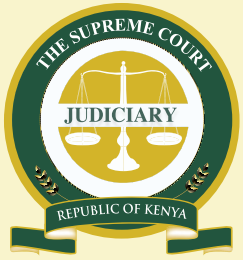
REPUBLIC OF KENYA



Celebrating 12 Years of

Defending the Constitution



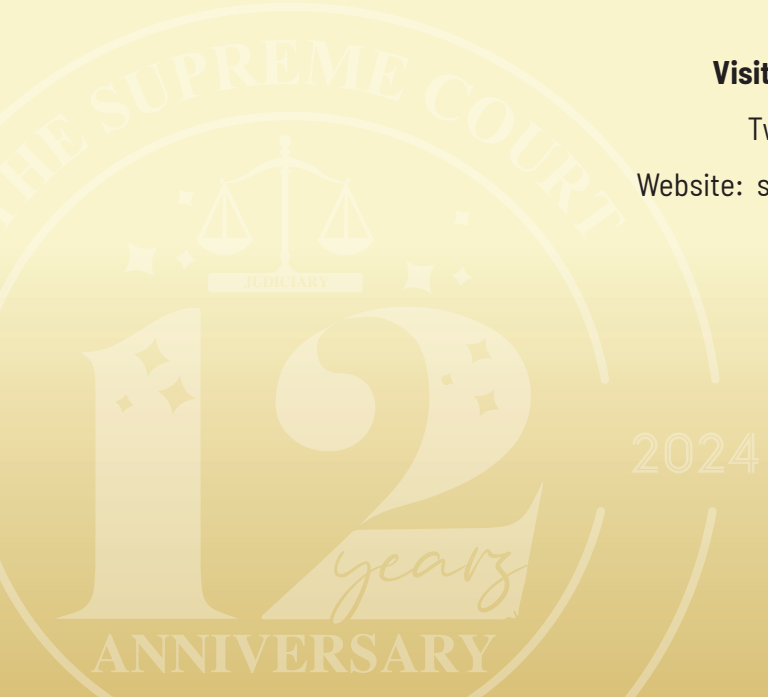


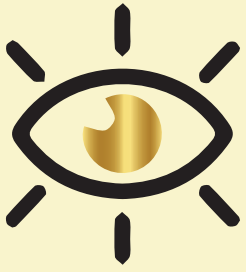
Published by the Supreme Court of Kenya
Supreme Court Building
City Hall Way
P.O. Box 30041-00100, Nairobi, Kenya
Email: supremeregistry@court.go.ke/
rsupreme2018@gmail.com/ supremecourt@gmail.com
Website: supremecourt.judiciary.go.ke

Visit our Digital platforms

Twitter: @THE_SCOK

Website: supremecourt.judiciary.go.ke





Vision

To be a trusted apex Court that protects the Constitution, sovereignty of the people of Kenya, Rule of Law, and enhances jurisprudence.



Mission

To protect and uphold the Constitution; interpret the law in an impartial, just, accessible and timely manner; enhance public trust and confidence and develop rich jurisprudence that facilitates social, economic and political growth in Kenya.



FOREWORD

It is with great pride that I present this *Commemorative Book* to mark the 12th anniversary of the Supreme Court of Kenya. This publication offers a reflective and insightful account of the Court's institutional and jurisprudential journey, from its establishment to the present-day.

The birth of the Supreme Court is intricately tied to Kenya's constitutional rebirth. As envisioned by the 2010 Constitution, the Court was created not only to resolve legal disputes but also to play a critical role in safeguarding the transformative promises of the Constitution. Over the years, both current and former Justices of the Supreme Court have risen to the challenge, developing a rich and indigenous body of jurisprudence that reflects the vision of the Constitution while addressing the evolving needs and demands of Kenyan society. These decisions not only clarify and settle the law but also breathe life to the aspirations of the Kenyan people as expressed in the Constitution, laying a foundation for a state based on the rule of law, democratic governance, and social justice.

Beyond Kenya's borders, the influence of the Supreme Court's jurisprudence has extended far and wide. This book highlights how apex courts in other jurisdictions, as well as regional courts, have drawn upon the Court's decisions for their persuasive value. The recognition and reliance on the Supreme Court of Kenya's jurisprudence by peer courts is a testament to the Court's growing international stature and its contribution to global legal thought.

The book also documents the Court's efforts to enhance efficiency in its service delivery, as demonstrated by the comprehensive case load statistics. These figures reflect the Court's unwavering commitment to the timely and effective resolution of cases. In addition, initiatives such as e-filing, e-customer service, the establishment of sub-registries, and regular bar-bench engagements have significantly strengthened the Court's operations, ensuring that the Supreme Court remains responsive to the needs of all stakeholders.

Equally important is the Court's dedication to making a societal impact beyond its judicial mandate. Through corporate social responsibility initiatives and outreach activities, the Supreme Court has been actively involved with the community. In addition, the Court has engaged in mentorship programmes providing guidance to students through internships and moot court competitions. These efforts have not only gone a long way towards nurturing the future generations of legal practitioners but also reaffirmed the Court's role in shaping a just and inclusive society.

This *Commemorative Book* invites you, the reader, to reflect on the milestones achieved by the Supreme Court over the past 12 years. It showcases the Court's steadfast commitment to upholding the Constitution, promoting justice, and contributing to Kenya's democratic governance.

I am confident that the Supreme Court will continue to meet the demands of the times, charting new paths in jurisprudence and serving the people of Kenya with dedication, integrity, and excellence.

Hon. Justice Martha K. Koome, FCIArb, EGH
Chief Justice and President of the Supreme Court of Kenya


REPUBLIC OF KENYA
JUDICIARY

MESSAGE FROM THE VICE PRESIDENT OF THE COURT

The Constitution, 2010 introduced a raft of reforms in Kenya's governance structure, including the establishment of the Supreme Court as the apex Court with the final judicial authority in Kenya. In the exercise of its jurisdiction, the Court has settled complex constitutional questions and endeavoured to fulfil its constitutional obligation to deliver quality justice efficiently to all people.

From the Court performance statistics, it is clear that with each passing year, there has been an increase in the number of cases filed. Since inception to August 2024, a total of 734 cases have been filed. This comprises of presidential election petitions, advisory opinions, appeals from the Court of Appeal, appeals from tribunals established for the removal of judges, and various applications. The Court has so far presided over 16 presidential election petitions; 3 petitions in 2013, 4 petitions in 2017 and 9 petitions in 2022. Despite the very short timelines provided in the Constitution for filing, hearing and determination of presidential election petitions, the Court has in every election cycle adhered to the timelines stipulated in the Constitution.

The Court has surmounted internal and external challenges and strived to shorten the judgment processing time, increased in its productivity, reduced case backlog and improved on its case clearance rate as set out in the targets contained in the Performance Management and Measurement Understanding (PMMU). For instance, the case clearance rate for appeals in the year 2012 was 71%, while in the year 2023 it was 179%.

This Commemorative Book highlights key events of the Court and some notable decisions delivered since inception. It is my hope that as we forge ahead, the Court shall continue to enhance its efficiency and excellence in service delivery.

Hon. Lady Justice Philomena Mbete Mwilu,FCIArb, MGH
Deputy Chief Justice and Vice President of the Supreme Court of Kenya.



NOTE FROM THE CHAIRPERSON, PUBLICATIONS COMMITTEE

This year marks the Supreme Court's 12th year anniversary. This called for an occasion to celebrate this milestone, hence the Supreme Court @12 Conference. As part of the celebrations, the Court considered it appropriate to publish this inaugural Commemorative Book to document the Court's extraordinary journey and afford an understanding of its working. This book is in line with the theme of the Supreme Court @ 12 conference: *Introspecting and Reflecting on the Supreme Court's Jurisprudence: 12 Years of Defending the Constitution*.

This Commemorative Book is a reflection on the journey and evolution of the Supreme Court, chronicling its history from inception to the present day. It provides a detailed account of the Court's mandate, achievements, and its role in upholding justice and the rule of law. The publication is not just a historical record but a thoughtful reflection on the Supreme Court's pivotal role in shaping the nation's legal landscape, and its mission to uphold justice and constitutional values. It serves as both an educational resource and a tribute to the institution's enduring impact. Moreover, the book is a tribute to the individuals who have served the Supreme Court with distinction, their tireless efforts in the pursuit of justice, and the trust that the Kenyan people have placed in this esteemed institution.

The development of the Commemorative Book would not have been complete without the support of the President, Vice President and Justices of the Court, to who I extend my sincere gratitude.

I also take this opportunity to extend my appreciation to the Publications Committee for their continuous support, professionalism, steadfast commitment, dedication, collaboration and exceptional hard work that has seen this publication come to fruition.

Hon. Lady Justice Njoki Ndungu, FCIArb, SCJ, CBS
Chairperson, Supreme Court Publications Committee



ACKNOWLEDGMENT BY THE REGISTRAR OF THE SUPREME COURT

The development of the Commemorative Book would not have been complete without the vision and guidance of the President, Vice President and Justices of the Court who conceived the need for a Publication that traces the Court's history and captures the true essence of the Court.

I am grateful to the Chairperson of the Supreme Court Publications Committee, Hon. Lady Justice Njoki Ndungu, who steered the workings of the Committee and ensured that we adhere to the tenets of the mandate of the Committee.

My commendations go to the Supreme Court Publications Committee members: Hon. Nelly Kariuki, Mr. Walter Khobe, Ms. Evelyne Kinyua, Ms. Faith Rotich, Ms. Nancy Macharia, Ms. Hilda Kunyanga, Mr. Samuel Nyambane, Ms. Nancy Waruguru, Mr. Anthony Sissey, Mr. Jarso Yussuf, Mr. Stephen Kirira, Ms. Margaret Gatua, Ms. Celina Lekelees, and Ms. Jacqueline Micheni for their passion, dedication, and industry that ensured the success of this task.

I appreciate the staff of the Supreme Court whose input has been critical in the achievements of the Court.

Hon. Letizia Wachira, FCIArb, OGW
Registrar, Supreme Court

TABLE OF CONTENTS

FOREWORD **4**
Message from the Vice President of the Court **6**
Note from the Chairperson, Publications Committee **8**
Acknowledgement by the Registrar of the Supreme Court **10**

CHAPTER ONE: HISTORY OF THE SUPREME COURT 15
1.0. Introduction 15
1.1. The Justice System in the Pre-Colonial Era 16
1.2. The Justice System in the Colonial era 16
1.3. Post-Colonial Era 19
1.4. The establishment of the present-day Supreme Court of Kenya 20

CHAPTER TWO: THE SUPREME COURT OF KENYA 24
2.0. Establishment of the Supreme Court 24
2.1. Location of the Court 24
2.2. Objectives of the Court 24
2.3. Jurisdiction 24
2.4. Current composition 25
2.5 Sittings of the Court 25
2.6. Current Judges of the Supreme Court
Hon. Justice Martha K. Koome,FCIArb , EGH 26
Hon. Lady Justice Philomena Mbete Mwilu,FCIArb , MGH 28
Hon. Justice Mohammed Khadhar Ibrahim, CBS 30
Hon. Justice (Dr.) Smokin C. Wanjala,FCIArb , CBS 32
Hon. Lady Justice Njoki Susanna Ndungu, FCIArb, CBS 34
Hon. Justice Isaac Lenaola, FCIArb, CBS 36
Hon. Justice William Ouko, FCIArb, CBS 38
2.7. Former Judges of the Supreme Court 40
Honourable (Rtd.) Justice (Prof.) Willy Mutunga 40
Honourable (Rtd.) Justice David K. Maraga 42
Honourable (Rtd.) Lady Justice (Dr.) Nancy Makokha Baraza 44
Honourable (Rtd.) Lady Justice Kalpana Rawal 46
Honourable (Rtd.) Justice (Dr.) Phillip Kiptoo Tunoi 48
Honourable (Rtd.) Justice (Prof.) J. B. Ojwang' 50
2.8. Reflections from the Court 56

CHAPTER THREE: THE COURT'S REGISTRY OPERATIONS 72
3.0. Introduction 72
3.1. Office of The Registrar of The Supreme Court. 72
3.1.1. Registrar of The Supreme Court 73
3.1.2. Deputy Registrars of The Supreme Court 74
3.2. Supreme Court Registry 78

3.2.1. Virtual Registry (E-customer service) 78
3.3. Case management in the Supreme Court 79

CHAPTER FOUR: STATISTICS 81
4.1. Caseload Statistics 81
4.1.1. Presidential Election Petitions 81
4.1.2. Petitions of Appeal 81
4.1.3. Advisory Opinions 82
4.1.4. Applications 83

CHAPTER FIVE: JURISPRUDENCE OF THE COURT 86
5.1. Introduction 86
Governance and Constitutional Law 86
Human Rights Law 90
Administrative Law 91
Commercial Law 92
Employment Law 93
Family Law 94
Land Law 94
Criminal Law 94
Appeals from Tribunal for the Removal of Judges 95
Election Law 96

CHAPTER SIX: REGIONAL AND INTERNATIONAL JURISPUDENTIAL INFLUENCE 99
6.1 Introduction 99
Constitutional Court of South Africa 99
Supreme Court of Uganda 100
Constitutional Court of Zambia 100
Supreme Court of Appeal of Malawi 100
Supreme Court of Namibia 101
Constitutional Court of Seychelles 101
Court of Appeal of Tanzania 102
Supreme Court of Ghana 102
Regional Courts 102
Caribbean Court of Justice 102
African Court on Human and Peoples' Rights 102
6.2 International Engagements, Study Tours and Experience Sharing 103

CHAPTER SEVEN: OUTREACH ACTIVITIES AND CORPORATE SOCIAL RESPONSIBILITY (CSR 106
7.1. Speaking Engagements 106
7.2. Mentorship of Law School Students 108
7.3. CSR Activities 110


THE SUPREME COURT OF KENYA

CHAPTER ONE
HISTORY OF THE SUPREME COURT

1.0 Introduction

The Supreme Court of Kenya which is established under the 2010 Constitution, had its inaugural bench assuming office on 26th August 2011 after being earlier appointed on 16th June 2011. It is the apex court in the Judiciary hierarchy and plays a crucial role in shaping the national legal landscape. Its establishment marked a significant milestone in the evolution of the Kenyan justice system from pre-colonial to modern time. This chapter explores the historical evolution of the Kenyan justice system and apex courts across different historical epochs.

1.1 The Justice System in the Pre-Colonial Era

The history of Kenya's justice system dates back to long before colonial rule, rooted in traditional and customary laws. These laws varied among the country's diverse ethnic groups, each with its own rules and procedures for resolving disputes and maintaining social order. Disputes were typically resolved in village, clan, or tribal courts, presided over by councils of elders, kings, or chiefs.

Justice in these systems was largely restorative, emphasizing reconciliation and compensation over punishment. The community played a central role in ensuring that dispute resolution upheld social harmony and cultural norms. These indigenous justice systems were highly respected and integral to pre-colonial Kenyan society, providing a foundation for accessible and culturally relevant justice.



Kikuyu Council of Elders [*photo courtesy of Mathaga***]**

1.2. The Justice System in the Colonial era

The modern Judiciary in Kenya has its roots in the colonial era. In 1888, the Imperial British East Africa Company (IBEAC) established territorial claims in what is now Kenya. In 1895, the British government took control of this territory, creating the British East Africa Protectorate. Later, in 1920, the region became the Colony and Protectorate of Kenya, a status it held until independence in 1963. IBEAC introduced the British legal system to the region, based on English Common Law.

The first High Court in the region was established in Zanzibar as the High Court of East Africa, under the East African Order in Council of 1897 and the Crown Regulations. The court, comprising a Chief Justice and Puisne Judges appointed by the Governor, had jurisdiction over both civil and criminal matters. Judges held circuit courts throughout the protectorate. The 1897 East Africa Order in Council and the Native Courts Regulations also introduced a two-court system: Native Courts and Non-African Courts.

In 1902, a general revision of British administration in East Africa moved the High Court to Mombasa and established new courts within the Kenyan Protectorate.



The 1902 East Africa Native Courts (Amendment) Ordinance created Special Courts with full civil and criminal jurisdiction over natives in the districts. The High Court applied English law, while the Native Courts used African customary law.

The same year, the East African Court of Appeal (EACA) was established to serve British colonies in East Africa, including Kenya. Appeals from the EACA could be taken to the Judicial Committee of the Privy Council in Britain.

In 1907, the Native Courts Ordinance created a three-tier system of African courts: Native Courts Tribunals, Chiefs & Headmen, and the Council of Elders. After Kenya became a colony in 1920, the East Africa Order in Council of 1921 established the Supreme Court within the protectorate, with full civil and criminal jurisdiction. This court, later renamed the High Court, remained in place until independence in 1963.



Elders of the African Native Tribunal of Kiambu gathered for a Swearing in Ceremony



Statue of King George V in front of Nairobi High Court



Once Kenya became a colony, the judicial system was structured as follows:

1. **Subordinate Courts**: These were divided into three categories: (i) African Courts for natives, (ii) Kadhi's Courts, and (iii) European Courts.

2. **Supreme Court**: Later renamed the High Court, had full civil and criminal jurisdiction over all persons and matters in the colony. It also heard appeals from lower courts and handled serious cases such as murder.

3. **East African Court of Appeal**: This was the highest appellate court for East Africa, handling appeals from the Supreme Court.

4. **Judicial Committee of the Privy Council**: Based in Britain, it handled appeals from the **East African Court of Appeal** and had jurisdiction across the British Empire.

1.3 Post-Colonial Era

In 1963, Kenya gained independence, becoming a sovereign state and ending decades of British colonial rule. With independence, significant legal reforms were introduced to shape the country's judicial system. The Independence Constitution of 1963 established a Supreme Court with original and unlimited civil and criminal jurisdiction. It also handled constitutional interpretation and matters related to the enforcement of fundamental rights and freedoms. The Court was composed of the Chief Justice and at least eleven other judges.

The Independence Constitution also created a Court of Appeal, which was superior to the Supreme Court and tasked with hearing appeals from it. However, Kenya did not operationalize its Court of Appeal, opting instead to continue using the East African Court of Appeal.

Two key amendments were made to the Constitution in 1965 through the Constitution of Kenya (Amendment) Act No. 14. First, the Supreme Court was renamed the High Court. Second, appellate jurisdiction to the Judicial Committee of the Privy Council was abolished, leaving the East African Court of Appeal as the highest court.

