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THE PLATFORM

FOR LAW, JUSTICE & SOCIETY

WHO WILL BE THE NEXT LSK PRESIDENT?


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IN THIS ISSUE

EDITORIAL

The guardians of justice have crossed the political line: A Constitutional reckoning for the Judicial Service Commission

Vice Chairperson of the Judicial Service Commission (JSC) Mr. Isaac Ruto with President William Ruto.

Recent public discourse has brought renewed attention to the constitutional boundaries that govern the conduct of members of independent commissions, particularly those entrusted with oversight of the Judiciary. Reports and images circulating in the public domain have suggested that the Vice Chairperson of the Judicial Service Commission (JSC) Mr. Isaac Ruto recently attended a meeting of a political party, the United Democratic Party (UDA), a high-level gathering convened at State House. These reports raise serious constitutional and ethical concerns that transcend individual personalities and instead implicate foundational principles of judicial independence and institutional integrity.

At stake is a central question in constitutional governance: whether a serving member of the Judicial Service Commission can openly participate in partisan political activities while continuing to credibly discharge the Commission's mandate. Within the framework of the

Constitution of Kenya, 2010, the answer must be approached with caution but clarity. The constitutional architecture governing independent commissions leaves little room for overt political alignment by those entrusted with safeguarding the administration of justice.

This controversy does not turn on the personal conduct or character of any individual office holder. Rather, it concerns the institutional office involved and the precedent that such conduct risks establishing. When a Vice Chairperson of the Judicial Service Commission is seen to engage openly in partisan political activity without apparent consequence, it raises a broader and more troubling question about institutional discipline and constitutional boundaries. Such conduct, if left unaddressed, may embolden other Commissioners to follow a similar path, encourage judicial officers to cultivate political affiliations, and gradually normalise the political capture of institutions that are meant to remain independent. Constitutional breakdowns rarely occur through sudden or dramatic events; more often, they unfold incrementally, through small departures from principle that are tolerated over time and reinforced by silence.

The Judicial Service Commission occupies a unique and critical position within Kenya's constitutional order. Under Article 172 of the Constitution, the Commission is responsible for recommending persons for appointment as judges, exercising disciplinary control over judicial officers, and generally promoting and facilitating the independence and accountability of the Judiciary. These functions place the JSC at the core of the justice system. Its decisions shape not only the composition of the courts but also public confidence in the fairness and impartiality of judicial processes.

The effectiveness of the JSC does not depend solely on its formal independence. It also rests heavily on public perception. Judicial institutions derive legitimacy from trust, and trust is sustained when oversight bodies are seen to operate free from political influence. Where a senior member of the Commission is perceived to be closely associated with a political party, particularly one that exercises executive power, that perception alone is capable of undermining confidence in the Commission as an impartial constitutional actor.

This concern is directly anchored in Article 249 of the Constitution, a provision that defines the character and obligations of constitutional commissions and independent offices. Article 249(1) affirms that such bodies are subject only to the Constitution and the law and are not subject to direction or control by any person or authority. Article 249(2) further requires them to protect the sovereignty of the people, secure the observance of democratic values and principles, and promote constitutionalism. These obligations are substantive, not symbolic. They demand conduct that reinforces independence in both reality and appearance.

Kenya's constitutional democracy is still young. Its resilience depends not on the text of the Constitution alone, but on the willingness of those entrusted with power to live by its spirit. Article 249 was designed to insulate commissions like the JSC from precisely the kind of political entanglement now alleged. To ignore its violation is to hollow out its meaning.

Participation by a senior JSC official in the activities of a political party, especially in settings closely associated with executive authority, creates a reasonable apprehension of political alignment. Such conduct risks conveying the impression that the Commission, or elements of its leadership, may be susceptible to political influence. From a constitutional standpoint, that apprehension alone is sufficient to raise concerns of non-compliance with

Article 249, which is designed to insulate independent commissions from precisely such entanglements.

Judicial independence is not merely an internal conviction held by office holders; it is a public standard that must be demonstrably upheld. The Constitution does not require proof of actual bias or improper decision-making before concerns may legitimately arise. The appearance of partiality is itself damaging. When a senior figure within the judicial oversight framework is seen in partisan political spaces, questions naturally arise about the neutrality of judicial appointments, the fairness of disciplinary processes, and the broader relationship between the Judiciary and the political branches of government. In constitutional governance, perception plays a decisive role, and once public trust is eroded, it is difficult to restore.
These concerns also intersect with the values set out in Chapter Six of the Constitution and the provisions of the Leadership and Integrity Act. Article 73 requires State officers to exercise authority in a manner consistent with the purposes and objects of the Constitution, to bring honour and dignity to public office, and to promote public confidence in institutional integrity. Open engagement in partisan political activities by a senior member of the Judicial Service Commission sits uneasily with these obligations, particularly given the Commission's role as a guardian of judicial impartiality. The Leadership and Integrity Act reinforces this framework by obligating State officers to avoid conflicts between personal or political interests and their public duties. High-level political participation cannot be characterised as a neutral or incidental activity; it signals affiliation and allegiance.

The context in which the reported political engagement occurred further amplifies these concerns. State House is not a neutral venue. It is the symbolic and functional centre of executive authority. Kenya's constitutional history reflects a long struggle to free the Judiciary from executive dominance, a struggle that informed the design of the 2010 Constitution. Independent commissions, including the JSC, were deliberately established as buffers between political power and constitutional governance. When those buffers appear to be crossed, even symbolically, the risk to judicial independence becomes acute.

The danger posed by such perceptions is neither abstract nor exaggerated. A Judiciary that is seen as politically aligned risks losing public confidence in its decisions, weakening its ability to enforce constitutional limits on power, and reviving patterns of deference to the executive that the constitutional reform process sought to dismantle. For this reason, restraint from partisan engagement has historically been observed by members of judicial oversight bodies. This restraint reflects an understanding that the authority vested in such offices demands a higher standard of neutrality than that expected of ordinary State officials.

Comparative constitutional practice supports this approach. In many jurisdictions, members of judicial councils and similar bodies are expressly or implicitly barred from partisan political activity. The underlying principle is universal: those responsible for overseeing the administration of justice must remain above political contestation. Kenya is not exempt from this logic, nor should it be.

These developments place a responsibility on the leadership of the Judicial Service Commission, particularly its Chairperson, to uphold institutional integrity. Constitutional stewardship requires more than passive observance; it demands principled engagement when questions of compliance arise. Addressing such matters openly and transparently, clarifying ethical boundaries, and, where appropriate, invoking internal accountability mechanisms are essential to preserving public confidence in the

Commission. Inaction risks normalising conduct that weakens constitutional norms and blurs the line between independent oversight and political proximity.

The Judicial Service Commission is required to address the matter in an open, transparent, and decisive manner in order to safeguard its institutional integrity. This necessarily entails seeking a clear explanation from the Vice Chairperson, articulating and reaffirming the ethical and constitutional limits that govern the conduct of Commissioners, and, where the circumstances so demand, activating the Commission's internal accountability processes. Inaction carries its own consequences. It risks rendering the institution complicit in the very conduct that threatens its independence and conveys the troubling impression that constitutional standards are flexible and that political proximity may be tolerated where it is inconvenient or uncomfortable to enforce the law.

Importantly, the implications of this issue extend beyond any single office holder. The concern is institutional rather than personal. If senior members of the Judicial Service Commission are seen to engage in partisan politics without consequence, a precedent is set that may encourage similar conduct by others, including judicial officers themselves. Constitutional erosion rarely occurs through sudden rupture; more often, it unfolds gradually through tolerated departures from principle and selective silence.

Kenya's constitutional democracy remains a work in progress. Its endurance depends not only on the strength of constitutional text but on the fidelity of those entrusted with constitutional authority. Article 249 was crafted to shield independent commissions from political influence. To disregard its requirements is to weaken the safeguards that underpin constitutionalism itself. Public scrutiny and constitutional vigilance should therefore be understood as essential features

The Judicial Service Commission (JSC) headed by the Chief Justice is a key institution in many countries, particularly those with a history in the Commonwealth, responsible for ensuring the independence, integrity, and quality of the judiciary. Its exact composition and powers vary by country, but its core functions are generally similar.

of democratic governance, not as acts of antagonism.

Ultimately, the boundary between law and politics must be clearly drawn and consistently respected, especially where the administration of justice is concerned. The Judicial Service Commission's moral authority depends on visible adherence to neutrality, independence, and constitutional principle. Anything less risks undermining both Article 249 and the broader promise of the 2010 Constitution. Kenya's constitutional order requires a Judiciary—and a Judicial Service Commission—that remains firmly above politics, not adjacent to it.

Conclusion: Drawing the line, before it disappears

The line between law and politics must be bright, firm, and visibly enforced—especially where the administration of justice is concerned. If the JSC is to retain its moral authority, it must reaffirm, through word and deed, that its leadership is politically neutral, constitutionally anchored, and fiercely independent. Anything less would be a betrayal not only of Article 249, but of the promise of the 2010 Constitution itself. Kenya deserves a Judiciary—and a Judicial Service Commission—that stands above politics, not beside it.

Who will be the next Law Society of Kenya President?

By Teddy Odira

Introduction

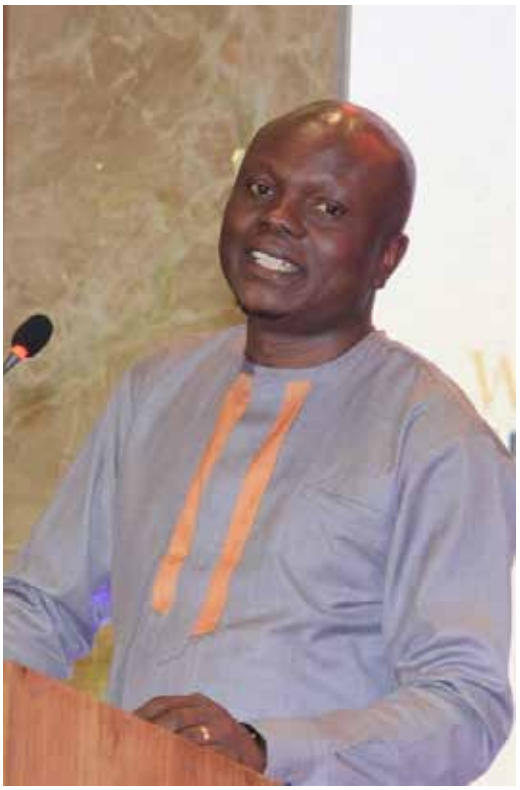
The presidency of the Law Society of Kenya (LSK) is a significant institutional office within Kenya's constitutional and professional architecture. It operates at the intersection of professional self-regulation, constitutional guardianship, and public legitimacy. This year, the profession is confronted with fundamental questions of leadership and direction. As the tenure of Faith Odhiambo draws to a close, attention turns to succession. Who will assume the responsibility of steering the Society, and who is best positioned to serve as the 52nd President of the LSK? Three candidates have been cleared to contest the office. Each advances a distinct understanding of the presidency, informed by differing professional trajectories and commitments. The question that emerges is therefore not merely electoral, but institutional: what kind of leadership does the LSK require?

THE CANDIDATE PROFILES

Mwaura Kabata presents himself as a leader shaped by professional adversity and sustained institutional engagement. His path through the profession informs a leadership philosophy grounded in resilience, continuity, and gradual reform rather than abrupt institutional disruption. Having risen through committee work to serve as General Member Representative and later Vice President, he situates his candidacy within the internal evolution of the Law Society of Kenya. Kabata views the Society as being on a broadly positive trajectory that now requires consolidation. His priorities focus on strengthening institutional infrastructure, reimagining continuing professional development as a structured training institute, and improving operational efficiency through integrated digital systems. Economically, he advances reforms aimed at stabilising legal practice across the bar. This includes minimum remuneration standards, review of the Advocates Remuneration Order, and expansion of legal aid as both a professional and access-to-justice intervention. His approach reflects a technocratic and consensus-oriented model of governance.

Charles Kanjama, SC grounds his candidature in long-standing professional practice and extensive experience within LSK's governance structures. His vision is framed around institutional balance, structured through four core pillars: the rule of law, integrity, practice and welfare, and engagement. Drawing on his service as Treasurer, branch chair, and committee convenor, Kanjama identifies risks facing the Society including financial capture, governance weaknesses, and inefficiencies within the justice system. His proposals emphasise institutional discipline and accountability with particular attention to corporate governance reporting, performance-based management of the Secretariat, and predictable financial oversight. He also places strong emphasis on devolution within LSK through structured empowerment of branches, alongside capacity-building initiatives focused on technology and professional development. Overall, his approach reflects an institutional design perspective aimed at reinforcing both internal credibility and external influence.

Peter Wanyama advances a vision of the LSK presidency rooted in constitutional litigation and protection of the practising space. His professional identity is closely tied to sustained legal challenges against the national government, which informs his understanding of the Society as a defensive institution operating within a hostile regulatory and political environment. He characterises the profession as facing existential threats, including regulatory encroachment, economic contraction, and erosion of independence. In response, Wanyama proposes assertive, interventionist measuresincluding minimum pay guidelines, practising certificate fee waivers, access to credit facilities for advocates, and strengthened welfare infrastructure at branch level. He also emphasises resistance to state capture and the need for structural adaptation to emerging market and technological pressures. His vision positions the LSK as an active shield for professional survival and constitutional integrity.



The Institutional role of the LSK President

Beyond individual platforms, the President of the Law Society of Kenya occupies a defined institutional role as the Society's principal representative, Chair of the Council, and custodian of professional self-regulation. The office requires sustained engagement with the courts, the Executive, Parliament, and the public, while simultaneously ensuring internal accountability and financial integrity. For the wider public, the effectiveness of the LSK President is measured by the Society's credibility and consistency in defending legality, constitutionalism, and access to justice. The responses examined here collectively affirm that the presidency is not a symbolic position but an operational office requiring clarity of purpose, institutional discipline, and strategic judgment. The decision facing the profession concerns the model of leadership most capable of positioning the LSK to address challenges that lie ahead.

Conclusion

The contest for the presidency of the Law Society of Kenya is a contest over institutional imagination. Each candidate articulates a distinct response to the same structural anxieties. What is at stake is not simply leadership succession but how the next president will understand authority, raise their voices to injustice and balance professional welfare with constitutional responsibility. The choice before members will shape the Society's posture towards credibility as a guardian of legality. In this sense, the presidency is less a personal office than a constitutional instrument, one whose direction will determine whether the Law Society of Kenya remains reactive, reformist, or resolutely protective in the years ahead.

INTERVIEW WITH

MWAURA KABATA

My name is Teddy Odira, on behalf of the Platform for Law, Justice and Society and in the lead-up to the 2026 elections for President of the Law Society of Kenya, I posed a common set of questions to the three candidates for the office. The answers are reproduced here in full and without editorial alteration so that readers can engage directly with each candidate's own words. I am grateful to Mwaura Kabata for responding fully and candidly. The willingness to submit his ideas, records, and reflections to public scrutiny reflects an appreciation of what this moment demands.

I invite you to read the responses closely and to draw your own conclusions about who is best placed to lead the Law Society of Kenya in the coming term. The future of the Society will not be determined by manifestos alone but by informed members exercising independent judgment at the ballot. That responsibility now rests with you.

Mr Mwaura Kabata, Briefly narrate your journey in the legal profession and public life, and identify the one experience that most prepared you to lead the Law Society of Kenya.

Unlike many, my journey to the bar was far from straightforward. It was characterized by frustration, rejection, and an unyielding persistence to live my dream of becoming an Advocate. After such difficulty, I did not just want to hold the title, I wanted to experience being an Advocate both through my own and through the circumstances of colleagues. Because of this, shortly after my admission in, I plunged myself into active engagement in the Law Society of Kenya, first through committees where I championed transformative perspectives and innovative solutions to members' challenges. In 2022, I was elected General Member Representative, and served as co-convener of the PIL Committee. Members then gave me the honour of serving as Vice President, a position I have carried with great sense of duty and deep humility. The highs and lows of my journey have grown my belief that no circumstance is permanent as long as you pour all your energy into whatever opportunity you get. That will remain my mantra should I be elected President.

What is your overarching vision for LSK for the 2026–2028 term, and how does it differ from what recent Councils and presidents have attempted or achieved?

Continuity anchored in innovation. The fact that we hold our elections every two years means that every regime change poses a risk of stalled projects and plans; whether because of difference in ideas, priorities, personalities or perceived needs. Majority of members agree that LSK is currently on a promising trajectory. I do not propose to bring down the tower of Babel and rebuild it, my vision is to leverage this good foundation, and innovatively make things better. We are more united than ever, we must now harness that unity into collaboration to exploit emerging frontiers. We have broken ground on the regeneration of our Headquarters, we must now make it a state-of-the-art facility with cutting edge amenities. We have marked our place as the bulwark for constitutionalism, we must now up the gear as we head into the coming election. We have embraced specialized CPD trainings for niche areas, we must now consider transforming CPD into a fully-fledged Training Institute. That is what I intend to do.

What are the most urgent problems facing pupils, young advocates, and the middle bar and what specific policy or regulatory changes will you champion to address each of them?

The elephant in the room among Pupils is the question of their remuneration. The conversation on setting minimum wages is one which we must have sooner or later. However, we must acknowledge that

one can only pay more when they have enough, so we must equally address how Advocates earn. The review of the ARO must be deliberate to block pathways for undercutting while expanding the earning capacity of all practitioners.

Young Advocates largely suffer an opportunity problem, with many either unemployed or struggling to set up their own practice. We must bridge this opportunity gap through both capacity building and direct opportunity creation. I propose both to initiate free specialized CPDs for first- and second-year Advocates on navigating career onset dynamics, and also speaks to our plan to agitate for the expansion of the Legal Aid Fund such that every young Advocate is given a fairly remunerated brief straight after admission.

The mid-bar's greatest need is seamless services, whether from the LSK, BRS, Judiciary or Lands Registry. We have a clear-cut plan to synchronize LSK systems through the new ERP with each of the registries to ensure faster turnaround times, reduce back-end intervention to cut off corruption, and ascertain efficient services all through.

Many members worry about capture of LSK by the State, political actors or powerful private interests. In your view, what are the most realistic capture risks today, and what safeguards will you put in place to keep the Society independent in both perception and reality?

In the context of the 2026-2028 period, the LSK will be at high risk of capture due to the coming election. We must therefore maintain our role as a safeguard of constitutionalism, democratic values, rule of law and electoral justice. In this endeavor, we must be proactive in approach, selfless in conduct and courageous in choices. We cannot take chances on our political neutrality and objectivity. Attitude makes habit, habit makes character and character makes a person. I have never been a political hardliner, and that attitude speaks to my view of politics as an objective means to a democratic end rather than a source of survival. I do not represent the Government and have never been openly partisan in favour of any political faction; I don't propose to start when elected. I will ensure LSK remains independent, first by remaining independent myself; then by working collaboratively with my council to prevent antagonism arising from disgruntlements; and ultimately through listening to my members, because they value this Society too much to set it astray.

Identify one recent or ongoing national governance or constitutional crisis where you think LSK either responded poorly or remained too silent. What would you have done differently as president, and what is your decision-making framework for deciding when and how LSK intervenes in national controversies?

Having been in council, I believe we have performed exemplarily in this area. However, I must admit that the Femicide crisis probably required a more robust reaction from LSK. While our President was part of the Presidential Taskforce on Femicide and GBV, the LSK's reaction as a whole was piecemeal. Sent back in time, I would see the LSK take up as active a role in the anti-femicide movement as it did during the Gen Z demonstrations.

In terms of decision-making, I appreciate the importance of consensus and collective responsibility within council. The decisions made by a President of LSK must never be hipster or intended to propel them into stardom. They must be deliberate, conscious decisions informed by the views of council and colleagues, backed by law and the Constitutions, and made in the interests of advancing our section 4 mandate regardless of optics and consequences.

Members regularly raise concerns about transparency in LSK's finances, decision-making and communication. What three governance or financial reforms will you commit to implement within your first year, and how should members measure whether you have succeeded?

From a financial perspective, we must pick up from where the current council has left off in terms of robust resource-mobilization, strategic management of investment revenue, and deliberate austerity measures through alternative modes of conducting society affairs. For instance, we have increased the LSK's investment portfolio from 240 Million in 2022 to 495 Million in 2026. Simultaneously, we have delinked council involvement in signing of Checks and limited it to oversight, to avoid conflict of interest and diminished fiscal accountability. Going forward, I propose to curate more sector-targeted programs to enable the LSK raise funds from strategic partners for actual impact-driven initiatives such as the budgetary support due from the Treasury for AML training.

On communication, the new ERP system promises to cut-down the need for person-to person interactions which introduces unnecessary bottlenecks in the service chain. Once it hits its optimum level, the ERP should respond to all member queries, requests and needs at the click of a button. I will fast-track the implementation of the system for this purpose.

On decision-making, our Act is clear on how decisions of both the council and the Society are to be made. I have always been an accommodative, consultative and approachable leader, and that will enable me to run the open-door policy necessary for consensus-building within LSK.

How will you rebalance LSK priorities away from Nairobi-centric politics?

I am an ardent supporter of devolution within the LSK and my record on the matter speaks for itself. It is during the time I have served in council that we have increased the allocation to branches so that they can have more operational autonomy in responding to the peculiar needs of members within their lived contexts. It is during our time that we have decentralised LSK activities and made every corner of the country experience the true spirit and energy of the LSK. An element of devolution that I have identified as a milestone is rotational selection of LSK's representatives to various statutory boards and state agencies. The concentration of appointees and nominees to members domiciled in Nairobi denies members from the rest of the country a fair chance in shaping the LSK's position on National issues which would give them a fair stake in how we operate. By decentralising this process, we not only achieve diversity but equalise the playing field to avert potential disenfranchisement.

Technology and AI are rapidly transforming legal practice. What is your philosophy on AI in advocacy and advisory work, and what specific guidelines, safeguards or opportunities would you push LSK to develop so that Kenyan advocates are not left behind but also not rendered obsolete or ethically compromised?

I believe that AI is a transformative opportunity which we must leverage and exploit to make ourselves more productive and efficient. However, with the great opportunity it provides comes a great responsibility to restrain ourselves from abusing it. The LSK retains its mandate as a regulator of practice standards, and we must draw the line between emerging technologies as tools of workmanship and the ethical challenges they pose to our noble profession. Perhaps the greatest concern we must address is the effect of AI on client confidentiality. We need to set mandatory thresholds for the amount of


Mwaura Kabata

client information Advocates can expose to AI platforms. We must also be watchful in how dependent we are on AI, as the reliance of AI to generate legal work does not only water down our craft but risks putting the profession into disrepute when, for instance we cite non-existent case law.

Name two measurable outcomes that we can check at the end of your term which, if you fail to meet them, you will publicly declare your leadership a failure.

My first is effective and accountable member services. The LSK is made of, for, and funded by it members, and there is no room for lethargy, incompetence or complacency in service delivery. We have progressively worked towards building the capacity of the secretariat to a point where they can be adequately equipped to serve members effectively. The point at which we find ourselves is one where member satisfaction must be the primary basis for retention and appraisal. The endemic non-responsiveness and ineffectiveness that members have suffered must be a thing of the past when I leave office.

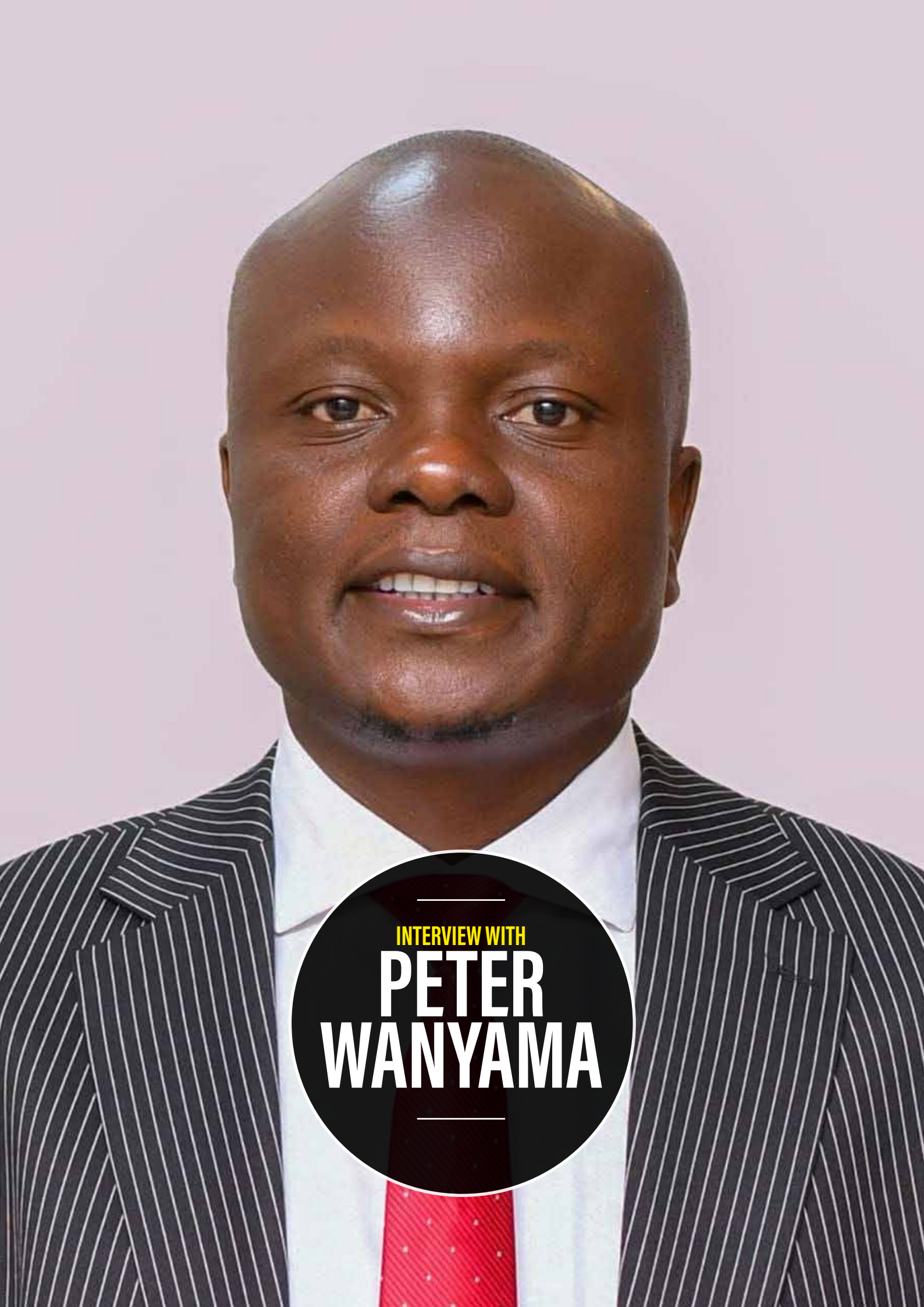
Secondly is the financial autonomy of the branches. The conversation on allocation formulae has been at the heart of our politics for a long time, but the question has never quite been resolved. If despite increasing our financial headroom and expanding our revenue streams we remain unable to adequately appropriate funds to or empower branches in resource mobilization, I would have failed as president.

Every leader makes mistakes. Looking back at your professional or public life, what is one serious criticism or controversy you have faced that LSK members deserve to understand, what did you learn from it, and what kind of legacy would you want the bar to say you left after your term as president?

