not provide means of livelihood and sustenance to all members of the community. In a society where every individual is looked after and properly cared for, there is no one to be designated as vagrant. This in traditional Kenyan society, the communal life was such that there could have not been any idlers, beggars or vagrants. But exposure of the traditional communities to Western way of life, has given rise to many new social problems, one of which is the problem of vagrancy. The emergence of this problem thus coincide with the colonization of Kenya by British. In this chapter an attempt is made to trace the historical development of the Law of vagrancy from the time this part of Africa became a colony. The social and economic factors which has given rise to this Modern problem of urban areas, have been given due attention in this chapter.

The idea of the coming of the Europeans in East Africa or in general to find new colonies outside their country was aimed at sustaining their economy back at home. In the words of a writer:

"... The British Imperialism wanted Kenya to supply British Industries with raw materials, serve as an area of investment of British economic surplus .... For Kenya to carry out these new functions the British set up a colonial state. Hence the post colonial state is in essence a neo-colonial state which remain an extension of not only the British bourgeois state but also an extension of the metropolitan states"<sup>1</sup>

The above reasons lead to the scramble for Africa. The official European Scramble for Africa, was launched by the Berlin Conferences of 1883. Article 35 of the conferences General Act provides:

"The signatory powers of the Present Act recognize the obligation to insure the establishment of an authority in the regions occupied by them on the coasts of the African continent".<sup>2</sup>

The Berlin conference was followed by the Brussels Conference, 1890. Article IV of its General Act provides:



"The powers exercising sovereignty or protection in Africa may however delegate chartered companies all or a portion of the agreement which they assume by virtue of Article III (dealing with suppression of Slave Trade). They remain nonetheless directly responsible for the engagement which they contract..."<sup>3</sup>

In answer to this call, the (B.E.A.A.) British East Africa Association, which soon became the Imperial British East African company was formed by William Mackinnon. It is clear that the British colonial intervention in East Africa derived from a General European Colonial Policy that had been given international legal sanction in the two conferences. This general legal sanction justified and guided the British General Law of colonization. One writer provides:

"The 1890 English Act, a consolidation of the Foreign Jurisdiction Acts of 1843 - 78 provided for the exercise by Her Majesty of any Jurisdiction whether obtained by treaty, Capitulation grants, Usage, sufferance or any other lawful means, whether obtained before or after the commencement of the Act in a foreign country as if she had acquired that Jurisdiction by cession or conquest"<sup>4</sup>.

On the strength of the general English Colonial Law, the English legal system came to East Africa; Section 9 of the Foreign Jurisdiction Act was to the effect that the jurisdiction which might be exercised under the Act, and which was to be specified in Orders in Council empowered consuls and later the Colonial officials to hold courts promulgate legislation and carry on all administration in the area to which the order in council applied. The relevant Orders were the Zanzibar Orders in Council, 1884 and the African Order in council, 1889. The two orders particularly the latter permitted the creation of a comprehensive framework of administration, with power to hold courts and promulgate regulations to be exercised over British subjects, British protected persons and some inhabitants and foreigners in the East Africa British sphere of Influence. Thus the two Orders in council came to be used as legal basis for the assumption of general governmental authority by the British Government when she declared her sphere of Influence, the British East African protectorate in 1895.



A series of Orders in Council were released to give effect to the declaration of a protectorate. The East Africa Orders in Council of 1897, 1899 and of 1902 inter alia empowered the commissioner to make ordinances for peace, order and good government of all persons in the protectorate. A High Court with full, criminal and civil jurisdiction over all persons and matters in the protectorate was established.

The declaration of a protectorate was of great legal importance, Ghai and McAusland writes:

"a protectorate is in the eyes of English law a foreign country and its inhabitants are not therefore British subjects ... and it does not matter that the system of government is distinguishable from that of a country with this vital difference - that international law does not govern its relations with the protecting power, and the rights and obligations of that power, no less than those of the protectorate and its inhabitants depend upon the law of the protecting power. This law is set out in the Foreign Jurisdiction Act, and Orders in Council made thereunder and in the general principles of English Constitutional Law, particularly the concept of the Act of State"<sup>5</sup>.

The above brief account describes the establishment of the English legal rule system in Kenya. As the law of Vagrancy, promulgated first as an ordinance,<sup>6</sup> is an aspect of this legal system it came into existence against this background. The first legislation dealing with the problem of vagrancy was the Regulation No. 2 of 1898 (East African Protectorate); the aim was to curb the problem of idlers, beggars asking for alms and those who lacked means of subsistence. This Regulation was repeated by the Vagrancy Regulation of 1900 No. 3 which was applied first in Mombasa then extended to Lamu and Malindi in 1901 and finally in 1902 it was applied in Nairobi area.<sup>7</sup> The Vagrancy Ordinance of 1920 followed the Vagrancy Ordinance of 1900. After this the Vagrancy Ordinance of 1960 was promulgated and finally was the Vagrancy Act of 1968<sup>8</sup> which is the current law on the subject. The various promulgations of the law of vagrancy as from the first vagrancy ordinance of 1898 indicates the changes which occurred in the social-economic sector enhancing the problem of vagrancy. An examination of such factors, thus follows.



SECTION B.SOCIAL ECONOMIC CONDITIONS WHICH INFLUENCED THE DEVELOPMENT OF THE LAW OF VAGRANCY.

For the British Government to achieve their goals, they had to pursue two policies. One was the policy of alienating land to white settlers, for it was believed that the African way of farming was only subsistence and could not further the whites interests. To secure land so as to grant it to incoming settlers various devices for acquisition of land had to be adopted. The second policy to be pursued was that of securing cheap labour. It is in the light of the above two policies namely land and labour in which an examination of the social economic impact upon law of vagrancy is made. The above policy was in effect trying to establish a capitalistic mode of production which was quite unknown in Kenyan communities before.

It suffices to point out here that land alienation was at highest mark in 1915, this is evidenced by the 1915 Crown Land Ordinance. This ordinance is important in that it almost declared Africans as landless. Sorrenson M.P.K. put it vividly and states,

"The effect of the crown lands ordinance 1915 and the Kenya (Annexation) order in council, 1921 was inter alia; to vest land reserved for the use of a native tribe in the crown and in consequence all native rights in such reserved land disappear- Natives in occupation thereof becoming tenant at will of the Crown"<sup>9</sup>.

The legal effect of the above quotation is illustrated in the case of WAINAINA V. MULITO.<sup>10</sup> As the settlers continued to flow in the country more land had to be taken away from Africans so that it could be granted to such people. It should also be noted that, the holding of land by Africans was on temporary for it could be snatched from them at any time, such African would be pushed in Native Reserve areas. There were adverse effect which followed land alienation and which had to be felt even after Independence.

The alienation of land implied that land which was productive was granted to the whites while Africans were pushed in areas which were



unproductive. It also followed that the area of land which was available to Africans was limited. This affected the mode of living which Africans had been used to i.e. shifting cultivation and pastoralism. The total effect of all these factors was that Africans could no longer sustain their daily needs as easily as they were used. This led some members of the family to move to towns and in other areas such as in white-settlers farms in search of jobs so as to earn their daily bread or supplement the meagre income from the land. It followed that not everybody who so moved secured jobs and since their aspirations were frustrated they could not go back to rural areas since to most of them it would have a lot down of their families and going back would not solve the problem of how to earn one's living. Since such people decided to stay in towns. They were considered as idlers and such class of people would breed a potential class of criminals, hence a law had to be promulgated to get such people out of the towns.