When the East African Community collapsed in 1977, the East African Court of Appeal was dissolved, leading to the establishment of the Court of Appeal of Kenya, which remained the apex court until the Supreme Court was established by the 2010 Constitution.

1.4 The establishment of the present-day Supreme Court of Kenya

The Supreme Court, in its current form, was established by the 2010 Constitution of Kenya. Its creation followed efforts that began in the early 2000s, during the constitutional review process led by the Constitution of Kenya Review Commission (CKRC). The CKRC produced a draft constitution, known as the CKRC Draft. This draft underwent one of the most extensive public participation exercises in Kenya's history and was discussed at the National Constitutional Conference, held at Bomas of Kenya, commonly referred to as the Bomas Conference.

The Bomas Conference produced the "Bomas Draft" Constitution, which proposed the establishment of the Supreme Court as the apex court and the final authority on constitutional interpretation. The CKRC's Final Report, highlighted several issues raised by the public as catalysts for establishing the Supreme Court. These included the High Court's restrictive approach to constitutional interpretation, particularly in human rights cases, which hindered the development of jurisprudence. There were also complaints about the lack of a right to appeal High Court rulings on constitutional matters, along with accusations that factors outside the law influenced some High Court decisions and the decisions were contrary to public interest. Concerns were also raised about inconsistencies in judicial decisions, even in similar cases.

The Report recommended the establishment of a Supreme Court with the following functions: arbitrating civil and criminal cases, acting as a referral court for disputes between districts and provincial councils, serving as the final court of appeal in all matters, providing advice to the executive or parliament on constitutional interpretation, resolving presidential election disputes, and exercising original jurisdiction as provided by the Constitution and legislation.

Upon the completion of the Constitutional Review Commission of Kenya (CKRC) process, the Chairperson, Prof. Yash Pal Ghai, formally submitted the Bomas Draft to the Attorney General, in accordance with the provisions of the Review Act. In 2004, the Parliamentary Select Committee (PSC) on the Review of the Constitution of Kenya was established, and subsequently reconstituted in 2005, with the mandate to review the Draft Constitution.

Following two retreats, first in Naivasha in November 2004 and then in Kilifi in June 2005, the PSC produced two reports known as the Naivasha Accord and the Kilifi Accord, respectively. These reports reflected efforts by Members of Parliament to address contentious issues raised by both the government and the opposition.

The Attorney General, Hon. Amos Wako, prepared a new draft of the Constitution, incorporating the recommendations from the Naivasha and Kilifi Accords. This version became known as the Wako Draft. Pertinent to the Judiciary, the Wako Draft largely retained the provisions of the Bomas Draft, including the proposal to establish a Supreme Court, with an additional provision granting the Court jurisdiction to issue advisory opinions.

On 21st November 2005, the Wako Draft was subjected to a national referendum presided by the Electoral Commission of Kenya. The draft was rejected by 57% of voters, with 43% voting in favor.

The constitution-making process stalled as the country entered

the electioneering period, leading to the 2007 General Elections. After the opposition disputed the election results, they refused to go to court, citing a lack of trust in the Judiciary, which they claimed was compromised by the incumbent government. The aftermath of the disputed elections led to the 2007/2008 post-election violence, a dark chapter in Kenya's history. Peace was restored through the signing of the Peace Accord, brokered by the late Kofi Annan, which resulted in the formation of a coalition government tasked with among other things the agenda of constitutional reforms.

The parties agreed to form two commissions: the Independent Review Committee (IREC) and the Commission of Inquiry on Post-Election Violence (CIPEV). These non-judicial bodies were tasked with investigating different aspects of the crisis.

The IREC, chaired by former South African Judge Johann Kriegler, investigated the 2007 presidential elections and made recommendations to improve the electoral process. The CIPEV, chaired by now retired Kenyan Judge Philip Waki, examined the violence that followed the elections and recommended measures to prevent future occurrences.

Both commissions highlighted concerns about the Judiciary, noting that it was perceived as lacking independence, impartiality, integrity, and transparency. These issues, along with allegations of delays in dispensing justice, were cited as reasons the opposition refused to take their election disputes to court.

This fueled renewed demands for a new Constitution, leading to the formation of a Committee of Experts on Constitutional Review. The Committee of Experts published a Harmonised Draft Constitution, collating reform proposals from previous drafts. This Harmonised Draft was subjected to a political consensus building process under the auspices of The Parliamentary Select Committee on the Review of the Constitution noting as follows with respect to institutional restructuring of the Judiciary:

> *One of the most notable "modifications in the Chapter is the removal of the Constitutional Court from the Harmonised Draft as it was considered an ad hoc institution (formed when need arises) and that its functions will best be performed by the Supreme Court..."*

The Proposed Constitution was thereafter subjected to a Referendum that culminated in the promulgation of the new Constitution on 27th August, 2010.



Signing of the new Constitution by former President H.E. Emilio Mwai Kibaki



Promulgation of the Constitution on 27th August 2010 by former President H.E. Emilio Mwai Kibaki

CHAPTER TWO

THE SUPREME COURT OF KENYA

2.0 Establishment of the Supreme Court

Article 163(1) of the Constitution establishes the Supreme Court as the highest court in Kenya's judicial system. The Court comprises the President, the Vice President and five other Judges. The Supreme Court Act, Cap. 9B Laws of Kenya makes further provision with respect to the operation of the Court. Under Article 163(2), the Court is properly constituted for its proceedings if it is composed of five judges.

2.1. Location of the Court

The Court sits at the Supreme Court Building, off City Hall Way Nairobi with two sub-registries in Kisumu and Mombasa and an *ad hoc* sub-registry in Forodha House.

2.2. Objectives of the Court

In execution of its mandate, the Court is guided by the objectives set out in Section 3 of the Supreme Court Act, which include:

i) Assert the supremacy of the Constitution and the sovereignty of the people of Kenya;
ii) Provide authoritative and impartial interpretation of the Constitution;
iii) Develop rich jurisprudence that respects Kenya's history and traditions and facilitates its social, economic and political growth;
iv) Enable important constitutional and other legal matters to be determined with due regard to the circumstances, history and cultures of the people of Kenya; and
v) Improve access to justice.

2.3. Jurisdiction

The Court derives its mandate from the Constitution and exercises the following jurisdiction:

i. **Exclusive original jurisdiction under Article 163(3)(a)** to hear and determine disputes relating to the elections to the office of the President. In exercise of this jurisdiction, the Court must hear and determine such petitions within 14 days from the date of filing.

ii. **Appellate jurisdiction under Article 163(4)(a) and (b)** to hear and determine appeals from the Court of Appeal and any other court or tribunal as prescribed by national legislation. Appeals from the Court of Appeal lie to the Court in two ways: as of right in any case involving the interpretation or application of the Constitution, and upon certification by either the Court or the Court of Appeal that a matter of general public importance is involved.

iii. **Jurisdiction to offer an advisory opinion under Article 163(6)** at the request of the national government, any state organ, or any county government relating to any matter concerning county government.

iv. **Appeals from tribunals constituted under Article 168 (8)** to hear and determine an appeal by a judge aggrieved by a decision of a tribunal formed to consider the judge's removal from office.

v. **Upon declaration of a State of Emergency under Article 58(5)** to determine the validity of a declaration of a state of emergency, any extension of such a declaration, and any legislation enacted or action taken in consequence of the declaration.

2.4. Current composition

The Chief Justice is the President of the Court and is responsible for the management of the Court, the allocation of cases, the composition of benches, and the determination of sittings of the Court. The Deputy Chief Justice is the Vice President of the Court and deputises the Chief Justice. The other five Judges take precedence according to the dates on which they respectively took the oath of office. While carrying out the Court's judicial mandate, the seven Judges are equal.

2.5. Sittings of the Court

The Court has three sittings in a Year –

(a) from the 14th January to the second Wednesday before Good Friday;
(b) from the first Wednesday after Easter Week to the 31st July; and
(c) from the 16th September to the 20th December.

2.6` Current Judges of the Supreme Court



Hon. Justice Martha K. Koome, FCIArb, EGH
Chief Justice and President of the Supreme Court of Kenya

Hon. Justice Martha Koome was appointed on 14th May, 2021 and assumed office on 21st May, 2021 as the Chief Justice of the Republic of Kenya, and President of the Supreme Court of Kenya. She is the first woman Chief Justice of the Kenyan Judiciary. She is the Chairperson of the Judicial Service Commission, National Council on the Administration of Justice (NCAJ), National Council for Law Reporting, and the Vice Chairperson of the Southern and Eastern Africa Chief Justices' Forum.

Prior to her appointment, she was a Judge of the Court of Appeal, and Judge of the High Court. Before joining judicial service, she was a practising advocate.

Hon. Justice Martha Koome was the President of the Kenya Magistrates and Judges Association (2019); Member of the AU Committee on the Rights and Welfare of the Child (2005 - 2010); Chairperson of FIDA - Kenya (1997- 2003); Chairperson of the Bill of Rights Sub-Committee at the Bomas Constitutional Conference; inaugural Treasurer of the East Africa Law Society; and Council Member of the Law of Society of Kenya (1994-1996). She chaired the NCAJ Special Taskforce on Children Matters that was the architect of the Children Act, 2022.

She was awarded the runner-up UN Person of the Year in Kenya 2020, the National Honours of the Elder of the Order of the Burning Spear (EBS), and the Elder of the Order of the Golden Heart (EGH).

She is an Advocate of the High Court of Kenya, holds a Bachelor of Laws (LLB) from the University of Nairobi, Post-Graduate Diploma from the Kenya School of Law, and Master of Laws (LLM) from the University of London. She is also a Fellow of the Chartered Institute of Arbitrators



Hon. Lady Justice Philomena Mbete Mwilu, FCIArb, MGH

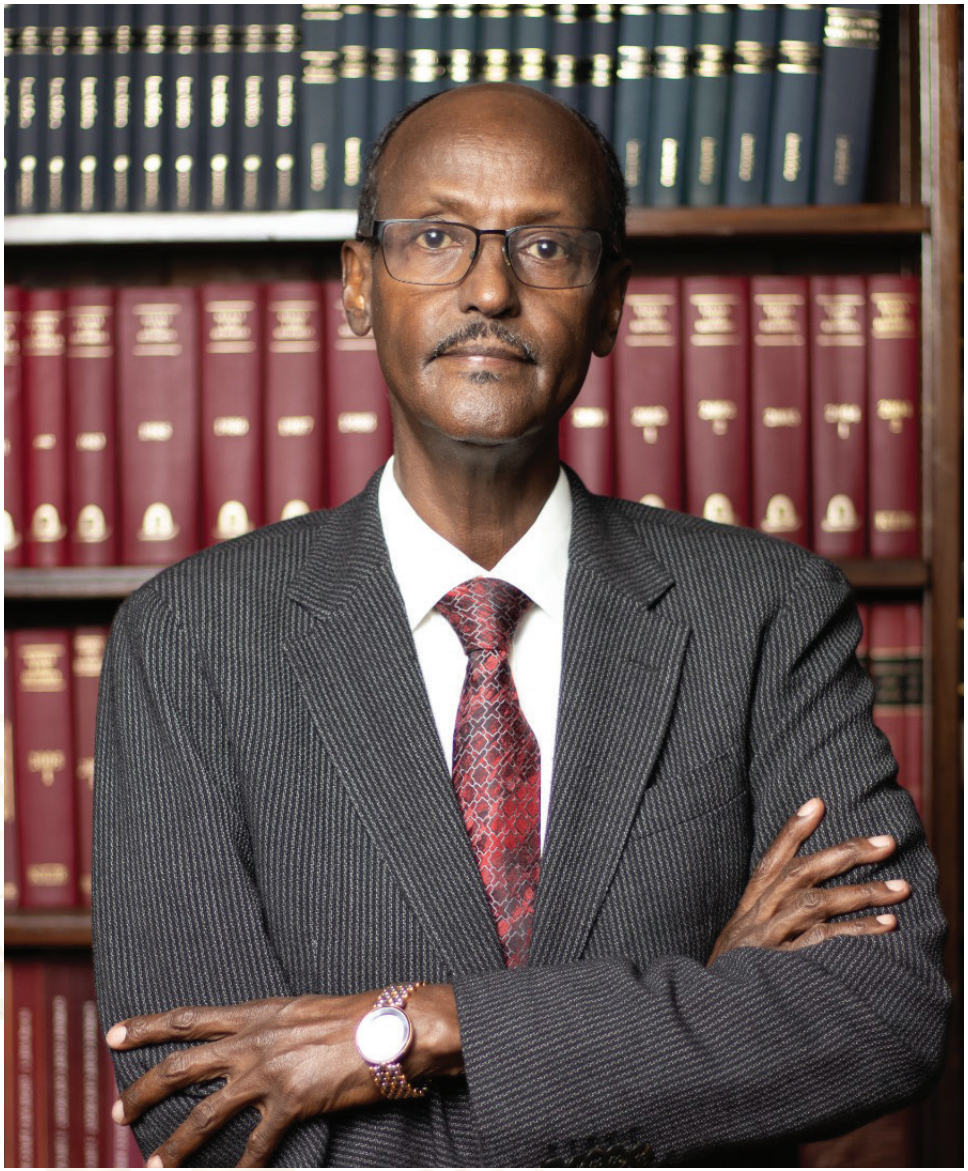
Deputy Chief Justice and Vice President of the Supreme Court of Kenya

Hon. Lady Justice Philomena Mbete Mwilu was appointed on 27th October, 2016 and assumed office on 28th October, 2016 as the Deputy Chief Justice and Vice President of the Supreme Court. She deputises the Chief Justice and is responsible for the co-ordination of the overall performance and supervision of the Supreme Court and the entire Judiciary.

Prior to her appointment, she served as a Judge of the Court of Appeal, and Judge of the High Court. She served as a Director of the Board and Chair of the Legal and Human Resource Committee of the Nairobi Water and Sewerage Company; Deputy Chairperson of the Energy Tribunal; Board Secretary of the Electricity Regulatory Board of Kenya; Senior Legal Officer in the insurance sector; and practiced law in various law firms.

She also served as a Commissioner of the Judicial Service Commission (2017-2022); Acting Chief Justice from 12th January, 2021 to 21st May, 2021; the Judiciary Ombudsman; and the Chair of the Implementation Monitoring Committee of the Sustaining Judiciary Transformation Framework (SJT). Hon. Lady Justice Philomena Mwilu is the Vice Chairperson of the Judiciary Leadership Team (JLT), and Chair of the Judiciary Management Committee. She was awarded the National Honour of the Moran of the Order of the Golden Heart (MGH).

She is an Advocate of the High Court Kenya, holds both Bachelor of Laws (LLB) and Master of Laws (LLM) from the University of Nairobi and Post-Graduate Diploma from the Kenya School of Law. She is also a Fellow of the Chartered Institute of Arbitrators.



Hon. Justice Mohammed Khadhar Ibrahim, CBS
Justice of the Supreme Court of Kenya

Hon. Justice Mohammed Ibrahim was appointed on 16th June, 2011 and assumed office on 26th August, 2011 as a Judge of the Supreme Court. He is the Supreme Court representative to the Judicial Service Commission, Chairperson of the Judiciary Committee on Elections, and heads the Supreme Court Engagement with the Electoral Process, Intellectual Resource Management and Court's Strategic Planning and Implementation Portfolio.

Prior to his appointment, he served as a Judge of the High Court. Before joining the Bench, he was a Partner at Ibrahim & Isaack Advocates (1997- 2003), Mohammed Ibrahim & Associates (1994-1997), and Messrs Waruhiu & Muite Advocates (1983-1994).

Hon. Justice Mohammed Ibrahim has been a champion for minority group rights and particularly advocated for recognition of the citizenship rights of Kenyan Somalis. He actively advocated for political pluralism in the early 1990s as a result of which he was detained in solitary confinement without trial.

He served as a Council member of the Law Society of Kenya (1994), and worked with Kituo Cha Sheria. He was a founding Trustee of the Mwangaza Trust; and Member of Lawyers Committee for Human Rights. He has been awarded the National Honour of the Chief of the Order of the Burning Spear (CBS).

Hon. Justice Mohammed Ibrahim is an Advocate of the High Court of Kenya, holds a Bachelor of Laws (LLB) from the University of Nairobi, and Post-Graduate Diploma from the Kenya School of Law.



Hon. Justice (Dr.) Smokin C. Wanjala, FCIArb, CBS
Justice of the Supreme Court of Kenya

Hon. Justice (Dr.) Smokin Wanjala was appointed on 16th June, 2011 and assumed office on 26th August, 2011 as a Judge of the Supreme Court. He is the Director Kenya Judiciary Academy (KJA) and heads the Supreme Court Academy Portfolio.

Prior to his appointment, he served as the Assistant Director of the Kenya Anti-Corruption Commission (2004-2009), Law Lecturer and later, Senior Lecturer at the University of Nairobi (1986-2004).

He served as a Commissioner of the Judicial Service Commission (2011-2016), and the Joint Secretary to the Commission on Illegally and Irregularly Acquired Public Land (the Ndung'u Commission, 2003). Hon. Justice Smokin Wanjala was the Chairman of the Public Complaints Committee on the Environment (2002-2004), under the National Environment and Management Authority (NEMA); and a founder member of the Centre for Law and Research International (CLARION) which pioneered Civic Education in the Country. He is a member of the Kenya National Academy of Sciences; visiting lecturer at the International Anti-Corruption Academy (IACA); and member of the Advisory Board of Columbia Global Centres – Nairobi.

He has been awarded the National Honour of the Chief of the Order of the Burning Spear (CBS) and was featured in "Marquis Who's Who", 25th Edition (2008).

He is an Advocate of the High Court of Kenya, holds a Bachelor of Laws (LLB) from the University of Nairobi, Post-Graduate Diploma from the Kenya School of Law, Master of Laws (LLM) from Columbia University, and Doctorate in Law (PhD) from the University of Ghent. He is also a Fellow of the Chartered Institute of Arbitrators.



