



---

12<sup>th</sup> September 2019

To all Media Houses,

---

**PRESS STATEMENT BY ICJ KENYA, KHRC, AND KATIBA INSTITUTE ON THE  
MATTER OF THE ARREST OF HON. KAGONI MATSIGULU**

---

An independent Judiciary is important to safeguard fundamental rights and liberties of all citizens. Indeed, the entrenchment of the national values and principles of governance including the fight against corruption depends on an independent, functioning and well funded Judiciary.

Therefore, the Kenya Section of International Commission of Jurists (ICJ Kenya), Katiba Institute (KI) and the Kenya Human Rights Commission (KHRC) deeply regret the arrest and attempted prosecution of Hon. Edgar Kagoni Matsigulu, Principal Magistrate at the Mombasa Law Courts. ICJ Kenya, Katiba Institute and KHRC further regrets the actions of the Office of the Director of Public Prosecutions (ODPP) and the Director of Criminal Investigations (DCI) in the matter and would wish to make the following statement:

ICJ Kenya, Katiba Institute and KHRC are aware that on 7<sup>th</sup> September 2019, the DPP made a press statement to the effect that the Hon. Magistrate Kagoni had been arrested, and that criminal charges had been preferred against him for obstruction with intent to defeat justice, as well as aiding and abetting in the trafficking of narcotic drugs.

*Contempt of Court Orders by the DPP and the DCI*

Though a petition brought under Certificate of Urgency, the High Court in Mombasa issued conservatory orders on Monday, 8<sup>th</sup> September 2019 in favour of Hon. Kagoni, suspending his intended prosecution and ordered his release on bail, pending the determination of the petition before the Court.

Those orders were blatantly disobeyed by the DPP and DCI because by the evening of September 10<sup>th</sup>, Hon. Kagoni had still not been released. The ostensible reason is that the DPP needed to verify those orders. Contempt of court orders especially by state officials is reprehensible and must be condemned by all. Contempt of court is an attack on the rule of law under Article 10 and judicial authority exercised by courts under Article 159 (1) of the Constitution. Contempt of court also demeans the status of public offices that are entrusted with the mandate of enforcing the law.

ICJ Kenya, Katiba Institute and KHRC therefore, calls on the DCI and the ODPP to always adhere to court orders even in cases of disagreement with those orders. Should the ODPP or DCI doubt or disagree with orders of the court, the law provides for them to apply for a revision of the orders or appeal against

them. All state officers who act in contempt of court violate the Constitution and should be liable to removal proceedings.

### *Judicial Independence*

Further, Article 160 (1) equips the Judiciary with independence against all persons and all authorities, subject only to the Constitution itself. The tweet by DCI Kenya on 6<sup>th</sup> September, and the press statement by the ODPP the following day regarding the arrest of Hon. Kagoni, are cause for concern. They depict the DCI and DPP being judge, jury and executioners in the matter regarding the alleged charges against Hon. Kagoni, thus eroding the doctrine of presumption of innocence of a judicial officer in the court of public opinion. Article 157(11) of the Constitution instructs the DPP to carry out his mandate while having due regard to public interest, the interest of the administration of justice, and also the need to prevent and avoid abuse of legal process.

The DCI and ODPP should desist from actions that can be interpreted as attempts to intimidate the Judiciary, and thus interference with judicial independence. The doctrine of separation of powers connotes that different arms of government should work separately with distinct roles and with checks and balances against each other.

A judicial officer's role is to decide on disputes before the court following the law. A party that is unhappy with the judicial officer's decision should appeal the same or apply for its review. The Judicial Service Act also makes provisions for complaints against judicial officers and their discipline and removal before the Judicial Service Commission.

ICJ Kenya, Katiba Institute and KHRC's position is that the right to a fair hearing, access to justice, equality before the law, and ultimately law and order in our society, is predicated upon an independent judiciary. This cannot be compromised in a democracy and in our constitutional order. We, therefore, call upon the DCI and ODPP to at all times comply with court orders and be respectful of the rule of law and due process.

Thank you.

Yours faithfully,



Kelvin Mogeni  
**Chairperson, ICJ Kenya Council**