

Approved for tabling.

REPUBLIC OF KENYA



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PARLIAMENT  
OF KENYA  
LIBRARY

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT

FIFTH SESSION

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE APPROVAL HEARING FOR APPOINTMENT OF HON.LADY JUSTICE  
MARTHA KARAMBU KOOME AS THE CHIEF JUSTICE OF THE REPUBLIC OF  
KENYA

CLERK'S CHAMBERS,  
PARLIAMENT BUILDINGS,  
NAIROBI

MAY, 2021



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KENYA NATIONAL ASSEMBLY



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

ATTENDANCE REGISTER FOR MEMBERS

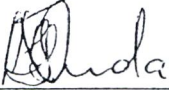
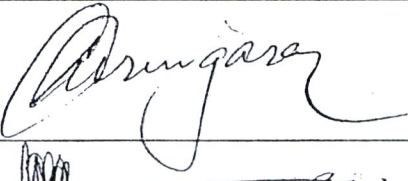
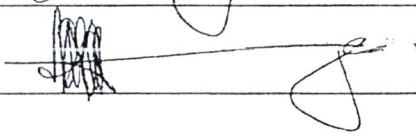
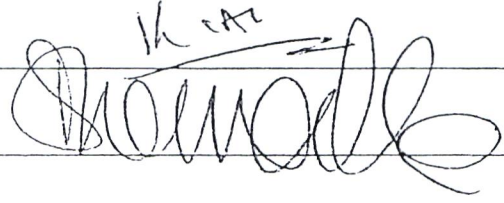

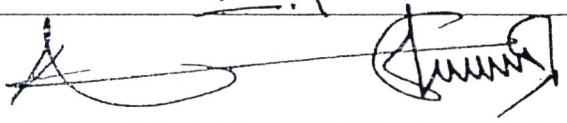
DATE...13-05-2021

VENUE...COUNTY HALL, MINI-CHAMBER

AGENDA

Adoption of Committee Report on the Approval Hearing of Hon.Lady Justice Martha Koome for Appointment as Chief Justice of the Republic of Kenya

NO.	NAME	SIGNATURE
1.	Hon. Clement Muturi Kigano, M.P. - Chairperson	
2.	Hon.T.J Kajwang, MP -Vice Chairperson	
3.	Hon.Emmanuel Wangwe	
4.	Hon. Junet Sheikh Nuh Mohamed, M.P	
5.	Hon. John Olago Aluoch, MP.	
6.	Hon. Roselinda Soipan Tuyu, MP.	
7.	Hon. Peter Opondo Kaluma, MP.	
8.	Hon. Mwamkale Kamoti, MP.	
9.	Hon. Zuleikha Hassan, MP.	

0.	Hon. Josephine Naisula Lesuuda, M.P.	
1.	Hon. George Gitonga Murugara, MP.	
2.	Hon. Adan Haji Yussuf, MP.	
3.	Hon. Japheth Kiplangat Mutai, MP.	
4.	Hon. Anthony Githiaka Kiai, MP.	
5.	Hon. Jennifer Shamalla, MP.	
6.	Hon. John Kiarie Waweru, MP.	
7.	Hon. John Munene Wambugu, MP.	
8.	Hon. Anthony Oluoch, M.P.	
9.	Hon. Robert Gichimu Githinji, M.P	

COMMITTEE CLERK

  
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DIRECTOR DEPARTMENTAL COMMITTEES

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## ABBREVIATIONS AND ACRONYMS

JLAC	Justice and Legal Affairs Committee
CID	Criminal Investigations Department
HELB	Higher Education Loans Board
EACC	Ethics and Anti-Corruption Commission
Hon	Honourable
H.E	His Excellency
KRA	Kenya Revenue Authority
MP	Member of Parliament
LSK	Law Society of Kenya
NCAJ	Nation Commission on Administration of Justice
HC	High Court
CA	Court of Appeal
SC	Supreme Court
CMC	Chief Magistrates Court
CJ	Chief Justice
JTI	Judiciary Training Institute
JMVB	Judges and Magistrates Vetting Board
CLE	Continuous Legal Education
JSC	Judicial Service Commission

## CHAIRPERSON'S FOREWORD

On 28<sup>th</sup> April, 2021 pursuant to Standing Order 42 (1), the Speaker communicated to the House a message from His Excellency the President Hon. Uhuru Kenyatta regarding the nomination of Hon. Lady Justice Martha Karambu Koome for appointment as Chief Justice of the Republic of Kenya.

The Message dated 28<sup>th</sup> April, 2021 was addressed to the Speaker of the National Assembly as per the provisions of Article 166(1)(a) of the Constitution of Kenya 2010. The Message also included a copy of a letter to H.E the President conveying the decision by the Judicial Service Commission nominating the Hon. Lady Justice Martha Karambu Koome for consideration for appointment as Chief Justice of the Republic of Kenya.

The above Constitutional provisions require that in making appointments to the Office of Chief Justice, the President shall seek the approval of the National Assembly. The Speaker of the National Assembly referred the Message together with the nominee's curriculum vitae to the Departmental Committee on Justice and Legal Affairs for consideration pursuant to provisions of Standing Order 42 (3) (c).

The Committee conducted public participation in the process of approval hearing by inviting written submissions from members of the public. In this regard, an advert was placed in newspapers on 30<sup>th</sup> April 2021. This process was undertaken in compliance with the requirements of Art. 118 of the Constitution, Section 6(9) of the Public Appointments (Parliamentary Approval) Act of 2011 and Standing Order 45(3) of the National Assembly.

The Committee undertook the approval hearing on 13<sup>th</sup> May 2021 at County Hall, Mini Chamber, Parliament Buildings.

This report contains the Committees' findings and recommendations that were arrived at based on the recruitment process by the Judicial Service Commission, her demonstration of competency and suitability during the approval hearing and materials presented before the committee

On behalf of the committee, I wish to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. Furthermore, the committee appreciates the input by members of the public made through written submissions.

Finally, pursuant to Standing Order 199 and 216(5)(f), it is my pleasure and duty to present to the House, the Committees' Report on the approval hearing which recommends that the House approves the nomination for appointment of Hon. Lady Justice Martha Karambu Koome as Chief Justice of the Republic of Kenya.

  
Hon. Clement Muturi Kigano, M.P

## CHAPTER 1

### 1.0 PREFACE

#### 1.1 Establishment and Mandate of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of the Departmental Committees established under National Assembly Standing Order No.216 (1).The Committee has mandate to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments).
2. The Committee derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows-
  - a. investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments.
  - b. study the programme and policy objectives of ministries and departments and the effectiveness of their implementation.
  - c. study and review all legislation referred to it;
  - d. study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives.
  - e. investigate and enquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House.
  - f. vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)
  - g. examine treaties, agreements and conventions.
  - h. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.
  - i. consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and
  - j. Examine any questions raised by Members on a matter within its mandate.
3. The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-
  - a. Constitutional affairs;
  - b. The administration of law and Justice
  - c. The Judiciary;
  - d. Public prosecutions;
  - e. Elections;
  - f. Ethics, integrity and anti-corruption; and
  - g. Human rights.
4. The Committee has overall mandate over all matters relating to Political Parties under the office of the Registrar of Political Parties.

## 1.2 Committee Membership

5. The current membership of the committee is as follows-

### Chairperson

Hon.Clement Muturi Kigano, M.P.  
Kangema Constituency  
Jubilee Party

### Vice Chairperson

Hon.Tom Joseph Kajwang, M.P.  
Ruaraka Constituency  
ODM - Party

Hon. John Olago Aluoch, M.P.  
Kisumu West Constituency  
FORD-Kenya

Hon. George Peter Kaluma, M.P.  
Homa Bay Town Constituency  
ODM-Party

Hon. Roselinda Soipan Tuyu, M.P.  
Narok County  
Jubilee Party

Hon.Junet Sheikh Mohammed, M.P  
Suna East Constituency  
ODM-Party

Hon. Emmanuel Wangwe, M.P  
Navakholo Constituency  
Jubilee-Party

Hon.W.Kamoti Mwamkale, M.P.  
Rabai Constituency  
ODM-Party

Hon.Josephine Naisula Lesuuda, M.P.  
Samburu West Constituency  
KANU-Party

Hon. Zuleikha Hassan, M.P.  
Kwale County  
ODM-Party

Hon. Jennifer Shamalla, M.P.  
Nominated MP  
Jubilee-Party

Hon.Robert Gichimu Githinji, M.P  
Gichugu Constituency  
Jubilee-Party

Hon.Anthony Oluoch M.P.  
Mathare Constituency  
ODM-Party

Hon. John Munene Wambugu, M.P.  
Kirinyaga Central  
Jubilee -Party

Hon. George Gitonga Murugara, M.P.  
Tharaka Constituency  
Democratic Party (DP)

Hon. Anthony Githiaka Kiai, M.P.  
Mukurueni Constituency  
Jubilee-Party

Hon. John Kiarie Waweru, M.P.  
Dagoretti South Constituency  
Jubilee-Party

Hon. Japheth Mutai, M.P.  
Bureti Constituency  
Jubilee-Party

Hon. Adan Haji Yussuf, M.P.  
Mandera West Constituency  
Economic Freedom Party

### 1.3 Committee Secretariat

6. The Committee secretariat is as follows-

Mr. Abenayo Wasike  
Principal Clerk Assistant  
Lead Clerk

Mr. Denis Abisai  
Principal Legal Counsel I

Ms. Halima Hussein  
Clerk Assistant II

Mr. Ahmed Hassan Odhwa  
Principal Research Officer

Mr. Omar Abdirahim  
Fiscal Analyst III

Ms. Roselyne Ndegi  
Serjeant-at-Arms I

Ms. Noelle Chelagat  
Media Relations Officer III

7. Minutes of sittings of the committee on the consideration of the nominees are attached to this report as annexure 1.

## CHAPTER 2

### 2.0 ESTABLISHMENT AND FUNCTIONS OF THE OFFICE OF CHIEF JUSTICE

#### 2.1 Establishment of the Office of the Chief Justice of the Republic of Kenya

8. The office of Chief Justice of the Republic of Kenya is established pursuant to the provisions of Article 161 (2) (a) of the Constitution of Kenya, 2010. The Article provides that;

*“There is established the office of Chief Justice, who shall be the Head of the Judiciary”*

9. Section 5 of the Judicial Service Act, No. 1 of 2011, sets out the functions of the Chief Justice as follows-

(1) *The Chief Justice shall be the head of the Judiciary and the President of the Supreme Court and shall be the link between the Judiciary and the other arms of Government.*

(2) *Despite the generality of subsection (1), the Chief Justice shall—*

(a) *assign duties to the Deputy Chief Justice, the President of the Court of Appeal, the Principal Judge of the High Court and the Chief Registrar of the Judiciary.*

(b) *give an annual report to the nation on the state of the Judiciary and the administration of justice; and cause the report to be published in the Gazette, and a copy thereof sent, under the hand of the Chief Justice, to each of the two Clerks of the two Houses of Parliament for it to be placed before the respective Houses for debate and adoption.*

(c) *exercise general direction and control over the Judiciary.*

10. The Supreme Court of Kenya is established pursuant to Article 163 (1) of the Constitution and Article 163 (1) (a) provides that the Chief Justice shall be the president of the court.

11. Article 22(3) of the Constitution requires the Chief Justice to make Rules to regulate court proceedings for the enforcement of the Bill of Rights as set out in Chapter Four of the Constitution. These rules were Gazetted on 28th June 2013 by the former Chief Justice of Kenya Dr. Willy Mutunga and are cited as the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.

12. Article 141(1) of the Constitution provides that the swearing in of the President-elect shall be in public before the Chief Justice, or, in the absence of the Chief Justice, the Deputy Chief Justice.

13. Article 144(3) of the Constitution requires the Chief Justice to appoint a Tribunal to investigate the President's physical and mental capacity to perform the functions of the office, on a resolution by a majority of the Members of the National Assembly.

### Tenure of office of the Chief Justice and other judges

14. The tenure of office of the Chief Justice and other judges is set out in Article 167 of the Constitution, which provides as follows-

- i. *A judge shall retire from office on attaining the age of seventy years, but may elect to retire at any time after attaining the age of sixty-five years.*
- ii. *The Chief Justice shall hold office for a maximum of ten years or until retiring under clause (1), whichever is the earlier.*
- iii. *If the Chief Justice's term of office expires before the Chief Justice retires under clause (1), the Chief Justice may continue in office as a judge of the Supreme Court.*
- iv. *If, on the expiry of the term of office of a Chief Justice, the Chief Justice opts to remain on the Supreme Court under clause (3), the next person appointed as Chief Justice may be selected in accordance with Article 166 (1), even though that appointment may result in there being more than the maximum permitted number of Supreme Court judges holding office.*
- v. *The Chief Justice and any other judge may resign from office by giving notice, in writing, to the President*

15. Section 5(4) of the Judicial Service Act, 2011, provides that in the event of the removal, resignation or death of the Chief Justice, the Deputy Chief Justice shall act as the Chief Justice for a period not exceeding six months pending the appointment of a new Chief Justice in accordance with the Constitution.

### Qualifications for appointment as Chief Justice

16. The qualifications for appointment as Chief Justice are set out in Article 166(2) and (3) of the Constitution, which provides as follows-

*(2) Each judge of a superior court shall be appointed from among persons who—*

- (a) hold a law degree from a recognised university, or are advocates of the High Court of Kenya, or possess an equivalent qualification in a common-law jurisdiction;*
- (b) possess the experience required under clause (3) to (6) as applicable, irrespective of whether that experience was gained in Kenya or in another Commonwealth common-law jurisdiction; and*
- (c) have a high moral character, integrity and impartiality.*

*(3) The Chief Justice and other judges of the Supreme Court shall be appointed from among persons who have—*

- (a) at least fifteen years experience as a superior court judge; or*
- (b) at least fifteen years' experience as a distinguished academic, judicial officer, legal practitioner or such experience in other relevant legal field; or*
- (c) held the qualifications mentioned in paragraphs (a) and (b) for a period amounting, in the aggregate, to fifteen years;*

## *Parliamentary approval process for the Office of the Chief Justice*

17. Article 124(4) of the Constitution requires that a committee of a House considers a nomination before making a recommendation to the House on the appointment. The Article provides as follows-

*(4) When a House of Parliament considers any appointments for which its approval is required under this Constitution or an Act of Parliament-*

- (a) the appointment shall be considered by a committee of the relevant House;*
- (b) the committee's recommendation shall be tabled in the House for approval;*
- (c) the proceedings of the committee and the House shall be in public.*

18. The committee is thus mandated to consider for approval by the National Assembly, appointments of the Chief Justice and Deputy Chief Justice under Article 166(1) (a) of the Constitution. The said Article requires H.E the President to nominate and with the approval of the National Assembly, appoint the Chief Justice and the Deputy Chief Justice in accordance with the recommendations of the Judicial Service Commission.

19. The approval hearing process is guided by the Public Appointments (Parliamentary Approval) Act; 2011. Section 7 of the Act provides that the issues for consideration during the approval hearing by the relevant House shall be: -

- (a) the procedure used to arrive at the nominee;*
- (b) any constitutional or statutory requirements relating to the office in question; and*
- (c) the suitability of the nominee for the appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which nomination is being made.*

20. Section 8(1) of the Public Appointments (Parliamentary Approval) Act; 2011 provides that unless otherwise provided in any law, a Committee shall consider a nomination and table its report in the relevant House for debate and decision within twenty-eight days from the date on which the notification of nomination was given in accordance with section 5. Section 8(2) of the Act further provides that at the conclusion of an approval hearing, the Committee shall prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated, and shall include in the report, such recommendations as the Committee may consider necessary.

21. Section 9 of the Public Appointments (Parliamentary Approval) Act, 2011 provides that if after expiry of the period for consideration specified in section 8, Parliament has neither approved nor rejected a nomination of a candidate, the candidate shall be deemed to have been approved.

22. Section 10 of the Public Appointments (Parliamentary Approval) Act, 2011 provides that; -

*'Where the nomination of a candidate is rejected by Parliament, the appointing authority may submit to the relevant House the name of another candidate, and the procedure for approval specified in this Act shall apply accordingly'.*

## 2.2. Vacancy in the Office of the Chief Justice of the Republic of Kenya

23. The Position of Chief Justice fell vacant after the then serving Chief Justice/President of the Supreme Court Hon. Justice David Kenani Maraga, EGH retired on 12th January, 2021.
24. The Acting Chief Justice, Hon. Philomena Mbete Mwilu, MGH for and on behalf of the Judiciary of Kenya vide Gazette Notice No. 386 dated 18th January, 2021 declared the vacancy in the Office of the Chief Justice of the Republic of Kenya pursuant to Section 3(1), Part II, First Schedule of the Judicial Service Act, No. 1 of 2011.
25. Thereafter, on 20th January, 2021 the Judicial Service Commission advertised the vacant position of Chief Justice of the Republic of Kenya in accordance with the provisions of Section 3, Part II, First Schedule of the Judicial Service Act, No. 1 of 2011.
26. The deadline set out in the advertisement for submission of applications was 9th February 2021 at 5.00 p.m.
27. The Judicial Service Commission received a total of thirteen (13) applications for the advertised position of Chief Justice. The applicants were: -
  1. Prof. Mare Otinga
  2. Prof. Dr. Dr. Wekesa Moni
  3. Hon. Mr. Justice Ouko William Okello
  4. Hon. Mr. Justice Marete D.K Njagi.
  5. Ms. Yano Alice Jepkoech
  6. Hon. Lady Justice Koome Martha Karambu
  7. Hon. Mr. Justice Nduma Mathews Nderi
  8. Mr. Ngatia Fredrick, SC
  9. Prof. Kameri Mbote Annie Patricia Gathiru, SC
  10. Mr. Murgor Philip Kichirchir, SC
  11. Hon. Mr. Justice Chitembwe Said Juma
  12. Mr. Otondi Ontweka
  13. Ombongi Brian Matagararo.
28. Pursuant to Part III, First Schedule of the Judicial Service Act, 2011 the Judicial Service Commission at its meeting of 12th February 2021 reviewed all the applications for completeness and compliance with Constitutional and statutory requirements and shortlisted ten (10) candidates namely: -
  1. Hon. Mr. Justice Chitembwe Said Juma;
  2. Hon. Lady Justice Koome Martha Karambu
  3. Prof. Kameri Mbote Annie Patricia Gathiru, SC;
  4. Hon. Mr. Justice Marete D,K. Njagi;
  5. Mr. Murgor Philip Kipchirchir,SC;
  6. Hon. Mr. Justice Nduma Mathews Nderi;
  7. Mr. Ngatia Fredrick, SC;
  8. Hon. Mr. Justice Ouko William Okello;
  9. Prof. Dr. Dr. Wekesa Moni
  10. Ms. Yano Alice Jepkoech.

29. The interviews were conducted between 12th and 30th April, 2021 at the Supreme Court Premises in Nairobi. It is important to note that all the applicants shortlisted indeed appeared for the interview of the vacant position.
30. The criteria used to evaluate the qualifications of individual applicants is provided under Part V, First Schedule of the Judicial Service Act, No. 1 of 2011, which provides as follows-

*PART V – CRITERIA FOR EVALUATING QUALIFICATIONS OF  
INDIVIDUAL APPLICANTS*

*13. Criteria for evaluation of qualifications*

*In determining the qualifications of individual applicants under the Constitution, the Commission shall be guided by the following criteria—*

- (a) professional competence, the elements of which shall include—*
  - (i) intellectual capacity;*
  - (ii) legal judgment;*
  - (iii) diligence;*
  - (iv) substantive and procedural knowledge of the law;*
  - (v) organizational and administrative skills; and*
  - (vi) the ability to work well with a variety of people;*
  
- (b) written and oral communication skills, the elements of which shall include—*
  - (i) the ability to communicate orally and in writing;*
  - (ii) the ability to discuss factual and legal issues in clear, logical and accurate legal writing; and*
  - (iii) effectiveness in communicating orally in a way that will readily be understood and respected by people from all walks of life;*
  
- (c) integrity, the elements of which shall include—*
  - (i) a demonstrable consistent history of honesty and high moral character in professional and personal life;*
  - (ii) respect for professional duties, arising under the codes of professional and judicial conduct; and*
  - (iii) ability to understand the need to maintain propriety and the appearance of propriety;*
  
- (d) fairness, the elements of which shall include—*
  - (i) a demonstrable ability to be impartial to all persons and commitment to equal justice under the law; and*
  - (ii) open-mindedness and capacity to decide issues according to the law, even when the law conflicts with personal views;*
  
- (e) good judgment, including common sense, the elements of which shall include a sound balance between abstract knowledge and practical reality and in particular, demonstrable ability to make prompt decisions that resolve difficult problems in a way that makes practical sense within the constraints of any applicable rules or governing principles;*
  
- (f) legal and life experience elements of which shall include—*
  - (i) the amount and breadth of legal experience and the suitability of that experience for the position, including trial and other courtroom experience and administrative skills; and*
  
  - (ii) broader qualities reflected in life experiences, such as the diversity of personal and educational history, exposure to persons of demonstrable interests and cultural backgrounds, and in areas outside the legal field; and*

*(g) demonstrable commitment to public and community service elements which shall include the extent to which a Judge or Magistrate has demonstrated a commitment to the community generally and to improving access to the justice system in particular.*

31. The Commission contacted the Kenya Revenue Authority, High Education Loans Board, Law Society of Kenya, Directorate of Criminal Investigation, Advocates Complaints Commission, Ethics and Anti - Corruption Commission and National Intelligence Service for confidential reports on the candidates shortlisted for vetting.
32. Members of the public were also invited to submit any information of interest on any of the candidates. Several complaints and information were received from the members of the public. They were admitted, processed and forwarded to the respective candidates for response. The particular candidates responded, and the responses were considered in evaluating and nominating the best candidate for the position.
33. In fulfillment of the constitutional requirement for public participation in the recruitment and selection to public offices, the Commission organized forums with stakeholders from various sectors to share their perspectives on the recruitment and selection of the Chief Justice. The stakeholders were drawn from the legal fraternity, academia, faith-based organizations, civil society, professional associations, trade unions, private sector, county governments and other arms of government.
34. At the conclusion of the exercise and pursuant to Article 166(1)(a) and Article 172(1) (a) of the Constitution of Kenya as read with Section 14, Part V, First Schedule of the Judicial Service Act, No. 1 of 2011 the Judicial Service Commission recommended Hon. Lady Justice Koome Martha Karambu National Identity Card No. 4322591 for appointment as Chief Justice of the Republic of Kenya.
35. Vide a letter from the Chief of Staff and Head of Public Service dated 28th April, 2021 to the Speaker of the National Assembly, the National Assembly was notified that the Judicial Service Commission had recommended to His Excellency the President the nomination of Hon. Justice Lady Justice Martha Karambu Koome for appointment as the Chief Justice of the Republic of Kenya. H.E the President's message is attached to the report as annexure 2.

#### **Former Chief Justices of Kenya**

36. If approved for appointment as Chief Justice, Justice Martha Koome will be the 16th Chief Justice of independent Kenya. She would also be the first woman to be appointed to the position of Chief Justice in the history of our country. The previous Chief Justices of Kenya are as follows-

#### **The colonial era Chief Justices were:**

- 1) Sir Robert William Hamilton (1867- 1944) Chief Justice from 1906 to 1920
- 2) Lt. Col. Jacob William Barth (1871-1941) Chief Justice from 1920 to 1934
- 3) Sir Joseph Sheridan (1882-1964) Chief Justice from 1934 to 1946
- 4) Sir John Harry Barclay Nihill (1892-1975) Chief Justice from 1946
- 5) Sir Harace Hector Hearne (1892-1962) Chief Justice from 1951 to 1954
- 6) Sir Kenneth Kennedy O'connor (1896-1985) Chief Justice from 1954 to 1957
- 7) Sir Ronald Ormiston Sinclair (1803-1996) Chief Justice from 1957 to 1962
- 8) Sir John Ainley Chief Justice from 1962 to post independence

## Independent Kenya Chief Justices

- 1) Sir John Ainley Chief Justice from 1963 to 1968
- 2) Justice Dennis Farrel Chief Justice for a short period in 1968
- 3) Justice Kitili Mwendwa Chief Justice from July 1968 to July 1971
- 4) Sir James Wicks Chief Justice from July 1971 to January 1982
- 5) Sir Alfred Simpson Chief Justice from 1982 to 1985
- 6) Justice Chunilal B. Madan Chief Justice from October 1985 to 1986
- 7) Justice Cecil Henry Ethelwood Miller Chief Justice from 1986 to 1989
- 8) Justice Robin Allan Winston Hancox Chief Justice from 1989 to April, 1993
- 9) Justice Fred Kwasi Apaloo Chief Justice from 1993 to 1994
- 10) Justice Abdul Majid Cockar Chief Justice from 1994 to 1997
- 11) Justice Zachaeus Richard Chesoni Chief Justice from 1997 to 1999
- 12) Justice Bernard Chunga Chief Justice from 1999 to 2003
- 13) Justice Evan Gicheru Chief Justice from 2003 to February 2011
- 14) Justice Willy Mutunga Chief Justice from June 2011 to June 2016
- 15) Justice David Maraga Chief Justice from October 2016 to January 2021

37. On April 28, 2021, the Hon.Speaker in a communication to the House referred the name of the nominee to the Departmental Committee on Justice and Legal Affairs for approval hearing and prepare a report for tabling in the House within the stipulated time. The Speaker of the National Assembly communication to the house is attached to the report as annexure 3.

### 2.3 Notification for Approval Hearing to the Public

38. Section 6(9) of the Public Appointments (Parliamentary Approval) Act (No.33 of 2011) provides that *"any person may, prior to the approval hearing and by a written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated"*.

39. The Clerk of the National Assembly placed an advertisement in the print media on 30th April, 2021 inviting the public to submit memoranda by way of written statements on oath (sworn affidavits) on the suitability or otherwise of the nominee in conformity with section 6(9) of the Public Appointments (Parliamentary Approval) Act 2011. The submissions were to be received latest by Wednesday 12th May, 2021. The newspaper advertisements is attached to the report as annexure 4.

40. Pursuant to provisions of Article 118 of the Constitution, section 6(4) of the Public Appointments (Parliamentary Approval) Act (No.33 Of 2011) and Standing Order 45(3), the general public was also notified in the print media by the Clerk of the National Assembly of the intention of the Departmental Committee on Justice and Legal Affairs to conduct the vetting and approval hearing of the nominee on Thursday 13th May, 2021.