Another factor connected with the land and which contributed to the problem of vagrancy is the fact that when the indigenous people could not bear any more of the harshness of the colonial rule, they waged a war against the colonial government, This culminated in the Mau Mau Movement. This Movement is significant for the purposes of the present study, for it was during this period when most of the people who participated in the movement, became disabled in one way or the other, most of the people were crippled during this time. During this period the land adjudication and consolidation process was on. One writer Sorrenson M.P.K. notes that, "the British Government had to strike the iron while it was hot". This was because most of the rebels and nationalists were in detentions and it was feared that if they were released, they would hinder the adjudication and consolidation process or undo what had already been achieved. It should also be pointed out that this process, "was aimed at rewarding those Africans who were loyal to the colonial government," This explains why most of the people who were chiefs or headmen during the colonial government holds large tract of land even densely populated areas. The process was also aimed at punishing those who were disloyal and the nationalists,<sup>13</sup> this gave rise to a class of landless people for their land was confiscated or



alienated to other people, or such people were in detention places during adjudication. This move was given legal sanction by enacting, the Africans Courts (suspension of land suits ordinance).<sup>14</sup>

The process of adjudication and consolidation culminated in the Registration of Land<sup>15</sup> whose law conferred upon the registered land owner all rights appurtenant to the land and an indefeasible interest and nobody could have a better claim than such a person.

The above discussion indicates how some people became landless as from the starting of adjudication process in Kenya. The device was originally a kind of punishment imposed on rebels by the colonialist, but this mode of ownership still continues. Such people who were in the forest and whose land was confiscated could not do anything else apart to migrate to the towns. This is because most of them found themselves propertiless, rejected by the society and by their families due to the western mode of life which emphasized individualistic. This implied that there was no more family or communal property. This is illustrated in the case of SERAH OBIERO V. OPIYO<sup>16</sup>. In this case a man who had two wives caused one of them to be registered as the absolute proprietor of the land in question. Later the registered wife sought an injunction to restrain her co-wife and her children from trespassing on the land which she claimed was the sole owner. The case indicates how family ties has been breaking up.

Such people (rejected by the society due to the new mode of life) moved in towns in hope of securing jobs. But in the town not all such people could get employment either because they had not the required education, or the job opportunities were quite limited. It then follows that such people would become vagrants for they had no lawful employment nor lawful means of subsistence or merely because of having no fixed place of a bode. The government and the propertied class were threatened by the presence of such people in the towns where most of the wealth is concentrated. Vagrants were considered as a threat to the property and public. Because these

vagrants have no fixed place of abode they are also considered as health hazards. This is because they live in shanties and in slums where most of the diseases emanate from due to lack of proper sanitation. Beggars become undesirable in that when they flood the streets of the big cities, they portray a damaging picture to foreign visitors. To promote the tourist industry, the government see it fit to remove beggars from the streets, this would also encourage foreign investors to invest in Kenya.

### SECTION C.

#### OTHER FACTORS WHICH CONTRIBUTE OR CONTRIBUTED TO THE VAGRANCY PROBLEM.

As indicated above, the colonial government had to face another problem, for after acquiring land for the settlers, they had yet to secure labour in order to exploit the natural resources. Since Africans were not used to wage-labour the colonial administrators had to use various devices in order to secure labour. One of such means employed was the vagrancy regulation under which it was no exaggeration to say that all the colony outside the reserves was closed to Africans who were not employed in such areas. This method of achieving labour was effected through the promulgation of the vagrancy Regulation of 1900 and later by the 1920 vagrancy ordinance. The legislation was taken to court for implementation in the case of NJOROGE WA KIMANI & ANOTHER<sup>17</sup>. The court quoted Article 3 of the Vagrancy Regulation of 1900 as providing that:

"the Magistrate shall in any case where a person charged with vagrancy under the regulation comes before him make an inquiry into the circumstances and the character of the apparent vagrant and record the same, and if he is satisfied that such a person is a vagrant may commit him to a civil goal for a period not exceeding three months."

Article I was also read as providing the punishment of a person who has been convicted twice .

Related to vagrancy Rules were the Native Passes Rules, 1900, which restricted the movement of the natives. In the case of LUBUI KINGU & OTHERS;<sup>18</sup>



the court stated that Rule I of the Rules made under the Native passes Rules 1900 prohibits the crossing of a boundary by the native without a pass. The court went further and held that the offence was confined to natives from their Districts of resident to another.

From the above analysis it brings out clearly the circumstances in which the Law of vagrancy developed in; this was in trying to establish a capitalistic mode of production which was unknown theretofore.

Concentration of Industries has also in post independence period contributed to the problem of vagrancy and in particular in big cities such as Nairobi, Mombasa, Nakuru and Thika. These cities have all the modern amenities and life is so promising in the towns especially to the large section of rural population which has never experienced such a life. This means that many people go to the town in search of employment since it is only in these big cities where employment opportunities are high. But not all job-seekers manage to secure jobs, and since a human being must have some basic necessities in life, such as eating they engage in unlicensed activities, such as brewing changaa which is an illegal activity, selling of drugs in the open streets, such drugs are usually stolen from government hospitals. For the young girls, they engage in prostitution. The young boys and girls earn their living as parking-boys and girls. On the aspect of housing this section of population cannot afford to rent a house since they do not have adequate or constant income. Moreover the rents of the houses have been rising at a very high rate. It is this section of our population which the vagrancy Acts styles as vagrants - because they either do not have a fixed place of abode or have no lawful means of subsistence.<sup>19</sup>

The education system which was introduced by the colonial government has also contributed greatly to the problem of vagrancy. The students are taught in a way which leads them to aspire only for white collar jobs. This problem is distinctive in form four and form six leavers. To their surprise most of them are frustrated by the life outside the school, most of them joins the class of the unemployed population. The increased family breakup evidenced by the many cases of divorces, forces the parties especially a woman to go in the town for if she had no property and an order of maintenance is not granted by court she has no other way of earning her living. The same thing applies to children if their custody is given to such a woman.

The above account indicates how the problem of vagrancy cannot be isolated from the social-economic factors prevailing in a particular country. This is so especially in a state where-by the trend has been to encourage individual ownership of property; for there emerges a one dominant class which is propertied and on the other hand there emerges a class which is poor and oppressed. This is what the colonial government established in the cause of fulfilling their aim for scramble of Africa. Unfortunately some of the laws which were promulgated so as to achieve these goals still exists even after 18 years of independence; a case in point is the Law of Vagrancy.

In chapter that now follows an attempt is made to examine the salient features of the Law of Vagrancy and its implementation with reference to Nairobi.