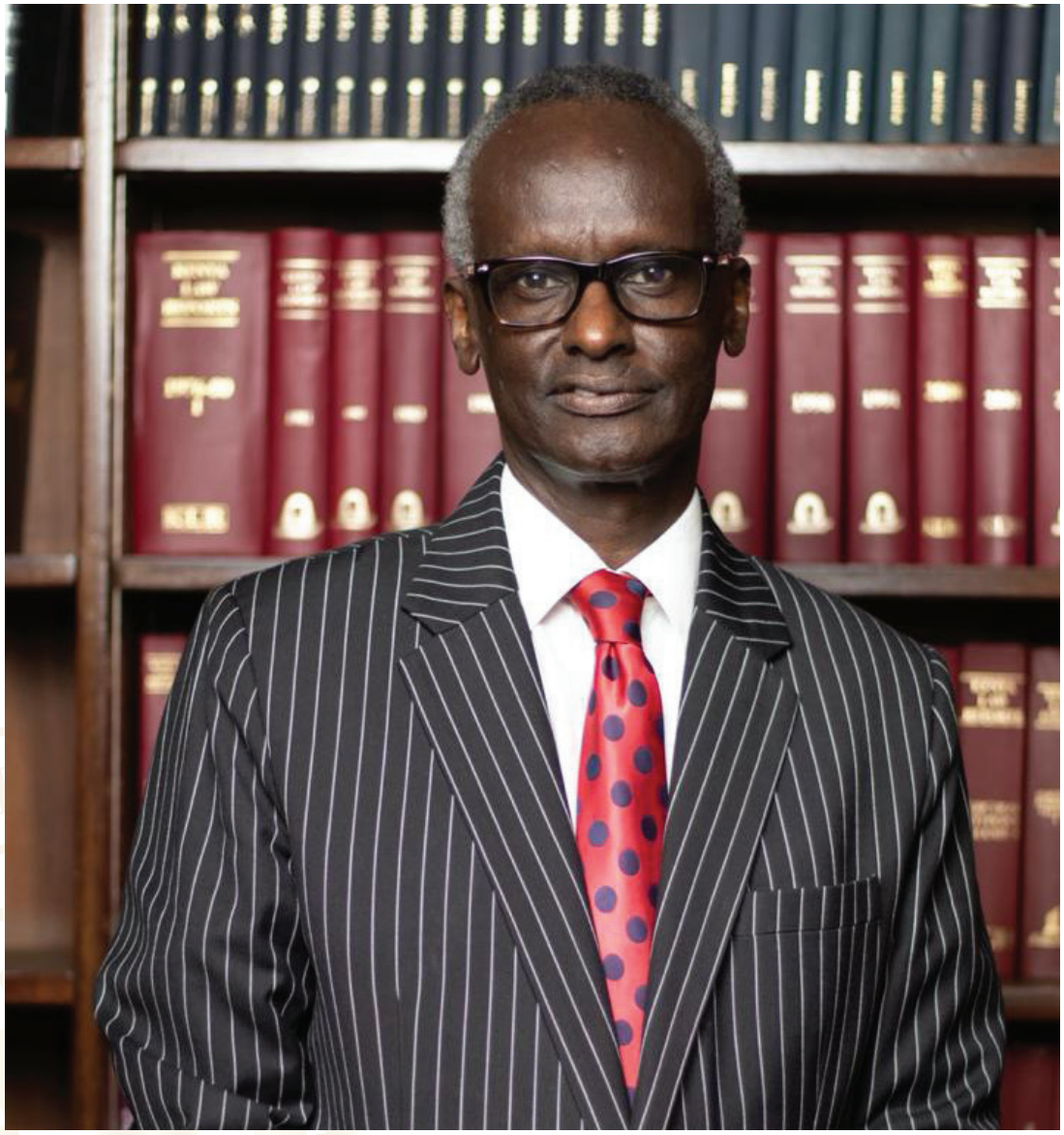
Hon. Lady Justice Njoki Susanna Ndungu, FCIArb, CBS
Justice of the Supreme Court of Kenya

Hon. Lady Justice Njoki Ndungu was appointed on 16th June, 2011 and assumed office on 26th August, 2011 as a Judge of the Supreme Court. She is Chairperson of the Judiciary Employee Protection and Integrity Committee and member of the Judiciary Leadership team. She holds the Supreme Court Governance and Regulatory Affairs Portfolio: heading both the Rules and Publications Committees of the Court.

Prior to her appointment, she sat on the Committee of Experts on Constitutional Review that drafted the Constitution of Kenya 2010. She served as Member of the National Assembly of the 9th Parliament and the Pan-African Parliament (2003-2007). She was the Mover of the Sexual Offences Bill 2006, and key amendments for legislative change including those on maternity and paternity leave. She worked in various capacities internationally and nationally, including as State Counsel at Office of Attorney General (1989), National Protection Officer at United Nations High Commissioner for Refugees (UNHCR) (1995), Women in Law & Development in Africa (1998), and as Political Analyst for the African Union (2000).

She was awarded UN Person of the Year, Kenya and ICJ Kenya – Jurist of the Year Award 2006, and National Honours of Elder of the Order of the Burning Spear (EBS), and Chief of the Order of the Burning Spear (CBS).

She holds a Masters in Law (LLM) in Human Rights & Civil Liberties (University of Leicester), Bachelor of Laws (LLB) (University of Nairobi), Post-Graduate Diploma (Kenya School of Law) and Diploma Women Rights (WUS). She is also a Fellow of the Chartered Institute of Arbitrators.



Hon. Justice Isaac Lenaola, FCIArb, CBS
Justice of the Supreme Court of Kenya

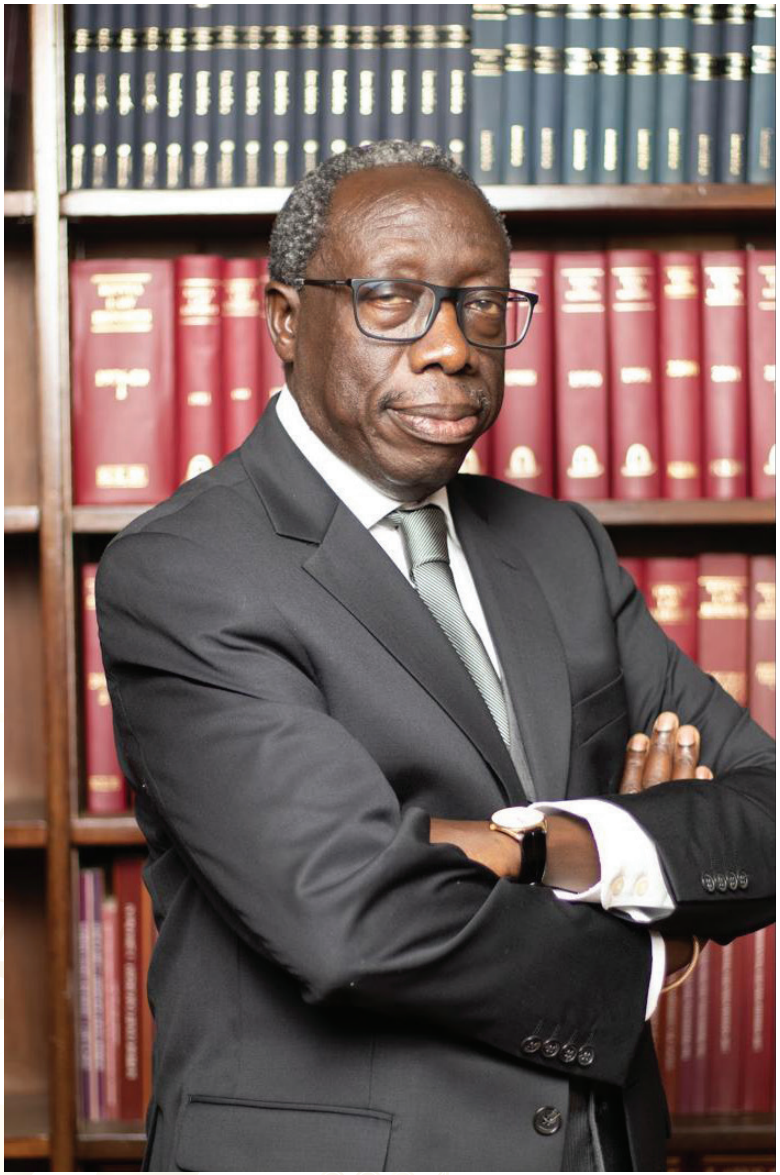
Hon. Justice Isaac Lenaola was appointed on 27th October, 2016 and assumed office on 28th October, 2016 as a Judge of the Supreme Court. He heads the Supreme Court Judicial Function Operations, Bar-Bench Relations, Relations with Non-Domestic Courts and International Courts as well as Information Communication Technology Portfolio.

Prior to his appointment, he was a Judge of the High Court of Kenya, and Judge and Deputy Principal Judge of the Court of First Instance of the East African Court of Justice (2011-2018). He is the Vice-President (2024) and Judge at the Residual Special Court for Sierra Leone (2013 to-date). He practiced law, served as a Commissioner in the Constitution of Kenya Review Commission (CKRC), and was a Member of the Tribunal Investigating the Conduct of Puisne Judges.

Hon. Justice Isaac Lenaola served as a Commissioner at the Judicial Service Commission and is the President of the Advisory Council of the Strathmore Institute for Advanced Studies in International Criminal Justice; President, International Association of Refugee and Migration Judges (IARMJ); and Chairman Emeritus, Judicial Action Group. He is a Fellow of the Chartered Institute of Arbitrators, and McLaughlin College, York University, Toronto, Canada.

He was awarded the LSK Distinguished Service Award (2008); East African Law Society Honorary Membership Award (2015); Jurist of the Year ICJ-Kenya Chapter (2019); IARMJ Distinguished Service Awards (2014 and 2018); and National Honours of the Moran of the Order of the Burning Spear (MBS), and Chief of the Order of the Burning Spear (CBS).

He is an Advocate of the High Court of Kenya, holds a Bachelor of Laws (LLB) from the University of Nairobi, and Post-Graduate Diploma from the Kenya School of Law.



Hon. Justice William Ouko, FCIArb, CBS
Justice of the Supreme Court of Kenya

Hon. Justice William Ouko was appointed on 14th May, 2021 and assumed office on 21st May, 2021 as a Judge of the Supreme Court. He heads the Supreme Court Physical Infrastructure, Security, Corporate Social Responsibility and Welfare Portfolio.

Prior to his appointment, he served as a Judge and the President of the Court of Appeal, and Judge of the High Court. He joined the judicial service in 1987 as District Magistrate II (Professional) rising through the ranks to the positions of Chief Court Administrator of the Judiciary, and Registrar of the High Court and Accounting Officer for the Judiciary.

Hon. Justice William Ouko was the Chairperson of the Sub Committee of the National Council on the Administration of Justice (NCAJ) mandated to mitigate Covid-19 in Kenya's Justice Sector (2020). He participated in various judicial reform initiatives as Chairperson of the Judiciary Transformation Programme Implementation Steering Committee (2011-2012); Chairperson of the Task Force on Judicial Reforms (2009), and Member of the Delinking Committee of the Judiciary. He was also the Joint Secretary in the Judicial Commission of Inquiry into the Goldenberg Affair. He was awarded the National Honours of the Elder of the Order of the Burning Spear (EBS) and Chief of the Order of the Burning Spear (CBS).

Hon. Justice William Ouko is an Advocate of the High Court of Kenya, holds a Bachelor of Laws (LLB) from the University of Nairobi, Post-Graduate Diploma from the Kenya School of Law, and Master of Arts in Criminology & Criminal Justice from Egerton University. He is also a Fellow of the Chartered Institute of Arbitrators.

2.7. Former Judges of the Supreme Court



THE HON. (RTD.) JUSTICE (PROF.) WILLY MUTUNGA

The Hon. (Rtd.) Justice (Dr.) Willy Mutunga was Kenya's Chief Justice and President of the Supreme Court from 2011 to 2016.

Before his appointment as Chief Justice, he led the Ford Foundation's East Africa office. He taught at the University of Nairobi, Faculty of Law, from 1974 to 1982. He was the Vice-Chairman of the Law Society of Kenya from 1991 to 1993 and the Chairman from 1993 to 1995. He also chaired the Kenya Human Rights Commission and later became its Executive Director. He spent 16 months in detention (1982-1983) for his democratic activism.

He holds a Bachelor of Laws and Master of Laws degrees, from the University of Dar-es-Salaam and Doctorate degree in Jurisprudence from Osgoode Hall Law School, York University.

Dr. Mutunga is renowned for his reformist approach. He played a pivotal role in transforming Kenya's judiciary, championing transparency, accountability, and judicial independence. With a rich background in activism and legal scholarship, he was instrumental in advocating for social justice, human rights, and the rule of law.

His tenure is remembered for significant judicial reforms, including the vetting of judges and the establishment of the Supreme Court of Kenya, which has strengthened the country's democratic framework. Dr. Mutunga's legacy is deeply rooted in his commitment to justice and his efforts to make the judiciary more accessible to all Kenyans.



HONOURABLE (RTD.) JUSTICE DAVID K. MARAGA

The Hon. (Rtd.) Justice David Maraga was Kenya's Chief Justice and President of the Supreme Court from 2016 to 2021.

Before his appointment as the Chief Justice, he served as a Judge of the Court of Appeal from 2012 to 2016, and Judge of the High Court from 2003 to 2012. He served in various capacities in the Judiciary, including as the Chair of the Judiciary Committee on Elections from 2015 to 2016 and Vice Chairperson of the Judiciary Working Committee on Election Preparedness from 2012 to 2015. Prior to joining the bench, he ran a private law practice for over 25 years.

He holds Bachelor of Laws and Master of Laws degrees from the University of Nairobi. He is a Fellow of the Chartered Institute of Arbitrators,FCIArb .

Maraga's tenure was marked by his unwavering commitment to upholding the rule of law and his advocacy for judicial independence. He also worked to reform the judiciary, aiming to enhance its efficiency and public trust.



HONOURABLE (RTD.) LADY JUSTICE (DR) NANCY MAKOKHA BARAZA

Hon. (Rtd.) Lady Justice (Dr.) Nancy Makokha Baraza was the Deputy Chief Justice and Vice President of the Supreme Court from 2011 to 2012.

Prior to joining the Judiciary, Lady Justice Nancy Baraza served as the Vice Chairperson of the Kenya Law Reform Commission from 2008 to 2011. Before that, she was the Chairperson of the Media Council of Kenya's Ethics and Complaints Commission, and the Kenyan Chapter of the Federation of Women Lawyers (FIDA). She also served as a Commissioner in the Constitution of Kenya Review Commission (CKRC).

While serving as the vice chairperson of the Kenya Law Reform Commission (KLRC), Dr. Baraza successfully undertook major reforms in family law which had historically remained elusive. The reforms resulted in the drafting of the current Marriage Act, 2014 and the Matrimonial Property Act 2013. She also led the KLRC to undertake studies into the Law of Succession Act, Cap 160 of the Laws of Kenya with a view to finding loopholes the law that lead to discrimination against women, and this led to some of the most recent reforms in the Act.

Since 2013, Dr. Baraza has served as a senior lecturer in the faculty of Law, university of Nairobi where she has mentored and nurtured thousands of law students. She has served as the chairperson of the Department of Public Law at the Faculty.

She holds Bachelor of Laws, Masters in Law and Doctorate in Law degrees, all from the University of Nairobi.


THE

HONOURABLE (RTD.) LADY JUSTICE KALPANA RAWAL

Hon. (Rtd.) Lady Justice Kalpana Rawal served as the Deputy Chief Justice and Vice President of the Supreme Court from 2013 to 2016.

She previously served as Judge of the Court of Appeal between 2012-2013, Judge of the High Court from 2000 to 2012 and Commissioner of Assize. She also served as a liaison Judge for the International Criminal Court.

She was admitted to the Bar in India in 1968. She subsequently relocated to Kenya and was admitted to the Roll of Advocates in the year 1975, and set up K.H. Rawal Advocates. Lady Justice (Rtd.) Kalpana Rawal was the first sole female lawyer to set up a private practice in Kenya and first woman of Asian descent to be appointed as a Judge.

As a Liaison Judge of the International Hague Network of Judges she assisted with expediting the promulgation of the Rules of Procedure set out in the International Crimes Act. She was also appointed to assist the International Criminal Court (ICC) in taking the evidence of security officers in respect of the 2007/2008 Post-Election Violence.

During her tenure as a Court of Appeal Judge, she chaired the Commission of Inquiry into the June 2012 Kenya Police helicopter craft that left 6 people dead including, the late Minister George Saitoti and Assistant Minister, Orwa Ojode.



HONOURABLE (RTD.) JUSTICE (DR.) PHILLIP KIPTOO TUNOI

Hon. (Rtd.) Justice (Dr.) Phillip Kiptoo Tunoi served at the inaugural bench of the Supreme Court from 2011-2016.

Prior to his appointment at the Supreme Court he served as a Judge of the Court of Appeal between 1993 and 2011, and a Judge of the High Court from 1987 to 1993. He also served as a Judge and Vice- President of the East Africa Court of Justice from 2011 to 2016.

Before joining the Judiciary, Justice Tunoi served as a Provincial State Counsel from 1970 to 1973. He then ventured into private practice for close to 14 years.

He holds a Bachelor's degree in Law from the University of Dar es Salaam, a Masters degree in Philosophy and a PhD in the Philosophy of Law, both from the University of Nairobi.



