

# **LEADERSHIP, ETHICS AND INTEGRITY- PUBLIC SECTOR FOCUS**

## **1.0 Leadership**

Business dictionary definitions:-

1. The individuals who are the leaders in an organization, regarded collectively.
2. The activity of leading a group of people or an organization or the ability to do this.
3. A process whereby an individual influences a group of individuals to achieve a common goal (Northouse, 2007, p3).
4. A process by which a person influences others to accomplish a mission (U.S. Army, 1983).

# **Factors of Leadership:**

There are four primary factors of leadership

- **Leader**
- Must have an honest understanding of who you are, what you know, and what you can do.
- It is the followers, not the leader or someone else who determines if the leader is successful.
- If they do not trust or lack confidence in their leader, then they will be uninspired.
- To be successful you have to convince your followers, not yourself or your superiors, that you are worthy of being followed.

# Followers

- Different people require different styles of leadership.
- A person who lacks motivation requires a different approach than one with a high degree of motivation
- You must know your people!
- The fundamental starting point is having a good understanding of human nature, such as needs, emotions, and motivation. You must come to know your employees' *be*, *know*, and *do* attributes.

# Communication

- You lead through two-way *communication*.  
Much of it is nonverbal.
- For instance, when you “set the example,” that communicates to your people that you would not ask them to perform anything that you would not be willing to do.
- What and how you communicate either builds or harms the relationship between you and your followers.

# Situation

- All situations are different. What you do in one situation will not always work in another.
- You must use your judgment to decide the best course of action and the leadership style needed for each situation.
- Various forces will affect these four factors. Examples of forces are:
  - your relationship with your seniors
  - the skills of your followers
  - the informal leaders within your organization
  - how your organization is organized

# ***Ethics***

- Business ethics (also known as corporate ethics) is a form of applied ethics or professional ethics that examines ethical principles and moral or ethical problems that arise in a business environment.
- It applies to all aspects of business conduct and is relevant to the conduct of individuals and entire organizations.
- These ethics originate from:-
  - individuals,
  - organizational statements or from the legal system.

# Applied ethics

- Applied ethics is a branch of ethics devoted to the treatment of :-
- moral problems
- practices
- policies in personal life
- professions
- technology
- and government

# Ethical Theory

- Ethical Theory is concerned with purely theoretical problems such as:-
- the development of a general criterion of rightness
- Applied ethics takes its point of departure in practical normative challenges.



# Ethical leadership

- Ethical leadership is leadership that is directed by respect for:-
- Ethical beliefs and values
- The dignity and rights of others.
  
- It is thus related to concepts such as:-
- trust,
- honesty,
- consideration,
- charisma
- fairness.

# Probity

- Complete and confirmed integrity; uprightness

## Probity Adviser

- A **probity adviser** is an external consultant appointed to assist in the procurement process

## A stakeholder

- A **stakeholder** or stakeholders, as
- *"those groups without whose support the organization would cease to exist."*
- The term has been broadened to include anyone who has an interest in a matter.

# 3.0 FIDUCIARY DUTIES OF LEADERS

## a) Fiduciary

- An **individual** in whom **another** has placed the:-
- utmost **trust** and **confidence** to **manage** and **protect property or money**.
- Relationship wherein **one person** has an obligation to act for another's benefit.
- **b) Fiduciary Duty:**
- A duty to act for someone else's benefit, while subordinating one's personal interest to that of the other person
- It is the highest standard of duty implied by law (e.g., trustee, guardian). -*Black's Law Dictionary*

- **Two Broad Duties.**
- **DUTY OF CARE (Due Diligence;**
- **Duty to Investigate).**
- Directors /Leaders must be diligent and careful in performing the duties they have undertaken.
- **Attend and participate** in meetings so they can be informed about the organization's business.
- Make reasonable inquiry into:-
  - various issues,
  - rules violations, etc.
  - Make decisions.
  - Keep corporate records.