Footnotes

1. Willy Mutunga, THE RENT ACTS AND THE HOUSING PROBLEM IN KENYA  
[An unpublished L.L.M. thesis, Faculty of Law, University of  
Dar es Salaam, 1974] p. 123
2. Supplementary Agreement 1891 pp 365-366.
3. Hert Slet Vol. II p. 488.
4. GHAI, Y.P. & MCAUSLAN, J.P.W.B.,  
Political Law and Political change in Kenya,  
[London; Oxford University Press (1970)] at p. 15.
5. Id. at p. 18.
6. of 1898
7. East African Gazette
8. CHAPTER 58, Laws of Kenya, vagrancy Act, 1968 [Revised 1970]
9. Sorrenson, M.P.K., LAND REFORM IN KIKUYU COUNTRY, [OXFORD  
UNIVERSITY PRESS 1968] p. 28.
10. (1923), 9(2) Kenya Law Review p. 102.
11. Sorrenson, Op. cit. Chapter 5.
12. ibid.
13. ibid.
14. 1956 Ordinance No. I of 1957.
15. Cap. 300, Laws of Kenya, Land Registered Act.
16. 1972 E.A. 227
17. 1906 2 E.A.L.R. 22.
18. 1913 5(1) E.A.L.R. 41.
19. Cap. 58 section 2.

## CHAPTER II.

SALIENT PROVISIONS OF THE VAGRANCY' ACT AND THE MACHINERY OF IMPLEMENTATION

Having traced the historical development of the law of vagrancy we will proceed to the examination of the salient provisions of the vagrancy Act; and also the machinery for its enforcement. In examining the operation of the Act, we have mainly concentrated the study of Nairobi town for various reasons. The problem of vagrancy is more acute in big towns such as Mombasa, Nakuru and Nairobi. The later being the capital of Kenya where most of the economy of the country is found and the main activities, it is obvious that a study of vagrancy problem in this area will reflect the problems in other areas.

As early as in 1958, the Nairobi city had started experiencing the problem of vagrancy. This is evident from a statement made by the Late Tom Mboya in answering the city council of Nairobi, which had said that it had not to house any more people unless entry to the city was controlled, he said

"The city council has failed to grasp the simple fact that, so long as Nairobi remains the capital of Kenya, and in this context the main industrial centre of the country, the majority of the able-bodied persons all over the country will trek towards this large city for economic or social reasons. How would the English or Americans react to control of entry into London or New York".<sup>2</sup>

The quotation portrays the reasons behind the inflow of people from rural areas into urban areas. This inflow enhances the problem of vagrancy for not all people who goes into towns get lawful employment or have lawful means of subsistence. Within Nairobi town, having more vagrants due to the high rate of immigration to this town. This is because of the various opportunities and amenities which the town offers, the vagrancy problem is more acute. This is sufficient reason to study the problem as it obtains in this city. In contrast one might examine the frequency in which vagrancy cases arise in the rural areas. In Kandara Court D.M.'s III we managed to secure one vagrancy case, which was the only case decided in a period of three years. This can be compared with vagrancy cases in one of the courts in Nairobi whereby, on 3rd February 1981 there were twenty four vagrancy cases de-



cided by the Senior Resident Magistrate at Makandara court.

SECTION A.

THE POLICE AND THE VAGRANTS.

The two important definitions in section 2 of the vagrancy Act are "beggar" and "vagrant".<sup>2</sup> "Beggar" is defined as, a vagrant who whether by reason of physical or mental disability is unable to maintain himself otherwise than by vagrancy and in respect of whom no person has shown himself to be willing and able to maintain him. Section 2 goes further and defines who is a vagrant as,

- 2 (a) "any person having neither lawful employment nor lawful means of subsistence such as to provide him regularly with the necessities for his maintainance; and for the purposes of this paragraph, prostitution and earnings from prostitution shall not be deemed to be lawful means of subsistence".

The subsection calls for comment since most of the vagrancy cases which find their way to court falls under it.<sup>2</sup> The frequency in which cases falling under the subsections also reflects the social and economic problems facing third world countries. With the current problem of unemployment one finds that a big portion of the population has to indulge in the so called unlawful employment in order to earn their daily bread, hence one finds prostitution, brewing of changaa and house-breaking abundant in Nairobi town especially in the suburb areas. Such people are considered as vagrant by definition as per definition in the Act. The section also provides that if one has no lawful means of subsistence one is considered to be a Vagrant, again under this section, "prostitution shall not be deemed as a lawful employment and earnings from prostitution cannot be deemed as lawful means of subsistence". The question would be as to which criteria will the police officers use in determining who is a prostitute. In practise this can only be possible where a girl is openly soliciting. The problem of deciding who is a prostitute and who is not, has made the sub-section ineffective and that is why prostitution is prevalent in the town. One cannot fail to notice these prostitutes if one



walking along Kenyatta Avenue or near big tourist hotels; where soliciting is carried out openly during night time "JOE MAGAZINE" in one of its issues points out that, "prostitutes are doing very well in the town".<sup>3</sup> The question is then why are they not apprehended as vagrants. The reason could be that section 2 does not offer a definition of prostitutes.

The other meaning of vagrant is provided for in section 2 (b) which says:-

"any person having no fixed abode and not giving a satisfactory account of himself, and, for the purposes of this paragraph, any person lodging in or about any verandah, pavement, outhouse, shed, warehouse, store, shop or unoccupied building, or in open air or in about any cart or vehicle, shall be deemed to be a person having no fixed place of abode".

The subsection just as subsection (a) is ambiguous in that most of the pinpointed places mentioned as not lawful fixed place of abode has been by implication admitted as lawful fixed place of abode. The term is so wide that it may cover even one's shop or his outhouse. If a person hires a shop and is residing there can he be declared as a vagrant. He may be even more prosperous than most of the people employed or claimed to have lawful employment. The section will cover people who own kiosks in the town as having no fixed place of abode.

The wide definition of fixed place of abode given in the section reflects the exigencies of the time when the Act was enacted. It was intended to protect mostly Europeans and the wealthy Asians under the assumption that if an African employed in a shop is allowed to reside there, he could steal from the shop. Also if an African was living in an outhouse he could bring his African comrades who were unemployed, hence unwanted by the Europeans in the towns. But in the Independent Kenya one fails to understand why shop, and outhouse continue to be termed as places of no fixed place of abode. Perhaps it is intended to serve the same role as during the colonial period, that is protect the property of the rich from the empty stomachs of the poor. It may be noted that nobody has ever been a victim of this subsection and if there has ever been, it would be a mockery of the law since there are so many people who sleep in the open streets and yet they are not arrested as people having



no fixed place of a bode.

Section 2 (c) provides that a vagrant means;-

"any person wondering abroad, or placing himself in any public place, to beg or gather alms".

