



Kenya Magistrates and Judges Association

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Our Ref: KMJAJSC//32021

Hon Anne A. Amadi, CBS

Secretary

Judicial Service Commission (JSC)

Nairobi

Dear Madam,

Re: Memorandum by the Kenya Magistrates and Judges Association (KMJA) on Appointment of the New Chief Justice of the Republic of Kenya

We, the Kenya Magistrates and Judges Association (KMJA), laud the Judicial Service Commission (JSC) on the ongoing process of appointing the new Chief Justice of the Republic of Kenya and Judge of the Supreme Court. We appreciate the opportunity accorded us by the Commission to give our views on the manner in which interviews of these appointments should be conducted and what kind of candidates, in our view, should become the Chief Justice of the Republic of Kenya and Judge of the Supreme Court of Kenya.

We found it prudent to list our views in point form for ease of reference.

A. The Interview and Selection Process

1. To protect the integrity of the process and get to a Chief Justice and Supreme Court Judge who will command respect across the board, we opine that interviews of the candidates be publicly broadcasted. Further, perception by all third parties cannot be ignored. While questions must be asked to ensure that the best candidate is selected, only relevant questions that protect and preserve the dignity of the candidates should be fielded.

Matters that contravene the provisions of Article 27(4) of the Constitution of Kenya 2010 should be given a wide berth while questions on the academic background, integrity and professional development, communication skills and leadership should be given a lot of emphasis so as to ensure that the best candidates for the Chief Justice and Judge of the Supreme Court are chosen.

We have observed that in the past, some Commissioners have tended to patronise and or appear condescending to candidates. This should be avoided at all costs. The questions must therefore be objective and not intended to paint the candidate in a negative light to the public. It must be recognised that unsuccessful candidates have a life beyond the interviews and should therefore be treated with all the respect that they deserve. Indeed, coming forward to be appointed to act in whatever position must be seen as a brave act and respected.

2. The whole interview process should ensure that only the top candidate is selected for the job. All considerations for the job should be included in the scorecard. The considerations that have ordinarily been taken into account while choosing one candidate

over another during plenaries in the past must be indicated in the scorecard and not left for the majority to decide.

In respect of regional balance of the Chief Justice and Judge of the Supreme Court, for example, lowest marks could go to the region that had already had a Chief Justice and Judge of the Supreme Court preceding the interviews. Lower marks can be given for any region with serving judges of the Supreme Court while top marks should go to a region that has never been represented either in the Chief Justice's position or Judge of the Supreme Court.

Gender could be scored similarly by having the female gender get more marks as there has never been a female Chief Justice and so on and so forth. No consideration that is not specified in the scorecard should be used to pick the candidates. Our position is that the scorecard must be made public and the recruitment be on merit. In other words, only those who get the most marks should be selected for the jobs.

There should be no discrimination as prohibited in Article 27(4) of the Constitution of Kenya in this regard. We, however, look forward to having a Chief Justice who is stronger on administrative and soft skills in addition to intellectual capacity. Intellectual capacity of the Supreme Court Judge should rank very highly in the scorecard.

3. The entire process of recruitment should be carried out in a very transparent atmosphere with the scores of each candidate shared with public at the end of the exercise to inspire confidence. The office of the Chief Justice and Judge of the Supreme Court are not to be taken causally like any other appointment because any

appointment that does not appear above board or one that does not inspire confidence in *'Wanjiku'* has the potential of plunging the country into chaos after the hearing and determination of the Presidential election. The bottom line is that the Commission must be above board and rise above "The recruitment" that has already been concluded in the social media.

B. The past and future of the process

4. Previously, the Commission has been seen to have acted negatively to prospective judges, judicial officer and judiciary staff. Efforts need to be made to inspire the confidence of the public. The Commission should be seen to work more as opposed to fighting its judges, judicial officers and judiciary staff. Extreme caution must therefore be exercised to ensure that media is not used to end careers of those who err.

C. The Kind of Chief Justice We Want

5. We do not want a Chief Justice with outdated views of classes in the Judiciary. One comment from the membership was that we would not want a Chief Justice who has ancient views of monarchs, kings, queens and colonial lords. These classifications have the potential of causing distrust amongst all those who work in the Judiciary. We want a servant who is accessible to all.
6. We want a pragmatic and charismatic leader as the new Chief Justice of Kenya. He must be a God-fearing individual and approved professionally and morally in his previous assignments and duties.
7. We want a Chief Justice who is robust and who commands respect of everyone within and without the judiciary.

8. We have had many challenges when it comes to issues of discipline because the Chief Justice is involved in the process from the beginning rendering the process closed from the beginning with no one else left for the affected officers to appeal to. The new Chief Justice should be one who can demonstrate that he or she has no qualms delegating matters discipline and only come in as a last resort. This is critical to according justice to those who are called upon to accord justice to the rest of Kenyans whenever they have disciplinary cases.

We therefore want a Chief Justice who is not overly technical but one who shows that he or she can trust the teams he or she puts in place to deliver. He or she must not be a micromanager.