HONOURABLE (RTD.) JUSTICE (PROF.) J. B. OJWANG'

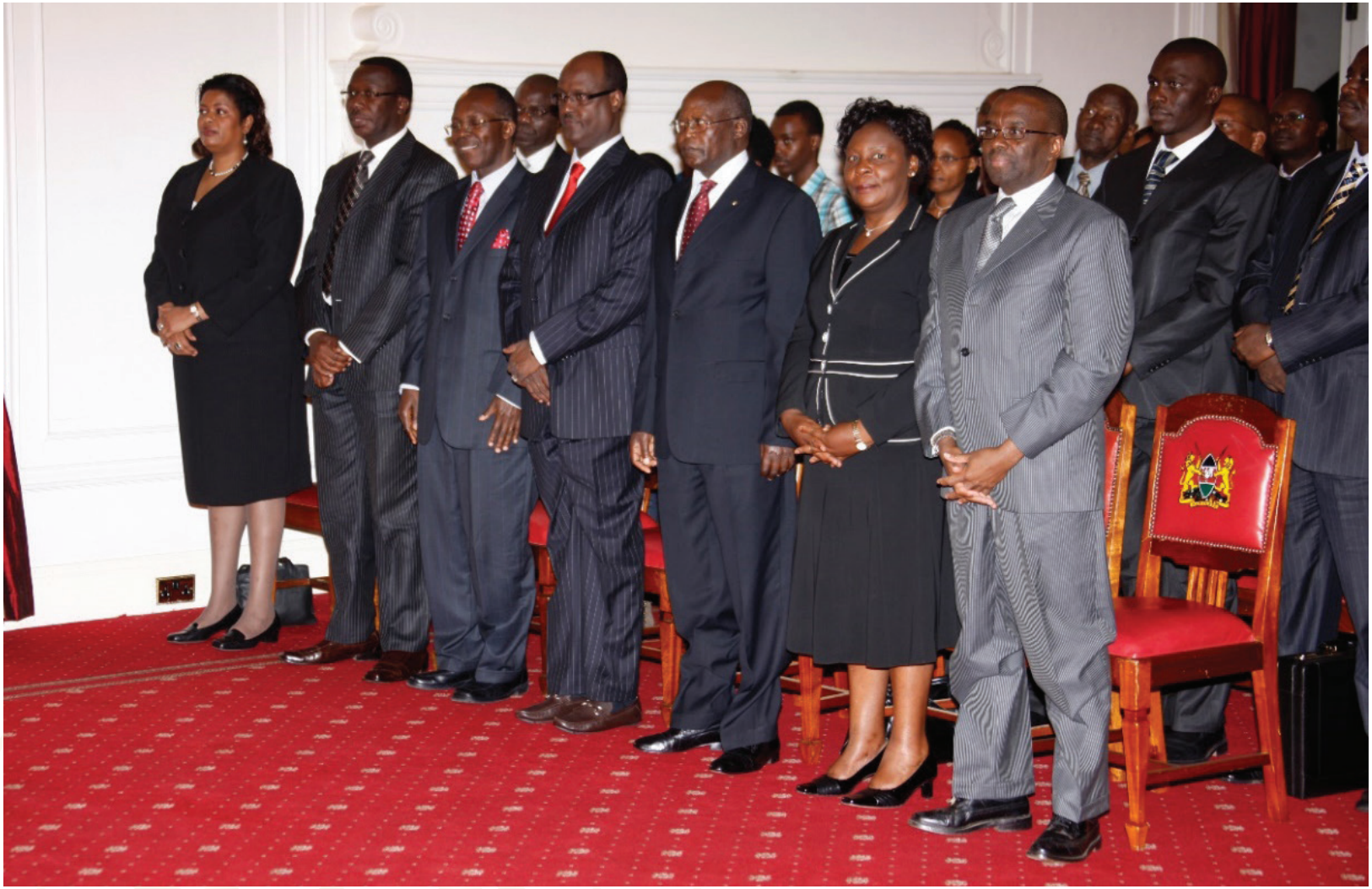
Hon. (Rtd.) Justice (Prof.) J. B. Ojwang' served as a Judge on the inaugural bench of the Supreme Court from 2011 to 2020.

He served as a Judge of the High Court in the period between 2003 to 2011. Prior to joining the bench, he taught at the University of Nairobi, including serving as Professor and Dean of the Faculty of Law.

He has a Bachelor of Laws and Masters in Law degree from the University of Nairobi, as well as a PhD in Comparative Constitutional Law from Downing College, Cambridge. He also obtained a Doctor of Laws degree (LLD) from the University of Nairobi.

He is an accomplished scholar, a Fellow of the Kenya National Academy of Sciences and has lectured at reputable universities around the world including the University of Nairobi where he served for 27 years.

He has conducted research published in several books and monographs, and in international peer-reviewed law journals. He has also participated in many international fora of scholarly, policy and law-making deliberations, and made contributions to specialized tasks of the United Nations, the African Union, and leading foreign Universities.



Swearing in of the Inaugural Supreme Court Bench on 16th June 2011



Supreme Court Judges during the Hearing of the Presidential Election Petition 2013



Supreme Court Judges during the Hearing of the Presidential Election Petition 2017



Supreme Court Judges during the Hearing of the Presidential Election Petition 2022

2.8. Reflections from the Court

Hon. Justice Martha K. Koome, FCIArb, EGH
The President of the Court



As I reflect on the Supreme Court's journey over the past 12 years, and on my own experience as President of this esteemed Court for the last three years, I am filled with a deep sense of pride. It is pride not only in what we, as a Court, have achieved but also in our commitment to continuously strive for improvement.

When I was appointed to this role in 2021, my brother and sister judges welcomed me warmly. During the induction, I was asked to share my vision for the future of the Court—a future that, in many ways, would be built upon the solid foundation laid by my predecessors. I articulated three key goals I wanted to champion: deepening our social justice jurisprudence, ensuring excellence in service delivery, and fostering a strong sense of collegiality within the Court. As we mark the 12th anniversary of the Court, I find myself reflecting on these three areas.

Enhancing social justice jurisprudence was my first priority. Our Court has developed rich and indigenous jurisprudence, particularly in areas of good governance such as devolution, bicameralism, and electoral justice. We've made significant strides, but my hope was always to see us further embrace the role of building social justice jurisprudence. I envisioned the Supreme Court as a forum where human rights, especially socio-economic rights and the protection of the vulnerable and marginalized, would be championed. These rights, so critical to the broader goal of social transformation, enable individuals and communities to thrive and fulfill their potential, as enshrined in Article 19(2) of our Constitution. In the past three years, I've witnessed the Court begin to address more cases in this area. But there's more work to be done. I encourage Kenyans to bring these issues before us, so we can continue building a body of indigenous social justice jurisprudence that reflects the social transformation spirit of our Constitution.

My second goal was ensuring excellence in service delivery. From the moment I assumed office, I committed to making the Supreme Court a "model court"—one that would serve as a benchmark for people-centered and efficient service across the Judiciary. I am proud of the progress we've made. Working as a team, we've built on the solid groundwork set by my predecessors, and we continue striving toward excellence. The Court has strengthened its internal systems and processes to ensure that justice is not only done but done in a timely and efficient manner. We've embraced technology, enhanced our case management systems, and fostered a culture of continuous improvement. The results are visible. We've seen improvements in case clearance rates and other performance metrics monitored by the Judiciary's Performance Management and Measurement Understandings (PMMU). This progress fills me with optimism for what lies ahead.

The third goal, and one close to my heart, was fostering collegiality among the Justices. I believe a Court thrives when its members work together with mutual respect and a shared vision. I am delighted that the Supreme Court feels like a family. There is a spirit of camaraderie, inclusivity, and teamwork that permeates everything we do. We see our work as a collective enterprise, where each of us contributes to the whole, reinforcing one another in the pursuit of justice. This culture of shared leadership has been key to the Court's success.

Looking back on these years, I am filled with gratitude—for the opportunity to serve, for the privilege of working alongside such dedicated and talented colleagues, and for the faith the people of Kenya have placed in our Court. As we look to the future, I remain steadfast in my belief that the Supreme Court will continue to evolve, embracing its role as the guardian of the Constitution and its aspiration for social transformation.

Hon. Lady Justice Philomena M. Mwilu, FCIArb, MGH

The Vice President of the Court



It has been the highest privilege of my career to serve as judge and Vice President of the Supreme Court of Kenya. Beyond professional achievement, this honour materializes from a deep appreciation of two mutually dependent considerations: the empirical context within which the Court exists and the impact of its decisions; and, second, the centrality of place of the Court within the architecture of our constitutional democracy. I frame my introspections and reflections on the Court over the past 12 years within these two dialectic metrics.

Discussions and debates preceding the promulgation of the Constitution of Kenya 2010 had general consensus on, and clamour for, the establishment of a Supreme Court. Launched on October 26th 2011, the expectations placed on the Supreme Court, and indeed the

Judiciary in general, were considerable. The apex Court, clothed with a deliberate and unique jurisdiction, would promote, anchor and protect the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law. This important aspiration frames one part of the empirical context; the other is framed by our social, political, cultural and economic realities as a nation and as a people.

Predictably the Court would have to grapple with sensitive political questions as all the various state organs sought to understand and operationalize their respective and inter-related constitutional mandates. Critics state that it is not ideal that a court be placed in a position to determine political/governance questions; the 'hard cases make bad law' adage. In our context, it was inevitable that juridical principles had to coalesce and calcify, that clarity be provided over often intersecting and interrelating roles and responsibilities, all in order to enable the stable and balanced development of institutional and state organ co-existence under the Constitution. The Supreme Court has played a key role in this regard. Though not a primary metric in my reflection, the significance of the Court in cultivating a culture and confidence that allows for the judicial resolution of political questions, including those concerning the presidential election, must not be taken for granted. It speaks to our democratic credentials as a nation and forms a cornerstone of our appreciation of the rationale that underpins the principle of the rule of law.

Appreciating the above, for me, particularly consequential are those decisions of the Court that positively impacted on the lives of Kenyans and deepened and embedded the emancipatory principles contained in our Constitution. Decisions of the Court in cases such as Mitu-Bell Welfare, Musembi, and Martin Wanderi have progressively enshrined and developed principles in the Bill of Rights in a tangible and impactful manner, not just for those directly interested in those proceedings, but for all Kenyans and future generations. The jurisprudence of the Court, especially in matters of public interest, has provided principled and practical guidance for courts and tribunals in the best traditions of purposive and progressive constitutional and statutory interpretation. An area in which the Supreme Court could do better though is in its relationships with its fellow courts and tribunals. This notwithstanding, there can be no equivocation on the principle of stare decisis; decisions of the Supreme Court are not suggestive or persuasive; they are binding.

Under the second metric, the centrality of place of the Court within the architecture of our constitutional democracy, the Supreme Court has striven to judicially and administratively fertilise the terrain upon which our constitutional democracy can grow and flourish. Especially through its advisory jurisdiction, the Court has assisted state organs and county governments find their feet, as it were, in our nascent constitutional dispensation. This is further buttressed by extra-judicial intra-institutional interactions, collegiality with its sister courts and tribunals, and inter-institutional collaborations that further strengthen the role of all institutional actors under the Constitution in enabling access to justice. The commitment of the members of this Court, especially those I have worked closely with over the past eight years, has never failed to impress and inspire me. Justices of the court have always demonstrated great teamwork in the discharge of the judicial function. I have benefitted immeasurably from the intellectual ability, acumen and dedication of colleague justices and it has been a privilege to serve with them. I am sure we shall all take this introspective and reflective moment to redouble our commitment to the solemn oath we all took in service to the people of Kenya as judges and the high honour and onerous responsibility bestowed upon us to serve on the esteemed apex court. The Court must and can only get jurisprudentially stronger into the next twelve years and beyond.

Hon. Justice Mohammed K. Ibrahim, CBS



As I sit to reflect on the journey of the Supreme Court over the past 12 years, I am filled with a profound sense of gratitude, honour and humility. Being a part of this Court since its inception has been one of the most rewarding experiences of my career. For me, this journey has been more than just a job, it has been a chance to contribute to the Kenya I believe in. Each case, every discussion, and every judgment has shaped me as a Judge and as an individual. While at the same time, serving alongside my fellow Justices has been an enriching experience. We have debated fiercely, learned from one another, and made decisions that we knew would leave a lasting mark on this country.

Some of the most defining moments for me were undoubtedly the Presidential Election Petitions for the three election cycles in 2013, 2017 and 2022. The weight of the nation rested on our shoulders, with the knowledge that our decisions would have ripple effects both in Kenya and across Africa. I will never forget the tension during the hearings, the careful deliberations, and the sleepless nights spent analyzing every detail, despite the tight constitutional timelines. Those moments taught me the immense power and responsibility the Court holds in maintaining the balance of our democracy. It is never just about politics, but rather showing Kenyans that the law stands above all else, even when it's uncomfortable or difficult. The experience reaffirmed my belief in the importance of judicial independence, and how critical it is for the Supreme Court to remain a pillar of integrity.

Another memory that remains close to my heart is the *Mitu-Bell Welfare Society v. Kenya Airports Authority case*, where we dealt with the rights of informal settlement dwellers who had been forcefully evicted without adequate notice or compensation. What made this case so memorable was not just the legal arguments, but the human aspect behind the story. We were tasked with balancing the letter of the law with the dignity and rights of the most vulnerable members of society. I remember thinking about the families involved, their daily struggles, and the importance of making a decision that would not only follow the law but also honour their humanity. It was a reminder of how the Constitution was crafted to serve every Kenyan, regardless of their socioeconomic status.

My tenure at the Court has not been without its challenges. During the year 2016, the Court faced a case that concerned the judges' retirement ages under the new Constitution. The Bench encountered a deadlock as four judges recused themselves. This led to the retirement of two Supreme Court Judges, one of whom was the Deputy Chief Justice. It happened to coincide with Chief Justice Dr. Willy Mutunga's retirement. For the first time, the Court faced a quorum deficit, with both the positions of President and Deputy President left vacant. As the most senior Judge at the time, I was appointed Acting President. It was an honour to be entrusted with this responsibility. However, due to the lack of a quorum, the Court was unable to conduct any business, which was a significant challenge that we had to navigate through. I served in this capacity for six months until the appointment of Chief Justice Emeritus David Maraga. Another significant challenge arose during the 2017 presidential election petition. I was taken quite ill and unable to participate in the last part of the proceedings, thereby missing the historic decision to nullify the election of the president.

Challenges aside, I've often found myself reflecting on the broader impact of our decisions. These are not just legal pronouncements, they are decisions that affect real lives, families, and communities. The realization that our judgments can restore hope to people who feel powerless is something that has deepened my commitment to justice. There is still more to do, nevertheless I believe this Court has the strength and vision to remain a beacon of justice for all Kenyans. I look forward to seeing the Court grow even more, with hope and optimism for the future.

Hon. Justice (Dr.) Smokin Wanjala, FCIArb, CBS



I have had the privilege of serving as a Judge of this Court since its inception on 16th November 2011. During this period, I have travelled a challenging yet exciting jurisprudential journey, navigating intricate constitutional and legal issues in a turbulent and fragile democratic environment. On many an occasion, in keeping with the traditions of the Court, I have been requested by my colleagues to take the lead in the drafting of a number of judgments, and advisory opinions, a task I always undertook and continue to undertake with humility and deference.

At a time when our 2010 Constitution continues to serve as the benchmark for social transformation and governance based on the rule of law, human rights and social justice, the role of the Court in shepherding this endeavour has grown in prominence. Towards this end, I and my colleagues continue to be faced with a bewildering array of legal questions that have shown no mercy in testing the limits of my judicial philosophy and intellectual insight. For example, we have had to decide a Presidential Election Petition after every general election; (I for one, have been involved in all the four) and this, within fourteen days. This is a task for which one has to be prepared to the fullest, in terms of judicial wisdom, endurance, perseverance, emotional intelligence, and case management strategy, all at the same time. But if one thought that all we do is to preside over presidential election petitions after every five years, then they should acquaint themselves with the Court's jurisprudence in the enforcement of the Bill of Rights. Thus, landmark judgments have been pronounced by the Court, covering the vast length and breadth of human rights such as economic and social rights, land rights, gender equality, minority rights, the right to free and fair elections, matrimonial relations, among many others. The Court has also had to play the role of arbiter between our National Assembly and the Senate, at times when the two Houses of Parliament, appeared to be reading from different scripts regarding their constitutional mandates. Not to be forgotten is the now internationally acclaimed BBI Judgment.

As is to be expected, the Court's decisions have from time to time, elicited different reactions from the legal fraternity and the public at large. Some have praised the Court for what they consider to be the latter's consistent assertion of the authority of our Constitution, while others have not been so flattering. Aided by our vibrant media, including social media, the Court's work continues to attract critical attention. Consequently, I have periodically reveled in the adulation showered at our judgments. But, I have also had to endure, the torment occasioned by the torrent of criticism, couched in vitriolic garb, and launched against the Court from pads as far afield and diverse, as funerals, weddings, political rallies, harambees, and even places of worship. As they say, this comes with the Office, and the cruel reality is that only a judge can withstand such attacks without the right of reply. I am however confident, that when history is written, the role of this Court in the consolidation of our democracy, and rule of law, in which everyone maximizes the fruits of nationhood, will be fairly and accurately chronicled. To this role, I remain reverently and firmly committed.

Hon. Lady Justice Njoki Ndungu, FCIArb, CBS



When I joined the inaugural bench of the Supreme Court in 2011, I was filled with a deep sense of purpose, yet realizing the magnitude of the task ahead. As a country, we had just adopted a new Constitution, and with it came the hopes, expectations, and dreams of millions of Kenyans. I knew from the start that our decisions would not only impact individual cases but would shape the very fabric of our society and the governance of our nation.

Nothing, however, had prepared me for the challenges of setting up a newly established Supreme Court. The Supreme Court Act had only just come into effect, only a week after joining the bench, giving us a legislative framework for our jurisprudential mandate, and nothing more. The Court had no court room, offices, administrative staff, legal researchers or law clerks; there were no administrative rules, procedures or practice directions. When I look back now, more than 12 years later, I feel a sense of accomplishment and deep sense of pride in what we have achieved this far. Yet, I am cognizant that our work is far from done. The Supreme Court must continue to evolve, remaining independent and steadfast in its leadership at the helm of the Judiciary.

Working in a collegial court has its challenges: we are 7 individuals from diverse professional backgrounds, values, religions, cultures, and experiences; each with a sound understanding as to how the law should be interpreted and applied, and diverse positions are bound to emerge. The art of persuasion and the ability to agree or disagree, with respect, are essential elements of our case conference ethos. The Court conducts its internal debate and discussion with civility that allows for different opinions to emerge periodically. As a Judge who has written a number of dissenting opinions, I am appreciative of this democratic space.

The Jurisprudence of the Court spans an entire spectrum of settled legal principles including those on matters affecting public law and governance, land and environment, personal and family law, commercial matters, devolution, electoral disputes, protection of human rights and the application and interpretation of the Constitution. Each case illustrates the profound influence the law has on real lives, on communities, on families, and on individuals. I have always been mindful of this human element, and it has shaped my approach when hearing matters: the law must never be applied mechanically but rather tempered with empathy, reasonableness and fairness. As a strong advocate for the protection of human rights, gender equity, and social justice; the principles of equality, inclusion and non-discrimination are deeply ingrained in my judicial style and have guided me throughout my tenure on the Bench.

However, I have found the work of a Supreme Court Judge in Kenya is not one for the fainthearted, and one must be both resilient and accepting in response to the occasional incivility and opprobrium that one may receive in response to making an unpopular judicial decision. In a country where citizens are aware of their constitutional rights and political opinions are entrenched; where the tension between the three arms of Government occasionally becomes intemperate, decisions that settle adversarial proceedings before the Court cannot satisfy all parties. To that end, I have learnt that the Court cannot not seek to be popular, but make its findings on the basis of the law alone. Fidelity to the Constitution remains the foundation of all our decisions.

