

#### **OPINION**

The Week that's Been for Nigerian **Startups:** A Review of the NITDA



#### **FUNDING: KENYA**

# CashBack App has raised US\$475,000

CashBack App has raised a US\$475,000 pre-seed funding

# AWYERS Newsletter

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#### **SOMALIA**

# Somalia reintroduces national payments system for the first time since 1991

Somalia reintroduced its national payments system for the first time since 1991. This will enable interoperability for debit and credit cards, mobile money, and ATMs in addition to connecting lenders to clearing and settlement platforms.



#### **NIGERIA**

# The Central Bank of Nigeria freezes bank accounts of 4 Nigerian FinTechs

■ The Central Bank of Nigeria this week froze bank accounts of Rise Vest Technologies Limited, Bamboo Systems Technology Limited, Chaka Technologies Limited and Trove Technologies Limited following orders from the Federal Court.

The Bank claimed that the companies are operating without licenses as asset management companies and utilizing FX sourced from the Nigerian market for purchasing foreign shares, contravening its rules.



A leaked copy of Nigeria's National Information Technology Development Agency Bill sends shock across the ecosystem

■ A leaked copy of Nigeria's National Information Technology Development Agency, NITDA, Bill revealed new licenses, fees, fines and sentences, sending shock across the tech ecosystem. The Bill seeks to repeal the current Act and create an effective, impartial, and independent regulatory framework for the development of the Nigerian information technology sector and digital economy. Further review of the Bill reveals contradictory regulatory functions with the Agency set to take over functions of state organisations including the Central Bank. This comes at a time when Nigerian ecosystem players have joined efforts towards drafting a Startup Bill, bringing more frustration to the already burdened ecosystem.

#### **TANZANIA**

# FinTech PesaPal gets Tanzanian regulators approval

Pesapal this week received a service license from the Tanzania Communication Regulatory Authority. Pesapal is a payment gateway enabling customers to use their credit cards, banks and mobile networks to settle bills from one portal. Early this year, the company got approval from the Central Bank of Kenya to operate as a payments service provider.

#### **KENYA**

# Bolt partners with leasing firm to help drivers own cars

■ Bolt this week partnered with several vehicle leasing companies to import vehicles and enter into a financing deal with the drivers that will allow them to own the cars.

The company noted that most of their drivers do not own the vehicles even after 3 years of operating through the platform.







U**S**\$ 475,000

# Kenya's CashBack App has raised US\$475,000 preseed funding

■ Kenyan customer loyalty startup CashBack App has raised a US\$475,000 pre-seed funding round to help scale its service in Kenya. The company helps Fast-Moving Consumer Goods companies build loyalty amongst customers by allowing them to earn cashback via M-Pesa on everyday shopping.

# Nigerian e-sports startup Gamr raises undisclosed seed funding

■ Nigerian e-sports startup Gamr raised an undisclosed amount in seed funding from backers including emPawa Africa. Gamr is an online subscription platform that allows gamers to interact with each other and enables tournament organisers to host events.

# ■Nigerian gifting startup Showlove raises \$300k preseed funding

Nigerian social platform for gifting Showlove closed a US\$300,000 preseed funding round. The startup aims to create a fun community for people to share their wants and needs, either with a closed circle of people or the general public.

**AMOUNT** RAISED BY CASHBACK APP TO HELP SCALE **ITS SERVICE IN** KENYA.

# CRYPTO & DIGITAL CURRENCIES

# NaijaCrypto, Nigeria's Leading Crypto Exchange, Launches a New Mobile App for iOS and Android

■ Nigerian cryptocurrency trading platform, Naijacrypto, this week launched a new iOS and android app. The new app features an improved user interface, faster onboarding process and easier accessibility. The launch comes in an important year for the platform. In February, Naijacrypto expanded its operations into Kenya, a show of its commitment towards growing Africa's cryptocurrency space.

# Binance P2P adds support for 3 more African Currencies

Binance, a leading crypto exchange has added three more African currencies to its Peer to Peer Exchange Platform. These currencies are, the Tanzanian Shilling, Rwandan Franc and the Central African Franc. Users will now be able to place trade advertisements on the platform using these currencies at zero transaction fees.

