

2017 KENYA MAGISTRATES' AND JUDGES' ASSOCIATION (KMJA) ANNUAL GENERAL CONFERENCE

**7-10 DECEMBER 2017
BONTANA HOTEL, NAKURU, KENYA**

OPENING REMARKS, SAMWEL MOHOCHI, EXECUTIVE DIRECTOR, ICJ KENYA

The Guest of Honour

The Honourable Chief Justice and President of the Supreme Court of Kenya

The Chairperson of the KMJA

Distinguished Judges (SCOK, C.A, High Court and Magistrates, with hierarchies observed

Delegates

Invited Guests and Speakers

Ladies and Gentlemen

Good Afternoon.

On behalf of the Council and the Secretariat of the Kenyan Section of the International Commission of Jurists (ICJ Kenya), it is my great honour to address this auspicious gathering of judges and magistrates from all over the country during this year's Kenya Magistrates' and Judges' Association (KMJA) Annual General Conference.

ICJ Kenya remains committed to work towards a society that respects human rights, democracy and justice. We have therefore had a long history of supporting and promoting judicial reforms, judicial independence and judicial accountability. We therefore consider the Judiciary as a key partner in the realization of human rights, democracy and the rule of law in the region. Certainly, ICJ Kenya recognizes and appreciates the unique and pertinent role that judicial officers play not only as citizens, duty bearers, leaders, interpreters of law, law makers, but also as champions of human rights, democracy and the rule of law.

We are proud of the continued strengthening of the KMJA as the premier institution articulating and safeguarding the welfare interests of judicial officers which remains a

critical aspect in realising the Kenyan commitment of the Sustainable development goal number 16 of Promotion of peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. We applaud you.

The KMJA annual conferences have been the stepping stone towards critical reform processes in the Judiciary. Every year, these deliberations and discussions on pertinent issues of law have provided us with opportunities to benchmark and share experiences. This year's theme on "Safeguarding Judicial Independence in Kenya – The Case of Law and Politics" comes at a very critical time when the judiciary has been attacked by individuals in the Executive and the Legislature.

Honourable members

We have witnessed troubling trends emerge.

I personally do contend that the failure by leaders to appreciate our democratic construct, Political doctrine of constitutional **law** under which the three branches of government (executive, legislative, and judicial) are kept separate to prevent abuse of **power**, and the general pedestrian attitude of the place of the executive vis a vis the citizenry constantly brings forth the unnecessary confrontation amongst the various arms of government especially during adjudication of disputes or immediately after judicial pronouncements.

During the opening of KMJA annual conference of 2016 at Panari hotel I did mention that in a healthy democracy decisions of the court must be enforced and any disregard thereof by any individual or institution undermines the very core construct of our democracy. As lawyers we usually do expect upon adjudication of a dispute a judicial pronouncement that may or may not favour our position and sound judicial reasoning provides the basis of the pronouncement further strengthening our collective societal developmental quest. No one should move court only expecting to win? We should the courts discharge their mandate and we learn to live with it.

There have been persistent and deliberate attacks against individual judges, the institution of the judiciary, and civil societies. There has been threats and intimidation of judges and judicial officers sitting at the High Court ready to determine the 339 election petitions in the country. These attacks by the politicians were exacerbated by the decision of the Supreme Court that annulled the August 8, 2017 presidential election.

As a result, there were public personalized attacks against the justices of the Supreme Court through mainstream media as well as negative profiling of judges, judicial officers and staff on social media platforms.

On one hand, there were threats from the Presidency on a number of occasions and in public spaces that his government, upon winning in the fresh elections, would 'deal with the rogue judges and the Supreme Court'. Not long after that, the government made unwarranted budget cuts from the Judiciary coffers so as to fund the fresh presidential election.

On the other hand, there were legislative attempts to undermine the independence of the judiciary through introduction of amendments to election related laws.

At the Subterranean level of many disputes adjudicated against, devolved units, National government, ministries and departments, we are all alive to the continued disregard of judicial decisions by individual cabinet secretaries, principal secretaries, agencies and departments to the disadvantage of litigants that are eager to enjoy the fruits of their judgements.

To ICJ-K fraternity, this remains a worrying trend where litigants have to initiate judicial review procedure long after judgements and awards, and subsequently commence contempt proceedings against individual state officers. This is a matter whose global magnitude is extremely concerning and further undermines the public confidence of the role of the judicial arm of government in adjudication and resolution of disputes.

We must remember that public perception, confidence and democratization are major factors that de facto and de jure independence of the Judiciary rely upon. To the detriment of public opinion, politicians and professionals took to mainstream and online media to air their positions on matters pending before court of the decision(s) of the Court. These discussions were marred by political affiliations and inclinations that failed to bring out impartial arguments of fact and law. As a result, the level of public perception and confidence in the judiciary to adjudicate on electoral disputes plunged by 12%.

Indeed, these efforts by the executive and politicians to undermine judicial authority are not grounded on principles of the rule of law and constitutionalism. They are designed by selfish and corrupt individuals in the executive and legislature to entrench the culture of corruption and impunity, and to defeat public demands for transparent, accountable and satisfactory governance.

Ladies and gentlemen

It is time for us to change this narrative.

Today provides a perfect opportunity to renew our commitment to do exactly that and commence a candid national conversation on strict adherence to articles 2 and 3 of the constitution in fact we from civil society expect more from all Duty Bearers especially the constitutional institutions and individuals deriving constitutional powers.

Firstly, it is important for us to balance the principles of judicial independence and accountability so as to underpin public confidence in the judicial system. On one hand, we must make a commitment to protect and promote judicial independence. On the other, we have to be accountable to the citizenry.

It is of equal importance that the leadership of the judiciary initiates the establishment of the full magnitude of cases of disregard and/or ignorance of enforcement of judgements and rulings especially by the duty bearers and commence a candid conversation with all arms of government to arrest the situation as the prevalence may eventually cascade to the citizenry leading to lawlessness and anarchy.

We urge as we move into 2018 that we all support the finalisation and establishment of the judiciary fund that is long overdue as a predicate of judicial independence.

We equally urge judicial officers to maintain judicial restraint to avoid making orders and judgement in vain if it is unclear on either supervisory aspects or implementation thereof.

Let us all remain steadfast in pursuit of an independent and accountable judiciary. Let us condemn the attacks, threats, and intimidation on the Judiciary, civil society organizations, and the media. Let us ensure that the exercise of judicial authority is not subject to the control or direction of any person or authority. Indeed, the Executive and Parliament must be reminded that the constitutional guarantees of judicial independence are non-derogable and are recognized by international and regional standards and norms.

ICJ-K fraternity once more reassures KMJA of continued partnership and our resolve towards safeguarding the independence of the judiciary as the catalyst of achieving our institutional visions of “A Just, Free and Equitable Society”

Honourable Members

Please join me in declaring this important conference officially open.

Again, thank you for coming together on this auspicious occasion.

May God bless you all and have pleasant festive season and a happy new year 2018.

God bless Kenya.

Asante

Mr. Samwel Mohochi
Executive Director, ICJ Kenya.