One fair criticism I have encountered in my professional and public life is that I have sometimes been too cautious and too inclined toward consensus, especially in moments when members wanted faster, more disruptive action. That caution has occasionally been read as hesitation.

What I learned from that is that while consultation and institutional process are essential, leadership also requires timely decision-making and clearer signalling of direction. You can listen widely and still act decisively. That balance is something I have consciously worked to improve.

If I am fortunate enough to serve as President of the Law Society of Kenya, I would want the Bar to say that my leadership was steady, inclusive, and institutional, that LSK became a place where different voices were heard, internal divisions were reduced, and the Society focused again on its core mandate of serving advocates and defending the rule of law. A legacy of trust, cohesion, and quiet effectiveness would matter more to me than personal acclaim.



INTERVIEW WITH

PETER WANYAMA

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Mr Peter Wanyama, Briefly narrate your journey in the legal profession and public life and identify the one experience that most prepared you to lead the Law Society of Kenya.

I have practiced law for 18 years in deep policy and legislative development and constitutional litigation where I have protected Kenya's constitution from mutilation through numerous litigation against the national government. Now, LSK requires a President who understands the nuances of legal practice and can strongly protect the practicing space and uplift the young bar.

What is your overarching vision for LSK for the 2026–2028 term, and how does it differ from what recent Councils and presidents have attempted or achieved?

Our profession faces numerous existential risks including the imminent introduction of a no-fault-based system for insurance compensation that will see more then 50 % of Kenyan law firms close shop. In a larger sense, we have lost our institutional prestige and profile. Unqualified persons such as surveyors and accountants are illegally practicing law. Previous LSK Councils have neglected practice issues. In my tenure, I will refocus attention of LSK to address these issues. I will push hard for members. We must protect our practicing space or perish as a profession.

What are the most urgent problems facing pupils, young advocates, and the middle bar and what specific policy or regulatory changes will you champion to address each of them?

The shrinking practicing space has led to reduced incomes for pupils, low pay for young lawyers and mass unemployment. The mid-bar lawyers are also affected. To address the issues, I propose as follows:

a. Introduce guidelines on minimum pay for pupils and young lawyers. In England law firms compete on who pays more.
b. Waiver of PC fees for newly admitted advocates. LSK has made many promises to do this in vain, but it will happen under my leadership.
c. Negotiating with a Microfinance Bank for a loan package of upto Kshs. 2 m for start up law firms or mid- bar lawyers to invest in office and IT infrastructure. The CEO of one bank already says the idea is attractive and implementable and wants to be the first to sign the MoU when I take over. By the way, microfinance lending is based on group guarantees. Peers monitor and support each other to ensure loan repayment. This should be a sustainable program. On my fast day in office- I will ask the CEO of LSK to get a team to work on this. I will personally lead the process.
d. Capacity building for start up law firms on strategy, business development, and

general career development ideas. The sessions can be done at major towns. Policy champions who are industry leaders will be asked to take the lead. Young lawyers should be told that the market it still virgin. There are newer practice areas that are yet to be explored. This programme is also sustainable.

e. Targeted leadership courses for LSK Branch chairs to enable them manage and track the welfare of members at the County level.
f. I will look for support to get a vehicle (van) for all LSK Branches to ease mobility on members issues. Moreover, I will ensure we employ programme officers for Branches that need them. We need branches to have capacity to deal with neglected issues such as depression, alcoholism, harassment of advocates by the police, registry issues, and relations with our stakeholders at the lowest level.
g. I will negotiate for twining programmes with bar associations in England, USA, Canada, New Zealand, Malaysia, South Africa, and Nigeria- for selected lawyers to benchmark ideas on legal practice. Additional placements will be negotiated in key global institutions that support rule of law programmes.
h. No LSK funds will be used for any of these initiatives. I know where to get funding. Instead, LSK funds will be channeled towards member issues.

Many members worry about capture of LSK by the State, political actors or powerful private interests. In your view, what are the most realistic capture risks today, and what safeguards will you put in place to keep the Society independent in both perception and reality?

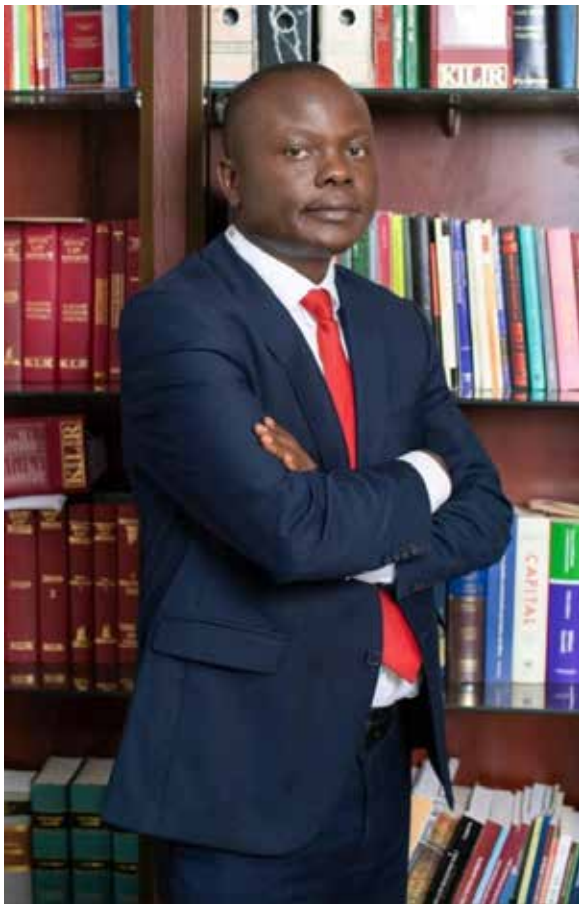
To prevent state capture, LSK President ought to be a strong leader who is not weak or financially vulnerable. The state usually captures weak folks. At LSK we must always be on the side of the rule of law and do what it takes to protect constitutionalism. I know how to keep politicians at bay. I have sued the national government in 57 petitions to protect the Constitution. It takes a strong will to resist state overtures. Under my tenure when the government violates the law, all option will be on the table. We will intensely push ideologies of resistance that ferment the rule of law!

Identify one recent or ongoing national governance or constitutional crisis where you think LSK either responded poorly or remained too silent. What would you have done differently as president, and what is your decision-making framework for deciding when and how LSK intervenes in national controversies?

LSK has not responded well in protecting devolution. Devolution is under constant threats. Almost daily. For example, recently, the government introduced e-procurement that centralizes all functions, yet the constitution requires decentralization. It also damaged our reputation when LSK President agreed to serve in a government task force. Under my tenure, we will push hard to protect the Constitution from slow but irreversible mutilation. I will also keep LSK independent of the regime.

Members regularly raise concerns about transparency in LSK's finances, decision-making and communication. What three governance or financial reforms will you commit to implement within your first year, and how should members measure whether you have succeeded?

There is a lot of theft of funds at LSK. The other day, it was reported that a crucial tender was cancelled but inflated from 4 m to 24 m and awarded to a company that has close ties with the Vice President of LSK. He is now running to be LSK President. Under



Peter Wanyama

my tenure, we will resist corruption. We will investigate all corruption allegations and take firm action to protect funds. I will share monthly reports to members on governance and integrity issues at LSK.

How will you rebalance LSK priorities away from Nairobi-centric politics?

I will take consequential steps to support LSK branches. Within 6 months, I will push LSK to buy 8 vans for branches for member -welfare. I will also push to increase allocation to branches. Empowered branches will address welfare issues in a meaningful manner.

Technology and AI are rapidly transforming legal practice. What is your philosophy on AI in advocacy and advisory work, and what specific guidelines, safeguards or opportunities would you push LSK to develop so that Kenyan advocates are not left behind but also not rendered obsolete or ethically compromised?

The greatest investment in a law firm is NOT a pompous office with a baroque boardroom but in hardware and software. Before COVID lawyers didn't bother much with these stuff but nowadays one must get an internet-enabled phone, and two or three laptops/desktops [to track cases that are called out at the same time]. For efficiency, the laptops require updated Microsoft software's which are increasingly using AI systems to run them. I have subscribed to Adobe Acrobat that is very useful for legal documentation. With Adobe I can combine and paginate huge files to the required appellate standards, stamp, and sign them virtually, do all manner of edits- and keep all my files [the entire law firm] in the Adobe clouds. Adobe has other detailed modules that I am learning how to use; especially the AI platform that is now embedded in the software. In summary, technology has greatly transformed legal practice and has forced all of us to change. To flourish, I will use the CPD platform for all practitioners to attend short courses on technology and AI. We need to learn the positives and embrace adaptation strategies. Digitization of economic services in systems that are driven by AI require some digital literacy on the part of legal practitioners.

Name two measurable outcomes that we can check at the end of your term which, if you fail to meet them, you will publicly declare your leadership a failure.

I will have failed as a leader if I will not keep LSK independent from government or taken cogent steps to protect our practicing space.

Every leader makes mistakes. Looking back at your professional or public life, what is one serious criticism or controversy you have faced that LSK members deserve to understand, what

did you learn from it, and what kind of legacy would you want the bar to say you left after your term as president?

I ran for LSK President in 2024 and emerged number 2. I didn't engage with members well, but I have learned from it and consulted members better this time round. On the second issue, I want to leave a legacy of transformation. I want LSK to institutionally monocrop and monotask for its members. The legal market is experiencing significant changes, prompting a need for adaptation within the profession. LSK must take the lead on this.

With heightened competition, marketization of services, and technological convergence, lawyers must reevaluate their business models. It is essential to master and apply modern knowledge, emphasizing probity, economic conscientiousness, and industriousness. While it is crucial for legal professionals to advocate for rules that protect monopolies in areas such as conveyancing, tax law, litigation, mediation, and company registration, they must also recognize the pressing challenges of modernity and capitalism. Adapting the legal sector is vital to remain relevant, as the market does not offer second chances. Passive initiatives in legal service provision are ineffective in increasingly competitive environments. Lawyers who thrive in "Brave New Markets" will be those who explore emerging areas such as policy and legislative development, supporting sectors like agriculture, food safety, animal health, cooperative enterprise development, health financing, renewable energy, and trade. Climate change and ESG practices also present critical intersections with corporate law, finance, construction law, project finance, aviation law, and maritime law. Legal professionals should prioritize implementing climate change adaptation projects.

At the institutional level, the Law Society of Kenya (LSK) should realign Continuing Professional Development (CPD) programs to focus on these emerging areas of legal practice. This shift will not only deepen market engagement but also serve as an effective mentoring strategy for young practitioners. Currently, CPD programs tend to be overly conceptual, profit-driven, and disconnected from the legal economy's needs.

INTERVIEW WITH

CHARLES KANJAMA, SC

My name is Teddy Odira, on behalf of the Platform for Law, Justice and Society and in the lead-up to the 2026 elections for President of the Law Society of Kenya, I posed a common set of questions to the three candidates for the office. The answers are reproduced here in full and without editorial alteration so that readers can engage directly with each candidate's own words. I am grateful to Charles Kanjama, SC for responding fully and candidly. The willingness to submit his ideas, records, and reflections to public scrutiny reflects an appreciation of what this moment demands.

I invite you to read the responses closely and to draw your own conclusions about who is best placed to lead the Law Society of Kenya in the coming term. The future of the Society will not be determined by manifestos alone but by informed members exercising independent judgment at the ballot. That responsibility now rests with you.

Mr Charles Kanjama, SC

Briefly narrate your journey in the legal profession and public life and identify the one experience that most prepared you to lead the Law Society of Kenya.

I was admitted to the Bar in June 2003, and 19 years later in August 2022 I was conferred with the title Senior Counsel, as the youngest SC at the time. After doing pupillage with Jinaro Kibet at Kibet & Co Advocates, our firm merged with two others to form what is now TripleOKLaw Advocates LLP. After practising law as a litigation lawyer for a few years in the firm, I left and subsequently set up Muma and Kanjama Advocates with my partner, Andrew Muma in February 2006. I have been the Managing Partner in the firm and head of the Disputes Department. We lead a full-service law firm with Disputes and Commercial/ Conveyancing Departments, whose principal office is in Nairobi and whose branch office is in Kisumu.

The most important experience that has prepared me to lead LSK is the years of service in leadership of LSK in various appointive, elective and volunteer capacities:

a. As Convenor of the LSK Constitution Implementation & Law Reform Committee (2010-14).
b. As Council Member & Treasurer of LSK (2012-14).
c. As inaugural Chair of LSK Nairobi Branch (2016-20).
d. As founding Chair of the LSK Caucus of Branch Chairs (2017-20).
e. As the founding Chair of the Nairobi Legal Awards Trust (2020-25).

What is your overarching vision for LSK for the 2026–2028 term, and how does it differ from what recent Councils and presidents have attempted or achieved?

My overall vision is for a transformed LSK that is able to equally focus on Rule of Law, Integrity, Practice and Welfare, and Engagement, because the time is RIPE for a strong LSK that serves all its members. I feel that in the recent past LSK has focused more strongly on one or other of these four pillars and less strongly on others.

What are the most urgent problems facing pupils, young advocates, and the middle bar and what specific policy or regulatory changes will you champion to address each of them?

The most urgent problem is that of financial welfare and sustainable practice environment. It requires very avid focus on protecting practice space, expanding practice space into new areas, and for LSK to embrace and act more as a trade union for its members in matters relating to terms and conditions of service in both the public and private sector. This can be effected even in the current legal and regulatory environment just by dedicated focus of LSK leadership on the bread and butter issues that matter most to lawyers.

Many members worry about capture of LSK by the State, political actors or powerful private interests. In your view, what are the most realistic capture risks today, and what safeguards will you put in place to keep the Society independent in both perception and reality?

Capture can be financial, operational, regulatory, ideological or capture based on personality and lack of courage of its leadership. The most likely capture risk at this time is financial, related to the burgeoning costs of running LSK elective campaign and the mutual willingness of some candidates and state representatives to enter into mutual financial arrangements. He who pays the piper calls the tune.

Identify one recent or ongoing national governance or constitutional crisis where you think LSK either responded poorly or remained too silent. What would you have done differently as president, and what is your decision-making framework for deciding when and how LSK intervenes in national controversies?

They say, hindsight is 20-20 vision. So it is easy for one to criticise past leadership and appear wise and strong when it is simply make-believe. True ability to deal with challenges is based on track record and competence. I am impressed by the efforts LSK has put in the last two years in particular to expand its responsiveness on rule of law issues and this needs to be built upon. However, in the area of bread and butter issues, including protecting and expanding practice space, and dealing with growing inefficiencies and accountability gaps in the Judiciary and in the court and commercial registries, LSK could have done better.

Regarding national controversies, LSK top leadership should avoid being co-opted in appointive positions by the National or County Executive. The controversy regarding the Presidential Panel on Compensation could have been avoided if this was done.

Members regularly raise concerns about transparency in LSK's finances, decision-making and communication. What three governance or financial reforms will you commit to implement within your first year, and how should members measure whether you have succeeded?

Three reforms to be implemented in the first year:

a. Introduce corporate governance reporting in LSK and its branches.
b. Improve reporting on donor-funded projects to both the donors and to LSK.
c. Strengthen performance-based evaluation and results-based management in LSK, from the Council to the Secretariat to the Branches & Chapters.

How will you rebalance LSK priorities away from Nairobi-centric politics?

I have been a devolution champion in LSK, as the Chair of Caucus of Branch Chairs (2017-20). I will strengthen collaboration with branch chairs, including seeking to have quarterly meetings with them, to ensure that branch matters and concerns are central to LSK affairs throughout the year.

Technology and AI are rapidly transforming legal practice. What is your philosophy on AI in advocacy and advisory work, and what specific guidelines, safeguards or opportunities would you push LSK to develop so that Kenyan advocates are not left behind but also not rendered obsolete or ethically compromised?

I embrace technology as an opportunity to improve legal practice. Like any other

development, technology can be abused and so regulations are required to avoid abuse, and especially to avoid unqualified persons encroaching on the practice space of lawyers. I intend to focus strongly on information technology, including artificial intelligence, through better-focused CPDs, an annual Legal Technology Week and strong partnerships with legal technology companies and products.

Name two measurable outcomes that we can check at the end of your term which, if you fail to meet them, you will publicly declare your leadership a failure.

One, to improve enforcement of court orders and decrees: a Judiciary Police Enforcement Department. Two, to secure development with financial probity of the LSK Wakili Towers. But I don't believe any single outcome should be used to define the success of a presidency whose manifesto is as compelling as mine.

Every leader makes mistakes. Looking back at your professional or public life, what is one serious criticism or controversy you have faced that LSK members deserve to understand, what did you learn from it, and what kind of legacy would you want the bar to say you left after your term as president?

For sure, no leader doesn't make mistakes, smaller ones and sometimes bigger ones. I'm sure in my long period of leadership I have made some mistakes. What I learnt early on is the importance of listening to all the voices of members, and not just some. The need to avoid group-think in boards, the need to communicate plans clearly and the readiness to adjust plans based on feedback received.

List of validly nominated candidates for Law Society of Kenya elections 2026

President
1. Kanjama Charles Njiru, Sc
2. Manyonge Peter Wanyama
3. Mwaura Kabata

Vice President
1. Ajwang Debora Anditi
2. Nicholas Teresia Wavinya
3. Wanjeri Elizabeth Wangui

General Membership of at Least 25 Years
1. K'opere Tom Oduo
2. Ndegwa James Wahome

General Member Representative
1. Anjichi Albert Bruce Amimo
2. Bosire Geoffrey Bonyi
3. Butende Yashim
4. Eyase Vivienne Mugwari
5. Mango Abner Collins
6. Momanyi Kelvin Maiyeka
7. Ogechi Samuel Siocha
8. Otieno Vincent Omondi
9. Rimau George Gichuhi
10. Rajab Sofia Wangechi
11. Wanjohi Wambugu

Nairobi Representative
1. Abdullahi Halima Ali
2. Effie Sheila Achieng
3. Gachara Cynthia Muthoni
4. Kaloki Alfonce Mumo
5. M'inoti Solomon Gaturu
6. Pele Erick Jefferson
7. Odhiambo Wycliffe Oyoo
8. Omari Nick Aboko
9. Otieno Justus
10. Wanjiku Francis Njoroge

Upcountry Representative
1. Adipo Godrick Kennedy Okelo
2. Kachapin Kevin Kemoi
3. Kathurima Hiram Kirimi
4. Mayama Sunday Memba
5. Mutua Faith Jappann M'edeal
6. Omollo Hezekiah Aseso
7. Oyoko Sharon Adhiambo
8. Roble Zulfa Adam

Coast Representative
1. Atiang Conrad Angaga
2. Mukhutsi Titus Mukanzi

Advocates Disciplinary Tribunal
1. Anditi Stephen Odhiambo
2. Bett Jackson Kiprotich (Dr)
3. Kenyariri Christopher (Dr)
4. Lotuiya Fridah Jepkoech
5. Lwande Yvette Otieno
6. Munyalo R. Nthuli
7. Nzioka Maureen Mbelete
8. Odiya Jane Nyabiage
9. Okumu Serah Esendi

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Beyond the questions: An assessment of the Court of Appeal Candidates interviews by the Judicial Service Commission

By Jerameel Kevins Owuor Odhiambo

1.Introduction

Under the transformative architecture of the 2010 Constitution, the Court of Appeal is not merely a middle tier in the judicial hierarchy; it is the heartbeat of appellate justice. The Court of Appeal of Kenya is established under Article 164 of the Constitution of Kenya as one of the superior courts in the Republic. The Court consists of a number of judges, being not fewer than twelve, setting the maximum number at seventy judges. The Court is mandated to administer appellate justice through hearing appeals from the High Court, the Employment and Labour Relations Court, the Environment and Land Court, and any other tribunal. The Court is headed by the President of the Court of Appeal, who is elected from among the judges themselves and provides leadership while ensuring the efficient management and administration of the Court.

As an appellate court, it is ordinarily constituted by a bench of three judges, although an expanded bench of five judges may sit in certain instances. The Court discharges its mandate by developing jurisprudence and providing an independent, accessible, fair and responsive forum for dispute resolution. The practice

The Court of Appeal of Kenya is one of the superior courts in the Kenyan judicial system. It is established under Article 164 of the Constitution of Kenya, 2010 and plays a central role in the administration of justice in the country.

and procedure of the Court is regulated by the Appellate Jurisdiction Act, Cap 9 of the Laws of Kenya, while the Court of Appeal (Organization and Administration) Act No. 28 of 2015 was enacted to give effect to Article 164 by providing for the organization and administration of the Court.

Currently, the Court has six stations with fixed benches in Nairobi, Mombasa, Kisumu, Nyeri, Nakuru and Eldoret, though Eldoret operates as a circuit station visited by judges from Nakuru. The Court also operates sub-registries in Malindi, Meru, Kisii, Kakamega, Busia and Garissa, where matters are filed and judges visit on circuit. As of now, the Court of Appeal has twenty-seven judges, a number that will increase to forty-two with

the appointment of fifteen judges following the conclusion of the Court of Appeal judges' interviews, thus providing a significant boost to the appellate court.

The significance of this recruitment exercise cannot be overstated when viewed against the backdrop of the Court's current caseload. As of June 2025, the Court of Appeal had 13,552 pending cases, a figure that must be examined with a keen understanding that more cases continue to be filed since then to date. The major issue has been inadequate judges to hear and determine matters. This is particularly critical given that the Court of Appeal is where quite a majority of cases end, save for those that make it to the Supreme Court, which has limited jurisdiction.

This recruitment exercise is being undertaken pursuant to Article 172 of the Constitution of Kenya and the Judicial Service Act, and is central to the Judicial Service Commission's responsibility to promote and facilitate an independent, accountable, effective and efficient Judiciary. The recruitment of additional judges is aimed at enhancing access to justice, improving service delivery, and accelerating the timely resolution of cases, particularly at the appellate and superior court levels where caseload pressures remain significant. This judges' recruitment exercise forms part of a broader and deliberate strategy by the Judicial Service Commission to strengthen the delivery of justice across all levels of the court system.

As per Gazette Notice No. 7318, Vol. CXXVII—No. 117, published in Nairobi on 4th June 2025, the Chief Justice declared fifteen vacancies in the office of Judge of the Court of Appeal of the Republic of Kenya. The position, referenced as V/No.14/2025, offered tenure of office until retirement at the age of seventy years, with the option for early retirement after attaining the age of sixty-five years in accordance with Article 167(1) of the Constitution.

A Judge of the Court of Appeal serves in the Court of Appeal of Kenya, with the function and jurisdiction of the Court provided for under Article 164(3)(a) and (b) of the Constitution, namely to hear appeals from the High Court and to hear appeals from any other court or tribunal as prescribed by an Act of Parliament. For appointment to the position, applicants must possess the minimum qualifications set out in Article 166(2)(a), (b) and (c) as read with Sub Article (4)(a), (b) and (c) of the Constitution. These include being an advocate of the High Court of Kenya or possessing an equivalent qualification in a common-law jurisdiction, and having at least ten years' experience as a superior court judge, or as a distinguished academic or legal practitioner, or such experience in other relevant legal fields, or holding a combination of these qualifications for a period amounting in the aggregate to ten years. Such experience may be gained in Kenya or in another Commonwealth common law jurisdiction. Crucially, applicants must have a high moral character, integrity and impartiality, meeting the requirements of Chapter Six of the Constitution on Leadership and Integrity.

In addition to these constitutional and statutory requirements, applicants are expected to demonstrate a high degree of professional competence, communication skills, fairness, good temperament, good judgment, wide breadth of both legal and life experience, and demonstrable commitment to public and community service. The appointment is made in accordance with Article 166(1)(b), (2) and (4) of the 2010 Constitution and section 30, Part V and the First Schedule of the Judicial Service Act, No. 1 of 2011. Ninety-four candidates applied for the position of Court of Appeal judge, and thirty-five persons were shortlisted for the exercise.

The background given above provides the necessary context for understanding the Court of Appeal albeit from a cursory

perspective. This article therefore seeks to provide an outsider's-observer perspective on the interviews of the Court of Appeal applicants conducted between 12th January 2026 and 21st January 2026, examining the process through various critical parameters. Chiefly through the questions posed to the candidates, transparency of the process; panel decorum and professionalism and quality of the questioning with particular attention to relevance and depth. Through this multifaceted examination, the article aims to provide a comprehensive assessment of the interview process and make recommendations where necessary.

2. An analysis of questions posed during Court of Appeal candidate interviews by the Judicial Service Commission

The questions posed during the interviews probed not only technical legal expertise but also the candidates' philosophy of justice, capacity for collegiality, and understanding of the delicate balance between judicial independence and institutional accountability. This analysis examines the questions asked during the interview process, organizing them thematically to reveal the competencies and knowledge domains the Commission deemed essential for appellate judicial service.

2.1 Jurisdiction and the architecture of Appellate Justice

The Commission began by testing candidates' understanding of the jurisdictional framework of Kenya's court system, which forms the foundation of appellate adjudication. Candidates were asked to explain what constitutes the jurisdiction of the Court of Appeal and whether it possesses original jurisdiction beyond its appellate mandate. The commissioners probed whether the Court of Appeal can assume jurisdiction on the constitutionality of a statute or assume original jurisdiction to determine the constitutionality of a sentence. These questions tested not merely rote knowledge but the candidates' grasp of constitutional design and the allocation of judicial power among different levels of the judiciary.

The interview process further examined when a single judge of the Court of Appeal sits, as opposed to the full bench, and explored the complex jurisdictional boundaries between the Environment and Land Court, Employment and Labour Relations Court, and High Court, particularly regarding the predominant issue test. Candidates were expected to articulate the agency theory of jurisdiction in Alternative Justice Systems and explain the concept of postponed jurisdictions. These inquiries revealed whether candidates understood the practical operation of Kenya's multi-tiered court system and could navigate jurisdictional complexity with confidence and precision.

The interface between the Court of Appeal and the Supreme Court received particular attention. Candidates were asked to explain when a matter can be certified as one of general public importance warranting Supreme Court consideration, what a party must do before proceeding to the Supreme Court on an advisory opinion, and how advisory opinions are enforced. The Commission also tested knowledge of appeal pathways by asking about the last point of appeal for an MCA election dispute, ensuring candidates understood both ordinary and specialized appellate routes.

2.2 Constitutional Law as the bedrock of judicial decision-making

The Constitution of Kenya, 2010, permeates every aspect of judicial decision-making, and the Commission probed candidates' mastery of its interpretive principles and substantive provisions. Commissioners asked how the Constitution can be amended and whether a presidential candidate can initiate a constitutional amendment, testing knowledge of the delicate interplay

between popular sovereignty and constitutional stability. Questions about the doctrine of constitutional voidance and whether judgments themselves can be unconstitutional pushed candidates to think critically about the judiciary's role in constitutional interpretation and the limits of judicial power.

The limitation of rights emerged as a critical area of inquiry. Candidates were asked to articulate when a right can be limited in line with Article 24 of the Constitution, which rights cannot be limited under any circumstances, and whether prosecution can stop because a constitutional right has been infringed. The Commission posed challenging hypotheticals, such as whether the right to strike under Article 41 can ever be absolute when a strike by doctors or teachers results in loss of life or collapse of the education system, or whether it must yield to the right to life. These questions assessed candidates' ability to balance competing constitutional values and apply proportionality analysis in complex factual scenarios.