### 2.4 Submission of Memoranda

41. Section 7 of the Public Appointments (Parliamentary Approval) Act, 2011 provides that the issues for consideration by the relevant House in relation to any nomination shall be:-

- a) the procedure used to arrive at the nominee;

- b) any constitutional or statutory requirements relating
  - c) to the office in question; and the suitability of the nominee for appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which nomination is being made.
42. Pursuant to Section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011, the Committee, through the Clerk of the National Assembly, invited submissions from the public on the suitability or otherwise of the nominee for appointment to the positions of Cabinet Secretary.
43. Further, section 6(10) of the Public Appointments (Parliamentary Approval) Act, 2011 provides that a candidate may at any time, by notice in writing addressed to the Clerk withdraw from the approval process and his or her nomination shall thereupon lapse.
44. The Departmental Committee on Justice and Legal Affairs held a sitting for vetting and approval hearing of the nominee on Thursday 13th May, 2021 and informed the nominee that by the deadline date of 12th May 2021, the Clerk of the National Assembly had received objections from;
- a. Mr. Khelef Khalifa, resident of Mombasa
  - b. Mr. Nelson Andayi Havi, President of the Law Society of Kenya.
  - c. Mr. Stephen Owoko
  - d. Mr. James Kimathi Kibunja

Attached as **annexure 5** are submissions objecting to the nomination of Hon.Lady Justice Martha Koome.

45. By the deadline date of 12th May, 2021, the Clerk of the National Assembly had received memoranda in support of the nominee's nomination from;
- a. Mr. Jared Nyachiro
  - b. Kenya Women Finance Trust (KWFT)
  - c. International Commission on Jurists (ICJ)
  - d. Ms. Lilian Wakiinya Mwaura
  - e. Dr. Jennifer Riria of Democracy Trust Fund
  - f. Mr. John Runji Kanya
  - g. Mr. Alexander Kireria
  - h. Kenya Women Microfinance Bank
  - i. The Federation of Women Lawyers (FIDA) -Kenya

Attached as **annexure 6** are submissions in support of the nomination of Hon.Lady Justice Martha Karambu Koome for appointment as Chief Justice of the Republic of Kenya.

46. It was further noted that the nominee had not notified the Clerk of the National Assembly of withdrawal from the approval process as outlined under Section 6(10) of the Public Appointments (Parliamentary Approvals) Act.
47. In view of the foregoing and in accordance with the provisions of the Constitution, the Public Appointments (Parliamentary Approvals) Act and the Standing Orders of the National Assembly, the Departmental Committee on Justice and Legal Affairs resolved to proceed to undertake the approval hearing as required as scheduled.

## 2.5 Memoranda

### A. Nelson Andayi Havi Advocate and President of the Law Society

Mr. Havi raising an objection on the approval of Lady Justice Martha Koome averred as follows:

48. On 29th March 2021 and 6<sup>th</sup> April, 2021 he submitted to Judicial Service Commission on behalf of the Law Society of Kenya, a memorandum on the integrity, competence and suitability of amongst others, Lady Justice Martha Koome.
49. Mr. Havi submitted that that he witnessed the interview of Lady Justice Martha Koome on 14th April 2021 when she was asked questions on the issues raised in the memoranda submitted to JSC. These issues included: -
  - (i) An order of stay of execution in Civil Application No 48 of 2012 (UR 33 of 2012), National Cereals & Produce Board v Erad Suppliers & General Contracts Ltd (UR) issued by Lady Justice Martha Koome and two other Judges on the strength of a letter dated 28th May, 2012 from the Permanent Secretary, Ministry of Agriculture and addressed to the Registrar of the Court of Appeal.
  - (ii) Lady Justice Martha Koome in her response before JSC stated that there was before Court an application for stay of execution and that the Court's decision was not influenced by the letter and that the decision saved the Country colossal losses for the reason that the directors of Erad Suppliers & General Contracts Ltd were eventually charged, convicted and sentenced for fraudulent acquisition of public property. She further posed the question on why the issue was never raised against Chief Justice (Rtd) David Maraga with whom she sat on that bench.
  - (iii) In Mr. Havi's view Lady Justice Martha Koome misapprehended or skirted around the concern of her acting on the directions of the Executive a fact that was evident from her answers.
  - (iv) The matter of IEBC v Khelef Khalifa & another Civil Application No 246 of 2017 (UR) that related to an application for stay of execution which was heard on the same day the judgment of the High Court had been delivered, at night, on a public holiday, without the prior authorization of the Chief Justice, without hearing the respondent and a decision made finally determining the appeal. Lady Justice Martha Koome's answer was that she was directed to hear the application that night, on a public holiday by the President of the Court of Appeal whose directions she could not question as doing so would amount to insubordination. In Havi's view the Lady Justice acts on orders from superiors even when the same are manifestly unlawful.
  - (v) Lady Justice Martha Koome in the IEBC matter further answered that the applicant's advocate stated that the matter was urgent and had to be heard in the absence of the respondent's advocate who had not been served or called to attend Court. Lady Justice Martha Koome also stated that the High Court had no jurisdiction to make the decision reversed by her and her two colleagues in the Court of Appeal for the reason that presidential election petitions are a preserve of the Supreme Court and that the Supreme Court affirmed the decision of the Court of Appeal.

- (vi) However Mr. Havi, averred that the fact of the matter was that the issue she gave an order on was not a presidential election petition, the appeal was withdrawn the desired outcome having been achieved on the basis of a final interlocutory order and the issue was never determined substantively by the Court of Appeal or the Supreme Court. Mr. Havi was of the view that Lady Justice Martha Koome lied to the JSC on this issue.
50. Mr. Havi also raised issue with an order of stay of execution issued in Kenya Revenue Authority v Prof Tom Ojienda & Law Society of Kenya, Civil Appln No 363 of 2019 (UR No 296 of 2018) which was allowed by a bench presided over by Lady Justice Martha Koome. An order of stay finally determining the appeal and the claim before the High Court was granted.
51. Mr. Havi also raised issue with the fact that the JSC despite compulsive constitutional obligation to give reasons for its recommendation and demand made to it on 3rd May, 2021 not given reasons on how the concerns on the three cases impacted on the Commissioners' mind in so far as the integrity, competence and suitability of Lady Justice Martha Koome was concerned.
52. Mr. Havi also raised issue with the nominee on the basis that upon being nominated for appointment as Chief Justice, Lady Justice Martha Koome wrote to him on 30th April, 2021 alleging defamation on the two memoranda submitted to JSC, demanding their retraction within seven days and an apology, failing which she would institute legal action. The demand by Lady Justice Martha Koome on a matter in which information was requested by JSC as required by the Constitution and Acts of Parliament, received and relied upon in evaluating her integrity, competence and suitability on facts which are not disputed and in respect of which the law invites no doubt, was indicative of a Judge suffering poor judgment or one who is intemperate, vengeful and rapacious, all vices undesirable of a Judge and Chief Justice.
53. Mr. Havi further submitted that the conduct and predisposition of Lady Justice Martha Koome is not isolated. It is pervasive and has punctuated her past, permeates her present and is demonstrative of how she will act in future as a Judge and Chief Justice if approved by the National Assembly. As regards the predisposition of Lady Justice Martha Koome, it is illustrative that in the decision made by the Magistrates and Judges Vetting Board (MJVB) on 21st September, 2012 the vote on her suitability to continue serving as a Judge was 4 to 4, with one member of the MJVB recusing herself.
54. Mr. Havi was of the view that a review of the conduct of Lady Justice Martha Koome in Civil Application No 48 of 2012 (UR 33 of 2012), National Cereals & Produce Board v Erad Suppliers & General Contracts Ltd (UR), IEBC v Khelef Khalifa & another Civil Application No 246 of 2017 (UR) and Kenya Revenue Authority v Prof Tom Ojienda & Law Society of Kenya, Civil Appln No 363 of 2019 (UR No 296 of 2018) confirms repetition and the malignance of the misconduct for which the MJVB was concerned with on her suitability to continue serving as a Judge.
55. Mr. Havi noted that Lady Justice Martha Koome applied for and was interviewed for the positions of Chief Justice and Judge of Supreme Court in 2016. The Judge was not appointed to either position. There is no indication and none has been given by JSC of how Lady Justice Martha Koome has improved in her integrity, competence and suitability since the decision of the MJVB made on 21st September, 2012 and in 2016

when she missed the appointment, for her to have qualified for nomination by JSC for appointment as Chief Justice.

56. The JSC is yet to establish a formula or Rules for evaluation of the indicators of or marking scheme for integrity, competence and suitability for Chief Justice and Judge of Supreme Court. Nonetheless, there is precedent for what constitutes want of integrity, competence and suitability in the Report of the Tribunal to Investigate the Conduct of the Deputy Chief Justice of the Republic of Kenya which should guide the JSC in this exercise. The Tribunal in the same report formulated values demonstrative of integrity for a Judge of the Supreme Court, which is a fitting marking scheme for ascertaining integrity, competence and suitability in the nomination for appointment of a Supreme Court Judge.

#### **B. Khelef Khalifa resident of Mombasa**

57. Mr. Khelef Khailfa was a litigant in the Judicial Review Miscellaneous Application No. 58 of 2017 at the Mombasa High Court, he raised an objection on the approval of Lady Justice Martha Koome averred as follows;
58. That a bench consisting of Lady Justice Martha Koome, Justice Fatuma Sichale and Justice Erastus Githinji issued an order stay on the judgment issued on 25th October, 2017 of Hon Justice Odunga that declared the appointment of 290 constituency returning officers and their deputies irregular and in breach provisions of the Elections (General) Regulations.
59. That the orders issued by the bench comprising of Justice Koome was issued at night, on a public holiday, without the prior authorization of the Chief Justice, without hearing the respondent and a decision made finally determining the appeal.
60. That Lady Justice Martha Koome, Justice Fatuma Sichale and Justice Erastus Githinji were not based in Nairobi on the period they allegedly heard the appeal despite the fact it has been made to appear the matter was heard at the appellate court situated at the Supreme Court. He has requested for information from the Judicial Service Commission to confirm if the three judges travelled to Nairobi, the same has not been provided.
61. Mr. Khelef Khalifa noted that when Justice Martha Koome was asked about the matter during the interviews on April 14, 2021 she admitted that she and the bench acted against laid down procedures. She further misled the Commission when she said that the Supreme Court and the Court of Appeal in subsequent rulings on the matter vindicated the decision of the bench she was part of. However, the fact is that IEBC withdrew the matter before the case could be heard on its merit by the appellate court.

#### **C. Stephen Owoko**

62. Mr. Stephen Owoko forwarded an unsworn statement objecting to the approval of nomination of Justice Martha Koome on the basis of regional balance. He stated that there was need for equity and regional balance noting that currently the Executive and Legislature are headed by persons from the Gema sub-tribe or Mt. Kenya region and the appointment of Hon Koome as Chief Justice would result in all three arms of Government being headed from the same region.

#### **D. James Kimathi Kibunja**

63. Mr. James Kibunja forwarded an unsworn statement objecting to the approval of nomination of Justice Martha on the basis of –

- a. A decision rendered in Civil Application 89 of 2009 that changed the ownership of a piece of land resulting in the disinheritance of the siblings of M'Ringerera.
- b. A decision in Civil Application No. 9 of 2014 that she unconstitutionally and illegally made with knowledge of the existence of Marathi Academy. The decision rendered resulted in the alienation of the school land leading to closure of Marathi Academy due to non-compliance with KNEC land registration requirements.
- c. The decision in ELC Civil Application 38 of 2018 Meru, where she refused to recognize the families right to Alternative Dispute Resolution that has resulted in conflicts and heavy litigation cost.

#### **E. Jared Nyachiro**

64. He forwarded an affidavit on behalf of Bedrock Security Services Limited in support of the nomination of Lady Justice Martha Koome.

#### **F. Kenya Women Microfinance Bank**

65. The Kenya Women Microfinance Bank forwarded an unsworn statement in support of the nomination of Lady Justice Martha Koome based on-

- (i) Her judicial philosophy that is evidenced through her writings, landmark rulings and long term practice, management skills and deep mastery of the judiciary.
- (ii) Her judicial temperament, throughout her work-life. Hon Koome has in their view exhibited compassion, decisiveness, open-mindedness, respect, tolerance, patience and impartiality.
- (iii) The high level of integrity exhibited by Hon Koome who is of high moral values, independent minded, committed to work and a stickler for the rule of law.

#### **G. The Federation of Women Lawyers (FIDA) -Kenya**

66. The Federation of Women Lawyers (FIDA) –Kenya is a non-governmental, non-partisan, non-profit making organization established in 1985 with a mission to promote women's individual and collective power to claim their rights in all spheres of life. FIDA forwarded an unsworn statement in support of the nomination of Lady Justice Martha Koome. In particular, FIDA sought to reflect on the exemplary contributions of Hon. Justice Martha Koome, Court of Appeal Judge and FIDA-Kenya Chairperson Emeritus in advancing social, political, and economic rights and women and girls. FIDA submitted as follows-

67. 68. FIDA submitted that Justice Martha Koome commanded over 33 years' experience in the legal profession and had immense experience on matters access to justice. She was a renown legal practitioner nationally and regionally having practiced law for over 15 years before she joined the bench in 2003. Justice Koome was actively involved in public interest matters and has previously served as a Council Member of the Law Society of Kenya as well as a Chairperson of FIDA-Kenya, the premier women rights institution in

the region. During her tenure at FIDA-Kenya, she was at the helm of law reform and participated in the review process that culminated in the Constitution of Kenya 2010. During her engagement in the process she was pivotal in the review of family law which she was passionate about and provided pro bono services to many indigent women and children who sort help and assistance from FIDA Kenya.

68. Justice Koome also represented FIDA-Kenya in the GJLOS initiative that was instrumental in the reform of the justice sector in Kenya and was further pivotal in the establishment of the East African Law Society and was the inaugural Council Treasurer.
69. FIDA also submitted that in Justice Koome's first posting to the Family Division she initiated transformative reforms in the case management. FIDA-Kenya alongside other stakeholders who actively practiced in this division attest to the reforms that were people centered and aimed at enhancing access to justice for all persons in society especially the vulnerable and marginalized. This is a key tenet of any effective judicial system. Justice Koome has further worked beyond the family division of the High Court and has worked in other divisions such as the Commercial Division and the Environment and Land Division which attests to her all-round knowledge and expertise in the law.
70. Extensive knowledge of the law is crucial for the effective leadership of the Judiciary through the office of the Chief Justice and Justice Koome already espouses this attribute among many other qualities. It is these qualities that have seen Justice Koome rise from the position of High Court Judge to that of Court of Appeal Judge where she has continued her impressive and stellar execution of her duties. Justice Koome has been a trailblazer in the creation of progressive jurisprudence that encompasses the social economic and cultural rights espoused in the bill of rights under the Constitution of Kenya 2010. Such decisions include the decision on the Teachers Service Commission and their vicarious liability on protecting children from sexual harassment and defilement.
71. FIDA submitted that within the Judiciary, Justice Koome has continued to play significant roles besides discharging her tasks in the administration of justice dutifully. She is a past Chairperson of the Kenya Judges and Magistrates Association (KMJA). Justice Koome is also a past Council Member of the East African Judges Association (EAJA). In both of these positions, Justice Koome has been instrumental in enhancing the welfare of members of the Judiciary in Kenya and in East Africa.
72. FIDA further stated that throughout her illustrious career, Justice Koome has demonstrated strong and outstanding leadership qualities. She has been a past Council Member of the Law Society of Kenya and where she was instrumental in driving legislative reform in public interest matters. Justice Koome was actively involved in FIDA-Kenya matters as a member and also in the governance of the organization which is a leader in championing women rights matters globally. Justice Koome was a Vice Chairperson of FIDA-Kenya between the years 1996-1998 and subsequently took over the Chairpersonship from 1998-2002. These were definitive years for Kenya that key milestones achieved in the quest for multi-party politics in Kenya and also saw the reign of Kenya's longest serving President come to an end. It was a historical era for the change in the country and Justice Koome did not shy away from the clamour as a jurist but was at the fore front of leading the change.

73. FIDA further submitted that while at the Judiciary, Justice Koome has very ably occupied key leadership roles and executed her duties with great diligence and commitment. She has headed the Family Division of the High Court and has been a Resident Judge in various courts such as Kitale and Nakuru. In her leadership, she was able to display outstanding management skills that helped address key challenges such as case backlog and bar-bench relations. Justice Koome has also headed the NCAJ Special Task Force on Children matters which has been instrumental in shaping the interaction of children in Kenya with the law. This was a huge undertaking given the high numbers of children in conflict or in need of the protection of the law. Justice Koome displayed great leadership in steering this taskforce that has proposed landmark reforms to the Children Act in Kenya.
74. FIDA stated further that in recognition of her great leadership ability, Justice Koome was feted as the United Nations Runner up Person of the Year in 2020. These are great attributes that the judiciary will hugely benefit from by having Justice Koome as Chief Justice of the Republic of Kenya.
75. FIDA submitted that the Constitution of Kenya 2010 is a progressive text that advances women's participation in the political, social, and economic life of Kenya and establishes important gains concerning women's rights and gender equality. The Constitution also establishes a set of values and principles in which inclusiveness, equality, and non-discrimination are underlined as core values and trump any discriminatory law, practice, or action –including those related to customary norms and tradition (Arts 10 and 27) (while embracing ethnic, cultural and religious diversity). Article 27 enunciates the equality tone by establishing that every person is equal before the law and has the right to equal protection from, and benefit from it. The affirmative action principle is a woman rights discourse that the Kenya women rights movement has been advocating for from the onset of the constitutional reform process. Further, FIDA-Kenya has consistently submitted that the appointment of the Chief Justice Republic of Kenya should be aimed at achieving meritocracy and leadership values in Chapter 6 of the Constitution of Kenya 2010. In this regard, Justice Martha Koome has made her mark as an outstanding jurist, exceptional Judge and exemplary leader who fits fully the requirements of the esteemed office of Chief Justice. She has set herself apart as a great mind and trailblazer of unquestionable character and integrity.
76. FIDA-Kenya urged the National Assembly to view the nomination of Justice Koome as timely. Timely in principle, timely in law, and timely in a deliberative democracy. Her commitment to a democratic approach will be key for the growth at the Supreme Court of Kenya in its mandate as envisaged under Article 163 of the Constitution.
77. Article 10 of the Constitution of Kenya outlines our national principles and values and in particular that good governance, integrity, transparency and accountability will form part of the making and implementation of public policy decisions. The recruitment process as implemented by the Judicial Service Commission and that subsequently announced Judge Koome as the Chief Justice Nominee factored in the above values. The process was additionally keen on public participation that saw FIDA-Kenya and other stakeholders consulted in the preparation of the process of selection suitable candidates. The public was given sufficient opportunity to raise any matters they had concerning the shortlisting of Judge Martha Koome.

78. FIDA submitted that in the interview of the nominee to the post of Chief Justice was conducted in a transparent manner and it was televised across all the major main stream and social media channels in real-time. During the interview, Judge Koome was granted an opportunity to outline the attributes she brings to the post of Chief Justice. She was also put to task about matters that had been raised by the public and in doing so put up a spirited defense of the matters. FIDA-Kenya therefore underscores that the Judicial Service Commission has already addressed the matter therein and largely that which has to do with the handling of IEBC v Khelef Khalifa & another Civil Application No. 246 of 2017 (UR). It is important to note that this same matter has previously been dealt with numerous times and dispensed with. It is therefore our submission that it is in bad taste that this matter keeps on being brought up with the intention of soiling an otherwise stellar track record of Justice Koome. This matter was handled by the Supreme Court of Kenya through Supreme Court Presidential Petitions 2 and 4 of 2017 (consolidated). The Supreme Court in handling this case found fault with the High Court's dealing with this matter in the first instance as it lacked jurisdiction to handle the matter.
79. FIDA further submitted that the Supreme Court further proceeded to uphold the ruling of the Court of Appeal delivered by Justice Koome and two other Judges. They further wish to emphasize that the Judicial Service Commission has also previously dealt with the matter. This same issue was brought as a complaint in January 2019 and was heard and dispensed with. The JSC in handling the matter found no merit in the complaint leveled against Justice Koome regarding the handling of the above case and proceeded to dismiss the same. FIDA-Kenya therefore reiterates that it was in bad faith to bring up this matter a second time during the public interview of Justice Koome for the position of Chief Justice in April 2021. However, they also note that the JSC proceeded to address itself on this same issue and still found no merit in the matter. This was evidenced in the unanimous decision arrived at to submit the name of Justice Koome as outstanding and the nominee for the position of Chief Justice Republic of Kenya.
80. FIDA-Kenya implored on the National Assembly to totally reject any attempts to re-open matters that had been handled by the Judicial Service Commission as this will infringe on Judge Koome's right to equal treatment under the law as enshrined in Article 27 of the Constitution of Kenya 2010.

## Response to Memoranda

Lady Justice Martha Karambu Koome submitted a replying affidavit to the affidavit of Khelef Khalifa and stated as follows –

81. That on the 25th day of October 2017 together with Justices Githinji, JA (now Rtd) who was presiding and Sichale, JA did sit on a bench duly empaneled by the then President of the Court of Appeal Justice Kihara Kariuki, JA (as he then was), to hear and determine a matter brought under certificate of urgency, which had already been certified urgent for ex-parte hearing, against orders issued in Miscellaneous Civil Application No 628 of 2017 (originally Civil Application No 58 of 2017) which was filed at Mombasa High Court on 16th October, 2017 but was transferred to the High Court at Milimani.
82. That during the week of 25th October 2017, although at the time, she was then stationed at Malindi/Mombasa and was on duty in Nairobi in accordance with the Court of Appeal practice that judges stationed out of Nairobi are required to serve in Nairobi for at least one week per month to help reduce backlog of cases.
83. That on the said date, she was notified by the Registrar of the Court of Appeal Mr. Serem that a matter had been certified as urgent by the President of the Court who had directed it be placed before a bench that included me and that I was required to proceed to the court at Nairobi for an urgent hearing.
84. That she made her way arriving at the Supreme Court building where the Court of Appeal Nairobi is situated about 5 pm or thereabouts, where she found other members of the panel namely Githinji, JA (now Rtd) presiding and Sichale, JA already there.
85. That she was given the relevant file and proceeded to chambers for perusal, after which together with her colleagues on the panel proceeded to open court (in full robes) where they heard the matter in the presence of the lawyer for the IEBC (the applicants). This was in the absence of the respondent's lawyers; the matter having been already certified urgent and looking at what was at stake, they were satisfied the exigencies of the matter justified an ex parte hearing.
86. That after hearing the matter in open court, they retired to chambers and after due consideration and deliberations we returned to court with a unanimous ruling ordering an interim stay of the orders issued on 25th October, 2017 in the High Court by (Odunga, J.) thus paving way for the repeat of the presidential elections set for the following day.
87. That subsequently the Supreme Court vindicated their said ruling in Petition No. 2 & 4 of 2017 (Consolidated) of 2017 where it was ruled that the High Court had no jurisdiction to issue the impugned orders and therefore the appeal against the said order did not lie. The Supreme Court stated in regard to the same: -

*"[331] Such a contention is contested by both the respondents and the interested parties. They maintain that the appointment of the constituency Returning Officers and their deputies, was in due compliance with the law in every respect. They urge further, that the issue is sub judice, as it is the subject of future determination by the Court of Appeal, which has already ordered (in Independent Electoral and Boundaries Commission v. Khelef Khalifa & Another, Civil Appl. No. 246 of 2017) that the matter rests in abeyance, and is to occasion no prejudice for the moment, in relation to the exercise of the mandate of the said electoral officials. The respondents, in advancing their standpoint, have observed that Mr. Justice Odunga, in the Khelef Khalifa Case, had not taken any action to invalidate the appointment of the said polling officials.*

[332] *Whereas the respondents' position represents a valid status quo, and the legal status of the Returning Officers thus cannot be denied, this Court has an obligation to set the matter to rest. The Court is considering an electoral matter in which it takes the first instance, and the ultimate instance. Its singular jurisdiction in the electoral matter is to be secured by holding that the current legal status of the said electoral officials, carries validity for now, and for the future: irrespective of such determination as may later be made by any other Court on the matter. Guided by exigency, and by judicial notice which must be taken of the reality of discharge of the assigned mandate of the electoral agency, we now hold that the officers in question lawfully held their positions, and duly discharged the constitutional mandate devolving to them. This is also because on the election date, the stay Orders granted by the Court of Appeal were firmly in place, and to state otherwise would be to negate the value of the validity of Court decisions, unless and until they are overturned. The decision of the High Court, to that extent, cannot be the basis for invalidating the 26th October election.*

[333] *Accordingly, we find no validity in the petitioners' claim that the said Returning Officers and their deputies, lacked authority."*

88. That in the premises it was most unfortunate that Mr. Khelefa Khalif either through ignorance, recklessness could perjure himself by claiming that she lied to the Judicial Service Commission when the records vindicate her position. That the said Khelef Khalifa made a similar complaint before the Judicial Service Commission on the 18th day April, 2018 and the same was dismissed vide a letter dated 7th January, 2019.
89. The said Khelef Khalifa once again made the same complaint to the Judicial Service Commission in April 2021 after she was shortlisted for the interview for the position of the Chief Justice.
90. That the said Khelef Khalifa has not in his said affidavit disclosed the history of his spirited campaign against her.
91. That the Constitution and the Court of Appeal Organization Act mandates the President of the Court of Appeal to allocate work to all Judges of Appeal and empanel the various benches, and there is no law or regulation that requires a Judge of Appeal duly allocated work by the President of the Court to seek further permission from the Chief Justice.
92. That she had always discharged her duties with utmost professionalism and integrity and would not knowingly utter a falsehood as alleged or at all and the case complained of was no different.
93. That all litigants including the government are treated equally as mandated by the Constitution of Kenya 2010 as she deals with facts and the law only.
94. Those ex-parte orders are a remedy provided in law in urgent matters and their said decision was legally sound and issued procedurally.

Lady Justice Martha Karambu Koome submitted a replying affidavit to the affidavit of Nelson Andayi Havi and stated as follows –

95. That she is aware that Nelson Andayi Havi on the 29th of March 2021 and on the 6th April 2021 submitted a memorandum to the Judicial Service Commission impugning her integrity ostensibly on behalf of the Law Society of Kenya, which capacity was disputed by a majority of members of the Law Society Council in a letter dated 30th March, 2021.
96. That all litigants whether individuals or legal entities are equal before the law and that the Ruling in Civil Application No. Nai. 48 of 2012 National Cereals & Produce Board

vs. Erad Supplies & General Contracts Ltd. (Erad case) referred to was a unanimous decision of a bench of three of which she was a member. The said decision was legally sound basis of the law and facts and was subsequently validated by the Supreme Court in Supreme Court Petition No 5 of 2012 Erad Supplies & General Limited Vs National Cereals & Produce Board.