Hon. Justice Isaac Lenaola, FCIArb, CBS



As I sit in my chambers, the weight of my eight years on the Supreme Court washes over me like a tide both comforting and daunting. Each day has been a tapestry woven from complex legal arguments, profound moral quandaries, and the relentless pursuit of justice. The robes I don at each hearing, while certainly a mantle of authority, in truth, are a constant reminder of the responsibility I bear—not only to the law but to the people who entrusted me with their lives, hopes, and dreams.

Looking back, I often think of my first year on the Supreme Court bench. I was filled with optimism, excited to engage in debates with my esteemed colleagues, each possessing a unique perspective that broadened my understanding of the law. I quickly learned that the Supreme Court is not just a final arbiter of disputes; it is a crucible where law meets humanity. Each case we heard was a story of individuals facing life-altering decisions. Be it the presidential election disputes for which the court is more known for, eviction of squatters, or devolution, I found that the implications of our judgments and rulings resonated far beyond the courtroom.

The most profound lesson I learned came from accepting differing opinions including the dissents we have had. Having been elevated straight from the High Court where I mostly sat alone and as I spent early mornings poring over cases, I realized that the intricate dance of agreement and disagreement is essential to the court's work. Each voice and opinion, however disagreeable to me, serves as a vital part of our democracy, urging us to reflect on the law's shortcomings and to consider the voices of those marginalized within our legal system. Those perspectives shaped my understanding and made me appreciate the depth and breadth of human experience in connection to the law.

There were moments of triumph, of course, where we could champion equality and justice, rekindling the hope that the judiciary can be a force for good. Yet, these moments were often tempered by the knowledge that our decisions could polarize as much as they could unite. The two 2017 presidential election petition judgments come to mind in this regard. In navigating public opinion strongly expressed in unrelenting social media platforms, some bordering on contempt and defamation, it was crucial to remember that our priority was to uphold the Constitution—not the popularity of our choices. The delicate balance between principle and perception thus often left me deeply reflective about the nature of justice. And yet, the authority of the court, as the last recourse in the justice chain, needed protection from malicious attacks made in open bad faith. If only for the sake of our Motherland and the administration of justice.

As we celebrate 12 years of the life of our Supreme Court, my thoughts drift towards the future of our judicial system. The challenges our society faces are relentless, and I worry about the erosion of trust in the institutions meant to uphold democracy. The legal landscape is changing rapidly, influenced by technology, globalization, and increasing divides among the populace. I hope that we, now serving in the court, and those to come after us, will navigate these waters with wisdom and empathy, recognizing the humanity that lies beneath every legal issue.

I have been fortunate to serve alongside brilliant minds, and I have had the good fortune to see at close range my colleagues' unwavering dedication to justice. Our debates may have been rigorous, but they were underscored by mutual respect and a profound commitment to our nation's ideals. I am forever grateful for the opportunity to contribute to an institution that stands as a bulwark against injustice however camouflaged.

I will continue to carry with me stories of resilience and hope, a deeper understanding of the law's power, and an unwavering belief in our shared duty to foster a just society. And as we embark on another year of the life of our apex court, my dedication to justice continues, for it is a journey that never truly concludes.

Hon. Justice William Ouko, FCIArb, CBS



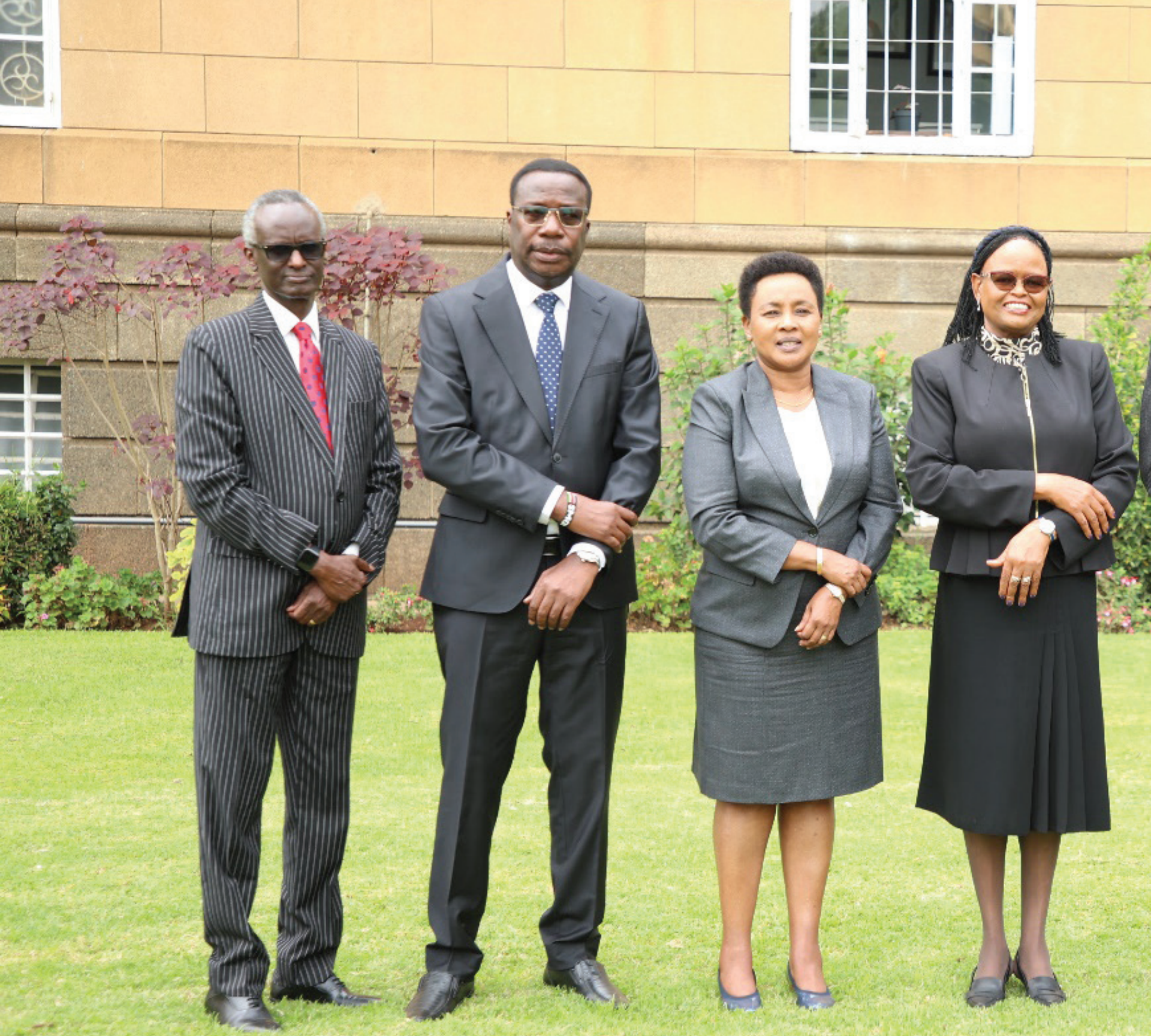
I have had many memorable moments throughout my service on the Court, but I wish to highlight three that I consider indelible. First, my swearing in as a Supreme Court Judge on 21st May 2021, stands out as the proudest achievement of my career. It was a testament that consistency in whatever you set out to do in your career and unwavering commitment to justice and the rule of law ultimately pays. Having served the Judiciary in different capacities for over three decades, my elevation to the Apex Court represented the zenith of my career, being the first Judge to ascend, step by step from the lowest position of District Magistrate II (Professional), through the ranks to a Judge of the High Court, the Court of Appeal, and ultimately, the Supreme Court. Wearing the robes of a Supreme Court Judge is not only an honor and is also a mark of weighty responsibility to protect and defend the Constitution, apply the values of democracy, protect and promote human rights, and equality for all.

Secondly, 2022 was a particularly eventful year; one I can only describe as baptism by fire. No sooner had I sat on my new seat in the Supreme Court than a landmark case, christened the BBI Case, one of the most significant constitutional challenges in Kenya's recent history was brought as an appeal to the Supreme Court. Few judicial proceedings in Kenya's recent history have garnered as much attention or sparked as widespread debate across all sectors of society as the BBI Case. The seven Justices wrote separate opinions, although ultimately, we were unanimous in the final outcome.

Then swiftly followed the 2022 Presidential Election Petition. In our country's history, elections have often been deeply emotional and fiercely contested both on the ground and in courts. When the Presidential Election results are challenged, attention shifts to the Supreme Court, with the entire nation and international observers watching closely; only this time, I was part of the Bench. The pressure was immense, as the spotlight was directed towards the seven of us. Ernest Hemingway's definition of *'Courage'* comes to mind: *'Grace under pressure.'* Despite the exceptionally challenging environment, we remained focused on the task of applying and interpreting the Constitution and on ensuring that justice was administered impartially, in accordance with our Oath of Office, especially that our decision would not be influenced by political, religious, or other considerations. The Court was unanimous in dismissing the Petition. The insults then ensued. Friends and some relatives were lost. But that is what I have come to understand the office of a judge to entail. It is not elective and Judges do not make decisions to please.

Over the past decade, the Supreme Court of Kenya has played a pivotal role in shaping the country's legal and political landscape. It has firmly established itself as a guardian of constitutionalism, democracy, and the rule of law. Beyond electoral disputes, the Court has addressed a wide array of issues, including devolution, the separation of powers, and the interpretation of fundamental rights. It has played a key role in defending the independence of county governments and ensuring the fair distribution of resources. It has advised both the national and county governments on grey areas of the law. Through its landmark decisions, the Court has also championed gender equality and upheld the freedoms enshrined in the Constitution.

However, the Court has not been without its share of controversies and criticisms, particularly in politically charged cases. Despite these challenges, it has shown resilience and adaptability, setting legal precedents that continue to strengthen Kenya's democratic foundations. Over the last 12 years, the Court has demonstrated its ability to evolve as an impartial and authoritative institution, dedicated to delivering justice for all expeditiously.





Judges of the Supreme Court at the Chief Justice's Garden

CHAPTER THREE

THE COURT'S REGISTRY OPERATIONS

3.0. Introduction

The Registry is a crucial part of the Court's administration. The Registrar is responsible for establishment and maintenance of the registry, management and supervision of the staff and day to day administration of the Court. The Registrar is assisted by Deputy Registrars responsible for all the administrative services in the registry, library services, case management, and execution of court decisions. The Deputy Registrars also oversee the allocation and performance of duties by all staff.

The Court has endevoured to streamline and standardize registry processes and operations as well as ensure uniform court user experience.

3.1. Office of The Registrar of the Supreme Court

Sections 9 and 10 of the Supreme Court Act provides that the Registrar is responsible for the following:

a) the establishment and maintenance of the Registry;
b) the acceptance, transmission, service and custody of documents in accordance with the rules;
c) taxing costs of any proceedings before the Court as between the parties;
d) certifying that any order, direction or decision is an order, direction or decision of the Court, or of the Chief Justice or other judge, as the case may be;
e) causing to be kept records of the proceedings and the minutes of the meetings of the Court and such other records as the Court may direct;
f) the management and supervision of the staff of the Court;
g) the day-to-day administration of the Court;
h) the management of the library of the Court;
i) ensuring the publication of the judgements of the Court; and
j) undertaking any duties assigned by the Court.

3.1.1. Registrar of the Supreme Court

Hon. Letizia Muthoni Wachira ,FCIArb, OGW



Hon. Letizia Wachira holds a Bachelor of Laws Degree (LLB) and Master of Laws degree (LLM) in Law, Governance and Democracy from the University of Nairobi. She is also Fellow of the Chartered Institute of Arbitration. She was the Vice President of the Kenya Magistrates and Judges Association (KMJA) (2013-2015). Prior to being appointed as the Registrar of the Supreme Court she served as a Magistrate, from District Magistrate II, rising through the ranks to Chief Magistrate. She was admitted to the roll of advocates in the year 2002.

3.1.2. Deputy Registrars of the Supreme Court

Hon. Bernard Onziru Kasavuli



Hon. Bernard Kasavuli holds a Bachelor of Laws Degree (LLB) from Moi University and Master of Laws, Law, Governance and Democracy from University of Nairobi. Prior to his appointment as Deputy Registrar, he served as a Magistrate, from District Magistrate II, rising through the ranks to Senior Principal Magistrate. Before joining the Judiciary, he practised law at Kitiwa & Co. Advocates. He was admitted to the Roll of Advocates in the year 2008.

Hon. Nelly Wangeci Kariuki



Hon. Nelly Wangeci Kariuki holds a Bachelor of Laws Degree (LLB) from Moi University and a Master of Laws in International Financial Laws & Regulations option from Strathmore University. Prior to her appointment as Deputy Registrar, she served as a Principal Magistrate at various stations and as Deputy Registrar at various High Court Stations. She also served as the Head of Station of the first-ever Gender Justice Court in Kenya at Shanzu, Mombasa County. She also currently serves as the Alternate Chairperson of the Committee to Define Case Types for the Gender Justice Court. Before joining the Judiciary, she practiced as an in-house counsel with a bias in corporate insurance litigation practice. She was admitted to the Roll of Advocates in the year 2008


1 FILING & REGISTRATION
2 ASSESSMENT
PERUSAL
SERVICE DELIVERY CHARTER
JUDICIARY EFFORTS TO COMBAT COVID-19
PLEASE PRACTICE SOCIAL DISTANCING
SUPREME COURT REGISTRY



Supreme Court Registry Staff attending to litigants at the Registry

3.2. Supreme Court Registry

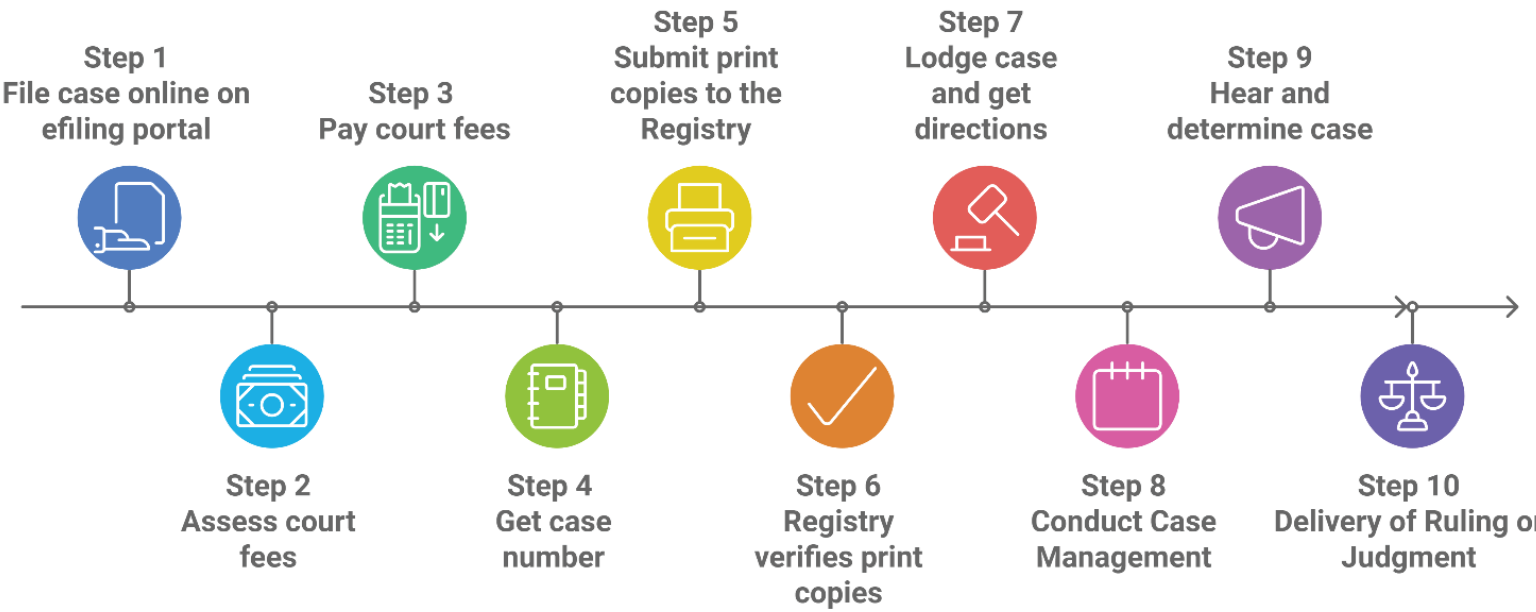
The Supreme Court Registry and Sub- Registries official working hours are 8.30 a.m. to 5.00 p.m. and 9.00 a.m. to 12 noon during vacation. The registry is open from Monday to Friday, except on public holidays or as otherwise directed from time to time by the Chief Justice.

The Court has adopted electronic filing of cases to improve operational efficiency in filing of cases and payment of court fees. For a document to be deemed as duly filed it has to be in both electronic and printed form. A party filing any document shall ensure consistency in the printed and the electronic formats. In case of any inconsistency between the hard copy and soft copy, the hard copy prevails. The guidelines of e-filing are contained in the Electronic Case Management Practice Directions, 2020.

3.2.1. Virtual Customer Service

The Supreme Court's Virtual Customer Care Service enhances accessibility, consistency and efficiency for seamless service delivery. It operates during official working days and formally designated days.

Supreme Court Case Filing Process



3.3. CASE MANAGEMENT IN THE SUPREME COURT

Case management is a collaborative approach to managing cases by which the Court organizes and oversees the progress of cases to ensure they are handled efficiently and effectively. It involves scheduling hearings, setting timelines, managing case documents, facilitating communication between parties, and ensuring that cases move through the judicial system in a timely manner.

The Court has implemented the following initiatives to streamline legal proceedings, and provide a structured approach to ensure efficiency in case management:

a. Supreme Court Registry Manual

The Supreme Court Registry Manual provides the Supreme Court staff and members of the public with simplified information on the Court's processes. It is also a useful guide to incoming staff. The manual is constantly reviewed to ensure it is aligned with the changing Court processes.

b. Supreme Court Registry Standard Operations Procedures (SOPS)

The Standard Operating Procedures standardizes Registry Operations. The Registry has developed a checklist used by court assistants to ensure all the steps in filing have been followed by litigants and court users.

c. Service Delivery Charter

The Supreme Court Service Delivery Charter outlines the services offered at the registry, fees and costs, and expected service delivery timelines. It was amended in June 2022 to align it with the amendments made to the Supreme (Presidential Election Petition) Rules. More specifically, the fees payable by litigants were aligned with the amendments.

d. Other Initiatives

. Amongst the new modules in the Case Management System is the Judges Performance dashboard that outlines the pending matters for various action including judgments.