# Americas Infrastructure Bill causes panic among cryptocurrency advocates and enthusiasts

■ America's Infrastructure Bill has caused panic among cryptocurrency advocates and enthusiasts. An article in the Bill requires 'brokers' of transactions in digital currencies to report their customers to the Internal Revenue Services so they can be taxed. This provision has brought confusion in the community with many grappling with the scope of a broker and more significantly, identifying users, given the anonymity that comes with this type of technology.



# China's District Court declares Bitcoin (BTC) as Virtual Property

■ Shanghai Minhang Court announced the status of Bitcoin as digital property. The court has argued that BTC is a virtual asset that is disposable, exchangeable, and exclusive. This comes at a time when the country is cracking down on cryptocurrency, presenting a contradiction.

# DATA PROTECTION



This is in the wake of the Taliban taking control of the country. Digital rights groups are getting significant numbers of requests from civil society groups to secure their digital presence as thousands of Afghans struggle to ensure not only their physical safety but also worry about their biometric databases and digital history being used to track and target them. The Taliban, however, issued a statement assuring all its citizens that it would protect their life, property and honor and create a peaceful and secure environment for its nation.

vulnerable groups.

# UK's ICO Launches Public Consultation on Personal Data in Employment Practices



The UK Information Commissioner's Office (ICO) has launched a consultation on the use of personal data by employers, which includes workplace monitoring technologies. The information gathered will be used to update the Employment Practices Guidelines. In a published blog, the acting director of regulatory assurance, Anulka Clarke, stated that AI and machine learning

have greatly impacted the ways decisions are made, even in relation to workers, especially in light of remote working. The resultant impact of these developments necessitates employers understanding how they can operate in the changing business environment while still building trust with workers over their information rights.



# Hamburg's Data Protection Watchdog claims Zoom Incompatible with GDPR

The acting Hamburg Commissioner for Data Protection and Freedom of Information officially warned the city's Senate Chancellery not to use the on-demand version of Zoom's video conferencing software, claiming the software violates the GDPR as such use would be associated with the transmission of personal data to the US. The press release, which stated a data transfer is only possible under strict conditions, has been interpreted to mean the DPA doesn't consider zoom to have achieved a level of protection for

personal data equivalent to that afforded by the GDPR. This is in spite of many businesses addressing the international transfers aspect of the GDPR by incorporating the model contract clauses with organisations in non-adequate jurisdictions. The European Court of Justice Schrems II decision effectively ruled that these in themselves weren't sufficient and that a transferring controller must do a comprehensive risk assessment and put additional measures in place to ensure essentially adequate protection.



# INTELLECTUAL PROPERTY



# Alibaba launches NFT marketplace for trading of Copyright

Chinese multinational e-commerce firm Alibaba has launched a new nonfungible token (NFT) marketplace that allows trademark holders to sell tokenized licenses to their IP. The new NFT marketplace, which is dubbed 'Blockchain Digital Copyright and Asset Trade' is accessible via Alibaba's Auction platform. The marketplace, which is already live, targets writers, musicians, artists and game developers.

# Canadian Federal Court awards \$29M in Statutory Damages for Copyright Infringement in Media case

The Federal Court has found in favour of a group of media broadcasters in ordering a group of retailers to stop distributing and selling set-top boxes that allow unauthorised or illegal access to Canadian television content, and further ordered the retailers to pay \$29.3M in damages.

The judge found that the defendants had infringed the plaintiff's statutory rights under the Copyright Act including the right to communicate a work to the public by telecommunication, and the making available right as well as authorizing such acts without con-



The influencer's action of using her blog post to market for the infringing brand was a commercial use of the complainant's trademark that could cause consumer confusion.



# Australia and South Africa find Artificial Intelligence "Inventor" compatible with Patent Law

The traditional definition of inventor in a patent application has been a person who invented or discovered the subject matter of the invention. Until recently it hasn't been necessary to consider if a non-human entity could be considered an inventor.

This has been brought about with the advent of AI. Several patent offices found that A.I cannot be considered an inventor but recent cases in Australia and South Africa may be showing a change in this trend. In a groundbreaking decision, the Australian Court in Stephen Thaler Commissioner of Patents found that a non-human inventor is not inconsistent with inventorship under Australian Law. Even more recently South Africa issued a patent designating an A.I. system as the inventor, however it doesn't offer formal examination so whether the A.I is properly identified as an inventor does not appear to have been considered.



