



STATEMENT BY THE JUDICIAL SERVICE COMMISSION ON ATTACKS ON THE JUDICIARY BY POLITICAL LEADERS

1. Over the last few months, a pattern has emerged where political leaders habitually hurl attacks at members of the Judiciary, focusing either on individual judges or the institution as a whole.
2. They have taken to criticising decisions reached by Judges, and, with increasing regularity, making threats and demands that fly in the face of judicial independence, the fundamental principle upon which our work rests.
3. The attacks have recently become bolder, persistent and institutionalised and have now climaxed with this week's demands by the Jubilee Party, contained in a letter to Chief Justice David Maraga by party secretary-general Raphael Tuju, asking that Judge George Odunga recuses himself or be replaced from his current assignments. While we do not wish to respond to this specific demand, we note with concern the audacity of the party as it seeks to select who hears the cases it files in court.
4. As the body that the Constitution has charged under Article 172 with the responsibility of promoting the independence and accountability of the Judiciary, the Judicial Service Commission takes great exception to this development, and demands that political and other leaders cease forthwith from this ignoble conduct that interferes with the work of the officers charged with the administration of justice.
5. The emerging culture of public lynching of judges and judicial officers by the political class is a vile affront to the rule of law and must be fiercely resisted. This is particularly so when the tone and regularity of the condemnations transgress the ordinary boundary of disagreement and debate on judicial pronouncements, and lurch alarmingly in the direction of threats, intimidation and blackmail.
6. Indeed, the chronology of attacks is quite worrying:
On December 22, 2016: Hon Aden Duale accused Judge George Odunga of playing tribal politics and being partisan. This was in regard to an application by the opposition on proposed amendments before Parliament.
In May 2017: NASA leaders Raila Odinga and Kalonzo Musyoka said their supporters would take to the streets in the event the Court of Appeal ruled in favour of IEBC on the question over who should declare the final results of a presidential poll.
On July 9, 2017: President Uhuru accused the Judiciary of working with the Opposition when the High Court ruled that IEBC must re-advertise tender for printing of presidential ballot papers.
On July 10, 2017: Uhuru and Ruto insisted that Judges are working with the opposition to postpone elections.
On July 11, 2017: Cabinet Secretary Mwangi Kiunjuri and Kinango MP Gonzi Rai accused the Chief Justice of "failing to conduct due diligence" in appointing Justice Odunga to sit in the bench of the Al Ghurair case.
7. We wish to state that the JSC and the Judiciary will not cower to these intimidating tactics.
8. Judges and judicial officers have no opportunity to defend themselves and the JSC wishes to assure them and the public that it will remain steadfast in defending the judges and the institution from unwarranted attacks.
9. The Constitution provides that judicial authority derives from the people and the decisions that judges render as guided by the law and the evidence presented, are alive to this fact.
10. We wish to remind the politicians that our Judicial system incorporates sufficient avenues for recourse should litigants be dissatisfied with decisions made by our courts. The most obvious one is appellate avenue which the political leaders have themselves used extensively in the past. Allowing litigants to choose their judges would be tantamount to abdicating from a cardinal principle of judicial and decisional independence that we hold so dear.
11. The JSC wishes to further state that we will always be at the forefront of defending the cardinal principle of decisional independence of judges, and that we will at no time direct any judicial officer on how to decide on the cases before them. Neither will we ask them to recuse themselves from the cases filed before them. Recusal is a matter of fact and law and the Chief Justice cannot direct a judge to disqualify him/herself from a matter. The rules of recusal are clear and are a matter of a personal prerogative and we leave it individual judges to decide whether their relationships and associations outside the courtrooms bear the risk of hindering them from delivering justice.
12. Let the public have no doubt that the Judiciary is prepared to handle all election-related disputes, at all levels, swiftly and fairly and without fear or favour.

Signed: For and on behalf of the Judicial Service Commission,

**HON. JUSTICE DAVID K. MARAGA, EGH
CHIEF JUSTICE AND CHAIRMAN
OF THE JUDICIAL SERVICE COMMISSION.**