. The Office of the Registrar developed an SMS Prompt tool for Supreme Court Judges that keeps track of both delivered and pending judgments. This is an essential tool in having a robust case management.



The Judges of the Supreme Court and Staff during a luncheon to celebrate exemplary performance

CHAPTER FOUR

CASE STATISTICS

4.1. Caseload Statistics

The Supreme Court has remained committed to the efficient and timely resolution of disputes, in line with its constitutional mandate. Since its inception, the Court has made significant strides in fulfilling its role as the highest judicial authority in the country, balancing its workload while delivering justice with a focus on both expediency and quality. Below are statistics highlighting the Court's performance and outputs over the years:

Over the past 12 years, the Court handled 734 cases, which include 349 appeals, 17 election petitions, 28 advisory opinions, and 340 applications. Of these, 690 cases were successfully resolved, comprising 314 appeals, 17 election petitions, 26 advisory opinions, and 333 applications.

As of August 31, 2024, there were 44 pending cases, comprising 35 appeals, 2 advisory opinions, and 7 applications. Importantly, only 7 cases had been in the court system for more than a year.

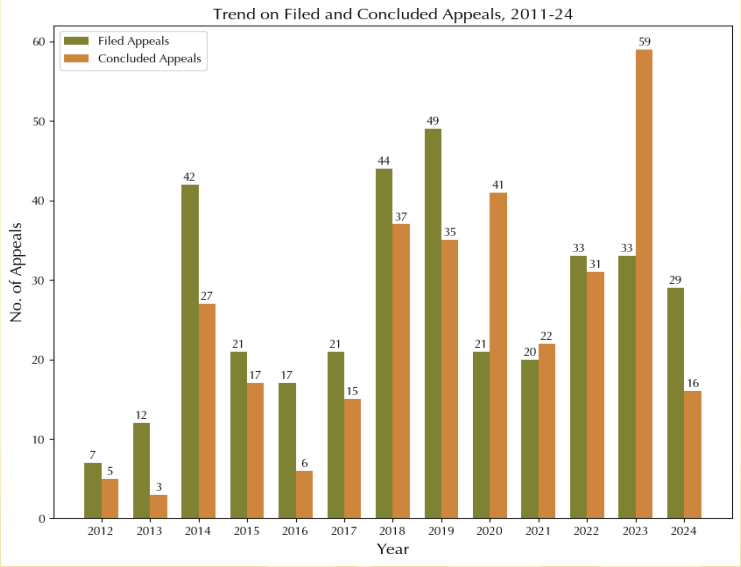
4.1.1. Presidential Election Petitions

The Court has been instrumental in effectively handling presidential election petitions. In the 2013 general election, the Court received and resolved 3 presidential election petitions. In the 2017 election cycle, 4 election petitions were filed, all of which were resolved within the prescribed timelines.

The 2022 general elections saw a significant increase in filings, with 9 presidential election petitions filed, all of which were resolved within the prescribed timelines, demonstrating the Court's commitment to managing electoral disputes efficiently. In 2023, 1 petition was determined, maintaining the Court's track record of timely resolution.\

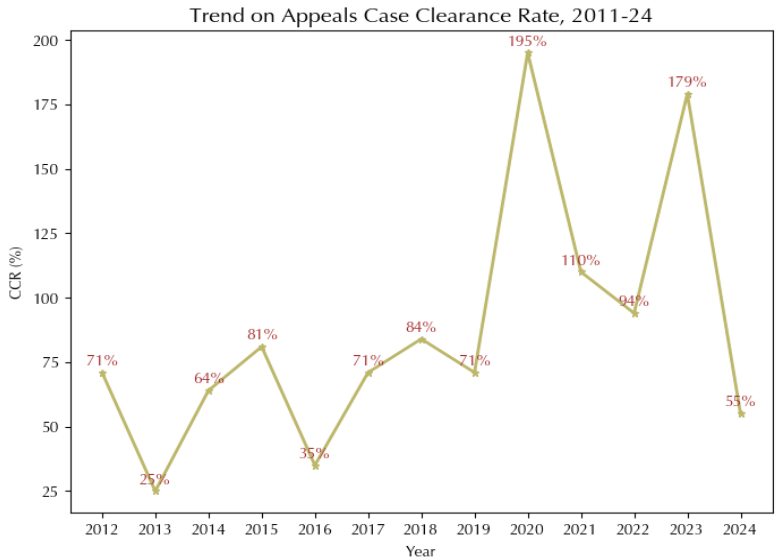
4.1.2. Petitions of Appeal

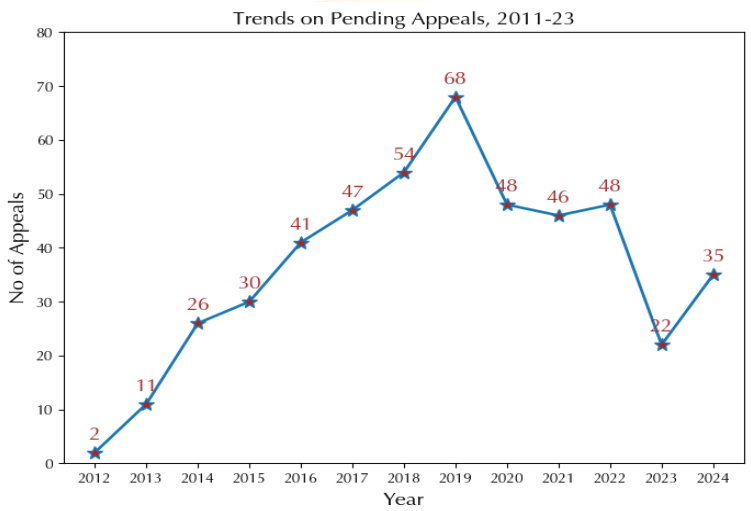
The Court plays a crucial role in the judicial system, especially in the appellate process, as the final arbiter. In 2012, the court had a clearance rate (CCR) of 71%, with 5 appeals concluded out of 7 filed.



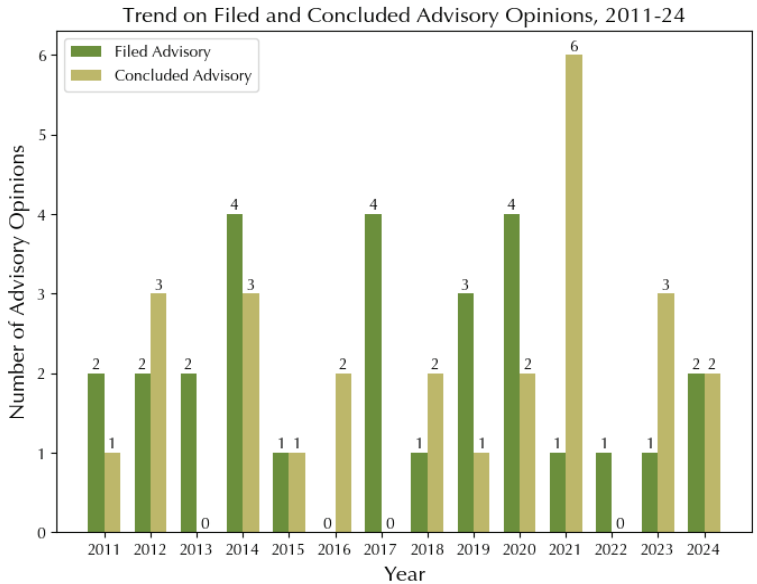
In 2014, there was a surge in appeals, with 42 appeals filed and 27 concluded, resulting in a CCR of 64%. The highest resolution

rates were achieved in 2020 and 2023, with a CCR of over 100%, reflecting the court's handling of a substantial number of pending cases. This dynamic reflects the ongoing challenges the Court faces in balancing caseloads while ensuring timely resolutions for appeals, which are vital for upholding justice.

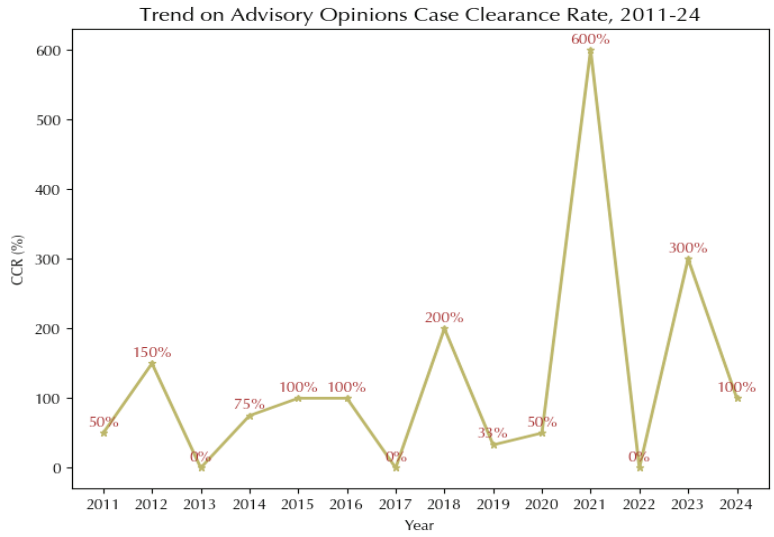


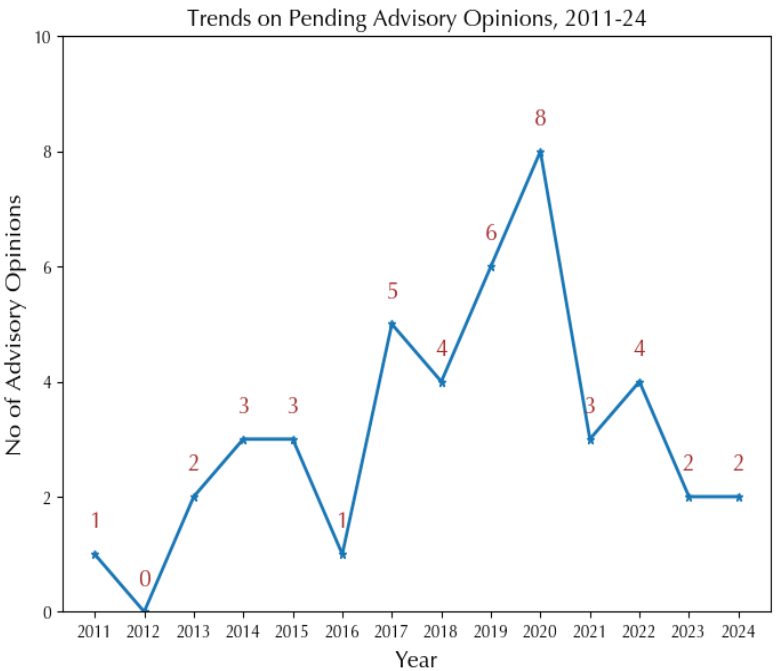


4.1.3. Advisory Opinions



The Court has handled a steady stream of requests for advisory opinions, demonstrating its essential role in clarifying constitutional and legal matters. The Court's performance in rendering advisory opinions has varied over the years, with notable highlights in 2012 and 2021, during which it achieved high clearance rates. In 2023, the Court resolved 3 advisory opinion cases, leaving only 2 pending, thus achieving a 300% clearance rate.

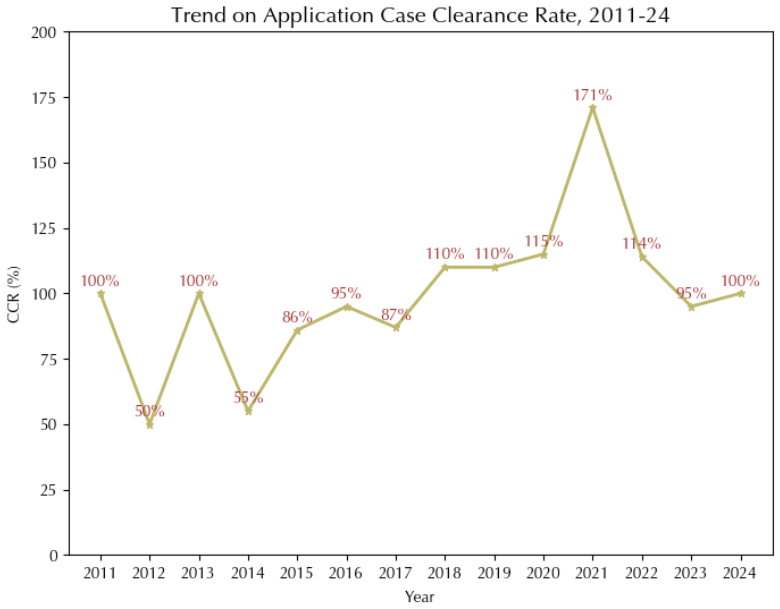


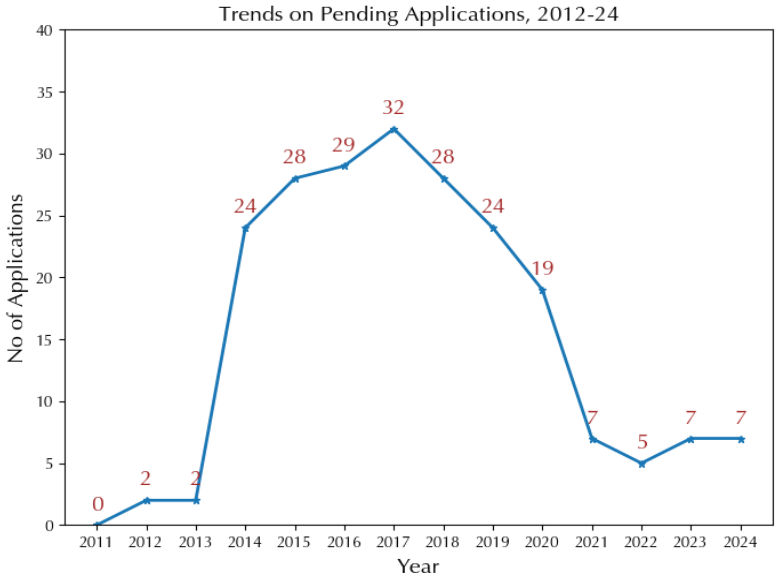


4.1.4. Applications



The Court has been instrumental in handling a variety of applications, which represent a significant portion of its caseload while maintaining a consistent resolution rate. With fluctuations in filings over the years, the Court achieved a case clearance rate (CCR) of 110% in 2018 and 2019, and by 2021, the CCR peaked at 171%. In 2023, the CCR was 95%, and by 2024, the Court achieved a 100% clearance rate.


Trend on Application Case Clearance Rate, 2011-24
CCR (%)
Year
100%
50%
100%
55%
86%
95%
87%
110%
110%
115%
171%
114%
95%
100%


Trends on Pending Applications, 2012-24
No of Applications
Year
0
2
2
24
28
29
32
28
24
19
7
5
7
7





Supreme Court Judges during a working session

CHAPTER FIVE

JURISPRUDENCE OF THE COURT

5.0 Introduction

This chapter explores the Court's key decisions and the overarching principles that have emerged from them. It offers an overview of the significant cases that have set legal precedence, reinforcing the role of the Court in advancing justice, promoting the rule of law, and shaping the interpretation and application of the law in Kenya.

1. GOVERNANCE & CONSTITUTIONAL LAW

Public Participation

British American Tobacco Kenya, PLC (formerly British American Tobacco Kenya Limited) vs. Cabinet Secretary for the Ministry of Health & 2 Others; Kenya Tobacco Control Alliance & Another (Interested Parties); Mastermind Tobacco Kenya Limited (The Affected Party) SC Petition 5 of 2017, [2019] eKLR

The Court set out the guiding principles of public participation as follows: (i) As a constitutional principle under Article 10(2) of the Constitution, public participation applies to all aspects of governance; (ii)The public officer and or entity charged with the performance of a particular duty bears the onus of ensuring and facilitating public participation; (iii) The lack of a prescribed legal framework for public participation is no excuse for not conducting public participation and the onus is on the public entity to give effect to this constitutional principle using reasonable means; (iv) Public participation must be real and not illusory. It is not a cosmetic or a public relations act. It is not a mere formality to be undertaken as a matter of course just to 'fulfill' a constitutional requirement. There is need for both quantitative and qualitative components in public participation; (v) Public participation is not an abstract notion; it must be purposive and meaningful; (vi) Public participation must be accompanied by reasonable notice and reasonable opportunity. Reasonableness will be determined on a case to case basis; (vii) Public participation is not necessarily a process consisting of oral hearings, written submissions can also be made. The fact that someone was not heard is not enough to annul the process; (viii) Allegation of lack of public participation does not automatically vitiate the process. The allegations must be considered within the peculiar circumstances of each case, the mode, degree, scope and extent of public participation is to be determined on a case to case basis.

Additionally, the Court held that the components of meaningful public participation include the following: (a) clarity of the subject matter for the public to understand; (b) structures and processes (medium of engagement) of participation that are clear and simple; (c) opportunity for balanced influence from the public in general; (d) commitment to the process; (e) inclusive and effective representation; (f) integrity and transparency of the process; and (g) capacity to engage on the part of the public, including that the public must be first sensitized on the subject matter.

Relationship between national apex Courts and Regional Courts

In the Matter of the Hon. Attorney General (On Behalf of the National Government) and Martha Karua (Reference E001 of 2022) [2024] KESC 21 (KLR)

The Court held that the Kenyan Constitution grants the Supreme Court the highest authority in the interpretation and application of its provisions. While international law is recognized as a source of law within Kenya, it cannot override the explicit directives of the Kenyan Constitution. The East Africa Court of Justice (EACJ) and the Supreme Court do not have a vertical hierarchical relationship, therefore decisions made by the Supreme Court are final within the national jurisdiction and are not subject to appeal or review by the EACJ. Further, by virtue of the principle of subsidiarity, regional courts across the world exercise restraint and deference giving partner states a wide margin of appreciation when reviewing decisions of the latter, more so of apex courts, like the Supreme Court of Kenya.

