



CIVIL SOCIETY ORGANISATIONS FILE PETITION IN COURT SEEKING PRONOUNCEMENT ON THE FINAL CUSTODIAN INSTITUTION FOR CHAPTER 6 OF THE CONSTITUTION.

FOR IMMEDIATE PRESS RELEASE

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Leading Civil Society Organisations in Governance, Constitutional Reforms, Elections, Transparency and Accountability, and Human Rights, namely Inuka Kenya Ni Sisi!, The Institute for Social Accountability (TISA), Kenya Human Rights Commission (KHRC), and Transparency International Kenya (TI-Kenya), have been closely monitoring key developments regarding the enforcement of Chapter 6 of the Constitution on leadership and integrity. We have noted with deep concern the seeming lack of commitment by key election oversight institutions to enforce and uphold values of Chapter 6 especially during the 2022 general election, and filed a petition (Petition NO. E168 of 2022) in The High Court of Kenya seeking a pronouncement on the vetting and clearing threshold and the final custodian institution for Chapter 6. The prayers made to the court are as summarised below:

EACC be declared the final custodian of Chapter 6 of the Constitution

We aver that during the 2017 general elections, the Ethics and Anti-Corruption Commission (EACC) failed to clear or reject candidates seeking elective seats on the basis of Chapter Six of the Constitution. This task was instead conducted by the Independent Electoral and Boundaries Commission (IEBC) which proceeded to seek advice from EACC. It is important to note that although the EACC submitted a list of more than 100 candidates to be barred from contesting in the election, this advice was largely ignored by IEBC.

The Constitution establishes the EACC as the primary and specialised institution for enforcement of Chapter 6 of the constitution. Any other legislation that provides otherwise is unconstitutional to this extent. The import of this is that a finding by EACC on Chapter 6 is final and binding to everyone. In the event such a finding is disputed, such dispute must be resolved through a judicial review process.

The decision by IEBC to allow candidates to contest based on such recommendations from EACC makes IEBC the de facto clearing institution for Chapter 6, which is an encroachment to EACC's jurisdiction as set out in Article 79 of the constitution. We hold that EACC should not play an advisory role or give recommendations to IEBC, but rather it should provide the proper test for leadership and integrity including vetting and clearing such candidates seeking to be elected.

Individuals charged in court for serious crimes be declared unfit to vie for elections

Our concerns are based on remarks from senior officials from different institutions involved in clearing candidates for elections to the effect that persons with serious questions on integrity could still be cleared to contest for elective office. The IEBC is on record stating that it will allow candidates with cases questioning their integrity to be cleared for office. The EACC has also been on record stating that it does not have the mandate to vet and clear candidates on the basis of Chapter Six. That notwithstanding, The Office of the Director of Public Prosecutions (ODPP) recently indicated that it does not intend to prioritize prosecution of corruption cases against politicians, until after the August 2022 general elections, ostensibly because such cases do not have a direct bearing on the election of leaders.

Our prayer to the court is that individuals seeking elective positions who have been charged in court for abuse of office, corruption, breach of public trust or any other serious offence should be declared unfit to vie for or hold public office until such matter is completely exhausted.

Court to determine that the ethical standard is different from the criminal standard

Article 99(1)(b), Article 180 (2), and Article 193 (1) (b) of the Constitution of Kenya 2010 makes reference to moral and ethical standards which do not necessarily have to be criminal in nature. We aver that it is possible for candidates seeking elective positions to be morally and ethically unfit but at the same time have no criminal records. In our petition, we urge the court to determine that the ethical standard is different from criminal standards which has been the standard applied in previous elections and is in fact a higher standard.

Conclusion

One of the hallmarks of the Constitution of Kenya is the dedication of an entire chapter to leadership and integrity which defines the relationship between public officers and power, sets minimum standards for anyone who seeks public office and stipulates moral and ethical values to guide public officials in carrying out their functions. We, therefore, hold that Chapter 6 of the Constitution on leadership and integrity

must be enforced in the forthcoming general elections. We also urge all Kenyans to unite at the ballot to reject individuals who have been implicated in unethical practices, corruption and other criminal cases.

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