The subsection stipulates a situation where beggars places themselves in streets to beg. The question is why there are so many beggars in the streets, not charged under the Act since they can be charged under this subsection. They also falls under both section 2(a) and (b) since they have no lawful means of subsistence except by begging, they also do not have lawful employment. Most of the beggars do not have a fixed place of abode. During interview some of the police officers admitted that they do not arrest beggars unless there is a directive from the D.C. or the P.C. to do so in order to "clean" the city when there is a big or an international meeting taking place in Nairobi, Interviewing one of the beggars who has begged for twenty years, WAMBUI MUCHINA told THUO THIONGO the interviewer that:-

"Regarding police harrasment, Wambui explains that they are unpredictable. Like now it is very quiet, we haven't seen them for sometime. But there are times we expect them every two weeks. They collect us roughly and pile us at police stations. Several times we are taken to court and fined. But at times they only make us suffer overnight and release us in the mornings. There are times they do not want to see us on the streets for weeks, particularly when important meetings are going on in Nairobi."<sup>4</sup>

The rational of cleaning the streets by removing the beggars is not to potray a bad image to the visitors from abroad. Police officers argued that even if the beggars are arrested and an order of repatriation is made, such beggars would run away from their Home Districts (if any) since they did not like to be restricted. This was also supported by one of the interviewed beggar said:-

"she does not support the idea of the government concentrating beggars in a camp and helping them from there, it is better to be given money. Camps would be like prisons where nobody is free."<sup>5</sup>

Section 2(d) provides another meaning of a vagrant as:-

"any person offering, pretending or professing to tell fortunes, or using any subtle craft, means or device by palmistry of otherwise to deceive or impose upon any person".



Like the other subsections (a) (b) and (c) of section two, this subsection is not invoked generally. There are so many people in the towns who professes to tell fortune, who can be brought within the ambit of law by invoking this subsection. An interview with police officers disclosed that, the main reason is that there is no complainants to the offence, so that if such a person offering to tell fortune is taken before the court, he would be discharged for lack of enough evidence. This is probably due to defect in the section itself which provides that, pretending or professing to tell fortune amounts to an offence when it is done, otherwise to deceive or impose upon any person. It implies that the section provides a loophole in that, it is hard to prove the element of deceiving or imposing upon anybody, for a complaint who goes to such fortune teller would be taken to have consented.

In practise the only section which is invoked mostly is section 2 (a) and only in rare occassion section 2 (b). The Police officers of KAMUKUNJI POLICE STATION were interviewed on the issue as to how they arrest vagrants and what criteria they use in deciding who is a vagrant and who is not police officers might operate a police "swoop" whereby they go into the streets at the late hours of the night and stop anybody whom they get in the streets. They ask a person to identify himself which means giving them an identify Card (I.D.) whether one has an I.D. or not he might over an explanation that he forgot it at his home or it is lost and he has reported the matter to the police. Assuming that one indentifies himself he is asked his place of work. One can only satisfy police officers on this question by showing them an identity card of his place of work. It should be noted that it is only a few employers who give their employees identity cards of the place of work. If one does not indentify himself with his place of employment, the police officers considers him as a vagrant than anything else and he is subjected to further questions. He is asked whether he has money with him to maintain himself. If he has money the police-officers consider whether the amount would be enough to sustain the person with subsistence. This can be illustrated by the case of R.V. OSMAN.<sup>6</sup> The police raised the argument that a dependant with one shilling in his pocket cannot claim to have enough to provide for necessities or his maintenance, by whatever standard. It is interesting that in deciding whether the amount of money is enough for subsistence, the police



officer applies subjective test. This is bound to vary from one officer to the other. There have been cases where a person with sh. 55 has been considered as not having enough money to sustain himself, this was in the case of RV.AISA MASUBAGU.<sup>7</sup> When the alleged vagrant was taken to court the court held that, the accused had sh. 55 with her and she was not a vagrant. The decision of the above case can be compared with the case of R.V. WILSON MALALU.<sup>8</sup> The accused was charged under section 2 (a) of the vagrancy Act for having no lawful employment nor lawful means of subsistence. The court held that since the alleged vagrant had sh. 1.50 and had shown it to court he was not a vagrant and he was discharged. It can be noted that the police officers have to exercise their discretion in deciding who is a vagrant. Because of the ambiguity of the definition which the section provides, the police officers can easily misuse the section.

There are cases where an individual goes to police station and declares himself as having no place to sleep and nothing to eat. Such cases normally arise where an individual has gained disfavour of the person, whether relative or otherwise with whom he was staying with. Such cases indicate the effect of abandoning African way of life where hospitality was even extended to strangers who were in need. This has been evaded by the Western way of life which is gaining roots in the Kenyan society. This is because Western way of life emphasises on individualistic, this has caused disagreements even between brothers. Such a person who declares himself as a vagrant by implication is charged under section 2 (a), of the Act, or if he had approached a police officer who is more sympathetic and he possesses money he can house the victim in his own premises and in the morning he would pay transport fare for such a person to his home. The police officers, interviewed were hasty to point out that this rarely happens. For you cannot be sure whether such person is of good or bad character and might commit crime like stealing when the host is not around. The reason for greater number of cases charged under section 2 (a) is that it is easier for a police officer to prove vagrancy under this subsection than other subsections.

At this juncture it would be appropriate to highlight the issue of beggars covered under this Act. This question is important in that, to many people, "a vagrant" means "a beggar" and since they are aware of the law of vagrancy aimed at curbing the problem of vagrancy, why then is the number of



beggars especially in the city of Nairobi is in increase rather than decreasing. This question was put to many police officers who are supposed to the law in motion by apprehending such people and taking them to courts. It was pointed out that, beggars can be charged either under section 2 (a) since they do not have lawful means of subsistence or lawful employment rather than begging. They can also be charged under section 2 (b) for most of them except those who are put in the streets by their relatives and taken home in the evening, have no fixed abode. Most of them sleeps in verandaha, pavement, sidewalk or in the open-air places which are specifically termed by the Act not to be considered as fixed places of abode. Finally beggars can also be charged under section 2 (c) for they wander abroad or place themselves in public places, to beg or gather alms.

The police officers admitted that they do not arrest beggars because, they have no place to be taken. By this it meant that there are no rehabilitation centres established for such beggars to be taken as provided by the law.<sup>9</sup> It can be argued that the Act provides for the establishment of Rehabilitation centres where a beggar found to be a Kenyan should be taken by an order of court. But the section further provides that, no such order shall be made unless the court is satisfied that the beggar will be admitted to a centre without undue delay. In essence the section does not make it Mandatory for a court to make an order to be taken to a rehabilitative centre. Further more there are no such centres, existing as provided by the law.

The other reason for the failure of the police officers to arrest the beggars is that, even if such a beggar is taken to court and a repatriation order is made he will go back in the streets again for they do not like to be restricted.

#### SECTION B: VAGRANTS IN COURTS.

After the alleged vagrants is arrested by the police officers, he is taken to police station where he is charged for being a vagrant. From there he is taken to court for the deciding of the case. Most of the vagrants arrested in the city centre of Nairobi are either by police officers of Central Police Station or by Police officers from Kamukunji Police Station. These two police stations takes their cases in Makandara court.



Power to deal with vagrancy cases is conferred to the court by section 4 (1) of the Act, which provides that the court before whom any person is brought as being apparently a vagrant shall inquire into the circumstances of that person, and where the courts finds that person to be a vagrant the court shall have power - if that person is a beggar and a citizen to be taken to a rehabilitation centre and requiring that person to reside in that centre for a period not exceeding two years. Provided that such order shall not be made unless the court is satisfied that the beggar will be admitted to a centre without undue delay.<sup>10</sup> If the court finds that person not to be a citizen of Kenya, or to be a citizen of Kenya who is a vagrant, but not a beggar and who has no home, the court can make an order for that person to be detained in a place of detention.<sup>11</sup> If on the other hand the court finds that person to be a citizen of Kenya who is a vagrant but not a beggar and who has a home to make an order for that person to be taken to the district in which his home ~~it~~ is situated and restricting the movement of that person to that district during a period of three years.