Constitutional Amendment & Presidential Immunity

Attorney-General & 2 Others vs. Ndii & 79 Others; Dixon & 7 Others (Amicus Curiae) (Petition 12, 11 & 13 of 2021 (Consolidated)) [2022] KESC 8 (KLR)

The Court held that the basic structure doctrine does not apply in Kenya under the Constitution. Any constitutional amendment must adhere strictly to the normative standards and the provisions of Chapter Sixteen of the Constitution. In addition, a President cannot initiate a constitutional amendment process using the popular initiative route provided in Article 257 of the Constitution.

Lastly, the Court held that according to Article 143(2) of the Constitution, civil proceedings cannot be instituted against a President or anyone performing the functions of a President during their tenure in respect of anything done or not done contrary to the Constitution. Such proceedings challenging the President's actions or inactions ought to be instituted against the Attorney General.

Power of President in appointment of Commissioners of Judicial Service Commission

Katiba Institute vs. Attorney General & 9 Others (Petition 17 of 2020) [2023] KESC 47 (KLR)

The Court held that the President's role in appointment of members of the Judicial Service Commission (JSC) is limited to the appointment of the two members representing the public. To that extent, the court declared Section 15(2) of the Judicial Service Act (Cap 8A, Laws of Kenya) unconstitutional for purporting to assign the President the role of appointing the other elected and nominated members of the JSC.

Role of National Assembly in approval of Commissioners of Judicial Service Commission

Law Society of Kenya vs. Attorney General & 4 Others (Petition 45 of 2019) [2023] KESC 19 (KLR)

The Court found that there was no constitutional or legal basis for a member of the JSC elected by Supreme Court Judges, Court of Appeal Judges, the association of Judges and Magistrates, Law Society of Kenya or nominated by the Public Service Commission to be vetted and approved by the National Assembly before appointment.

Constitutionality of the Constituencies Development Fund Act, 2013

Institute for Social Accountability & Another vs. National Assembly & 3 Others & 5 Others (Petition 1 of 2018) [2022] KESC 39 (KLR)

The Court determined that the Constituencies Development Fund (CDF) Act 2013 violated the division of functions between the National and County levels of Government for reasons that under the Constitution, the decentralization of service must be undertaken within the confines of the structures of either the National Government or County Governments, not parallel to the two levels of Government.

In addition, the Court held that the National Assembly's legislative powers relate to the National Government, not county governments. The doctrine of separation of powers requires distinct roles for each branch of government. Given that the CDF Act, 2013, improperly merged legislative and executive functions by involving Members of the National Assembly in executive tasks, it created a conflict of interest in the exercise of the oversight of the legislature. Lastly, the Court found that the CDF Act 2013 offended the constitutional revenue-sharing formula by directly allocating 2.5% of all the national revenue to the CDF contrary to the Constitution which calls for equitably sharing among the two levels of government.

Bicameralism – Processing of Division of Revenue Bill

In the Matter of the Speaker of the Senate & Another, Advisory Opinion Reference No. 2 of 2013; [2013] eKLR

The Court held that the Division of Revenue Bill is not a money Bill under Article 114(3) of the Constitution. Being an ordinary Bill dealing with equitable allocation of funds to the counties, it is subject of the legislative competence of both the National Assembly and the Senate.

Bicameralism – Unlocking Impasse in Enactment of Division of Revenue Bill

In the matter of Council of Governors & 47 Others (Reference 3 of 2019) [2020] KESC 65 (KLR)

The Court held that the recommendations by the Commission on Revenue Allocation were not binding upon either the National Assembly, or the Senate or any other entity to which they may be directed. However, those recommendations had to be accorded due consideration before voting took place in either of the Houses, on the Division of Revenue Bill and the County Allocation of Revenue Bill. Further, in case of an impasse, the National Assembly has the authority to approve the withdrawal of money from the Consolidated Fund for County Government expenditure. In keeping with the spirit of Article 222 (2) (b) of the Constitution, the money to be withdrawn shall be 50% of the total equitable share allocated to the Counties in the Division of Revenue Act.

The Court however declined to prescribe set timelines within which the National Government should release the equitable share of revenue to the County Government, noting that Article 219 allows for a degree of flexibility on the part of the National Treasury in effecting monetary transfers to Counties. However, it was of the view that to release funds at a time when the same cannot be realistically utilized in the implementation of county projects as per their budgets constitutes a violation of the Constitution. Finally, the Court determined that pursuant to Section 39 of the Public Finance Management Act the National Assembly cannot enact an Appropriations Act before enacting the Division of Revenue Act.

Judicial Intervention in ongoing Impeachment Proceedings

Justus Kariuki Mate & Another vs. Martin Nyaga Wambora & Another, SC Petition No. 32 of 2014; [2017] eKLR

The Court settled the question on when a court of law may interfere with Parliamentary processes that are in actual progress. Echoing the doctrine of Separation of Power, it formulated guiding principles on how the various arms of government are to co-exist within a constitutional framework anchored on the rule of law, with the courts exercising judicial restraint. This decision has helped guide the two institutions, particularly as regards when the courts may intervene in impeachment matters before Parliament.

Senate's oversight over County Revenue

Senate vs. Council of County Governors & 6 Others (Petition 24 & 27 of 2019 (Consolidated)) [2022] KESC 57 (KLR)

The Court found that the Senate is constitutionally empowered to summon Governors to appear before it or any of its committees, for purposes of answering questions and providing requisite information, in the performance of its oversight role over county revenue. Although, the revenue is locally generated, it does not remove from it the purview of Senate oversight, as such revenue still falls within the rubric of public finance whose use must remain under the radar of scrutiny and oversight by State organs established for that purpose.



Supreme Court Judges during the *BBI* Case



Advocates following proceedings of the BBI Case

2. HUMAN RIGHTS LAW

Right to Housing on Public Land

Mitu-Bell Welfare Society vs. Kenya Airports Authority & 2 Others; Initiative for Strategic Litigation in Africa (Amicus Curiae), SC Petition No. 3 of 2018; [2019] eKLR

The Court held that while squatters or landless persons who illegally occupy public land for a long period of time and establish homes thereon do not acquire title to the land, a protectable right to housing over the same accrues in their favour. In that regard, the Court held that orders such as compensation, the requirement of adequate notice before eviction, the observance of humane conditions during eviction and the provision of alternative land by the state for settlement may be issued where eviction is justified in the public interest.

The Court found that Article 2 (5) and (6) of the Constitution embraces both international customary law and treaty law. The U.N Guidelines and General Comments are not "binding" upon the state parties, nor are they part of the law of Kenya in the language and meaning of Article 2 (6) of the Constitution, unless they have ripened into a norm of customary international law, as evidenced by widespread usage. However, they can be used as an interpretive tool in interpreting the Bill of Rights. Further, the Court recognised that structural interdicts as reliefs that can be issued in constitutional/human rights litigation.

Right to Housing on Private Land

Musembi & 10 Others (Suing on their Own Behalf and on Behalf of 326 Persons Formerly Residing in City Cotton Village and Upendo City Cotton Village and their 90 School-Going Children) & Margaret Kanini Keli & 2 Others (Suing on Their own Behalf and on Behalf of 15 Residents of Upendo City Cotton Village at South C Ward, Nairobi vs. Moi Educational Centre Co. Ltd. & 4 Others, SC Petition No. 2 of 2018; [2021] KESC 50 (KLR)

The Court held that an evicting party must carry out evictions in a manner that respects the dignity, right to life and security of those affected including protecting the rights of women, the elderly, children and persons with disabilities as well as according such persons, the first priority to salvage their property. The Court also clarified that the progressive realization of Article 43 rights (economic and social rights including accessible and adequate housing) lies with the State, and does not extend horizontally to private entities. However, private entities have the obligation, under Article 20(1) of the Constitution, not to violate Article 43 rights since the Bill of Rights applies and binds both the State and all persons.

Quantification of damages in constitutional violation matters is different from the regular civil matters. In matters of constitutional violation, the Court should also consider other factors like, public policy.

Adjudication of Transitional Justice Claims

Wamwere & 5 Others vs. Attorney General, SC Petition Nos. 26, 34 & 35 of 2019 (Consolidated); [2023] KESC 3 (KLR)

The Court held that in evaluating whether there is unreasonable delay in filing claims relating to historical human rights violations, courts should consider the public interest in allowing victims of alleged past gross human rights violations to access courts, as this prevents future repression. In awarding damages, courts exercise a very broad, open-ended remedial discretion

taking into account what was just, fair and reasonable in the circumstances of the case. In transitional justice claims, the damages the court awards should not only serve to enhance the dignity of the person(s) whose rights have been violated but also be a public recognition of the wrong done to them given the historical context of the case.

Best interests of the child

CMM (Suing as the Next of Friend of and on Behalf of CWM) & 6 Others vs. Standard Group & 4 Others, SC Petition 13 (E015) of 2022; [2023] KESC 68 (KLR)

The Supreme Court held that the principle of the best interest of a child is of paramount importance. Publication by the media of charges preferred against minors is in violation of the rights to privacy and the best interest of the child. In addition, the limitation on the public hearing of cases involving children and revelation of their identities is reasonable as it is meant to protect children, who are by their predisposition, vulnerable.

Right to association

NGOs Co-ordination Board vs. EG & 4 Others; Katiba Institute (Amicus Curiae) (Petition 16 of 2019) [2023] KESC 17 (KLR)

The Court found that denial of registration of an organization, purely on the basis of sexual orientation of the applicants was tantamount to unjustified limitation of freedom of association under Article 36 of the Constitution.

3. ADMINISTRATIVE LAW

Exhaustion of Administrative Remedies

Albert Chaurembo Mumba & 7 others (sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) vs. Maurice Munyao & 148 others (suing on their own behalf and on behalf of the Plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme) SC. Petition No. 3 of 2016; [2019] eKLR

The Supreme Court affirmed the doctrine of exhaustion of administrative remedies. It observed that where there is an alternative dispute resolution mechanism established by legislation, the courts must exercise restraint and accord deference to such dispute resolution bodies under the doctrine of exhaustion.

Scope of Judicial Review of Administrative Action

Edwin Harold Dayan Dande & 3 Others vs. Inspector General, National Police Service & 5 Others (Petition 6 (E007), 4 (E005) & 8 (E010) Of [2022] (Consolidated)) [2023] KESC 40 (KLR)

The Court held that when a party approaches a court under the provisions of the Constitution then the court ought to carry out a merit review of the case. However, if a party files a suit under the provisions of Order 53 of the Civil Procedure Rules and does not claim any violation of rights or the Constitution, then the court can only limit itself to the process and manner in which the decision complained of was reached or action taken and not the merits of the decision *per se*.

Nature of CAJ's recommendations

Kenya Vision 2030 Deliveries Board vs. The Commission on Administrative Justice & 2 others SC Petition No. 42 of 2019 [2021] eKLR

The Court found that whereas the Commission on Administrative Justice (the CAJ) has the requisite mandate to make recommendations to a public officer or a public body, the same is not binding. It held that a recommendation can only be binding when the same is specifically provided for in the Constitution or in law. The Court further found that a Court of law cannot dictate the manner in which a recommendation should be implemented but the only exception, is where "there is gross abuse of discretion, manifest injustice or palpable excess of authority" equivalent to denial of a settled right which the aggrieved party is entitled, and there is no other plain, speedy and accurate remedy."



Supreme Court Judges listening to submissions of Counsel during the Presidential Election Petition 2017

4. COMMERCIAL LAW

Appeals from the High Court to the Court of Appeal on Arbitration Cases.

Nyutu Agrovet Limited vs. Airtel Networks Kenya Limited; Chartered Institute of Arbitrators-Kenya Branch (Petition 12 of 2016) [2019] KESC 11 (KLR) & ***Synergy Industrial Credit Limited vs. Cape Holdings Limited*** (Petition 2 of 2017) [2019] KESC 12 (KLR)

The Court held that an appeal to the Court of Appeal against a High Court determination under Section 35 of the Arbitration Act is permissible only when the High Court exceeds its grounds, resulting in a grave injustice. The Court of Appeal should exercise jurisdiction sparingly and only in clear cases, to maintain the efficiency and purpose of arbitration.

Appeals from the Court of Appeal to the Supreme Court on Arbitration Cases

Geo Chem Middle East vs. Kenya Bureau of Standards (Petition 47 of 2019) [2020] KESC 1 (KLR)

The Court held that no further appeal can lie before it from the Court of Appeal's decision in a matter arising from an arbitral award.

Variation of Interest Rates on Bank/Financial Institution Loans

Stanbic Bank Kenya Limited vs. Santowels Limited (Petition E005 of 2023) [2024] KESC 31 (KLR)

The Court found that the proper interpretation of Section 44 of the Banking Act which provides that *'No institution shall increase*

its rate of banking or other charges except with the prior approval of the Minister' is that bank/financial institutions are required to seek approval of the Cabinet Secretary responsible for matters relating to Finance before increasing the interest rates on loans/ facilities advanced to its customers. While a contract that is mutually agreed upon by parties might provide the bank with the discretion to alter or vary interest rates on loans, that discretion is not absolute or unlimited. The bank is still required to seek the approval of the Cabinet Secretary before varying interest rate.

5. EMPLOYMENT LAW

Indirect Discrimination

Simon Gitau Gichuru vs. Package Insurance Brokers Ltd., SC Petition No. 36 of 2019; [2021] eKLR

The Court held that no person should directly or indirectly discriminate against another person on account of health status or disability by setting out the definition of discrimination, what amounts to direct discrimination, the salient features of indirect discrimination and what the courts should consider when faced with claims of indirect discrimination. The Court further went on to hold that failure to accommodate an employee with disability amounted to indirect discrimination and outright victimization.

Mandatory nature of advice of the Salaries Remuneration Commission (SRC)

Muthuuri & 4 Others vs. Attorney General & 2 Others (Petition 15 (E022) of 2021) [2023] KESC 52 (KLR)

The Court determined that the National Police Service cannot determine or review the benefits of graduate police constables without the advice of the Salaries and Remuneration Commission (SRC). The role of the SRC is mandatory and must be obtained prior to taking any action that requires that advice. The advice is binding in terms of Article 259 (11) of the Constitution.



Supreme Court Judges in a Working Session

6. FAMILY LAW

Interpretation of rights of spouses

JOO vs. MBO; Federation of Women Lawyers (FIDA Kenya) & another (Amicus Curiae), (Petition No. 11 of 2020) [2023] KESC 4 (KLR)

The constitutional principle that parties to a marriage are entitled to equal rights means that each party is entitled to a fair share of matrimonial property (dependent on proven direct or indirect contribution), and does not mean an automatic entitlement to a 50% share of matrimonial property.

Presumption of Marriage

MNK vs. POM; Initiative for Strategic Litigation In Africa (ISLA) (Amicus Curiae) (Petition 9 Of 2021) [2023] KESC 2 (KLR)

Long cohabitation does not necessarily imply that the parties intended to enter into a marriage. For such cohabitation to be presumed to be a marriage, the parties must have intended to enter into a marital relationship.

7. LAND LAW

Sanctity of Title

Dina Management Limited vs. County Government of Mombasa & 5 Others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR)

Where the registered proprietor's root title is under challenge, the instrument of title is not sufficient proof of ownership. The registered proprietor must go beyond the instrument and prove the legality of the title as well as demonstrate that the acquisition was lawful and procedural. Otherwise, a proprietor cannot benefit from the principle of an innocent purchaser for value without notice.

Legal Status of Allotment Letters

Torino Enterprises Limited vs. Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR)

An allotment letter did not confer title to the land unless it was registered and perfected. The holder of an allotment letter could not transfer or pass title to a third party.

Customary Trust

Isack M'inanga Kiebia vs. Isaaya Theuri M'lintari & Another [2018] eKLR

The Court recognised the place of customary law by affirming that customary trusts are overriding interests, to which a registered proprietor is subject. In so doing, the Court dispelled the notion that registration of land automatically extinguished customary rights.

8. CRIMINAL LAW

Mandatory nature of the Death Sentence for the Offence of Murder

Francis Muruatetu & Another vs. Republic; Katiba Institute & 5 Others (Amicus Curiae) (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR)

The court declared the mandatory nature of the death sentence

for the offence of murder as was prescribed under Section 204 of the Penal Code (Cap 63, Laws of Kenya) unconstitutional. Consequently, the decision clarified that following a conviction of murder, a trial court is required to exercise its judicial discretion in meting out the appropriate sentence after taking into account the mitigating circumstances of each case.

Role of the ODPP vis a vis Attorney General in Extradition Proceedings

Director of Public Prosecutions vs. Okemo & 4 Others (Petition 14 of 2020) [2021] KESC 13 (KLR)

The Court delimited the role played by the Director of Public Prosecution (ODPP) and the Attorney General in extradition proceedings. In particular, it held that authority to initiate (issuance of Authority to Proceed) and conduct extradition proceedings before a court of law lies with the Director of Public Prosecutions as opposed to the Attorney General.

Victims Participation in a Criminal Trial

Joseph Lendrix Waswa vs. Republic, SC Petition 23 of 2019 [2020] eKLR

The Court held that victims ought not to act as secondary prosecutors in a criminal trial. Pursuant to section 9(2) (a) of the Victim Protection Act No. 17 of 2014 victims are to present their views and concern to assist the trial Judge obtain a clear picture of what happened (to them) and how they suffered. The Court proceeded to set the guidelines to assist courts in considering an application by a victim or his legal representative to participate in a criminal trial and the manner and extent of the participation. In the guidelines the Court cautioned that victim participation must not be prejudicial to or inconsistent with the rights of the accused and that the Court has no obligation to follow the victim's preference of punishment.

Rights of Arrested Persons

Hussein Khalid and 16 Others vs. Attorney General & 2 Others, SC Petition 21 of 2017 [2019] eKLR

The Court held that an apprehension or allegation of breach of the rights in Articles 32, 33, 36, 49 and 50 cannot be a sufficient reason for quashing criminal proceedings or for one not taking plea. The criminal justice system, with its components such as plea taking, arraignment and trial are legitimate causes and do not violate any constitutional right and freedom.

