



The Hour of the Rough Beast

By Maina Kiai



Dr. Fred Matiang'i is in dire need of a refresher course on the Constitution. I don't think there is anyone exercising power who exhibits as much ignorance, or contempt, for the constitution as he does. He also needs to be taught (or re-taught) the role of the Judiciary in society, and in being an effective check on the excesses of the executive. Despite all his formal education, exposure and relative youthfulness, his ignorance and/or contempt of the law and how things should be done is frightening.

Of course it could be that he just has such a big head, and is so enamored of the office that he temporarily occupies, that everything he has learnt, or knew, or believed in has gone out the window. And if he is the Christian he claims to be, he is in serious need of bible study to understand the role of humility, truthfulness, thoughtfulness, and obedience to the law.

There is a clip circulating on social media where he heaps blame on the Judiciary for issuing orders against him or officers in his ministry. And he repeated the same message when he appeared before Parliament, to the extent of describing some judges as "evil." He is full of passionate intensity, like "the very worst of them" in Yeats' *The Second Coming* about the coming of evil, refusing to accept blame, instead casting aspersions on everyone but himself. He seems to believe that whatever he does must be accepted by everyone, and he thinks he is the ultimate judge of the law and procedure.

Court orders, as someone recently observed, are not suggestions...Once the court ruled

that Mr. Miguna was to have his Kenyan passport returned, Mr. Matiang'i's opinion on whether or not the court is wrong is immaterial.

For the avoidance of doubt, there would be no need for court orders and injunctions if Mr. Matiang'i and his officers obeyed the law! The way to avoid court orders and injunctions is not to berate the courts. It is simply to make sure that whatever you do is within the confines of the law and guided by the constitution.

Court orders, as someone recently observed, are not suggestions. And so when the Court orders that Miguna Miguna must be brought before the court, and that his passport must be returned, then that is that. It must and should be done. Procedure and process cannot and must not work to frustrate the court order. Rather, it is for those who are in breach of the law to find ways to remedy the situation to fit into the court order.

Thus, once the court ruled that Mr. Miguna was to have his Kenyan passport returned, Mr. Matiang'i's opinion on whether the court is wrong is immaterial. He needs to obey the court order as it is and fight it out afterwards on appeal. This whole embarrassing saga has been unnecessary; wiser, humbler and more effective officials would have resolved this within moments.

Upon Mr. Miguna's return to Kenya, the Immigration Department could have prepared temporary papers to allow Mr. Miguna into the country, and then process a new Kenyan passport that afternoon or the next day to fulfill the court orders. They could then have appealed the court's orders.

But their misguided approach has cost taxpayers millions. From the massive security presence at the airport, the payments to Emirate's airlines, the cost to journalists and lawyers injured by the police to the massive global embarrassment of this sorry circus.

The fact that the agreement for direct flights to the USA is under review is solely Mr. Matiang'i's fault, and Kenya Airways would be wise to seek compensation from him. To blame Mr. Miguna for this review is the height of callousness.

There is a narrative that suggests that Mr. Miguna broke the law in acquiring his Kenyan passport—which is different from his citizenship—under the old Constitution. Perhaps he did. But the coming into force of the new Constitution obviated any violation of law he may have committed.

The worst part of all this is that Mr. Matiang'i has disobeyed court orders at least five times. And rather than face up to this, and be held accountable, he attempts to make the Judiciary the problem, when he in fact is the problem. In fact, if we were in a law respecting state, he would have been suspended from office by now for the fact that he has a criminal conviction against him.

To illustrate, Parliament recently passed a law allowing men to marry more than one wife (not sure why women can't marry more than one husband!). Previously, it was an offence (bigamy) to be polygamous. Suggesting that Mr. Miguna should be punished now for breaking an obsolete law would be similar to arresting all the men who were polygamous before the new law passed!

The worst part of all this is that Mr. Matiang'i has disobeyed court orders at least five times. And rather than face up to this, and be held accountable, he attempts to make the Judiciary the problem, when he in fact is the problem. In fact, if we were in a law respecting state, he would have been

suspended from office by now for the fact that he has a criminal conviction against him, even though he has appealed.

More crucially, if high officials will not obey laws and court orders, then why should anyone else? Jubilee has never made any secret of its disdain for checks and balances, believing that rule by might trumps rule of law. But they better be careful, for the chickens will come home to roost as more and more of us decide which laws to obey and which not to.

Published by the good folks at [The Elephant](#).

The Elephant is a platform for engaging citizens to reflect, re-member and re-envision their society by interrogating the past, the present, to fashion a future.

Follow us on [Twitter](#).

