



Kenya Magistrates and Judges Association

The Secretariat
Kenya Magistrates and Judges Association
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4th June 2021

Our Ref: KMJAMH 0106/2021

To All Media Houses,

RE: PRESS STATEMENT OF THE KENYA MAGISTRATES AND JUDGES ASSOCIATION ON THE PRESIDENT'S SELECTIVE APPOINTMENT OF JUDGES

Prior to the promulgation of the Constitution of Kenya 2010, the President had power to appoint Judges. Kenyans voted to have a Constitution that gave the Judicial Service Commission (JSC) the power to recommend Judges for appointment by the President.

The JSC, in exercise of its mandate under the Constitution and the Judicial Service Act, nominated 41 Judges for appointment to the Court of Appeal, Employment and Labour Relations Court and Environment and Land Court. One has since passed on. May his soul RIP.

Yesterday, the 3rd of June 2021, His Excellency the President of the Republic of Kenya vide gazette notices number 5233, 5234 and 5235, appointed Honourable Judges to various courts.

In a shocking turn of events, the President declined to appoint six (6) of the Judges nominated by the JSC. All the six are currently serving on the Bench.

In Petition Number 369/19, the High Court of Kenya pronounced itself on this issue that the President is constitutionally bound by the recommendation made by JSC in accordance with Article 166(1) as read with article 172(1)(a) of the Constitution on the persons to be appointed as Judges; and that the President's failure to appoint the persons recommended as Judges violates the Constitution and the

Judicial Service Act; and finally, that the continued delay to appoint the persons recommended for appointment as Judges of the respectful courts was and still remains a violation of Articles 2(1), 3(1), 10, 73(1)(a), 131(2)(a), 166(1), 172(1) and 249(2) of the Constitution.

Once the JSC has recommended names for appointment, the President has no power to tinker with the names. Any such attempt amounts to interference with the Institutional Independence of the JSC, violation of the Constitution and in particular, the rule of law which the President swore to uphold.

The decision by the President to leave out the six is therefore baffling, unfounded and patently unconstitutional. The President is setting a very bad precedent for this country, one of not following the rule of law and disobedience of court orders.

It is against this background that KMJA calls upon the President to immediately gazette the six that were left out.

For and on behalf of KMJA

A handwritten signature in black ink, appearing to read 'Derrick Kuto', written over a faint circular stamp or watermark.

Hon. Derrick Kuto
Secretary General, KMJA