97. That the judgement in; Anti-Corruption Criminal Case No. 31 of 2018 -Republic vs. Grace Sarapayi Wakhungu, John Koyi Waluke and Erad Supplies & General Contracts Limited, both directors and Erad Supplies & General Contractors Ltd were tried for various criminal offences, ranging from corruption, fraud, utterance of false documents and others. They were found guilty; convicted and sentenced accordingly. Their conviction therefore demonstrates that the order of stay granted by the Court of Appeal to stop the attachment of the applicant, a National Strategic Food Reserve, was, indeed, meritorious and a timely judicial intervention by the Court that saved taxpayers millions of shillings. The allegations by the said Mr. Havi that she acted on instructions of the executive are not supported by any shred of evidence, and are a deliberate falsehood intended to malign her good name.
98. That as regards the Ruling delivered on 25th October, 2017 in Civil Application No. 246 of 2017 (Ruling by a bench comprising Justices (Githinji, Koome and Sichale, JJ. A) she reiterates her sworn response to identical allegations by Khelefa Khalifa, and stated that the deliberately false and misleading allegations that she was not forthright with the Judicial Service Commission amount to perjury.
99. That in answer to paragraph 17 & 18 of Mr. Havi's affidavit regarding a Ruling of the Court in Prof. Tom Odhiambo Ojienda vs. KRA & LSK (2018) eKLR. She stated that this was a Ruling of the Court (Koome, Murgor & Kantai, JJ. A. There was an exercise of judicial discretion which was exercised according to the law and reasons provided. Further Mr. Havi failed to disclose that he was acting for the applicant. Moreover, the decision arrived at by the bench presided over was legally sound based on the law and facts. In any event it was open to a party aggrieved by the courts decision to challenge it on appeal.
100. That the Judicial Service Commission nominated her procedurally as mandated by the law after rigorous, and competitive public interviews.
101. That she was aggrieved by the allegations made against her by Mr. Havi whereupon she gave instructions to her lawyer before the interviews for Chief Justice. Upon having been nominated as Chief Justice by the Judicial Service Commission, she has since instructed her lawyers not to proceed any further with the matter.
102. That the vetting board found as a fact that her integrity could not be impugned. They commended her for her management of her case load and concluded that she was fit to serve, as a result of which she continued to serve as a Judge of the Court of Appeal.
103. That the interviews attracted many qualified candidates who included herself but only one was selected which of itself does not in any way amount to a disqualification to her future applications as eminently proved by my nomination for the position of Chief Justice. The vetting process was long concluded by operation of law in 2014.
104. That at all times in her eighteen (18) years of service as a Judge of the High Court and Court of Appeal, conducted herself with utmost professionalism and integrity and would continue to do so, and if accorded with the opportunity to serve she is prepared for it as demonstrated by her written submission to Judicial Service Commission.

105. That she believes consideration of one's suitability to serve as a judicial officer is an objective not subjective one, and therefore bias as apparent in this case should not be allowed to be the sole criteria of evaluation.

106. She finally categorically denied each and every adverse allegation in Mr. Havi's affidavit. Attached and marked as annexure 7 is the nominee's response to objections submitted against her nomination for appointment as Chief Justice of the Republic of Kenya.

## 2.6 Clearance Requirements

107. On 29th April, 2021 the Clerk of the National Assembly wrote to the Ethics and Anti-Corruption Commission, Kenya Revenue Authority (KRA), Director of Criminal Investigations (DCI), Registrar of Political Parties and the Higher Education Loans Board (HELB) requesting for reports with respect to the nominee on matters touching on integrity; tax compliance; HELB loan repayments and Political parties membership.

108. In response, HELB confirmed vide a letter Ref. HELB/RR/112009/108 dated 7th May, 2021 that the nominee having been a beneficiary of the HELB Loans Scheme was cleared by the board in September 2009; Kenya Revenue Authority confirmed that the nominee was tax compliant. The Ethics and Anti-Corruption Commission vide a letter Ref. EACC.7/10/5 VOL.XVII (146) dated 5th May, 2021 confirmed having no outstanding issues or ongoing investigations against the nominee. The Criminal Investigations Department (CID) confirmed vide a letter referenced CD/CRO/SEC/6/7/2/A/VOL.IX/153 dated 5th May, 2021 that the nominee was cleared and was already issued with a Police Clearance Certificate. The Office of the Registrar of Political Parties vide a letter Ref.RPP/ORG/034 Vol.III (63) dated 5th May, 2021. Attached and marked as annexure 8 are copies of clearance certificates by state agencies.

## CHAPTER 3

### 3.0 ISSUES FOR CONSIDERATION DURING THE APPROVAL HEARING OF HON.LADY JUSTICE MARTHA KARAMBU KOOME FOR APPOINTMENT AS CHIEF JUSTICE OF THE REPUBLIC OF KENYA

110. The Committee noted that the issues for consideration during the approval hearing are set out under Section 7 of the Public Appointments (Parliamentary Approval) Act, No. 33 of 2011, which provides as follows-

- i. the procedure used to arrive at the nominee
- ii. any Constitutional or statutory requirements relating to the office in question.
- iii. the suitability of the nominee for appointment proposed with due regard as to whether the nominee's abilities, experience and qualities meets the needs of the body to which the nomination is made.

Section 10 of the Act further provides that: -

*“Where the nomination of a candidate is rejected by Parliament, the appointing authority may submit to the relevant House the name of another candidate, and the procedure for approval specified in this Act shall apply accordingly”.*

111. The procedure for the appointment of the Chief Justice of the Republic of Kenya requires the committee to consider: -

- i. the qualifications for appointment as the Chief Justice of the Republic of Kenya as set out under Article 166(2) and (3) of the Constitution of Kenya and the First Schedule of the Judicial Service Act, 2011 on;
  - a. the steps taken by an applicant in order to be considered for a judicial appointment.
  - b. the steps taken by the Commission to ensure that applicants are fairly evaluated and that the most qualified are nominated.
  - c. the Chief Justice declaration of a vacancy within fourteen days by a notice thereof in the *Gazette* and thereafter post a notice on its website; notice of the vacancy to the Law Society of Kenya and any other lawyers' professional associations; and circulation of the notice in any other appropriate manner.
  - d. Background investigation and vetting
  - e. Publication of the names of applicants
  - f. Interview scheduling and conduct
  - g. Criteria for evaluation of qualifications
  - h. Notification of nominations
- ii. Possession of the relevant academic, professional training and years of service required for the job and experience requirements for the job.
- iii. Family background on the nature of nominee's citizenship.

- iv. Educational Background: The nominee's description on how her education background relates to the need of the current job and whether her academic qualifications are consistent with the demand of the Job.
- v. Work experience on whether the nominee has at least fifteen years' experience as a superior court judge or at least fifteen years' experience as a distinguished academic, judicial officer, legal practitioner or such experience in other relevant legal field.
- vi. The nominee's description of the relevance of her past experience to the demands and needs of the position of the Chief Justice of the Republic of Kenya
- vii. Political Activities and Affiliations
- viii. The Committee considered Constitutional, statutory and professional requirements of the nominees as follows-
  - a. The committee considered whether the nominee holds a Law degree from a recognized University, is an advocate of the High Court of Kenya or possesses an equivalent qualification in a commonwealth law jurisdiction.
  - b. Whether the nominee appreciate the provisions of Article 10 of the Constitution on national values and principles of good governance.
  - c. Whether the nominee is conversant with Article 232 of the Constitution on the values and principles of public service.
  - d. The committee considered if the nominee has of high moral character and integrity and has satisfied the requirements of Chapter Six of the Constitution.
  - e. The committee considered how the nominee's personal and work experiences reflect the principles set out under chapter 6 of the Constitution.
  - f. The vision of the nominee to the Office of Chief Justice of the Republic of Kenya.
  - g. Background information from State Agencies
  - h. Jurisprudential standing of the nominee
  - i. Vision, leadership and judicial reforms in the Judiciary
  - j. Access to justice
  - k. Expectations and key priorities
  - l. Overall suitability for the position
  - m. Tax compliance
  - n. Professional affiliations

112. During the approval hearings the committee considered the nominees clearances from state agencies as follows: -

- a. Compliance with tax obligations to the State (KRA)
- b. Clearance with Higher Education Loans Board (HELB)
- c. Clearance with the Ethics and Anti-Corruption Commission (EACC)
- d. Certificate of good conduct (DCI)
- e. Certificate from Registrar of Political Parties

## CHAPTER 4

### 4.0 APPROVAL HEARING OF HON.LADY JUSTICE MARTHA KARAMBU KOOME FOR APPOINTMENT AS CHIEF JUSTICE NOMINEE OF THE REPUBLIC OF KENYA

113. The Hon. Lady Justice Martha Koome appeared before the Committee for the approval hearing on 15th May 2021 at 10 am. She responded to the questions from Members of the Committee on her suitability for approval for the position of Chief Justice of the Republic of Kenya. She responded as follows: -

#### Self-Introduction, Academic and Professional Qualifications

114. the Lady Justice Martha Koome was born in Meru County in 1960 and is currently serving as a Judge of Appeal with 33 years of legal practice in public and private sectors and has expertise in overseeing the legal processes in court and applying the law in accordance with the Constitution of Kenya. She holds a Master of Laws (LL.M) in Public International Law from the University of London, a Postgraduate Diploma in Law from Kenya School of Law and Bachelor of Laws from the University of Nairobi.

115. She informed the members that she would bring transformational leadership skills she has accumulated over the 33 years as a transformational leader. She has been a member of the LSK Council. She took part in the clamour for constitutional reforms. She was also a member of FIDA and took pride in the plethora of laws that have come to effect to protect children and family through the efforts of FIDA. She was also involved in legal advocacy and reforms including repeal of Section 2A of the former Constitution of Kenya, independence of the Judiciary, establishment of Court Users Committees, and introduction of Children's Unit at the Director of Public Prosecutions and Director of Criminal Investigations offices. She was also instrumental in advocacy for the enactment of laws on children and family matters. She participated in all the major discussions related to the review of the constitution of Kenya and was closely associated with the birth of the constitution of Kenya 2010. The nominee informed members she joined the struggle for good governance and enhancement of access to justice. She also represented political detainees, individuals charged with politically instigated offences. She was also instrumental in GJLOS blue print that guided the reforms in the justice sector.

116. The nominee also averred that she has been actively involved and has experience working in the region. She was a member of the council of LSK that formed the East Africa Law Society. She was also part of the conversation that led the creation of the East Africa treaty and the East Africa institutions such as the East Africa Court of Justice. She served as a commissioner in Africa Union. She also represented Kenya as a delegate to major world conferences and is an accredited trainer by the Commonwealth Secretariat and Institute of Malta. She also stated that as the nominee of FIDA she helped in law reforms especially in family and children issues. FIDA on its part offered pro bono legal services and argued landmark cases to declare rights of women which were used to inform that rights that were eventually entrenched in the constitution.

#### Her Vision for the Judiciary as the Chief Justice of the Republic of Kenya

117. The nominee stated that her vision stems from the Constitution as a progressive instrument and requires that the administration of justice be responsive to the needs of Kenyans. Her vision is that of independent judiciary that is accessible, efficient and responsive to the aspirations of the people of Kenya. She further stated that she will

achieve the Vision through optimizing the existing human resource capital and aligning to the Job descriptions with deliverables and accountability mechanisms.

#### **Her position on the relationship with other branches of government**

118. The nominee stated that the Judiciary as the custodian of justice is an independent institution which is at the centre of social, economic and human rights protection and the national development of the country. The Judiciary requires the support of both legislature and executive to work complementarily to deliver on shared responsibility of delivery of service to Kenyans.
119. The Hon. Lady Justice stated that the National Council on Administration of Justice (NCAJ) which is anchored under the Judicial Service Act is the body responsible to bring all the actors together. She argued for enactment of a law to provide for mechanisms to resolve disputes and conflicts amongst the branches of government so as to ensure timely delivery of service. The branches of government are supposed to work in complementarity while respecting each other's areas of operations. The courts should exercise maximum restraint so as not to impede the execution of the mandate of other institutions unless they have gone outside the parameters given in the Constitution which then attract judicial review by way of injunctions or declaratory orders.
120. The Nominee pledged to restore harmonious working relationship with Parliament without compromising on the independence of the Judiciary. She stated that she will entertain the idea of appearing before parliament and its committees if that would help in the delivery of service to the people of Kenya and enhance access to justice in all corners of the country. She informed the members that the average distance between a court and the people is 175km and there is a need to reduce that to at least 100km.
121. The nominee submitted that she would be willing to work closely and continuously with the committee to avail the necessary resources to achieve the mandate of the Judiciary. By taking advantage of the mapping that has already been done by the Judiciary to bring closer to the people, she would partner with the members' CDF and the Council of Governors and the executive to take a holistic approach to the issues of delivery of justice. She also submitted that she would be keen to follow up on the annual reports submitted by the JSC with parliament. She further submitted that she would organize round-table engagements to resolve outstanding issues with the other branches of government.

#### **Her defence to the objection raised to her nomination**

122. The Hon. Lady Justice referred the members to the comprehensive response to the memoranda. This can be found under paragraphs 81 to 106.

#### **Her position on whether Judges are always right**

123. The Hon. Lady Justice was of the view that magistrates and judges can make an error or misapprehend some facts or the law and that is why the appellate system is in place for an aggrieved person to file an appeal. She also argued against public criticism of judges as that has the potential to lower the dignity of the court.

#### **Her diplomatic and negotiation skills**

124. The Hon. Lady Justice submitted that she was a firm leader and judicial officer but also a peacemaker, astute negotiator, results oriented person. In addition she is a people's person who believes in consultation to resolve disputes and conflicts. She informed the Committee she is a skilled negotiator who was pivotal in the drafting and formulation of various legal policies and bills including the Court of Appeal Transfer Policy, Practice Directions of the Court of Appeal, the Children's Bill, the Equality Bill, Domestic Violence

Bill, the Children's Act, 2011, and a blueprint strategic plan for reforms in institutions involved in the administration of justice. She will use her negotiation skills to have the issue of the swearing-in of the 40 judges resolved.

#### **Her stand on BBI reforms and the position of Ombudsman**

125. The lady justice stated that she was not opposed to reforms in the judiciary that enhances access to justice and make the judiciary more efficient to Kenyans. She further submitted that the JSC was currently mandated to handle complaints about judges and nothing could stop the JSC to recruit an Ombudsman to handle these tasks and help JSC deal with complains related to the judiciary.

#### **Her understanding of Articles 10 and 232 of the Constitution**

126. The Lady Justice Hon. Martha Koome stated that the principles under Article 10 of the Constitution are the principles that guide the courts to interpret the constitution and the law and reach decisions that perpetuate these principles. In relation to Article 232 she stated that on equal opportunity, gender equality and ethnic balancing JSC has considered these principles. She informed the members that her confirmation will make the Supreme Court 2/3rd gender principle compliant and at least one arm of government would be led by an individual of different gender than those who currently the other two branches of government. She added that Judiciary has set the standard of compliance with the principles of 2/3rd gender rule in all the court stations and her confirmation would complete this achievement by the Judiciary.

#### **View on limited or Expanded Jurisdiction of the Supreme Court**

127. The nominee stated that there has been floodgates of cases to relating to the interpretation and application of the constitution to the Supreme Court. Upon realizing that state of affairs and the fact that any case can touch on constitutional interpretation, the Supreme Court has now given guidelines that unless the constitutional issue was in dispute at the trail court it could not be introduced in the Supreme Court.

128. The nominee further submitted that tribunals are important in the justice system as they provide multi-door approach to solving problems. She added that the tribunals are transitioning to the judiciary and due to constraints in budgetary allocations the process was taking longer than expected.

#### **Position on delayed justice on matters related to land and sporadic evictions of people**

129. The nominee was emphatic that the delay in delivery of justice can be dealt with. She gave the example of the expeditious resolution of election disputes within six months. She informed the committee that she believed it was possible to resolve the delay of cases, and she will review the human resource register assets and find out the causes of the delay of cases and deal with the problem to give confidence to Kenyans.

130. She added that land matters are emotive and there was a need for a legislative enactment to address the issues of evictions of people. There is a need to achieve a balance between public interest matters and the rights of citizens during evictions. This would require a round-table discussions to address the issue.

#### **Position on backlog of cases and corruption in the Judiciary**

131. The nominee submitted that she will work closely with the EACC and DCI to ensure that the Judiciary is free from corruption and the services that the Judiciary offers must engender confidence of Kenyans. She argued that no member of public should pay a judicial officer to get services from the Judiciary.

132. The nominee further submitted that to the members that she would prioritize to deal with and expedite cases including corruption related cases. She would employ technology and closely partner with other stakeholders such as DPP and the Police to ensure success.
133. The Nominee further submitted that this could be addressed under the auspices of the NCAJ and agree upon how to expedite the cases taking cognizant of the fact that election petitions are usually completed within 6 months. Similar strategies could be employed to expedite corruption cases. The nominee argued that the need to protect the country from the scourge of corruption requires a collective and sustained action from everyone. She added that on her part she will treat the fight against corruption as one of her top priority in the delivery of Justice.

#### **Her position on Stalled Judiciary projects**

134. The nominee stated that the delays to complete projects are occasioned by late release of funds by the National Treasury which affects contract terms and overall budget for the projects. The nominee expressed her determination to see value for money for every project undertaken by Judiciary. She further stated that she would institute a system of audit in place to ensure there was value for money for all projects undertaken by the Judiciary.

#### **View on Biased justice System against the Poor**

135. The nominee stated that under leadership the delivery of justice will be fairly served to all Kenyans equally without discrimination.

#### **View on Age of Consent to Sexual Intercourse**

136. The nominee stated that the law stipulates that any person below the age of 18 years is a child. The court will always treat such person as a child that is in need of care and protection. The nominee further stated that as a child right defender would not recommend the age of consent to sexual intercourse to be lowered. She attributed her stand on the issue to the fact that there were rising cases of early marriages and it would be counter-productive to lower the age of consent. The nominee also stated that the age of sexual consent is internationally recognized and as a country, we should conform to the norms at the international level.

#### **View on Judicial Accountability**

137. The nominee stated that accountability of the Judiciary is to the people of Kenya. The Judiciary is also accountable under the Constitution and under the Leadership and Integrity Act as well as under the judicial code of conduct. The judicial officers are bound to show their daily work and in case of delay of a case the concerned officers must give justifiable reasons for the delay. The Nominee averred that the delivery of Service has been affected by the delay of the swearing-in of the 40 judges.

#### **Her Jurisprudence/Judicial Philosophy**

138. The Hon. Lady Justice stated that she was tending towards liberal-progressive jurist in the pre-2010 Constitution era. In post 2010 constitutional order she has adopted a progressive outlook since the Constitution gives guidance on the principles to embrace when interpreting the Constitution. These principles are to be found in Articles 10 and 232 of the Constitution. The Constitution should be interpreted as a living document and judges are expected to breathe life into it.

## CHAPTER 5

### 5.0 COMMITTEE'S OBSERVATIONS AND FINDINGS

#### 5.1 Observations

149. The Committee having considered the curriculum vitae of Hon. Lady Justice Martha Karambu Koome and having heard her submissions during the vetting made the following observations on her nomination: -

- a. That Hon. Lady Justice Martha Karambu Koome was born in Meru County in 1960.
- b. She holds a Master of Laws Degree (LLM) from the University of London; a Bachelor of Laws Degree (LLB) from the same University, and a Post-graduate Diploma in Law from the Kenya School of Law, she was admitted to the Roll of Advocates in 1987.
- c. Before being appointed as a Judge of the High Court, she was a legal practitioner in private practice for fifteen (15) years from 1987 - 2003, she was engaged in civil and criminal litigation as well as general practice matters.
- d. The nominee has a strong track record both in the Judiciary and private practice, where she successfully served both as a professional and a leader. She is exposed to many different facets of law, varied working environments, people, and communities making her a well-rounded individual.
- e. The Committee observed that the nominee has a proven strategic judicial and organizational value-driven leadership and focus.
- f. On leadership and professional membership, she is a member of the Kenya Magistrates and Judges Association; Kenya Women Judges Association; International Women Judges Association; The Commonwealth Judges and Magistrates Association; Federation of Kenya Women Lawyers; East Africa Magistrates and Judges Association; League of Kenya Women Voters; Institute of Certified Public Secretaries; East Africa Law Society; International Family Law Judges Association; Hague Network of Family Law Judges; Council Member Law Society of Kenya, LSK (1993 – 1996); Founding Member & First Treasurer – East Africa Law Society (1993 – 1996).
- g. The nominee was engaged as Co-Chair – National Steering Committee on the Children's Bill and the Committee developing guidelines on Psychosocial Support; Child Protection Mainstreaming; Legal Policy Formulation as a member of a team that drafted the Children's Act, 2011, the Equality Bill, and the Domestic Violence Bill, which was adopted as the Protection Against Domestic Violence Act, 2015; Policy Guide Launch which Launched a guidance note on protection of children during the Covid-19 pandemic-Coordination meetings with representatives of justice agencies and shared progress updates on challenges and successes during the Covid-19 pandemic; Participant in Access to Child Friendly Justice in Africa – Day of the African Child (2020); as a delegate at Ufungamano House/Bomas of Kenya, participated actively in discussions and in the formulation of position papers on Property Rights of Women, Economic factors of Gender Based Violence, and Value Addition of Inclusion of Women in Leadership, laying the groundwork for the enactment of the Constitution of Kenya, 2010 and She was a managing partner of Martha Koome & Company Advocates.

- h. In Community service and pro bono, activities, she has been supporting Huruma Hospital, Nanyuki; Imani Children's Home, Kayole; Support for Rehabilitation Schools.
- i. The nominee has published in Digest on Case Flow Management (In Progress); Women's Guide to Law (Conducted research on behalf of FIDA); Women and Democracy in Kenya – League of Kenya Women Voters; Chapter Contribution on Implementation of the CRC and the Children's Act, 2011 – FIDA Kenya's Annual Report; Several papers on Property Rights of Women; The Bench Book on Family Law and The National Council on the Administration of Justice (NCAJ) Status Report.
- j. The nominee received Runner-up Award UN Kenya Person of the Year (2020); FIDA Kenya Award for exemplary Leadership (2010); Grace Githu Award for Democracy and Defense of the Rule of Law (2007) and "The Seraph Award for Justice" from Chamber of Justice (2004).
- k. The nominee was engaged in legal advocacy and reforms including repeal of Section 2A of the former Constitution of Kenya, independence of the Judiciary, establishment of Court Users Committees, and introduction of Children's Unit at the Director of Public Prosecutions and Director of Criminal Investigations offices.
- l. The nominee participated in the drafting and formulation of various legal policies and bills including the Court of Appeal Transfer Policy, Practice Directions of the Court of Appeal, the Children's Bill, the Equality Bill, Domestic Violence Bill, the Children's Act, 2011, and a blueprint strategic plan for reforms in institutions involved in the administration of justice.
- m. The nominee took part in local and international stakeholder events, with a proven record of high-level presentations, publications, and awards for exemplary leadership, commitment to justice, democracy, Rule of Law, and Children's Rights.
- n. The nominee demonstrated expertise in Court Policies and Procedures; Case Management; Conduct of Hearings; Legal Policy Development; Justice System Strengthening; Legal Advocacy; Leadership; Stakeholder Relations; Partnerships Development; Litigation & Arbitration; Legal Research & Drafting; Strategic Planning ;Organizational Leadership; Child Rights Mainstreaming; Records Management; Pro Bono Lawyers Scheme and Teaching & Training .
- o. The nominee is currently serving as a senior Judge in the Court of Appeal and head of the criminal division. She chaired the Court of Appeal committee consisting of members of the court and the LSK.As chair; she led the development of the Court of Appeal Practice directions on civil appeals which introduced a case management mechanism of call over.

## 4.2 FINDINGS

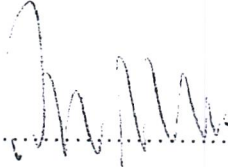
150. After conducting the approval hearings, the Committee made the following findings: -

- i. Hon. Lady Justice Martha Karambu Koome has the requisite qualifications and vast experience in the Judiciary which qualifies her for appointment to the position of Chief Justice of the Republic of Kenya.
- ii. Hon. Lady Justice Martha Karambu Koome, according to the records and information availed to the Committee has never been implicated in any issues that may lead to a conclusion of lack of integrity on her part.
- iii. The candidate exhibited impressive knowledge of topical issues including demonstrated understanding of administration and management principles required to address the challenges facing the Judiciary. The nominee exhibited a proper understanding of the doctrine of separation of powers which requires the three branches of government to exercise their powers in a manner that respects their respective constitutional territories while upholding the rule of law and the principle of checks and balances in the structure of the government.
- iv. The objection to her appointment by Mr. Nelson Andayi Havi and Mr. Khelef Khalifa lack merit because the same was filed at the Judicial Service Commission and the nominee was cleared.
- v. Members of the Public were invited by JSC to submit any information of interest on any of the candidates.
- vi. The Judicial Service Commission exercised due diligence and contacted vetting bodies for confidential reports on the candidates. The commission contacted the Kenya Revenue Authority, Higher Education Loans Board, Ethics and Anti-Corruption Commission, Directorate of Criminal Investigation, Law Society of Kenya, Advocates Complaints Commission and the National Intelligence Service.
- vii. The nomination of Hon. Lady Justice Martha Karambu Koome was in compliance with Article 166(1) of the Constitution and the statutory requirements set out in the First Schedule of the Judicial Service Act, No. 1 of 2011 on provisions relating to the procedure for appointment of Judges

CHAPTER 6

6.0 RECOMMENDATION OF THE COMMITTEE

THAT Pursuant to Article 166 (1)(a) of the Constitution of Kenya, the Public Appointments (Parliamentary Approval) Act, 2011 and Standing Orders 216(5)(f) and 199 of the National Assembly, the Committee recommends that the House approves the nomination of Hon. Lady Justice Martha Karambu Koome for appointment by H.E the President as Chief Justice of the Republic of Kenya.

Signed  .....

Hon. Clement Muturi Kigano M.P

(Chairperson)

Departmental Committee on Justice and Legal Affairs

Dated this 17<sup>th</sup> Day of May, 2021

# **ANNEXURE 1**

# **MINUTES**

**MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE  
AND LEGAL AFFAIRS HELD ON THURSDAY 13<sup>TH</sup>, 2020 AT 1:30 PM. IN MINI  
CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS**

**PRESENT-**

1. Hon.Muturi Kigano, M.P - Chairperson
2. Hon. Tom Kajwang, M.P -Vice-Chairperson
3. Hon.Emmanuel Wangwe, M.P
4. Hon. John Olago Aluoch, M.P
5. Hon. Mwamkale Kamoti, M.P
6. Hon. Zuleikha Hassan, M.P.
7. Hon. Josephine Naisula Lesuuda,M.P
8. Hon. Jennifer Shamalla, M.P.
9. Hon. Adan Haji Yussuf, M.P
10. Hon. George Gitonga Murugara, M.P
11. Hon. Peter Opondo Kaluma, M.P
12. Hon. Anthony Aluoch, M.P
13. Hon. Junet Sheikh Nuh Mohammed, M.P.
14. Hon.Robert Gichimu Githinji,M.P
15. Hon. John Munene Wambugu, M.P.

