REPUBLIC OF KENYA

JUDICIAL SERVICE COMMISSION
08 AUG 2024
SIGNED MART

PETITION TO THE CHIEF JUSTICE, TO URGENTLY ASSIGN 5 JUDGES OF THE HIGH COURT TO WRITE AND DELIVER JUDGEMENT TO DISSOLVE THE 13TH PARLIAMENT

WE, THE UNDERSIGNED, individual Patriotic Citizens of Kenya, Political Parties and Civil Society Organizations in Kenya

Draw the attention of Hon. lady Chief Justice Martha Koome to the following:-

I. **THAT**, the Constitution of Kenya, 2010 is the supreme law of the Republic, and BINDS all persons and all state organs at both levels of government.

II. **THAT**, Every Person has an obligation to RESPECT, UPHOLD and DEFEND the Constitution of Kenya, 2010.

III. **THAT**, Every Person has the Right, peaceably and unarmed, to assemble, to demonstrate, to picket and to present petitions to public authorities.

IV. **THAT**, Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair, and that if a right or a fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action,

V. **THAT**, Judicial authority is derived from the people of Kenya, and that in exercising judicial authority, justice shall be done to all, irrespective of status; Justice SHALL NOT BE DELAYED; Justice shall be administered without undue regard to procedural technicalities; and that the Purposes and Principles of the Constitution of Kenya, 2010 shall be protected and promoted.

VI. **THAT**, The Constitution of Kenya, 2010 establishes superior courts which include the Supreme court, Court of Appeal, the High Court and other courts established with the status of the High Court.

VII. **THAT**, the High Court has jurisdiction to hear any question respecting the interpretation of the Constitution of Kenya 2010, including the determination of the question whether anything said to be done under the authority of the Constitution or of any law is inconsistent with or in contravention of the Constitution 2010.

VIII. **THAT**, any matter raising a substantial question of law, shall be heard by an uneven number of judges, being not less than three, assigned by the Chief Justice.

IX. **THAT**, Article 261 (5) of The Constitution of Kenya expressly states that *'If Parliament fails to enact any particular legislation within any specified time, any person may petition the High Court on the matter'*. The High court may make a declaratory order or under Art 261 (6) (b) *'transmit an order directing Parliament and the Attorney-General to take steps to ensure that the required legislation is enacted, within the period specified in the order, and to report progress to the Chief Justice'* and at Art 261 (7) *'If Parliament fails to enact legislation in accordance with an order under clause (6) (b), the Chief Justice SHALL advise the President to DISSOLVE Parliament, and the President SHALL DISSOLVE Parliament.'*

X. ***THAT*** following Parliament's failure to enact laws anticipated by the Constitution, under Art 27 (8) and under Art 81 (b) and following the Constitutional Provision under Art 261, various petitioners *in the Matter of the Petitions for dissolution of Parliament and in the matter of Consolidated CJ Petitions Nos 1-5 of 2019 & 1 of 2020*, petitioned the Chief Justice to advice the President to DISSOLVE PARLIAMENT.

XI. **THAT**, Lord Chief Justice David Maraga on 21st September, 2020 advised the President to dissolve Parliament, upon which several petitions were filed, including *Petition No E 291 of 2020 (consolidated with petitions Nos E 300 of 2020; E 302 of 2020; E 314 of 2020; E 317 of 2020; E337 of 2020; E229 of 2020; E220 of 2020; and JR E 1108 of 2020. Leina*

Konchellah & Others V Chief Justice and President of the Supreme court of Kenya & Others

XII. THAT, The petitions in paragraph (XI) above were heard to completion on 3rd, 4th and 5th May, 2021 by Justice L A Achode; P Nyamweya; GV Odunga; J A Makau and A K Ndungu. The Judgement on the same was reserved for delivery on notice.

XIII. THAT, the judgement was not delivered following an order for stay of proceedings issued by the Court of Appeal on 28th May, 2021 *in Civil application no E 097 of 2021, the National assembly and the Senate Vs Chief Justice of the Republic of Kenya and Others.*

XIV. THAT, the order of stay of proceedings was conditional upon the intended appeal being filed within 30days from the date of the order, in default of which the stay would lapse. Given that no appeal was filed and or served in time, the stay is deemed to have lapsed.

XV. THAT, paragraph I, II, III, IV, V, VII, VIII, IX, X, XI of this petition being read together with other relevant parts of the Constitution of Kenya, 2010 and other laws, it is imperative that the question to dissolve Parliament should be executed without any further delay

THEREFORE, your humble petitioners PRAY that:-

1. In accordance with the Constitution of Kenya 2010, you urgently assign 5 Judges of the High Court TO WRITE AND DELIVER a JUDGEMENT ON THE AFORE-MENTIONED CONSOLIDATED PETITIONS TO DISSOLVE THE 13th PARLIAMENT.
2. The question to DISSOLVE PARLIAMENT by the President, as was advised by Lord Chief Justice David K Maraga on 21st September, 2020, given that Parliament is unconstitutional, BE EFFECTED WITHOUT ANY FURTHER DELAY.
3. You advise the President that the current Parliament Stands DISSOLVED and order all other branches of government to effect the DISSOLUTION OF THE 13th PARLIAMENT.

4. That any subsequent Parliament be found unconstitutional by dint of Article 261 of COK, 2010, until such a time that they enact the required legislation, Under Article 27 (8) and Article 100 of COK, 2010 to give effect to the not more than two third gender principle, as well as legislation to promote the representation in Parliament of Women, Persons with disabilities, youth, marginalised communities, ethnic and other minorities, within the period envisaged under Art 261 (7) of COK, 2010.

And your PETITIONERS will ever pray.

PRESENTED BY

1. Lilian Lingai ID no. 39923847
2. Binuamin Salat ID no. 41995063
3. Martha Selina Wako
4. Bina Maseno
5. TISA-KENYA
6. Kenya Human Rights Commission
7. Democracy Without Boarder's Kenya.
8. Ukweli Party
9. The Communist Party of Kenya.
10. The United Green Movement Party.
11. The Hummingbird Grassroots Centre.

DATE: This 8th day of August, 2024