

**Press Statement by Fred Ojiambo, MBS, SC, Chairman of the Senior Counsel Bar, made on Tuesday, 19<sup>th</sup> September 2017, regarding the current attacks on the independence of the Judiciary.**

1. Recent reports of the open and brazen personal attacks on the Chief Justice, Hon. Mr. Justice David Maraga, the Deputy CJ, Lady Justice Philomena Mwilu and two honorable judges of the Supreme Court, Hon. Mr. Justice Smokin Wanjala and Hon. Mr. Justice Isaac Lenaola are deeply distressing and must be condemned by all Kenyans and people of goodwill.
2. The genesis of these attacks is the majority decision of the Supreme Court rendered in respect of the Presidential Election Petition. Specifically, the attacks seem caused by the fact that the Court nullified the presidential election held on 8th August, 2017. The reasons for the orders of nullification are due to be issued on Wednesday, 20th September, 2017.
3. The attacks themselves are entirely undeterred by any sense of law or decorum. There is clearly a feeling that the judiciary are fair game for criticism on account of a decision made by them in the course of their duties and in exercise of their constitutional mandate. Article 159(1) of the Constitution states that judicial authority vests in, and shall be exercised by, the courts and tribunals established by or under the constitution. Article 160(1) declares that in the exercise of judicial authority, the Judiciary shall be subject only to the Constitution and the law and shall not be subject to the control or direction of any person and authority.
4. The rationale for these constitutional safeguards is not difficult to discern. Judges are protected by law from the kind of interference which is being played out. If they are not then the likelihood of judicial officers pandering to a dominant or more powerful party, regardless of the manner in which he/she ought to rule under the law becomes very real indeed. And so the rule of law becomes more of a pious hope or favourite platitude than a reality. In turn, law becomes the tool only for the powerful, and a bane for the poor and marginalized.
5. The attacks on the judiciary are an attack on the rule of law. The sad and frightening trajectory of such action is that a culture of little actual respect for the law is engendered, not just for the powerful, but for society in general. A firm basis for any society is the belief that justice will always reign, and that the final bastion of that justice will always be an independent judiciary immunized from the vicissitudes, fickleness and whims of political exigencies.
6. We appeal to all Kenyans to pause and reflect carefully about the long term effects of the current invective against the judiciary. Obedience of the law must be preferable to its enforcement. In the final analysis, it is question of morality. If we are committed to building a nation ruled by laws and not by expediency then we must strenuously shun any attack on the edifice of that law and of justice, namely an independent and just judiciary. The alternative is chaos. It may be long in coming, but may indeed be upon us before we know it. We must resist the temptation to breakdown these structures of justice by our own hands.

Dated at Nairobi this 19<sup>th</sup> day of September 2017.



**Fred N. Ojiambo, MBS, SC**  
**Chairman,**  
**Committee on Senior Counsel**