



# Legally Grown But I'm Still told to Pay My Dues

By Martin Maitha



Millennials have been blamed for pretty much everything that is going on wrong in the world today. Marriage is failing, thanks to hook-up culture and Tinder's *"I'll get with anything I swiped right on."* The real estate market is falling because millennials would rather spend all their money on avocado toast than take up mortgages and buy homes. The meat industry is failing because millennials care more about animals' pain and after all, vegan is the new wave.

Millennials are entitled snowflakes with a fundamentally skewed sense of how the world really works. They complain on the Internet on how the baby boomers and Gen Xers have ruined the world with neoliberalism and polluted the planet with carbon emissions - if they are woke enough to simultaneously share a picture of their decaf soy latte next to a pristine Macbook on Instagram (#Workflow). They eschew responsibility and have a questionable attitude towards stable middle-management corporate jobs. They would rather *"find themselves"* by Air-B-n-bing and backpacking across continents, *"do work that excites them"* by building an app that delivers food via drones and *"follow their passion"* of selling torn clothes and labelling it avant-garde fashion - after all, if Kanye West did it, why can't we?

*"Why can't they just listen? Why do they feel so damn entitled? Didn't they know how hard we had it?"*

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The attitude the older generations have towards millennials, specifically, their perceived inability to “listen” to the words of the elder statesmen (and women) and the sheer gumption of making their future without being beholden to the past reminds me of an excerpt I recently read from *The Secret Footballer: Access All Areas* (Guardian Faber, 2015) on the author’s experiences coming through as a young professional footballer:

*“Then a curious thing happened once I was signed by my first professional club: my fellow footballers, my teammates, laughed at me. I wasn’t a kid...they talked about me as if I was a teacher’s pet who had no idea how to play ‘proper’ football. I wouldn’t last five minutes. Some of them tried to bully me, until they realised that I bit back...”*

*“I realised that the ritual was about keeping me in my place, but I wasn’t interested in playing along. They’d call it ‘paying your dues’, I hadn’t paid my dues in professional football. Fine. I’d call what went on a short-sighted, half-arsed form of bullying, really.*

*“Let me tell you the run of the before, the during and the after of that early football education. At first they laughed. The thought of a new nobody coming into their dressing room and into their dressing room was so strange to them that their only response could be to laugh. Then when the ‘nobody’ did well on the pitch it wasn’t so funny. They became jealous. This was counter to everything they had been taught to everything they had been taught when they started out in the academy, not long after they were potty-trained. His dues! His dues! He hasn’t paid his dues!”*

It was all too relatable. Not because it was profound, but rather, because it was such an accurate description of my experiences in the legal profession for the past year and a half.

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In the legal profession, “*paying your dues*” means ticking all the right boxes: an unforgiving four year slog in university (preferably a public one like THE University of Nairobi- never mind they have been on strike/closed for over a year- and counting); a backbreaking year at the Kenya School of Law, pass the bar exams administered by the Council of Legal Education - if you are lucky (an exam with a pass rate of only 10% or less, check the statistics); a six-month pupillage and a coveted spot “holding over” in a law firm. When you are done, Canaan beckons- admission to the Bar as an advocate of the High Court of Kenya, and all the rewards that follow.

While paying your dues, you should keep your head down. Be like a child in Victorian England - seen and not heard; preferably with a blend of stoicism and blandness of expression - think Mark Zuckerberg and his ill-fitting navy-blue suit before Congress. Offer no opinion on the irony as your boss points out that the Employment Act requires that employment contracts of more than three months to be in writing; yet you have never seen such a written contract for the ten months you have been employed there for a stipend that is way below the statutory minimum wage. Keep a stiff upper lip as you watch the former Chairman of the Commission on Administrative Justice, in open court, stating that being represented in court by a young lawyer is an act of “great contempt”. Smile and wave like the Penguins in *Madagascar* as your boss makes remarks, within earshot, that schools nowadays “*produce nothing but half-baked lawyers.*”

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“*Holding over*” is a particularly loathed stage in an advocate’s career, falling just between the six-month statutory term of pupillage and admission to the Bar. It is a stage of professional purgatory -

you are not a pupil but you are not an advocate either. It gets worse if you are in a firm where the carrot of being retained as an associate turns pupillage from what is meant to be a learning experience to a bare-knuckled Hobbesian fight to the death; a nasty, brutish and short period.

