

## Waikwa & Company Advocates

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September 20, 2017

Hon. Anne Amadi,  
The Secretary  
Judicial Service Commission  
Supreme Court Building  
Nairobi, Kenya



Dear The Hon. Amadi:

**Re: PETITION BY MARTIN WAMBUGU NGUNJIRI AGAINST HON. DAVID K. MARAGA**

### **Purpose**

We have instructions from Prof. Makau Mutua and Mr. Maina Kiai to act as their counsel of record concerning a Petition filed by Mr. Martin Ngunjiri Wambugu and dated September 14, 2017. The Petition is titled "Petition Against Justice David Maraga, Chief Justice & President of the Court". Prof. Mutua and Mr. Kiai seek to be admitted to the Petition as Interested Parties and to be allowed to present evidence and appear in person, and if need be, to tender oral evidence. They would also like to test the veracity of the claims in the petition through cross examination.

### **Basis for Seeking Joinder**

As you will note, the general tenor of the Petition is to make serious, but unsubstantiated allegations, against the Honorable Chief Justice by claiming that he is working in cahoots with certain individuals within the civil society with the "intent of procuring regime change through judicial radicalism." Mr. Wambugu has especially attempted to link Prof. Mutua to being one of the masterminds of the "regime change". He also refers to Mr. Kiai as well as organizations that Mr. Kiai is intimately linked with adversely, including the Kenya Human Rights Commission (Board Member), AFRICOG (Board Member), InformAction (Founder), and the Kenyans for Peace with Truth and Justice (KPTJ).

The various allegations levelled against Prof. Mutua and Mr. Kiai and the organizations they are intimately involved in leaves the impression that the two are just very eager and have the capacity to cause regime change through unconstitutional or illegal means. It also creates the impression that the two are not law-abiding citizens, and instead they are conspirators and saboteurs of constitutional processes. It is clear from the tone, sequencing and juxtaposition of the content where Prof. Mutua and Mr. Kiai are referred to in the Petition that Mr. Wambugu specifically named them in his Petition in order to create an impression among the members of the public that the two are non-law abiding citizens who thrive on destroying constitutionally established institutions.

As the JSC will appreciate, the two have spent decades working at the national and international levels and are well known people with stellar reputations which Mr. Wambugu has deeply, negligently and recklessly soiled. Their admission into the Petition will provide them, at the minimum, with some opportunity to recover some of their reputation because it will give them a chance to show malice, lies, and malignancy on Mr. Wambugu's part. It is the evidence of their

reputation, and other evidence, that they would wish to present to the JSC in order to clear their names and re-assert their reputations.

Both Prof. Mutua and Mr. Kiai therefore have an identifiable stake in the proceedings before the Judicial Service Commission (JSC) since it is the best forum for them to clear their names, by presenting evidence to the contrary and confronting Mr. Wambugu's creative wonderland tales through cross-examination. Kindly therefore treat this letter as a formal application for joinder by Prof. Mutua and Mr. Kiai as Interested Parties to the proceedings before the JSC.

### **Objection at Attempts to Withdraw Petition**

We have also learned through the media that Mr. Wambugu has given an indication of his intent to withdraw the Petition. We are however unable to verify at this point whether Mr. Wambugu has filed a formal application to withdraw the Petition with the JSC. Regardless, please note that Prof. Mutua and Mr. Kiai strongly object to any attempt to withdraw the Petition. It is their view that a withdrawal of the Petition will cause them great prejudice as they will lack the opportunity or the forum through which their innocence could be adjudicated. This would be a violation of their access to justice and fair hearing rights. At the minimum, they are owed a determination by the JSC on the adverse inference on their reputations created by Mr. Wambugu's Petition. We urge that you further treat this letter as a formal objection to the withdrawal of the petition to the extent that any application for withdrawal of the petition has been notified to the JSC.

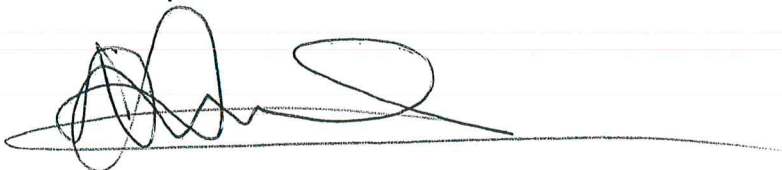
### **Conclusion**

Please note that both Prof. Mutua and Mr. Kiai are law abiding citizens, who strongly believe in the rule of law and the constitution. They are especially strong believers of judicial independence at its two critical levels of institutional independence and the independence of the judge. They are emphatic that they would contemplate or advocate for no other means of regime change other than what is decreed in the constitution.

Finally, both Mr. Kiai and Prof. Mutua also feel very strongly that they have an obligation as lawyers and human rights defenders to protect the institutions that advance the rule law, bring the constitution to life, and provide people access to justice. They regard the judiciary, KHRC, and other institutions and organizations named in the Petition as deserving protection from Mr. Wambugu's (and his sponsors) scorched earth policy against the bulwarks of democracy. They fear that they will further be denied a chance to defend these institutions which are very dear to them if Mr. Wambugu is allowed to quietly go into the night after exploding a bomb.

We look forward to further directions from the JSC, including when and where the appearance of Prof. Mutua and Mr. Kiai will be required.

Yours truly,



Waikwa Wanyoike

CC. Hon. David K. Maraga, Chief Justice and President of the Supreme Court  
Mr. Martin Wambugu Ngunjiri, MP