In learning the case, what actually happens is that, the charge is read to the alleged vagrant who is then asked to enter a plea. If he enters a plea of "not guilty" then he is asked three basic questions regardless of which subsection of section two of the vagrancy Act, he was charged with the questions are:- whether he has lawful employment?, whether he has a place to stay?, and whether he has any money with him? If the alleged vagrant claims to be employed or have a place of fixed abode but have no money on him he will be released immediately if he has any elderly relative present in court. Otherwise the court orders that he be sent to the police station nearest his place of work or place of abode so that his claim can be investigated where the accused has money he is released forthwith. This is illustrated by the two cases of R.V. AISA MASUBAGU<sup>12</sup> and R.V. WILSON MALALU.<sup>13</sup> The two cases also illustrates the liberal attitudes of courts in using the criteria of money in determining whether one is a vagrant or not. In the case of R.V. WILSON MAZALU<sup>14</sup> the accused was discharged and the court held that he was not a vagrant. The accused had sh. 1.50 and shown it to court. I feel that his lordship was influenced by some other extraneous factors which were not indicated in the judgement. It is respectfully submitted that he erred in holding that the accused was not a vagrant. The same thing happened in the



case of R.V. AISA, where the accused was found at the city centre at 9.30 p.m. on the 1st Feb. 1981, having no lawful employment nor lawful means of subsistence. The court held that the accused was a very nice (emphasis mine) woman with sh. 55 she is not a vagrant and she was discharged. If his Lordship was not biased which is against the doctrine of Natural Justice then he viewed vagrancy cases very lightly as requiring no legal procedure to be conformed with.

The proper procedure which courts dealing with vagrancy cases ought to confirm with what was laid in the case of R.V. NYAMBURA NDUNGU<sup>15</sup>. The accused was found at victoria street at 10.00 p.m. on August 10, 1962 having no fixed abode and not giving a satisfactory account. The complaint was made under section 2 (1) (b) and c of the ordinance 1960. No allegation in the particulars falls within paragraph (c) and the record of the Magistrate enquiry into the complaint, discloses that there was no such reference to this paragraph. When the alleged vagrant was taken before the court she was informed of the complaint and invited to reply to it. She was recorded as saying, "No work, No money from Nyeri. Twenty seven years of age". Magistrate then added the words obviously a prostitute: (emphasis mine). In appeal the High Court submitted that the judgement was arrived at erroneously.

RUDD, Ag. C.J. laid the proper procedure which should be followed in vagrancy cases:-

"We appreciate that no procedure is prescribed under the vagrancy ordinance but nevertheless, as the liberty of the subject is made liable to restriction under the ordinance, we think that the enquiry under the ordinance should follow closely the procedure provided for trials under the Criminal Procedure code. The answer by an alleged vagrant to the particulars of a complaint should be accepted as an admission of vagrancy only when such answer falls unequivocally within one or more of the definition of "vagrant" in the ordinance. If there is no clear admission by the alleged vagrant which can justify the finding that he or she is a vagrant, the court should require the prosecution to lead the evidence in support of the complaint when all such evidence has been taken the court should inform the alleged vagrant of the right to give evidence or make unsworn statement and to call witnesses for the defence. The court should take a note of the evidence. The trial magistrate should then give his finding on the evidence and his reasons for deciding, if he so decided, that the person is a vagrant. If there is any reasonable doubt the benefit of that doubt should be given to the alleged vagrant. Finally, if the court finds that the alleged vagrant is in fact a vagrant it



should ask him if there is any reason why the provisions of paragraph (a) or (b) of section 4 sub-section (1) should not be applied to his case."

It may be submitted that the statement of Law by RUDD C.J. is the correct view and the procedure should be followed by courts deciding such case; other than deciding vagrancy cases cerbitrainly.

As indicated above, courts have powers of either making an order for a vagrant who is a beggar to be taken to a rehabilitation centre, can make such vagrant to be detained in a place of detention or an order of repatriation to home district can be made by court depending on the nature of the vagrancy.

The field survey conducted for this study did not lead to any case where an order for a beggar to be taken into a rehabilitation centre was made. This is because there are no such established centres as required by section 9(1) of the vagrancy Act. For detention orders are made by courts especially, in cases where the alleged has no home, they are usually taken to detention places which are inform of Jails from where they are discharged after a few days.

In cases where the vagrant is a Kenyan and not a beggar and he has a home, courts makes orders for such a person to be taken to the district in which his home is situated and restricting the movement of that person to that district during a period of three years.

Such an order was made in the case of R.V. PETER NDUNGU MUCHAI Cr. case No. 1468 of 1981. The accused was found at the city centre at 9.30 a.m. on 1st February 1981, having neither lawful employment nor lawful means of subsistence. He was charged under section 2 (a) of the vagrancy Act. The accused told the court that he was born at Kiambu, he had no money and he was not employed; an order for his repatriation was made.

In the same court, an order for repatriation was made in connection with the case of R.V. IBRAHIM ALI HASSAN Cr. case No. 1629 of 1981. The accused aged 30 years was charged and convicted of being a vagrant in accordance with section 2 (a) of the vagrancy Act, as having no lawful employment and no lawful means of subsistence. A court order was made for his repatriation



to his home district for a period of three years. In Nairobi District what happens when an order of court is made for repatriation of a particular vagrant, he is taken to MATHARE DETENTION DEPORT which is responsible in making sure that the vagrant is handed over to the District commissioner of his home District, who in turn hands over the individual to the chief of his location. Such a person cannot move out of his home district without a permit issued by administrative officer with power conferred to him by section 7 (1) of the Act. An offence is created by section 8 of the Act whereby if such a person is found outside that district in contravention of that order; and is not in possession of a permit issued under section 7 of this Act; or is found to be acting in breach of any conditions of a permit so issued;<sup>16</sup> or while outside that district fails without reasonable cause to produce such a permit to a police officer or administrative officer upon demand; shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding six months for a first offence or two years for a second or subsequent offence.

In the case of NZIA s/o MAINDI V. R.<sup>17</sup> the appellant was repatriated to Kitui on April 26, 1960. On June 27, 1962, he was issued with a permit to look for employment in Nairobi which he alleged was his place of residence though he was born in Kitui. He did not find employment within the period stated in the permit and was subsequently charged with returning after repatriation contrary to section 4 (3) of the vagrancy ordinance (cap 58). In his plea he said "I was repatriated. I have a permit to return," and produced the permit. This was treated as a plea of guilty and he was convicted thereon and sentenced to two years' imprisonment and ordered to be repatriated.

The accused appealed, the court held that the plea was not unequivocal plea of guilty and the appellant was convicted without a trial; the original and all subsequent orders were wrongly made since they ordered the appellant's repatriation to a place where he did not have a home. The judgement of the court was read by RUDD, Ag. C. J.

Having examined the courts' powers in dealing with vagrant cases, it will be appropriate to look at the various orders of court which prescribes how the vagrant is to be dealt with.