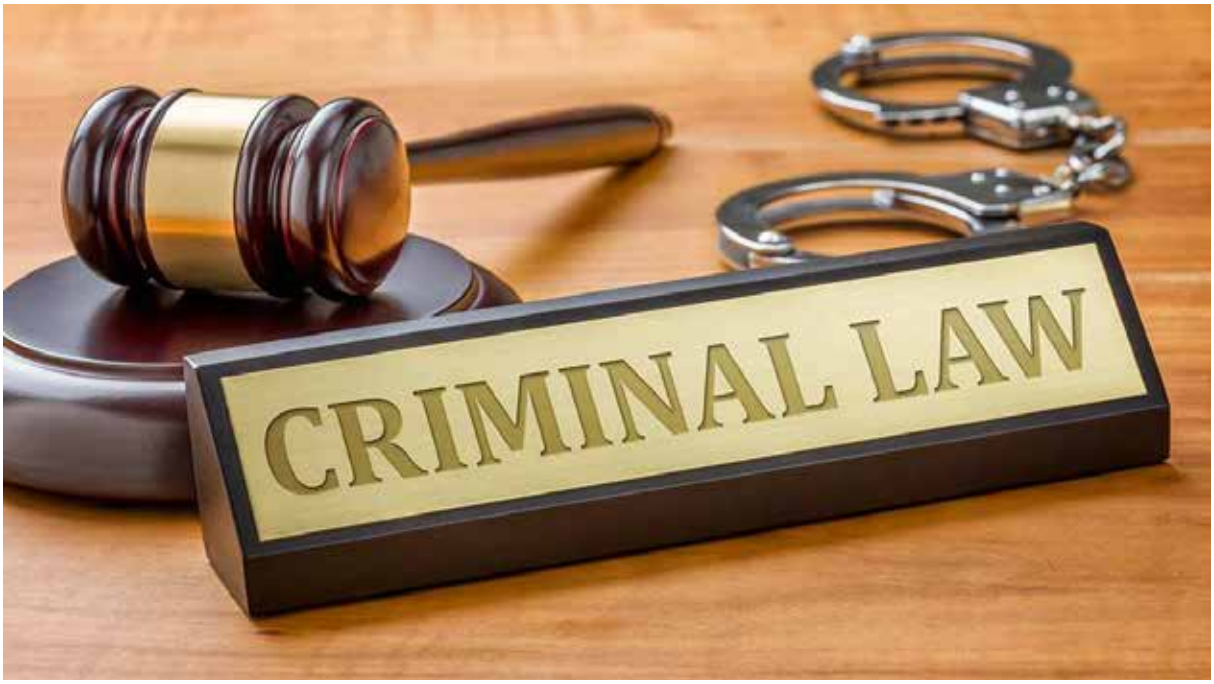
The constitutionality of statutes represented another major theme. Candidates were asked to discuss the dangers of declaring a statute unconstitutional, the constitutionality of mandatory and minimum sentences, and the practice of suspended declarations after findings of unconstitutionality. The Commission explored practical complications: what happens when a court declares a statute invalid, Parliament is given six months to cure the defect but fails to do so, and what occurs when an order of invalidity has been issued alongside a suspension order but the public entity wishes to appeal. These questions tested whether candidates could navigate the intersection of judicial review and legislative supremacy while respecting separation of powers.

Questions on discrimination and equality required candidates to distinguish between differentiation and discrimination, and to explain using case law whether differentiation or inequality of treatment amounts to discrimination. Commissioners asked about the interplay of Article 40 of the Constitution and intellectual property rights, testing understanding of how constitutional property protections extend to intangible assets. The question of whether adverse possession can be deemed unconstitutional challenged candidates to reconcile common law doctrines with constitutional values.

2.3 Separation of powers and institutional relationships

The delicate balance among Kenya's three arms of government featured prominently in the interviews. The Commission asked whether a judge can create an offense through interpretation of the law and at what point judicial oversight of the legislative process crosses the line into interfering with the "political thicket." These questions assessed whether candidates respected the primacy of Parliament in lawmaking while understanding the judiciary's constitutional obligation to interpret and apply the law. The specific question about whether minimum mandatory sentences constitute legislative overreach tested candidates' willingness to interrogate legislative choices that may conflict with judicial discretion and constitutional rights.

The executive-judicial interface received scrutiny through questions about instances when the three arms of government converge, views on officers serving at the pleasure of the President, and the point of recourse for a Cabinet Secretary who has been impeached. Candidates were asked to explain when a state of emergency can be declared and whether such a declaration can act retrospectively, demonstrating understanding of emergency powers and their potential for abuse. Questions about threats to the judiciary, judicial independence, and the sustainability of



The Court of Appeal handles a very large number of criminal appeals, but it is more accurate to say that criminal appeals form a major and critical part of its docket, rather than the entirety of it. The court also hears civil, commercial, and constitutional appeals.

the judiciary in Kenya probed whether candidates grasped the institutional vulnerabilities facing the judiciary and could articulate strategies for protecting judicial autonomy.

The Commission tested understanding of mechanisms designed to protect judicial independence, such as why the retirement of a judge is a charge on the consolidated fund and the extent to which judges should be involved in budget preparation. Questions about shared leadership in the judiciary revealed whether candidates understood modern judicial administration as collaborative rather than hierarchical. The exploration of judicial activism, judicial restraint, and judicial overreach, along with the political question doctrine and judicialization of politics in Kenya, tested whether candidates could articulate a coherent philosophy about the proper role of courts in a democratic society. The question "what is judicial adventure" and whether judges should delve into public policy challenged candidates to define the boundaries of legitimate judicial activity.

2.4 Criminal Law: Sentencing, evidence, and procedure

Criminal appeals form a substantial portion of the Court of Appeal's docket, and the Commission extensively examined sentencing jurisprudence. The interviews began with fundamental distinctions such as the difference between minimum sentences and mandatory sentences. Candidates were asked to explain when to grant custodial versus non-custodial sentences, when the Court of Appeal can interfere with a sentence, and when a court can substitute a sentence. The philosophical question of whether sentencing is a matter of law or fact tested understanding of appellate review standards and the allocation of sentencing discretion between trial and appellate courts.

The practical question of what happens when a sentence imposed is lenient and the High Court wants to enhance it probed knowledge of appellate remedies and procedural requirements. Candidates were asked to articulate aggravating

and mitigating factors in criminal cases, demonstrating the ability to conduct individualized sentencing analysis that respects both retributive and rehabilitative goals. The landmark Muruatetu decision and questions about what the Court of Appeal has said about minimum mandatory sentences tested familiarity with leading jurisprudence on sentencing and constitutional criminal procedure.

Evidence and proof received attention through questions about how to prove theft of intangible assets, the difference between confession and admission, and the standard of proof in sexual harassment matters. These questions assessed whether candidates understood evidentiary challenges in modern criminal practice, particularly regarding digital evidence and workplace misconduct. Commissioners asked about the legal framework on anticipatory bail and the circumstances under which it is granted, testing knowledge of pre-trial rights and the balance between liberty and public safety.

The Commission explored the extent of victim involvement in criminal cases and when the prosecution can turn a prosecution witness into an accused person, testing understanding of prosecutorial discretion and victims' rights in criminal procedure. The question of how petty offenders are viewed from a legal lens revealed concern for proportionate responses to minor criminality and alternatives to incarceration.

2.5 Alternative Dispute Resolution and the supervisory role of Courts

The growth of alternative dispute resolution mechanisms featured prominently in the interviews. The Commission examined knowledge of Supreme Court decisions on arbitration, the court's supervisory role in arbitration, and judicial oversight in arbitration. Candidates were asked to explain when to appeal a matter on arbitration and how to approach the Court of Appeal, demonstrating understanding of the limited grounds for judicial intervention in arbitral awards. The question of whether arbitration can be challenged on constitutional grounds tested whether candidates recognized that constitutional rights can limit even consensual dispute resolution.

Commissioners probed the distinction between Alternative Justice Systems and Alternative Dispute Resolution, testing understanding of Kenya's pluralistic approach to justice, which includes traditional and community-based mechanisms alongside formal adjudication. The Commission asked whether Alternative Justice Systems can be used for sexual offenses and murder matters, and whether ADR can be applicable in criminal cases where the complainant is a child. These questions tested whether candidates appreciated the limits of informal justice mechanisms when serious crimes or vulnerable persons are involved.

The question of whether negotiations can occur in constitutional petitions challenged candidates to reconcile the adversarial nature of constitutional litigation with pragmatic dispute resolution. This revealed whether candidates rigidly adhered to procedural formalism or could adapt judicial processes to achieve substantive justice.

2.6 Family law and succession

Family and succession matters received extensive attention, as these often present the most emotionally charged appeals. The Commission probed matrimonial property law, asking about parameters of distribution and the challenging question of how to quantify "non-monetary contribution" in 2026. The specific question of whether marriage creates a presumptive 50/50 split or requires a "surgical" analysis of who did what tested, whether candidates understood contemporary jurisprudence on partnership theory in marriage and gender justice.

In Kenya's appellate system, employment and labor relations cases follow a specialized track, distinct from the general criminal and civil appeals handled by the Court of Appeal. The primary court for these matters is the Employment and Labour Relations Court (ELRC). Established under Article 162(2) of the Constitution, the ELRC has the status of a High Court and holds both original and appellate jurisdiction over employment disputes.

The practical question of how to obtain spousal consent for property matters in a polygamous home revealed the ongoing challenge of reconciling customary practices with constitutional equality.

Succession law questions explored the life interest of a widow in succession law and whether children can inherit property from their parents while they are still alive. The Commission posed a difficult ethical scenario: what should a judge do when someone applies for letters of administration while accused of murdering the deceased wife? This tested judicial temperament, ethical judgment, and understanding of the principle that wrongdoers should not profit from their wrongs.

Children's rights received particular attention through questions about Supreme Court decisions on the best interest of a child and children born out of wedlock. The Commission posed a wrenching hypothetical: what is the best interest of a child born from a sexual offense when the girl is 17, the man is 20, and he is imprisoned for life? This question tested candidates' ability to balance multiple interests, apply child welfare principles, and render decisions in tragic circumstances.

Burial disputes, where clan wishes conflict with individual wishes about where one should be buried, tested understanding of customary law, individual autonomy, and cultural respect. Commissioners asked whether there is any property right in a corpse and requested relevant case law, probing the intersection of family law, cultural practices, and property concepts. Questions about living wills revealed attention to emerging issues of medical ethics and end-of-life decision-making.

2.7 Employment and labour relations in the appellate context

The specialized Employment and Labour Relations Court generate appeals requiring understanding of both statutory frameworks and constitutional labor rights. The

Commission tested fundamental distinctions such as the difference between a contract of service and a contract for service, which determines employment status and attendant rights. Candidates were asked to articulate the rights of employers and employees under the Employment Act and explain whether employer-employee relationships are of private or public nature, testing understanding of constitutional horizontality and the reach of fundamental rights into private relationships. Commissioners inquired about the factors courts consider before awarding reinstatement as a remedy, probing understanding of labor jurisprudence and the balance between employee rights and employer prerogatives. Questions about how decisions under the Work Injuries Benefit Act are enforced tested knowledge of specialized statutory schemes and their enforcement mechanisms. The question of whether someone acquitted of a criminal trial can still be terminated for gross misconduct tested understanding of the different standards of proof and purposes of criminal versus employment proceedings.

2.8 Land Law and property disputes

Land disputes constitute a significant portion of appellate work, and the Commission tested candidates' mastery of complex statutory schemes and customary practices. Commissioners asked about Supreme Court decisions relating to land, particularly on lease extension and legitimate expectation, and the difference between extension and renewal of a lease. Candidates were asked to explain the advisory given by the Supreme Court on the functions of the National Land Commission, demonstrating understanding of this constitutional body's role in land administration.

The essence of Land Control Board consent and specific Court of Appeal decisions on this issue tested whether candidates understood statutory restrictions on land transactions and the rationale for requiring administrative approval of certain dealings. The question about auctions whether purchasers should be worried about root of title when the sale happens at the fall of the hammer and banks have due diligence duties tested practical understanding of property transactions and the balance between finality in commercial dealings and protection against defective titles.

Questions about constructive trusts and what constitutes them probed understanding of equity's role in remedying unconscionable conduct and unjust enrichment in property matters. This required candidates to demonstrate facility with both statutory land law and equitable principles.

2.9 Appellate practice and procedure: The technical craft

Technical mastery of appellate procedure featured prominently throughout the interviews. The Commission asked whether it is fatal if a decree is not part of the Record of Appeal, testing understanding of what constitutes an essential component of appellate review. The modern question about how to handle an appeal where the record is incomplete because of a technical glitch in the e-filing system tested adaptability to technological change and the allocation of burdens between courts and litigants when systems fail.

Commissioners asked whether a person who was not a party at the High Court can competently lodge an appeal against that judgment, testing knowledge of standing and the parties who can invoke appellate jurisdiction. The specific scenario about how to apply principles of fairness when a litigant files a Notice of Appeal on time but fails to serve it within the required time probed whether substantial justice under Article 159 always overrides procedural technicalities. This tested candidates' ability to balance procedural integrity with access to justice.

Questions about what constitutes an arguable appeal and when the Court of Appeal can admit additional evidence tested understanding of appellate standards and the limited circumstances justifying expansion of the appellate record. The practical question of what to consider before granting a stay of execution at the Court of Appeal, and whether one can stay a negative order, revealed understanding of interim relief in the appellate context. Questions about when the Court of Appeal can remit a case back to the High Court tested knowledge of appellate remedies beyond simple affirmation or reversal.

The Commission explored costs jurisprudence by asking when courts should award costs in public interest claims and whether the Attorney General can be awarded costs, testing understanding of the principles that modify the usual rule that costs follow the event. Questions about 5(2)(b) applications tested knowledge of specific procedural mechanisms.

2.10 Public Interest Litigation and Access to Justice

Public interest cases featured prominently in the interviews. The Commission asked what makes a case to be regarded as being of public interest and what constitutes a public interest case, testing whether candidates could articulate principled criteria rather than subjective preferences. Commissioners probed the distinction between public interest and national interest, testing understanding of the difference between matters that benefit society broadly and matters that serve state interests. The challenging question of whether public interest overrides individual interest and rights in Kenya tested whether candidates understood that public interest cannot automatically trump constitutional rights.

Questions about who qualifies as an amicus curiae and an interested party, and what their roles are, tested understanding of expanded participation in public interest litigation and the mechanisms for ensuring courts hear diverse perspectives on matters of broad societal import.

2.11 Remedies and Orders: Shaping the lived reality of Justice

The remedy shapes the lived reality of justice, and the Commission explored this extensively. Commissioners asked about injunctions and conservatory orders, and the critical question of when to give ex parte orders and when to grant or deny them. These questions tested whether candidates understood the exceptional nature of ex parte relief and the stringent requirements for denying a party the opportunity to be heard.

Questions about structural interdicts and relevant case law tested knowledge of complex remedies appropriate when systemic failures require ongoing judicial supervision. Commissioners asked about consent judgments, testing understanding of settlements and their enforcement. Questions about remedies for judgments obtained by fraud probed understanding of the courts' inherent power to set aside judgments that offend justice. The practical question of how to enforce a foreign judgment tested knowledge of recognition and enforcement procedures under private international law.

2.12 Extradition and International Cooperation

International cooperation in criminal matters received attention through questions about the three steps in granting an extradition request and knowledge of Supreme Court decisions on extradition. The challenging question of how to conduct extradition when there is no treaty between Kenya and another country tested understanding of the statutory framework and the principles of reciprocity and comity

that may permit extradition absent a formal treaty.

2.13 Emerging legal issues and technological change

The law evolves with society, and the Commission posed questions about novel issues. Commissioners asked about transfer, payment, and trade in virtual assets, testing whether candidates understood blockchain technology, cryptocurrencies, and digital property rights. The question of whether clean money can be subject to illicit financial flows probed understanding of money laundering and the independence of source from subsequent illegal use.

The Commission explored the pros and cons of handling matters virtually and how this affects administration of justice, testing adaptability to pandemic-era innovations and permanent changes in judicial practice. The question about the role of a judge in the age of Artificial Intelligence and the future dispensation of justice revealed concern about how technology will transform adjudication and whether candidates were thinking seriously about these changes.

Questions about case law on recovery of unexplained assets tested knowledge of anti-corruption jurisprudence and asset forfeiture. Commissioners asked about the Supreme Court decision on battered woman syndrome, testing familiarity with gendered violence and psychological defenses. The distinction between service week and Mahakama Popote tested knowledge of access to justice initiatives and mobile court services.

2.14 Judicial ethics, temperament, and the person behind the robe

Technical competence had to be matched by ethical integrity and appropriate judicial temperament. The Commission extensively examined recusal, asking about the tension between recusal and the duty to sit as of necessity, when judges should recuse themselves, and when a judge can refuse to recuse even when arguably required to. The extreme scenario where one judge sends a judgment to one of the parties and is a member of the three-judge bench in a matter tested ethical judgment and whether candidates understood that such conduct would undermine judicial integrity and require immediate action.

Questions about judicial temperament, judge craft combined with compassion and empathy, and how to handle divergent opinion or criticism tested whether candidates possessed the emotional intelligence and resilience necessary for appellate service. Commissioners asked about key aspects of judicial courage expected of a judge, probing whether candidates understood that courage sometimes means making unpopular decisions or standing alone for principle. Questions about elements of judicial authority and components of judicial craft tested whether candidates had reflected deeply on what makes judicial decision-making legitimate and effective.

2.15 Collegiality, dissent, and panel decision-making

Unlike trial judges, appellate judges must navigate the dynamics of panel decision-making. The Commission asked how candidates would balance independent thought and collegiality, and how they would integrate into the Court of Appeal given its collegial nature. The particularly challenging question asked how a candidate would handle being the lone dissenter on a matter of high constitutional importance, and whether there is a point where collegiality should give way to a dissenting opinion. This tested whether candidates understood that while harmony is valuable, principled dissent serves important functions in legal development and can protect against groupthink.

Questions about handling conflicts in Supreme Court precedent when a decision seems to contradict a previous ruling without explicitly saying so—tested whether candidates would follow the latest word or the best reasoned word. This probed judicial philosophy about the nature of precedent and the obligation to ensure coherence in the law. Commissioners asked about under what circumstances a judge can depart from a judgment, testing understanding of stare decisis and its exceptions. Questions about two-track judicial review tested knowledge of differentiated approaches to reviewing administrative action versus legislative enactments.

2.16 Personal attributes, vision, and life beyond the bench

Beyond legal knowledge, the Commission sought to understand the person who would don the judicial robes. Commissioners asked what attributes candidates brought to the Court of Appeal and what attributes characterize a good appeal judge, testing self-awareness and understanding of appellate excellence. The question about vision and life philosophy invited candidates to articulate their deepest commitments and how these shape their approach to judging.

Recognizing that judicial work can be mentally and emotionally demanding, commissioners asked how candidates maintain mental health, release work pressure, and unwind. Questions about handling multiple tasks with stringent deadlines tested organizational capacity and stress management. Commissioners asked how candidates stay abreast of legal developments, testing commitment to continuous learning and professional development.

The Commission's question about what community needs candidates have worked to address revealed that judicial service should be rooted in broader civic engagement and concern for societal wellbeing beyond the courtroom. This suggested that the best judges do not retreat into cloistered isolation but remain connected to the communities they serve.

2.17 Institutional management and administrative leadership

Senior judicial officers increasingly shoulder administrative responsibilities alongside adjudicative duties. Commissioners asked about types of revenue the judiciary collects and how they are accounted for, testing understanding of judicial administration and fiscal accountability. Questions about how to promote diversity in the judiciary and emerging trends in managing people in the workplace tested whether candidates understood modern human resources practices and the imperative of building a judiciary that reflects Kenya's diversity.

Questions about management philosophy, such as the carrot and stick approach and the meaning of "culture eats strategy for breakfast," tested whether candidates had thought seriously about organizational leadership and understood that even the best policies fail without supportive institutional culture.

2.18 Specialized knowledge across diverse legal domains

Certain questions tested depth of knowledge in specialized areas that frequently arise in appeals. Commissioners asked whether clean money can be subject to illicit financial flows and about case law on recovery of unexplained assets, probing understanding of financial crimes and asset recovery. The standard of proof in sexual harassment matters tested knowledge of employment law and the civil standard applied to workplace misconduct.

Questions about principles of public finance tested understanding of constitutional fiscal governance and the limitations on executive financial discretion. The question about

majoritarian rule tested understanding of democratic theory and the counter-majoritarian difficulty facing courts in a democracy.

3. Observing Justice in the making: Reflections on the Court of Appeal Judicial Interviews

The concluded interviews for Court of Appeal positions revealed a judiciary acutely aware of its precarious standing in the public consciousness. Candidates found themselves repeatedly confronted with questions about restoring institutional credibility; a persistent theme that spoke volumes about the reputational damage wrought by recent corruption allegations. This wasn't merely a perfunctory line of inquiry; the commissioners' insistence on eliciting trust-building strategies underscored a genuine crisis of legitimacy. The frequency and urgency with which this issue surfaced suggested that whoever ascends to the appellate bench will inherit not just a judicial mandate, but a restoration project requiring both symbolic gestures and substantive reforms to salvage the judiciary's standing among skeptical citizens.

The interview dynamics exposed a striking dichotomy in questioning approaches that alternately illuminated and disadvantaged candidates. Commissioners with legal backgrounds, most notably Justice Fatuma Sichale and Commissioner Omwanza Ombati, wielded their expertise like surgical instruments, delivering laser-focused inquiries that demanded comprehensive knowledge of jurisprudence, precedent, and legal doctrine buttressed by case law. Their questions required analytical minds capable of navigating complex legal terrain with precision. In contrast, non-legal commissioners adopted a complementary approach, probing situational awareness and character through scenarios that tested judgment beyond mere legal technicality. This dual methodology, while theoretically comprehensive, created uneven terrain for candidates who excelled in one domain but faltered in the other, raising questions about whether the process genuinely assessed appellate readiness or simply rewarded those versatile enough to code-switch between doctrinal rigor and practical wisdom.

Procedural inconsistencies, however, marred what could have been a more equitable assessment process. Some commissioners posed questions of such labyrinthine length that candidates visibly struggled to distill the actual inquiry from the preamble, placing them at an immediate disadvantage. More troublingly, the number of questions varied dramatically certain commissioners peppered some candidates with four or more technical queries while limiting others to a single question, creating vastly disparate interview experiences. This unevenness contributed to marathon sessions for some applicants while others completed their appearances with relative brevity. The absence of standardized question caps or time limits meant that a candidate's performance became partially contingent on which commissioners engaged them most aggressively, introducing an element of chance into what should have been a merit-based evaluation.

The Commission's selective scrutiny of academic credentials presented perhaps the most puzzling anomaly in an already inconsistent process. Commissioner Ingutiah appeared tasked with evaluating written submissions, yet this responsibility manifested unevenly across candidates. Justice Lucy Mwihaki endured rigorous examination of her master's thesis on "*Performance Management in the Kenyan Judiciary: A Critical Analysis of the Adequacy of the Legal and Institutional Framework*" a topic of obvious relevance to her candidacy. Yet Professor Migai Akech, the sole academic among the shortlisted candidates and presumably the most research-oriented applicant, faced no comparable interrogation of his scholarly work to be precise his Masters or Doctors

of Law Thesis. Similarly, other candidates holding advanced degrees escaped scrutiny of their theses entirely. This selective engagement with academic achievements raises uncomfortable questions: was the Commission applying different standards to different candidates, or did they simply lack a coherent strategy for evaluating scholarly credentials?

Certain exchanges laid bare institutional sensitivities and territorial instincts within the judiciary's upper echelons. When Justice Silas Munyao's interview touched upon issues of root of title, due diligence, and the Torrens system, the Commissioners from the Supreme Court launched into spirited defenses of their court's decisions in Dina Management and Torino, treating any critical examination as an implicit challenge to settled jurisprudence. The exchange grew sufficiently contentious that other commissioners had to stop further questions on the issue. Elsewhere, the Attorney General's persistent questioning about judicial activism, restraint, and overreach barely concealed what many observers interpreted as a litmus test for executive-friendliness a suspicion that would have been dispelled had she simply asked directly whether candidates would defer to government interests rather than cloaking her concerns in jurisprudential terminology.

Commissioner Olwande's statistical confrontations with candidates over performance metrics particularly case clearance rates and judgment output devolved into disputes that served neither party well. Multiple candidates (who are presently judicial officers) challenged or outright refuted the figures presented to them, transforming what should have been straightforward accountability discussions into debates over data accuracy. This suggests a fundamental procedural failure: performance statistics should have been verified and shared with candidates beforehand, allowing them to prepare substantive responses rather than forcing them into defensive postures over potentially erroneous numbers. Additionally, several candidates' past conduct surfaced during interviews, requiring them to explain controversial judgments, professional misconduct, or condescending behavior towards colleagues' moments that, while revealing character, also suggested inadequate vetting during the shortlisting phase.

The commissioners' obsession with whether candidates were "judge ready" a phrase appearing nowhere in constitutional requirements for appellate judges further betrayed an institutional preference for promoting judicial insiders over equally qualified candidates from academia, civil society, or the private sector. This gatekeeping effectively circumvents constitutional mandates for diversity and transforms an ostensibly merit-based process into an insider advancement mechanism, potentially denying the appellate bench the varied perspectives that could enrich its jurisprudence and enhance its problem-solving capacity.

Despite structural and procedural shortcomings, the interviews showcased several candidates whose intellectual firepower and legal mastery augured well for the Court of Appeal's future. Justice Katwa Kigen, Justice Silas Munyao, Justice Stephen Radido and Justice Chacha Mwita, distinguished themselves through analytical precision, comprehensive grasp of legal principles, and articulate reasoning that transcended mechanical recitation of doctrine. Their performances demonstrated situational awareness of contemporary societal challenges, familiarity with emerging issues in technology and human resource management, and sophisticated understanding of case management techniques precisely the multifaceted competencies appellate work demands.

Nevertheless, even as these standout performances offered hope, the process

revealed that highly experienced candidates with impressive credentials could falter when confronted with questions any serious appellate candidate should have anticipated. It is good practice for those applying for any judicial whether from the bench or the bar to have grasp of not only the case law but also judicial policy documents, Chief Justice Blue Print, annual State of the Judiciary reports; most fundamentally, the constitutional architecture undergirding Kenya's judicial system. Only through such comprehensive preparation coupled with a reformed, equitable interview process can the judiciary hope to select jurists capable of simultaneously dispensing justice.

4. Recommendations for enhancing future Judicial interview processes

4.1 Standardization of interview protocols and time allocation

The Commission must urgently establish and enforce rigorous standardization protocols that eliminate the procedural arbitrariness that characterized these interviews. A comprehensive interview framework should prescribe minimum and maximum time allocations for each candidate, ensuring that no applicant receives a significantly truncated or unduly protracted session based merely on the vicissitudes of commissioner engagement. More critically, the Commission should develop a structured question matrix that guarantees every candidate faces a comparable baseline of inquiry across all essential competency domains: constitutional law, appellate procedure, judicial temperament, ethics, and specialized legal knowledge.

This does not demand mechanical uniformity that stifles organic dialogue; rather, it requires establishing core questions that every candidate must address, supplemented by follow-up inquiries tailored to individual backgrounds and responses. The current system, where some candidates fielded a single perfunctory question from certain commissioners while others endured relentless cross-examination, transforms what should be a merit-based evaluation into a lottery of circumstance. By implementing standardized interview protocols with built-in flexibility for substantive follow-up, the Commission can ensure that selection rests on demonstrated competence rather than the happenstance of which commissioners chose to engage most vigorously with particular candidates.