# **US Federal District Court states** Sponsored Blogger Can Face Trademark Infringement Liability

A US Federal District judge held that when an influencer is paid to promote a brand and the brand's name is trademark infringing, the influencer can also be on the hook for the infringement. This decision was held after Petunia sued both Rodan & Fields, and Sims, an influencer they had contracted to market a product, on claims of direct and contributory federal trademark infringement and federal unfair competition.

In the ruling, the influencer's action of using her blog post to market for the infringing brand was a commercial use of the complainant's trademark that could cause consumer confusion. As such, endorsers are potentially liable under trademark law for the words they choose to say to consumers on behalf of wouldbe infringers, especially when they actively facilitate consumers' purchase of a product.



# ARTIFICIAL INTELLIGENCE



# Open Call to join the Mozilla Trustworthy Al Working Group

On 18/8/2021 Mozilla announced this opportunity to join the second working group on Trustworthy AI. You can join the group as a contributor who helps plan a project, complete its tasks, and deliver its outcomes, an observer who keeps up with a project and gives feedback at major milestones or a potential user who gives feedback and helps file bugs or issues on a project's output(s). The Call is open until 30th September, complete this form to join.

# Ibm Research Africa Introduces Its Artificial Intelligence Seminar Series

Last week, IBM Research Africa held the first session of its free virtual AI seminar series designed to improve more local talent and skills. During the sessions, researchers from four of IBM's research labs in New York, Haifa, Johannesburg and Nairobi will present their work. The next session would be held on 25th August 2021.



# Is your next lawyer a robot?

'Do Not Pay' has been described as the world's first robot lawyer. The app uses AI to help users deal with parking tickets and write letters dealing with insurance claims, applying for tourist visas, getting refunds from a cancelled holiday or cancelling gym memberships. It has over 150,000 subscribers in the Uk and US and was awarded by the American Bar association for increasing legal access.

# Two activists sue the Union of India over the use of spy software, Pegasus

Hearing of a petition filed by two independent Journalists and activists against the Government of India in the Indian Supreme Court continued last week. The petition was filed after research by Amnesty International revealed that the spy software had allegedly been used to spy on at least 40 journalists in India. The activists want the court to declare the use of spyware such as pegasus unconstitutional and direct the government to disclose all its use of pegasus.

# DIGITAL ID NEWS

# Concern that Afghanistan's digital ID system can be used to target citizens as the Taliban take over the Country

As the Taliban take control of Afghanistan, they control the state's biometric system that contains biometrics of Afghani's including iris scans and could potentially be used to track and trace those who worked for foreign governments, security forces or non-profits. Citizens are now rushing to delete their digital history to avoid such tracking. Civil society organizations have also published guides in local languages to help them delete their digital history and evade facial recognition.

# The Kenyan Government launches an online portal for Huduma Namba

On 17th August, the Government spokesman announced that the government has launched an online portal that allows Kenyans to check the status of their huduma cards and get responses on any issues they may have. To date the government has processed 9,154,184 cards out of which 6,003,144 cards have been collected.



# The Week that's Been for Nigerian Startups: A Review of the NITDA

It's been a long past two weeks for Nigerian founders. The regulatory changes began last week when the Central Bank issued guidelines for financial institutions targeted at payment solution services, mobile money operators and payment switching and issuing companies.

The guidelines once implemented will require these types of companies to set up Payment Service Holding Companies at the tune of around \$14,600. The Companies will ensure activities of the subsidiaries are clearly outlined.

Fast forward to this week, founders and policymakers were shocked to have their day disrupted by news of a proposed National Information Technology Agency Bill that somehow made its way to the public. The Bill which has since been reviewed by several policy organisations seeks to bring the regulation of the digital economy into the ambit of the already established Agency giving it additional functions not in the current Act.

The final blow was news of a freezing order issued by the Federal Court instructing the Central Bank to freeze accounts of 4 fintechs, Rise Vest Technologies Limited, Bamboo Systems Technology Limited, Chaka Technologies Limited and Trove Technologies Limited. The Bank claimed that the fintechs are operating without licenses as asset management companies and utilizing FX sourced from the Nigerian market for purchasing foreign shares, contravening its rules.