9. APPEALS FROM TRIBUNAL FOR THE REMOVAL OF JUDGES

Exercise of the Courts Jurisdiction

Joseph Mbalu Mutava vs. Tribunal appointed to investigate the conduct of Justice Joseph Mbalu Mutava, SC Petition No. 15 of 2016 [2019] eKLR

Being the first case under this limb of jurisdiction the Court set out foundational principles applicable in exercise of this jurisdiction. In this regard, the Court recognized that in exercising this jurisdiction it acts as the first and only appellate Court from the findings of the Tribunal. Accordingly, it had the duty to re-evaluate and re-assess the evidence on record with a view of establishing whether the Tribunal in arriving at its conclusion, misdirected itself and whether its conclusion should stand. The Supreme Court upheld the decision of the Tribunal.

Mental Incapacity to undertake the functions of the office of judge

Hon. Justice Mary Muthoni Gitumbi vs. The Tribunal Appointed to Investigate the Conduct of Hon. Justice Mary Muthoni Gitumbi, SC Petition 10 (E013) of 2022; [2023] KESC 73 (KLR)

The Court for the first time determined the question of a judge's mental incapacity to undertake the functions of the office of a judge. Importantly, the Court formulated guidelines to guide courts in the assessment of mental incapacity to perform duties.

10. ELECTION LAW

Tallying, verification and declaration of Presidential Election Results

Odinga & 16 Others vs. Ruto & 10 Others; Law Society of Kenya & 4 Others (Amicus Curiae) (Presidential Election Petition E005, E001, E002, E003, E004, E007 & E008 of [2022] (Consolidated)) [2022] KESC 56 (KLR)

The Court clarified that the broad powers vested in the Independent Electoral Boundaries Commission (IEBC) ought to be understood as being vested in the collective of the chairperson and members of IEBC. In particular, the responsibility of tallying and verifying the results of a presidential election at the National Tallying Centre, vests in IEBC as a collective entity. The chairperson, the members of IEBC and the secretariat (employees) are envisaged to undertake the said twin constitutional and statutory mandate, and the chairperson cannot exclude any member of IEBC from the execution of such mandate. However, the declaration of the presidential election result, vests exclusively in the chairperson of IEBC.

Nullification of a Presidential Election

Odinga & Another vs. Independent Electoral and Boundaries Commission & 2 Others; Aukot & Another (Interested Parties); Attorney General & Another (Amicus Curiae) (Presidential Election Petition 1 of 2017) [2017] KESC 42 (KLR)

The Court annulled the presidential election upon finding that the IEBC failed to conduct the elections consistent with the Constitution and the Elections Act. It held that the IEBC committed irregularities and illegalities affecting the integrity of the election and thereby impugned the integrity of the entire presidential election.

A petitioner who is able to prove that the conduct of an election in question substantially violated the principles laid down in the Constitution as well as other written law on elections, would on that ground alone, void an election. Such a petitioner would also be able to void an election if they are able to prove that although the election is conducted substantially in accordance with the principles laid down in Constitution as well as other written law on elections, is fraught with irregularities or illegalities that affected the result of the election.

Conduct of a repeat Presidential Election

John Harun Mwau & 2 Others vs. Independent Electoral and Boundaries Commission & 3 Others, Presidential Election Petition No. 2 & 4 of 2017 (consolidated); [2017] eKLR

The Court held that any person, that is, both a natural and juristic person, can file a petition challenging presidential elections, and there is no requirement for such a person to have participated in the subject elections. In addition, where a presidential election

is nullified by the Supreme Court on other grounds save for the nomination process, there is no requirement for fresh nomination of presidential candidates for the repeat/fresh elections. Candidates that participated in the nullified election are the only candidates that will participate in the fresh elections. A fresh election under Article 140(3) of the Constitution is not a disjointed phenomenon, but is lodged within the motions of the previous electoral contest. Lastly, the withdrawal of a candidate from the electoral contest is not one of the scenarios contemplated by the Constitution, as a basis for the cancellation of an election.

Standard of Proof in Electoral Disputes

Raila Odinga & 5 Others vs. Independent Electoral and Boundaries Commission & 3 Others, Presidential Petition No. 5 of 2013; [2013] eKLR

The Court settled the applicable standard of proof in a presidential election petition to be above the balance of probability, though not as high as beyond-reasonable-doubt – save that this would not affect the normal standards where criminal charges linked to an election, are in question. In the case of data-specific electoral requirements (such as those specified in Article 138(4) of the Constitution, for an outright win in the presidential election), the party bearing the legal burden of proof must discharge it beyond any reasonable doubt. In addition, the Court interpreted the threshold in Article 138 (4) (a) of the Constitution relating to the meaning of 'all votes cast' to include both valid and rejected votes.

Electoral Offences

Wetangula & Another vs. Kombo & 5 Others (Petition 12 Of 2014) [2015] KESC 12 (KLR)

The Court found that while an election court has the competence to look into electoral offences that are criminal in nature, such as bribery and treating of voters, its inquiries on the relevant instances of the election offence do not constitute a criminal trial. In that regard, sanctions/penalties issued by the electoral court against the person found culpable are confined to the wrong of undermining the electoral voice of the citizens. Therefore, a finding by an election court on an election offence is not subject to double jeopardy principle. An election court may also send a report to the Director of Public Prosecutions to initiate substantive criminal trial in respect of culpability that originates from election proceedings.

Declaration of election results

Joho & Another vs. Shahbal & 2 Others (Petition 10 of 2013) [2014] KESC 34 (KLR)

The Court held that the tallying of votes and publicly announcing the total votes for each candidate must occur immediately after the close of polling, followed by prompt declaration of election results. Once the returning officer completes their duties, including issuing certificates to elected individuals, jurisdiction over electoral disputes shifts from the IEBC to the Judiciary. Any challenge to the declared results must be filed within the specified timeframe computed from the declaration by the returning officer and not from the date of publication of Gazette notice notifying the elected individuals' names.

Powers of the IEBC to enforce the Electoral Code of Conduct

Independent Electoral & Boundaries Commission vs. Hon. Sabina Wanjiru Chege SC Petition No. 23 (E026) of 2022 [2023] KESC 74 (KLR)

The Court held that the Electoral Code of Conduct is constitutionally designed to enable IEBC perform its constitutional and statutory mandate. Therefore, IEBC has jurisdiction to conduct investigations, summon witnesses and to conduct hearings in relation to a complaint of breach of the Code.

Powers of Returning Officer post declaration of results

George Mike Wanjohi vs. Steven Kariuki & 2 Others [2014] eKLR

The Court held that a Returning Officer cannot cancel a Certificate of Results after issuance or rectify the certificate, as they become *functus officio.* Allowing a Returning Officer to nullify results post-declaration would undermine the election process and encroach on the Election court's powers. Any errors regarding the final choice of electors had to be resolved by the judicial system to protect the sanctity of the election process.

CHAPTER SIX
REGIONAL AND INTERNATIONAL JURISPRUDENTIAL INFLUENCE

6.1 Introduction

In an increasingly interconnected world, courts around the globe are engaging in jurisprudential dialogue, and cross-fertilizing ideas through the consideration and citation of decisions from comparable apex courts. Over the past twelve years, the Supreme Court of Kenya has played an increasingly influential role in this global judicial conversation by delivering landmark decisions that have significantly shaped Kenyan law. These decisions, beyond settling legal issues within Kenya, have also garnered persuasive value in other jurisdictions, highlighting the Supreme Court's influence both regionally and internationally.

Peer courts not only appreciate the jurisprudential perspectives offered by the Supreme Court of Kenya but also consider its interpretive methodologies and approaches in resolving novel legal disputes. This growing influence suggests that the Supreme Court of Kenya is poised to play an even more significant role in the global jurisprudential community in the coming years.

This section examines instances where courts in other countries have embraced the reasoning and interpretative stances developed by the Supreme Court of Kenya.

Constitutional Court of South Africa

In ***Paulsen and Another vs. Slip Knot Investments 777 (Pty) Limited*** (CCT 61/14) [2015] ZACC 5, the Constitutional Court of South Africa, when considering its jurisdiction to hear appeals on points of law "of general public importance," referenced the Supreme Court of Kenya's approach in delineating its jurisdiction under Article 163(4)(b) of the Constitution of Kenya. The Constitutional Court of South Africa considered the approach outlined in *SAJ v AOG & 2 Others* (Petition No. 1 of 2013), ***Steyn vs. Ruscone*** (Application 4 of 2012) [2013] KESC 11 (KLR) and ***Board of Governors, Moi High School, Kabarak & Daniel Toroitich Arap Moi vs. Malcolm Bell*** *(Civil Application 12 & 13 of 2012) [2013] KECA 13 (KLR),* for the proposition that a matter of general public importance must transcend the specific interests of the parties and bear significant public interest.

2012 12 years 2024 ANNIVERSARY

Supreme Court of Uganda

The Supreme Court of Uganda in ***Amama Mbabazi vs. Kaguta Museveni & 2 Ors*** [2016] UGSC 4 drew upon the reasoning in ***Odinga & 5 Others vs. Independent Electoral and Boundaries Commission & 3 others*** *[2013] KESC 6 (KLR)*, where the Supreme Court of Kenya held that the nullification of an election is contingent upon proof that non-conformity with the law had an impact on the election results.

Constitutional Court of Zambia

The Constitutional Court of Zambia has frequently drawn on Kenyan jurisprudence. In ***Kanengo vs. Attorney General and Anor*** (CCZ 24 of 2022), the court relied on the Supreme Court of Kenya's decision in ***Obado vs. Oyugi & 2 Others*** [2014] KESC 22 (KLR) to hold that courts cannot extend constitutional timelines.

Similarly, in ***Kapoko vs. People*** (23 of 2016), the court was influenced by the Kenyan case ***Odinga & 5 Others v Independent Electoral and Boundaries Commission & 3 Others*** *[2013] KESC 6 (KLR)* to interpret the constitutional principle that "justice shall be administered without undue regard to procedural technicalities" is to be applied on a case-to-case basis depending on the circumstances before the court.

Yet another notable instance of reference is in ***Law Association of Zambia & Chapter One Foundation Limited vs. The Attorney*** (13 of 2019) [2020], where the Constitutional Court of Zambia cited the Kenyan case ***Mahamud vs. Mohamad & 3 Others; Muktar (Interested Party)*** [2019] KESC 70 (KLR) to emphasize that a court's jurisdiction is a fundamental matter that cannot be treated as a procedural technicality.

Supreme Court of Appeal of Malawi

In ***Telekom Networks Malawi PLC vs. GlobeTele Services PTE Limited*** (Civil Appeal 10 of 2021), the Supreme Court of Appeal of Malawi adopted the Kenyan Supreme Court's reasoning in ***National Bank of Kenya Limited vs. Anaj Warehousing Limited*** [2015] KESC 4 (KLR) regarding the legal implications of documents prepared by legal practitioners without a valid practicing certificate.

Additionally, in ***Mutharika & Anor. vs. Chilima & Anor.*** (MSCA

Constitutional Appeal 1 of 2020), the Malawian court was persuaded by the Kenyan approach to electoral law as developed in the ***Odinga & 5 Others v Independent Electoral and Boundaries Commission & 3 Others*** *[2013] KESC 6 (KLR)* and ***Odinga & Another vs. Independent Electoral and Boundaries Commission & 2 Others*** [2017] KESC 32 (KLR) (2017) cases including on the burden of proof, and the need to interpret electoral laws and constitutional provisions in a way that approaches elections not just as an event but as a process in line with the qualitative approach to adjudicating electoral disputes.

Supreme Court of Namibia

The Supreme Court of Namibia in ***Itula and Others vs/ Minister of Urban and Rural Development and Others*** (1 of 2019) [2020] NASC 6 referenced the Kenyan Supreme Court's decision in ***Odinga & Another vs. Independent Electoral and Boundaries Commission & 2 Others*** *[2017] KESC 32 (KLR)* on the evidentiary threshold required for nullifying an election due to systemic irregularities and illegalities.

Constitutional Court of Seychelles

The Constitutional Court of Seychelles, in ***Government of Seychelles vs. Public Service Appeal Board & Anor*** (CP 15 of 2019), cited the Kenyan Supreme Court's decision in ***Samuel Kamau Macharia & Another vs. Kenya Commercial Bank and 2 Others*** (Application 2 of 2011) [2012] KESC 8 (KLR) to the effect that a court's jurisdiction flows from either the constitution or legislation, or both.

Additionally, in ***Seychelles Human Rights Commission & Ors vs. Speaker of the National Assembly of Seychelles & Ors*** (MA 230 of 2022), the court was persuaded by the Kenyan case ***Shollei & Another vs. Judicial Service Commission & Another*** [2018] KESC 42 (KLR) on the doctrine of necessity and the duty to sit in recusal applications that would have the effect of disabling the Judiciary from hearing a dispute.

Court of Appeal of Tanzania

The Court of Appeal of Tanzania, in ***Atlas Copco Tanzania Ltd vs. Commissioner General, Tanzania Revenue Authority*** (Civil Appeal No. 167 of 2019) [2020] TZCA 317, invoked the Supreme Court of Kenya's interpretation of "matters of law only" as developed in ***Munya vs. Kithinji & 2 Others*** *(Petition 2B of 2014) [2014] KESC 38 (KLR)*

Supreme Court of Ghana

In ***Ghana Center for Democratic Development & 8 Ors vs. Attorney-General*** [2023] GHASC 23, the Supreme Court of Ghana referenced the Kenyan Supreme Court's interpretation of the autonomy of independent constitutional bodies in ***In the Matter of the Interim Independent Electoral Commission*** *(Applicant) (Constitutional Application 2 of 2011) [2011] KESC 1 (KLR).*

The court also drew from the Kenyan jurisprudence in ***Akufo-Addo and Others vs. Mahama and Others*** [2013] GHASC 3, particularly the burden of proof in electoral petitions as discussed in the ***Odinga & 5 Others vs. Independent Electoral and Boundaries Commission & 3 Others*** *[2013] KESC 6 (KLR).*

REGIONAL COURTS

Caribbean Court of Justice

The Caribbean Court of Justice in ***Jabari Sensimania Nervais vs.The Queen; Dwayne Omar Severin vs. The Queen*** drew from the Kenyan Supreme Court's decision in ***Muruatetu & Another vs. Republic; Katiba Institute & 5 Others*** *(Amicus Curiae) [2017] KESC 2 (KLR)* on the unconstitutionality of mandatory death penalty recognizing that it violates the rule of law and due process.

African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights, in ***Ally Rajabu and Others vs. United Republic of Tanzania***, cited the Kenyan Supreme Court's decision in ***Muruatetu & Another vs. Republic; Katiba Institute & 5 Others*** *(Amicus Curiae)* [2017] KESC 2 (KLR), affirming that mandatory death penalties breach the right to a fair trial

6.2 International Engagements

Over the years the Supreme Court has received delegations from various jurisdictions undertaking study tours. Through these engagements, the Court has shared and exchanged best practices and standards on registry and court operations. In order to formalise the engagements, the Supreme Court has signed Memoranda of Understanding setting out the areas of partnership and further collaboration.

The Supreme Court has also undertaken bench marking visits in other jurisdictions to appreciate and draw useful experiences and best practices from other apex courts. Through these visits, the Court gained insights on operations of the foreign apex courts, case management systems, and the use of technology.



Supreme Court Judges in a group photo session with their counterparts from the Federal Constitution Court of Germany



The Supreme Court signs a Memorandum of Understanding with the Federal Supreme Court of Ethiopia



The Supreme Court hosts the delegation from the African Court on Human and Peoples' Right



Supreme Court meeting with the Superior Electoral Court of Brazil



The Hon. Chief Justice of Rwanda, Dr. Faustin Ntezilyayo, and the Hon. Chief Justice of Kenya, Martha Koome, signed a MoU on mutual exchange of the respective judicial systems



The Supreme Court hosts the delegation from the Supreme People's Court of China

CHAPTER SEVEN
OUTREACH ACTIVITIES AND CORPORATE SOCIAL RESPONSIBILITY (CSR)

7.1. Speaking Engagements

The Judges of the Supreme Court have over the years participated in various public engagements, through speeches, paper presentation, guest lectures, and discourses largely with judicial and non-judicial audiences, and in Universities in and outside Kenya. The Justices of the Court have additionally presented papers and given public lectures during Continuous Professional Development (CPD)Trainings hosted by the Law Society of Kenya (LSK).



The Hon. Chief Justice with Students at the Mukuruwe- Ini Annual Education Day



The Deputy Chief Justice and Vice-President of the Supreme Court of Kenya, Hon. Lady Justice Philomena Mbete Mwilu gives a public lecture" *"Navigating the Legal Profession: Pathways to Excellence"* at the University of Nairobi.



Hon. Justice Mohammed Ibrahim speaking on Leadership, Ethics and Standards enlightening MPs on ethics and standards instrumental in their roles as representatives of the People, and their interactions and engagements with colleagues within and outside of the Chamber as outlined in the Constitution



Hon. Justice Smokin Wanjala Speaking during the launch of the Trans-Nzoia Alternative Justice System



The Hon. Justice Isaac Lenaola attending the Nairobi trial advocacy training for Regional Courts organized by the East Africa Law Society



Hon. Lady Justice Njoki Ndungu receiving a gift after giving a lecture titled *"Lecture of Opportunity"* to course 26-2023/2024 participants at the National Defence College.



Hon. Justice William Ouko giving a keynote speech on *Youth Advocacy and Sustainable and Sustainable Leadership*, the case for Active Citizenship during the Annual Leadership Conference Series

7.2. Mentorship of Law School Students

The Social Transformation through Access to Justice (STAJ) blue print recognizes the importance of exploring strategic partnerships with all stakeholders in the justice sector, including learning institutions. STAJ also recognizes the importance of mentorship targeting students to support early appreciation of people-centred justice. It is on this basis that the Supreme Court started a mentorship initiative with the Law Schools in Kenya to mentor law students.



University Students being taken through the Judiciary Museum at the Supreme Court Building



Supreme Court Staff taking University Students through the Court's Registry Processes









Engagement with Deans of all Law Schools and student representatives at the Supreme Court Library



The Hon. Chief Justice hosting students from Moi Girls High School, Eldoret



The President of the Supreme Court Hon. Justice Martha K. Koome visit to the Gede Special Primary School Watamu

7.3. CSR Activities

Corporate Social Responsibility (CSR) contributes positively to society by addressing social, environmental, and ethical concerns. The Court recognizes the significance of CSR as a means of giving back to the community, fostering social cohesion, and promoting sustainable development. It has actively participated in several CSR initiatives that align with the values of justice, fairness, and community empowerment.





The development of Commemorative Book to mark the 12th anniversary of the Supreme Court of Kenya was supported by

IJM