4.2 Transparent and consistent evaluation of academic credentials

The Commission's capricious approach to academic scrutiny demands immediate rectification through the establishment of explicit, uniformly applied criteria for evaluating scholarly work. If the JSC considers advanced academic credentials relevant to appellate fitness and it demonstrably should, given that scholarship cultivates the analytical rigor and doctrinal depth essential to appellate adjudication then every candidate holding such qualifications must face comparable examination of their intellectual contributions. The inexplicable disparity whereby Justice Mwihaki's thesis received exhaustive interrogation while other candidates work escaped scrutiny entirely suggests either discriminatory application of standards or, more charitably, an absence of coherent evaluation methodology.

The Commission should designate specific commissioners responsible for reviewing academic submissions prior to interviews, develop a standardized rubric for assessing scholarly work (examining methodological rigor, originality of argument, doctrinal contribution, and relevance to judicial service), and ensure that questions about academic credentials are posed consistently to all candidates with advanced degrees. This approach would transform academic evaluation from an arbitrary exercise into a systematic assessment that rewards genuine intellectual achievement while avoiding

the appearance of selective targeting that undermines process legitimacy and potentially discourages future academic applicants from seeking judicial appointment.

4.3 Pre-Interview verification and disclosure of performance data

The unseemly disputes over case statistics and performance metrics that marred several interviews expose a fundamental procedural deficiency that the Commission must address with urgency. Before any candidate appears for interview, the JSC should conduct thorough verification of all performance data drawn from official judicial records, engage in preliminary consultation with candidates to confirm accuracy and allow for explanation of apparent anomalies, and provide candidates with comprehensive performance summaries sufficiently in advance to permit preparation of substantive responses.

The current practice of ambushing sitting judicial officers with contested statistics figures they immediately challenged or refuted serves neither accountability nor fair evaluation; it merely devolves into unproductive argumentation that obscures rather than illuminates judicial competence. Performance metrics, when accurately compiled and contextualized, constitute legitimate subjects of inquiry that can reveal work ethic, case management skills, and dedication to timely justice delivery. However, their utility evaporates when candidates must expend precious interview time disputing data accuracy rather than explaining their judicial approach and achievements. By implementing a pre-interview verification process with candidate consultation and advance disclosure, the Commission transforms performance evaluation from confrontational gotcha moments into productive dialogues that genuinely assess judicial effectiveness while respecting candidates' due process rights and professional dignity.

4.4 Enhanced question quality control The Commission must institute

comprehensive training programs for all commissioners that emphasize the art and science of effective interviewing, focusing on question construction, active listening, follow-up technique, and the elimination of unconscious bias. The labyrinthine questions that left candidates visibly confused, the repetitive inquiries that multiple commissioners posed to the same candidate, and the occasional descent into institutional defensiveness when cherished precedents faced examination all point to a pressing need for enhanced commissioner preparation. Training should address specific deficiencies observed in these interviews: crafting concise questions with clear objectives, avoiding compound inquiries that conflate multiple issues, recognizing when a question has been adequately answered versus when additional probing would yield insight, and maintaining professional detachment even when candidates critique established jurisprudence.

The Commission should implement a question review process whereby proposed inquiries undergo advance scrutiny for relevance, clarity, and legal accuracy, preventing the propagation of questions based on misunderstanding of law or designed more to showcase commissioner erudition than to assess candidate capability. This quality control mechanism, coupled with structured training emphasizing that interviews serve evaluation rather than intellectual jousting, would dramatically improve the rigor and fairness of future proceedings while ensuring that candidates face substantive rather than performative interrogation.

4.5 post-decision transparency through anonymized feedback mechanisms

The Commission should develop a structured feedback system that, while respecting individual candidate privacy,

provides meaningful transparency about selection criteria and evaluation methodology. This could take the form of anonymized performance summaries that detail how candidates were scored across various competency domains legal knowledge, analytical ability, judicial temperament, communication skills, ethical reasoning, and practical wisdom without identifying individual applicants by name. Such summaries would illuminate the relative weight accorded to different factors, explain how competing considerations such as merit, gender parity, regional balance, and institutional needs were reconciled, and demonstrate the principled application of constitutional appointment criteria.

This enhanced transparency serves multiple vital functions: it legitimizes the selection process by demonstrating principled decision-making rather than arbitrary preference, educates future applicants about Commission expectations and evaluation standards, holds the JSC accountable to its constitutional mandate of merit-based appointment, and gradually builds public confidence in a process that, despite its flaws, represents one of Kenya's most significant democratic innovations in judicial governance. The commitment to transparency that animates public interviews should extend through to the final selection, ensuring that Kenyans understand not merely who was chosen, but why they were chosen.

5. Final thoughts

In Africa, Kenya is among few constitutional democracies where judges are interviewed publicly, broadcast for all to see. Kenyans get a rare opportunity to scrutinize candidates applying for any judicial office. We may have gotten many things wrong, but on this one, we got it right: our judiciary. The recruitment process for the judges was rigorous, transparent, competitive and transmitted live. It comprised public advertisement of vacancies, public participation before shortlisting, and public interviews and vetting undertaken in line with the Constitution.

Massive congratulations to the 15 distinguished men and women who have been nominated for appointment as Judges of the Court of Appeal by the Judicial Service Commission. The outcome of the interviews represents several historic milestones. For the first time, six judges from specialized courts have been nominated to the Court of Appeal. This is an achievement that recognizes the expertise and judicial excellence developed in the Environment and Land Court and the Employment and Labour Relations Court. As well three counties got their first judges of appeal thus ensuring greater regional balance and representation.

The Judicial Service Commission must be commended for the overall fairness of the process. The Commission had to balance competing interests including competence, gender, regional balance, and confidential reports. In reaching its decision, the Commission stated that it was guided by constitutional principles including merit, fairness, gender parity, inclusivity and regional balance. One would only hope that the recommendations in this paper would be considered by the Judicial Service Commission as it refines future interview processes. The stakes are too high, and the constitutional mandate too sacred, for the JSC to rest on its laurels. The journey toward a truly merit-based, equitable, and transparent judicial appointment process must continue, ensuring that Kenya's judiciary not only dispenses justice but exemplifies it in every stage of judicial selection.

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Constitutionalism on trial: Electoral governance and political violence in Tanzania

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Abstract

Tanzania has long stood out as a pocket of calm and relative stability in East Africa's stormy politics. However, since 2021, under President Samia Suluhu Hassan, that image has shattered amid growing chaos. This article zeros in on the explosive 2025 general elections in Tanzania a turning point marked with widespread election irregularities polls, deadly crackdowns on demonstrators, sweeping arrests, mysterious vanishings, and bold power grabs laid bare a slide toward autocracy. Pulling from a broad mix of voices, including insights from the Journal of Democracy, reports by Amnesty International, Human Rights Watch and the United Nations and eyewitnesses' stories buzzing on X, this Article argues that President Suluhu's early reforms were mere autocratic reform-washing. They were designed to mask the entrenchment of authoritarian control within the ruling Chama Cha Mapinduzi (CCM) party. The analysis explores socioeconomic undercurrents fueling unrest, the erosion of judicial independence, parallels with global autocratic trends in Africa and beyond, and potential pathways for accountability through regional and international mechanisms. The analysis digs into the economic and social sparks igniting the fury, like jobless youth and land grabs hitting communities hard, the crumbling trust in courts, echoes of strongman tactics seen in Africa and beyond and real ways forward, from regional watchdogs to international courts. With risks of ripples hitting neighbors like Kenya and Uganda think cross-border tensions or refugee flows this deep dive. This article spotlights how shaky new democracies really are and why

Tanzania's President Samia Suluhu Hassan

the world can't afford to let up on pushing for change.

Key words: *Constitutionalism on trial, Electoral governance, Political violence in Tanzania, Democratic backsliding, and Autocratic reform-washing.*

Introduction

Tanzania's political ground feels like it's crumbling away, washed out by endless rains of discontent.[1] Since multi-party politics kicked off in 1992,[2] the country earned praise for smooth handovers of power and clinging to that core Swahili ideal of Uhuru na Umoja. But when Samia Suluhu Hassan stepped up in March 2021 after John Magufuli' s sudden passing,[3] things took a twist. Magufuli was the bulldozer type. He denied COVID–19 existence,[4] shutting down media[5] and squashing rivals left and right. President Samia Suluhu came in promising a fresh start easing rally bans, chatting with opposition folks[6] and unbanning outlets that had been silenced.[7] It felt like a breath of fresh air, international watchers cheered[8] and even Freedom House bumped up the civil liberties score a notch. Fast-forward to today and that initial optimism around President Samia Suluhu Hassan feels pretty dimmed.[9] What started as a breath of fresh air in Tanzanian politics after John Magufuli's iron-fisted rule has turned into a stark warning about how leaders can mask authoritarian moves with a pretense of reform. Suluhu, once hailed as a moderate, has presided over a cunning consolidation of power, especially evident in the explosive 2025 elections that shattered any illusions of progress.[10] Violent street clashes erupted amid widespread unrest, with reports from Human Rights Watch and Amnesty International documenting hundreds killed or disappeared in the crackdown.[11] Drawing from analyses by scholars like Nancy Bermeo and Anna Lührmann on democratic erosion,[12] this article also spotlights raw accounts from X users braving blackouts to expose the chaos, alongside high-stakes legal battles like opposition leader Tundu Lissu's treason trial.[13] By mid-November 2025, as the fallout lingered, Suluhu addressed parliament,

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[3]Wamsley, L., & Peralta, E. (2021, March 17). Tanzanian President John Magufuli, a COVID-19 skeptic, has died. NPR. https://www.npr.org/2021/03/17/978746591/tanzanian-president-john-magufuli-a-covid-19-skeptic-has-died accessed 20 January 2026.
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[6]BBC News, 'Tanzanian leader Samia Suluhu Hassan lifts ban on political rallies' (BBC, 3 January 2023) https://www.bbc.com/news/world-africa-64151793 accessed 19 January 2026.
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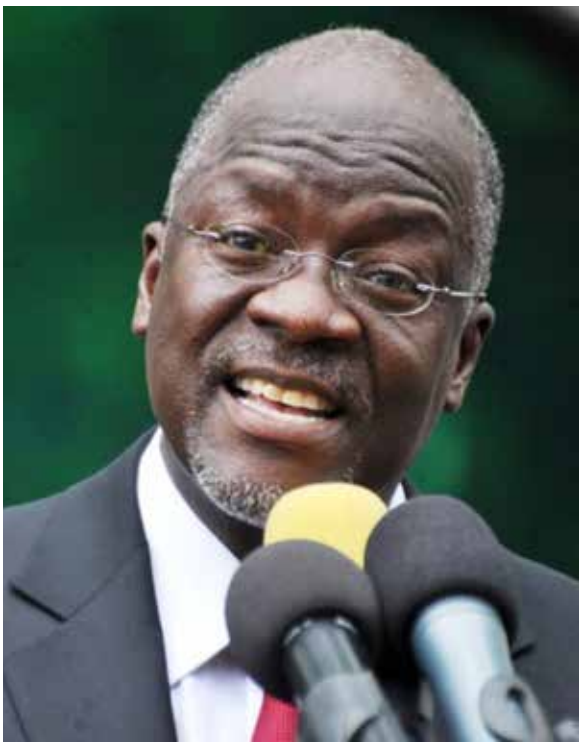
[11]Amnesty International, 'Tanzania: Security forces used unlawful lethal force in election protest crackdown and 'took away' dead bodies' (Amnesty International, 19 December 2025) https://www.amnesty.org/en/latest/news/2025/12/tanzania-security-forces-used-unlawful-lethal-force-in-election-protest-crackdown-and-took-away-dead-bodies accessed 19 January 2026
[12]Amnesty International, 'Tanzania: Security forces used unlawful lethal force in election protest crackdown and 'took away' dead bodies' (Amnesty International, 19 December 2025) https://www.amnesty.org/en/latest/news/2025/12/tanzania-security-forces-used-unlawful-lethal-force-in-election-protest-crackdown-and-took-away-dead-bodies accessed 19 January 2026.
[13]Amnesty International, 'Tanzania: Stop repression of opposition leaders and immediately release Tundu Lissu' (Amnesty International, 11 April 2025) https://www.amnesty.org/en/latest/news/2025/04/tanzania-stop-repression-of-opposition-leaders-and-immediately-release-tundu-lissu accessed 19 January 2026.



John Magufuli

pledging investigations into the deaths and amnesty for young protesters even invoking a biblical plea for forgiveness, "Father, forgive them, for they know not what they do."[14] Yet the opposition has dismissed her staggering 97% victory as rigged, sparking ongoing protests where funerals double as rallies. The African Union's rare rebuke adds pressure[15] and murmurs of International Criminal Court scrutiny are growing louder, painting Tanzania as a fragile democracy on the brink.

Historical context: From Magufuli's authoritarianism to Suluhu's inherited legacy

John Magufuli's presidency from 2015 to 2021 marked a sharp authoritarian turn, characterized by the personalization of power within a party-based regime.[16] His administration suppressed opposition through arbitrary arrests, media shutdowns, and electoral manipulations, leading to a decline in Freedom House scores from Partly Free to near Not Free status.[17] Suluhu, the then vice president, was complicit in this backsliding, yet her ascension offered a glimmer of hope.[18] Scholars argue that Magufuli's death created an opportunity for reform, but structural constraints including Chama Cha Mapinduzi's dominance over state institutions limited change.[19] A 2021 analysis in Democracy in Africa cautioned against expecting rapid progress,[20] noting that sustained democratization requires pro-reform factions within the ruling party, which Suluhu has failed to cultivate. Instead, her regime has perpetuated Magufuli-era tactics, blending superficial liberalization with intensified repression.[21]

The dawn of hope: Samia Suluhu's ascent and early promises

When vice president Samia Suluhu Hassan was sworn in as Tanzania's sixth president

[14]BBC News, 'Tanzania's President Samia Suluhu Hassan promises probe into post-election unrest' (BBC, 14 November 2025) https://www.bbc.com/news/articles/c4gpdxp5vl2o accessed 19 January 2026.
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[17]Freedom House, Tanzania: Freedom in the World 2025 Country Report (Freedom House, 2025) https://freedomhouse.org/country/tanzania/freedom-world/2025 accessed 20 January 2026.
[18]Mehdi Bouzouina, 'How Tanzania's President Samia Suluhu Hassan Went from Reform to Repression' (Yahoo News Australia, 19 January 2026) https://au.news.yahoo.com/how-tanzania-president-samia-suluhu-hassan-went-from-reform-to-repression-085400892.html accessed 20 January 2026.
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[20]Democracy in Africa, 'The End of the Honeymoon in Tanzania: CCM Reverts to Type' (Democracy in Africa, 4 August 2021) https://democracyinafrica.org/the-end-of-the-honeymoon-in-tanzania-president-samias-govt-reverts-to-type accessed 20 January 2026.
[21]*Journal of Democracy*, 'Tanzania's Autocratic Reform-Washing' (Journal of Democracy, 2025) https://www.journalofdemocracy.org/articles/tanzanias-autocratic-reform-washing/ accessed 20 January 2026.

on 19 March 2021, the moment felt historic not only because it followed the sudden and mysterious death of president John Magufuli but also because it landed on a nation grappling between grief, uncertainty and quiet expectation. Her swearing in followed the constitutional rules and many people both inside and outside Tanzania felt a sense of hope. Suluhu was known for being calm, cooperative and more open to dialogue so many expected a softer and more inclusive leadership style.[22] From the start Suluhus actions showed a change in tone. She declared a national mourning and promised to continue the main development projects of the ruling party CCM, at the same time she began moving away from some of Magufulis toughest allies.[23] This mix of continuity and change made many people curious about what direction her government would take.[24]

Her early decisions strengthened this hope. In February 2022, her government restored licenses for four newspapers that had been banned during Magufuli's time and many journalists and civil rights groups saw this as a positive step towards more press freedom.[25] In 2023 suluhu went further and publicly promised to restore competitive politics and reopen the process of reviewing the constitution.[26] One of the biggest changes came in January 2023 when Suluhu lifted the six year ban on political rallies, where this move was widely welcomed by the opposition and international observers who saw it as a major step towards rebuilding political freedom.[27]

Even so many analysts pointed out that although it felt more open many laws and systems used to restrict opposition during Magufulis rule were still in place. They warned that real long-term change would require deeper legal and institutional reforms not just announcements or temporary measures.[28] Suluhus rise to power created a strong sense of hope where she promised to open political space, review strict media laws and allow more freedom for parties and the press and this captured the attention of many people. Experts noted that Tanzania's political system is deeply structured and real reform would depend on how much she was willing and able to change those foundations.[29]

Pre-election repression: Setting the stage for 2025 turmoil

Imagine standing at the edge of a democratic dream, only to feel the ground crumble beneath your feet as shadows of fear close in. That's the reality Tanzania endured in the months before the October 29, 2025, elections a time that should

[22]Reuters, 'Tanzania's New President Samia Suluhu Hassan Takes Oath of Office Following the Death of Her Predecessor' (Reuters, 19 March 2021) https://www.reutersconnect.com/item/tanzanias-new-president-samia-suluhu-hassan-takes-oath-of-office-following-the-death-of-her-predecessor-john-pombe-magufuli-at-state-house-in-dar-es-salaam/dGFnOnJldXRlcnMuY29tLDIwMjE6bmV3c21sX1JDMjlFTTlPREZVMA==/ accessed 19 January 2026.
[23]Reuters, 'After Tanzania's President John Magufuli Announced Dead, Opposition Wants VP Sworn' (Reuters, 17 March 2021) https://www.reuters.com/business/media-telecom/after-tanzanias-president-john-magufuli-announced-dead-opposition-wants-vp-sworn-2021-03-18/ accessed 19 January 2026.
[24]Peter Fabricius, 'Tanzania: Samia Suluhu Hassan's Hesitant Reforms' (AllAfrica / Institute for Security Studies, 7 June 2024) https://allafrica.com/stories/202406070408.html accessed 19 January 2026.
[25]Amnesty International, 'Tanzania: Victory for Media Freedom as Ban on Four Newspapers Lifted' (Amnesty International, 10 February 2022) https://www.amnesty.org/en/latest/news/2022/02/tanzania-victory-for-media-freedom/ accessed 19 January 2026
[26]Voice of America, 'Tanzania President Promises "Competitive Politics"' (VOA, 8 March 2023) https://www.voaafrica.com/a/tanzania-president-promises-competitive-politics-/6995963.html accessed 19 January 2026
[27]Al Jazeera, 'Tanzania's President Hassan Ends 6-Year Ban on Opposition Rallies' (Al Jazeera, 3 January 2023) https://www.aljazeera.com/news/2023/1/3/tanzania-president-hassan-lifts-ban-on-opposition-rallies accessed 19 January 2026
[28]Media Council of Tanzania, Press Freedom Violations Report 2021 (Media Council of Tanzania, 2021) https://mct.or.tz/wp-content/uploads/2023/11/Press-Freedom-Violations-Report-2021.pdf accessed 19 January 2026
[29]Strategic Litigation Initiative, Tanzania Civic-Space Monitor 2023 (Strategic Litigation, April 2024) https://strategiclitigation.org/wp-content/uploads/2024/06/TANZANIA-CIVIC-SPACE-MONITOR-2023-FINAL-April-2024.pdf accessed 20 November 2025.

have buzzed with spirited debates, vibrant campaigns, and voter enthusiasm, but instead echoed with the thud of prison doors, the crack of batons, and the eerie silence of enforced disappearances. Under President Samia Suluhu Hassan's administration, what began as whispers of hope for reform devolved into a full-throated assault on dissent,[30] echoing the authoritarian playbook of her predecessor, John Magufuli, but with a slicker, more insidious twist.[31] As one defiant X post from the group Defiance Against Dictatorship put it, this wasn't an election it was a violent coronation of authoritarianism,[32] leaving the world to wonder, how far will a regime go to cling to power?

But how did a nation once hailed for its stability descend into this abyss? Drawing on reports from Human Rights Watch, Amnesty International, scholarly analyses to uncover the human stories behind the headlines and the legal violations that demand accountability. The repression didn't erupt overnight, it built like a gathering thunderhead, fueled by a government intent on neutralizing threats before they could mobilize. Amnesty International's October 2025 report,[33] laid it bare, a wave of terror sweeping Tanzania since January 2024, with at least 83 enforced disappearances,[34] arbitrary arrests,[35] torture and killings documented in chilling detail. Human Rights Watch echoed this in their September 2025 alert,[36] warning of deepening repression that threatened the very integrity of the polls, including over 500 opposition detentions in the pre-election frenzy. These weren't isolated incidents, they formed a deliberate strategy to instill fear,[37] suppress civic engagement, and entrench CCM's dominance, as Amnesty starkly concluded. The African Union's rare pre-election warnings and the United Nations' calls for restraint further underscored the pattern of state-sponsored intimidation.[38]

Ordinary Tanzanians like Ali Kibao, a Chadema strategist kidnapped from a bus in September 2024,[39] tortured, and murdered, his body scarred by acid, dumped as a macabre warning to others and Deusdedith Soka, a youth organizer lured to a fake meeting in August 2024 and never seen again, his fate a haunting question mark for

[30]Human Rights Watch, *Tanzania: Deepening Repression Threatens Elections* (29 September 2025) https://www.hrw.org/news/2025/09/29/tanzania-deepening-repression-threatens-elections accessed 20 January 2026.
[31]Amnesty International, *Tanzania: Authorities Instil Climate of Fear and Step Up Repression Ahead of General Elections* (2025) https://www.amnesty.org/en/latest/news/2025/09/tanzania-authorities-instil-climate-of-fear-and-step-up-repression/ accessed 20 January 2026.
[32]Defiance Against Dictatorship [@DefianceAfrica]. (2025, November 2). *X post on Tanzania election repression*. https://x.com/DefianceAfrica/status/1985004660847956017 accessed 20 January 2026.
[33]Amnesty International. (2025, October 20). Unopposed, unchecked, unjust: *"Wave of terror" sweeps Tanzania ahead of elections.* https://www.amnesty.org/en/documents/afr56/0376/2025/en/ accessed 20 January 2026.
[34]Amnesty International, 'Tanzania: Authorities Instill Climate of Fear and Step Up Repression Ahead of General Elections' (20 October2025) <https://www.amnesty.org/en/latest/news/2025/10/tanzania-authorities-instil-climate-of-fear-and-step-up-repression-ahead-of-general-elections/> accessed 19 January 2026
[35]Amnesty International, 'Tanzania: Authorities Instill Climate of Fear and Step Up Repression Ahead of General Elections' (20 October2025) <https://www.amnesty.org/en/latest/news/2025/10/tanzania-authorities-instil-climate-of-fear-and-step-up-repression-ahead-of-general-elections/> accessed 19 January 2026.
[36]Human Rights Watch, *Tanzania: Deepening Repression Threatens Elections* (29 September 2025) https://www.hrw.org/news/2025/09/29/tanzania-deepening-repression-threatens-elections accessed 20 January 2026.
[37]Amnesty International, T*anzania: Authorities Instill Climate of Fear and Step Up Repression Ahead of General Elections* (20 October 2025) https://www.amnesty.org/en/latest/news/2025/10/tanzania-authorities-instil-climate-of-fear-and-step-up-repression-ahead-of-general-elections/ accessed 20 January 2026.
[38]African Union, *Preliminary Statement of the African Union Election Observation Mission to the October 2025 General Elections in Tanzania* (January 19 2026) https://au.int/en/pressreleases/20251107/aueom-preliminary-statement-october-2025-general-elections-tanzania accessed 20 January 2026.
[39]BBC News, 'Tanzania Leader Condemns Killing of Opposition Figure Doused in Acid' (9 September 2024) https://www.bbc.com/news/articles/cqjlnevwdzvo, accessed 20 January 2026.

The chairman of Tanzania's main opposition party Chadema, (Middle) Tundu Lissu.

his family.[40] Then there's Mdude Nyagali, snatched from his home in May 2025,[41] joining dozens of vanished critics in what Human Rights Watch described as a "climate of fear" engineered to dismantle opposition before the vote. Eyewitness accounts on X paint vivid horrors, one post from a human right advocate detailed a neighborhood combed by security forces in uniform and plainclothes, dragging away protesters while families watched in terror. Another shared smuggled videos from hospitals overwhelmed with the injured, bodies piled in morgues[42] and whispers of mass graves claims that amplify the urgency for independent probes.

At the heart of this crackdown was the weaponization of Tanzania's legal framework, turning laws meant to protect society into tools of tyranny. The Political Parties Act of 2019,[43] granted electoral authorities sweeping discretion to disqualify candidates on flimsy grounds like alleged signature irregularities effectively barring major opposition parties like Chadema from contesting key races. Similarly, the Cybercrimes Act of 2015 became a blunt instrument for stifling online criticism,[44] with provisions under Section 16 criminalizing the publication of false information,[45] leading to arrests for social media posts that merely questioned the regime. In May 2025 alone, the Tanzania Communications Regulatory Authority shut down over 80,000 websites,[46] social media accounts, and online platforms for "unethical content," a move condemned by

[40]The Chanzo, 'One Year On: CHADEMA Honors Deusdedith Soka Amid Unsolved Disappearance' (18 August 2025) https://thechanzo.com/2025/08/18/one-year-on-chadema-honors-deusdedith-soka-amid-unsolved-disappearance/ accessed 20 January 2026.
[41]The Chanzo Reporter. (2025, May 3). *Tanzanian activist Mdude Nyagali remains missing following bloody attack at his home, police deny involvement.* https://thechanzo.com/2025/05/03/tanzanian-activist-mdude-nyagali-remains-missing/, accessed 20 January 2026.
[42]CNN. (2025, November 5). Tanzanian Police Disposed of Bodies After Election Violence. https://www.cnn.com/2025/11/05/world/tanzania-election-protest-deaths-intl, accessed 20 January 2026.
[43]The Political Parties (Amendment) Act 2019 (Tanzania).
[44]Cybercrimes Act, 2015(Tanzania).
[45]*Cybercrimes Act*, 2015, Section 16(*Tanzania*).
[46]CIVICUS Monitor. (2025, October 26). *Government intensifies crackdown on opposition & online spaces ahead of 2025 elections.* https://monitor.civicus.org/explore/government-intensifies-crackdown-on-opposition-online-spaces-ahead-of-2025-elections/, accessed 20 January 2026.

digital rights groups as a preemptive strike on free expression. These actions flouted Tanzania's 1977 Constitution specifically Article 18 on freedom of expression,[47] additionally Article 20 on freedom of assembly.[48] These actions breached international obligations under Article 9 of the African Charter on Human and Peoples' Rights,[49] which guarantees the right to receive and disseminate information. Scholarly voices, like those in the Journal of Democracy, have labeled this autocratic reform-washing,[50] where superficial nods to liberalization mask deeper entrenchment of control.

