



THE JUDICIARY

Justice be our Shield and Defender



SPEECH

BY

HON. MR. JUSTICE DAVID K. MARAGA,

THE CHIEF JUSTICE OF THE REPUBLIC OF KENYA,

AT THE LAUNCH OF PRACTICE DIRECTIONS FOR THE

ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION

OF THE HIGH COURT

ON

15TH OF DECEMBER, 2016

All Judges Present

Honorable Attorney General (AG)

Honorable Director of Public Prosecution (DPP)

All Judicial Officers present,

The President of the Law Society of Kenya,

Learned Members of the Legal Profession,

Distinguished Guests,

Ladies and Gentlemen,

It is a good morning to you all.

We gather here today to launch the Anti-Corruption and Economic Crimes Division of the High Court of Kenya and the Practice Directions to guide it. This court was gazetted by my predecessor, Dr. Willy Mutunga on 11th December 2015. This is just over one year ago. Its launch and the unveiling of new Practice Directions to guide its proceedings early in my term is a testimony of my personal resolve and commitment to the fight against corruption.

We all know and visitors to this country remind us that Kenya is a vast and beautiful country. However, the beauty and promise of this great nation gets stained with the ever rising cases of corruption reported every day. Corruption is stealing the soul of our nation; pilfering the value of the present and robbing the future off our children.

Our high growth rates in GDP, our rising household incomes, our expanding middle class and growing middle income economy, our high school enrolment rates – and a host of other positive development indicators – are undermined by our high corruption levels. We cannot be a country destined to greatness but which, through our narrow and selfish human acts, continue to undermine this promise.

As citizens of this nation, regardless of our political, ethnic, or ideological inclination, it should bother us that the PWC ***Prevalence of Economic Crimes Survey*** ranks Kenya **Third** in corruption in the world. It is indeed sad that Kenya ranks top of the world in areas such as embezzlement, bribery and procurement fraud. The PWC report ranks embezzlement as the most dominant economic crime in the country. Many other integrity surveys offer similar indictments on the country, a fact that we should be ashamed of. Leaders and the entire citizenry have a civic and ethical responsibility to fight graft. Institutions have a democratic and constitutional duty to punish and eliminate this vice.

Ladies and Gentlemen,

As an institution, the Judiciary is under obligation to administer the law without fear or favour. In this regard, the Judiciary is an institution where those who engage in corruption should face justice according to the law. I want to state here and now that the Judiciary will not be a shelter or sanctuary for the corrupt. **However, this must also take into consideration of the Constitutional rights of an accused to a Fair Hearing under Article 50 of the Constitution and the presumption of innocence until proven guilty.** My message to the other actors in the justice chain is this: give us evidence, and we shall convict. If you fail to furnish us with evidence beyond reasonable doubt we shall acquit. This is not a failure of the court system but a miscarriage of the investigative and prosecutorial machinery.

I understand the ever increasing public quest for rapid and speedy convictions of those who have literally robbed this country of hundreds on millions of shillings. We must, however, always remember that the Judiciary is constitutionally required to uphold the rule of law and to

ensure that due process is followed in court proceedings. This is more so because our laws requires that criminal charges to be proved beyond reasonable doubt before any convictions are recorded.

In discharging this duty, the desire for expedition has to be balanced with the right of an accused person to fair trial and fair administrative action. A court of law cannot condemn without a hearing nor can it convict without evidence.

Cases of corruption have been dragging in our courts for years on end. The public should be forgiven for believing the rich and the powerful in this country are and will never convicted. When arraigned before court, they quickly obtain injunctions or stay orders, continually adjourn the hearing of their cases and thus wear out the witnesses and end up with acquittals.

Because of other cases, the trial courts before which the anti-corruption and economic crimes cases are taken and the High Court before which applications for Judicial Review and Constitutional References challenging the

prosecution of those crimes are filed, are not able to expeditiously hear and determine those matters.

It is to address these concerns of delay and the public perception that the rich and the powerful are never made to answer for their crimes that the Anti-corruption and Economic Crimes Division of the High was established and we first gazetted the Anti Corruption and Economic Crimes Practice Directions *vide* Gazette Notice No. 9123 on 11th December, 2015. The Judges in that Division have no other business but to expeditiously hear and determine such applications and constitutional references. Those Directions have now been superseded by the Practice Directions we are launching here today. This is done in order to keep pace with the changing trends and adopt to the best practices in our criminal justice system. It is also for this reason that I am shortly going to designate magistrates to hear and determine those cases.

The gravamen of the Practice Directions is that all Judicial Review Applications and Constitutional References in respect of corruption and economic crimes shall henceforth be filed, heard and determined by the Anti-Corruption and Economic Crimes Division of the High Court at Nairobi. No

other High Court Division or station should entertain those matters. **The Division will also handle all criminal reviews, revisions, appeals and any other applications arising from decisions of the special Magistrates appointed under Section 3 of the Anti-Corruption & Economic Crimes Act 2003.**

All part-heard cases related to corruption and economic crimes pending before other Stations or Divisions of the High Court shall continue to be heard and determined by the aforementioned stations or divisions. While all cases relating to corruption and economic crimes which have been filed before other Stations or Divisions of the High Court, in which hearing has not commenced, shall be transferred to the Anti-Corruption and Economic Crimes Division.

