



THE SUPREME COURT OF KENYA
PARLIAMENT OF KENYA & ANO. VS OKIYA OMTATA OKOITI & OTHERS
SC PETITION NOS. E016 & E017 OF 2025 (CONSOLIDATED)
DATE OF JUDGMENT: 31ST MARCH, 2026

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Orders: The Court partially allows the consolidated appeal.

Background

Prior to the Constitution 2010, tribunals, which exercised administrative or quasi-judicial functions, were established by different Legislations and operated under the Executive branch of government. However, Article 169(1)(d) of the 2010 Constitution establishes local tribunals as subordinate courts, operating as part of the Judiciary. In dispute, is the nature, composition and regulation of the local tribunals envisioned under Article 169(1)(d). In particular, which tribunals are to be classified as local tribunals for transition to the Judiciary? Additionally, is whether Parliament (the 1st appellant) violated the Constitution by failing to enact the legislation contemplated under Article 169(2) of the Constitution that would confer jurisdiction, powers and/or functions on the said local tribunals.

At the High Court, the 1st respondent argued that the operations of the current tribunal system lack uniformity. In that, tribunals are established under different legislations; tribunal members are appointed by different authorities, including the Executive, through different processes and with varying terms of service; and they operate under different rules of procedure, with some limiting the right of appeal entirely. Furthermore, the 1st respondent argued that the current state of affairs violates the right to access justice under Article 48 and the right to fair trial under Article 50 due to the Executive's involvement in disputes before the same tribunals whose members it appoints. In nutshell, the 1st respondent claimed that all tribunals should be transitioned/moved to the Judiciary and appointment of their membership and regulation done by the Judicial Service Commission (JSC).

The High Court held that the nature of the local tribunals under Article 169(1)(d) of the Constitution is that they are: courts of law which are subordinate to superior courts; are not advisory or administrative in nature; are established under legislation; and do not include a judge of the superior courts in their membership. The High Court further found that the appointment and removal of members of local tribunals by the Executive violates the independence of the Judiciary since local tribunals are subordinate courts that should be under the regulation of JSC. Accordingly, the High Court held that local tribunals ought to be transitioned/moved to the Judiciary, and issued an order of structural interdict (supervisory order with periodic reporting to court) to the appellants directing them to report to the court on the steps taken/progress of enacting a

Tribunals Legislation within 6 months of the date of the judgment. The Attorney General (the 2nd appellant) appealed to the Court of Appeal, which upheld the High Court's decision and dismissed the appeal.

Cumulatively, the consolidated appeal raised the following issues for consideration by the Supreme Court:

- i. *Whether the 1st respondent's petition before the High Court was justiciable.*
- ii. *Whether Article 169(2) of the Constitution prescribes a timeframe for the enactment of the Tribunals Bill.*
- iii. *What is the proper interpretation of "local tribunal" under Article 169(1)(d) of the Constitution, and which categories of tribunals fall within that rubric for purposes of transition to the Judiciary?*
- iv. *Whether it was appropriate for the High Court to grant an order of structural interdict to supervise the enactment of the Tribunals Bill, when the process of enacting the Bill was actively underway.*

Upon consideration, the Supreme Court allowed the appeal in part for the following reasons:

1. **Issue 1:** The dispute was justiciable (suitable for adjudication by the court) as it raised issued of violation of the Constitution.
2. **Issue 2:**
 - a. Parliament is under a mandatory obligation to enact legislation conferring jurisdiction, functions, and powers on the local tribunals as contemplated under Article 169(2) of the Constitution within reasonable time.
 - b. A delay in enacting the above legislation under Article 169(2) for over eight years, as at the time of filing of the 1st respondent's petition at the High Court, amounted to unreasonable delay and a breach of the constitutional obligation arising from Articles 48 (right to access to justice) and 169(2) of the Constitution
3. **Issue 3:** For a statutory body to qualify as a "local tribunal" under Article 169(1)(d) of the Constitution, such a tribunal must: exercise judicial, quasi-judicial, or adjudicative power as opposed to administrative, regulatory, or advisory power; it must be subordinate to the superior courts; it must resolve disputes through a structured, adversarial process culminating in binding determinations; it must be established by an Act of Parliament; and it must not be constituted by, or include in its membership, judges of the superior courts.
4. **Issue 4:** The structural interdict issued in this case was not an appropriate remedy since it was not demonstrated that Parliament was unwilling or persistently indifferent to its constitutional duty, particularly as the legislative process for the enactment of the Tribunals Bill was already underway as at the time of institution of the appeal before the Court of Appeal. In such a circumstance, a declaratory relief would have been a sufficient, proportionate, and less intrusive remedy. Moreover, the structural interdict was improperly directed at the 2nd appellant, who lacked authority over the legislative process within Parliament.

Accordingly, the Court issued the following orders:

1. The consolidated appeal partially succeeds to the following extent:
 - a) We hereby set aside the declaration as granted by the High Court under limb (e) of its orders and affirmed by the Court of Appeal.
 - b) We hereby set aside the structural interdict as granted by the High Court and affirmed by the Court of Appeal
2. We uphold the following findings by the Court of Appeal:
 - a) Parliament bears a mandatory constitutional obligation under Article 169(2) of the Constitution to enact legislation conferring jurisdiction, functions and powers upon local tribunals, an obligation that must be discharged within a reasonable time.

- b) For a statutory body to qualify as a “local tribunal” under Article 169(1)(d) of the Constitution, it must exercise judicial, quasi-judicial, or adjudicative power.
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