No story captures the regime's ruthlessness quite like that of Tundu Lissu, the fiery Chadema opposition leader whose fight for electoral reform turned him into public enemy number one. Arrested on April 9, 2025,[51] during a peaceful rally in Mbinga as part of Chadema's no Reforms, no Election campaign, Lissu was bundled into a police vehicle without being informed of the charges, a direct violation of Tanzania's Criminal Procedure Act and international fair trial standards.[52] He was held incommunicado for nearly 24 hours while being driven over 1,150 km to Dar es Salaam, he was eventually charged with treason, a non-bailable offense carrying the death penalty and three counts of publishing false information under the Cybercrimes Act. The treason charge stemmed from an April 3 statement where Lissu allegedly called for disrupting the elections, while the other counts targeted a YouTube video accusing the president of influencing candidate disqualifications and police of vote tampering. His trial, which opened on October 6, 2025, just weeks before the polls and was marred by irregularities: no plea was entered for treason, and the case was postponed indefinitely pending investigations, infringing on his right to a speedy trial under Article 13(6) of the Tanzanian Constitution.[53] The International Commission of Jurists slammed it as a malicious prosecution aimed at sidelining rivals, noting that Section 148(5) of the Criminal Code, which allows indefinite detention for non-bailable offenses,[54] has been ruled discriminatory by the African Court on Human and Peoples' Rights in cases like (Lohe Issa Konate v. Burkina Faso2014),[55] where similar provisions were found to violate the presumption of innocence. Lissu's ordeal wasn't unique; it mirrored the unsolved 2017 assassination attempt on him,[56] underscoring a pattern of impunity that Amnesty linked to over 500 similar cases. As one X user lamented, "Justice on trial, democracy at stake "a sentiment that captured the nation's despair.[57]

The international community didn't stay silent. Amnesty International warned of a

[47]Constitution of the United Republic of Tanzania (1977), Article 18.
[48]United Republic of Tanzania. (1977). Constitution of the United Republic of Tanzania - Article 20.
[49]African Union. (1981). African Charter on Human and Peoples' Rights, Article 9.
[50]Amnesty International, 'Tanzania: Stop Repression of Opposition Leaders and Immediately Release Tundu Lissu' (11 April 2025) https://www.amnesty.org/en/latest/news/2025/04/tanzania-stop-repression-of-opposition-leaders-and-immediately-release-tundu-lissu, accessed 20 January 2026.
[51]Amnesty International, 'Tanzania: Stop Repression of Opposition Leaders and Immediately Release Tundu Lissu' (11 April 2025) https://www.amnesty.org/en/latest/news/2025/04/tanzania-stop-repression-of-opposition-leaders-and-immediately-release-tundu-lissu, accessed 20 January 2026.
[52]Centre for Human Rights, University of Pretoria, 'Statement on the Arrest of Hon. Tundu Lissu and Crackdown on Human Rights Defenders in Tanzania' (2 April 2025).
[53]United Republic of Tanzania. (1977),Constitution of the United Republic of Tanzania ,Article 13(6).
[54]United Republic of Tanzania. (1984) Criminal Procedure Act ,Section 148(5).
[55]African Court on Human and Peoples' Rights. (2014). Lohé Issa Konaté v. The Republic of Burkina Faso.
[56]BBC News. (2020, October 22). Tanzania's Tundu Lissu: Surviving an Assassination Attempt to Run for President. https://www.bbc.com/news/world-africa-54484609, accessed 20 January 2026.
[57]Defiance Against Dictatorship. (January 19 2025). *Justice on Trial, Democracy at Stake* [Post]. X. https://x.com/DefianceAfrica/status/1985004660847956017, accessed 20 January 2026.

After the disputed results were announced, widespread protests erupted across major urban centers. Security forces responded with lethal force, including live ammunition and excessive tear gas, leading to hundreds of deaths and many injuries.

deliberate strategy to instill fear, while HRW highlighted how these tactics threatened the very integrity of the elections.[58] The African Union, UN Office of the High Commissioner for Human Rights, and Southern African Development Community issued sharp rebukes, citing breaches of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. On X, raw stories flooded in, one post described police lobbing tear gas across borders into Kenya during unrest,[59] while another shared videos of arbitrary shootings, amplifying calls for justice amid internet blackouts. Scholars in Democracy in Africa drew stark parallels to Magufuli's era,[60] arguing this pre-election terror was about "stacking the deck" through intimidation, ensuring CCM's victory not by popular will, but by vanquishing any real competition.

Yet, amid the darkness, glimmers of resistance emerged. X users dodged blackouts to share horror stories, turning platforms into lifelines for truth. Civil society groups like the Legal and Human Rights Centre condemned the violations, demanding independent probes and the release of detainees. As the powder keg ignited into post-election violence, one question haunts: How can a vote shrouded in such shadows ever claim legitimacy? Tanzania's story is not just a cautionary tale, it's a rallying cry for accountability, reminding us that democracy

[58]Human Rights Watch. (2025, September 29). Tanzania: Deepening Repression Threatens Elections. https://www.hrw.org/news/2025/09/29/tanzania-deepening-repression-threatens-elections, accessed 20 January 2026.
[59]Africa news, 'Tanzania's post-electoral unrest spills into Kenya as police lob tear gas over the border' (30 October 2025) https://www.africanews.com/2025/10/30/tanzania-post-electoral-unrest-spills-into-kenya-as-police-lob-tear-gas-over-the-border/, accessed 20 January 2026.
[60]Aikande C Kwayu, 'The end of the honeymoon in Tanzania: CCM reverts to type' (Democracy in Africa, 4 August 2021) https://democracyinafrica.org/the-end-of-the-honeymoon-in-tanzania-ccm-reverts-to-type/, accessed 20 January 2026.

dies not in grand spectacles, but in the quiet erosion of rights. Will the world listen, or will silence prevail?

Post-election repression: Escalating violence and the clampdown on dissent

The October 29, 2025, elections, marred by allegations of widespread fraud and voter suppression, quickly descended into chaos as opposition supporters took to the streets in protest. President Samia Suluhu Hassan's declared victory with an implausible 97% of the vote ignited nationwide demonstrations, met with a ferocious state response that amplified the pre-election repression into a full-scale crisis. Human Rights Watch reported that Tanzanian security forces fired live ammunition and tear gas at protesters, resulting in dozens of confirmed deaths and hundreds injured in the immediate aftermath, with opposition estimates suggesting casualties could reach into the hundreds.[61] Amnesty International documented a "wave of terror" extending post-election, including arbitrary arrests of opposition figures, enforced disappearances and a nationwide internet blackout designed to stifle information flow and conceal atrocities.

The violence spilled over borders, with reports of Tanzanian police lobbing tear gas into Kenya during border protests, exacerbating regional tensions and prompting fears of refugee flows. Eyewitness accounts on X, often shared amid blackouts via smuggled videos, depicted scenes of brutality, protesters gunned down in Dar es Salaam and Zanzibar, bodies disposed of in makeshift graves, and hospitals overwhelmed with the wounded. The regime-imposed curfews and deployed military units, framing the unrest as "foreign-instigated" chaos, a narrative President Suluhu reiterated in early December 2025, blaming external powers for the protests. This rhetoric echoed global autocratic trends, where leaders deflect accountability by invoking sovereignty and colonial legacies, as analyzed in comparative studies of African democracies.

By mid-November, opposition leaders like Tundu Lissu remained detained, and new arrests targeted protest organizers ahead of planned Independence Day demonstrations on December 9, 2025.[62] The government canceled national celebrations, citing security concerns, while civil society reported over 1,000 detentions since the polls.[63] International condemnation grew, the United States reconsidered bilateral ties, condemning "disturbing violence against civilians,"[64] and the European Union called for multilateral engagement to prevent further deterioration.[65] Yet, the African Union's response remained fractured, with some bodies endorsing the results while others decried violations, highlighting institutional failures in regional oversight.[66]

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[61]Human Rights Watch, 'Tanzania: Killings, Crackdown Follow Disputed Elections' (Human Rights Watch, 4 November 2025) <https://www.hrw.org/news/2025/11/04/tanzania-killings-crackdown-follow-disputed-elections> accessed 20 January 2026.

[62]Amnesty International, 'Tanzania: Right to Peaceful Assembly and Freedom of Expression Must Be Protected as More Protests Planned' (Amnesty International, 8 December 2025) <https://www.amnesty.org/en/latest/news/2025/12/tanzania-right-to-peaceful-assembly-and-freedom-of-expression-must-be-protected-as-more-protests-planned> accessed 20 January 2026.

[63]Human Rights Watch, 'Tanzania: Multilateral Engagement Is Key to Preventing a Further Deterioration of the Human Rights Situation and Ensuring Accountability for the Post-Election Crackdown' (Human Rights Watch, 8 December 2025) <https://www.hrw.org/news/2025/12/08/tanzania-multilateral-engagement-is-key-to-preventing-a-further-deterioration-of> accessed 20 January 2026.

[64]'U.S. Reconsiders Tanzania Ties After Deadly Post-Election Crackdown' (Oregon Public Broadcasting, 7 December 2025) <https://www.opb.org/article/2025/12/07/u-s-reconsiders-ties-with-tanzania> accessed 20 January 2026.

[65]'Tanzania: Multilateral Engagement Is Key to Preventing a Further Deterioration of the Human Rights Situation and Ensuring Accountability for the Post-Election Crackdown' (Human Rights Watch, 8 December 2025) <https://www.hrw.org/news/2025/12/08/tanzania-multilateral-engagement-is-key-to-preventing-a-further-deterioration-of> accessed 20 January 2026.

[66]Valeriya Mechkova, Anna Lührmann and Staffan I Lindberg, 'How Much Democratic Backsliding?' (2017) 28 Journal of Democracy 162 https://www.journalofdemocracy.org/articles/how-much-democratic-backsliding/, accessed 20 January 2026.

This post-election phase solidified Suluhu's shift from reformist facade to overt authoritarianism, perpetuating socioeconomic grievances like youth unemployment and land dispossessions that fueled the unrest.[67] As protests persisted into December, the regime's tactics internet shutdowns, media censorship, and preemptive arrests mirrored those in neighboring Uganda and Ethiopia, underscoring a continental pattern of democratic backsliding.[68]

International accountability: ICC proceedings so far and pathways forward

As the death toll mounted and evidence of systematic abuses emerged, calls for international intervention intensified, focusing on the International Criminal Court as a mechanism for accountability. By late November 2025, human rights activists, including coalitions from Kenya and international groups, petitioned the ICC to investigate President Samia Suluhu Hassan and senior security officials for alleged crimes against humanity, including murder, enforced disappearances, and persecution during the election period.[69] A Madrid-based law firm submitted a formal communication to the ICC Prosecutor on November 25, 2025,[70] detailing mass killings and urging a preliminary examination into the violence.[71] Tanzanian opposition and civil society echoed these demands, citing over 500 documented cases of impunity linked to state forces.[72]

However, as of 19 January 2026 the ICC has not publicly announced the opening of a preliminary examination or formal investigation into the Tanzania situation.[73] Fact-checks dismissed premature claims of active probes, emphasizing that while petitions have been received, the Court's process involves initial assessments before any official steps.[74] The ICC's Office of the Prosecutor has acknowledged broader concerns in East Africa but issued no specific statements on Tanzania, amid

[61]Human Rights Watch, 'Tanzania: Killings, Crackdown Follow Disputed Elections' (Human Rights Watch, 4 November 2025) <https://www.hrw.org/news/2025/11/04/tanzania-killings-crackdown-follow-disputed-elections> accessed 20 January 2026.
[62]Amnesty International, 'Tanzania: Right to Peaceful Assembly and Freedom of Expression Must Be Protected as More Protests Planned' (Amnesty International, 8 December 2025) <https://www.amnesty.org/en/latest/news/2025/12/tanzania-right-to-peaceful-assembly-and-freedom-of-expression-must-be-protected-as-more-protests-planned> accessed 20 January 2026.
[63]Human Rights Watch, 'Tanzania: Multilateral Engagement Is Key to Preventing a Further Deterioration of the Human Rights Situation and Ensuring Accountability for the Post-Election Crackdown' (Human Rights Watch, 8 December 2025) <https://www.hrw.org/news/2025/12/08/tanzania-multilateral-engagement-is-key-to-preventing-a-further-deterioration-of> accessed 20 January 2026.
[64]'U.S. Reconsiders Tanzania Ties After Deadly Post-Election Crackdown' (Oregon Public Broadcasting, 7 December 2025) <https://www.opb.org/article/2025/12/07/u-s-reconsiders-ties-with-tanzania> accessed 20 January 2026.
[65]'Tanzania: Multilateral Engagement Is Key to Preventing a Further Deterioration of the Human Rights Situation and Ensuring Accountability for the Post-Election Crackdown' (Human Rights Watch, 8 December 2025) <https://www.hrw.org/news/2025/12/08/tanzania-multilateral-engagement-is-key-to-preventing-a-further-deterioration-of> accessed 20 January 2026.
[66]Valeriya Mechkova, Anna Lührmann and Staffan I Lindberg, 'How Much Democratic Backsliding?' (2017) 28 Journal of Democracy 162 https://www.journalofdemocracy.org/articles/how-much-democratic-backsliding/, accessed 20 January 2026.
[67]Anja Osei and Elisabeth Bruhn, 'Tanzania under Magufuli: The Personalization of a Party-Based Regime' (2024) 31 Democratization 1.
[68]Nancy Bermeo, 'On Democratic Backsliding' (2016) 27 Journal of Democracy 5.
[69]Editorial, 'ICC Urged to Probe Alleged Killings After Tanzania Election' (Bloomberg, 25 November 2025) <https://www.bloomberg.com/news/articles/2025-11-25/icc-urged-to-probe-alleged-mass-killing-during-tanzania-election> accessed 20 January 2026.
[70]Editorial, 'Kenyan Civil Society Petitions ICC to Probe Tanzania Poll Violence' (Africa News, 26 November 2025) <https://www.africanews.com/2025/11/26/kenyan-civil-society-petitions-icc-to-probe-tanzania-poll-violence> accessed 20 January 2026.
[71]'Tanzania Election Killings: Outcry and Calls for International Investigations' (The New Humanitarian, 12 November 2025) <https://www.thenewhumanitarian.org/news-feature/2025/11/12/tanzania-election-killings-outcry-calls-international-investigations> accessed 20 January 2026.
[72]Amnesty International, '"This fear, everyone is feeling it": tech-facilitated violence against young activists in Tanzania' (Amnesty International, 19 January 2026) https://www.amnesty.org/en/documents/afr56/0471/2025/en/ accessed 19 January 2026.
[73]Brenda Wanga, 'Suluhu under scrutiny as human rights groups petition ICC to probe Tanzania post-election killings' *Citizen TV Digital* (25 November 2025) <https://www.citizen.digital\> accessed 26 November 2025.
[74]Tess Wandia, 'Ignore Claims that International Criminal Court Is Probing Post-Election Deaths in Tanzania' (Africa Check, 11 November 2025) https://africacheck.org/fact-checks/reports/ignore-claims-international-criminal-court-probing-post-election-deaths-tanzania, accessed 20 January 2026.

President Samia Suluhu Hassan's tenure in Tanzania has been characterized by a mixed record, with analysts noting both clear democratic reforms and persistent concerns about regression. There is no consensus, with assessments varying based on which indicators are emphasized.

ongoing situations in neighboring countries like Kenya's post-2007 election violence precedent.[75] Scholars draw parallels to the ICC's handling of African cases, noting delays due to state non-cooperation and the Court's focus on complementarity prioritizing national mechanisms unless they fail.[76] In response, President Suluhu established a domestic commission of inquiry in December 2025 to probe election abuses, a move critics labeled as reform-washing to preempt international scrutiny and close doors to observers.[77] Pathways for accountability extend beyond the ICC. Regional bodies like the African Court on Human and Peoples' Rights could adjudicate violations of the African Charter,[78] while the UN Human Rights Council has urged independent investigations.[79] Economic leverage from partners like the US and EU through aid reviews and sanctions offers pressure points, as seen in reconsidered ties post-election.[80] Civil society advocates for targeted Magnitsky-style sanctions on officials involved in repression.[81] Ultimately, sustained international monitoring and support for Tanzanian reformers are crucial to reverse the slide, drawing lessons from global cases like Zimbabwe's post-Mugabe transition.[82]

Conclusion

President Samia Suluhu Hassan's tenure, initially promising renewal, has instead accelerated Tanzania's democratic regression through calculated repression masked as reform. From pre-election terror to post-poll violence, the 2025 elections exposed the fragility of institutions under CCM dominance, fueled by socioeconomic inequities and judicial erosion. While ICC proceedings remain in nascent stages limited to petitions without formal action, they symbolize growing global scrutiny. Tanzania's crisis serves as a stark reminder without robust accountability, autocratic entrenchment risks regional instability. The world must amplify calls for justice, supporting local resistance to reclaim Uhuru na Umoja.

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[75]International Criminal Court, *Situation in the Republic of Kenya* (ICC, concluded 27 November 2023) https://www.icc-cpi.int/kenya, accessed 20 January 2026.
[76]Valeriya Mechkova, Anna Lührmann and Staffan I Lindberg, 'How Much Democratic Backsliding?' (2017) 28 Journal of Democracy 16 https://www.journalofdemocracy.org/articles/how-much-democratic-backsliding/
[77]The Chanzo, 'The Full Text of President Samia's Address at the Launch of the Commission of Inquiry' (The Chanzo, 20 November 2025) https://thechanzo.com/2025/11/20/the-full-text-of-president-samias-address-at-the-launch-of-the-commission-of-inquiry accessed 19 January 2026.
[78]African Court on Human and Peoples' Rights, 'Statement on Violations in Tanzania' (African Court on Human and Peoples' Rights, 2025) https://www.african-court.org/en/ accessed 19 January 2026.
[79]Human Rights Watch, 'Tanzania: multilateral engagement is key to preventing a further deterioration of the human rights situation and ensuring accountability for the post-election crackdown' (Human Rights Watch, 8 December 2025) https://www.hrw.org/news/2025/12/08/tanzania-multilateral-engagement-is-key-to-preventing-a-further-deterioration-of accessed 19 January 2026.
[80]Oregon Public Broadcasting, 'U.S. reconsiders Tanzania ties after deadly post-election crackdown' (Oregon Public Broadcasting, 7 December 2025) https://www.opb.org/article/2025/12/07/u-s-reconsiders-ties-with-tanzania accessed 19 January 2026.
[81]U.S. Department of the Treasury, 'Treasury Sanctions Tanzanian Officials Involved in Repression' (U.S. Department of the Treasury, 2025) https://home.treasury.gov/news/press-releases/jy1234 accessed 19 January 2026.
[82]Peter Fabricius, 'Lessons from Zimbabwe's Post-Mugabe Transition for Tanzania' (Institute for Security Studies, 2025) https://issafrica.org/iss-today/lessons-from-zimbabwe-post-mugabe-transition accessed 19 January 2026.

Ballots without freedom: Legal reflections on electoral integrity in East Africa

By Murithi Antony

"***... if you find water rising up to your ankle, that's the time to do something about it, not when it's around your neck.***"
Chinua Achebe, Anthills of the Savannah

1. Introduction

Democracy in East Africa is passing through a turbulent and regressive moment. By early 2026, the region reveals a stark paradox as elections continue as a routine feature of political life, yet the real power of democratic choice is steadily eroded by expanding executive control and the capture of key institutions. From the heavy-handed suppression of the opposition in Uganda's January 2026 elections to the irregularities that defined Tanzania's 2025 polls, the East African Community (EAC) is witnessing a transition from nascent liberal democracy to a more rigid competitive authoritarianism.[1] As Kenya prepares for its 2027 General Election, the regional contagion of digital authoritarianism, militarized policing, and the weaponization of the law raises a fundamental legal question regarding the validity of the social contract. Can a ballot cast in an environment of state-sponsored fear and information darkness ever truly satisfy the constitutional threshold of a free, fair, and credible election?

This article reflects on the legal erosion of electoral integrity in East Africa by examining the recent experiences of Uganda and Tanzania as a predictive framework for Kenya's 2027 polls. It argues that the rule of law is increasingly being replaced by rule by law; where legal frameworks are not used to protect rights, but to provide a veneer of legitimacy for the consolidation of power.[2] By analyzing the intersection of digital rights, judicial independence, and regional treaty obligations, this article seeks to highlight the urgent need for a shift in the EAC's approach to democratic governance before the water reaches the necks of its citizens.[3]

2. The Uganda 2026 experience: Law as a tool of exclusion

Uganda's elections on 15th January 2026, served as a grim reminder of how the law can be weaponized to stifle dissent under the guise of maintaining public order. Despite the 1995 Constitution of Uganda guaranteeing the right to political

[1]Levitsky S and Way LA, *Competitive Authoritarianism: Hybrid Regimes after the Cold War* (Cambridge University Press 2020).
[2]Cheeseman N and Fisher J, *Authoritarian Africa: Repression, Resistance, and the Power of Ideas* (Oxford University Press 2023).
[3]Songa, Andrew, and Martin Ronceray. "The EAC democracy agenda: Channels, lessons and digital technologies for civil society engagement." *European Partnership for Democracy* 354 (2023).

Ugandan opposition leader Robert Kyagulanyi.

participation and the freedom of assembly, the 2026 cycle was characterized by what scholars' term 'the normalization of regime policing'.[4] The legal framework was manipulated through several channels, most notably the use of military courts to try civilian opposition figures. This move, widely condemned by international jurists and the African Commission on Human and Peoples' Rights, continued to isolate leaders like Robert Kyagulanyi (Bobi Wine), effectively removing them from the physical and digital campaign trail.[5]

Beyond the physical violence, the administrative de-nomination of parliamentary candidates after they were duly cleared created a legal vacuum that effectively handed dozens of seats to the ruling National Resistance Movement (NRM) unopposed. This legalistic exclusion circumvents traditional, and often messy, ballot-box stuffing, instead ensuring that the opposition never reaches the ballot in the first place.[6] The Electoral Commission's failure to act as an impartial arbiter has led to a crisis of confidence in the very idea of the vote as a mechanism for leadership transition. In this context, the law does not serve the voter; it serves the incumbent by creating insurmountable procedural hurdles that make genuine competition a statistical impossibility.[7]

Furthermore, the role of the judiciary in Uganda has come under intense scrutiny following the 2026 polls. While the courts have historically shown occasional flashes of independence, the systematic appointment of cadre judges has significantly narrowed the window for electoral justice.[8] When the opposition attempted to challenge the 2026 results, they were met with a judicial system that prioritized procedural technicalities over the substantive investigation of widespread fraud. This judicial retreat reinforces the perception that the legal system in Uganda has been fully co-opted into the security architecture of the state,

[4]Bwesigye Bwa Mwesigire, 'Uganda Election 2026: A Letter from the Edge of Hope' (*The Elephant*, 14 January 2026) https://www.theelephant.info/analysis/2026/01/14/uganda-election-2026-a-letter-from-the-edge-of-hope/ accessed 20 January 2026.
[5]Bwesigye Bwa Mwesigire, 'Uganda Election 2026: A Letter from the Edge of Hope' (*The Elephant*, 14 January 2026) https://www.theelephant.info/analysis/2026/01/14/uganda-election-2026-a-letter-from-the-edge-of-hope/ accessed 20 January 2026.
[6]Jamil Ddamulira Mujuzi, 'The Legal, Policy and Institutional Framework of Land Governance in Uganda: A Critical Analysis' (2017) 1(1) African Journal of Land Policy and Geospatial Sciences 10 https://www.researchgate.net/publication/321361625_The_Legal_Policy_and_Institutional_Framework_of_Land_Governance_in_Uganda_A_critical_Analysis accessed 20 January 2026.
[7]Roger Tangri and Andrew M Mwenda, *The Politics of Elite Corruption in Africa: Uganda in Comparative African Perspective* (Routledge 2013).
[8]Asiimwe Jackline-Bainipai, 'Civil Judge in Uganda: Remuneration Systems and Promotion Possibilities: How to Reward Efficient and Independent Decisions' (2019) 6(1) KAS African Law Study Library 13

leaving the electorate with no peaceful avenue for redress.[9]

3. Tanzania 2025 and the crisis of institutional capture

Tanzania's October 2025 elections showcased a different but equally potent threat to electoral integrity: the total capture of electoral management bodies. Under the presidency of Samia Suluhu Hassan, early hopes for a 'Tanzanian Spring' and the restoration of multiparty pluralism were replaced by a return to exclusionary politics reminiscent of the Magufuli era. The National Electoral Commission (NEC) of Tanzania, whose members are presidential appointees, rejected numerous opposition candidates from parties like CHADEMA and ACT-Wazalendo on technicalities that the courts refused to review in a timely manner. This created a one-horse race in several key constituencies, rendering the democratic exercise a mere formality for the ruling Chama Cha Mapinduzi (CCM).

The legal implications of this institutional capture are profound, as they represent a total failure of the separation of powers doctrine. When the NEC functions as an extension of the executive, the constitutional guarantee of periodic elections becomes a hollow ritual rather than a substantive right. Following the 97.6% victory claimed by the incumbent in late 2025, the subsequent crackdown on those questioning the results led to reports of mass arrests and the suspension of non-governmental organizations that attempted to conduct parallel vote tabulation.[10] Legally, the state utilized the "Non-Governmental Organizations Act" to effectively criminalize independent election monitoring, thereby removing the only objective lens through which the international community could assess the validity of the polls (Bakari, 2026).

Moreover, the Tanzanian experience demonstrates how regional silence emboldens domestic authoritarianism. Despite the blatant irregularities observed during the 2025 cycle, the East African Community's observer missions provided what critics called diplomatic whitewashing, focusing on the peaceful nature of the voting day while ignoring the violent and exclusionary environment of the preceding months.[11] This lack of regional accountability means that there is no external legal pressure to adhere to the African Charter on Democracy, Elections and Governance. Consequently, the Tanzanian state has successfully redefined electoral integrity to mean the mere absence of open conflict, rather than the presence of genuine competition and fairness.[12]

4. The digital kill-switch: A new frontier of State coercion?

A defining feature of East African elections in this decade is the rise of digital authoritarianism. In both the Tanzania 2025 and Uganda 2026 cycles, governments deployed nationwide or regional internet shutdowns and social media blackouts in the days surrounding the vote.[13] These shutdowns are not merely technical disruptions; they are profound

[9]Onyango-Obbo C, 'The Long Shadows of Kampala: Why the 2026 Election Matters for the EAC' *The East African* (Nairobi, 10 January 2026).
[10]Amal El Ouassif, 'The Architecture of Consensus: Tanzania's Political Culture and the 2025 Elections' (Policy Paper 31/25, Policy Center for the New South 2025).
[11]Elizabeth Radina, 'Democracy in Retreat as East African Countries Jail the Opposition' (*HORN International Institute for Strategic Studies*, 23 October 2025) https://horninstitute.org/democracy-in-retreat-as-east-african-countries-jail-the-opposition/ accessed 20 January 2026.
[12]Edwin Baitani and Mary Gikundi, 'Electoral Justice System in East Africa: A Comparative Analysis of Kenya and Tanzania' (2024) 4(1) Journal of Contemporary African Legal Studies 130 https://jcals.mzumbe.ac.tz/index.php/cals/article/download/86/18 accessed 20 January 2026.
[13]*Ibid*.