SECTION C.VAGRANTS AND REHABILITATION CENTRES, DETENTION PLACES AND REPATRIATION:

Section 9(1) of the vagrancy Act provides the powers of establishing rehabilitation centre, by the minister concerned (usually of Local Government). The city council of Nairobi is conferred to establish rehabilitation centres under section 155 (g) of the Local Government Act.<sup>18</sup> The section provides that; sect. 155: Every county, municipal or town council shall have power -

(g) subject to the vagrancy Act to establish, maintain and control rehabilitation centres for the care, maintenance and rehabilitation of beggars.

This power of establishing such centre is subject to the consent of the Minister and of the Minister for the time being responsible for local government.

In reality no such power has been exercised to establish a rehabilitation centre; not even in Nairobi town. The Nairobi city council only gives financial aid and participates to a very limited extent in management of "MJI WA HURUMA". This is established by Salvation Army Organisation, but it is not exclusively for beggars, but also for old and poor people who are aged and who have no people to care for them. The organisation like its counter-part in Mombasa is neither established under the vagrancy Act, nor Managed by the city council. The inevitable conclusion to be drawn is that the Act is a dead letter as far as rehabilitation process is concerned.

As far as detention orders are concerned very few are made as compared to repatriation orders. This is because the orders are issued only to vagrants who are non-citizens. Though the Act empowers the court to issue detention orders in respect of citizen vagrants who have no "home", this power is rarely invoked because of the criterion of using one's ethnic origin in determining his home district. In Nairobi District citizen vagrants who are awaiting repatriation or whose cases are still being investigated are confined at MATHARE DETENTION DEPORT. Efforts to discover whether there are citizen vagrants for whom employment has been secured as per section 15 (1) was fruitless. With the current unemployment problem in the country, this

is understandable, otherwise the section was only effective during colonial time when such vagrants were taken to work in the European farms. The question which emerges is whether such section is relevant in the present social economic conditions. For non-citizen vagrants they are mostly from the neighbouring countries. It should be noted that deportation orders are rarely issued by the minister, for it is regarded as an unnecessary expenditure. This is in essence true for a non-citizen who is not actually a vagrant might declare himself or put himself in circumstances in which he would be arrested for vagrancy so that a deportation order would be made and thereby he would get free transport to his country. What happens is that such people are detained for three months, whether it is a citizen vagrant or a non-citizen vagrant after which period he is released<sup>19</sup> so that the purpose of the Act is defeated.

Where a repatriation order is made, the process of taking such a vagrant to his home district has been examined above.



Footnotes

1. East African Standard of 8th July 1958.
2. The 24 vagrancy cases filed at Makandara court on 3rd Feb. 1981 were under section 2(a).
3. Africas Humour Monthly Magazine of December 1973 p. 14 col. I.
4. THUO, T. "Woman of no fixed abode",  
The Anvil, Vol. 9 No. 71 p.6  
(Thursday, April 9, 1981).
5. *ibid.*
6. Cr. case no. 425 of 1976 at Vihiga's District Court Unreported case.
7. Cr. case No. 1456 of 1981 at S.R.M'S Court at Makandara: (unreported).
8. Cr. case no. 1451 of 1981 at S.R.M's court at Makandara (unreported).
9. Cap. 58, <sup>OF</sup>Laws/Kenya, vagrancy Act, 1968 [Revised 1970],  
Section 4(1) (a)
10. *Supra*
11. *ibi* section 4 (1) (b)
12. *Supra*
13. *Supra*
14. *Supra*
15. 1962 E.A. p. 679
16. *ibid* section 8(a) i and ii
17. 1963 E.A. p. 322
18. Cap. 265 of the Laws of Kenya
19. *ibid* section 15 (1) and (3).

## CHAPTER III.

CONTROL OF VAGRANCY': AN ASSESSMENT

Having examined the implementation of the vagrancy Act, in the previous chapter an attempt will be made to expose the failures of the Act and its success if any. This is important in that, having looked at the main causes of the vagrancy problem, one can look at the prescribed law aimed at combating the vagrancy problem and see whether it has lived true to its aims. In examining the shortcoming of the Act, we will consider defects in the enactment, in the enforcement of the law and finally the failure to appreciate the social and economic factors by the legislatures as the main causes of the vagrancy problem.

At the outset, it is worthy to note opinion or comments of two people in regard to the operation of the Act. Mr. Cooke an elected member for coast constituency (as he then was) remarked during the debates on the 1959 vagrancy Bill.

"My opinion is that it is not so much against the Bill that the protest have come, but the way the Bill may be administered.... There is a lot of good in the Bill and it can control a lot of uncontrollable elements at the moment, but there is a great deal of bad in it as well as if it is to be left to the mercies of government junior servants".<sup>1</sup>

In 1968 when the vagrancy Act had been in force for ten years Mr. LE PELLEY a practising advocate said:-

"The provisions of the vagrancy Act may be justifiable but the present manner of its enforcement it is submitted, clearly is not".<sup>2</sup>

From the above two opinions by the two persons, two features are distinct. First, feature is to the effect that, the vagrancy law is justifiable if properly implemented. The second feature is that, as the Act stands it can be misused especially when it is left to the junior officers (police) for its enforcement. On the first feature, the Act can be justified in that as the HEAD NOTE OF THE ACT provides, the main aim of the Act is,



"for the suppression of vagrancy; for the detention of vagrants and for the care and rehabilitation of beggars; and for matters incidental there to and connected therewith."

This implies that if the Act is properly implemented it would operate in favour of the desparate and destitute beggars who are exposed to cold and peoples' rebuke. This is so for the Act provides for establishment of rehabilitation centres for such beggars to be catered there.

The second feature expressed by the two opinion above is that, the law of vagrancy mainly operates on the innocent and not the true vagrants. This is illustrated by the number of vagrancy cases which finds their way to court and the courts find that the accused person is not in fact a vagrant. Such people might have come into town for business and got stranded in the city<sup>3</sup>, a school leaver who is in search of employment. If this is compared with the people who sleeps in the street and earn their daily bread by solely on begging and yet they are never arrested as vagrants, then it can be rightly argued that the purpose of the law of vagrancy has lived to its frustration.

An attempt will be made to show how the law of vagrancy has failed at different levels.

#### SECTION A.

##### FAILURE IN ENACTMENT:

One of the failures in the vagrancy Act is its ambiguity in defining who is a vagrant. Generally the law leaves it to the police officers to use their discretion in determining who is a vagrant and who is not. The Act provides that anybody who has no lawful employment nor lawful means of subsistence is a vagrant. It may be noted that in the light of the unemployment problem in Kenya, the police officer is left to determine a very sensitive area, that is what is lawful employment and lawful means of subsistence. The same case is with those people who have no fixed

vide for necessities or his maintenance, by whatever standards. If compared by those people who by virtue of section 2(d) provides a vagrant as,

"any person offering, pretending or professing to tell fortunes, or using any subtle craft, means or device by palmistry or otherwise to deceive or impose upon any person."