If those challenges succeed and prosecution is stopped, the affected prosecutions shall be terminated and those cases shall be dismissed. If the challenges fail, the cases shall be heard in the designated subordinated courts where they are instituted.

The Anti-Corruption and Economic Crimes Division will dedicate all its judicial time and resources only to corruption related cases in order to expeditiously dispose of the cases. I know that these Practice Directions are likely to elicit complaints of denial or limiting of access to justice but extra-ordinary situations like the current level of corruption in our country call for extra-ordinary measures. After all the rich who try to stop the prosecution of their cases can always afford to travel to Nairobi from any other part of the country.

Ladies and Gentlemen.

As I have said before, the fight against corruption is a collaborative effort of all the agencies and institutions mandated by our Constitution to fight the vice. The war on corruption requires the multi-faceted effort of credible and proper investigation by the police and the EACC, and; proper prosecution and submission of evidence by the DPP. Only then can the courts deliver convictions.

The blame game on responsibility for the failures in the anti-corruption campaign cannot continue forever. We must identify where the lapse lies and fix it immediately. Only then can we discharge our respective mandate in the fight against corruption. My promise, on behalf of the Judiciary, is that we shall be accountable to our duties and obligations and in good and clear conscious deliver judgements on the facts before us and the law which guides our conduct. Let the other agencies support us in its discharge.

I want our judges and magistrates to examine their conduct and improve on those matters that genuinely make the Judiciary ineffective in the fight against corruption. We in the judiciary cannot assert that we have been operating optimally. If the interventions made since December 2015 have started producing positive results, then it is clear that we can still improve. I will lead the Judiciary more earnestly on that path.

Ladies and Gentlemen.

Today's event symbolizes the common approach that is needed in this fight. We, in the judiciary, believe that each

agency must carry its own constitutional weight and be measured by its own performance. These Practice Directions are an outcome of what the Judiciary initiated within the framework of the National Council on the Administration of Justice (NCAJ). They are not the Judiciary's unilateral imposition. For this reason, I thank the membership of the NCAJ for their contributions and continued support in this regard.

I also wish to remind all of us here that the objective of these Practice Directions may not be achieved if the players in the justice chain do not pay fidelity to the Practice Directions themselves. For example, in my view, the Police and DPP should not initiate or charge a suspect if investigations are not complete and if witnesses are not ready. Indeed, and as I have already stated, a Judge or a Magistrates cannot convict when a case has been so poorly investigated or so weakly and inadequately prosecuted that the inevitable conclusion is that the processes were designed to produce an acquittal.

I want the DPP, EACC and Police to bring professional rigor to their work if they expect the Judges and magistrates to

find in their favor. Trafficking accused persons to court to manage political pressure when investigations are not concluded, or when those investigations are sloppily and casually done, or charging the wrong officers or drawing faulty charge sheets – all which are intended or devised to fail the case and blame the courts should come to an end. I have asked our judges and magistrates to make it clear in their judgments who should take responsibility for failures in corruption cases. We all must be accountable.

The Law Society of Kenya leadership must also rein on its members to uphold the spirit of these Practice Directions by not taking up frivolous briefs and misleading the courts to avail unnecessary adjournments. As advocates, you will be central and key players in assisting in the administration of justice according to the law. Our courts place a significant level of trust on the advocates who appear before them and therefore your duty to court is of such paramount significance in the justice system. It is unethical for an advocate to apply for an adjournment in the morning, and later in the afternoon, in a fit of falsified fury, address a press conference blaming the Judiciary for

delaying cases and rising backlogs. Ladies and Gentlemen you cannot have it both ways.

As I have said before, and I repeat now that due to the public interest nature of economic crimes, hearing of corruption cases will proceed on a daily basis with no room for adjournment except in very compelling and exceptional circumstances. I urge all our Judges and Magistrates to put their feet down and take charge of the court proceedings without compromising the rights of the accused and ends of justice.

Ladies and Gentlemen.

In the last one year, a total of **Eighteen (18)** convictions have been recorded on corruption cases – the highest number of convictions in any one year that EACC has secured since it was established. This number may appear small but given where we are coming from it signals hope.

Last but not last, I want to remind all of us here today of a quote from [Anne Bishop](#) in [Heir to the Shadows](#), that:

“When honor and the Law no longer stand on the same side of the line, then the mind drifts to evil and corruption.

I therefore ask all to cooperative in this noble endeavor for the benefit of our citizens.

With these remarks I now officially launch the Anti—Corruption and Economic Crimes Division of the High Court and the Practice Directions to guide it.

THANK YOU ALL AND MAY GOD BLESS YOU.