On January 13 2026, Uganda's telecommunications regulator, the Uganda Communications Commission (UCC), ordered a temporary suspension of public internet access and certain mobile services nationwide. This took effect about 48 hours before the general election. The shutdown blocked public internet traffic — including social media, web browsing and messaging apps — and included SIM card sale restrictions and outbound data roaming limitations. Voice calls and SMS often continued, but most data services were cut.

legal violations that contravene Article 9 of the African Charter on Human and Peoples' Rights, which guarantees the right to receive information and freedom of expression. By imposing a digital blackout, the state prevents real-time reporting of ballot-stuffing, hinders coordination between opposition party agents, and stops the parallel counting of results, which is essential for verifying official tallies.[14]

In Uganda, the communications regulator justified the 2026 shutdown as a necessary measure to 'prevent misinformation and protect national security.' However, international legal standards of legality, necessity, and proportionality suggest that blanket shutdowns can never be a justified response in a democratic society.[15] The legal danger here lies in the precedent it sets for the 2027 Kenyan elections. If the kill-switch becomes a standard tool for EAC incumbents, the very concept of electoral transparency is rendered obsolete. Without the ability to document and share evidence of irregularities instantaneously, the opposition is left with a burden of proof that is impossible to meet in a court of law weeks after the event.[16]

The use of surveillance technology also plays a critical role in this digital suppression. Investigations into the 2025 and 2026 cycles have revealed the use of sophisticated spyware to monitor the communications of opposition leaders, journalists, and activists.[17] This creates a chilling effect on the freedom of association as guaranteed under various national constitutions. When the state has the legal and technical capacity to peer into the private organizing spaces of its citizens, the secret ballot is undermined

[14] *Ibid.*
[15] **Ibid.**
[16] 'Digital Harassment and Surveillance: Kenya's Youth Under Siege' (Amnesty International Kenya, 16 July 2024) https://www.amnestykenya.org/digital-harassment-and-surveillance-kenyas-youth-under-seige/ accessed 20 January 2026.
[17] *Ibid.*

by a visible campaign where the risks of participation outweigh the hope for change. This integration of technology and tyranny represents the most significant evolution in electoral malpractice in the region to date.[18]

5. Kenya 2027: Navigating the rising tide of authoritarianism

Kenya has long been seen as the region's democratic anchor, yet its history of electoral violence, most notably in 2007 and 2017, remains a haunting precedent. As the 2027 election approaches, the water is rising to the ankles, and the indicators of democratic backsliding are becoming increasingly visible. The current legal anxiety in Kenya stems from the delayed reconstitution of the Independent Electoral and Boundaries Commission (IEBC). As of mid-2025, the commission faced significant hurdles in boundary delimitation and voter registration due to a lack of full commissioners, a situation that critics argue is a manufactured crisis intended to keep the electoral body weak and susceptible to executive influence.[19]

Furthermore, the regional diffusion of restrictive practices from Uganda and Tanzania suggests that the Kenyan executive may face the temptation to use similar tactics ahead of 2027. We are already seeing the weaponization of the Computer Misuse and Cybercrimes Act to silence online critics and the use of heavy-handed police tactics during public protests.[20] The legal community in Kenya is concerned that the Ugandanization of Kenyan politics, where the police and military are increasingly involved in domestic political management, could derail the 2027 polls before the first ballot is even cast. This shift threatens to undo the gains made by the 2010

Kenya remains formally a constitutional democracy, but growing use of security forces to suppress dissent, political pressure on institutions, legal harassment of critics, and a shrinking civic space point to democratic erosion and rising authoritarian tendencies rather than an outright dictatorship.

[18]Michael L Miller and Cristian Vaccari, 'Digital Threats to Democracy: Comparative Lessons and Possible Remedies' (2020) 25(3) The International Journal of Press/Politics 333.
[19]Moses Nyamori, 'Too Hot to Handle: Why IEBC Won't Review Electoral Boundaries Before 2027' (*Daily Nation*, 15 September 2025) https://nation.africa/kenya/news/too-hot-to-handle-why-iebc-won-t-review-electoral-boundaries-before-2027--5206812.
[20]'Kenya: New Cybercrime Amendments Threaten Online Expression' (Human Rights Watch, 7 November 2025) https://www.hrw.org/news/2025/11/07/kenya-new-cybercrime-amendments-threaten-online-expression.

Constitution, which sought to de-link the electoral process from the whims of the presidency.[21]

The Kenyan Judiciary, historically more independent than its regional counterparts, will be the final line of defense in 2027. However, the systematic underfunding of the judiciary and the aggressive political rhetoric against activist judges suggest a coordinated effort to weaken the very institutions meant to referee the contest. If the Supreme Court of Kenya, which famously nullified the 2017 presidential election, is intimidated into submission, the last legal guardrail against regional authoritarianism will fall.[22] The 2027 election will therefore not just be a test for Kenya, but a litmus test for whether the Kenyan model of constitutionalism can survive the rising tide of East African autocracy.

6. Regional obligations and the failure of the EAC Treaty

The tragedy of East African democracy is that the legal remedies already exist on paper, yet they remain largely dormant. The African Charter on Democracy, Elections and Governance (ACDEG), which Kenya and its neighbours have signed, mandates state parties to ensure transparent, free and fair elections and prohibits the unconstitutional change of government.[23] Scholars argue that this prohibition includes the legalistic subversion of democratic processes through the manipulation of constitutions to remove term limits or the use of law to exclude opposition. However, the African Union and the EAC Secretariat have shown a persistent reluctance to invoke these charters against sitting heads of state.

The failure also lies in the lack of enforcement by the East African Court of Justice (EACJ). While the EACJ has the mandate to interpret the EAC Treaty, which includes adherence to the principles of democracy, the rule of law, and social justice, member states have frequently ignored its decisions.[24] For instance, when the EACJ ruled against the Ugandan government's treatment of opposition members in the past, the response was a move by the summit of heads of state to restructure the court and limit its jurisdiction.[25] This judicial harassment at the regional level ensures that there is no higher authority to which a disenfranchised East African citizen can appeal.

7. Conclusion

The crisis of electoral integrity in East Africa is a crisis of the Rule of Law in its most fundamental sense. If the law is merely a tool for those in power to retain power, then the elections of 2025, 2026, and 2027 are not democratic exercises but sophisticated exercises in state capture. To prevent the complete erosion of the democratic project, there must be a move toward militant constitutionalism, where the legal profession, civil society, and regional bodies aggressively defend the procedural and substantive requirements of a fair vote. Without this, the region faces a future of ballots without freedom, where the act of voting is disconnected from the power to choose.

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[21] *Ibid.*
[22] *Ibid.*
[23] Wiebusch, Micha, Chika Charles Aniekwe, Lutz Oette, and Stef Vandeginste. "The African Charter on Democracy, Elections and Governance: past, present and future." *Journal of African Law* 63, no. S1 (2019): 9-38.
[24] Taye, Mihreteab Tsighe. "Human Rights, the Rule of Law, and the East African Court of Justice: Lawyers and the Emergence of a Weak Regional Field." *Temp. Int'l & Comp. LJ* 34 (2019): 339.
[25] Reichard, Cara. "The Logic of International Courts: An Exploration of the East African Court of Justice." (2015).

TAXED WITHOUT VOICE

Housing for who? A nation taxed, a people ignored

By Munira Ali Omar

22nd February 2024, betrayal marched calmly,
Through Parliament's doors, the record spoke plainly.
141 wenyenchi voted yes, as protests grew,
149 wenye viti stayed silent, as ordered kutoka juu.
Housing for who? Still nobody knows

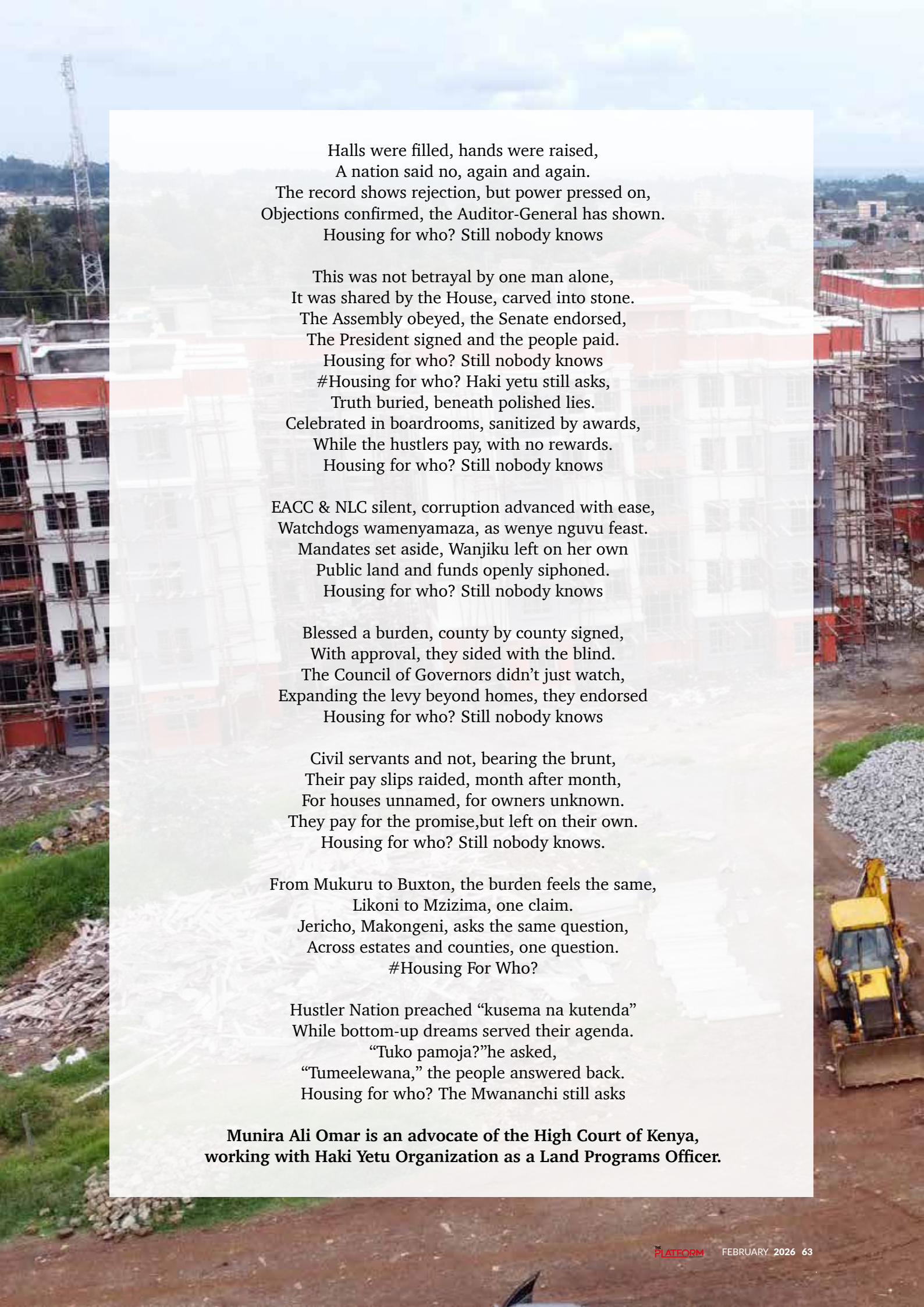
12th March 2024, in the Senate of the people,
Nine said yes, while the people said no.
While Katiba is clear, power belongs to the people
Democracy paused, despite the will of the people,
Housing for who? Still nobody knows

19th March 2024, the president's ink declared the war,
A bill pushed through, despite resistance raised before,
Victory claimed by power, sealed in law,
Shifting the burden to those without a voice.
Housing for who? Still nobody knows

He speaks of Singapore as the final destination,
Yet bypass the rules that guided its vision.
Called us wajinga for doubting, our dissent deemed dumb,
Wages taxed for a vision spoken, not seen.
Housing for who? Still nobody knows

They spoke of affordability and dignity,
While imposing deductions with impunity.
They promised housing for all, hustler included
Then taxed his survival, deliberately excluded.
Housing for who? Still nobody knows

They said it was maendeleo, necessary and right,
When people questioned, force replied,
When wananchi asked, "Housing For Who?"
The answer came in uniform, our voices silenced too
Housing for who? Still nobody knows



Halls were filled, hands were raised,
A nation said no, again and again.
The record shows rejection, but power pressed on,
Objections confirmed, the Auditor-General has shown.
Housing for who? Still nobody knows

This was not betrayal by one man alone,
It was shared by the House, carved into stone.
The Assembly obeyed, the Senate endorsed,
The President signed and the people paid.
Housing for who? Still nobody knows
#Housing for who? Haki yetu still asks,
Truth buried, beneath polished lies.
Celebrated in boardrooms, sanitized by awards,
While the hustlers pay, with no rewards.
Housing for who? Still nobody knows

EACC & NLC silent, corruption advanced with ease,
Watchdogs wamenyamaza, as wenye nguvu feast.
Mandates set aside, Wanjiku left on her own
Public land and funds openly siphoned.
Housing for who? Still nobody knows

Blessed a burden, county by county signed,
With approval, they sided with the blind.
The Council of Governors didn't just watch,
Expanding the levy beyond homes, they endorsed
Housing for who? Still nobody knows

Civil servants and not, bearing the brunt,
Their pay slips raided, month after month,
For houses unnamed, for owners unknown.
They pay for the promise,but left on their own.
Housing for who? Still nobody knows.

From Mukuru to Buxton, the burden feels the same,
Likoni to Mzizima, one claim.
Jericho, Makongeni, asks the same question,
Across estates and counties, one question.
#Housing For Who?

Hustler Nation preached "kusema na kutenda"
While bottom-up dreams served their agenda.
"Tuko pamoja?"he asked,
"Tumeelewana," the people answered back.
Housing for who? The Mwananchi still asks

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Caspian Sea desiccation: Implications and policy options for Azerbaijan

By Samir Chowdhury

By Clemence Mutegeri

By Amrin Akter

Introduction

People sometimes imagine climate change as a problem for other places, other communities, other futures, not as something unfolding before us. Yet in the heart of Eurasia, the Caspian Sea, long seen as a bridge between Europe and Asia, is shrinking in silence. Its desiccation has become one of the paradoxes of the modern climate era. While seas and oceans rise across the world, the planet's largest enclosed body of water is retreating.[1] Climate projections indicate that the Caspian Sea could decline by 8–20 meters by the end of the century as evaporation continues to outpace inflow across the basin. At these levels, the northern Caspian basin would dry out completely and the Sea's overall surface area would shrink dramatically.[2]

For decades the five littoral states focused on drawing borders, calculating energy reserves, and negotiating access, but they overlooked the most basic resource, the water itself. Years of legal disputes over seabed division, competition for hydrocarbon deposits, and the failure to establish an effective cooperative framework illustrate how geopolitical priorities repeatedly overshadowed ecological responsibility.[3] As the shoreline pulls back, it becomes clear that diplomacy without action cannot secure the basin. The crisis facing the Caspian is environmental and civilizational.

Domestic social and policy implications

The retreat of the Caspian Sea is no longer an abstract projection. It is already reshaping Azerbaijan's coastline in visible and costly ways. Along Baku's waterfront,

[1]Ella Goodman, *Climate Change Is Fast Shrinking the World's Largest Inland Sea*, The Conversation (Sept. 15, 2025), https://theconversation.com/climate-change-is-fast-shrinking-the-worlds-largest-inland-sea-265239
[2]Rishav Samant & Matthias Prange, *Climate-Driven 21st Century Caspian Sea Level Decline Estimated from CMIP6 Projections*, 4 Communications Earth & Environment 369 (2023), https://doi.org/10.1038/s43247-023-01017-8
[3]Douwe van der Meer & Julian Postulart, *Receding Waters, Rising Challenges: Navigating the Caspian Sea's Geopolitical Moment*, The Diplomat (Jan. 23, 2025), https://thediplomat.com/2025/01/receding-waters-rising-challenges-navigating-the-caspian-seas-geopolitical-moment

Caspian Sea desiccation is becoming one of the world's most serious — and least talked-about — environmental crises. The Caspian Sea is often compared to the Aral Sea disaster — but on a much larger scale. Its desiccation would represent a planetary-scale warning about climate change, water mismanagement, and regional inaction.

the shoreline continues to pull back, while the Port of Alat increasingly depends on continuous dredging, reinforcement, and redesign to maintain the depth required for shipping. These changes raise logistical costs, slow operations, and place growing pressure on port management and coastal infrastructure.[4] Environmental degradation adds a deeper layer of domestic strain. As the waterline recedes, long-buried Soviet-era industrial debris and oil residues are exposed to the air. Toxic dust is carried into populated areas across the Absheron Peninsula, increasingly burdening public health in Azerbaijan's economic and demographic core. Doctors are already reporting higher rates of respiratory illness in districts nearest the exposed seabed.[5] This pattern echoes the Aral Sea catastrophe, where exposed seabed sediments created toxic dust with long-term health and agricultural impacts.

The ecological consequences are equally severe. Shrinking shallow zones have disrupted fisheries and undermined local livelihoods along Azerbaijan's coast. Humbatova shows that rapid changes in salinity, concentrated pollution, and unstable shorelines are degrading coastal landscapes and marine resources.[6] Industrial discharge, agricultural runoff, and untreated wastewater entering the Kura, Araz, and other rivers frequently exceed permissible

[4]Caspian Post, *Impact of the Shrinking Caspian Sea on People and Nature* (Apr. 12, 2024), https://caspianpost.com/environment/impact-of-the-shrinking-caspian-sea-on-people-and-nature

[5]Kazemi, *The Negative Consequences of the Declining Water Level in the Caspian Sea*, Institute for Political and Strategic Studies (IPSC) (Mar. 5, 2025), https://peace-ipsc.org/2025/03/05/the-negative-consequences-of-the-declining-water-level-in-the-caspian-sea

[6]Saadat Humbatova, Gunay Abbasova & Mubariz Humbatov *the Impact of the Environmental Situation on the Landscapes of the Caspian Sea Coast's Azerbaijan*, 151 BIO Web of Conferences 02005, at 2 (2025), https://doi.org/10.1051/bioconf/202515102005

concentration limits, intensifying ecological stress.[7] As river flow declines under rising temperatures, pollutants become more concentrated, reducing the Sea's ability to dilute contamination and accelerating long-term degradation. Recent scientific evidence confirms that these pressures are already producing ecosystem collapse. A 2025 study in *Communications Earth & Environment* finds that the Caspian is losing critical habitats, particularly in shallow areas such as Azerbaijan's Ghizil Agaj Bay. Fixed protected zones are no longer effective, as coastlines are shifting horizontally by several kilometers. Species dependent on specific depths, including sturgeon, benthic organisms, and migratory birds, face rapid population decline unless conservation planning becomes adaptive to changing shorelines.[8] Declining flows in the Kura and Araz rivers further intensify these challenges. Reduced discharge concentrates pollutants and weakens the Sea's capacity to regenerate. In some locations, the Caspian has even begun feeding the lower Kura, reflecting serious hydrological imbalance documented in recent assessments. As traditional livelihoods shrink with the retreating shoreline, fishing households, port workers, and small coastal communities face growing income instability. What began as an environmental problem is now becoming a sustained social and economic challenge inside Azerbaijan.

Taken together, these pressures force Azerbaijan to rethink domestic policy across multiple sectors. Infrastructure planning, coastal zoning, fisheries management, and environmental enforcement can no longer rely on assumptions of a stable sea level. Environmental decline is already translating into a growing public-health burden and an urgent need for coordinated domestic policy responses.

International and Regional Implications

The Caspian Sea's retreat extends far beyond domestic borders, as the maritime anchor of the Middle Corridor, forming the principal South Caucasus transport link connecting Central Asia and Europe. Declining water depth threatens vessel capacity, raises transport costs, and reduces transit reliability. Analysts warn that without structural adaptation, the competitiveness of east–west transit could fall sharply as the Caspian Sea becomes increasingly inaccessible.[9] The erosion of navigability also affects insurance costs, delivery timetables, and the overall viability of multimodal logistics. As channels narrow and shallow-water zones expand, maritime routes may become seasonally inaccessible, raising the likelihood of bottlenecks and higher insurance premiums.

Energy operations face similar challenges, as falling water levels complicate access to offshore hydrocarbon platforms, where support vessels face draft limitations and greater operational risk. The broader regional landscape is marked by growing geopolitical fragility. A shrinking Caspian undermines stability, complicates trade diplomacy, and elevates the need for coordinated governance. If current trends continue, parts of the maritime segment of the Middle Corridor may become seasonal or low-draft waterways by the mid-2030s, reducing projected 2030 transit volumes by 15–25 percent and weakening EU Global Gateway and U.S. PGII investments. This would diminish regional competitiveness and increase strategic uncertainty for all littoral states.

[7] Id. at 6 & 9.
[8] R. Court et al., *Rapid Decline of Caspian Sea Level Threatens Ecosystem Integrity, Biodiversity Protection, and Human Infrastructure*, Communications Earth & Environment 6 (2025), https://doi.org/10.1038/s43247-025-02212-5
[9] Der Meer, J., & Postulart, A., *Receding Waters, Rising Challenges: Navigating the Caspian Sea's Geopolitical Moment*, The Diplomat (Jan. 23, 2025), https://thediplomat.com/2025/01/receding-waters-rising-challenges-navigating-the-caspian-seas-geopolitical-moment

The Caspian Sea is also central to the security of the five littoral states. Iran's naval activity in the Caspian Sea and the Persian Gulf shows the importance the country places on maritime presence as a symbol of power.[10] Environmental change adds further sensitivity, as even minor shifts in shoreline geometry can revive debates about boundaries and resource rights, a dynamic heightened by Iran's continued non-ratification of the Convention on the Legal Status of the Caspian Sea (CLSCS). Iran's expanded patrols around Bandar Anzali reflect growing concern over sediment exposure, altered channels, and changing access routes.[11] These developments illustrate how environmental change can rapidly evolve into strategic uncertainty.

Legal and governance challenges

The Convention on the Legal Status of the Caspian Sea (CLSCS) establishes fixed territorial waters, fishing zones, and seabed sectors for each littoral state. Under Articles 6–9, the five riparian states enjoy exclusive sovereign rights over a 15-nautical-mile territorial zone, including the seabed, subsoil, and airspace, as well as a 10-nautical-mile exclusive fishing zone.[12] While this framework protects national sovereignty and stabilizes interstate relations, it also insulates the Caspian from international environmental scrutiny and leaves key ecological responsibilities weakly regulated.

Although the Convention assigns environmental responsibility to the littoral states under Articles 3(13), 3(14), 11(8)(f), 14, and 15, it does so without binding obligations on hydrological management, coordinated responses to desiccation, or river-basin governance. International organizations are largely excluded, creating a gap between legal form and environmental reality as the Sea continues to retreat. River governance exposes these weaknesses most clearly. The Kura and Araz rivers lack a fully developed international river regime, limiting basin-wide planning despite their importance for inflow.[13] More critically, over 80 percent of Caspian inflow originates from the Volga and Ural rivers, yet basin-wide governance remains fragmented.[14] The Volga, which provides the overwhelming majority of inflow, remains under Russia's exclusive jurisdiction rather than an international river framework, restricting Azerbaijan's ability to influence basin stability. As a result, scholars often analyse Caspian governance through a prisoner's-dilemma framework, where unilateral economic incentives discourage sustained cooperation.[15] Each state seeks to maximize benefits from hydrocarbons, fisheries, and transport routes, yet the absence of enforceable cooperation accelerates environmental degradation, pollution, and regional tension.

The baseline debate further complicates governance. An ambulatory baseline system could destabilize jurisdictional claims over seabed resources, leading Azerbaijan to favor fixed baselines despite changing shorelines. The Tehran Convention represents an important step toward regional environmental cooperation, but it lacks effective dispute-resolution

[10]Paul Goble, *Iran Expanding Its Naval Presence in the Caspian*, Jamestown Foundation (May 28, 2020), https://jamestown.org/program/iran-expanding-its-naval-presence-in-the-caspian
[11]Id.
[12]Convention on the Legal Status of the Caspian Sea arts. 6–9, Aug. 12, 2018.
[13]Labardini & Baghirova, *Desiccation in the Caspian Sea: On the Need to Implement Domestic and Regional Countermeasures*, IDD Policy Brief 7 (2023), https://idd.az/media/2024/01/12/idd_policy_brief_-_labardini-baghirova_22_december.pdf
[14]R. Court et al., *Rapid Decline of Caspian Sea Level Threatens Ecosystem Integrity, Biodiversity Protection, and Human Infrastructure*, 6 Communications Earth & Environment (2025), https://doi.org/10.1038/s43247-025-02212-5
[15]Orazgaliyev & Araral, *Conflict and Cooperation in Global Commons: Theory and Evidence from the Caspian Sea*, Int'l J. Commons (2019), https://thecommonsjournal.org/articles/10.5334/ijc.914

mechanisms, binding compliance tools, and robust monitoring systems.[16] Without reform introducing enforceable cooperation and improved river-basin governance, the Caspian littoral states risk competing over diminishing resources in a Sea that is steadily disappearing.[17]

Short, medium, and long-term policy measures

Short-term policy measures

With the growing environmental and regional challenges facing the Caspian Sea, action can no longer be delayed if the Sea is to be protected for future generations. In the short term, expert committees composed of representatives from the riparian states must be established to monitor changes in water levels, exchange information, and prepare climate-impact assessments. This is necessary because governance at the national, regional, and international levels has so far failed to respond effectively to Caspian desiccation, and adaptation measures remain largely unimplemented. Public organizations, such as the Association of Universities and Research Centers of the Caspian States, along with independent research and investigation groups, should be actively involved in early-warning and monitoring mechanisms.

At the national level, Azerbaijan must prioritize stabilizing its coastal ecosystems through stronger governance and enforcement. Research shows that rivers flowing into the Caspian frequently exceed maximum permissible pollution levels due to industrial waste, agricultural runoff, petroleum residues, and untreated domestic discharge.[18] Rising temperatures further reduce river inflow, weakening the Sea's capacity to dilute contaminants and accelerating ecological degradation.[19] If these trends continue unchecked, near-shore ecosystems are likely to disappear. Short-term government action should therefore focus on pollution control, including the installation of real-time water-quality monitoring stations on key rivers such as the Kura, Araz, and Samur.[20] Monitoring must be paired with legal enforcement to ensure compliance and accountability.

Early action is especially important because sea-level decline does not only reduce water levels vertically but also reshapes coastlines horizontally, allowing ecological and infrastructural damage to spread faster than anticipated.[21]

Medium-term policy measures

In the medium term, Azerbaijan should focus on biodiversity protection and adaptive spatial planning in response to a retreating shoreline. Many marine protected areas were created under the assumption that the Caspian Sea's water level would remain stable. However, scientific evidence shows that as the Sea level declines by several kilometers, coastlines shift horizontally, making fixed marine protected areas increasingly ineffective.[22] This change increases the vulnerability of species that depend on specific depths,

[16]A. Bayramov, *The Reality of Environmental Cooperation and the Convention on the Legal Status of the Caspian Sea*, 39 Central Asian Survey 500–519 (2020), https://doi.org/10.1080/0234937.2020.1815653.
[17]T. Butylina et al., *The Path from Origins to Organizing Regional Nature Protection Cooperation Activities of the Caspian States for the Protection of the Caspian Sea Marine Environment*, Tehran Convention Secretariat / UNEP / GEF / UNDP / World Bank (2003).
[18]Saadat Humbatova, Gunay Abbasova & Mubariz Humbatov, *The Impact of the Environmental Situation on the Landscapes of the Caspian Sea Coast's Azerbaijan*, 151 BIO Web of Conf. 02005, at 2 (2025), https://doi.org/10.1051/bioconf/202515102005
[19]Id. at 2.
[20]Id. at 9.
[21]Prange, Wilke & Wesselingh, *The Other Side of Sea Level Change*, Communications Earth & Environment 1(69), at 3 (2020), https://www.nature.com/articles/s43247-020-00075-6
[22]R. Court et al., *Rapid Decline of Caspian Sea Level Threatens Ecosystem Integrity, Biodiversity Protection, and Human Infrastructure*, Communications Earth & Environment 6 (2025), at 9, https://doi.org/10.1038/s43247-025-02212-5

Kazakhstan's President Kassym-Jomart Tokayev

while shallow ecosystems experience the most severe habitat loss.[23] Ghizil-Agaj Bay already illustrates this pattern, with significant degradation documented in its shallow zones.[24] To address this challenge, Azerbaijan should adopt dynamic conservation planning that allows protected areas to shift over time in line with shoreline change.[25] Such an approach would help protect future habitats rather than only those that exist today. At the same time, medium-term planning must anticipate conflicts between ecosystem conservation and the relocation of ports, shipping routes, and coastal infrastructure.