- **B. DUTY OF LOYALTY (No Self-Dealing).**
- Directors/Leaders must act in the best interests of the association even if at the expense of their own interests.

This is more than just embezzlement of funds; it includes:-

- steering contracts to family members
- or taking actions that result in personal benefits to the director/Leader at the expense of the organization.

Violation could result in:-

- liability for all profits received,
- all damages caused by the breach,
- punitive damages.
- The duty of loyalty can extend to the support of board/Management decisions.

- **Business Judgment.**
- In determining whether directors/Leaders violated their fiduciary duties,
  - courts will use the **Business Judgment Rule**.
- To avoid potential breaches, boards/Management should adopt an ethics policy to guide directors.

# FIDUCIARY DUTIES - COMPANIES ACT 2015 PERSPECTIVE

## Duties of the Board of Directors under the Kenyan Companies Act 2015

- The duties include:
- **The duty to act within powers(Section 142)**
- The Act provides that a director of a company must act in accordance with the company's
- Constitution and only exercise powers for the purposes for which they are conferred.
- In essence this means that directors must abide by the memorandum and articles of association (the constitution of a company) when carrying out their duties.
- They must also exercise the powers conferred by the Constitution for proper purposes only and act in the best interests of the company.

- **2) Duty to promote the success of the company (Sec.143)**
- The Act provides:
- A director of a company shall act in the way in which the director considers, in good faith, would promote the success of the company for the benefit of its members as a whole, and in so doing the director shall have regard to :-
  - (a) the long term consequences of any decision of the directors;
  - (b) the interests of the employees of the company;



- relationships with suppliers, customers and others;
- (d) the impact of the operations of the company on the community and the environment;
- (e) the desirability of the company to maintain a reputation for high standards of business conduct; and
- (f) the need to act fairly as between the directors and the members of the company.
- (2) If, or to the extent that, the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.

- (3) The duty imposed by this section has effect subject to any law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.
- The duty essentially requires the Directors to act ***bonafide*** and in the ***benefit of the interests of the members of the company***.
- The directors are also required to give proper consideration in decision making process and therefore in case of any consequences likely to arise, they would still be held accountable.

- **3) Duty to exercise independent judgment (Sec. 144)**
- A director of a company shall exercise independent judgment:
- (2) The duty under subsection (1) is not infringed by the director acting-
- in accordance with an agreement duly entered into by the company that restricts the future exercise of discretion by its directors; or
- in a way authorized by the constitution of the company.
- This would mean that a person who is appointed on that basis must accept that their obligation to the company cannot be discharged, and may be breached, by accepting instructions from the appointer.

- **4) Duty to exercise reasonable care, skill and diligence (Sec. 145)**
- This is provided as:
- In performing the functions of a director, a director of a company shall:-
  - exercise the same care, skill and diligence that would be exercisable by a reasonably diligent person with
  - ***the general knowledge, skill and experience*** that may reasonably be expected of a person carrying out the functions performed by the director in relation to the company; and
  - the general knowledge, skill and experience that the director has.
- This means that Directors must continue to act with reasonable skill and care.

- If they have special skills or knowledge then they will be expected to exercise them (i.e. an advocate serving on the board is expected to discharge his/her duties with the competence of a lawyer).
- Otherwise they will be measured against the standard of a reasonable person occupying their position.

## 5) Duty to avoid conflict of interest (Sec. 146)

- Under this section, a director must avoid a situation in which he has, or ***can have, a direct or indirect interest that conflicts, or possibly may conflict,*** with the interests of the company.
- The provision incorporates the long-standing common law rule that directors, like any other person who has fiduciary responsibilities, must respect the trust and confidence placed in them and should do nothing to undermine or abuse that trust and confidence.
- Directors should strive to ensure that situations where they could be called upon to make such a decision do not arise in the first place.

