

RADAR SCREEN BY WILLIAM MAEMA

How patrons can deal with restaurants in anti-smoking breach

LAW Anyone subjected to second-hand smoke is entitled to lodge a claim both against the smoker and the manager or business owner for violation of constitutional right

In 2007, Kenya became one of the first African nations to introduce stringent laws against smoking in public.

The Tobacco Control Act was passed amid an intense public debate and lobbying, punctuated by allegations and feeble denials that tobacco manufacturers had bribed the lawmakers to reject the Bill or, at best, pass an impotent statute as a public relations exercise.

The alacrity with which the law was initially implemented brought a huge sense of relief to anti-tobacco lobbyists.

City authorities built specially designated sheds for smokers. And smokers were arrested and fined instantly for puffing on the streets.

So dreaded was the new law that tourists planning to visit Kenya at the time would seek legal advice on how to comply with the new law while in the country.

Judging by the number of men and women (of all social status) walking into and huddling in the designated smoking sheds within Nairobi's central business district, it is fair to say that individual smokers have largely complied with the law.

Regrettably, however, the same cannot be said of businesses, especially those in the high end of the market that generally act as if the law was enacted for lesser mortals.

In these establishments, the law is honoured more in breach than in observance. You walk into your favourite restaurant for Sunday

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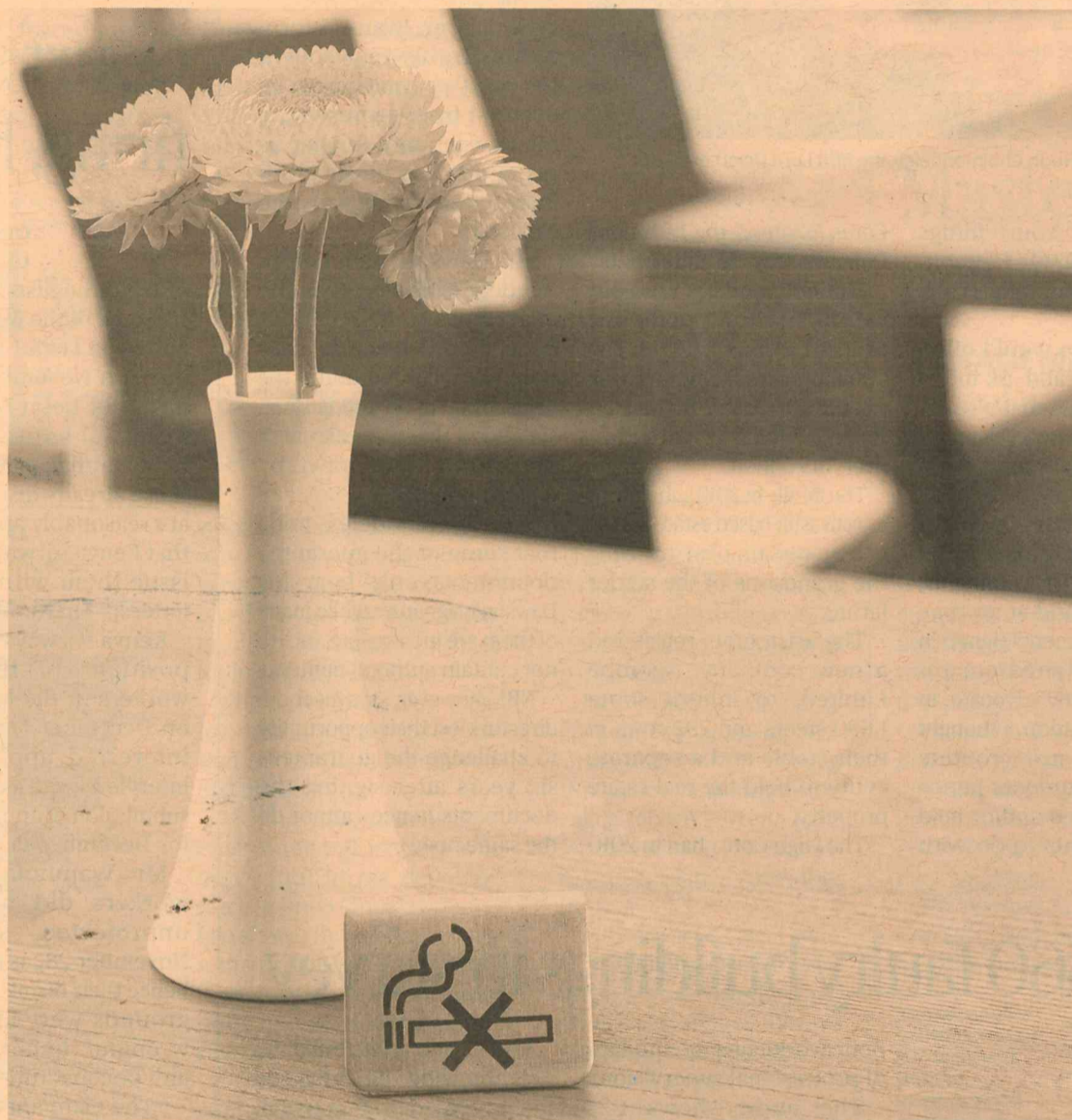
brunch with your family comprising, among others, two impressionable teenagers, a toddler who seems to be allergic to everything except food and your asthmatic 89-