At the regional level, the medium term also requires new mechanisms and the renegotiation of existing legal frameworks. This includes the Tehran Convention, its Aktau, Moscow, Ashgabat, and Glasgow Protocols, as well as the 2018 Convention on the Legal Status of the Caspian Sea. Introducing enforceable obligations that directly address desiccation is essential, particularly given that territorial waters and fishing zones are still defined using fixed baselines tied to a retreating waterline.[26] Current assessments further indicate that regional cooperation remains fragmented and largely declaratory, highlighting the need for stronger coordination and implementation.[27]

Long-term policy measures

In the long term, the desiccation of the Caspian Sea must be treated as a shared regional challenge rather than a purely national issue. No single littoral state can resolve this crisis alone. Regional discussions, including conferences held in Dushanbe, have highlighted this reality, where Kazakhstan's President Kassym-Jomart Tokayev proposed the establishment of a new system to ensure environmental cooperation in the Caspian basin.[28] Regional reporting shows that the Caspian Sea has already lost more than 31,000 km² of its surface area since 2006, with serious consequences for ports, fisheries, and trade routes across the region.[29] Shrinking water levels are already affecting Iran's port of Bandar-e Anzali, raising concerns for Russia's North–South trade corridor, and increasing risks for Azerbaijan's Baku-Alat port.[30] This has expanded the crisis beyond

[23]Id. at 7.
[24]Id. at 7.
[25]Court et al., supra note 22, at 9
[26]Labardini & Baghirova, *Desiccation in the Caspian Sea: On the Need to Implement Domestic and Regional Counter measures*, IDD Policy Brief, at 7 (2023), https://idd.az/media/2024/01/12/idd_policy_brief_-_labardini-baghirova_22_december.pdf
[27]United Nations Environment Programme (UNEP) & DHI Centre on Water and Environment, *Caspian Sea Fluctuations and Climate Change: Coordinated Research Is Needed* 14 (Nov. 2024), https://unepdhi.org/wp-content/uploads/sites/2/2024/11/Caspian_Sea_working_paper.pdf
[28]Kazakhstan Leads Regional Efforts to Save the Caspian Sea, *Times of Central Asia* (Oct. 17, 2025), https://timesca.com/kazakhstan-leads-regional-efforts-to-save-the-caspian-sea
[29]*Id.*
[30]*Id.*

Baku Azerbaijan. The shrinking Caspian Sea is not just an environmental issue—it's a national security and economic threat. The country must balance immediate protective measures with long-term planning, while pushing for a regional strategy to address root causes (climate change and river water diversion). How Azerbaijan adapts could serve as a model—or a warning—for other Caspian nations facing the same crisis.

environmental damage to include economic and strategic risks, with some researchers drawing parallels to the Aral Sea.[31]

Addressing this challenge requires a joint Caspian program in which all littoral states coordinate to preserve water resources and monitor transboundary rivers. Kazakhstan's proposal to establish a permanent regional platform involving the Caspian-five, together with international actors such as the United Nations and the World Bank, offers a practical framework for long-term cooperation on hydrology, scientific research, infrastructure planning, and ecosystem restoration.[32] Azerbaijan should actively support and participate in this process. Satellite-based monitoring systems could further strengthen cooperation by providing real-time data on sea-level change and environmental conditions.[33]
At the same time, long-term resilience requires deeper structural transformation. Economic diversification and a gradual shift away from oil-dependent sectors are essential, alongside the creation of a more integrated ecological system and resilient development strategies for coastal communities. Strict pollution taxes and price-control measures should be introduced to discourage environmentally harmful practices. In addition, the establishment of a supranational body, with representatives from both the Caspian-five and the wider international community, is necessary to redefine the status of the Caspian, adopt legally binding decisions, and introduce enforcement and punishment mechanisms. This need for coordinated, science-based governance is reinforced by recent UNEP assessments, which emphasize that fragmented national responses are insufficient to manage climate-driven Caspian Sea fluctuations over the long

[31] *Id.*
[32] Kazakhstan Leads Regional Efforts to Save the Caspian Sea, *Times of Central Asia* (Oct. 17, 2025), https://timesca.com/kazakhstan-leads-regional-efforts-to-save-the-caspian-sea/.
[33] *Id.*

The shrinking of the Caspian Sea is a serious and accelerating environmental crisis, driven primarily by climate change and human water use.

term.[34] Strengthening institutional relations through scientific exchanges and closer links between regional environmental frameworks is equally important.

Conclusion

The shrinking Caspian is not just an ecological alarm, but a moment that challenges the states to see beyond their own borders. If every nation waits for another to act, the Sea will keep disappearing, and they will inherit nothing left to defend. What this region needs most urgently is something very simple but also very difficult: honest diplomacy and shared responsibility, a vision of the Caspian as a living common rather than a map to be divided. Only then can cooperation be possible, and only then does the Caspian stand a chance of survival. For the countries of the basin, it is an opportunity to redefine what it means to be a regional leader, not dominance but stewardship. The states that take the first steps will be remembered not for what they controlled, but for what they preserved.

Scientific projections for 2020–2025 indicate that desiccation of the Caspian is not a temporary aberration. Persistent decline in river flow, warmer temperatures, accelerated evaporation, and heightened ecological volatility are precipitating a long-term regime shift that is already reconfiguring the basin and placing Azerbaijan at the geographic and economic center of the first impacts. Ports, fisheries, energy transit corridors, and coastal communities are already struggling to adapt to the Sea's regression. It is time to rethink how regional leadership is being exercised. The Caspian is a transboundary hydrological system; its pollution is a shared burden, and its biodiversity cannot be apportioned by lines on a map. It will continue to degrade without concerted policy on river-flow regulation, pollution thresholds, habitat protection, and real-time monitoring. Azerbaijan is at a crossroads. It can do nothing and watch the region become another story of environmental decline and accelerated economic and geopolitical volatility, or it can act and position itself as a leader of a regional cooperation effort that could serve as a model for shared responsibility in the age of climate disruption.

The opportunity to choose a different future is slight but still there. Institutions capable of governing a shrinking sea are urgently needed, institutions built for flexible coastlines rather than thin borders, with common goals, clear environmental regulations, and a basin-wide fund for managing the region's disaster. What is lost next will depend on whether states act now, or only when there is nothing left to save.

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[34]United Nations Environment Programme (UNEP) & DHI Centre on Water and Environment, *Caspian Sea Fluctuations and Climate Change: Coordinated Research Is Needed to Understand How Climate Change Is Impacting Caspian Sea Levels* 14 (Nov. 2024), https://unepdhi.org/wp-content/uploads/sites/2/2024/11/Caspian_Sea_working_paper.pdf.

The beacon and the blunder: Critiquing the EACJ's inconsistent path to regional integration

By Alvin Kubasu Oola

Introduction

Since its inauguration in 2001, the East African Court of Justice (EACJ) has been at the forefront of championing compliance with the Treaty establishing the East African Community (the EAC Treaty) and other regional instruments by holding member states accountable and promoting access to justice.[1] The Court's boldness has often been met with discontent by member States, who have deployed tactics to instill fear in the judges, curtail the Court's powers, or frustrate the Court's operations altogether.[2] This was evident in the 2006 *Anyang Nyong'o case*, the EACJ, after making a proclamation that was unpopular with the Kenyan government, the latter sponsored a motion that sought to amend the treaty, introducing provisions on, first, the removal of a judge from office, second, the introduction of the appellate chamber, and lastly, the introduction of the two – month time limit within which complaints must be lodged before the court.[3]

Despite this, the Court remained unfazed and in 2007 delivered one of the most consequential decisions yet. The EACJ lacks express human rights jurisdiction; however, in *James Katabazi v Secretary General of the East African Community*, the Court stated that it will not abdicate its duty just because the issues before it were of human rights in nature.[4] This decision opened the pearly gates of the Court, allowing any and every issue to trend through the corridors of justice, provided the complainant can frame it as a treaty violation (most commonly a violation of the rule of law or the good governance principle). Consequently, the court has positioned itself as a primary public interest litigation avenue in the region.[5] In a region where the rule of law remains aspirational, the EACJ has been a key line of defence bridging the gap between aspiration and realization. From the legislature to the judiciary and even the executive, the EACJ has not shied away from weighing their actions against the EAC treaty and its protocols to ascertain compliance.

[1]Prof. Tomasz P. Milej, 'Human Rights Protection by International Courts – What Role for the East African Court of Justice?' (2018) 26(1) *African Journal of International and Comparative Law* 108.
[2]Ibid
[3]A P van der Mei, 'The East African Community: The Bumpy Road to Supranationalism – Some Reflections on the Judgments of the Court of Justice of the East African Community in Anyang' Nyong'o and others and East African Law Society and others' (2009) Maastricht Faculty of Law Working Paper 2009-7.
[4]James Katabazi and 21 Others v Secretary General of the East African Community and Attorney General of Uganda (EACJ, 1 November 2007) Reference No 1 of 2007, Par 39
[5]Prof. Tomasz P. Milej, 'Human Rights Protection by International Courts – What Role for the East African Court of Justice?' (2018) 26(1) *African Journal of International and Comparative Law* 108.

While this is encouraged and in fact welcomed, in the recent past, there has been a creeping concern. Not only does the Court enjoy a wide subject matter jurisdiction, but also whenever a complainant waves the 'treaty is being violated flag,' the court's hammer (almost immediately) falls against the member State irrespective of the consequences that these decisions present.

This article highlights this concern, critiquing the EACJ's decision in *Centre for Law Economics and Policy of East African Integration v Attorney General of Kenya*,[6] and where that leaves the implementation of the Kenya-EU Economic Partnership Agreement (EPA).

The Kenya- EU Economic Partnership Agreement

The Kenya-EU Economic Partnership Agreement was signed in December 2023 and came into force in July 2024.[7] The agreement paved way for what the European Commission described as the most ambitious trade agreement entered into with a developing country.[8] The agreement was praised for its sustainability provisions on climate and environmental protection, labour rights and gender equality.[9]

The agreement provided duty and quota-free European Union (EU) market access for Kenyan exports. In return, Kenya was to work towards a gradual tariff reduction of imports from the EU.[10] This was a welcomed reprieve, especially for Kenya. According to the World Trade Organization's (WTO) 2023 Trade Profile, Kenya's share in the world exports in 2021 was 0.03%.[11] Juxtaposing this with the fact that imports were higher than exports, leading to increased pressure on the shilling,[12] there was a need to further exploit international trade prospects.

While traders from both Kenya and the EU have, for the past year, reaped the fruits of this agreement, its story is far from linear as it appears. To comprehend the intricacies involved, one has to dive into the past. In 2000, the European Union (then the European Community) entered into a partnership treaty with 79 African, Caribbean and Pacific (ACP) countries.[13]

The partnership treaty aimed at, poverty eradication, supporting sustainable economic, social and cultural development and helping the progressive integration of the partner countries' economies into the world economy.[14] To this end, the Cotonou Agreement was based on the principles that the partner countries were to determine their own development policies and that the cooperation arrangements and priorities varied according to the country's level of development.

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[6]Centre for Law Economic and Policy of East African Integration (CLEP East Africa) v Attorney General of the Republic of Kenya & Another (Application No. 7 of 2024 (Arising from Reference No. 10 of 2024)) [2025] EACJ 10 (24 November 2025) (First Instance Division).

[7]Tom O. Onyango, 'An Overview of the EU-Kenya Economic Partnership Agreement (EPA)' https://www.tripleoklaw.com/an-overview-of-the-eu-kenya-economic-partnership-agreement-epa/ accessed 6 December 2025.

[8]Gabriele Rugani, *The Economic Partnership Agreement between the European Union and the Republic of Kenya: an example of "variable geometry" approach* (AISDUE, May 2024) https://www.aisdue.eu/wp-content/uploads/2024/05/Rugani-BlogDUE.pdf accessed 6 December 2025.

[9]Ibid

[10]Economic Partnership Agreement between the European Union and Kenya (text of the agreement, European Commission) https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/east-african-community-eac/eu-kenya-agreement/text-agreement_en accessed 6 December 2025.

[11]World Trade Organization (WTO), Trade Profiles 2023 (PDF, October 2023

[12]Tom O. Onyango, 'An Overview of the EU-Kenya Economic Partnership Agreement (EPA)' https://www.tripleoklaw.com/an-overview-of-the-eu-kenya-economic-partnership-agreement-epa/ accessed 6 December 2025.

[13]European Union, 'Cotonou Agreement: summary' (EUR-Lex) https://eur-lex.europa.eu/EN/legal-content/summary/cotonou-agreement.html

[14]Ibid

Since the Cotonou Agreement promoted preferential trade between the EU and the ACP countries, its application would violate the most-favoured-nation principle (MFN) under the General Agreement on Trade and Tariffs (GATT). This principle requires that any preferential trade treatment to any WTO member should be extended to all members (immediately and) unconditionally.[15] To circumnavigate this, the Cotonou agreement included a clause that allows the EU to get into different EPAs, with the ACP countries subgroups.

Flowing from this, the Kenya-EU EPA was initially negotiated between the EU and the EAC Partner States. It was seen as a bloc–to–bloc agreement, thus it can only come into force upon ratification by all EAC partner States.[16] This was, however, frustrated by the lacklustre approach of the partner States, with Rwanda being the only country that had ratified the agreement. To put perspective on the reluctance of the other partner States, several factors have to be considered.

First, the UN, since 1971, has been identifying countries that are disadvantaged in their development process, categorizing them as Least Developed Countries (LDCs).[17] Countries in this category face a higher risk of remaining in this predicament of underdevelopment. Second, with a view to alleviating LDCs and integrating them into the multilateral trading system while increasing their participation in world markets, the international community has put in place several measures. LDCs enjoy preferential market access for goods and services, flexibility to implement WTO rules and special priorities in trade-related technical assistance and capacity building.[18] Third, all the countries in the EAC region (in 2023) were categorized as LDCs but Kenya. This categorization allowed them to enjoy duty and quota-free access to the EU market; why should they then open up their markets to the EU? Consequently, Kenya sought the approval of other EAC partner States to proceed with the negotiations, which culminated in the signing of the agreement in 2023.

It is worth noting that, in line with the variable geometry principle in EAC law – a principle that allows member states to move forward with projects at different speeds;[19] the Kenya-EU EPA remains open to all EAC partner States.

The case in issue

The case was filed on the 15th of February 2024, with the applicant arguing that the Kenya-EU EPA violated key EAC law instruments, including Article 37 of both the Customs Union and Common Market Protocols. Thus, the applicant sought interim injunction orders to stop the implementation of the EPA. They argued that if the EPA is allowed to continue being implemented, the reference would become moot since the harm would be irreparable.[20]

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[14]Ibid

[15]General Agreement on Tariffs and Trade 1994 (GATT 1994), art 1(1)

[16]Gabriele Rugani, *The Economic Partnership Agreement between the European Union and the Republic of Kenya: an example of "variable geometry" approach* (AISDUE, May 2024) https://www.aisdue.eu/wp-content/uploads/2024/05/Rugani-BlogDUE.pdf accessed 6 December 2025.

[17]United Nations Conference on Trade and Development (UNCTAD), 'Least Developed Countries' https://unctad.org/topic/least-developed-countries accessed 6 December 2025

[18]World Trade Organization (WTO), 'Boosting trade opportunities for least developed countries: Progress over the past ten years and current priorities' (January 2022)

[19]Patricia Achieng Ouma, 'The EU – EAC Economic Partnership Agreement Standoff: The Variable Geometry Question' (AfronomicsLaw, 30 May 2019)

[20]Centre for Law Economic and Policy of East African Integration (CLEP East Africa) v Attorney General of the Republic of Kenya & Another (Application No. 7 of 2024 (Arising from Reference No. 10 of 2024)) [2025] EACJ 10 (24 November 2025) (First Instance Division).

The EACJ is primarily tasked with ensuring the adherence to law in the interpretation, application, and compliance with the Treaty for the Establishment of the East African Community (1999). It serves as the guardian of the EAC legal order, similar to how the European Court of Justice functions for the EU.

In its analysis, the Court invoked the test established in *Francis Ngaruko v Attorney General of Burundi*.[21] The Court found that, first, the reference raised serious questions before it on the violation of the EAC treaty. Second, the applicant demonstrated a potential risk of irreparable harm. The EPA included environmental and biodiversity aspects, which, if affected, cannot be rectified through compensation. Consequently, the Court was satisfied that the test was met and issued an injunction staying the implementation of the EPA.

At the heart of the reference is the question of whether Kenya's actions are in line with the variable geometry principle or whether Kenya violated Article 37 of the Customs Union and Common Market Protocols. Article 37 of the Customs Union Protocol requires notification to Partner States when concluding a separate trade agreement with a third party.[22] The concern, therefore, is that if Kenya negotiated the EPA as a 'new agreement' it will be detrimental not only to the common external tariff but also the bargaining power (collective) of the EAC Customs Union.

These are valid concerns, and I dare say central to the realization of regional integration. However, looking back at the historical background of the EPA leads to the conclusion that the Court cherry-picked the provisions of the law to rely on before rendering its decision. It is not the first time that the court has faced this criticism; in the recent past, it has become a common feature, starting with an end in mind, and selectively picking provisions that support the preconceived conclusion.[23]

For an institution that is pivotal towards the realization of the goals and aspiration of regional integration, the EACJ's decisions fail to exemplify the broader scope of the action in issue while weighing them against the consequences of their decision. The Court is acting like a power broker, out to flex its muscles and attract attention rather than exploring the salient authority as the glue of the region. Every time an applicant cries foul, the Court will quickly dash to their side, finding the Respondent's action in violation of the treaty with little regard to the economic, political or jurisprudential consequences.

In the instant case, the 2025 Kenya National Bureau of Statistics survey noted that there has been a 4.5% increase in exports to the EU, from Kes 150.1 billion in 2023 to 156.9 billion in 2025.[24] With the Court suspending the EPA on what would in principle be a technicality, the Kenya-EU trade becomes an uncertain venture, effectively reducing investors' confidence in the industry and export sectors.[25]

[21]Francis Ngaruko v Attorney General of the Republic of Burundi (EACJ, Ref No 2 of 2012, 29 April 2014).
[22]East African Community, *Protocol on the Establishment of the East African Community Customs Union* (2004) art 37.
[23]Owiso Owiso, *'Supremacy Battle between the Supreme Court of Kenya and the East African Court of Justice: A Reply to Dr. Harrison Mbori'* (Afronomicslaw, 7 June 2024).
[24]Kenya National Bureau of Statistics, 2025 Economic Survey (2025)
[25]ALN Kenya, *East African Court of Justice Stays Implementation of Kenya-EU Partnership Agreement*, Legal Alert (PDF, December 2025)

This case should be distinguished from the 2022 case of *Christopher Ayieko and another v Attorney General of Kenya and another*. In this case, the bone of contention was that Kenya had unilaterally initiated negotiations with the USA on a free trade agreement without involving other EAC Partner States. The Court, in finding Kenya in violation of Article 37 of the Customs Union Protocol, faulted Kenya for not involving the other partner States and seeking their input as the law requires.[26] Subsequently, the free trade agreement was declared illegal, null and void.

Contrasting the two decisions, it is evident that in the latter decision, Kenya had not adhered to the legal requirements, and the court was warranted to stop Kenya from proceeding. However, in the former case, it was the Partner States who had hindered the process, prompting Kenya to act still in conformity with the law, yet the resultant agreement was still stopped by the Court.

When the EACJ arrives at the same conclusion for two materially different cases, it is not accountability and promoting the rule of law; it is shooting the region in its foot, as this creates uncertainty in trade relations. The suspension complicates the EAC-EU strategic engagement. The Kenya-EU EPA was meant to form the foundational basis for a regional agreement.[27] Instead, the EU has to backtrack and monitor EAC's internal processes before any further engagement. As parties prepare for the main hearing of the reference, all eyes are on the EACJ Appellate Division as Kenya seeks to set aside the injunction.

In conclusion, this article does not seek to diminish the EACJ's vital role as a guardian of the Treaty. Its history of holding

Relations between the European Union (EU) and the East African Community (EAC) are among the most structured and comprehensive of the EU's partnerships with regional economic communities in Africa. They are built on a long history of cooperation, shared strategic interests, and a complex mix of trade, development, and political dialogue.

powerful States to account is a cornerstone of EAC integration. However, the Court's decision in *CLEP v Attorney General of Kenya* exposes a critical flaw in its contemporary jurisprudence: a tendency towards legal formalism that prioritizes the fact of a potential treaty violation over the context and consequences of its ruling. By equating Kenya's EPA negotiated after years of regional inertia and under the principle of variable geometry with the unilateral action in the Ayieko case, the Court has created a damaging equivalence. The ensuing injunction does not merely pause an agreement; it undermines economic certainty, strains EU-EAC relations, and signals that the region's legal framework may punish proactive states caught in a collective action problem. For the EACJ to remain a credible beacon of hope, it must evolve from a reactive power broker into a strategic institution that weighs its hammer with an understanding of the economic and political foundations it seeks to protect.

Alvin Kubasu Oola is a lawyer

[26]Christopher Ayieko & Emily Osiemo v Attorney General of the Republic of Kenya & Secretary-General of the East African Community (Reference No. 5 of 2019) [2022] EACJ 38 (2 December 2022).
[27]ALN Kenya, *East African Court of Justice Stays Implementation of Kenya-EU Partnership Agreement*, Legal Alert (PDF, December 2025)

ALGORITHMS AUDIT YOU

Is Artificial Intelligence your new auditor?

By Agnes Nthenya Waithera

The audit profession is increasingly embracing Artificial Intelligence. We have seen use of machine learning and generative AI in audit cases. All Big Four firms are adopting the use of AI and from the outlook, subsequent future investment plans point to further development of this technology in the profession.

Firms are developing their own AI-powered audit platforms such as the Deloitte Omnia, Price Waterhouse Coopers.

Aura Platform, KPMG Clara and EY Helix. Some other AI incorporated software used in audit include Workiva and Mindbridge that enable analyzing and auditing of full data sets.

One notable case has been the use of machine learning which are models that can be trained to analyse data and predict patterns. PwC is an example of such a firm using machine learning algorithms to flag unusual transactions, making audit processes more data-driven and risk-focused.

IFAC has continually issued guidelines and updated standards as a result of evolving technology use. National bodies such as Financial Reporting Council (FRC) in the UK, which has significant influence, has also issued guidelines on use of AI for audit firms requiring documentation of how AI tools

AI is not your new auditor. It is your auditor's newest and most powerful toolkit. The essence of auditing—professional judgment, ethical responsibility, and providing assurance—remains a fundamentally human endeavor, now supercharged by artificial intelligence.

are evaluated, deployed and monitored to ensure audit quality.

Issuing of such AI specific guidance by FRC may have a trickle-down effect on audit firms as international firms involved in audit may not only adopt this in UK but subsequently standardize the process in their global operations. While not a regulatory practise, this may be considered standard best practise over time.

This further highlights the use of AI is going to have an impact on audit risk; inherent, control and detection. While it can directly and significantly reduce detection risk by methods such as allowing full population testing rather than sampling, the effect on inherent and control risk remains indirect as these require significant professional judgement. Although some of these risks cannot be fully eliminated, AI can contribute to a notable reduction in the overall audit risk.

Artificial Intelligence is not a replacement for human auditors, but it's rapidly becoming a transformative tool used by auditors to enhance their work. Think of AI less as a new auditor and more as a powerful new assistant that changes the nature of auditing.

We've seen implications where top audit firms have been slapped with significant fines for not having mitigated some of these risks. Some research data by Consulancy.uk. shows in the last 5 years, the big four have coughed up more than £100million in fines. With AI supported audit, there's potential to reduce such exposures saving financial and reputational damage suffered by such institutions.

There will be need for revised policies on risk assessment and mitigation plans to suit use of these technologies to ensure they are undergoing enough scrutiny not to compromise IESBA ethical principles by ensuring they are fit for purpose and confidentiality is maintained during their use especially with third-party support involvement.

The risk of overreliance on the technology remains imminent. If used end to end from auditing to forming an opinion, the resulting opinion may differ were professional judgement applied.

Auditors are regulated by IFAC so allowing a system to audit end to end including form an opinion would mean we are treating the system as though it were a regulated professional and could form judgement which is far from true.

It is important that auditors view it as a tool of work not as a final decision maker, at the end of the day this is a technology and may have bias based on the nature of transactions and its use should not replace professional judgement. Overreliance may be viewed as a violation of ethical code of conduct.

So, is Artificial Intelligence your new auditor? Yes and No, AI technologies should be used as a supportive tool to make the audit process easier and minimize the risks but not replace human oversight. Professional judgment and ethical responsibility still lie in the hands of the auditor.

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ADVANCE PAY DISPUTES

Anticipatory Salaries vs. Contractual Termination in Kenya: Case overview of Ngokonyo vs. Telkom

By Antony Makau Irungu

By Tracy Nawambisa

A. Introduction

The dispute in *Francis Waithaka Ngokonyo & 2 Others v. Telkom Kenya Limited*[1] originated over three decades ago, centring; on the premature retirement of three long-serving employees of the Kenya Posts and Telecommunications Corporation (KPTC), the predecessor to Telkom Kenya Limited. The appellants, Francis Waithaka Ngokonyo, Sudi Abdalla, and Andrew Muga, were seasoned professionals who had risen to senior managerial positions after decades of diligent service. The factual catalyst for the litigation occurred on July 19, 1991, when the appellants were placed on compulsory leave due to allegations of "persistent laxity," the specifics of which were never disclosed. Despite their attempts to seek an audience with the management, they were formally retired in the "public interest" on October 22, 1991. At the time of their retirement, the appellants were aged 41, 43, and 50, respectively well before the mandatory retirement age of 55.

Following their retirement, the appellants filed separate suits in 1992, which were eventually consolidated. In 2001, a High Court judgment in their favour was nullified by the Court of Appeal on technical grounds and remanded for re-hearing. In the second High Court proceeding, Havelock, J. ruled in 2013 that the retirement was unlawful, citing a breach of the principles of natural justice and specific internal regulations that required the Managing Director to allow employees to make representations before such retirement. The High Court awarded the appellants substantial sums, including "anticipatory salaries," *the earnings they would have received had they served until age 55.*

However, the Court of Appeal reversed this decision in 2024, setting aside the award for anticipatory salaries because they were speculative and led to "unjust enrichment." The matter ultimately reached the Supreme Court to determine a singular issue of general public importance: whether premature retirement of public

[1]Francis Waithaka Ngokonyo & 2 others v Telkom Kenya Limited [2016] KEHC 8525 (KLR)

Contractual termination in Kenya is governed by a combination of statutory law (primarily the Kenyan Law of Contract Act, Cap 23), common law principles inherited from English law, and specific clauses within the contract itself. Understanding the proper grounds and procedures is crucial to avoid wrongful termination and potential liability for damages.

officers in the public interest creates a legal or contractual basis for the payment of anticipatory salaries and allowances.

