

SUSTAINED ATTACKS ON THE JUDICIARY AFTER THE SUPREME COURT JUDGEMENT ON THE PRESIDENTIAL PETITION

23 SEPTEMBER 2022

Over the last two weeks, the attention of the Kenyan Section of the International Commission of Jurists (ICJ Kenya) has been drawn to increasing political statements and commentaries, including on social media, in response to the Presidential election Petition Judgement delivered on 5 September 2022.

ICJ Kenya has been monitoring and tracking these reactions and responses. As a Commission of Jurists, we note with concern the alarming remarks, including misinformation and disinformation intended to undermine the dignity and stature of the Judiciary. Similarly, the Judiciary leadership also made public statements regarding the Judgement that have raised questions and concerns among the citizens.

Whereas ICJ Kenya fully promotes and champions the freedom of expression as a fundamental freedom, in our considered view, these comments, judicial expressions, and political statements have undermined, demeaned, and impacted the public perception of the Judiciary in the court of public opinion. Some statements have questioned the integrity of the Supreme Court Justices and, by extension, the Judiciary.

We posit that Judicial Independence is a prerequisite for courts to exercise their authority with predictability, equity, and justice. The Judiciary must fulfil and exercise judicial independence collectively, and individual judicial officers execute their mandate in line with the judicial code of conduct. Judges and Magistrates exercise judicial functions independently based on their assessment of facts and the law without direct or indirect extraneous influence, inducements, pressures, threats, or interference.

ICJ Kenya recalls and reminds the Judiciary, the executive, legislature, and political leaders, including members of the public, of the constitutional principle of separation of powers that underpins our Constitution's architecture. Further, the national, regional, and international mechanisms, including the Constitution of Kenya, guarantee the independence of the Judiciary and refers to its institutional and decisional independence. These guarantees are contained in the Universal Declaration of Human Rights (UDHR)¹, the International Convention on Civil and Political Rights (ICCPR)², the African Charter³, the Grand Bay (Mauritius) Declaration and Plan of Action⁴, the UN Basic Principles on the Independence of the Judiciary,⁵ the Bangalore Principles of Judicial Conduct⁶ and the Commonwealth (Latimer House) Principles of the three Branches of Government⁷. Consistent with this, most national Constitutions in the African region vest judicial power in the courts and declare that they are independent and subject only to the Constitution and the law.

¹ Universal Declaration of Human Rights Article 10 <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>

² International Convention on Civil and Political Rights <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf>

³ The African Charter on Human and People's Rights https://www.achpr.org/public/Document/file/English/banjul_charter.pdf

⁴ The Grand Bay (Mauritius) Declaration and Plan of Action section 4 <https://www.achpr.org/legalinstruments/detail?id=44>

⁵ <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>

⁶ https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

⁷ <https://www.cpahq.org/media/dhfajkpg/commonwealth-latimer-principles-web-version.pdf>

In conclusion, whereas we recognize that elections and attendant outcomes are emotive, we assert that there are provided constitutional and legal channels intended to address concerns or grievances against the Judiciary regarding judicial conduct, court decisions, and processes, including but not limited to filing petitions before the Judicial Service Commission (JSC) and the relevant Parliamentary Committees.

We call on the Judiciary, political leaders, and the citizenry to exercise restraint, respect and safeguard the constitutional underpinnings of our established institutions towards fostering the rule of law and promoting the democratic fabric of our society.

Signed



Mr. Protas Saende
ICJ Kenya Chairman.