

CIVIL SOCIETY PLATFORM ON THE JOHN GITHONGO DECISION ON DEFAMATION

SAROVA-PANAFRIC

FRIDAY, MAY 17, 2019

Remarks by Willy Mutunga

I have not read Judge Serгон's decision. I will read it. THEREFORE, my remarks cannot be about the constitutionality and legality of the decision. I am here to laud this platform, and similar ones going forward.

This platform breaths into life some of the foundational pillars of our constitution:

Article 1 of the Constitution decrees **“All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.”**

Under Article 10 of the Constitution principles and values include participation of the people, patriotism, inclusiveness, human dignity, accountability, transparency, integrity, rule of law, and human rights. These are relevant in the issue in question here. You have every right to interrogate whether the decision reflects the vision of our progressive Constitution.

Article 159 (1) decrees that **“Judicial authority is derived from the people...”**

It is my view that critiquing decisions of judges, holding them to account on the principles and values of the Constitution they have sworn to protect and uphold, and their Oath of Office, is an exercise of your **sovereignty power as Kenyans that you have, indeed, donated to the judges and other judicial officers.**

You will recall that the 2013 decision on the presidential petition was critiqued and debated by all Kenyans. We handed over the decision to the University for Kenyans and the public intellectuals to debate it. We did that under these provisions, among others. **It is a great practice. It ought to be continuous and consistent.**

In matters of continuous and consistent practice we need to learn from the LGBTIQ+ movement that camps in court during the proceedings and

judgment. The decriminalization judgment is coming up for delivery next Friday, May 24. It would be an act of solidarity if we marched with them in the spirit and word of principles and values stated including non-discrimination, protection of the marginalized, equity and equality. We must march with all whose rights are violated, and all those who are exploited and oppressed. I am sure soon sex-workers will be on the streets, too. So, will be the abortionists. Let us not be afraid of religious and secular homophobes and bigots. They will never be our teachers.

I believe these platforms should also take place when you want to glorify decisions of the courts. You should all realize that the independence of the Judiciary is under severe threat from the ruling elite and its cartels. You should also, besides criticizing judicial officers, glorify the jurisprudence of others who are resisting the **various pressures (executive, parliament, corporate and civil society interests, ethnic, religious, family, friends, and other insidious pressures) to decide in accordance with the Constitution. Public support means a lot to judicial officers under siege by these pressures.**

In exercise of your sovereignty will as Kenyan then express it in both ways to strengthen the institution of the Judiciary.

Finally, I want to say the burning question in Kenya now is POLITICAL. It is our patriotic duty now to search for alternative political leadership for this country. The baronial narratives of politics of division since 1963 now must continue to be counter penetrated by counter narratives of politics of humanity, and issues, so that we start thinking about our freedom, emancipation from foreign and national forces that continue to enslave us.

I have called for a national convention that can discuss the issues we face and come up with a blueprint to address them. It is only in such a national convention that issues of sovereign debt, corruption, wastage of our resources, people's war on corruption, poverty, quality education, ecological safety, water, food, work, extrajudicial killings, contesting political power; and consolidating movements and political parties that are progressive in resolving this burning question shall we be taken seriously by the people of Kenya. People is dirty because we have refused to clean it up.

THIS GREAT POLITICAL OPPORTUNITY MUST NOT BE ALLOWED TO PASS.