**ABSENT WITH APOLOGIES-**

1. Hon. Japheth Mutai, M.P
2. Hon. Roselinda Soipan Tuya, M.P
3. Hon. John Kiarie Waweru, M.P.
4. Hon. Anthony Githiaka Kiai, M.P

**IN ATTENDANCE-**

**COMMITTEE SECRETARIAT-**

- |                           |   |                              |
|---------------------------|---|------------------------------|
| 1. Mr. Abenayo Wasike     | - | Principal Clerk Assistant    |
| 2. Mr.Ahmed Hassan Odhowa | - | Principal Research Assistant |
| 3. Lynet Otieno           | - | Legal Counsel                |
| 4. Ms. Halima Hussein     | - | Second Clerk Assistant       |
| 5. Ms. Roselyn Njuki      | - | Sergeant at Arms             |
| 6. Mr.Nickson Mutai       | - | Audio Officer                |

**NOMINEE-**

Hon. Lady Justice Martha Koome.

MIN NO./05/2021: -

PRELIMINARIES

The meeting commenced at 1:35 a.m with a word of prayer from the Chairperson and thereafter Members considered observations and findings following the approval hearing of Hon.Lady Justice Martha Koome for appointment as Chief Justice of the Republic of Kenya.

MIN NO./06/2021: -

OBSERVATIONS AND FINDINGS ON THE  
APPROVAL HEARING OF HON.LADY  
JUSTICE MARTHA KOOME.

**Observations**

The Committee having considered the curriculum vitae of Hon. Lady Justice Martha Karambu Koome and having heard her submissions during the vetting made the following observations on her nomination;

1. That Hon. Lady Justice Martha Karambu Koome was born in Meru County in 1960.
2. She holds a Master of Laws Degree (LLM) from the University of London; a Bachelor of Laws Degree (LLB) from the same University, and a Post-graduate Diploma in Law from the Kenya School of Law, she was admitted to the Roll of Advocates in 1987.
3. Before being appointed as a Judge of the High Court, she was a legal practitioner in private practice for fifteen (15) years from 1987 - 2003, engaged in civil and criminal litigation as well as general practice matters.
4. The nominee has a strong track record both in the Judiciary and private practice, where she successfully served both as a professional and a leader. She is exposed to many different facets of law, varied working environments, people, and communities making her a well-rounded individual.
5. The Committee observed that the nominee has a proven strategic judicial and organizational value-driven leadership and focus.
6. On leadership and professional membership, she is a member of the Kenya Magistrates and Judges Association; Kenya Women Judges Association; International Women Judges Association; The Commonwealth Judges and Magistrates Association; Federation of Kenya Women Lawyers; East Africa Magistrates and Judges Association; League of Kenya Women Voters; Institute of Certified Public Secretaries; East Africa Law Society; International Family Law Judges Association; Hague Network of Family Law Judges; Council Member Law Society of Kenya, LSK (1993 – 1996); Founding Member & First Treasurer – East Africa Law Society (1993 – 1996).

7. The nominee was engaged as Co-Chair – National Steering Committee on the Children’s Bill and the Committee developing guidelines on Psychosocial Support; Child Protection Mainstreaming; Legal Policy Formulation as a member of a team that drafted the Children’s Act, 2011, the Equality Bill, and the Domestic Violence Bill, which was adopted as the Protection Against Domestic Violence Act, 2015; Policy Guide Launch which Launched a guidance note on protection of children during the Covid-19 pandemic-Coordination meetings with representatives of justice agencies and shared progress updates on challenges and successes during the Covid-19 pandemic; Participant in Access to Child Friendly Justice in Africa – Day of the African Child (2020); as a delegate at Ufungamano House/Bomas of Kenya, participated actively in discussions and in the formulation of position papers on Property Rights of Women, Economic factors of Gender Based Violence, and Value Addition of Inclusion of Women in Leadership, laying the groundwork for the enactment of the Constitution of Kenya, 2010 and She was a managing partner of Martha Koome & Company Advocates.
8. In Community service and pro bono, activities, she has been supporting Huruma Hospital, Nanyuki; Imani Children’s Home, Kayole; Support for Rehabilitation Schools;
9. The nominee has published in Digest on Case Flow Management (In Progress); Women’s Guide to Law (Conducted research on behalf of FIDA); Women and Democracy in Kenya – League of Kenya Women Voters; Chapter Contribution on Implementation of the CRC and the Children’s Act, 2011 – FIDA Kenya’s Annual Report; Several papers on Property Rights of Women; The Bench Book on Family Law and The National Council on the Administration of Justice (NCAJ) Status Report.
10. The nominee received Runner-up Award UN Kenya Person of the Year (2020); FIDA Kenya Award for exemplary Leadership (2010); Grace Githu Award for Democracy and Defence of the Rule of Law (2007) and “The Seraph Award for Justice” from Chamber of Justice (2004).
11. Engaged in legal advocacy and reforms including repeal of Section 2A of the former Constitution of Kenya, independence of the Judiciary, establishment of Court Users Committees, and introduction of Children’s Unit at the Director of Public Prosecutions and Director of Criminal Investigations offices.
12. Participated in the drafting and formulation of various legal policies and bills including the Court of Appeal Transfer Policy, Practice Directions of the Court of Appeal, the Children’s Bill, the Equality Bill, Domestic Violence Bill, the Children’s Act, 2011, and a blueprint strategic plan for reforms in institutions involved in the administration of justice.
13. Took part in local and international stakeholder events, with a proven record of high-level presentations, publications, and awards for exemplary leadership, commitment to justice, democracy, Rule of Law, and Children’s Rights.
14. The nominee demonstrated expertise in Court Policies and Procedures; Case Management; Conduct of Hearings; Legal Policy Development ; Justice System Strengthening ; Legal Advocacy ;Leadership; Stakeholder Relations; Partnerships Development; Litigation & Arbitration; Legal Research & Drafting; Strategic Planning ;Organizational Leadership; Child Rights Mainstreaming; Records Management;Pro Bono Lawyers Scheme and Teaching & Training .
15. The nominee is currently serving as a senior Judge in the Court of Appeal and head of the criminal division. She chaired the Court of Appeal committee consisting of members of the court and the

LSK.As chair; she led the development of the Court of Appeal Practice directions on civil appeals which introduced a case management mechanism of call over.

## Findings

After conducting the approval hearings, the Committee made the following findings;

1. Hon. Lady Justice Martha Karambu Koome has the requisite qualifications and vast experience in the Judiciary which qualifies her for appointment to the position of Chief Justice of the Republic of Kenya.
2. Hon.Lady Justice Martha Karambu Koome, according to the records and information availed to the Committee has never been implicated in any issues that may lead to a conclusion of lack of integrity on her part.
3. The candidate exhibited impressive knowledge of topical issues including demonstrated understanding of administration and management principles required to address the challenges facing the Judiciary. The nominee exhibited a proper understanding of the doctrine of separation of powers which requires the three branches of government to exercise their powers in a manner that respects their respective constitutional territories while upholding the rule of law and the principle of checks and balances.
4. The objection to the appointment by Mr. Nelson Andayi Havi and Mr.Khelef Khailfa lacks merit because the same was filed at the Judicial Service Commission and the nominee was cleared.
5. Members of the Public were invited by JSC to submit any information of interest on any of the candidates.
6. The commission Judicial service exercised due diligence and contacted vetting bodies for confidential reports on the candidates. The commission contacted the Kenya Revenue Authority, Higher Education Loans Board, Ethics and Anti-Corruption Commission, Directorate of Criminal Investigation, Law Society of Kenya, Advocates Complaints Commission and the National Intelligence Service.
7. The nomination of Hon.Lady Justice Martha Karambu Koome was in compliance with article 166(1) of the constitution and statutory requirements set out in the First Schedule of the Judicial Service Act, No.1 of 2011 on provisions relating to the procedure for appointment of Judges.

MIN NO./07/2021: -

RESOLUTION OF THE COMMITTEE ON  
THE APPROVAL HEARING OF HON.LADY  
JUSTICE MARTHA KOOME.

Members resolved unanimously to approve the nomination of Hon.Lady Justice Maratha Karambu Koome for appointment as Chief Justice of the Republic of Kenya.

MIN NO./08/2021: -

ADOPTION OF COMMITTEE REPORT ON  
THE APPROVAL HEARING OF HON.LADY  
JUSTICE MARTHA KOOME.

Hon.Jennifer Shamalla, M.P proposed adoption of the Committee report and was seconded by Hon.Kamoti Mwamkale,M.P.

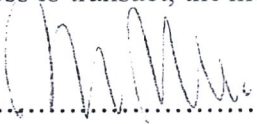
Members of the Committee unanimously adopted the Committee report recommending to the house to approve the nomination of Hon.Lady Justice Martha Karambu Koome for appointment as Chief Justice of the Republic of Kenya.

MIN NO./04/2021:-

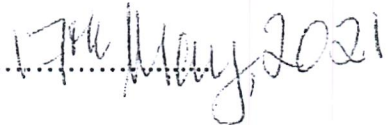
ADJOURNMENT

There being no other business to transact, the meeting was adjourned at 2:30 pm.

Signed.....

  
Hon.Clement Muturi Kigano  
Chairperson

Date.....



**MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE  
AND LEGAL AFFAIRS HELD ON THURSDAY 13<sup>TH</sup>, 2020 AT 10:00 AM. IN MINI  
CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS**

**PRESENT-**

1. Hon.Muturi Kigano, M.P - Chairperson
2. Hon. Tom Kajwang, M.P -Vice-Chairperson
3. Hon.Emmanuel Wangwe, M.P
4. Hon. John Olago Aluoch, M.P
5. Hon. Mwamkale Kamoti, M.P
6. Hon. Zuleikha Hassan, M.P.
7. Hon. Josephine Naisula Lesuuda,M.P
8. Hon. Jennifer Shamalla, M.P.
9. Hon. Adan Haji Yussuf, M.P
10. Hon. George Gitonga Murugara, M.P
11. Hon. Peter Opondo Kaluma, M.P
12. Hon. Anthony Aluoch, M.P
13. Hon. Junet Sheikh Nuh Mohammed, M.P.
14. Hon.Robert Gichimu Githinji,M.P
15. Hon. John Munene Wambugu, M.P.

**ABSENT WITH APOLOGIES-**

1. Hon. Japheth Mutai, M.P
2. Hon. Roselinda Soipan Tuya, M.P
3. Hon. John Kiarie Waweru, M.P.
4. Hon. Anthony Githiaka Kiai, M.P

**IN ATTENDANCE-**

**COMMITTEE SECRETARIAT-**

- |                           |   |                              |
|---------------------------|---|------------------------------|
| 1. Mr. Abenayo Wasike     | - | Principal Clerk Assistant    |
| 2. Mr.Ahmed Hassan Odhowa | - | Principal Research Assistant |
| 3. Lynet Otieno           | - | Legal Counsel                |
| 4. Ms. Halima Hussein     | - | Second Clerk Assistant       |
| 5. Ms. Roselyn Njuki      | - | Sergeant at Arms             |
| 6. Mr.Nickson Mutai       | - | Audio Officer                |

**NOMINEE-**

1. Hon. Lady Justice Martha Koome.

MIN NO./01/2021: -

PRELIMINARIES

The meeting commenced at 10:0am with a word of prayer from the Chairperson and thereafter Members present adopted the agenda as filed.

The Chairperson informed the meeting that the committee is mandated to consider for approval by the National Assembly, appointments of the Chief Justice and the Deputy Chief Justice under Article 166(1) (a) of the Constitution. The said Article requires H.E the President to nominate and with the approval of the National Assembly, appoint the Chief Justice and the Deputy Chief Justice in accordance with the recommendations of the Judicial Service Commission pursuant to section 7 of the Public Appointment (Parliamentary Approvals) Act, 2011.

The Secretariat informed the meeting that the Committee had received eleven (11) memoranda and affidavits from the public, four (4) in opposition and the rest in support of the nomination of Hon. Lady Justice Martha Koome for the position of Chief Justice.

MIN NO./02/2021: -

APPROVAL HEARING OF THE CHIEF  
JUSTICE NOMINEE HON. LADY JUSTICE  
MARTHA KOOME.

The Chairperson welcomed the nominee for the approval hearing followed by administration of oath by the secretariat. The approval proceedings commenced as follows;

**On personal background:** She informed the meeting that she was a Kenyan Citizen of Identity Card number 4322591 and born in Meru County in 1960.

**On education background:** She informed the meeting that she had attained a Master of Laws (LL.M) in Public International Law from the University of London, United Kingdom in 2011, Bachelor of Laws (LL.B) from the University of Nairobi in 1986 and Postgraduate Diploma in Law from the Kenya School of Law in 1988

**Employment History/experience:** She stated that she has 33 years of experience in the legal profession as follows.

- She is currently serving as a senior Judge in the Court of Appeal, heading the Criminal Division. She has chaired and led the Court of Appeal Committee consisting of members of the Court and Law Society of Kenya (LSK) in developing Court of Appeal directions on civil appeals which introduced a case management mechanism of call over. This mechanism of call over has reduced the backlog of cases in this court.
- She served as a Judge of the High Court in the family division where she introduced a checklist to guide the filing of succession matters which led to the timely disposal of cases. She also served in the High Court in Nakuru and Kitale as the presiding judge.
- She practised as an advocate of the High Court of Kenya for 15 years where she succeeded in running a reputable law firm (Martha Koome & Co. Advocates) as a managing partner where she gained an all-round experience representing clients in conveyancing, commercial, civil, and criminal law and above all family law.

**On Leadership:** She stated that she has worked as a patriotic Kenyan in transformative leadership as follows.

- She was a member of the Law Society of Kenya (LSK) between 1994-1996. This is where she was involved in national debates and conversations, towards the Constitutional Reforms. She participated in the Constitutional making process from Kamkunji in 1990 to Ufungamano House and Bomas of Kenya. This is the process that gave rise to the Constitution of Kenya 2010.
- As a council member of the LSK in 1995, she was involved in the formation of the East Africa Law Society where she became the inaugural Treasurer. As a member, she participated in the discussions towards the enactment of the East Africa Community Treaty and the Institutions of the Community such as the East Africa Court of Justice.
- In 2005 she was appointed by the African Heads of State as a member of the African Union Committee on the Rights of the Welfare of the Children where she served for a term of 5 years.

- She has also represented Kenya at the Hague Network of Judges on Family Law.
- In 2005, she was appointed by the former first lady Lucy Kibaki to lead the Kenyan delegation to Beijing during the major review of the Beijing Platform for Action.
- Later, in 2019, when she became the President of the Kenya Magistrates and Judges Association (KMJIA), she became an official of East Africa Magistrates and Judges Association where she continued the work of harmonizing the practice of law, the rule of law and cross-border practice towards the social economic development of the community.

#### **On her Vision for the Judiciary.**

She submitted that her vision for the Judiciary stems from the Constitution of Kenya. She acknowledged that the Constitution of Kenya is a progressive instrument which requires the administration of justice to be always responsive to the needs of Kenyans. Thus, her vision is to build a Judiciary that is independent, accessible, efficient, and responsive to the aspirations of Kenyans and a true guardian of the rule of law.

#### **On the relationship between the Judiciary and other arms of the Government.**

The nominee noted that the Judiciary is independent, and this independence is secured by the Constitution. However, Judiciary is accountable to Kenyans in terms of service delivery which is a shared responsibility. Therefore, she was quick to note that the Judiciary cannot deliver justice by itself and it required the support from other arms of the Government. She informed the meeting that the Judiciary needed budget allocations from the Legislature that would enable the it to perform its role. She noted that the Judiciary should work with the other arms of the Government to enhance interdependence. She recognized the importance of National Council on the Administration Justice (NCAJ) and her recommendation was that the three arms of the government should work together and come up with an (NCAJ) Act complete with an organ that can enhance the working relationship of the three arms of government and in the event of a stalemate between the arms of government, the body can deal with such conflicts.

#### **On whether judges are always right**

She recognized that there exists an appellate system in the Kenyan judicial process. This is because judicial officers and judges can make errors by misapplying the facts or law. Thus, she noted that a party aggrieved by the decision of the trial court can file an appeal and in case of any error it can be corrected by the appellate court.

#### **Her take on BBI particularly on judicial reforms.**

She stated that the matter is being considered in court. Therefore, the sub-judice rule prohibits her from making any comments regarding the matter. However, she indicated that the Judiciary is not opposed to reforms that enhance access to justice and efficiency of the Judiciary. She further noted that currently the Judicial Service Commission (JSC) is mandated to deal with complaints against judicial officers because of the independence of the judiciary. Therefore, the JSC can employ an Ombudsperson to receive and deal with the complaints in accordance with Article 160 of the Constitution.

#### **On expanded or limited jurisdiction of the Supreme Court of Kenya**

She recognized that the Supreme Court of Kenya is a new court of ten years since its establishment. Further, on the interpretation and application and on matters of public interest of the Constitution, there seems to be a floodgate of litigation to the apex court. To curb the situation, she stated that the Supreme Court had made a ruling that unless a constitutional issue was in dispute in the trial court then the matter cannot be introduced in the Supreme Court.

#### **Transition of tribunals to the Judiciary**

She recognized that there existed 60 tribunals in Kenya which are required to transition to the Judiciary. She noted that now 20 have already transitioned but due to budget constraints not all of them have transitioned to the judiciary. She stated that this was a work in progress and if she was appointed as the Chief Justice, she will endeavor to work with Parliament to see how all the tribunals can be transitioned.

#### **Her understanding of Articles 10 and 232 of the Constitution.**

She stated that the principles provided for in Article 10 and 232 of the Constitution are the principles that are applied in the interpretation of the Constitution and the law. Consequently, these are the guiding principles of the Judiciary in decision making. On equal opportunities specifically, she stated that JSC has employed the principles of gender equality on nominating her for the position of the Chief Justice. If she is approved as the Chief Justice by the committee, for the very first time the Supreme Court of Kenya would be compliant with the 2/3 gender rule requirement provided for in the Constitution as it would bring the membership of the Supreme Court to 3 women and 4 men. Furthermore, the three (3) Arms of the government would be gender compliant as one of its own would be headed by a woman. Thus, these principles highlighted under Article 10 and 232 of the Constitution will be complied with. She recognized that if approved by the National Assembly, the JSC would have set the standards to show that they are compliant with the requirement of the 2/3 gender rule for the first time.

#### **On Age of criminal responsibility**

She averred that the law is clear on the age of criminal responsibility. Adding that anyone under the age of 18 years is a minor. Thus, if a male who has committed an offence while under the age of 18 years, they should be treated as children in need of care and protection. Hence, the Judiciary normally recommends that if a minor commits an offence they need to be counselled. She further expressed that she would not recommend on lowering the age of sexual responsibility because Kenya is still battling with early childhood marriages and children need to attend school thus, there should be no any hurry to lower the age of criminal responsibility which is internationally recognized.

#### **On Stalled projects**

The nominee acknowledged that due to the late remittance of funds by the Exchequer, there were delays in execution of projects. Furthermore, the Judiciary fund had not been operationalized. Thus, the Judiciary has not been able to complete projects. However, if approved for the position of Chief Justice, she would institute a system of auditing that would ensure value for money of projects.

**On Same Sex Marriages.**

She disclosed that she is always guided by the Constitution on the matters that she decides. The Constitution of Kenya only recognizes marriages between two consenting adults of opposite sex thus, prohibiting same sex marriages. Therefore, she affirmed that same sex marriages cannot be introduced in Kenya in any way by Judicial craft. However, she informed the committee of a High Court Case (**EG v Non- Governmental Organisations Co-ordination Board & 4 others [2015] eKLR**) where the Court allowed LGBTG organization to register as a non-governmental organization. She stated that the judgement in the case above was in line with the Constitution, particularly Article 27 and 36 which protects the Kenyan citizen from discrimination and allows for freedom of association, respectively.

**On Judges yet to be sworn in.**

On the forty-one (41) judges yet to be sworn in, she recognized how it has affected the judicial system especially the human capital in the Court of Appeal where she sits. This court barely meets the required threshold of 12 judges as provided for in the Constitution. Consequently, making it a matter of utmost importance. She submitted that she was going to employ her negotiating skills in ensuring that the judges are sworn into office. Further, if there was a problem with any of them, she would use her problem-solving skills to resolve the issue.

**On what she would bring to the Judiciary**

The nominee stated that if the committee approves her nomination, she inject excellence, commitment to the delivery of service, access to justice, efficiency in the Judiciary and an institution that engenders the confidence of Kenyans from all walks of life.

**On Accountability of the judiciary**

She recognized that accountability of the Judiciary is provided for by the Constitution. She added that judges and judicial officers are accountable under the Leadership and Integrity Act and the Judicial Code of Conduct. The accountability extends to the resources Kenyans entrust to the

Judiciary. Therefore, if allowed to work as the Chief Justice, one of the key issues she will be most keen on would be advancing the discussions on how judges and judicial officers can consistently give value for their salaries and benefits they earn, and for the privileges they are accorded. Having worked with the NCAJ for 4 years she would employ her skills to bring every stakeholder to the table to discuss administration and delivery of justice and the embracement of results-based management.

**On objections to her nomination by Mr.Khelef Khalifa**

She stated that the litigant had filed a case challenging the appointment of the 290 constituency returning officers and their deputies. He claimed that the IEBC had erred in this appointment by violating the provisions of Elections (General) Regulations 2012. The case was heard, and the High Court held that the appointment was illegal. The judgement was delivered a day to election. The day the said judgment was read was declared a public holiday and no court proceedings were to take place on that day.

Bearing in mind the urgency of the matter and the national importance, the presiding judge of the Court of Appeal at that time appointed a bench of three judges of which she was a part of. The matter was heard ex-parte and an order of stay had been made implying that the presidential election was to proceed. Furthermore, her decision and that of other members of the bench, was confirmed by the Supreme Court when determining the issue of the repeat election. It was agreed that the High Court did not have the jurisdiction to hear the matter.

**On the objection by Mr. Nelson Havi;** she stated that the case of **National Cereals & Produce Board V Erad Suppliers & General Contractors Ltd (UR 33 of 2012)**, an application for stay of execution had come before her and the rest of the members in the bench. And on applying their own discretion as judges they were of the view that it was necessary to issue a stay of execution to stop the cereals board which was the national strategic food reserve from paying the money to Erad Suppliers until the merits of the case was heard. Further, the matter had proceeded and some of the directors of Erad had been charged and convicted and sentenced for fraudulent acquisition of public property. This, according to her, was an indication of a timely intervention that stopped the Country from losing a lot of money.

**On the objection by Noordin Nurani**, she stated that he had deliberately misled the committee by stating that the decision appealed against was made by her which was not the case as it was made by another judge.

**On the interference by the Judiciary with the mandate of the Legislature**

She recognized that the Constitution gives each body its mandate. And the two bodies are to work to complement each other while respecting each other's area of operation. However, where the Legislature acts ultra vires, beyond its mandate, that is where the judiciary comes in through the power of judicial review.

**On National Ethos and National Cohesion**

She identified herself as coming from Meru County and of Meru ethnicity. However, she stated that in her 33 years of experience she chose to serve Kenyans from everywhere without caring where she was from. She opened a law firm in Nairobi and had pro bono client in all corners of the country. She competitively applied for the position and was considered on merit. Also on gender, the judiciary, by nominating her had become compliant. She further added that offices are transient. Lastly, she commented that if approved as the Chief Justice, gender and ethnicity would not inhibit her from serving Kenyans.

**On land cases;** she acknowledged that land matters are highly emotive in Kenya. Thus, requiring a roundtable with the Legislature to discuss issues of evictions. Discussions will majorly be on whether there is need for an act of parliament or regulations on matters evictions. As they bring a lot of suffering to the people. She also identified the National Agenda that public land must be developed. Hence, the need to balance public interest and individual interest.

**On Access to justice;**she recognized that in some areas for one to access courts, they needed to cover more than 300km. This inhibits access to justice. To cure this, she stated that if appointed, she will partner with the CDF and Counties to see how justice can be brought closer to the people. She also recognized that mapping has been done to identify areas that need courts. However, she noted that courts do not exist alone. They exist with other government agencies such as the police stations. Thus, it is a partnership that she will look at very diligently working

with the Council of Governors to see how to ensure access to justice. She would also actively work on reducing the distance to courts to an average of 100km.

**On Jurisprudence;**She declared that she believes in progressive jurisprudence. And in every interpretation, she makes she is guided by the Constitution, which is progressive, liberal and emphasizes on respect for human rights, human dignity and she considers how her judgements affect the parties.

On indigenous jurisprudence, she stated that she has rendered many decisions that give the Constitution of Kenya a purposive and progressive interpretation thereby enlarging the human rights enjoyed by Kenyans. Furthermore, she explained that the new constitution has expanded the traditional Common law principles of Judicial Review to include proportionality and legitimate expectation, fair administrative action, and damages as some of the remedies the courts of law can grant. These traditional remedies were previously confined to the three corners of certiorari, mandamus, and prohibition.

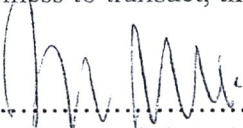
If appointed to the position of Chief Justice, she stated that she will advance jurisprudence that develops Kenyan laws so that human and property rights are secured and above all through court pronouncements, Kenyan laws are certain and predictable.

MIN NO./04/2021:-

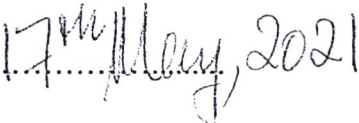
**ADJOURNMENT**

There being no other business to transact, the meeting was adjourned at 1:00pm.

Signed.....

  
Hon. Clement Muturi Kigano  
Chairperson

Date.....



**ANNEXURE 2**

**MESSAGE**

**FROM H.E**

**THE**

**PRESIDENT**

RECEIVED  
28 APR 2021  
SPEAKER'S OFFICE  
P. O. Box 41842, NAIROBI



THE PRESIDENCY  
EXECUTIVE OFFICE OF THE PRESIDENT  
HEAD OF THE PUBLIC SERVICE

NATIONAL ASSEMBLY  
RECEIVED  
28 APR 2021  
CLERK'S OFFICE  
P. O. Box 41842, NAIROBI

Telegraphic Address  
Telephone: +254-20-2227436  
When replying please quote

STATE HOUSE  
P.O. Box 40530-00100  
Nairobi, Kenya

Ref. No. **OP/CAB 1/24A**  
and date

28<sup>th</sup> April, 2021

Hon. Justin B. Muturi, EGH, MP,  
Speaker  
The National Assembly  
Parliament Building  
Parliament Road  
**NAIROBI**

*Noted. CNA to prepare the necessary communication*

*BAI SNA  
28/4/2021*

Dear *Hon. Muturi,*

*DLRP President's cut 28/4/21*

**NOMINATION OF THE HON. LADY JUSTICE MARTHA KARAMBU KOOME FOR APPOINTMENT AS THE CHIEF JUSTICE OF THE REPUBLIC OF KENYA AND PRESIDENT OF THE SUPREME COURT OF KENYA**

A vacancy in the Office of the Chief Justice arose on 12<sup>th</sup> January, 2021 following the retirement of the nation's fourteenth Chief Justice by virtue of his attainment of the constitutional retirement age for judges of the superior courts. Subsequently, the Judicial Service Commission (JSC) formally declared the vacancy vide Gazette Notice No. 386 of 2021.