Immediately after my six-month pupillage, I was physically, mentally and emotionally exhausted. I politely declined a very generous offer to stay on at the firm and instead took the time off to recuperate. I lived my best life for the next three months: no more waking up at 5 a.m. to battle with the insane Nairobi traffic. A normal day would start at 11 a.m. with a healthy brunch and a dose of Netflix. I was on twitter for most of the day - sharing memes. I experimented with some projects - I started a legal blog that crashed and burned, miserably so on account of low readership. To earn a few coins, I took on research projects for law firms, "consulting" - I called it, to give a sheen of respectability to the work.

My decision brought immeasurable strain in my relationships. My parents were supportive, of course, they were, but I could always see the shake of the head and the silent sigh over the dinner table. The person I was "talking to" at the time could not handle my "lack of ambition." My friends thought I had genuinely lost it. To them, I had committed the cardinal sin of looking a gift horse in the mouth and labelling it a sneaky gift from the Greeks "*So much potential and you are here, throwing it all away.*"

How could I turn down such a marvellous opportunity to make a reputation? How was I to get my name out there? Did I want to make it in this profession without paying my dues?

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As recently as 2012, it was actually an offence for an advocate to start their own firm straight after being admitted to the Bar. One had to serve for at least two years under someone who had been in practice for five years, before entertaining the thought of going solo. It was a very invidious piece of gatekeeping backed by legislation - more specifically section 32 of the Advocates' Act; naturally in true Kenyan fashion after the promulgation of the 2010 Constitution, someone went to court to challenge this.

The petitioners in *Okenyo Omwansa George & another v Attorney General & 2 others [2012] eKLR* argued that this particular provision of the law was unconstitutional, as it subjected young advocates to forced labour and servitude. The law compelled a young advocate to work for someone against their will so as to attain an expected level of learning and experience in the legal profession to branch out on their own.

The respondents had a different view, of course. The rules were there for a reason: for the young lawyers' own good. Supervised practice enables young advocates to gain experience under the tutelage of senior advocates, which prepares young advocates to discharge their most noble calling. It is a good idea to protect the public from the impetuosity of youth and their propensity to make mistakes.

The Honourable Mr Justice Majanja agreed with the respondent. He reasoned that the pursuit of a legal career is a voluntary act. Nobody forced anyone to become an advocate, the petitioners fully knew what the statutory requirements were. Furthermore, slaves do not have the luxury of leaving. The best the petitioners could do was to quit whining and suck it up for the two years.

This decision was short-lived. Section 50(2) of the Legal Education Act, 2012 repealed the dreaded section 32 of the Advocates' Act. Free at last, free at last, young advocates were free at last, to practise on their own.

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After my admission to the Bar in December 2016, the charade was up. I was 26, squatting at my parents' house. The pressure was on to do something more meaningful with my life other than "writing things on the Internet." I was tired of being broke. My rebellious nature ensured that I had burnt most of my bridges. This, coupled with the slight taste of freedom I had recently begun to enjoy, meant I was, for all intents and purposes, unemployable in conventional legal practice. Thankfully, the law allowed me to start practising law in the way I thought fit and in the words of the modern-day philosopher, Russell Westbrook III, I asked myself, "Why not?"

I realised that this was an undertaking I could not possibly accomplish by myself. I partnered with a friend (also 26) from university and law school, who was equally "directionless" according to his grandparents. We cobbled together a few resources and started drafting plans. In our youthful naiveté, we picked the worst possible time to start a new business. It was July 2017, a month before the General Elections. The way this country is set up, any semblance of economic activity is informally suspended for months before (and especially after) the elections.

*"Let us see how this thing will turn out, then we'll talk,"* was the default Kenyan stock answer we got. In the very rare event we were fortunate to get some work, we did not get paid, because *"Let us see how this thing will turn out, then we'll talk."*

When the skirmishes broke out after the result of the August 8<sup>th</sup> election, I was mightily relieved that I would not have to go to our threadbare office – it was literally four walls and a room. I live near Kawangware and I was marooned in the house, in fear (but relieved) as the police brutally cracked down on non-existent protests. Even if I ventured out, there was absolutely no work to be done. When the Supreme Court nullified the results of the August 8<sup>th</sup> election and ordered a fresh election, my partner and I took it on our glass chins, because the cycle of *"Let us see how this thing will turn out, then we'll talk"* had just begun. Again.