9. We want a Chief Justice who is calm and who demonstrates that he or she will let due process run its course when it comes to handling of complaints in the Judiciary. We do not want a reactionary Chief Justice who interferes with the process due to either internal or external forces. This will not only foster decisional independence of judges and judicial officers, but it will also inspire confidence from these and judiciary staff to do their best.
10. We want a Chief Justice who is completely apolitical. This will foster public confidence in the judiciary especially when it comes to handling presidential election petitions and entrenching independence in the rest of judges and judicial officers.
11. From the experience of past leaderships, we want a Chief Justice who can demonstrate that he or she does not promote cronyism, nepotism or tribalism in employment or promotions.

12. One of the greatest fears of a judge, a judicial officer or a judiciary staff lies in the issues of transfers. We therefore want a Chief Justice who acknowledges the importance of the Transfer Policy, especially with regards to ensuring family cohesion among judiciary employees.

We want a Chief Justice who will not employ transfers or lack of transfers and/or promotions as punishment. The Chief Justice must demonstrate faithfulness in policies and institutions.

13. We want a Chief Justice who treats magistrates and kadhis with a lot of respect. Some past Chief Justices treated these judicial officers as "lesser beings". This is important since magistrates and kadhis have no security of tenure, and some previous administrations have used them as "examples" to "prove" how "tough" they are.

14. For the sake of the survival of many young families in the judiciary, we want a Chief Justice who is family-centred and sensitive to judges, judicial officers and judiciary staff who have young families or genuine challenges.

15. We want a Chief Justice who is both humane and ambitious, one who appreciates the intricate relationship between results and welfare. There was a general feeling amongst the members that unfortunately, the former Chief Justice seemed to dwell more on results at the expense of the welfare of judges, judicial officers and judiciary staff.

There was a serious and worrying observation by a number of judicial officers that during a full term of a certain top office they had zero welfare growth.

16. We want a Chief Justice who understands the role of capacity development among judges and judicial officers and one who is therefore determined to use such development and exposure to capture Kenya's space in the international justice system and a social engineer for better qualities of life for Kenyans. The judges, judicial officers and judiciary staff have lost many opportunities to develop themselves yet opportunities were available. The Chief Justice must recognise that younger people have the potential to grow beyond the Judiciary and must therefore be supported to be the best that they can ever be so as to compete with others in the job market.
17. Insufficient sensitivity to gender in appointment of those who lead court stations in the country has been cited by many as a source of discouragement. We want a Chief Justice who demonstrates gender sensitivity including appointment of heads of stations.
18. Judicial independence is greatly enhanced with a leadership that is not easily rattled or bullied from within or without the judiciary. Therefore, we want a Chief Justice who is in charge and who has a history of not being easily bullied to conform to popular or powerful opinion. We want a Chief Justice who is faithful to the Rule of Law, and a brave defender of the Judiciary and its members.
19. While we do not want a Chief Justice who is captive to the Commission, we want a Chief Justice who respects the Commission as an employer. For instance, at the height of suspensions and interdictions, there were concerns that the Commissioners were not consulted. A Chief Justice is a very powerful position that requires the occupant to be someone who commands respect and not fear among staff, someone who

motivates staff. We therefore want a Chief Justice who is team player, especially with regards to relationship with the Commissioners and not a bully who must have his way and one who can demonstrate a record of having a consultative approach on matters leadership.

20. The judiciary has suffered a lot in the past because of our unbalanced relationship with the other arms of government. We want a Chief Justice who can strike the delicate balance between independence and inter-dependence. A Chief Justice who can foster a balanced relationship that upholds the principles of independence while promoting the benefits that come from interdependence with other arms of government.

21. We want a Chief Justice who can explain plainly how he or she will navigate with plans to co-exist with the "judiciary Ombudsman" should the Building Bridges Initiative (BBI) go through.

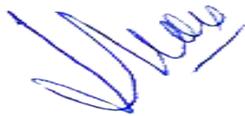
22. The Salaries Remuneration Commission (SRC) is in the process of doing job evaluation for purposes of salary review. Many members took the view that the previous Chief Justice and the Commission did not burn "the midnight oil" to safeguard our interests. The Candidates must demonstrate how they intend to deal with this. The last evaluation was done in a very opaque manner and the results were underwhelming. KMJA would like to see more proactive leadership on this subject as there is concern that the Commission did not adequately present our case in the past. The Chief Justice and the Commission must be ready to give regular updates on issues that affect the judges, judicial officers and judiciary staff.

23. Most of all, we want a Chief Justice who will recognize KMJA as the premier association and who must embrace it to promote welfare and judicial independence.

In conclusion, please note that a group shared the view that, notwithstanding the provisions of Article 27(4) of the Constitution, perhaps maybe the new Chief Justice ought to be a sitting judge. Another group also had a bias towards having a female Chief Justice.

It is my sincere hope that you find the aforesaid in order.

Yours Sincerely,



Hon Lady Justice Jacqueline Kamau

President, KMJA