Upon declaration of the vacancy in the Office of the Chief Justice, the JSC invited applications and conducted interviews to select a nominee for appointment as Chief Justice and President of the Supreme Court. At the conclusion of the interview process, the JSC transmitted its recommendation for appointment to His Excellency the President.

In that regard, you are notified that His Excellency the President has, pursuant to Article 166 (1) of Constitution and in accordance with the recommendation of the Judicial Service Commission (JSC), nominated the Hon. Lady Justice Martha Karambu Koome for appointment as the Chief Justice of the Republic of Kenya and President of the Supreme Court of Kenya.

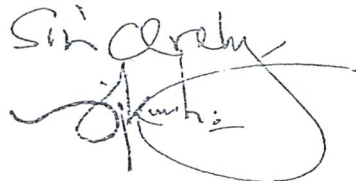
Accordingly, and by the way of this letter, we transmit His Excellency's nominee for parliamentary consideration and approval. To aid the House in appraising the

CONFIDENTIAL

suitability of the nominee, we convey herewith the certificate of Presidential nomination, the judge's curriculum vitae and testimonial, together with the recommendation of the Judicial Service Commission as transmitted to His Excellency the President.

In view of the compelling public interest and the unique place of the office of the Chief Justice within our constitutional and legal order, you are requested to consider the nomination on a priority basis.

Yours

Sincerely  


**JOSEPH K. KINYUA, EGH**  
**HEAD OF THE PUBLIC SERVICE**

Encls.

**Copy to: Hon. (Dr.) Amos M. Kimunya, EGH, MP**  
Leader of Majority Party  
The National Assembly  
Parliament Building  
Parliament Road  
**NAIROBI**

**Mr. Michael Sialai, CBS**  
Clerk of the National Assembly  
The National Assembly  
Parliament Building  
**NAIROBI**

**Mr. Kennedy W. Kihara, CBS**  
Principal Administrative Secretary &  
Assistant Secretary to the Cabinet  
Executive Office of the President  
Harambee House  
**NAIROBI**



**PRESIDENTIAL  
NOMINATION NO. 3 OF 2021**

**THE CONSTITUTION OF KENYA**

**NOMINATION  
FOR  
STATE APPOINTMENT**

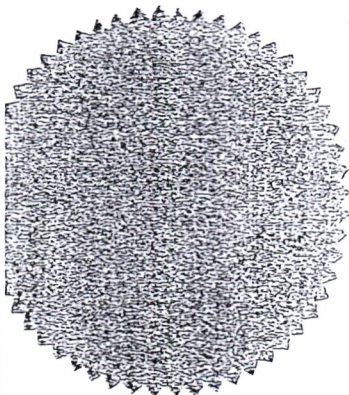
**IN EXERCISE** of the powers conferred by Article 166 (1) (a) of the Constitution of Kenya, **I, UHURU KENYATTA**, President and Commander-in-Chief of the Kenya Defence Forces nominates —

**HON. LADY JUSTICE KOOME MARTHA KARAMBU**

for appointment as the Chief Justice of the Republic of Kenya.

Dated the 28<sup>th</sup> day of April, 2021

**UHURU KENYATTA,  
President.**



# Hon. Lady Justice Martha Koome

P.O Box 60362-00200, Nairobi, Kenya | Tel: +254 (0)724 204 104

Email: Martha\_koome@yahoo.com

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February 08, 2021.

To the Secretary,  
Judicial Service Commission,  
P.O Box 40048-00100  
NAIROBI, KENYA.

Dear Sir/Madam,

REF: V/NO.1/2021: APPLICATION FOR THE POSITION OF CHIEF JUSTICE

For over 32years, I have been committed to and worked passionately towards the protection and promotion of the rule of law and justice; strengthening of the judicial system; legal reforms; promotion of human rights; democracy, and the administration of justice in public and private sector. I have 15 years of experience as a practicing Advocate, 9 years as a Judge of the High Court, and 9 years as Judge in the Court of Appeal. Alongside my rich experience, I bring a solid legal background, with a degree in Law (LLB) from the University of Nairobi (1986), a Postgraduate Diploma in Law from the Kenya School of Law (1987), and a Master's degree in Public International Law (LL.M) from the University of London, UK in 2010. I wish to submit my application for the position of Chief Justice.

I have leveraged my diverse and expansive experience in decision making to develop very progressive jurisprudence that promotes human dignity and constitutionalism. I have adjudicated precedent-setting appeals on land, labour matters, family law, and corruption cases. I am a transformative leader, excellent in stakeholder engagement, and consensus building capabilities that I wish to leverage to lead the Judiciary, serve as liaison between the Judiciary and other arms of Government, chair the JSC, and execute the functions of the Chief Justice as set out in the Constitution of Kenya, the Advocates Act, and the Judicial Service Act.

As Judge of Appeal and member of the Court of Appeal leadership, I have chaired the Bar Bench Committee (2012-2014)when we developed Practice Directions that incorporated a case management system that helped reduce case backlog at the Court of Appeal. I chaired a committee that developed the Court Registry Manual, standardizing Registry practice across all Court of Appeal Registries, and serve as Head of the Criminal Division (2019-2021), where I led a team of Staff to developing a Criminal Appeals Practice Directions Manual

My prior experience as Resident Judge at Nakuru, Kitale Law courts, Environment and Land court, Family Division and at the Milimani Commercial courts are earmarked by various accomplishments that include the establishment of a Court Users Committee, for participatory involvement of stakeholders in the administration of justice. Additionally, I simplified the Family law practice procedures to expedite the administration of justice, developed an effective case management strategy that resulted in the clearance of a backlog of cases and effective coordination of Judges, Judicial Officers, and court users towards the expeditious disposal of cases. I helped strengthen the child protection network with particular focus on *pro bono* legal support for children, and leveraged strong work ethic, commitment to integrity and impartiality, to successfully mediate a lawyer's boycott at Kitale Law courts and delivered the highest number of cases, reported as judgment of the week in 2010 by the National Council of Law Reporting.

I have worked in private practice as Legal Associate with Mathenge and Muchemi Advocates, and as Managing Partner at Martha Koome and Company Advocates, a law firm that I established and positioned as one of the leading women-led law firms. Through the firm, I represented political detainees and clamoured for the repeal of section 2A of the old Constitution, and the independence of the Judiciary and the bar. Beyond legal practice, I participate in various *pro bono* schemes, taskforces, and community engagement initiatives driving legal policy reform and system strengthening, and policy influencing. I took leadership of the Law Society of Kenya as a Council Member (1995-1997) under the leadership of Rtd. Chief Justice Willy Mutunga, at a time when there was national clamor for constitutional and legal reforms. I played a pivotal role in guiding national and public debates, facilitating civic education, and issuing public statements to check government excesses.

I was also a Founding Member of the East Africa Law Society and served as the organization's First Treasurer, an organization that grew to a powerful body of regional lawyers working towards the promotion and protection of the rule of law and cross-border practice of law among lawyers. As the Chairperson of FIDA-Kenya, I actively engaged in constitutional making conferences at Ufungamano House and Bomas of Kenya, where I chaired the Committee on the Bill of Rights. I also participated in sector wide reform committee (GJLOSS) led by the Judiciary, that developed a blueprint for the justice reform strategy. I demonstrated strong negotiation skills as Chairperson of the Kenya Magistrates and Judges Association to lobby for the increase of salaries of Magistrates and Judiciary staff.

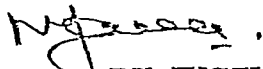
When I am not practicing law, I volunteer my time and resources towards community service. I support Imani Children's Home in Kayole, and Huruma Catholic Hospital in Nanyuki where I provide medical support to the poor and to children with disabilities. I visit both institutions regularly to provide material support, mentorship, and psychosocial support, and I have served as a guardian to three children at Imani Children's Home, seeing them through graduation and marriage nuptials. I hold regular talks in universities including Pwani University,

Kenyatta University School of Law and Strathmore University, to provide mentorship to students, and I deliver talks on human rights and family law to church groups.

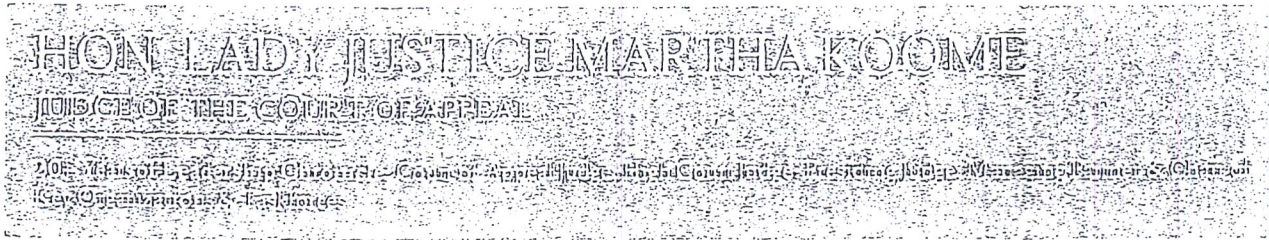
I have leveraged my resource mobilization skills during the Covid-19 pandemic to secure 15 laptops, books, and games equipment from donors delivered to the Cabinet Ministry of Labour and Social Protection in October 2020 for the benefit of Government children-holding facilities. I have experience working with people from diverse backgrounds, expertise in cultivating collegiality and harnessing the knowledge and skills of each member of the team towards the overall vision of the Judiciary. I have attended high-level local, regional, and international conferences in the areas of Human Rights, and pursued trainings on Mediation, Alternative Dispute Resolution, Case Management, Strategic Leadership, and Public engagement in negotiations. I have attached my CV, with a more in-depth outline of my experience and qualifications and hope to speak with you about my candidacy and the Chief Justice Position.

Thank you in advance for your kind consideration.

Sincerely,



**HON. LADY JUSTICE MARTHA KOOME**  
**JUDGE COURT OF APPEAL**



✉ Martha\_koome@yahoo.com ☎ +254 (0)724 204 104 📍 P.O Box 60362-00200, Nairobi, Kenya

Judge of Appeal with over 30 years of legal practice in public and private sectors and expertise in overseeing the legal process in court and applying the law in accordance with the Constitution of Kenya.

Legal Expert, providing technical leadership and direction in the administration and management of courts and presiding over a variety of cases on criminal law, family law, Children's Rights, constitutional law, land and succession law, matrimonial property rights, human rights, civil law, and commercial law.

Transformational Leader, engaging in legal advocacy and reforms including repeal of Section 2A of the former Constitution of Kenya, independence of the Judiciary, establishment of Court Users Committees, and introduction of Children's Unit at the Director of Public Prosecutions and Director of Criminal Investigations offices.

Skilled negotiator and tactician, pivotal in the drafting and formulation of various legal policies and bills including the Court of Appeal Transfer Policy, Practice Directions of the Court of Appeal, the Children's Bill, the Equality Bill, Domestic Violence Bill, the Children's Act, 2011, and a blueprint strategic plan for reforms in institutions involved in the administration of justice.

Thought leader and subject matter expert, engaging in local and international stakeholder events, with a proven record of high-level presentations, publications, and awards for exemplary leadership, commitment to justice, democracy, Rule of Law, and Children's Rights.

Effective communicator, with excellent ability to communicate with peers, defendants, witnesses, and the public; fluent in English and Kiswahili with advanced use of MS Office Suite.

**AREAS OF EXPERTISE**

Court Policies and Procedures	Case Management	Conduct of Hearings	Legal Policy Development
Justice System Strengthening	Legal Advocacy	Stakeholder Relations	Leadership
Partnerships Development	Litigation & Arbitration	Legal Research & Drafting	Strategic Planning
Organizational Leadership	Child Rights Mainstreaming	Records Management	Pro Bono Lawyers Scheme
Teaching & Training			

**EDUCATION AND TRAINING**

Master of Laws (LL.M): Public International Law  
 University of London, UK  
 2009 - 2011

Postgraduate Diploma in Law  
 Kenya School of Law  
 1986 - 1988

Bachelor of Laws: LL.B  
 University of Nairobi  
 1983 - 1986

2

## LEGAL CAREER EVOLUTION

### Judge of Appeal Court of Appeal, Kenya

*January 2012 - Present*

*Promoted to Judge of the Court of Appeal, presiding over appeals and hearings at the Nairobi station, before moving to the devolved court of appeal in Nyeri, and back to the Court of Appeal in Nairobi. Senior member of the Court Leadership, directing registry staff on case management, records management, and hearing of criminal appeals.*

**Key Contributions:**

- Serving as Head of the Criminal Division of the Court of Appeal, presiding over and adjudicating criminal trials appeals.
- Chaired the group that formulated the Court of Appeal Registry Manual, credited with harmonization and standardization of the practice across registries.
- Worked within a three-judge bench that included Justice Visram and Justice Odek to clear a backlog of cases from the region, including Embu, Meru, Nanyuki, Murang'a, Garissa, and Nyeri.
- Initiated real-time filing and hearing of cases at the devolved Court of Appeal in Nyeri, a first in the history of the Judiciary.
- Instrumental in the development and publishing of the Practice Directions of the Court of Appeal, validated and launched in November 2014, and which made provisions for case management and expeditious disposal of appeals in the Court of Appeal.
- Developed the Court of Appeal Transfer Policy that entrenched a two-year rotational cycle for judges, as Chair of the Court of Appeal Sub-Committee, providing opportunities for judges to serve in every part of the country.
- Presided over progressive jurisprudence that set precedent in land matters, labour issues, family law, and corruption-related offences.
- Serving as member of the Bar Bench Committee that holds regular meetings to discuss challenges encountered by litigants in the Court of Appeal.

### Head of Land and Environment Division High Court of Kenya

*October 2011 - December 2011*

*Stepped into the role of Head of Land and Environment Division, carved out from the Civil Division before implementation of the 2010 constitution, to organize and oversee operations at the Division.*

**Key Contributions:**

- Led the Division and cleared a backlog of cases at the Division.

### Resident Judge Kitale Law Courts

*October 2010 - October 2011*

*Served as the Presiding Judge at the Kitale Law Courts, accountable for the Magistrates Court in Trans Nzoia, West Pokot, and Turkana, with full authority on expeditious disposal of cases and access to justice.*

**Key Contributions:**

- Instituted a functional Bar and Bench Committee that transformed new civil procedures into a simplified checklist, and trained magistrates and advocates on the application of the new rules.
- Revamped case management, enabling the Court to take charge of cases upon filing, instead of lawyers and litigants. Established Court Users Committees (CUC) in all 20 magistrates courts within jurisdiction.
- Spearheaded justice system strengthening by leading the Court Users Committee in Kakuma in the construction of a courthouse at the Kakuma Refugee Camp, under the "bringing justice to refugees and host community" project, using a human rights approach in the project roll out; gained credit from UNHCR, with the approach emulated by other agencies.
- Harnessed excellent communication skills to mediate a lawyers' boycott that had been ongoing for a year prior to posting, restoring order and clearing a backlog of cases, particularly on land and succession disputes.

### Judge Milimani Commercial Court

*May 2009 - September 2010*

*Oversew the administration of justice at the station, reviewing pleadings, motions, and evidence presented, assessing admissibility and relevance to the case, and determining appropriate ruling.*

**Key Contributions:**

- Delivered a high turnover of cases, presiding over precedent-setting cases in bankruptcy, tax, copyright, and commercial matters, with less than 5% of rulings overturned by the Court of Appeal.
- Gained recognition with the highest number of cases reported as judgement of the week in 2010 by the National Council for Law Reporting.

## LEGAL CAREER EVOLUTION

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### Resident Judge

#### Nakuru Law Courts

January 2006 - April 2009

*Assumed tenure as Presiding Judge, with jurisdictional oversight on approximately 30 courts in the entire South Rift Region including Kericho High Court Sub Registry, and Magistrate's Courts in Kericho, Naivasha, Nyahururu, Maralal, Molo, Narok, Sotik, and Bomet.*

#### Key Contributions:

Conducted hearings and adjudicated criminal, civil, and family matters before the Court.

Oversaw smooth operations of the courts and organized visits to magistrate's court stations to deliver trainings on case management.

Led a 10-member legal team of judges, magistrates, and paralegal staff within jurisdiction in clearing the endemic backlog of cases at the station, and addressing infrastructural needs that included renovation and construction of courthouses in Naivasha, Narok, Nyahururu, and Sotik.

Initiated a pilot programme of Court Users Committee that became a model of best practice on participatory involvement of stakeholders in court administration; model was emulated by other court stations, and entrenched in the Judicial Service Commission Act as one of the key institutions in the administration of justice.

Established a model children's court and a child protection unit, and strengthened the pro bono legal support for children by recruiting more advocates to the scheme and facilitating trainings on children's law, in partnership with lawyers from Newcastle.

### Judge – Family Division

#### High Court of Kenya

May 2003 - January 2006

*Presided over trials and cases on family disputes that included children's cases, succession, and family law, while overseeing three staff members.*

#### Key Contributions:

Streamlined case filing procedures and expedited delivery of justice by developing a checklist and bench book on family law procedures.

Pronounced various precedent-setting decisions in succession law and landmark cases on protection of Children's Rights.

### Managing Partner

#### Martha Koome & Company Advocates

January 1993 - May 2003

*Built the law firm from the ground up to full-scale operation, with a rich portfolio of clients including commercial banks, insurance companies, and other public, private sector, and non-profit (NGO) clients, running one of the most successful women-led law firms at the time, and positioning the firm as one of the leading law firms in family law cases.*

#### Key Contributions:

Led the firm's 15 staff members.

Took lead in client representation in Court in diverse areas of law including public interest litigation.

Provided pro bono legal representation to economically disadvantaged clients in the areas of human rights abuses, women and children's rights.

Successfully represented a highly publicized matrimonial property and inheritance rights case (Echaria Vs. Echaria HCCC No. 4684 of 1987) that inspired families to seek mediation and sign agreements on sharing of family property.

Gained recognition as a defender of human rights, particularly gender rights.

Represented political detainees and persons accused of politically instigated offences during the volatile one-party rule in Kenya.

Actively participated in the clamor for a repeal of section 2A of the former constitution to restore multi-party democracy, and for the independence of the judiciary.

### Legal Associate

#### Mathenge and Muchemi Advocates

January 1988 - December 1992

*Joined the Family Law Division to provide legal support on dispute resolution, divorce, separation, child custody, and matrimonial property cases.*

#### Key Contributions:

Drafted pleadings, represented clients in court, prepared submissions on legal issues and delivered legal opinions.

Managed correspondence with clients and provided pro bono services to clients in need.

Conducted legal research on assigned legal cases and performed analysis in preparation for litigation.

## LEADERSHIP, APPOINTMENTS & PRO BONO ACTIVITIES

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### Visiting Lecturer – Judicial Training Institute (2003 - Present)

Training Judges and Magistrates on Family Law and Case Management, and the Imperatives of case Management as a tool for succeeding as a Judicial Officer.

Training newly recruited legal researchers on "Preparation of Bench Memos" to ease the burden on Judges.

Served on a Taskforce of Kenya Women Judges that developed a training manual on Gender and Family Laws.

### Co-Chair – National Steering Committee on the Children's Bill and the Committee developing guidelines on Psychosocial Support (2017 - Present)

Overseeing the review of the Children's Act, 2001 to align it with the Constitution of Kenya and factor in the inclusion of emerging issues such as cybercrime. Took part in drafting the Children's Bill awaiting enactment by parliament; the policy on a mandatory curriculum as part of the professional development programme for child practitioners; Standard Operating Procedures for Child Protection Units; and Practice Directions for Children's Court.

### Chair – The National Council on the Administration of Justice (NCAJ) Special Taskforce on Children Matters (February 2016 - Present)

Developed and launched the NCAJ Status Report on Children in the Justice System in Kenya, highlighting the plight of children in the justice system and seven recommendations (The Big 7) to be implemented over the years.

Pivotal in the formulation of the Children's Bill, and provided recommendations for various reforms in child hosting institutions in the best interest of the child <https://ncaj.go.ke/wp-content/uploads/2019/11/NCAJ-Report-Digital-Version.pdf>

### Chairperson – Kenya Magistrates and Judges Association (2011 - 2013)

Served on a two-year term, successfully negotiating with and lobbying the Judicial Service Commission and the Salaries and Remuneration Commission to review the salaries of Magistrates, Kadhis, and other judicial staff. Provided psychosocial support to Judges and Magistrates during the vetting process.

### Member – African Union Committee on the Rights and Welfare of the Child (ACWRC) (2005 - 2010)

Appointed by African Heads of States Summit in Sirte, Libya in May 2005 to serve on the AU Committee, tasked with overseeing the implementation of the Charter by State Parties.

Provided technical support in developing governance structures, including rules and procedures to ensure all African states became party to the Charter, adopted it, and reported to the committee on how they are protecting the welfare of children.

### Chair of the Board – African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) (2004 - 2008)

Led the Kenyan Chapter of ANPPCAN with a mandate to facilitate the promotion, defense, and advocacy for Children's Rights in line with the UN Convention on the Rights of the Child, The African Charter on the Rights and Welfare of the Child, the Children Act, and the Children's Act.

Guided the committee in developing rules of procedures for receiving state party reports on how each country protected children in the entire cycle of a child.

### Chairperson – Federation of Kenya Women Lawyers (FIDA) (1997 - 2002)

Elected twice as Chairperson and successfully positioned the organization locally and internationally as a leading Women's Rights Advocacy Body.

Represented the organization at stakeholder events, delivering presentations at national, regional, and international stakeholder forums.

Served as member of the Kenya Government delegation to the UN Committee on the Status of Women, and attended UN meetings organized by the UN Commission on the Status of Women and Elimination of all forms of discrimination against women (CEDAW).

Served as Civil Society representative at the Sector Wide Legal Reform Sector Committee, led by the Kenya Judiciary, and contributed to the development of a blueprint strategic plan for reforms in institutions that administer justice; blueprint paved way for the establishment of the Governance, Justice, Law and Order Sector (GJLOS), currently the National Council on the Administration of Justice (NCAJ).

### Founding Member – League of Women Voters (1993 - 1996)

Steered advocacy on participation and inclusion of women in all positions of leadership.

### Secretary – Kenya Women Finance Trust, KWFT (1993 - 1996)

Served as first Board Secretary, developing personnel manuals and accountability systems that included a policy on conflict of interest.

## LEADERSHIP, APPOINTMENTS & PRO BONO ACTIVITIES

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### OTHER ENGAGEMENTS

**Child Protection Mainstreaming:** Led a team that influenced the restructuring of child protection agencies, resulting in the Office of the Director of Public Prosecutions opening a Child Protection Unit within its Office, and the Director of Criminal Investigations opening the Anti-trafficking and Child Protection Unit.

**Legal Policy Formulation:** Member of a team that drafted the Children's Act, 2011, the Equality Bill, and the Domestic Violence Bill, which was adopted as the Protection Against Domestic Violence Act, 2015.

**Policy Guide Launch:** Launched a guidance note on protection of children during the Covid-19 pandemic.

**Chair - Justice Sector COVID-19 Response Committee representing Children:** Coordination of meetings with representatives of justice agencies where practice direction and protocol for case hearings during the Covid-19 pandemic were developed. Mobilized donors to provide 15 laptops to facilitate virtual court sessions for rehabilitation schools, presented to the Ministry of Labour and Social Protection for delivery to rehabilitation schools in need. Drove resource mobilization for books, football jerseys, masks, and soap to support the schools amid the Covid-19 pandemic.

**Participant: Access to Child Friendly Justice in Africa - Day of the African Child (2020)** Took part in promotion activities to raise awareness on children's issues, participated in TV and radio interviews, and chaired a webinar with panelists from various African countries to share best practices and lessons learned on child protection during the Covid-19 pandemic.

**Delegate - Ufungamano House/Bomas of Kenya:** Actively engaged in discussions and in the formulation of position papers on Property Rights of Women, Economic factors of Gender Based Violence, and Value Addition of Inclusion of Women in Leadership, laying the groundwork for the enactment of the Constitution of Kenya, 2010.

### COMMUNITY ENGAGEMENTS

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#### Volunteer

Huruma Hospital, Nanyuki

2016 - Present

Providing medical support to the economically disadvantaged and to children with special needs, as well as farm produce to the facility, and coordinating fundraising activities for support during the Covid-19 pandemic.

#### Volunteer

Imani Children's Home, Kayole

1996 - Present

: Delivering material, mentorship, and psychosocial support to children at the home, serving as "guardian" and providing pro bono legal services.

### PROFESSIONAL AFFILIATIONS & LICENSURE

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Member - Kenya Magistrates and Judges Association; Kenya Women Judges Association

Member - International Women Judges Association; The Commonwealth Judges and Magistrates Association

Member - Federation of Kenya Women Lawyers; East Africa Magistrates and Judges Association

Member - League of Kenya Women Voters; Institute of Certified Public Secretaries; East Africa Law Society

Member - International Family Law Judges Association; Hague Network of Family Law Judges Council

Member - Law Society of Kenya, LSK (1993 - 1996)

Founding Member & First Treasurer - East Africa Law Society (1993 - 1996)

### PUBLICATIONS IN JOURNALS & BOOK CHAPTERS

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Digest on Case Flow Management (In Progress)

Case Law Handbook on Violence Against Women and Girls in Commonwealth East Africa Kenya, Rwanda, Tanzania and Uganda

Link: [shorurl.at/nr3S2](https://shorurl.at/nr3S2)

Women's Guide to Law (Conducted research on behalf of FIDA)

Women and Democracy in Kenya - League of Kenya Women Voters

Chapter Contribution on Implementation of the CRC and the Children's Act, 2011

25

## PUBLICATIONS IN JOURNALS & BOOK CHAPTERS

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FIDA Kenya's Annual Report

Several papers on Property Rights of Women

The Bench Book on Family Law

The National Council on the Administration of Justice (NCA) Status Report

## AWARDS

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Runners-up: UN Kenya Person of the Year (2020)  
*United Nations*

Grace Githu Award for Democracy and Defense of the  
Rule of Law (2007)  
*Grace Githu Award*

FIDA Kenya Award for exemplary Leadership (2010)  
*FIDA*

"The Seraph Award for Justice" from Chamber of  
Justice (2004)  
*Chamber of Justice*

## REFERENCES

---

### PROFESSIONAL REFERENCES:

Hon. Justice William Ouko, JA President, Court of Appeal of Kenya.