All this comes at a time when key ecosystem players are lobbying for a Startup Bill aimed at creating a more favourable policy environment for Nigerian entrepreneurs.

The publishing of the NITDA Bill is arguably the most concerning event in this timeline. We explore why in this article.

# The Bills Objective

The Objective of the Bill is to create an effective, impartial, and independent regulatory framework for the development of the Nigerian information technology sector and digital economy. The Agency intends to do this through policies, support, foreign investment, promoting consumption of local products and services, research and development support, promoting inclusion and safeguarding national interests.

It's worth noting that the regulation of the digital economy is not in the mandate of the Agency under the current Act and appears for the first time under the proposed law.

# The Agency's Functions

Currently, the Agency takes an observatory role towards informing policy, and a legislative role in designing foundational level policies that encourage use of digital products





The Agency will also support the development and promotion of technical specifications and standards for the use of information technology and digital services in Nigeria, including emerging technologies such as robotics, block chain, cloud computing, and artificial intelligence.

and services. This is by creating research and development frameworks, guidelines for electronic governance, advisory on IT, incentives for ICT uptake and investment by the private sector.

The proposed law outlines a whooping 24 functions delegated to the authority creating a centralised regulatory regime. The overarching function of the law is to regulate digital services.

The Agency will also bring into its mandate the regulation of data for business and security intelligence. This could potentially affect businesses leveraging on personal data for KYC, artificial intelligence systems, MedTech and startups using location data, for example, ride hailing. This function extends to digital signatures and contracts regulation.

Procurement of digital products and services for state use will also be a function of the Agency.

The Agency will also support the development and promotion of technical specifications and standards for the use of information technology and digital services in Nigeria, including emerging technologies such as robotics, block chain, cloud computing, and artificial intelligence. This implies that the Agency's board will be composed of experts in these fields to develop these standards. Interestingly, the proposed composition of the Board does not speak to this. As expected, the transitionals provisions make it so that all appointees and employees under the current law continue in office with only one member of the Computer Professionals Registration Council compared to the current four. Sandboxing of new technologies and the registration of devices



and type approvals will also form part of the Agency's mandate. The law also makes using tech that's not approved an offence.

Other functions include, consumer protection, promoting private sector investment, digital skills, job creation and representing Nigeria at international gatherings related to the digital economy.

# The Agency's Powers

Through the proposed Act, the Agency will have power to implement all government policies relating to information technology and the digital economy. This implies the creation of a super regulatory body that takes over the powers and functions of already existing regulatory bodies including, the Central Bank of Nigeria (CBN), The Securities Exchange Commission (SEC), the National Identity Management Commission, Nigeria Communications Commission and the Federal Inland Revenue Service.

The Agency will also test and approve IT infrastructure before adoption in Nigeria.

It will be interesting to see how the Agency will exercise its power to develop regulations, guidelines and directives on the use of information technology and digital services in every sector of the economy.

Away from developing legislation, the Agency will have the power to issue licenses and collect fees and penalties. The Bill sets out three types of licenses,

- Product license
- Service provider license
- Platform provider license

The Agency will also have the power to search and seize in enforcing court orders while denying entry, attracting fines ranging from N3,000,000 (\$7,288) to N30,000,000 (\$72,881).

Other powers include, monitoring compliance, creating any subsidiary offices and carrying out activities the Agency thinks to be necessary.

#### **Offences**

The Bill sets out penalties for non compliance by both individuals and body corporates. Fines range from N3,000,000 (\$7,288) to N30,000,000 (\$72,881) with the possibility of imprisonment for 1 to 2 years.

Importing or deploying the usage of information technology equipment that requires approval from the Agency without the said approval also amounts to an offence. It will be interesting to see what type of equipment will fall under this category once the Agency publishes the accompanying Regulations. This could have a negative impact on businesses procurement processes and the overall quality of products and services.

# **Galaxy Backbone**

The Bill provides for the establishment of a Digital Infrastructure and Service Provision Company. The Company also known as 'Galaxy Backbone', will be incharge of procuring digital infrastructure products and services to state agencies, capacity building for state employees, promoting Nigerian content and services, and providing quality services at competitive prices. It is unclear what type of content the Company will promote given the lack of a definition in both versions of the Act.