B. A claim for anticipatory salaries

Anticipatory salaries refer to the projected earnings, including basic pay and allowances, that an employee expects to receive from the date of termination until their projected mandatory retirement date. In employment law, the claim for such salaries is often grounded in the theory that a permanent contract grants an employee a vested right to remain in service until retirement, provided they maintain good conduct.[2]

The courts have, on various occasions, been called upon to provide judicial guidance on similar claims. It is equally true that courts have not been unanimous on the issue of anticipatory salary. In the case of ***Peter J. Ndungu Vs Kenya Posts and Telecommunication Corporation***, which was against the same respondent herein, the plaintiff was retired in public interest at the age of 44. The High Court (Hayanga, J.) held that he was entitled to damages comprising his net salary and allowance for the number of years left to his normal retirement. In ***Nyamodi Ochieng Nyamogo v Telkom Kenya Limited [2012] KEHC 3658 (KLR), the High Court (Nambuye, J.,)***[3] as she then was) allowed a claim for future salary earnings due to unlawful compulsory retirement at the age of 45 years. Although the cause of action arose in 1993 the case was not decided until 2012. The above decisions allowed claims for

[2]Roedl & Partner, 'Compensation for Unfair Termination of Employment in Kenya' (Roedl & Partner, 15 June 2021) https://www.roedl.com/en/insights/compensation-unfair-termination-employment-kenya/ accessed 17 December 2025
[3]Civil Suit No. 1736 of 1993

anticipatory salaries. In contrast, in ***Geoffrey Muguna Mburugu Vs Attorney-General [2003] KEHC 1 (KLR)***[4], the retirement of the plaintiff from the public service in the public interest was found to be wrongful and a nullity, as a result of which the court awarded salary arrears and other benefits, for the period dating back to the date of his termination. The Court of Appeal in the case of ***Kenya Ports Authority vs Edward Otieno [1997] KECA 388 (KLR)***[5], where the respondent was compulsorily retired at the age of 51, held that:

> *"...In our judgment, where, as in the instant case, a contract of service includes a period of termination of the employment, the damages suffered are the wages for the period during which his normal notice would have been correct. In the case of Rift Valley Textiles Limited vs. Edward Onyango Oganda Civil Appeal No. 27 of 1992 (unreported), the contract of service provided that it could be terminated by a three-month' notice by either party. The judge awarded the respondent twelve months' gross salary as general damages in addition to the three months' salary in lieu of notice already paid.*

By way of comparison under the current Employment Act, in 2012 the ELRC in ***Kenneth Njiru Nyorani V Dodhia Packaging Limited (Cause 431 Of 2010) [2012] Keelrc 80 (Klr) (5 October 2012)***[6] stressed that:

> *"... Compensation for loss of future earnings would be ordered by the court only in exceptional cases where there is impossibility or difficulty in the employee's capacity to mitigate such losses through obtaining alternative or other employment, or, if it is shown that the contract of employment imposed irrevocable restriction on the employee to get into any gainful employment for the period between the termination and the retirement date or date of lapsing of the contract."*

In 2013, in ***D.K. Njagi Marete v Teachers Service Commission [2013] KEELRC 575 (KLR)*** also decided under the current constitutional environment and the Employment Act, 2007, the ELRC expressed the following view regarding a claim for anticipatory salaries where the plaintiff was retired in public interest:

> *[25] What remedies are available to the Claimant? This Court has advanced the view that employment remedies, must be proportionate to the economic injuries suffered by the employees. These remedies are not aimed at facilitating the unjust enrichment of aggrieved employees; they are meant to redress economic injuries in a proportionate way....*
>
> *[26] A grant of anticipatory salaries and allowances for a period of 11 years left to the expected mandatory retirement age of 60 years, would not be a fair and reasonable remedy. The Court would facilitate double remuneration of the Claimant from public funds, while he is no longer rendering any legal services to the TSC. It is not in the interest of the public and would offend the principle of a fair go all round.*
>
> *[27] In the High Court Civil Case No. 1139 of 2002 between Menginya Salim Murgani v. Kenya Revenue Authority, Hon Justice Ojwang "*[7] *stated that it would be injudicious to found an award of damages upon sanguine assessments of prospects. In that case the plaintiff was 38 years*

[4]Civil Case No. 3472 of 1994
[5]Civil Appeal No. 120 of 1997
[6]Cause 431 of 2010
[7]Menginya Salim Murgani v Kenya Revenue Authority (Civil Application 4 of 2013) [2014] KECA 718 (KLR) (Civ) (14 March 2014) (Ruling)

old when his contract of employment was terminated. He asked for remuneration he would have received between the age of 38, and the expected mandatory retirement age of 55 years. The Court observed that the plaintiff was able bodied, intellectually and professionally well- endowed man, likely to find occupational engagement outside the defendant's employ. The Court applied the principle, then confined to civil law, that an aggrieved party has the obligation to mitigate his or her losses. An aggrieved employee must move on and not sit back waiting to enjoy anticipatory remuneration.

The Supreme Court contrasted this with the current legal framework and established common law principles. It was observed that even under the current Employment Act (2007), there is no provision for the award of salaries up to the age of retirement.[8] The Court emphasized a critical distinction in the evolution of employment jurisprudence: while modern law provides robust protections against unfair termination, the remedy is typically capped (often at 12 months' salary) and does not extend to the full remainder of a projected career. The transition from the repealed Act to the 2007 Act shifted the focus from purely contractual notice periods to a *fairness* standard, yet it maintained the principle that employment is a terminable engagement, not a guaranteed life-long tenure.[9]

C. The Judicial reasoning

The Supreme Court dismissed the appeal and upheld the Court of Appeal's judgment, firmly rejecting the appellants' claim for anticipatory salaries. The Court's reasoning was anchored in three primary legal pillars: the nature of permanent contracts, the doctrine of legitimate expectation, and the speculative nature of future earnings.

First, the Court clarified that the term permanent and pensionable does not imply a contract for life. Drawing on the classic House of Lords decision in ***McClelland Vs Northern Ireland General Health Services Board [1957] 1 WLR 594***,[10] the Court held that such employment remains terminable by either party upon reasonable notice or in accordance with contractual terms. Therefore, no employee has an absolute right to serve until the mandatory retirement age. The court cited that:

"I should not regard the use of the word 'permanent,' even when the word 'pensionable' is added to it, as sufficient in that context to create a promise of a life employment or to disable the respondents as employers from terminating the employee's contract of service upon reasonable notice I do not, for my part, think that, in a contract of service, use of the word 'permanent' would be of itself sufficient to import the notion of a life appointment. The word is clearly capable, according to the context, of many shades of meaning; and it seems to me of considerable importance, in interpreting its use in a contract of service, that such a contract cannot be specifically enforced."

Second, regarding the doctrine of legitimate expectation, the Court ruled that while an employee may expect to serve until retirement, this expectation is subject to

[8]The prerogative is that *"It is our position that the claim for anticipatory salaries and allowances/future earning lost due to the retirement on public interest before retirement age is not awardable since the same is not provided for under statute. Furthermore, to grant the request would be tantamount to reinstating an employee to employment or paying for work not done which amounts to unjust enrichment. We therefore set aside the award of anticipatory salaries and allowances by the learned judge. This ground of appeal succeeds. However, grounds 1 and 5 of the respondent's cross-appeal fail."*

[9]Affirmed also in Kenya Law, 'Kenya Law Weekly Issue 040/24-25' (Kenya Law Weekly, 30 April 2025) https://new.kenyalaw.org/akn/ke/doc/newsletter/2025-04-30/kenya-law-weekly-issue-04024-25/eng@2025-04-30 accessed 17 December 2025.

[10][1957] 1 WLR 594, House of Lords.

Terminating a contract in Kenya is a formal legal process, not a mere verbal declaration. The safest path is always to follow the contract's own termination clause meticulously. In the absence of a clear clause, you must rely on the common law grounds for termination, acting reasonably and with clear evidence. Given the high risk of a wrongful termination claim, obtaining tailored legal advice from a Kenyan advocate before taking any irreversible step is strongly recommended.

the employer's legal right to terminate the contract. In this case, the appellants' contracts allowed for termination with one month's notice, which had been honoured. Citing, the decision in ***Elizabeth Wakanyi Kibe v Telkom Kenya Limited [2014] e-KLR***, where the COA held that employees have the obligation to move on, and look for fresh employment after termination, and not sit back in the hope of enjoying anticipatory remuneration. Employment remedies must be proportionate, and employees must be discouraged from replicating employment wrongs and multiplying remedies.[11]

Third, the Court characterized anticipatory salaries as speculative and unjust enrichment. The Court reasoned that many variables could end an employment relationship before retirement such as death, resignation, redundancy, or dismissal for cause making it legally unsound to award a lump sum for years of unperformed work. The Court reaffirmed the principle that the measure of damages for wrongful termination is generally the loss suffered during the notice period, not the loss of a career.

D. The way forward

The Supreme Court's decision in establishes that "permanent and pensionable" employment in the Kenyan public sector is a terminable engagement and not a guarantee of lifetime tenure. By rejecting the claim for anticipatory salaries, the Court has provided much-needed clarity on the limits of remedies for unlawful termination, aligning Kenyan jurisprudence with international common law standards. The broader implications of this ruling are significant for both employers and employees. For public sector entities, it provides financial predictability by shielding them from massive, speculative claims for decades of unearned future wages. For employees, it serves as a sobering reminder that security of tenure is not absolute and is governed by the specific terms of the employment contract. In the contemporary landscape, this decision reinforces the doctrine that employment is a contractual relationship based on mutual consent and service. While the law provides protections against procedural unfairness, it does not mandate compensation for "what might have been." The judgment affirms that remedies for wrongful retirement must proportionately compensate actual economic injury rather than provide windfall gains through speculative anticipatory salaries.

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[11]Elizabeth Wakanyi Kibe v Telkom Kenya Ltd (Civil Appeal 25A of 2013) [2014] KECA 765 (KLR) (5 February 2014) (Judgment)

SPORTS

The Forgotten titan: Why Talanta Stadium should Honour Kenneth Matiba

By Andrew Bomani

Introduction

When the late Hon. Raila Amolo Odinga passed away last October, a well-intentioned proposal quickly surfaced: that the soon-to-be-completed, ultra-modern Talanta Stadium in Nairobi be renamed Raila Odinga International Stadium. The suggestion was rooted in gratitude, in memory, and in the undeniable truth that Raila Odinga is one of Kenya's most gallant freedom fighters. Few would contest that he deserves national recognition of the highest order. Yet history has a way of whispering uncomfortable reminders, and in this case, it urges us to pause.

A promise made, a promise deferred

During the funeral of the late Kenneth Stanley Njindo Matiba the man most closely associated with the courageous push for the restoration of multiparty democracy in 1990 a solemn commitment was made. Former President Uhuru Kenyatta publicly promised to sit down with Raila Odinga and agree on a meaningful way to honour Matiba's immense contribution to Kenya. Sadly, that promise never materialised. Time has passed, but as the saying goes, *better late than never*. Ironically, it was Raila Odinga himself who, in his funeral tribute to Matiba, lamented that one area where justice had not been done to him was in sports.

Talanta Stadium

Matiba beyond politics

Kenneth Matiba's legacy stretches far beyond the political trenches. Long before he became a symbol of resistance and sacrifice, he was a passionate sports administrator and reformer. He served as Chairman of the Kenya Football Federation between 1974 and 1978, and later, in 1983, was appointed Minister for Culture and Social Services, then the docket overseeing sports. At the helm of KFF, Matiba pursued deep, structural reforms with characteristic courage and clarity of vision. His frustration, however, lay in the resistance to his boldest idea: professional football.

Kenneth Matiba

A vision ahead of its time

In his autobiography, Matiba reflects candidly on this struggle, concluding with remarkable foresight:

> *"Although there was a lot of progress made in the management of the game during my time, I would not be altogether satisfied until professional soccer was introduced in the country… Unless and until we have professional football in Africa, we will not make meaningful headway in the game. But the day we go professional, I believe we will bring the World Cup to Africa without any difficulties."*

His insistence on professionalism cost him politically within football circles. When the opposition became too entrenched, he chose principle over position and stepped away, convinced that the stand he had taken was right.

Recognition from his time

When Matiba was appointed to the Cabinet in 1983, The Weekly Review, then Kenya's most respected political magazine, offered a glowing assessment of his credentials and energy. It noted his transformative role at Kenya Breweries, his reforms at KFF, and his administrative depth shaped by years in public service and private enterprise. Above all, the magazine captured Matiba's defining trait: relentless energy. It observed that if his work ethic were emulated across Cabinet, the performance of government itself would be dramatically improved.

Above tribe, above self

In 1992, as Matiba contested the presidency, B.M. Gecaga, then chief of BAT Kenya, paid tribute to Matiba's rare ability to rise above tribal boundaries. He pointed to Matiba's stewardship of football a sport deeply associated with specific regions and how, through discipline and professionalism, he unified and elevated it against formidable odds. This, too, was leadership.

Dreaming the impossible

Matiba's belief that Africa could one day host and even win the World Cup was not idle dreaming. It was rooted in systems, standards, and sacrifice. Today, as East Africa prepares to host the Pamoja AFCON tournament for the first time, that dream feels closer than ever. It is within this context that Talanta Stadium presents itself as a rare and powerful opportunity. Naming it after Kenneth Matiba would be a fitting tribute to a patriot whose love for sport was both practical and visionary.

A Mountaineer's spirit

Matiba's passion for sport found its purest expression in mountaineering. In 1986, while still a Cabinet minister, he embarked on a Himalayan expedition not as a symbolic gesture, but as a serious climber. By then, he had already scaled Mount Kenya seven times and Mount Kilimanjaro twice, the first time as a student in 1953. True to form, he personally sought Kenyan companions for the Himalayas climb, funding the effort himself, despite the scarcity of experienced climbers. The expedition succeeded. Matiba planted the first-ever Kenyan flag in the Himalayas.

Leadership forged on the Mountain

Few Kenyans know that Matiba once served as the first indigenous chairman of the Outward Bound Movement in East Africa, an organization dedicated to leadership development through physical challenge. With a permanent mountain school in Loitokitok, it shaped young leaders across Kenya, Tanzania, and Uganda until the collapse of the original East African Community dealt it a fatal blow. That this movement has never been revived in Matiba's honour remains one of the quiet tragedies of our collective amnesia.

The President Who Might Have Climbed There is a profound link between sport and leadership in Matiba's worldview. One cannot help but imagine that had he ascended to the presidency, the bar for leadership would have been set extraordinarily high. One can even picture a New Year beginning not with speeches, but with a mandatory climb up Mount Kenya for senior government officials led by the President himself. The idea sounds audacious, even impractical, yet deeply symbolic. It would have captured global attention, drawn tourists, and embodied servant leadership in its purest form. A story shared at Matiba's funeral by Major (Rtd) Marsden Madoka illustrates this spirit vividly. While climbing Kilimanjaro, Matiba developed altitude sickness. Madoka advised retreat. Matiba refused, dismissing the suggestion and urging Madoka to descend alone if he wished. That was Matiba relentless, uncompromising, and indomitable.

The sportsman the athletes remembered

Perhaps the most telling tribute came in 1988, when Kenyan athletes preparing for the Seoul Olympics invited Matiba to address them at their farewell ceremony at Kasarani despite the fact that he had left the sports ministry two years earlier. They remembered his leadership. He encouraged

The Late Raila Odinga

them, rewarded them personally, and rallied others to contribute. It is painful to reflect that the sporting fraternity did not fully honour him when he most needed recognition. Yet perhaps this moment offers a final window.

A thoughtful compromise

Rather than naming Talanta Stadium after Raila Odinga, why not honour him by renaming Uhuru Park a space inseparable from Kenya's democratic journey? It is where *Kibaki Tosha* was declared, where the 2010 Constitution was promulgated, and where the People's President was sworn in. Raila was also a champion of environmental protection.

Huo ni uwanja wa Raila.

Let Talanta Stadium, a home of sport, bear the name of Kenneth Matiba the great sportsman and patriot whom Raila himself so profoundly acknowledged.

The young generation deserves to be inspired by the remarkable story of KSN.

I beg to move.

Mungu Ibariki Afrika.
Dar es Salaam
a_bomani@yahoo.com

BOOK REVIEW

Slow Poison, A Mahmood Mamdani eye opener

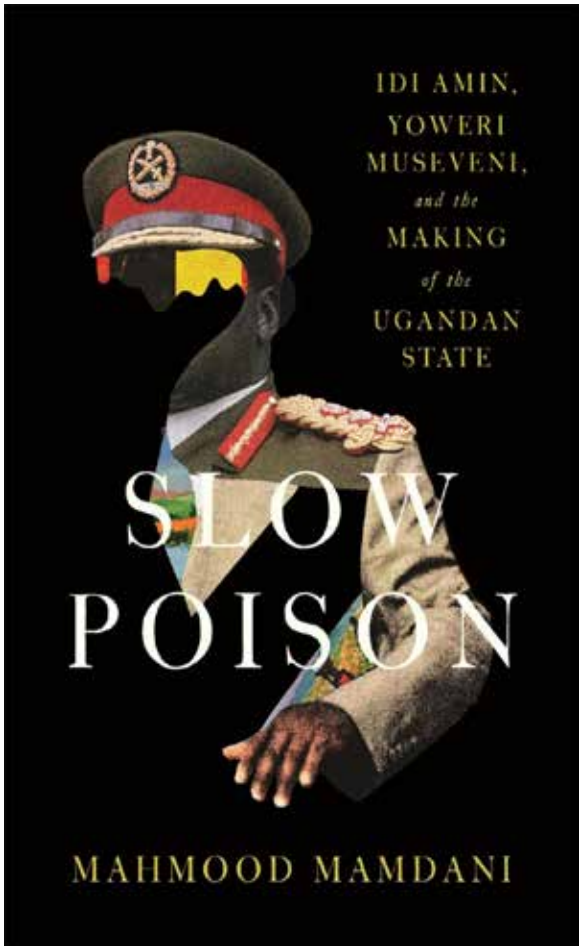
By Janet Wairimu Mburu

Introduction

By the time I was done reading **Slow Poison: Idi Amin, Yoweri Museveni, and the Making of the Ugandan State**, a beautiful book by one amazing Ugandan scholar and Author, Professor, Mahmood Mamdani, father to New York's mayor Zohran Kwame Mamdani, it was clear that I could no longer think of post-colonial Africa in simple moral binary language. Mahmood did not allow me as a reader that luxury; instead, he offered a deeply troubling and intellectually demanding reflection on how liberation clots into domination, how revolution promise rots into administrative permanence, and further, how the state that is supposed to be a vessel of collective emancipation can slowly drain the society it's supposed to protect.

From the title of the book, you'd think it's simply a book about Uganda's Presidency, but no, the book reflects a lot on Africa's political inheritance, the deeply rooted structures that outlived colonialism. Furthermore, the author undertakes the challenging task of narrating history without romantic absolution or demonization. Slow poison intersects a memoir, a historical reckoning, and a political theory- A perfect Blend.

At the heart of the book is a modest assertion: Africa did not always consist of



tribes; tribes were made. Mamdani insists on a distinction that colonial logic deliberately collapsed; the difference between *ethnicity* and *tribe*. An ethnic group is a cultural community; a tribe is a politicized identity, fixed to territory, governed by customary authority, and regulated by customary law. Tribe is not primordial; it is modern and colonial.

This distinction is not academic hair-splitting; rather, it is the conceptual key to the book. For Mamdani, the tragedy of postcolonial Uganda, and by extension much

of Africa, lies in the failure to dismantle the colonial state's tribal foundations. Independence transferred power to new rulers but left intact the logic of rule. The result was not liberation, but mutation.

Professor Mamdani's key impetus is deceptively simple: that the two presidents, Idi Amin and Yoweri Museveni, should not be assessed as opposites but as products of the same genealogy, politically. One president ruled briefly and violently, while the other ruled administratively and extensively. One is internationally reviled while the other is celebrated. Yet, Mamdani argues that both presidents belong to the unfinished post-colonial state formation project. Uganda's tragedy lies in the continuity of this project.

The title- slow poison

Just as the title suggests, slow poison does not announce itself with a bang; it does not immediately trigger a revolt or shock the conscience. Rather, it works gradually, systematically, and invisibly, entrenching itself in habits, institutions, and political common sense. It eats away at civil life over time, dissolving resistance, squarely because its effects feel normal, stabilizing, and even inevitable.

Keeping this perspective in mind, Mamdani applies a daring interpretative move of the regimes. Idi Amin's time, chaotic and brutal, represents a violent rupture arising from the unresolved contradictions rolling in from colonial rule. BY contrast, Yoweri's Regime represents the normalisation of those contradictions, the actual poison that is slower, quieter, and more enduring.

This transposition unsettles major narratives that we have been sold over the years, for instance, Western political discourse has long presented Idi Amin as the personification of African despotism, and Yoweri as its reformatory, that is, the disciplined and revolutionary leader who restored economic reform, rational governance, and order. Mamdani boldly challenges this narrative, not by commending Amin's violence, but by interrogating why loud violence horrifies us more than that which is premeditated, intentionally endorsed, bureaucratic, and procedural.

Beyond the monster

One aspect that captures my heart in the book is Mamdani's intentionality in ensuring that Amin is not just reduced to a cartoon villain, far from historical context. He demands that the reader be careful and unbiased, and see Amin's role wholesomely, without minimising the suffering of his victims and his atrocities.

Amin, as Mamdani argues, is a product of the same colonial military structure that recruited and trained African soldiers for the enforcement of imperial authority, while denying them political education. Amin understood the rewards of obedience, not deliberation, of violence, not legitimacy- as was with the colonial army. Thus, when Independence arrived, the apparatus stayed intact, only now, it was in African hands, and without democratic transformation.

An event that Mamdani refers to as deeply personal was the expulsion of Asians from Uganda by Idi Amin, which not only affected him but also his family. The event becomes a lens through which the author analyses post-colonial nationalism, with a broader view of struggle over citizenship, economic power, and colonial racial ranks that had long privileged the non-Africans. The expulsion was not just an irrational ethnic hatred - Amin sought to expel Asians without exterminating them, an ethnic cleansing, not a genocide. This distinction, uncomfortable as it is, is central to Mamdani's argument: moral outrage must not substitute for political analysis.

Being able to see Amin from Mamdani's

view does not absolve him of his faults, but it complicates him. But to understand is not to excuse, and the moral outrage we have had toward Idi Amin teaches us nothing about how such regimes come into being. We need the historical explanation in order to understand how to prevent such regimes in the future. Mamdani forces the readers to face the uncomfortable question, why is African violence often portrayed as pathological, but the Western one, economic structural and imperial, is excused as invisible or rational?

Yoweri's managed politics

As per Mamdani's book, if Idi Amin is the renowned villain of the Ugandan state, Yoweri is the Paradox. Year in year out, Yoweri has been celebrated as a revolutionary intellectual, a thinker soldier who presented a difference - A promise to end Africa's cycle of dictatorship and coups. Under his leadership, Uganda became a model of neoliberal reforms, a darling to donor organisations and an ally in regional security.

Mamdani's treatise becomes all the more crippling because it is factual and methodical rather than sensational. His argument is that Yoweri refined the authoritarian state, rather than dismantled it. Where Amin used terror to rule, Yoweri used and still uses regulation. Where Amin minimised the number of institutions, Yoweri multiplied them, more often than not, instruments of control.

At the core of his argument, Mamdani analyses identity politics. He contends that Yoweri's regime systematically fragmented Uganda's national identity into cultural, ethnic, and administrative units, thus governing through divergence rather than unity. Each new district created new "indigenous" groups and new "settlers." Fragmentation became governance. The result: political struggle, groups competing against each other for resources and state recognition, thus a neutralised opposition. The ultimate result: A country of politics without citizens, a group of subjects, beneficiaries, and clients.

This critique resonates across Africa, where movements that were once well-intended, that mobilised mass political participation, have transmuted into permanent ruling parties, worse still, sustained by donor funding, managed elections, and security alliances. The primary metric of success becomes development and stability, as opposed to democracy and justice.

Personal political memory

Slow poison gets a deeper emotional gravity from Mamdani's willingness to insert himself in the account. He is not a professor and intellect distancing himself from his subject; rather, Mamdani is a man returning emotionally and introspectively to his motherland, which had expelled him. Childhood, exile, return, and reflection are moments of deep memory that punctuate the book. The moments are not self-indulgent, but they are real. Mamdani intrigues us with memories, as a contested terrain, shaped by narration and power. By writing himself into the history of Uganda, Mamdani defies the false objectivity that tends to sanitize political analysis. It is a way of acknowledging his positionality, as an intellectual rather than as a weakness.

In this sense, the book Slow Poison can be classified under the African writings that treat scholarship as a moral engagement. Mamdani, like Ngugi wa Thiongo, Walter Rodney, and Frantz Fanon, understands that the main task of an intellectual is clarity, not neutrality.

Fragmented political community

Mamdani also draws our attention to the role of colonial rule continuity in African states. His powerful intervention is the insistence that African states did not and

do not fail because they were unprepared for self-rule; rather, the colonial rule had deliberately fragmented the political community. The colonial governance applied decentralised despotism to block unified political action. The design was ethnic divisions, customary authorities, and legal pluralism. African independence transferred power without dissolving this structure. As such, the rule is not just bad leaders; it is bad inheritance.

Mamdani identifies that Yoweri's genius was to learn how to run this inherited machine effectively, maintain domestic control, and simultaneously align with the global neoliberals' interest. Idi Amin, on the other hand, lacked the patience to do so.

Slow poison offers a very sobering lesson to all of us. The most dangerous regimes are not those that collapse the state, but those that perfect it without democratizing it.

Why it matters now

Even though the book is rooted in the history of Uganda, its relevance is unmistakably contemporary. We have seen long-serving leaders across Africa justifying their permanence in power through the language of development, stability, and anti-Chaos. Opposition exists, but is tightly controlled; Elections occur, but politics and competition are hollowed out.

The book also speaks powerfully to Kenya's own political moment. The tension between liberation rhetoric and lived inequality, between constitutional promise and administrative repression, echoes throughout Mamdani's analysis. His warning is clear: when politics becomes managerial rather than participatory, the poison has already entered the bloodstream.

Globally, Slow Poison challenges Western readers to reconsider their role in sustaining authoritarianism through selective praise, aid conditionalities, and security partnerships. Democracy, Mamdani suggests, is often sacrificed at the altar of predictability.

Points of critique

Every serious book will be challenged, and Slow Poison is no exception, as it invites disagreement. Some readers will argue that Mamdani's Conceptualisation of Amin risks moral relativism. Others will contend that Yoweri's regime, for all its flaws, delivered tangible gains in security and infrastructure that cannot be dismissed.

These points are meritable and sensible, yet they also risk missing Mamdani's deeper point, that development without democratic transformation is not progress, its postponement. Mamdani doesn't make us choose between Yoweri and Amin; he makes us reject false choices altogether.

Conclusion

Slow Poison is not an easy book, and it's not meant to be. It rejects the simplicity of villains,or conforms to heroism, and avidly demands that the reader think broadly, politically, historically, and ethically.
For us, The Platform readers, a publication committed to critical thought and democratic debate, Mamdani's work is especially fitting. It reminds us that freedom is not a moment but a process, not a slogan but a practice. It warns that the greatest threat to liberation may not be the tyrant who announces himself, but the system that normalizes domination in the name of order. In reading Slow Poison, we are forced to ask not only what went wrong in Uganda, but what remains unresolved across postcolonial Africa. And perhaps more urgently: how do we recognize slow poison before it finishes its work?

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