P.O Box 30041-00100, Nairobi, Kenya.

Email: oukoww@gmail.com

Tel: +254 (0)722 343 248

Hon. Rtd. Justice Alnashir Visram, EBS Judge of Appeal.

P.O Box 42941-00100, Nairobi, Kenya.

Email: judgevisram@gmail.com

Tel: +254 (0)722 747 220

Samuel Munyuwiny, Executive Director and Head of Research, African Institute for Children Studies.

Email: samuelm@institutechildstudies.org

Tel: +254 (0)723 359 783

### CHARACTER REFERENCES:

Prof. Leah Marangu, (Retired) Vice-Chancellor, Africa Nazarene University.

Email: lmarangu@gmail.com

Tel: +254 (0)733 628 920

Dr Jennifer Riria, Group CEO, Echo Network Africa.

Email: jriria@enafrica.org

Tel: +254 (0)722 203 824

## REFERENCES

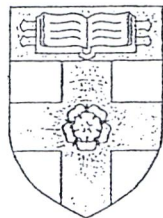
### Professional References

1. Hon. Justice William Ouko, JA  
President, Court of Appeal of Kenya  
P.O Box 30041-00100  
NAIROBI  
Tel: +254 (0)722 343 248 | Email: [oukoww@gmail.com](mailto:oukoww@gmail.com)
  
2. Hon. Rtd. Justice Alnashir Visram, EBS  
Judge of Appeal (Rtd.)  
P.O Box 42941-00100  
NAIROBI  
Tel: +254 (0)722 747 220 | Email: [judgevisram@gmail.com](mailto:judgevisram@gmail.com)
  
3. Samuel Munyuwiny  
Executive Director, African Institute for Children Studies  
P.O Box 21262-00100  
NAIROBI  
Tel: +254 (0)723 359 783 | Email: [samuelm@institutechildstudies.org](mailto:samuelm@institutechildstudies.org)

## REFERENCES

### Character References

1. Prof. Leah Marangu  
Vice Chancellor  
Africa Nazarene University  
Tel: +254 (0)725 217 949 | Email: Lmarangu@gmail.com
2. Lynn Ngugi  
Country Representative, UNHCR  
P.O Box 889-00621, Village Market, Nairobi, Kenya  
Tel: +254 (0)705 007 281 | Email: Ngugi@unhcr.org



UNIVERSITY OF LONDON

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COURT OF APPEAL OF KENYA  
29/12/10

*Martha Karambu Koome*

having registered with the University of London and passed the approved examinations conducted by Queen Mary and Westfield College and University College London has this day been admitted by the University of London to the Degree of

MASTER OF LAWS

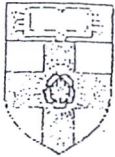
in the specialisation : Public International Law

*Geoffrey Corrick*

*Vice-Chancellor*

31 December 2010

30



University of London  
**DIPLOMA SUPPLEMENT**  
 Transcript of Academic Records

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 THE ORIGINAL

*A. Glaz*

REGISTRAR  
 COURT OF APPEAL OF KENYA

4.3 Programme Details (continued...)

Martha Karambu KOOME

Mode of Study: Distance Learning  
 Student Number: 080370385  
 Date of Registration: May 2009  
 Qualification: LLM

A: Mechanisms for human rights protection by United Nations bodies	2010	6	57
B: Substantive rights under United Nations Human Rights Treaties 1	2010	6	57
C: Substantive rights under United Nations Human Rights Treaties 2	2010	6	53
D: Selected United Nations human rights bodies and specialised agencies	2010	6	58
Overall average mark for this course :			56

Total Equivalent ECTS Credits: 96

Martha Karambu KOOME

Awarded: Master of Laws (Specialisation: Public International Law)

Date: 31 December 2010

Official Seal:

*Geoffrey Cornick*

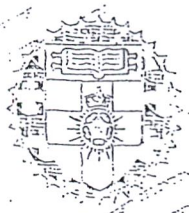
Vice-Chancellor

*The overall average mark for a course is only given when all four sections (or equivalent in double sections) of that course have been completed.*

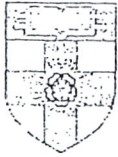
*A student who has obtained 40% or greater but less than 50% in any section at a first attempt may choose to make a second attempt at the examination for that section. A student who has obtained less than 40% in a section at a first attempt must make a second attempt at the examination for that section. Students who have obtained 50% or more in any section are not permitted to make a second attempt at the examination for that section.*

*A student who has passed at least three complete courses from one of the predefined list of Specialisations may elect to have the title of that Specialisation included on the Master of Laws (LLM) degree certificate. Not more than one Specialisation may be included on the degree certificate.*

*Queen Mary and Westfield College and University College London are responsible for the academic delivery of this programme and for the examining of the award.*



*Geoffrey Cornick*



University of London  
**DIPLOMA SUPPLEMENT**  
 Transcript of Academic Records

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REGISTRAR  
 COURT OF APPEAL OF KENYA

4.3 Programme Details

Martha Karambu KOOME

Mode of Study: Distance Learning  
 Student Number: 080370385  
 Date of Registration: May 2009  
 Qualification: LLM

Course: Human rights of women

Section	Year	Equivalent		Mark
		ECTS	Credits	
A: Is the theory underlying human rights law male?	2009	6		62
B: Feminist critiques of human rights	2009	6		64
C: Institutional framework, institutions and documents relating to the human rights of women	2010	6		67
D: Sovereign governments, non-state actors and individual responsibility for human rights violations: linking theory to practice	2010	6		68
Overall average mark for this course :				66

Course: International refugee law

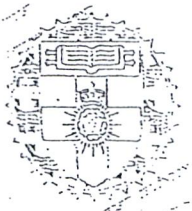
Section	Year	Equivalent		Mark
		ECTS	Credits	
A: The development of, and responsibility for, international protection of refugees	2010	6		62
B: The European dimension of refugee law	2010	6		55
C: The rights of refugees	2010	6		54
D: Contemporary issues in refugee law	2010	6		55
Overall average mark for this course :				56

Course: International rights of the child

Section	Year	Equivalent		Mark
		ECTS	Credits	
A: The development of the international law on the rights of the child	2010	6		54
B: Children and Family Life	2010	6		53
C: Children and the justice system	2010	6		49
D: Combatting child poverty	2010	6		54
Overall average mark for this course :				53

Course: United Nations protection of human rights

Section	Year	Equivalent		Mark
		ECTS	Credits	



4.5 Overall classification/result of the qualification (in original language):

[Empty box for classification/result]

5. INFORMATION ON THE FUNCTION OF THE QUALIFICATION

5.1 Access to further study:

Holder is entitled to apply for National Framework level 8 (Doctoral) studies.

5.2 Professional status: (if applicable)

Not Applicable

6. ADDITIONAL INFORMATION

6.1 Additional information:

The University of London's Regulations state that candidates granted degrees and other awards shall have attained the same academic standard irrespective of mode or place of study or examination.

6.2 Further information sources:

[www.londonexternal.ac.uk](http://www.londonexternal.ac.uk)

7. CERTIFICATION OF THE SUPPLEMENT

7.1 Date:

31 December 2010

7.2 Signature:

*Geoffrey Crossick*

7.3 Capacity:

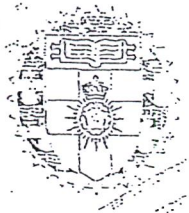
Vice-Chancellor

7.4 Official Stamp or seal:

8. INFORMATION ON THE NATIONAL HIGHER EDUCATION SYSTEM

Please see attached

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21/12  
REGISTRAR  
COURT OF APPEAL OF KENYA



# UNIVERSITY OF NAIROBI



CERTIFIED TRUE COPY OF  
THE ORIGINAL

REGISTRAR  
COURT OF APPEAL OF 21/2/86

This is to certify that

*Martha Karambu Koome*

having satisfied the requirements  
for the award of the degree of the

BACHELOR OF LAWS

(Pass)

was admitted to the degree  
at a Congregation held at  
this University on the

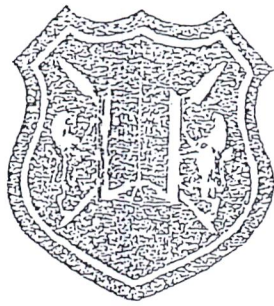
Twenty Ninth Day of September in the Year  
1986

*Philip M. Mbitia*

VICE - CHANCELLOR

*J.M. Murese*

DEPUTY VICE - CHANCELLOR (ACADEMIC AFFAIRS)



# Council of Legal Education Kenya


Advocates Act—Section 134

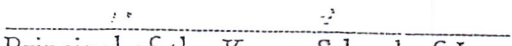
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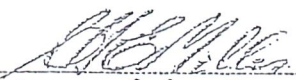
REGISTRAR  
COURT OF APPEAL

This is to certify that—

*Martha Karimachi Mwangi (Mwangi)*  
was admitted to the Kenya School of Law on *15th September 1986*  
and  
duly passed the examinations for admission to the Roll of Advocates in  
*April, 1987*, satisfactorily completed a course of  
legal education, service under pupillage and was awarded a Diploma in  
Law.

  
Secretary of the Council

  
Principal of the Kenya School of Law

  
Chairman of the Council

35

HIGH COURT OF KENYA

CERTIFICATE OF ADMISSION

This is to certify that MARTHA KARAMEU KOOME

having this day signed the Roll of Advocates of the High Court of Kenya is admitted to practise as an Advocate of the High Court and is entitled to practise in the Courts Subordinate thereto, as from the 29th day of November, 1987.

Given under my hand and the Seal of the High Court of Kenya at Nairobi this Twenty-ninth day of November Eighty-seven, in the Year of Our Lord One Thousand Nine Hundred and

*[Signature]*  
Chief Justice,  
High Court of Kenya

Certified that the name of the said MARTHA KARAMEU KOOME has this day been entered on the Roll of Advocates on payment of the prescribed fee.

Dated this 29th day of November, 1987.

*[Signature]*  
Registrar

CPK 1546-10m-1976

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REGISTRAR  
COURT OF APPEAL

THE KENYA  
NATIONAL EXAMINATIONS COUNCIL

This is to certify that the candidate named below sat for the Examination for the Kenya Advanced Certificate of Education and qualified for the award of a

KENYA  
ADVANCED CERTIFICATE OF EDUCATION

The candidate passed at the level shown (Principal or Subsidiary) in the subject(s) named and attained the Grade(s) as indicated.

KARABU M RUTERE

24003/538

MUGDIRI GIRLS' HIGH SCHOOL

		Grade
GENERAL PAPER	SUBSIDIARY	6
HISTORY	PRINCIPAL	B
CHRISTIAN REL EDUCATION	PRINCIPAL	B
LITERATURE IN ENGLISH	PRINCIPAL	B

SUBJECTS RECORDED FOUR

CERTIFIED TRUE COPY OF  
THE ORIGINAL  
REGISTRAR  
COURT OF APPEALS KENYA  
21/12/21

EXAMINATION OF NOVEMBER/DECEMBER 1981

Secretary  
Kenya National Examinations Council

Chairman  
Kenya National Examinations Council

A012665

(See overleaf)

# THE EAST AFRICAN EXAMINATIONS COUNCIL



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THE ORIGINAL. *aj*

REGISTRAR  
COURT OF APPEAL OF KENYA *8/21/81*

This is to certify that the candidate named below sat for the Examination for the East African Certificate of Education and qualified for the award of an

## EAST AFRICAN CERTIFICATE OF EDUCATION

### DIVISION II

THE CANDIDATE REACHED THE GRADE SHOWN IN THE SUBJECTS NAMED

KARANDU M. BUTERE

K3453/026

CHUKA COMMERCIAL SECONDARY SCHOOL

	GRADE
ENGLISH LANGUAGE	8
LITERATURE IN ENGLISH	2
CHRISTIAN REL EDUCATION	3
HISTORY	3
GEOGRAPHY	6
MATHEMATICS ALT 5	9
BIOLOGY	9
TYPEWRITING W OFF PRACTICE	3

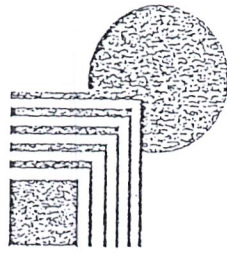
SUBJECTS NAMED EIGHT      SUBJECTS PASSED SIX

EXAMINATION OF NOVEMBER/DECEMBER 1979

Secretary  
East African Examinations Council

Chairman  
East African Examinations Council

(See overleaf)



IAT

Institute of Advanced Technology

CERTIFIED TRUE COPY OF  
THE ORIGINAL

REGISTRAR  
COURT OF APPEAL OF KENYA

8/2/24

*This is to certify that*

*Koome Martha*

*has successfully completed*

*Computer Skills for Managers*

*Course*

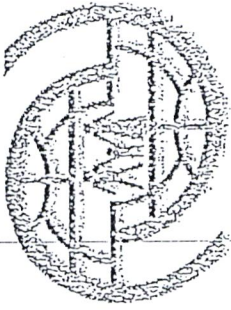
*Start Date: 16 May 2005 End Date: 03 Jun 2005*

*and has obtained grade 'B+'*

Certificate No.  
P.05559

Test Centre Administrator

This Certificate is not valid  
without the IAT Test Centre Seal



# CONCEPTS, CHALLENGES, AND STRATEGIES TO COMBAT HUMAN TRAFFICKING IN EAST AFRICA

LAKE NAIVASHA, KENYA  
8-11 NOVEMBER 2005

DECLARED TRUE COPY OF  
THE ORIGINALS.

This certificate was presented to

*Martha Koome*

REGISTRAR  
COURT OF APPEAL

For completion of the International Organization for Migration's training workshop

Edwin P. McClain  
Regional Representative for East & Central Africa

Signature

*E. P. McClain*

Date

*11 November 2005*

Virginia Brown  
Regional Programme Development Officer

Signature

*V. Brown*

Date

*Nov 11/05*

# California State University, Sacramento



CERTIFIED TRUE COPY OF  
THE ORIGINAL. *5/2/12*

REGISTRAR  
COURT OF APPEAL OF KENYA

College of Health and Human Services  
Center for African Peace and Conflict Resolution

This is to certify that

*Hon. Lady Justice Martha K. Koome*

Participated in the Alternative Dispute Resolution (ADR) Workshop  
August 11 & 12, 2005, in Mombassa, Kenya.



*Ernest Uwazie*  
Professor Ernest Uwazie  
Trainer & Director, CAPCR

*Marilyn Hopkins*  
Dr. Marilyn Hopkins, Dean  
College of Health & Human Services

Daniel Yamshon, Esq.  
Trainer



USIA

CERTIFIED TRUE COPY OF  
THE ORIGINAL *812124*  
REGISTRAR  
COURT OF APPEAL OF KENYA

*This is to certify that*

*MARTHA KOOME*

*participated in the  
International Visitor Program  
of the  
United States Information Agency*

*December 6, 1991*

*Washington, D.C.*

*International Visitor Program  
Bureau of Educational  
and Cultural Affairs*



# Certificate of Participation



This is to certify that

*Hon. Lady Justice Martha Koome*

successfully participated in the workshop on

## International Protection and Refugee Law

held at Sopa Lodge, Naivasha on 23 - 25 April 2008

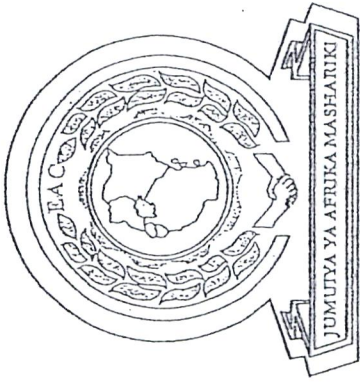
*Furib De Angelis*

Furib De Angelis  
Assistant Representative (Protection)  
UNHCR, Nairobi

*Isaac Lenaola*

Hon. Mr. Justice Isaac Lenaola  
Chairman  
KMJA, Nairobi

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THE ORIGINAL. *21/2/08*  
REGISTRAR  
COURT OF APPEAL OF KENYA



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THE ORIGINAL.

REGISTRAR  
COURT OF APPEAL OF KENYA



# Certificate

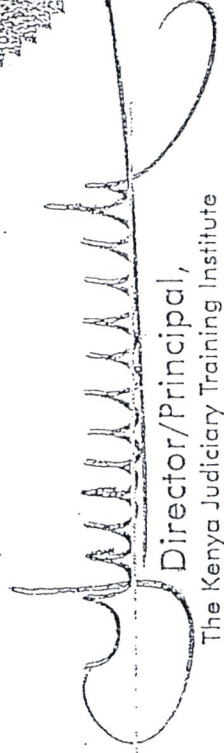
presented to

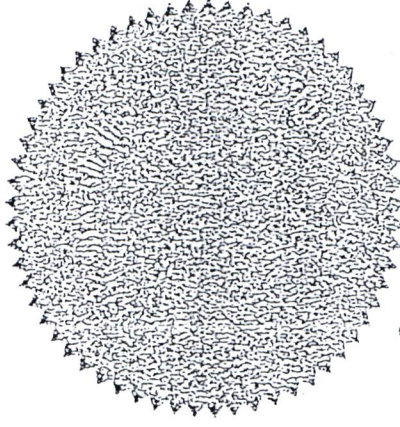
Hon. Lady Justice Martha Koome

For participating in the

East African Judicial Education Committee  
Seminar on Case-Flow Management  
5th - 8th September, 2011  
Nairobi, Kenya

  
Chairman,  
East African Judicial Education Committee

  
Director/Principal,  
The Kenya Judiciary Training Institute



UNICEF · WFP · FAO · WHO · UNHCR · UNDP · UNE · UNFPA

UNODC · UNIC · UNDRR · UNOPS · UNHABITAT · IFAD · IMO · UNON · WMO · IOM · UNICEF



# UNITED NATION IN KENYA

## CERTIFICATE of Commendation

*On the occasion of the UN Day  
24 October 2020,  
the United Nations System in Kenya commends*

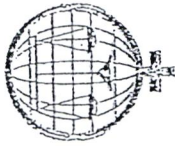
*Lady Justice Martha Koome*

*in recognition of her advocacy for the rights of children in conflict  
with the law and child victims*

UNODC · UNIC · UNDRR · UNOPS · UNHABITAT · IFAD · IMO · UNON · WMO · IOM · UNICEF

UNFPA · UNESCO · UNIDO · UNWOMEN · UNAIDS · OCHA · ILO

100



# The 13<sup>th</sup> Biennial Conference

of the

# International Association of Women Judges

Women Judges and the Rule of Law:

Assessing the Past, Anticipating the Future

Washington, D.C., USA - 26-29 May 2016



Hosted by the

National Association of Women Judges-USA

# Hon. Martha Karumbuzome

In recognition of your attendance and participation in the 25th anniversary celebration of the International Association of Women Judges, whose members represent all levels of the judiciary in over 80 countries around the world and share a commitment to equal justice and the rule of law.

*Luisita Leonardo de Castro*

Hon. Teresita Leonardo de Castro  
IAWJ President

*Lisa Day*

Lisa Day  
IAWJ Executive Director

CERTIFIED TRUE COPY OF  
THE ORIGINAL

REGISTRAR  
COURT OF APPEAL OF KENYA

8/21/24

VERIFIED TRUE COPY OF  
THE ORIGINAL

212124

AFRICAN UNION  
COURT OF JUSTICE  
الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

Addis Ababa, ETHIOPIA P. O. Box 3243 Telephone : 517 700 Fax : 517844  
website : [www.africa-union.org](http://www.africa-union.org)

## OATH OF OFFICE

I, MARIONA Kosme..., solemnly undertake to exercise in all loyalty, discretion and conscience, the functions and responsibilities entrusted to me as a Member of the African Committee of Experts on the Rights and Welfare of the Child of the African Union and to discharge my functions faithfully and impartially with only the interests of the Child in view.

SIGNED: .....



Done in Addis Ababa, Ethiopia, on 19<sup>th</sup> December 2005.

CERTIFIED TRUE COPY OF  
THIS INSTRUMENT

REGISTRAR  
COURT OF APPEAL



REPUBLIC OF KENYA

**OATH FOR THE JUDGE OF THE COURT  
OF APPEAL AND OF THE HIGH COURT**

I MARTHA KARAMBU KOOME

JUDGE OF THE HIGH COURT, DO SWEAR IN THE NAME OF THE ALMIGHTY GOD TO DILIGENTLY SERVE THE PEOPLE AND THE REPUBLIC OF KENYA AND TO IMPARTIALLY DO JUSTICE IN ACCORDANCE WITH THIS CONSTITUTION AS BY LAW ESTABLISHED, AND THE LAWS AND CUSTOMS OF THE REPUBLIC, WITHOUT ANY FEAR, FAVOUR, BIAS, AFFECTION, ILL-WILL, PREJUDICE OR ANY POLITICAL, RELIGIOUS OR OTHER INFLUENCE. IN THE EXERCISE OF THE JUDICIAL FUNCTIONS ENTRUSTED TO ME, I WILL AT ALL TIMES, AND TO THE BEST OF MY KNOWLEDGE AND ABILITY, PROTECT, ADMINISTER, AND DEFEND THIS CONSTITUTION WITH A VIEW TO UPHOLDING THE DIGNITY AND THE RESPECT FOR THE JUDICIARY AND THE JUDICIAL SYSTEM OF KENYA AND PROMOTING FAIRNESS, INDEPENDENCE, COMPETENCE AND INTEGRITY WITHIN IT.

**SO HELP ME GOD.**

**ANNEXURE 3**  
**COMMUNICATION**  
**BY THE SPEAKER**  
**OF THE NATIONAL**  
**ASSEMBLY**





**REPUBLIC OF KENYA**

**TWELFTH PARLIAMENT - (FIFTH SESSION)**

**THE NATIONAL ASSEMBLY**

**MESSAGES**

**MESSAGE FROM THE PRESIDENT**

*(No. 04 of 2021)*

**ON THE NOMINATION OF A PERSON FOR APPOINTMENT AS CHIEF  
JUSTICE OF THE REPUBLIC OF KENYA**

**Honourable Members,**

Standing Order 42(1) relating to Messages from the President provides that *"the Speaker shall read to the House any message from the President delivered to the Speaker for communication to the House."*

In this regard therefore, I wish to inform the House that I have, today, 28<sup>th</sup> April 2021 received a Message from the His Excellency the President conveying the nomination of the **Hon. Lady Justice Martha Karambu Koome** for appointment as the **Chief Justice of the Republic of Kenya and President of the Supreme Court**. The Message also includes the Certificate of Presidential Nomination, the Judge's Curriculum Vitae, testimonial and recommendation of the Judicial Service Commission on the recruitment and selection process for the Chief Justice. This was submitted in line with the provisions of Article 166 (1) of the Constitution which provide, and I quote:

***"The President shall appoint the Chief Justice and the Deputy Chief Justice, in accordance with the recommendation of the Judicial Service Commission, and subject to the approval of the National Assembly."***

The President therefore seeks the approval of the National Assembly on the said nomination.

**Honourable Members,**

Section 5 of the Public Appointments (Parliamentary Approval) Act, 2011, provides that an appointing authority shall, upon nominating a person for an appointment to which this Act applies, notify the relevant House of Parliament accordingly. Consequently, a proper notification in line with the above provision has been received.

**Honourable Members,**

Section 8 of the Public Appointments (Parliamentary Approval) Act, 2011 further provides that the relevant Committee should table its Report for debate and decision within twenty eight (28) days from when the notification of nomination is given.

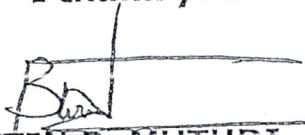
**Honourable Members,**

Pursuant to the provisions of Standing Order 42(3)(c), I now refer the Message, including the *curriculum vitae* of the nominee, to the Departmental Committee on Justice and Legal Affairs to undertake the necessary approval hearings. I wish to guide the Committee and the House as follows:-

- (i) The Committee should notify the nominee and the general public of the time and place for holding the approval hearings expeditiously. The notification should therefore be made immediately; and,
- (ii) The Committee should thereafter commence the necessary approval hearings and table its Report on or before **Tuesday, 25<sup>th</sup> May, 2021** for debate and decision by the House.

Although the Committee and the House have twenty-eight days to consider and make a decision on the nomination, in view of the compelling public interest and the unique place of the office of the Chief Justice within our constitutional and legal order, the Committee is requested to consider the nomination on a priority basis.

**I thank you!**

  
**HON. JUSTIN B. MUTURI, EGH, MP**  
**SPEAKER OF THE NATIONAL ASSEMBLY**

Wednesday, April 28, 2021



REPUBLIC OF KENYA

THE JUDICIAL SERVICE COMMISSION

ANNEXTURE

THE REPORT OF THE JUDICIAL SERVICE COMMISSION OF KENYA ON THE  
RECRUITMENT AND SELECTION PROCESS FOR THE CHIEF JUSTICE OF THE  
REPUBLIC OF KENYA

SUBMITTED TO HIS EXCELLENCY THE PRESIDENT OF THE REPUBLIC OF KENYA

ON 27<sup>TH</sup> APRIL, 2021

DATED 27<sup>TH</sup> APRIL, 2021

## INTRODUCTION

1. The Chief Justice / President of the Supreme Court Hon. Mr. Justice David Kenani Maraga, EGH, retired on 12<sup>th</sup> January, 2021.

## NOTICE OF VACANCY

2. Subsequently, on the Acting Chief Justice, Hon. Philomena Mbete Mwilu, MGH for and on behalf of the Judiciary of Kenya vide Gazette Notice No. 386 dated 18<sup>th</sup> January, 2021 declared the vacancy in the Office of the Chief Justice of the Republic of Kenya pursuant to Section 3(1), Part II, First Schedule of the Judicial Service Act, No. 1 of 2011.

## ADVERTISEMENT

3. Thereafter, on 20<sup>th</sup> January, 2021 the Judicial Service Commission advertised the vacant position of Chief Justice of the Republic of Kenya in accordance with the provisions of Section 3, Part II, First Schedule of the Judicial Service Act, No. 1 of 2011.
4. The deadline set out in the advertisement for submission of applications was 9<sup>th</sup> February, 2021 at 5.00 p.m.
5. A total of thirteen (13) applicants responded to the advertisement as follows:-

List of applicants for the position of Chief Justice:

S/NO.	NAME OF APPLICANT:
1.	Prof. Mare Otinga
2.	Prof. Dr. Dr. Wekesa Moni
3.	Hon. Mr. Justice Ouko William Okello
4.	Hon. Mr. Justice Marete D.K. Njagi
5.	Ms. Yano Alice Jepkoech
6.	Hon. Lady Justice Koome Martha Karambu
7.	Hon. Mr. Justice Nduma Mathews Nderi
8.	Mr. Ngatia Fredrick, SC
9.	Prof. Kameri Mbote Annie Patricia Gathiru, SC
10.	Mr. Murgor Philip Kipchirchir, SC
11.	Hon. Mr. Justice Chitembwe Said Juma
12.	Mr. Otondi Ontweka
13.	Mr. Ombongi Brian Matagaro

## REVIEW OF APPLICATIONS

6. Pursuant to Part III, First Schedule of the Judicial Service Act, 2011 the Judicial Service Commission at its meeting of 12<sup>th</sup> February, 2021 reviewed all the applications for completeness and compliance with Constitutional and statutory requirements and shortlisted ten (10) candidates as follows:-.