### **What Next**

The NITDA Bill as it stands will create a centralised regulatory regime away from the current framework that delegates sector specific regulation to established entities such as the Central Bank. This could be difficult to implement and transition into and is likely to create confusion amongst entrepreneurs, policymakers, regulators and the general public.

Regulation is good, but only to the extent of creating an enabling environment for economic growth. At this time, it is important that all ecosystem players familiarise themselves with the proposed amendments to be able to lobby for an enabling regulatory environment.



Regulation is good, but only to the extent of creating an enabling environment for economic growth.



# An overview of the Kenyan Startup Bill, 2021

The Startup Bill's main aim and objective is to oversee the interactions between the state/government, incubators, startups, and potential investors as well as provide a network in the startup ecosystem that encourages the growth and development of startups. It will provide a link for the startups with both capital, investments and research opportunities.

It further seeks to attract Kenyan talents and capital while promoting the creation of employment, entrepreneurship and wealth creation. The Bills objectives are in tandem with promoting Kenya's place as a regional leader in the African startup ecosystem and the role that sustainable policies driven by incentives for startups, investors and other stakeholders play in creating an enabling environment for these businesses to thrive.

# **Objectives of the Bill**

The Bill seeks to inculcate a culture of innovative thinking and promote entrepreneurship by startups whilst ensuring compliance with the registration and set up requirements set out. It also seeks to provide a linkage for investors, financial institutions, research and development institutions as well as providing an enabling environment for the startups to thrive in Kenya. This will involve having a solid regulation that provides for uniformity in the conduct for startups and incubators at the County and National government level.

The Bill also seeks to establish incubation centres both at the County and National Government level to promote innovation, oversee the transfer of technological advancements and innovation as well as promote employment and wealth creation.

# **Highlights of the Bill**

# 1. Role of the County and National Government in the Startup Ecosystem

The two levels of government have been tasked with;

- Establishment of the incubation programmes and development of policy frameworks for the startup and incubation system:
- Creation of an enabling environment for the promotion of incubation programmes;
- Keeping and inventory of all startups and incubators within their jurisdiction;
- Supporting research and development activities within the startup ecosystem;
- Development of standards and guidelines that will regulate the relationship and linkages between an incubator and a startup; and
- Provision criteria for evaluation of structures and entities as well as programmes in implementing the Act.
- The Bill provides for the registration of startups which shall be done by the Office of the Registrar of startups the Kenya National Innovation Agency (This Agency is established under Section 28 of the Science, Technology

and Innovation Act). Further, the registrar shall keep a database of all registered startups, shall be involved in the supervision and conduct of startups as well as coordinate the functions of the County Registrars at the County level.

# 2. Eligibility of a startup to be admitted into an incubation programme

For a startup to be eligible for admission, it:

- Must be registered in Kenya either as a Company, Partnership, Limited liability Partnership and Non-Governmental organization;
- Must have been in existence for less than 7 years since incorporation but an exception has been made for startups in the biotechnology sectors where the period is 10 years from the date of incorporation or registration.
- Has its headquarters in Kenya and in majority owned by one or more Kenyans;
- At least 15% of its expenses are research and development centered:

The Bill has expressly provided that it will not apply to subsidiaries or holding companies of existing entities or an entity established as a result of a split, reconstruction, merger or reconstruction of an existing business.

#### 3. Establishment and obligation of incubators

The bill tasks the Registrar and Country Registrars with the licensing and approval of incubators.

#### 4. Incentives for startups

The Agency as well as the County Executive Committee Member in charge of startups in a county government will implement incentives for startups including, a subsidy programme for formalization of startups, protection of intellectual property rights for the startups; fiscal and non-fiscal support for startups admitted in incubation programmes, provides support for research and development activities.

Further, there shall be established a credit guarantee scheme for startups whose main aim is provision of easily accessible financial support for startups, guarantee for investors, availing of financial and credit information for startups, and capacity building for startups as well.

The Agency has been tasked with facilitating startups in the application, filing and registering intellectual property as well as institution of legal action for any alleged breach of such

In next week's issue, we explore the challenges facing startup businesses in Africa and what policymakers should consider when drafting startup related laws drawing reference to Kenyas Startup Bill, 2021.