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An outcome of the August 8<sup>th</sup> election was the deluge of election petitions that were filed. My partner was politically savvy and had made friends with clients at the firm where he had undertaken his pupillage. One of them was a losing aspirant who wanted us to file his election petition. We could smell the big time.

The politician was none too pleased with our quotation. In a heated exchange with my partner, he made a huge meal of the fact that he did not go with "experience" but rather with young hungry advocates. *"You charge way too much for people just starting out. Give me a rate that reflects your 'experience'. Otherwise, you're just being too greedy, asking for too much, too soon."*

We refused his offer. He never filed his petition and poof! The big time vanished.

We learnt an important lesson along the way, reinforced by many futile attempts at bidding for work, identifying the dog whistles.

*"Experience". "Solidity."*

*"People who have done this for years."*

*"People who know what they are doing, not those who will learn on the job."*

Another experience my partner had was with one of his grandfather's friends from the village.

People generally do not take advice, especially legal advice, from people younger than their last-born children.

*“Young man, I saw when your mother was changing your diapers. We held a harambee for you to study law, and YOU are here telling ME that I have to subdivide my land to MY DAUGHTER! YOUNG PEOPLE OF NOWADAYS, NO RESPECT FOR CULTURE! I WILL TAKE THIS UP WITH YOUR GRANDFATHER!”*

That is not as funny as clients who openly question your age or your looks.

*“I would prefer if you tried to at least grow a beard. It would give the impression that you are not 17.”*

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I recently sat down to lunch with a friend making the transition back into legal practice after a stint in academia. I had met her on one of these Law Society of Kenya things where people just love listening to the sound of their own voices, struck a good conversation and a respectful professional friendship. It is not every day I can call a PhD holder and ask her to have lunch. Over a very meh glass of red wine (her words) that was not a Merlot (I learned what a Merlot was not on that day), we shot the breeze and talked shop, from the Miguna saga to what the Lands Ministry was doing with e-conveyancing.

*“I mean, be honest, you older lawyers, don’t respect young lawyers, and that’s a fact.”* I suggested.

She gave me that long withering stare Stringer Bell reserved for his dumb hoodlums in *The Wire*. It did not help that she is bespectacled.

*“First of all...”*

I knew I was going to get it, and by it, I do not mean a Head of State Commendation.

*“I have a legal assistant, who for all intents and purposes, is clueless. Zero initiative. He thinks he knows it all already so he doesn’t listen. You young people are too entitled yet you don’t want to put in the work. I understand you don’t have to go through our experiences, or live a life as hard as we did. I don’t expect you to read 100 law reports when kenyalaw.org have it for free, but come on. Basic stuff like punctuality, politeness, work ethic. Some of you make it so incredibly hard to take you seriously.”*

*“But...but...the pay,”* I countered.

*“The pay, we could do better with the pay, but the way this Kenyan economy is set up...we all got paid peanuts. Suck it up and get on with it.”*

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On the way back from lunch, I was still frothing indignantly about being owned, so I turned to my Instagram. An acquaintance from law school had posted his first draft of an agreement they were working on. On Instagram Stories, with the hashtag *#LawyerLife #RespectTheHustle*. It is really hard to defend millennials when someone pulls this kind of stunt and claims to take their work, their ethical obligations and themselves, seriously.

But the older generation has to understand that this is a new world and the worst thing they can

possibly say to us is, *“Well, in my day, we did it like this.”* We do not have to walk to school for ten kilometres barefoot just because you did it *“back in our day”*, and we do not have to use a tin-and-wick lamps to study when there are solar-powered lights. We do not have to suffer the indignities you did on the come up; to insist on such and calling it *“toughening up”* is nothing more than institutionalised hazing.

As a young professional, I am sick and tired of being patronized by my seniors and made to feel as if I am not working hard enough, or that I do not belong, despite the *Churchillian* blood, sweat and tears I have spent getting here. There is no need for me to work twice as hard to be considered half as good, in the face of insurmountable obstacles placed by older people who have wreaked havoc on this economy through decades of mismanagement and poor governance. I will certainly not be called *“half-baked”* by someone who is in charge of teaching and churning out the *“half-baked”* student, after ruining the education system through underfunding, poor teaching methods and the rapacious pursuit of profit. I will not *“respect my elders”* when they have done very little to show me why they deserve that respect, other than being old.

And, no, I will not be paying my dues anytime soon, because I am coming out to claim them.

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