### Shortlisted Candidates:

S/NO.	NAME OF CANDIDATE:
1.	Hon. Mr. Justice Chitembwe Said Juma
2.	Prof. Kameri Mbote Annie Patricia Gathiru, SC
3.	Hon. Lady Justice Koome Martha Karambu
4.	Hon. Mr. Justice Marete D.K. Njagi
5.	Mr. Murgor Philip Kipchirchir, SC
6.	Hon. Mr. Justice Nduma Mathews Nderi
7.	Mr. Ngatia Fredrick, SC
8.	Hon. Mr. Justice Ouko William Okello
9.	Prof. Dr. Dr. Wekesa Moni
10.	Ms. Yano Alice Jepkoech

7. The Commission's meeting held on 12<sup>th</sup> February, 2021 scheduled the ten (10) candidates for interview as indicated below:-

### Schedule of interview for shortlisted candidates:

S/NO.	NAME OF CANDIDATE:	I.D. / PASSPORT NO.	DAY/DATE OF INTERVIEW:	TIME FOR THE INTERVIEW:
1.	Hon. Mr. Justice Chitembwe Said Juma	9008217	Monday 12.4.2021	9.00 a.m.
2.	Prof. Kameri Mbote Annie Patricia Gathiru, SC	3082161	Tuesday 13.4.2021	9.00 a.m.
3.	Hon. Lady Justice Koome Martha Karambu	4322591	Wednesday 14.4.2021	9.00 a.m.
4.	Hon. Mr. Justice Marete D.K. Njagi	7677662	Thursday 15.4.2021	9.00 a.m.
5.	Mr. Murgor Philip Kipchirchir, SC	3357808	Friday 16.4.2021	9.00 a.m.
6.	Hon. Mr. Justice Nduma Mathews Nderi	1092695	Monday 19.4.2021	9.00 a.m.
7.	Mr. Ngatia Fredrick, SC	4826805	Tuesday 20.4.2021	9.00 a.m.

S/NO.	NAME OF CANDIDATE:	I.D. / PASSPORT NO.	DAY/DATE OF INTERVIEW:	TIME FOR THE INTERVIEW:
8.	Hon. Mr. Justice Ouko William Okello	5395190	Wednesday 21.4.2021	9.00 a.m.
9.	Prof. Dr. Dr. Wekesa Moni	3463371	Thursday 22.4.2021	9.00 a.m.
10.	Ms. Yano Alice Jepkoech	9124736	Friday 23.4.2021	9.00 a.m.

8. Pursuant to Section 9, Part III, First Schedule of the Judicial Service Act, No. 1 of 2011, the Commission published the names of the applicants and shortlisted candidates in the print media and the Kenya Gazette. The shortlisted candidates were accordingly notified of the dates of interviews.

#### INTERVIEWS

9. The interviews were conducted between 12<sup>th</sup> and 30<sup>th</sup> April, 2021 at the Supreme Court Premises in Nairobi.
10. The criteria used to evaluate qualifications of individual applicants is provided under Part V, First Schedule of the Judicial Service Act, No. 1 of 2011.
11. The total number of candidates who appeared for interview was ten (10).
12. The Commission exercised due diligence and contacted the following vetting bodies for confidential reports on the candidates; Kenya Revenue Authority, High Education Loans Board, Law Society of Kenya, Directorate of Criminal Investigation, Advocates Complaints Commission, Ethics and Anti Corruption Commission and National Intelligence Service. Members of the public were also invited to submit any information of interest on any of the candidates. Several complaints / information were received from the members of the public. They were admitted, processed and forwarded to the respective candidates for response. The particular candidates responded, and the responses same were considered in evaluating and nominating the best candidate for the position.
13. In fulfillment of the constitutional requirement for public participation in the recruitment and selection to public offices, the Commission organized forums with stakeholders from various sectors to share their perspectives on the recruitment and selection of the Chief Justice. The

stakeholders were drawn from the legal fraternity, academia, faith-based organizations, civil society, professional associations, trade unions, private sector, county governments and other arms of government.

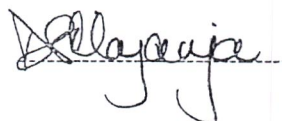

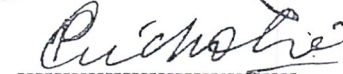
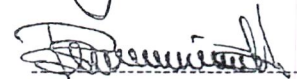
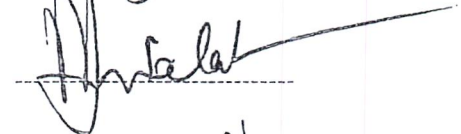
#### NOMINATION

14. At the conclusion of the exercise and pursuant to Article 166(1)(a) and Article 172(1) (a) of the Constitution of Kenya as read with Section 14, Part V, First Schedule of the Judicial Service Act, No. 1 of 2011 the Judicial Service Commission recommends Hon. Lady Justice Koome Martha Karambu National Identity Card No. 4322591 for appointment as Chief Justice of the Republic of Kenya.

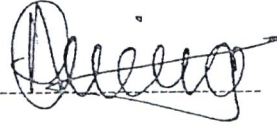
#### COMMISSIONERS

#### SIGNATURE

1. Hon. Olive M. Mugenda, CBS,  
Vice Chairperson.
2. Hon. Mr. Justice M.A. Warsame, Judge of Appeal  
Commissioner.
3. Hon. Lady Justice Philomena Mwilu, MGH,  
Commissioner.
4. Hon. Mr. P. Kihara Kariuki EGH, Attorney General  
Commissioner.
5. Hon. Mr. Patrick Gichohi, CBS  
Commissioner.
6. Hon. Mr. Felix Koskei  
Commissioner.
7. Hon. Mr. Macharia Njeru  
Commissioner.
8. Hon. Mr. Justice David Majanja  
Commissioner.

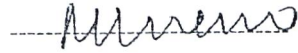


9. Hon. Everlyne S. A. Olwande  
Commissioner.



SECRETARY / CHIEF REGISTRAR OF THE JUDICIARY

Hon. Mrs. Anne A. Amadi,



Dated: 27/4/2021

# **ANNEXURE 4**

## **NEWSPAPER ADVERTISEMENT FOR NOTIFICATION AND PUBLIC PARTICIPATION**

Deputy President William Ruto's allies opposed the Bill in its entirety, arguing that it was not

## FIRE Project Impact Mapping Consultancy

The Financial Sector Deepening Trust (FSD Kenya) initiated the Financial Innovation for the Real Economy (FIRE) project in 2018 to create market capacity and incentives to innovate financial solutions for real world problems. At its core, the project works to bring about change in the financial markets by creating a paradigm shift for the market to develop sustainable finance solutions, evolving organisation and business models to deliver meaningful solutions, enhanced market capacity to identify how finance can meet the needs of the economies of the poor and new linkages to enable finance to do more via partnerships, networks and platforms.

The project has been on-going for the past 4 years and now needs to review the process and document the impact of the various innovation activities that have been undertaken by the project to date, map out the key hypotheses tested, and to validate FIRE's investment thesis. FSD Kenya is requesting for proposals from individual/ and or teams of experts and consultancy firms to evaluate and track the outcome of the project hypotheses, document insights from diverse innovation processes, and offer suggestions for improving FSD Kenya's innovation approach (innovation has the wider sense of either application of ideas, or processes, or products, or procedures, which are new to the people and/or

Detailed FIRE project impact mapping consultancy terms of reference can be found on FSD Kenya's website under **Jobs and Opportunities** section. Proposals should be submitted by e-mail to [tenders@fsdkenya.org](mailto:tenders@fsdkenya.org). Please indicate **"FIRE project impact mapping consultancy"** in the subject line. Closing date: **14th May 2021 by 16:00hours (East Africa Time)**.



places where they are introduced).

### Minimum requirements:

- Demonstrable evidence of similar work undertaken. A minimum of 10 years' relevant experience in implementing and reviewing innovation projects in Kenya and/or sub-Saharan Africa, and with a good understanding of the innovation process.
  - Experience and understanding of Kenya's financial sector, including the evolution of innovation in finance.
  - Demonstrable expertise and knowledge in synthesizing innovation insights and broader market communication of the insights.
  - 5 years' high-level technical assistance to development programmes that use a facilitative market development approach.
- ### Criteria for shortlisting:
- Demonstrable background and skills in financial innovation.
  - Level and depth of relevant experience; demonstrated track record in relevant work.
  - Proposed approach, including availability and ability to meet project timelines.
  - Cost and value for money.

constituencies unconstitutional. It has in its report observed that

amend the bill to amend the back door.



REPUBLIC OF KENYA

## THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT (FIFTH SESSION)

### In the Matter of the Approval by the National Assembly of Hon. Lady Justice Martha Karumu Koome for appointment as the Chief Justice of the Republic of Kenya and President of the Supreme Court.

**Notification of nomination**  
The Hon. Speaker through a notification to the Speaker dated 28<sup>th</sup> April 2021 notified the National Assembly of the nomination of Hon. Lady Justice Martha Karumu Koome for appointment as the Chief Justice of the Republic of Kenya and President of the Supreme Court. The nomination was done in exercise of the powers conferred to His Excellency the President by Article 166(1) of the Constitution.

**Committee**  
The Hon. Speaker committed the matter to the Departmental Committee on Justice and Legal Affairs on 28<sup>th</sup> April 2021 to conduct an approval hearing of the nominee in accordance with the provisions of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) and National Assembly Standing Order No. 45.

**Notification of approval hearing**  
Pursuant to the provisions of Section 6(4) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011), the general public is hereby notified that the Departmental Committee on Justice and Legal Affairs shall conduct approval hearing (vetting) of the nominee for appointment as the Chief Justice of the Republic of Kenya and President of the Supreme Court on **Thursday 13<sup>th</sup> May 2021 at the Mini-Chamber, County Hall, Parliament Buildings at 10.00 a.m.**

The nominee shall bring her original Identity Card, academic and professional certificates, and other relevant testimonials. In addition, the nominee is required to obtain letters/certificates of clearance/compliance from the following institutions: -

- 1) Ethics and Anti-Corruption Commission.
- 2) Kenya Revenue Authority.
- 3) Higher Education Loans Board
- 4) Directorate of Criminal Investigations; and
- 5) Office of the Registrar of Political Parties.

**Public Participation and Submission of memoranda**  
The Committee is required under Article 118(1)(b) of the Constitution of Kenya to involve the public in the approval hearing of the nominee. In addition, Section 6(9) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) provides that "any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated".

**Now Therefore**, in accordance with Article 118(1)(b) of the Constitution and Section 6(9) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011), the Committee invites interested members of the public to submit any representations they may have, by written statements (affidavits) with supporting evidence on the suitability or otherwise of the nominee for appointment to the office.

The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received on or before **Wednesday 12<sup>th</sup> May 2021 at 5.00 p.m.**

MICHAEL R. SJALALI, CBS  
CLERK OF THE NATIONAL ASSEMBLY  
30<sup>th</sup> April 2021

... NALIA said acqui-

... we want to have electric buses, so

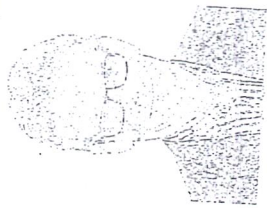
... against pollution.

... er of the hearing was ...  
... ing the delay. [John Shikisa]



## Public Announcement

### Appointment of Director of Britam Holdings Plc



Britam Holdings Plc is pleased to announce the appointment of Mr. Michael Turner to the Board with effect from 29th April 2021.

Mr. Turner is a Founding Partner & Managing Director, East Africa, of Actis which is regulated by the FCA in UK. He is responsible for the strategic development of Actis business in East Africa, raising funds and investor relations, developing the investment criteria and investment processes. Mr. Turner has over 30 years' experience in Multi Sector investments in Eastern Africa & Southern Africa.

Mr. Turner holds a Bachelor of Science Civil Engineering (Hons) from the University of Southampton, UK and is a Fellow of Chartered Accountants in England and Wales.

The Board of Directors of Britam Holdings Plc welcomes the appointment of Mr. Turner and looks forward to benefit from his skills, knowledge and experience.

On behalf of the Board of Directors

**MOHAMED KARAMA**  
ACTING CHAIRMAN  
29th April 2021

REPUBLIC OF KENYA



## THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - FIFTH SESSION

**On the Matter of the Approval by the National Assembly of Hon. Lady Justice Martha Karumba Karambu Kiarie for appointment as the Chief Justice of the Republic of Kenya and President of the Supreme Court.**

### Notification of nomination

His Excellency the President through a notification to the Speaker dated 28<sup>th</sup> April 2021 notified the National Assembly of the nomination of Hon. Lady Justice Martha Karumbu Kiarie for appointment as the Chief Justice of the Republic of Kenya and President of the Supreme Court. The nomination was done in exercise of the powers conferred to His Excellency the President by Article 165(1) of the Constitution.

### Ceremonial

The Hon. Speaker committed the matter to the Departmental Committee on Justice and Legal Affairs on 28<sup>th</sup> April 2021, to conduct an approval hearing of the nominee in accordance with the provisions of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2017) and National Assembly Standing Order No. 45.

### Notification of approval hearing

Pursuant to the provisions of Section 6(4) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2017), the general public is hereby notified that the Departmental Committee on Justice and Legal Affairs shall conduct approval hearing (vetting) of the nominee **Ujini-Chamber, County Hall, Parliament Buildings at 10.00 a.m.**

The nominee shall bring her original Identity Card, academic and professional certificates, and other relevant testimonials. In addition, the nominee is required to obtain letters/certificates of clearance/compliance from the following institutions:

- 1) Ethics and Anti-Corruption Commission.
- 2) Kenya Revenue Authority.
- 3) Higher Education Loans Board.
- 4) Directorate of Criminal Investigations; and
- 5) Office of the Registrar of Political Parties.

### Public Participation and Submission of memoranda

The Committee is required under Article 118(1)(b) of the Constitution of Kenya to involve the public in the approval hearing of the nominee. In addition, Section 6(9) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2017) provides that "any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated".

**Now Therefore**, in accordance with Article 118(1)(b) of the Constitution and Section 6(9) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2017), the Committee invites interested members of the public to submit any representations they may have. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to [secretary@parliament.go.ke](mailto:secretary@parliament.go.ke); to be received on or before **Wednesday 12<sup>th</sup> May 2021 at 5:00 p.m.**

**MICHAEL R. SIALAI, CBS**  
CLERK OF THE NATIONAL ASSEMBLY

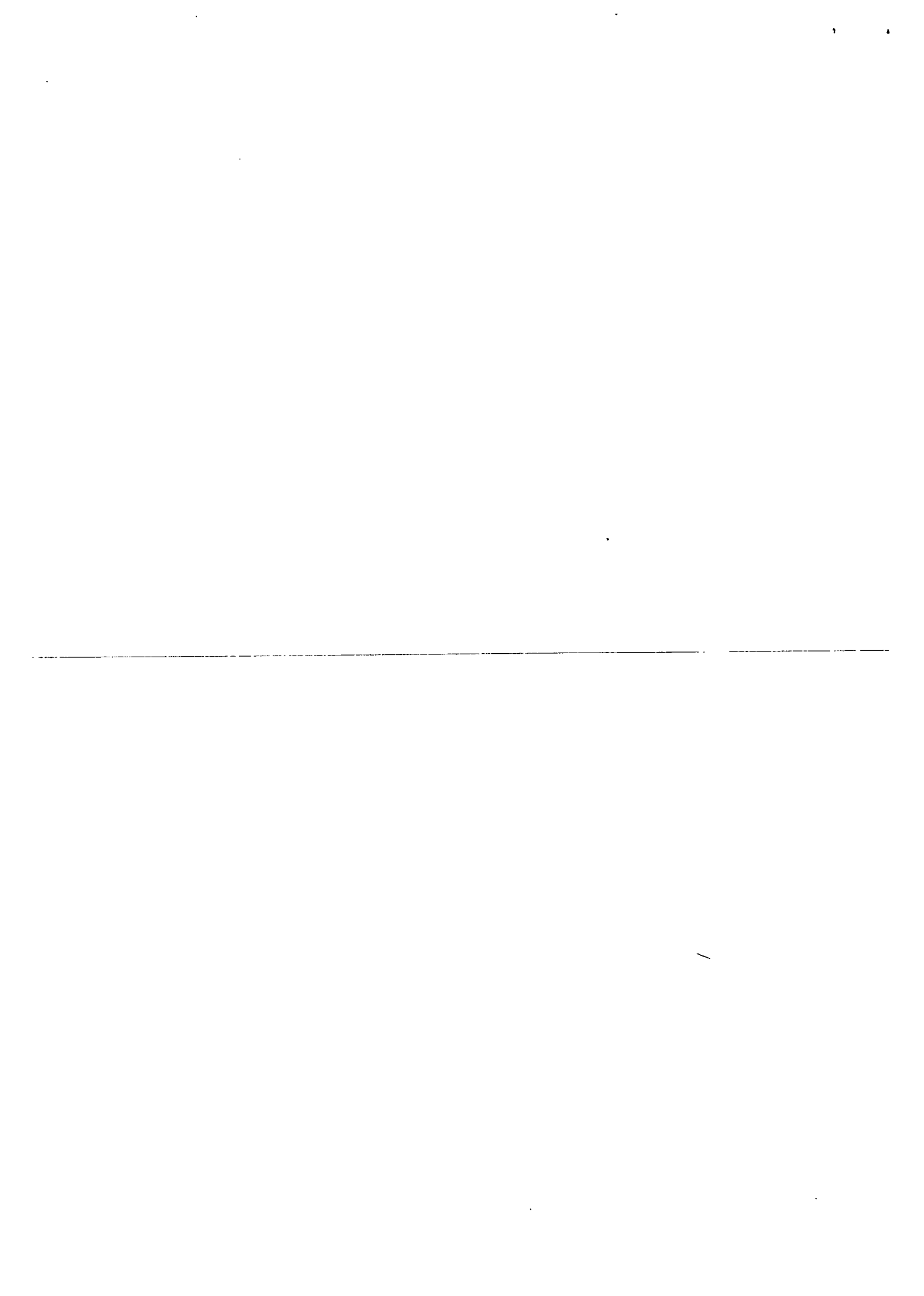
30<sup>th</sup> April 2021

# **ANNEXURE 5**

## **SUBMISSIONS IN OBJECTION TO THE NOMINATION**

**Mr. Khelef Khalifa**

**Affidavit**



**REPUBLIC OF KENYA**

**IN THE MATTER OF THE OATHS AND STATUTORY DECLARATIONS ACT**

**AND**

**IN THE MATTER OF NOMINATION OF JUSTICE MARTHA KOOME TO  
THE POSITION OF CHIEF JUSTICE OF THE REPUBLIC OF KENYA**

I, **Khelef Khailfa** of P.O BOX 42261-80100, Mombasa, a resident of Mombasa county within the Republic of Kenya, and a male adult of sound mind, do hereby make an oath and states as follows:

1. I am an adult male of sound mind and therefore competent to swear and depose to this Affidavit.
2. I swear this affidavit in opposition to the nomination of Justice Martha Koome to the position of Chief Justice of the Republic of Kenya.
3. I believe that the Hon. Justice Martha Koome through her conduct in judicial proceedings before her in which I was a party has demonstrated disregard for the rule of law and administration of justice.
4. That in her subsequent appearance before the Judicial Service Commission she has demonstrated that she lacks integrity through giving false information meant to mislead the Commission in considering her application for appointment as Chief Justice.
5. I was a litigant in the Judicial Review Miscellaneous Application No. 58 of 2017 at the Mombasa High Court. The case got transferred to Milimani High Court in Nairobi and issued with new number as Judicial Review Miscellaneous Application No. 628 of 2017.
6. The case challenged the appointment of 290 constituency returning officers and their deputies. The Independent Electoral and Boundaries Commission (IEBC) erred in this appointment by violating the provisions of regulations 3 of the Elections (General) Regulations, 2012.
7. The case was heard by the Hon. Justice George Odunga who delivered a judgement on the 25<sup>th</sup> October, 2017, a day to the repeat presidential

election which was scheduled to be held on the 26<sup>th</sup> October 2017. The Hon. Justice Odunga in his judgement held that the appointment of the 290 constituency Returning Officers was illegal and breached the provisions of the Regulations.

8. That the day when the said judgement was read, was a declared public holiday and no court proceedings were taking place on that day. The public holiday had been declared by the Cabinet Secretary in charge of Interior vide Gazette Notice 10561.
9. The Court of Appeal and its registries remained closed on that day and only those courts that had been given express authorization by the Chief Justice were sitting on that day.
10. Despite the appellate court not being functional and its registries closed on October 25, 2017, because of the declared public holiday, Paul Kihara—the former President of the Court of Appeal and now the Attorney General (AG)—purportedly empaneled a bench of three judges that overturned Odunga’s ruling. The bench comprised of Justices Martha Koome, Fatuma Sichale, and Erastus Githinji.
11. The public holiday rendered the Court of Appeal non-functional, and therefore, there was no duty judge to certify IEBC’s appeal as urgent and allow the matter to be placed before a bench, as was the case. Also, I do not believe—nor is it reasonable in these circumstances—that the IEBC managed to file an application for stay under certificate of urgency, which was heard the same day as Kenyans were made to believe. If IEBC appealed, they did it illegally, opaquely, and in conspiratorial way, given the Court of Appeal registry remained closed. Neither I nor my counsel were notified of the appeal, stay or procedure that would have enabled proper and fair justice to prevail.
12. Furthermore, Judges Koome, Sichale and Githinji were not based in Nairobi on the period that they allegedly heard the appeal. Justice Martha Koome was based in Malindi, Justice Sichale in Nyeri and Justice Githinji in Kisumu. The public has been made to believe that the appeal got heard at the appellate court situated at the Supreme Court of Kenya building in Nairobi.

13. To date, the Judicial Service Commission (JSC) has not proved that Justices Koome, Sichale and Githinji converged in Nairobi to hear the purported appeal. Neither has it given me the name of the duty judge who certified the purported IEBC appeal as urgent or the proceedings certifying the matter urgent. I requested the following information from JSC to no success: CCTV clips of the Court of Appeal premises between the period of 2 pm – 6 pm on October 25, 2017, showing the purported court in which the appellant's application was heard. I also requested justices Koome's, Sichale and Githinji driver's daily log and trip sheet for October 25, 2017, but JSC has never supplied this information. The trip sheet would have shown the judges indeed travelled to Nairobi to hear the appeal.
14. I watched JSC interviewing Judge Koome for the post of Chief Justice (CJ) on April 14, 2021. Some of the issues the Commission raised included the handling of the aforementioned petition. The judge admitted that the bench she was part of, illegally sat at night to overturn Odunga's ruling. Judge Koome admitted that the Head of the Judiciary, former CJ David Maraga, had not permitted the Court of Appeal to conduct business during the public holiday on October 25, 2017.
15. Additionally, Judge Koome admitted to the Commission that she and the bench acted against the laid down procedures. Justice Koome self-confessed that the bench heard and ruled on IEBC's appeal in the absence of my counsel and made no effort to reach out to my attorney. Justice Koome's action showed bad faith, partiality, and utter incompetence, which resulted in a conspiracy to defeat the cause of justice.
16. That Justice Martha Koome lied and misled the Commission when she said the Supreme Court and the Court of Appeal in subsequent rulings on the matter had vindicated the decision of the bench that she was part of. The fact is that IEBC never pursued the hearing of the appeal after obtaining ex parte orders from Judges Koome, Sichale and Githinji. IEBC withdrew the appeal even before the case could be heard on its merit by the appellate court and hence the same have never been heard on merits by the Supreme Court.

17. By misleading the Commission on such a serious matter—and admitting her bench heard IEBC's appeal in the absence of my counsel and sat illegally to overturn Justice Odunga's ruling—Justice Koome publicly exhibited lack of integrity and transparency and failed the requirements of Article 166(2)(c) of the constitution, which demands high moral character, honesty and impartiality from a candidate seeking the post of Chief Justice.
18. By lying to the Commission, Justice Koome showed predisposition to cheat in furtherance of other motives and to advance a selfish interest at the expense of the rule of law.
19. That upon listening to Justice Koome's lies before the Commission, I swore an affidavit which I forwarded to the JCS detailing the misleading information and lies which Justice Koome had made when she appeared before it. The JSC never considered the averments contained in my said affidavit in assessing the character and integrity of Justice Koome to determine if she is a proper and fit person to serve as Chief Justice of the Republic of Kenya.
20. I have a genuine fear and concern that the Justice Koome will be subservient to the Executive and other forces if confirmed as the next CJ based on her conduct of sitting illegally and overturning a High Court ruling to allow Jubilee administration to stay in power.
21. Justice Koome's action of conducting a sitting and delivering ruling without express authorization from the CJ rekindled the era of Benard Chunga—a former public prosecutor during Moi time, who prosecuted cases in wee hours of the morning or late evening without hearing other parties. Justice Koome's action reverberates Moi era that risk creeping back if she will hold the post of the CJ. It should be noted that Chief Justice Chunga was forced out of office ostensibly for prosecuting cases in the night whereas Justice Martha Koome who has admitted conducting court sittings at night seeks to be appointed as a Chief Justice.
22. I am, therefore, petitioning Parliament to determine that Justice Koome is not a person who is competent and fit to be Chief Justice of the Republic of Kenya.

23. All that is stated herein is true to the best of my knowledge, information and belief, save for matters of information and belief whose sources have been disclosed herein.