This subsection is not invoked to arrest, the very many people found in big towns. These people, that is fortune-tellers, astrologers and palmists - although they are galore in major towns (and actually some of them put regular advertisements in the local press, including the sale of sexual stimulants, which is illegal under the public Health Act) look rich and act so, and police, in their own notion of vagrancy being associated with poverty do not touch them. CHRISTOPHER MULEI in his article, "vagrancy cannot be fought by police and courts" says that,

"Poverty should not be a crime, but this is not so in Kenya. Here you lose your value if you are poor or destitute, and, what is more, you are automatically on the wrong side of the law if you remain on that disadvantaged position"<sup>7</sup>

This attitude is also adopted by the court. When an alleged vagrant is taken before the court, he is asked whether he has money with himself,<sup>8</sup> if he has, he is released for he is termed as not a vagrant. The court has gone to an extent of holding that an alleged vagrant with Sh. 1.50 is not a vagrant.<sup>9</sup> What is important is that the court does not question how the money was raised, for it could have been raised by begging or stealing. And in such circumstances the accused would be a vagrant despite of having money. This approach by the court contributes to the failure of the Act for they take the offence of vagrancy lightly. If the charged person has no money he is asked a further question, whether he has place of a bode. If he answers in affirmative and there is an elderly person, who is a relative in court, he is discharged.



The method adopted by court affords the accused with a loophole, for the accused might not in actual fact be having a relative with whom he stays with, but a friend who is aged can claim to be a relative, whereby the accused would be released and becomes a vagrant once again. If the above two questions posed to the alleged vagrant is in negative, courts ask yet a third question; whether the accused have a lawful employment, if the answer is in affirmative, he is taken to a detention place for the investigation to be carried out.

The irony is that under the Act while beggars are apparent vagrants and can be charged either under section 2 (a) for they do not have lawful means of employment nor lawful means of subsistence, or section 2(b) for they do not have a fixed place of abode or section 2(d) for they place themselves in public places for the purposes of begging their presence is notoriously noticeable in most of the distinct streets in Nairobi, and in other big towns, both during the day and night. One fails to understand why the Act is not invoked to arrest such people so that they could be taken to rehabilitation centres [as the Act provides in theory]. It may be observed that, in enacting the vagrancy Act and inserting such provision, the legislature had the welfare of beggars in mind for by being taken to rehabilitation centres they would lead a better life than being exposed to cold and rain during the rainy season or scorching sun during the hot seasons. With this regard the Act would have echoed one of the general aims of law, that is "to make people lead a good life".<sup>10</sup>

Laxity adopted by courts in trying vagrancy cases have contributed to the failure of the Act to achieve its aims. This is illustrated in the case of R.V. NYAMBURA NDUNGU<sup>11</sup> when the charge was read to the accused she was recorded as having said that "no work, no money. From Nyeri" the magistrate then added the words "obviously a prostitute". It should be noted that a vagrancy charge is an offence, since it affects one's freedom of movement;



Hence the procedure available to any other offence should also be afforded to vagrancy cases. If this is put into practise the Act would be abit effective.

### SECTION C

#### FAILURE AT THE ADMINISTRATION LEVEL.

Under this heading the aspects of rehabilitation centres, Detention and repatriation are discussed. Though the Act provides for the establishment of rehabilitative centres by the Minister concerned,<sup>12</sup> the Act has not made it mandatory for establishment of a minimum number of such centres in any given town. As a result no such centres have been established so it is ineffective. Assuming that such centres are established, the law would be still inadequate to deal with the problem for it is provided that, if the court finds a Kenyan citizen to be an apparrent vagrant and is taken to a rehabilitation centre,

"... he shall be discharged from a centre if the warden is satisfied that upon leaving the centre he will either -

- (a) engage in some suitable employment of occupation outside the centre by which he will be able to maintain himself....."13

This provision ignores the social economic problems in Kenya, for it is hard for a beggar who is either mentally or physically handicapped to secure a job in view of unemployment problem and unless the government takes steps to provide such people with jobs.

The same case applies to vagrants who are committed into detention places; section 15 of the Act provides that if a Kenyan citizen is detained in such a place; the officer in charge shall use his best endeavours to obtain suitable employment outside that place for those vagrants detained therein and in the event of such employment being found and accepted by such a vagrant, he shall be discharged. If three months elapses without such employment



being found, such a vagrant shall be discharged from such a detention place.<sup>14</sup> This also applies to any vagrants who is not a citizen of Kenya ... If three months elapses since the report was made to the Minister of immigration, and he has not made any order for such person to be removed in Kenya, such a vagrant shall be discharged forthwith from detention.<sup>15</sup> What is important is that such people after being discharged will have the very forces which operated on them previously, operating on them again; which means that they become vagrants once more. In essence the problem of vagrancy has only been temporary curbed.

Provisions relating to repatriation of the vagrant to his Home District also portrays a failure of the Act.<sup>16</sup> When a vagrant is repatriated to his home district the law only provides that he would be restricted in such place for three years and for him he should not travel out of the District without a permit issued in accordance with section 7 of the Act. It can be observed that this is not a solution to the problem, and it is ineffective on two grounds. First the legislature fails to realise that a vagrant can be a vagrant in his Home District, i.e. a vagrant who has been to his Home District he can be a vagrant in Thika town which is in Kiambu, technically he would not have committed any act of vagrancy. Secondly, after the expiry of the three years, such a person would revert to his old way of life; that is he would become a vagrant once again since at home he has no occupation to provide him the daily bread, [In this case it is assumed those genuine beggars who have no land and cannot be accepted by their family if any]. Some cases can be anticipated where a vagrant do not know his Home District though no such case came to the notice during the research such cases can be anticipated. This is because, there are women beggars who sleeps in the streets and you find them with children, when such children becomes mature how are they to know their original Home District. This proposition also indicates that, unless something very revolutionary is done, the problem of vagrancy is there to stay, for such children who are brought up by begging, the chance of their leading such kind of life is very high. From the above discussion it also culminates



to the point that repatriation succeeds only in postponing the problem.

SECTION D:

SOCIAL ECONOMIC FACTORS AS CONTRIBUTING TO THE  
FAILURE OF THE ACT.

Ignorance of the social economic factors, by the legislature in providing provisions to curb the vagrancy problem has contributed most to the failure of the Act. In chapter I the causes of the vagrancy problem have been examined; just to mention them briefly such factors are landlessness, due to Mau Mau Movement which caused many people to be crippled and they found themselves rejected by their family and since they could not do manual work they had to move in towns where they earn their living by begging. Other factors responsible for migration to towns are, localisation of industries in the major towns, the system of education which trains most of our students to aspire for whites collar jobs and to some extent increase marriage breakdowns having a frustrationary influence on the children who thereafter, run away from home to towns.

If the laid machinery ignores these factors in curbing the problem it amounts to paying lip-service to the whole problem. We may concur with CHRISTOPHER MULE I who observes that, "vagrancy cannot be fought by police and the courts alone."<sup>16</sup> This statement explains the current law of vagrancy apathy as far as curbing the problem is concerned. The government has started to direct the newly established industries to be located in rural areas. This will reduce the number of Job-seekers who flows in the town and after the frustration of their aspirations, they engage in activities accounting to vagrancy. As far as education is concerned, the government has a policy which emphasize on technical schools and village polytechnics. This will alleviate the problem of vagrancy in that most of the up-coming youth would be self-



employed if not employed in other sectors.

