

KENYANS MUST NOT BE FLEECE BY AN UNHOLY UNION OF PARLIAMENT, THE EXECUTIVE AND THE JUDICIARY. THE CONSTITUTION MUST BIND EVERYONE

Joint Press Statement by Religious Leaders and Civil Society Organisations of Kenya

FOR IMMEDIATE RELEASE

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Kenyans are at risk of being fleeced by an unholy union of Parliament, the Executive and the Judiciary when the institutions entrusted with protecting the public interest instead preside over, enable or defend privileges at public expense. The escalating cost of judges' car grants is one such concern. At a time when citizens are struggling with the cost of living, unemployment, school fees, healthcare costs and an unsustainable tax burden, the question is simple: Who is protecting the Kenyan taxpayer?

As the Supreme Court prepares to determine the dispute concerning the taxable car grant for judges, we, religious leaders and civil society organisations, call upon the Court and all constitutional institutions to uphold the Constitution, defend the public interest and honour the trust bestowed upon them by the people of Kenya.

Article 1 of the Constitution vests sovereign power in the people. Article 10 binds all State organs, State officers and public institutions to national values including the rule of law, human dignity, equity, social justice, integrity, transparency and accountability. Article 73(1) declares that State authority is a public trust, exercised in a manner that respects the people, brings honour to the nation and serves the people rather than ruling them.

Our position is unequivocal: No institution is above the Constitution. Judicial independence is indispensable, but it must never become judicial exceptionalism. Independence protects judges from intimidation, political interference, and financial retaliation. It does not place public expenditure beyond constitutional scrutiny or make accountability optional.

1. JUDICIAL INDEPENDENCE MUST NOT BECOME A LICENCE FOR EXCEPTIONALISM

The Constitution establishes the Salaries and Remuneration Commission (SRC) under Article 230 to set and regularly review the remuneration and benefits of State officers. Article 230(5) requires the Commission to consider fiscal sustainability, attraction and retention of skills, performance and transparency, among other principles. Article 160(4), meanwhile, protects judges against disadvantageous variation of their remuneration and benefits.

Both provisions must be given effect. The constitutional question is how to protect judicial independence while maintaining a coherent, equitable, and accountable framework for public remuneration.

In *Gachuri v. Attorney General & another; Kenya Judges Welfare Association & another* [2024] KEHC 5836 (KLR), the High Court held that the taxable car allowance was a protected benefit under Article 160(4). The Court of Appeal subsequently considered the dispute in *Salaries & Remuneration Commission v. Gachuri & 3 others* [2026] KECA 692 (KLR). We acknowledge these judicial proceedings and the constitutional protections at stake. The Supreme Court must now determine the issues properly before it and provide authoritative guidance on the relationship between judicial independence, remuneration and public accountability.

Our concern extends beyond this particular benefit. If historical entitlements or institutional status are treated as sufficient grounds for immunity from effective constitutional scrutiny, other powerful institutions may seek comparable exceptions. This risks the creation of fragmented compensation arrangements, deepening inequality, and weakening the institutions established to safeguard public resources.

We also recognise the ethical sensitivity of a dispute involving benefits accruing to members of the institution called upon to adjudicate it. Without presuming impropriety or prejudging the legal questions, we insist that actual or properly raised apparent conflicts of interest must be addressed under the applicable law, and that public confidence in impartial justice must remain paramount.

The Constitution cannot become a marketplace of institutional exceptions, where every powerful institution demands a special rule for itself.

2. THE COST TO KENYANS CANNOT BE IGNORED

Our analysis estimates that a KES 10 million vehicle grant for each of the judicial positions covered by the available figures would amount to approximately KES 2.3 billion before tax, or KES 1.61 billion after tax, every four years. These are estimates based on the available figures and assumptions, not confirmed by actual expenditure or a determination of the grant's legality.

Our analysis also indicates that judges have access to official chauffeur-driven transport, while the disputed grant is intended for private vehicle use. This raises legitimate questions about the justification, proportionality, and overall cost of the benefit alongside existing transport arrangements.

Let us put the numbers in perspective. KES 1.61 billion is not an abstract accounting figure. It is money raised from Kenyans through taxation and public revenue. It is money that could otherwise contribute to frontline health services, school infrastructure, essential medicines, water, agricultural support, and other public priorities. Every shilling committed to a public benefit carries an opportunity cost for the country.

The issue is not whether judges deserve fair remuneration. They do. The issue is whether a private vehicle benefit of this magnitude is legally justified, equitable and defensible to citizens who finance the State while struggling to meet their basic needs.

The same constitutional scrutiny must extend to public retirement benefits, including those of judges. Article 201 requires openness and accountability in public finance, prudent and responsible use of public money, and equitable sharing of the burdens and benefits of public expenditure. Public service must not become a basis for benefits disconnected from the economic realities of the citizens who sustain it.

We reject a public culture in which ordinary Kenyans are expected to pay more taxes, accept deteriorating services and make sacrifices while public institutions appear increasingly protective of their own privileges. Public money is a public trust, not an entitlement to be expanded without justification.

3. OUR CALL: THE CONSTITUTION MUST SERVE THE PEOPLE

We respectfully call upon the Supreme Court to interpret Articles 160(4) and 230 in a manner that protects judicial independence while upholding constitutional accountability. The Court should clarify the legal status of the disputed benefit, the scope of protection against disadvantageous variation, and the applicable constitutional framework for public remuneration.

We urge all public institutions to respect their constitutional mandates, ensure that public expenditure has a lawful basis, and subject public benefits to appropriate transparency and accountability. Judicial independence must not be determined by political popularity, but neither should constitutional interpretation disregard fiscal sustainability, equity and the public interest.

We call upon religious institutions, civil society organisations, professional associations, universities, workers' organisations and the media to sustain informed, peaceful and principled public engagement. Citizens must continue to exercise their sovereign power by questioning public expenditure and demanding reasoned decisions from every institution.

Our demand is not for a weakened Judiciary. It is for a Judiciary whose independence is matched by integrity, whose authority is matched by humility, and whose decisions strengthen public confidence in the rule of law.

Kenya cannot build a just society if constitutional safeguards become instruments of institutional privilege. Accountability cannot be demanded of citizens while being resisted by those entrusted with public power.

Let the Constitution bind everyone equally. Let public money serve the public good. Let no institution place itself above the people whose sovereignty gives it authority.

SIGNED:

1. Joint Forum of Religious Organisations (U-JFRO)
2. Seventh Day Adventist
3. Friends Church
4. Presbyterian church of east Africa
5. Baptists Church
6. NCCK Nairobi Region County Coordinating Committee
7. Muslim Professionals League Africa
8. The Institute for Social Accountability (TISA)
9. Transparency International Kenya
10. Badili Africa
11. Youth Alive! Kenya
12. PAWA254
13. Kenya Human Rights Commission
14. Inuka Kenya Ni Sisi!
15. National Integrity Alliance
16. Okoa Uchumi Campaign

THE BIBLE – DEUTERONOMY 16:19

“Do not pervert justice or show partiality. Do not accept a bribe, for a bribe blinds the eyes of the wise and twists the words of the innocent.”

THE QUR'AN – SURAH AN-NISA 4:135

“O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relatives.” (Sahih International translation.)