# Uber and Bolt competitor DiDi expands services across South Africa

Chinese ride-hailing company DiDi has launched its services in the Gauteng cities of Johannesburg, Pretoria, and Ekurhuleni. Carina Smith-Allin, DiDi's head of public relations and communications for Sub-Saharan Africa, says DiDi was launched in the country to offer a necessary, high-quality mobility resource to both riders and driver-partners.

"The platform promotes income opportunities for drivers, and in a country like ours, where unemployment rates and safety are major concerns, this is not only much-needed but highly valuable. DiDi offers the chance to start making great money independently with competitive service fees, localised support, and pioneering safety features."



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Founded in 2012, DiDi is a Chinese vehicle-for-hire company headquartered in Beijing, with over 600 million users and tens of millions of drivers. It is available in 17 countries and five continents, with the most recent launches being SA, Ecuador, and Kazakhstan. (Source: ITWEB)

# OnlyFans to Bar Sexually Explicit Videos Starting in October

Starting in October, the company will prohibit creators from posting material with sexually explicit conduct on its website, which many sex workers use to sell fans explicit content. They'll still be allowed to put up nude photos and videos, provided they're consistent with OnlyFans' policy, the company said Thursday. The popularity of the social-media service exploded during the pandemic as sex workers, musicians and online influencers used it to charge fans for exclusive access to photos, videos and other material. OnlyFans has attracted more than 130 million users. (Source: Bloomberg)

# Elon Musk Announces Humanoid 'teslabot' Prototype Robot Within A Year

Tesla will build a humanoid robot called Tesla Bot. CEO Elon Musk announced this week.

"We're also good at sensors and batteries and we'll probably have a prototype next year that looks like this," Musk said, shortly after an actor in a body suit designed to look like the Tesla robot gyrated wildly on stage. He remarked that the actor was not a real robot, but "the Tesla Bot will be real. The Tesla Bot is an example of Musk's showmanship, in which he announces that Tesla is working on exciting products scheduled for years into the future to energize backers including employees, customers, and investors. (Source: CNBC)

# **EVENTS**

# Registrations for the AfriLabs Annual Gathering 2021 is live!

Set to be held in Abuja, Nigeria from 27-29 October 2021 and hosted by the AfriLabs Secretariat, the 3-day event will feature high-level panel discussions, a time to connect, explore the Nigerian Innovation Community and network with global innovation leaders across the

Paradiam Initiative invites stakeholders to share session proposals for Digital Rights and Inclusion Forum (DRIF)

Paradigm Initiative invites a diverse group of stakeholders to host sessions at the digital community convening, the Digital Rights and Inclusion Forum (DRIF). The 9th edition of the Digital Rights and Inclusion Forum (DRIF) will be held virtually from 12 – 14 April 2022 under the theme Towards a digitally inclusive and rights respecting Africa.



Join our membership and be a part of a great community that includes legal and tech professionals, students, startups, organizations and government representatives. Over the past year, members have benefited through Networking Opportunities, Collaboration Opportunities, Invitations to speak at events, Mentorship, Access to the Lawyer's Hub Innovation Space and to cutting-edge technology tools. This year, we have revamped our offers to make it even better and more accessible to many across Kenya & beyond our borders. These benefits include;

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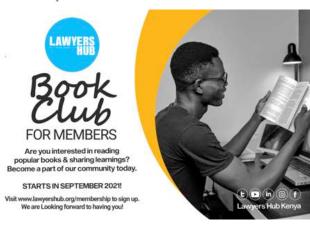
It is important for lawyers to learn the fundamentals of coding as the legal industry becomes more tech and data driven. The Lawyers Hub has taken the initiative to ensure that its members develop these skills by curating a coding course that is set to start on the 1st of October 2021.



# 2. BOOK CLUB

The aim of our book club is to bring together like minded individuals through shared learning in books, to understand diverse perspectives and increase our members' systematic reading habits, fostering growth by creating a safe environment to share or debate ideas.

Applications to join are open as we prepare for the official launch in September 2021.





#### 3. DANCE CLASS

We care about our members' mental health and fitness as these are crucial to everyone's wellbeing. The Lawyers Hub hosts two choreographed dance classes every week that will tick all your mental health boxes in Upper Hill at Ack Garden House. You also get to network with working groups.

Your 1st dance class is on the house. Join us!

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info@lawyershub.ke www.lawyershub.org 1st Ngong Avenue, Upper Hill, Nairobi

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# **EVENT SPACE**