- **6) Duty not to accept benefits from third parties (Sec. 147)**
- A third party is defined as a person other than the company,
  - an associated body corporate or a person acting on behalf of the company or an associated body corporate.
- In this section Directors should ensure that they do not receive ***any benefits not provided for, or allowed, under the constitution of the company.***
- The only exceptions will be benefits that are so minor that they could not be thought to influence the director in any way.
- This rule is also intended to ensure that a director is not
- distracted from performing his or her duty to the company by rewards offered for doing unspecified things (or not doing any such things).

# LEADERSHIP INTEGRITY

- Definitions
- **Public Officer**
- Public Officer” Means--
  - (a) any State officer; or
  - (b) any person, other than a State Officer, who holds a public office;
- **“Public Office”**
- “public office” means an office in the national government, a county government or the public service, if the remuneration and benefits of the office *are payable directly from the Consolidated Fund or directly out of money provided by Parliament;*



- **Public Service”**  
“public service” means the collectivity of all individuals, other than State officers, performing a function within a State organ;
- **State Officer**
- “State office” means any of the following offices--
  - (a) President;
  - (b) Deputy President;
  - (c) Cabinet Secretary;
  - (d) Member of Parliament;
  - (e) Judges and Magistrates;
  - (f) member of a commission to which Chapter Fifteen applies;

- (g) holder of an independent office to which Chapter Fifteen applies;
- (h) member of a county assembly, governor or deputy governor of a county, or other member of the executive committee of a county government;
- (i) Attorney-General;
- (j) Director of Public Prosecutions;
- (k) Secretary to the Cabinet;
- (l) Principal Secretary;
- (m) Chief of the Kenya Defence Forces;
- (n) commander of a service of the Kenya Defence Forces;
- (o) Director-General of the National Intelligence Service;

- (p) Inspector-General, and the Deputy Inspectors-General, of the National Police Service; or  
(q) an office established and designated as a State office by national legislation;  
“State officer” means a person holding a State office;

- **Responsibilities of leadership**

(1) Authority assigned to a State officer:-

(a) is a public trust to be exercised in a manner that--

- is consistent with the purposes and objects of this Constitution;
- demonstrates respect for the people;
- brings honor to the nation and dignity to the office; and
- promotes public confidence in the integrity of the office; and

(b) vests in the State officer the responsibility:-

- to serve the people, rather than the power to rule them.

# **GUIDING PRINCIPLES OF LEADERSHIP INTEGRITY**

(2) The guiding principles of leadership and integrity include--

- Selection On The Basis Of Personal Integrity, Competence And Suitability, Or Election In Free And Fair Elections;
- Objectivity And Impartiality In Decision Making, And In Ensuring That Decisions Are Not Influenced By Nepotism, Favouritism, Other Improper Motives Or Corrupt Practices
- Selfless Service Based Solely On The Public Interest, Demonstrated By--
- honesty in the execution of public duties; and
- the declaration of any personal interest that may conflict with public duties;

- (d) accountability to the public for decisions and actions;  
(e) discipline and commitment in service to the people.

# CONDUCT OF STATE OFFICERS

- (1) A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids--
  - (a) any conflict between **personal interests** and **public or official duties**;
  - (b) compromising any public or official interest in favour of a personal interest; or
  - (c) demeaning the office the officer holds.
- (2) A person who contravenes clause (1), or Article 76, 77 or 78 (2)--
  - (a) shall be subject to the applicable disciplinary procedure for the relevant office; and
  - (b) may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

- (3) A person who has been dismissed or otherwise removed from office for a contravention of the provisions specified in clause (2) is disqualified from holding any other State office.



- **Financial probity of State officers**
- (1) A gift or donation to a State officer on a public or official occasion is a gift or donation to the Republic and shall be delivered to the State unless exempted under an Act of Parliament.
- (2) A State officer shall not--
- (a) maintain a bank account outside Kenya except in accordance with an Act of Parliament; or
- (b) seek or accept a personal loan or benefit in circumstances that compromise the integrity of the State officer.

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