

ICJ KENYA STATEMENT WELCOMING THE HIGH COURT JUDGMENT ON THE UNCONSTITUTIONALITY OF THE 50 CHIEF ADMINISTRATIVE SECRETARY(CAS) POSITIONS.

5TH JULY 2023

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) has reviewed and interrogated the judgement of the Constitutional and Human Rights Division of the High Court of Kenya in *Petition No E080 of 2023, Eliud Karanja and others vs The Republic of Kenya and others*, commonly referred to as the Chief Administrative Secretary(CAS) case 2023.

On 12 October 2022, the Public Service Commission invited applications for 23 positions in the office of CAS vide *Gazette Notice No. 12432*. Thereafter, the advertisement was challenged by the Law Society of Kenya in the Employment and Labour Relations Court under *Law Society of Kenya v The Public Service Commission and the Hon. Attorney-General*¹. The Court found that the Public Service Commission had complied with the appropriate process required to hire the 23 CASs. The Public Service Commission thereafter shortlisted 240 candidates for interview. The interviews were conducted between 1 March 2023 to 7 March 2023. In his resolution dated 16 March 2023, the President nominated 50 persons for appointment against an initial vacancy declared for 23 positions.

On 3 July 2023, the High Court sitting as a three-Judge Bench sat to deliver its judgement over the creation of the **Office Of The Chief Administrative Secretary** as created by His Excellency the President of Kenya, Dr. William Ruto and The Public Service Commission.

In delivering its Judgement, the High Court declared the Office of Chief Administrative Secretary unconstitutional. Further, whereas there was public participation in the initial complement of 23 CAS, there was a lack of public participation in the additional complement of 27 Chief Administrative Secretaries. As a Commission of Jurists, we laud the High Court for asserting itself on the unconstitutionality of the Office of the Chief Administrative Secretary and the attendant processes that led to the recruitment, shortlisting and, thereafter, appointment.

1 <https://www.standardmedia.co.ke/national/article/2001458209/psc-says-lawyers-cas-case-baseless>

Notably, in the previous administration led by His Excellency Rtd. President Uhuru Kenyatta, the position of Chief Administrative Secretary² was the subject of litigation in *Okiya Omtatah Okiiti v Public Service Commission*,³ and the Court held that the offices were unconstitutional for failing to recruit competitively and violating public participation requirements. The orders were suspended until the end of the last administration, as they would impair ministry operations during the Covid-19 pandemic.

As a Commission of Jurists, we welcome the recent judgment by the High Court on *Petition 080 of 2023*, declaring the position of Cabinet Administrative Secretary as unconstitutional. This landmark ruling reaffirms the principles of constitutionalism and upholds the integrity of our democratic system⁴. The High Court's decision sends a clear message that adherence to constitutional provisions is paramount and that no position should be created or maintained outside the bounds of our constitutional framework. This judgment reaffirms the importance of separation of powers and the need to preserve the checks and balances that underpin our democracy.

As Commission of Jurists, we posit that the Judgement represents a significant step towards ensuring transparency, accountability, and good governance within our government structures. It reinforces the principle that every action and appointment by the Executive must be grounded in constitutional legitimacy, ultimately serving the best interests of the Kenyan people.

ICJ Kenya commends the judiciary for its independence and commitment to upholding the rule of law. This decision demonstrates the vital role of an Independent Judiciary in safeguarding the Constitution and protecting the rights and freedoms of citizens. To this effect, we call upon the relevant government authorities, such as the Public Service Commission, to respect the court's decision and take immediate steps to address the unconstitutional aspects highlighted in the judgment and, if aggrieved, to follow the appellate channels to appeal the decision.

In conclusion, ICJ Kenya encourages the government to thoroughly review its structures and appointments to ensure compliance with the Constitution and strengthen the principles of transparency, accountability, and constitutional governance. We remain committed to working collaboratively with all stakeholders to advance the rule of law and contribute to developing a just and inclusive society with strengthened democratic institutions that promote constitutionalism and respect for human rights and dignity.

Signed



Mr. Protas Saende
ICJ Kenya Chairman

2_ <https://www.standardmedia.co.ke/politics/article/2001267406/uhuru-creates-new-powerful-post-rewards-election-losers>

3 <http://kenyalaw.org/caselaw/cases/view/156498/>

4 Article 10 of the Constitution of Kenya

About ICJ Kenya.

The Kenyan Section of the International Commission of Jurists (ICJ Kenya) is a non-governmental, non-profit and member-based organisation. Established in 1959, ICJ Kenya is a premier Human Rights organisation whose Vision is to promote a just, free and equitable society.⁵

For media inquiries or further information, please contact: Anita via anita.atieno@icj-kenya.org

5 <https://icj-kenya.org/>