year-old mother who gets into a fit of uncontrollable cough whenever she inhales any kind of smoke, leave alone the toxic smell of tobacco.

You are ushered in by the waitress with the usual plastic smile and led to a reserved table on a beautiful terrace. No sooner have you ordered your drinks than you notice that there is something grossly uncomfortable about your seating area.

Seated at the next table is a young couple happily puffing away and blowing the smoke in your general direction, probably meaning no harm but clearly unaware of the discomfort and annoyance that this is causing you and your family.

You try to express your disapproval by casting an ugly glance at them but soon realise that you are on your own. You call the waitress and



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complain agitatedly.

She looks at you helplessly, shrugs her shoulders and tells you that the terrace is a smoking area and the only choice you have is to sit inside the restaurant despite the searing heat of the day.

The lawyer in you stirs up and you calmly but firmly tell the poor waitress that it is against the law to smoke in a public place and that a restaurant is such a place.

She shrugs her shoulders again and suggests that you should probably talk to the management about the law. At this point she asks you to place your orders for food.

The fact, however, is that Kenya's ban on smoking in public places is

in line with global trends towards the total eradication of the vice to safeguard the health of non-smokers who, researchers tell us, stand a higher risk of contracting cardiovascular and respiratory diseases than the smoker himself.

Broken down to the bare basics, the logic is that "since I did not help you to buy your cigarette, why should I help you smoke it?"

The World Health Organisation (WHO) factsheet of May 2017, says tobacco kills about seven million people annually across the world. Of these, 890,000 die as a result of exposure to second-hand smoke.

Apart from subjecting an innocent non-smoker to an unwelcome

pollutant, smoking in public is analogous to a stranger injecting an innocent person with a lethal dose.

Public smoking is not only a serious health hazard but a most inconsiderate habit.

Both the Kenyan Constitution and the Tobacco Control Act guarantee every person the right to a clean and healthy environment and the right to be protected against second-hand smoke.

Concomitantly, every person has the duty to observe measures to safeguard the health of non-smokers. The head of the family, for example, is required by law to ensure that children are free from second-hand smoke.

Smoking in any public place is expressly prohibited under the law. A 'public place' is defined as any indoor, enclosed or partially enclosed area, which is open to the public or to which members of the public have access. This includes corridors, lounges, restaurants, hotels, bars and other eating areas.

Smoking is only allowed in designated areas built in the manner prescribed by law. The structure should be a well-ventilated room which is separate, enclosed and sealed from floor to the roof, with a door. It must also be a place where non-smokers do not have to enter for any purpose while smoking is occurring.

Clearly, the so called "outside areas", which most restaurants call smoking zones, do not fit the statutory definition of a "designated area" and are therefore a contravention of the law.

The manager of a restaurant or bar is required by law to display clear and prominent notices in both English and Kiswahili, that smoking is prohibited as well as the prescribed penalty.

Among other technical specifications, the notice should bear the word "WARNING" in capital letters and be placed at the main entrance of the establishment.

The manager is required to ensure that the rights of non-smokers are not infringed by smokers within his premises.

The Act empowers him or her to order any person, who smokes within the area or immediate vicinity of the entrance, to cease smoking or leave the premises. Any manager who fails to observe this provision is liable to a fine of Sh150, 000 or imprisonment for six months or to both.

Any person subjected to second-hand smoke is entitled to lodge a claim both against the smoker and the manager or business owner for breach of his or her constitutional right.

As is often said in Kenya, our problem is not the shortage of laws but their enforcement.

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