

PRESS STATEMENT

The re-appointments of the KACC Director and two of his assistants has raised some concerns from various stakeholders. The concerns revolve around two issues- suitability of Justice Ringera and the powers of the H.E the President to make the appointments. I will now address both issues.

1. SUITABILITY OF JUSTICE RINGERA.

While there has been some criticism of Justice Ringera's Performance through the media by various stakeholders including the civil society, political leaders and the media, I wish to point out that no complaint against Justice Ringera has been made either to the Ministry of Justice, National Cohesion and Constitutional Affairs or to the President or Parliament through the Ministry by the Advisory Board.

Given that Justice Ringera holds a sensitive office in which he is bound to make enemies as he carries out his mandate, complaints about his performance must be treated with caution. It would be expected that such complaints would first and foremost emerge from the body charged with the statutory responsibility to oversee his performance, the Advisory Board. None has come. In fact the Board has consistently reiterated its confidence and satisfaction with the work of Justice Ringera and his officers. For instance in its annual report for 2006/2007 the Board Chairman writes:

'As chairman of the advisory board, I am happy to report that the commission has acquitted itself well vis a vis its statutory mandate in the Act'. And in the 2007/2008 Annual Report he notes he thanks the management and all employees for 'yet another successful year'

Most of the allegations in the public domain about the non-performance of Justice Ringera are based on a misconception of his responsibilities under the law. Justice Ringera's role is restricted to investigations but a lot of the complaints about the pace of the war against corruption relate to prosecutions and the lack of convictions of alleged perpetrators. There is

also the perception Justice Ringera has not targeted the 'big fish' and has merely targeted the 'small fish'. This perception is not borne out by facts.

Under the stewardship of Justice Ringera, KACC has investigated and recommended the prosecution of ministers, permanent secretaries and heads of state corporations. Records show that 8 Ministers, 16 MPs, 8 PSs and 58 Chief Executives have been investigated and recommended for prosecution. Who are the so-called 'big fish' if these are not big fish?

As a result of the commissions work more than more 240 criminal cases are in court, 293 civil cases have been filed for the recovery of public land, 76 civil cases for the recovery of embezzled funds have been filed and many more are under investigation. Properties worth more than 3.7 billion have been recovered including the Grand Regency and Karura forest land. These are not minor achievements by any standards.

Weaknesses in other institutions have of course undermined the work of the KACC. These weaknesses in the Judiciary, the Police and the State Law Office are well known and they are being addressed. KACC and Justice Ringera cannot be the scapegoat for these weaknesses.

2. PRESIDENTIAL POWERS OF APPOINTMENT

The re-appointment of Justice Ringera and his assistants is clearly within the mandate of H.E the President. **As the appointing authority, it cannot be denied that he also has authority to re-appoint.** Under the Anti-corruption and Economic Crimes Act, **no procedure is set out for re-appointment.** The relevant provision (paragraph 3(2) of the first schedule to the Anti-Corruption and Economic Crimes Act) stipulates:

A person who has held office as Director or Assistant Director may be re-appointed, but may not serve as the Director for more than two terms or as assistant director for more than two terms'

The only procedure set out is for new appointments . While appointment deals with fresh recruits, re-appointment deals with serving officers. There is therefore no need for vetting officers in terms of their suitability as is expected of new officers. Parliament in its wisdom did not therefore provide for the re-vetting of officers who are to be re-appointed. The President cannot therefore be accused of ignoring any provisions of the law in making the re-appointments. The President was acting within the law and did not breach any provisions of the law.

In making the appointment, the President referred to section 8(4) to demonstrate that the original appointment had been recommended by the Board and approved by Parliament. He was therefore re-appointing the officers on the understanding that they were found fit to serve in their respective capacity during the original appointment and nothing had been brought to his attention by the Board about the unsuitability of the officers since appointment.

Section 24 of the Constitution is clear that subject to the Constitution and any other law, the power of making appointments **to any office** and terminating of any such appointments is vested in the President. In the current circumstances no law bars the President in making the re-appointment and no procedure is prescribed for the making of the re-appointment.

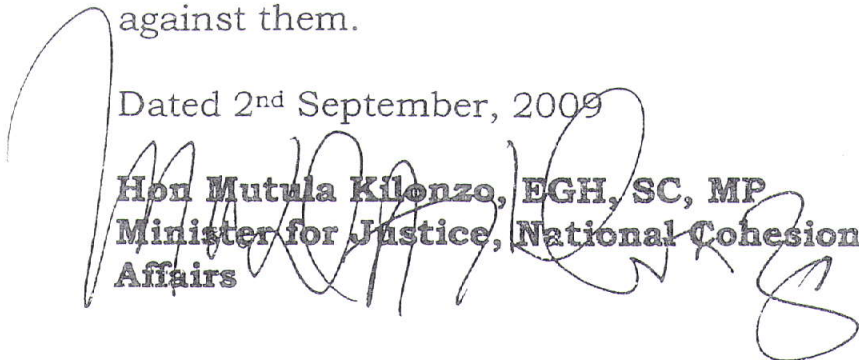
3. CONCLUSION

In the circumstances I urge members not to unduly complicate the war against corruption by demonizing the Director and the Assistant Directors simply because there are generalized complaints about the pace of the war against corruption which has actually been affected by a multiplicity of factors which are not within the control of the Director or his Assistants.

As a nation, we must move away from the culture of mob justice whereby individuals holding public office are ridiculed,

vilified ,condemned and hounded out of office without due process or any substantiation or evidence of the allegations against them.

Dated 2nd September, 2009


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Minister for Justice, National Cohesion and Constitutional Affairs