As pointed out in Chapter I, landlessness is a major contributory to the problem of vagrancy. This factor has been ignored by the government in enacting laws to curb the vagrancy problem. The importance of land in the Kenyan economy has been discussed in great depth in chapter I. Failure of getting employed together with lack of land where one can work on it to earn his living, has been a major reason of the heavy rural-urban immigration. A great portion of such urban immigrants ends up in turning out to be vagrants. What the government should strive to do is find a device in which genuine landless people would be indentified. It should then allocate such vagrants with land in which they should be compelled to work on and not to sell. It can be observed that there is a portion of vagrants who are either mentally or physically disabled, the government should establish a home for such people where they could be catered for but it should not leave such people to the mercy of the voluntary organisations such as Salvation Army which has established MJI WA HURUMA.

Land to be allocated to the landless could be acquired from those people who have large tract of land which is not utilised. The government has such power conferred by the constitution that is to acquire land compulsorily through section of the constitution provided it compensate such people.<sup>17</sup> The government could also allocate government land which might be lying idle.

It can be observed that most of the factors discussed in this chapter have been ignored by the Legislatures; though they greatly contribute to the problem. Lack of considering these important factors have contributed greatly to the failure of the vagrancy Act, to achieve its purpose.

Footnotes

1. Kenya Legislative Council Debates  
vol. 81-83 at Col. 1133, 22/12/59.
2. Le Pelley, "vagrancy and the law in Kenya"  
5 E.A.L.J. 1969 at p. 200
3. R.V. Wilson Malalu S.R.M.'s Court  
at Makandara cv. case No. 1451 of 1981. The accused  
hailed from Kitui. He had gone to Nairobi to renew his  
driving license and got stranded in the city.
4. Cv. case No. 425 of 1976 at Kakamega D.M.'s court.
5. Section 81 (1) of Kenya Constitution
6. Cv. case No. 425 of 1976 at Vihiga's D.M.'s Courts.
7. The Sunday Nation, Page 30,  
(dated 2nd November 1980).
8. ibid
9. ibid.
10. Cited in KURIA G.K., "Religion, the Constitution and Family  
Law and Succession". Department of Private Law, University  
of Nairobi, prepared for Faculty of Law seminar held  
on October 28, 1977. p. 1
11. 1962 E.A. 679.
12. Section 10 (2), vagrancy Act  
Cap. 58 of the Lawa od Kenya.
13. ibid, section 15 (2)
14. ibid, section 15 (3)
15. ibid, section 4(c)
16. ibid
17. via Cap 302 sect. 9.



## CHAPTER IV

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It has been noted that in the foregoing chapters that the colonial government introduced the law of vagrancy as one of the main devices of fulfilling their goals in establishing colonies in East Africa. In striving to achieve these goals the then government succeeded in establishing a capitalistic mode of production which is still in existence in the present Independent of Kenya. Those who took over power after Independence felt a need of the very laws, Law of vagrancy being one, since they found themselves in the shoes of their former masters. This explains why the law of vagrancy has remained essentially the same as it was introduced by the colonial government though it is lagging behind the social events i.e. why should a shop or an outhouse be styled as not a lawful fixed of a bode, while we know that a big number of people resides in such places.

The definition of the vagrant in the Act is ambiguous. This makes it difficult for the police officer to be sure of whom he is out to arrest as vagrants. It can be argued that being a vagrant *per se* does not call the invocation of the law of vagrancy i.e. beggars and fortune tellers. It is only when the vagrant becomes or is a potential threat to the interest of the well class. Thus the law of vagrancy can be said to be meant to punish those who have been rendered workless and propertyless by the capitalist form of private ownership and control of the basic means of production. Clearly no member of ruling classes can be found to be without means of subsistence or fixed abode while the unemployed worker. The capitalist economy is destined to have many in permanent unemployment, is sure candidate. This law does not and is not envisaged to apply equally across social classes. It is discriminatory and arbitrary as far as the general public are concerned. It helps the bourgeoisie to blame the victims of bourgeois controlled society and ills attendant thereto. In short putting the blame where it does not lie.

## RECOMMENDATIONS

The concept of vagrancy legislation is certainly necessary in the present society. But as it has come out in the cause of discussing the topic the present content and methods of implementing the Act have made the purpose of the law of vagrancy to be frustrated. First recommendation would be made for a redefinition of a "vagrant" in precise and clear terms. This is necessary for the definition adopted in the current law of vagrancy Cap. 58 of the Laws of Kenya, was defined during colonial times in which case the social economic environment was quite different from that of today. The provisions relating to the establishment of a rehabilitation centres should be ammended so as to make it Mandatory for the Minister concerned (Local Government) to establish a minimum number of such centres in each given town. An alternative could be that the city council of particular towns could be given such responsibility, but the government should provide them with funds.

When vagrants are taken into such centres they should not be discharged unless an alternative occupation has been found for them. For if they are discharged the law would have only succeeded in arresting the problem temporary. The same case, should apply to vagrants put in detention places awaiting for the officer concerned to find employment for them. Where a non-citizen is detained in a detention place, awaiting for the Minister of Immigration order for such a person to be removed from Kenya, the Law should make it compulsory for the Minister to act. It is realised that such moves would involve using alot of public money in removing such people from the country, but if the problem is to be curbed the government should be ready to meet such consequences. In cases involving repatriation to be effective a vagrant so repatriated should be restricted in his Location for as it was indicated above, a person can be a vagrant in his own District without falling within the ambit of Law.



The legislatures should be ready and be willing to appreciate the root causes of the vagrancy problem. This would call for a restructure of economy and our mode of production. One way of effecting this would be a policy of, "one Man one job", this would creat employment of opportunities cattering for those people who would have ended in being vagrants. It may be pointed out that this is not practicable for such motions have been raised in Parliament and have been defeated. Another way which could arrest the problem is allocating land to landless, so that such people could earn their own living. The government should also place a minimum acreage of land which an individual can possess, this would call for an even distribution of land. Again this has been subject to much debate in the Parliament only to for such motions to be defeated. The class of vagrants which is both mentally and physically disabled should be cared for by the government, if their relatives cannot be traced.

It <sup>may</sup> further be pointed out that earnest efforts should be made by the society itself for a balanced growth of all segments of society. Only then the problem of vagrancy would be completely eliminated.

BIBILIIOGRAPHYBooks

Ghai & McAuslan, Public Law and Political Change in Kenya  
(Oxford 1970).

Sorrenson M.P.K., Land Reform in Kikuyu Country (Oxford 1968).

ARTICLES & PERIODICALS

Christopher Mulei, "Vagrancy cannot be faught by police and  
courts alone" Sunday Nation P. 30.

Kuria, G.K. "Religion, the constitution and family law."

Le Pelley, P. "Vagrancy and the Law in Kenya" 5 E.A.L.J.  
1969 p. 195.

Thuo Thiongo, "Woman of no fixed abode", the Anvil vol. 9  
No. 71 p. 6), (April 9, 1981.

Willy Mutunga, "The Rents Act and the Housing problem in  
Kenya".

Government paper, East African Gazzette.