**SWORN** by the said **KHELEF KHALIFA**

At **MOMBASA**

This 4th day MAY of 2021

Khelef Khalifa  
)  
(DEPONENT)

**BEFORE ME**  
  
**COMMISSIONER FOR OATHS**

**Mr. Nelson Andayi**

**Havi**

**Affidavit**

REPUBLIC OF KENYA  
IN THE MATTER OF OATHS AND STATUTORY DECLARATIONS ACT  
CAP 15 OF THE LAWS OF KENYA

AFFIDAVIT

I, NELSON ANDAYI HAVI residing in Lavington, Nairobi and of P.O' Box Number 38422-00623 Nairobi hereby solemnly swear and state as follows:

1. I am an Advocate of the High Court of Kenya and the President of the Law Society of Kenya. I am competent to swear this Affidavit.
2. I swear this Affidavit pursuant to the Notification of the General Public and Submission of Memorandum by the National Assembly, published in the Daily Nation of 30<sup>th</sup> April, 2021. The notice invited the submission of information on the suitability of Lady Justice Martha Koome for approval for appointment as Chief Justice of the Republic of Kenya.
3. I am aware that through a notice published in The Standard on 17<sup>th</sup> February, 2021 the Judicial Service Commission (JSC) invited the submission of information from the public on the integrity, competence and suitability of candidates shortlisted for interview for recruitment of Chief Justice and Judge of Supreme Court.
4. Amongst the candidates shortlisted for interview for recruitment of Chief Justice and Judge of Supreme Court was Court of Appeal Judge, Honourable Lady Justice Martha Koome (Lady Justice Martha Koome).
5. On 29<sup>th</sup> March, 2021 I submitted to JSC on behalf of the Law Society of Kenya, a memorandum on the integrity, competence and suitability of amongst others, Lady Justice Martha Koome. A copy of the memorandum is produced herein as NAH-1.
6. On 6<sup>th</sup> April, 2021 I submitted a further memorandum to JSC on the integrity, competence and suitability of amongst others, Lady Justice Martha Koome. A copy of the memorandum is produced herein as NAH-2.

7. I witnessed the interview of Lady Justice Martha Koome on 14<sup>th</sup> April, 2021 when she was asked questions by Honourable Everlyn Olwande, Mr Justice David Majanja and Lady Justice Philomena Mbete Mwilu on the issues raised in the memoranda submitted to JSC.
8. Civil Application No Nai 48 of 2012 (UR 33 of 2012), National Cereals & Produce Board v Erad Suppliers & General Contracts Ltd (UR) concerned a case in which Lady Justice Martha Koome and two other Judges issued an order of stay of execution on the strength of a letter dated 28<sup>th</sup> May, 2012 from the Permanent Secretary, Ministry of Agriculture and addressed to the Registrar of the Court of Appeal. The letter and ruling are produced at pages 2 to 6 of NAH-1.
9. Lady Justice Martha Koome stated that there was before Court an application for stay of execution and that the Court's decision was not influenced by the letter and that the decision saved the Country colossal loses for the reason that the directors of Erad Suppliers & General Contracts Ltd were eventually charged, convicted and sentenced for fraudulent acquisition of public property. She posed the question on why the issue was never raised against Chief Justice (Rtd) David Maraga with whom she sat on that bench.
10. Lady Justice Martha Koome misapprehended or skirted around the concern of her acting on the directions of the Executive a fact that was evident from her answers.
11. IEBC v Khelef Khalifa & another Civil Application No 246 of 2017 (UR) related to an application for stay of execution which was heard on the same day the judgment of the High Court had been delivered, at night, on a public holiday, without the prior authorization of the Chief Justice, without hearing the respondent and a decision made finally determining the appeal. The judgment of the High Court and order of the Court of Appeal are produced at pages 8 to 36 of NAH-1.
12. Lady Justice Martha Koome's answer was that she was directed to hear the application night, on a public holiday by the President of the Court of Appeal whose directions she could not question as doing so would amount to

insubordination. She acts on orders from superiors even when the same are manifestly unlawful.

13. It was evident from the further questions asked by Mr Justice David Majanja and Lady Justice Philomena Mbete Mwilu that only the Chief Justice ought to have authorised such a sitting and that none had been given.
14. Lady Justice Martha Koome further answered that the applicant's advocate stated that the matter was urgent and had to be heard in the absence of the respondent's advocate who had not been served or called to attend Court. Lady Justice Martha Koome was determined to hear and indeed heard the matter in the absence of the respondent, a fundamental assault on the right to be heard and flaw on the part of the Judge.
15. Lady Justice Martha Koome also stated that the High Court had no jurisdiction to make the decision reversed by her and her two colleagues for the reason that presidential election petitions are a preserve of the Supreme Court and that the Supreme Court affirmed the decision of the Court of Appeal.
16. The fact of the matter is that the issue she gave an order on was not a presidential election petition, the appeal was withdrawn the desired outcome having been achieved on the basis of a final interlocutory order and the issue was never determined substantively by the Court of Appeal or the Supreme Court. Lady Justice Martha Koome lied to JSC on this issue.
17. *Kenya Revenue Authority v Prof Tom Ojienda & Law Society of Kenya*, Civil Appln No 363 of 2019 (UR No 296 of 2018) was an application for stay of execution allowed by a bench presided over by Lady Justice Martha Koome. An order of stay finally determining the appeal and the claim before the High Court was granted.
18. In response, Lady Justice Martha Koome stated that the Court acted on the application for stay of execution by Kenya Revenue Authority which was merited. Again, this was a case where the Judge usurped the original jurisdiction of the High Court and appellate jurisdiction of the Court of Appeal on a substantive hearing, to determine the claim finally in an

interlocutory application, thereby rendering both the claim before the High Court and the Court of Appeal useless.

19. JSC has, despite compulsive constitutional obligation to give reasons for its recommendation and demand made to it on 3<sup>rd</sup> May, 2021 not given reasons on how these three concerns impacted on the Commissioners' mind in so far as the integrity, competence and suitability of Lady Justice Martha Koome is concerned. The demand to JSC dated 3<sup>rd</sup> May, 2021 and the response thereto are produced herein as NAH-3 at pages 1 to 9.

20. Upon being nominated for appointment as Chief Justice, Lady Justice Martha Koome wrote to me on 30<sup>th</sup> April, 2021 alleging defamation on the two memoranda submitted to JSC, demanding their retraction within seven days and an apology, failing which she would institute legal action. The demand by Lady Justice Martha Koome dated 30<sup>th</sup> April, 2021 is produced herein as NAH-4 at pages 10 to 15.

21. On 3<sup>rd</sup> May, 2021 I responded to Lady Justice Martha Koome indicating why her demand was not justified in law and amounted to intimidation in the performance of my professional functions as President of the Law Society of Kenya. I asked her to rescind the demand in three days or go to Court within the same period noting that I intended to submit the information herein to the National Assembly. The response dated 3<sup>rd</sup> May, 2021 is produced herein as NAH-5 at pages 16 to 64.

22. The demand by Lady Justice Martha Koome on a matter in which information was requested by JSC as required by The Constitution of Kenya and Acts of Parliament, received and relied upon in evaluating her integrity, competence and suitability on facts which are not disputed and in respect of which the law invites no doubt, is indicative of a Judge suffering poor judgment or one who is intemperate, vengeful and rapacious, all vices undesirable of a Judge and Chief Justice.

23. The conduct and predisposition of Lady Justice Martha Koome as deponed to hereinabove is not isolated. It is pervasive and has punctuated her past, permeates her present and is demonstrative of how she will act in future as a Judge and Chief Justice if approved by the National Assembly.

24. As regards the predisposition of Lady Justice Martha Koome, it is illustrative that in the decision made by the Magistrates and Judges Vetting Board (MJVB) on 21<sup>st</sup> September, 2012 the vote on her suitability to continue serving as a Judge was 4 to 4, with one member of the MJVB recusing herself. The decision of MJVB is produced at pages 25 to 53 of NAH-5.

25. Amongst the concerns preceding the tie on decision by the MJVB were the following:

116. At the interview the judge was questioned on the issue of joinder of parties which arose in one complaint. The judge stated that "once the party is joined they file pleadings either as plaintiff or defendant, the position they take after joinder to the suit is what determines whether they are defendant or plaintiff." It was felt by some members that the position taken by the Judge was incorrect; it is not up to a party to determine post application for joinder, whether they shall be a plaintiff or a defendant; the application has to be specific as to the capacity in which the party is being joined; and the order granting the joinder has to specifically state the capacity in which the party is joined. The judge thus by her response exposed her inability to properly understand, appreciate, interpret and apply the law. [Emphasis added]

117. The judge was also questioned over a succession matter flowing from a woman-to-woman marriage. While the judge was to be commended for recognizing and dealing with the reality of the relationship, the manner in which she disposed of the property raised doubts on her ability to properly understand and apply the law. The judge was questioned on the legal requirement for valuation and verification of assets before a distribution order is made. The judge said that she was aware of the law, but did not apply it, as it was an unnecessary expense on the parties. This position by the judge was unfortunate, as failure to value and ascertain assets can lead to a distribution that is not fair or just. This was evidenced in the case. [Emphasis added]

118. In another matter, it was felt that the judge had shown a lack of fairness by upholding an appeal against a custody order made in the Magistrate's Court on an ex parte basis without hearing the father. The judge proceeded with the actual hearing of the appeal ex parte, without stating any reasons in the record for proceeding ex parte, knowing full well that the complainant who did not have the benefit of counsel, had been in court that morning, and was intent on being heard in the matter. In matters involving the welfare of children, it is imperative that all parties are granted a hearing by the court. It is also a tenet of natural justice, that all parties must be accorded a fair hearing, and the courts must be extra vigilant to secure this right where a party is

unrepresented. The judge's haste in proceeding to hear the appeal in the absence of a party, in a case that the judge admitted was very emotive, displayed a lack of fairness and good judgment. This, it was felt, fueled a perception that she could be unduly predisposed to take shortcuts and lean one way in gender-related matters... [Emphasis added]

120. Another area of concern was a noted disconnect that exists between the proceedings and the judgment. Facts appearing in the judgment are not supported in the record of proceedings made by the Judge. These facts which do not form part of the proceedings, are actually relied upon to reach the final decision. This displays lack of diligence, and poor writing skills. The judge should try to work on these failings, and improve her ability to capture accurate records of the proceedings. This is very crucial, as our courts are courts of record. Parties rely on the record if they need to appeal. [Emphasis added]

122. A section of the Board felt that the judge's good qualities far outweighed any deficiencies. No suggestion had been made that in any of the matters the judge had been manipulating the law to promote impunity. Her integrity was not impugned. She appeared to manage her case roll with aplomb. If there was concern that she was unduly intent on combating patriarchy, this was a matter to be discussed by the judiciary as a whole. And if in the meantime, she erred, she did so in favour of what she regarded as promoting human rights. In particular, she was to be commended for supporting the principle that the interests of the child should be paramount. [Emphasis added]

26. A review of the conduct of Lady Justice Martha Koome in Civil Application No Nai 48 of 2012 (UR 33 of 2012), National Cereals & Produce Board v Erad Suppliers & General Contracts Ltd (UR), IEBC v Khelef Khalifa & another Civil Application No 246 of 2017 (UR) and Kenya Revenue Authority v Prof Tom Ojienda & Law Society of Kenya, Civil Appln No 363 of 2019 (UR No 296 of 2018) confirms repetition and the malignance of the misconduct for which the MJVB was concerned with on her suitability to continue serving as a Judge.

27. It worth noting that Lady Justice Martha Koome applied for interview of Chief Justice and Judge of Supreme Court in 2016. The Judge was not appointed to either position. The notice of shortlisted candidates is produced at page 65 of NAH-6.

28. There is no indication and none has been given by JSC of how Lady Justice Martha Koome has improved in her integrity, competence and suitability

since the decision of the MJVB made on 21<sup>st</sup> September, 2012 and in 2016 when she missed the appointment, for her to have qualified for nomination by JSC for appointment as Chief Justice.

29. On the contrary, the conduct of Lady Justice Martha Koome in the three cases enumerated above, demonstrates action consistent with what the misconduct MJVB had warned her against and advised improvement.
30. JSC is yet to establish a formula or Rules for evaluation of the indicators of or marking scheme for integrity, competence and suitability for Chief Justice and Judge of Supreme Court. Nonetheless, there is precedent for what constitutes want of integrity, competence and suitability in the **Report of the Tribunal to Investigate the Conduct of the Deputy Chief Justice of the Republic of Kenya** which should guide the JSC in this exercise. The Report is produced at pages 33 to 69 of NAH-1.
31. The otherwise claimed “minor” infraction of pinching the nose of a guard by the then Deputy Chief Justice and attempts to conceal her wrong doing subsequent thereafter was sufficient to warrant the Tribunal probing her conduct to declare her as unsuitable to hold office.
32. The holding on the former Deputy Chief Justice’s plea for mitigation and aggravating consideration is at page 53 of NAH-1 is illustrative of this proposition:

The number of acts of alleged gross misconduct or misbehaviour is relevant in assessing the suitability of a judge to hold office. An isolated incident may be evidence of the fact that the act complained about was an aberration, a lapse from the normal and which is unlikely to recur. On the other hand, a pattern of conduct might show that the judge lacks judicial temperament and the ability to perform judicial functions in the manner anticipated by the Constitution and the Judicial Service Code of Conduct. In this inquiry we are dealing with a single incident. [Emphasis added]

33. The Tribunal concluded at page 54 of NAH-1 thus:

We are therefore not convinced that the Deputy Chief Justice can be expected not to engage in this kind of misconduct or misbehaviour in the future. Even if she does not engage in similar misconduct in future,

we are not convinced that she would not engage in other types of misconduct. Her failure to consider the effect of her misconduct on her staff and the reputation of the judiciary at the time of her actions leaves us with little confidence in her ability to refrain from future misconduct demeaning to the esteem of the judiciary. The fact that she improperly contacted witnesses in the absence of the Lead Counsel to the Tribunal also raises concerns about her ability to refrain from future misconduct. She has shown an inability to control her behaviour, demonstrating the strong likelihood she will continue to commit misconduct or misbehaviour in future. [Emphasis added]

34. The Tribunal formulated the following as values demonstrative of integrity for a Judge of the Supreme Court at page 55 of NAH-1:

Acceptability; accountability; acumen; agreeableness; alacrity; alertness; allegiance; amicability; amity; appreciativeness; candour; care, carefulness; caution; cautiousness; character; civility; commitment; compassion; compatibility; composure; concern; confidence; confidentiality; conscience; conscientiousness; considerateness; consistency; contentment; convictions; cordiality; correctitude; corrigibility; courtesy; credibility; decency; dedication; demeanour; devotion; dignity; diligence; discretion; dutifulness; empathy; endurance; elegance; eloquence; etiquette; excellence; expectations; fairness; faithfulness; felicity; fidelity; firmness; forbearance; forgiveness; gentleness; gentility; graciousness; gratitude; harmony; heartiness; honesty; honour; humaneness; humility; identity; impartiality; impeccability; impressiveness; incorruptibility; integrity; intuitiveness; kindness, laudability; leeriness; leniency; lenity; likeability; likeableness; manners; mercifulness; moderation; modesty; mutuality; patience; patriotism; peacefulness; perseverance; persistence; personality; pleasantness; politeness; praiseworthiness; predilection; preference; privacy; professionalism; propriety; providence; prudence; purposefulness; reasonableness; reciprocity; reliability; remorsefulness; resourcefulness; respectability; respectfulness; responsibility; responsiveness; reticence; righteousness; sagacity; satisfaction; self-control; self-confidence; self-discipline; self-respect; self-restraint; selflessness; sensibleness; sensibility; sincerity; sobriety; sociability; stewardship; tenacity; thoroughness; tolerance; transparency; trustworthiness; truthfulness; unselfishness; veracity; verity; virtue; vocation; volition; wariness; weal; well-being; wisdom; zeal.

35. Nothing more need be said to add to the exhaustive evaluation criterion set by the Tribunal. It is a fitting marking scheme for ascertaining integrity, competence and suitability in the nomination for appointment of a Supreme Court Judge.

36. It should be asked by the National Assembly whether on the basis of the matters raised in the Memorandum of 29<sup>th</sup> March, 2021 and the criteria set out in the Report aforesaid, Lady Justice Koome is suitable for approval for appointment of as Chief Justice of the Republic of Kenya. She is not.

37. I swear this Affidavit in objection to the approval by the National Assembly of Lady Justice Koome for appointment as Chief Justice of the Republic of Kenya.

38. The matters set out herein are true to the best of my knowledge.

SWORN by the said NELSON ANDAYI )

HAVI )

At Nairobi this 10<sup>th</sup> day of May, 2021 )

BEFORE ME )

)

COMMISSIONER FOR OATHS )

DRAWN & FILED BY:

HAVI & COMPANY

ADVOCATES

PARK SUITES, 3<sup>RD</sup> FLOOR, SUITE NO.4

PARKLANDS ROAD, OPP. PARKLANDS POST OFFICE

P.O. BOX 38422 - 00623

NAIROBI

**Mr. Stephen Owoko**

D/D's  
DLS  
Please deal  
Sub:  
07/05/21

Stephen Owoko,  
P.O. BOX 72540-00200  
Nairobi  
6<sup>th</sup> May 6, 2021

To the Chairman of legal and Constitutional Affairs  
Through the Clerk of the National Assembly  
Parliament Buildings  
Dear Sir,

*Abenayo Wasike*  
*pls facilitate consideration*  
*10/5/21*

RE NOMINATION OF MARTHA KOME TO THE OFFICE OF CJ

I would like to take this opportunity give my opposition to the nomination of the above judge to fill the position of the CJ and President of the Judiciary, my concern is based on the in Kenya constitution 2010 which talks of equity and regional balance. The two arms of government the Executive and legislature are already being led by Hon Uhuru Kenyatta and Hon justice Muturi both from Gema sub tribe or Mt.Kenya region, therefore it is not social moral right give the third arm of government to the person from Gema/Mt. Kenya.

My concern might seem like far-fetched and baseless to short sighted persons, but throughout history this kind of don't care attitude, insensitive to the tribal composition in any given country and the their feelings has always bred animosity that has led to tensions, wars and succession in some countries. Take example of the conflicts in Somali, Boko haram in Nigeria, the ongoing war in Tigray region in Ethiopia, Eritrea and South Sudan war of independence the never ending conflict in eastern DRC, the genocide of Rwanda 1994 and the split of the ancient Israel kingdom between the north and south all these were brought about by tribal favors by those that were in power at those given times, the same seed is being planted in Kenya.

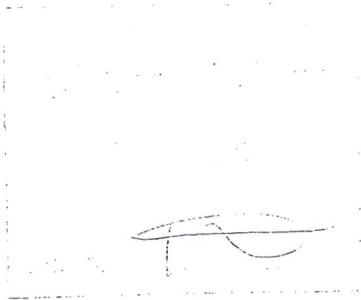
You have been called upon at times like this when political, social and economic situation in our country is wanting my prayer is that the good lord may grant you the spirit of knowledge, understanding and Solomonic wisdom on this matter to decision that is right for the future prosperity of ourselves, our children and grandchildren for generations to come

Should you need farther clarification I'm more than willing to do so.

*Stephen Owoko*  
Stephen Owoko

0722829062 / 0733180C76

NATIONAL ASSEMBLY  
RECEIVED  
DEPUTY CLERK  
P.O. Box 41042-00100 NAIROBI



STEPHEN OWOKO.

P.O.BOX 72540-00200.

NAIROBI.

Email [sowokoh@yahoo.com](mailto:sowokoh@yahoo.com)

Mob 0722829062 / 0733180076

18<sup>TH</sup> April 19, 2021

TO THE CHAIRPERSON,  
JUDICIAL SERVICE COMMISSION,  
P.O. BOX 40048 -00100.

NAIROBI.

Dear Madam,

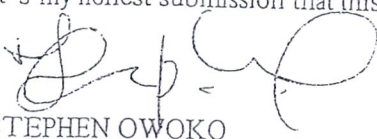
RE: A HONEST NATIONALISTIC OPINION ON CHOOSING THE NEXT CHIEF JUSTICE

I would like to take this opportunity to congratulate you for the difficult and tedious job of identifying the most suitable person out of all the applicants to be our next chief justice. When you are done with the interviews and you sit to review and compile your points I would urge that you consider the issue of **tribal and ethnicity** as a determining factor too in your selection.

Judiciary is one of the three arms of government as per the Kenyan 2010 constitution, the other two Executive and Legislature are being led by the Gema community, **President Uhuru Muigai Kenyatta** Executive and **Justin Muturi** legislature, on that note we should not have another Gema or kikuyu leading the judiciary it will mean the whole government is being headed by a single community and in any case we already have a kikuyu serving as a judge of the supreme court, it is your constitutional duty as the appointing authority to make sure that it reflects the face of Kenya.

There exists a silent law in countries like, Nigeria, Tanzania, Lebanon and many others that inform decisions of appointments in sensitive high national offices by inclusivity, national cohesiveness that is aimed at promoting peace, stability and prosperity.

It's my honest submission that this advice should help you in reaching a well-informed decision.

  
STEPHEN OWOKO

President Independence candidates

**Mr. James Kimathi**

**Kibunja**

Abercaino was  
pls facilitate consideration  
10/15/21

D/DC  
precedent  
6/5/21

OPPOSITION TO THE APPOINTMENT OF  
HON. LADY JUSTICE KOOME AS A CHIEF JUSTICE.

I Feel extremely sad and sorry to oppose the above appointment with all the due respect for the following reasons:-

While serving in the appeal court Nyeri, She overruled the decision of nine (9) Hon. Appeal court judges in civil application No.89 of 2009 (Eunice Karimi Kibunja Vs Paul Mwingi M'Ringera) and without production of evidence by the plaintiff (Eunice Karimi) the Hon. Judge changed the ownership of a piece of land thus disinheriting 11 siblings of M'Ringera.

2. In civil application No.9 of 2014 Nyeri, she unconstitutionally and illegally with the full knowledge of existence of Marathi academy and after production of the registration of certificate alienated the school land leading to an automatic closure of the school for KNEC registration requires LR No. which her decision / judgment changed. (See the attached letter)

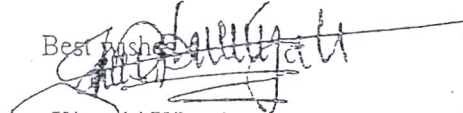
3. She deliberately and intentionally refused to recognize the family **alternative dispute resolution mechanism (ADR)** as agreed upon by the family and as enshrined in the constitution which has caused a lot of conflicts in the family, led to heavy litigation costs and destruction of property worth millions of shillings (Elc Civil application No. 35 of 2018 Meru).

Since these cases and other related matters are or might end up in the Supreme Court, I feel our family members might be greatly disadvantaged if she ascends to the above position for she has already shown partiality in this case.

JLAC can check the particulars of the pending civil appeal No. 29 of 2019 in the Supreme Court.

JSC has all these details and have acknowledged my complaint through a letter dated 6<sup>th</sup> April 2021 reference No. JSC 28 signed by Hon. Anne A. Amandi, CBS secretary to the commission.

The Hon Lady Justice Koome' convictions that our Laws are constructed on patriarchal basis and beliefs negates the principle of the rule of law, fairness and justice to all regardless of their gender and her decisions are bound to cause a lot of suffering to people of the opposite gender.

Best wishes  
  
James Kimathi Kibunja

Mobile: 0720 854 608 / 0733 493 290





REPUBLIC OF KENYA  
MINISTRY OF EDUCATION

State Department of Early Learning and Basic Education

Telegrams: "ELIMU" Meru

Email: [cdemerucounty@gmail.com](mailto:cdemerucounty@gmail.com)

When Replying please quote

COUNTY DIRECTOR OF EDUCATION

Meru County

P O Box 61- MERU

Ref: *MRU/C/EDUC/143/VOL II/104*

Date: 24<sup>th</sup> September, 2019

Proprietor/Director/Headteacher,

*Marathi Academy*

Through;

The Sub County Director of Education.

*Forwarded*

**RE: CLOSURE OF UNREGISTERED SCHOOLS IN MERU COUNTY:**

The County Education Board, meeting on 11<sup>th</sup> July 2019, noted with a lot concern that you are operating a private school without proper registration as provided for in the Basic Education Act 2013, Section 50(1).

You are therefore in violation of Section 50(4) of the act that states: *If any person (a) conducts a private school which is not a registered school or a provisionally registered school, or (b) being the proprietor of a private school does any act calculated to lead to the belief that the school is a registered school while it is a provisionally registered school, he or she shall be liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both such fine and such imprisonment.*

In view of this violation, your school is hereby ordered closed with immediate effect. You are required to convey the same message to all parents, teachers and pupils of your school. By a copy of this letter, the Sub County Director of Education is required to ensure 100% placement of all pupils who are in your school to other registered schools.

  
M. M. NZIOKA

COUNTY DIRECTOR OF EDUCATION/SECRETARY CEB  
MERU COUNTY.

cc:

1. The Principal Secretary, Ministry of Education, Nairobi.
2. Director, Quality Assurance and Standards, MoE, Nairobi.
3. Regional Director of Education, Eastern Region, Embu.
4. County Commissioner, Meru County. - for enforcement
- ✓ 5. All Deputy County Commissioners, Meru County- for enforcement

*Meru Central*

(Encl: Full list of un-registered schools)

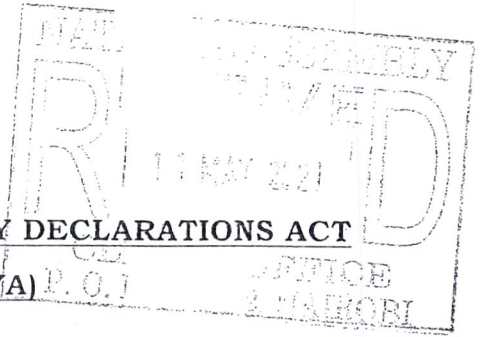


# **ANNEXURE 6**

## **SUBMISSIONS IN SUPPORT OF THE NOMINATION**

**HON.LILIAN WAKIYA**  
**MWAURA**

*Akenayo Wasike*  
*Pls facilitate consideration*  
*13/5/21*



**REPUBLIC OF KENYA**  
**IN THE MATTER OF THE OATHS AND STATUTORY DECLARATIONS ACT**  
**(CHAPTER 15, LAWS OF KENYA)**

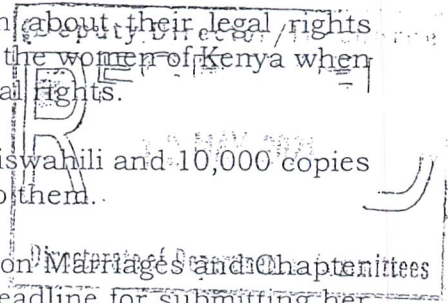
**IN THE MATTER OF APPROVAL BY THE NATIONAL ASSEMBLY OF HON. LADY JUSTICE MARTHA KOOME FOR APPOINTMENT AS THE CHIEF JUSTICE OF THE REPUBLIC OF KENYA AND PRESIDENT OF THE SUPREME COURT**

**AFFIDAVIT IN SUPPORT**

*D/DC*  
*see details on A*

I HON. LILIAN WAKIYA MWAURA of Post Office Box 50515-00200 Nairobi in the Republic of Kenya, **DO HEREBY MAKE OATH** and state as follows:- *12/5/21*

1. **THAT** I am an Advocate of the High Court of Kenya duly admitted to the Roll of Advocates on 26<sup>th</sup> October 1975 and a retired partner in the firm of K. MWAURA & COMPANY ADVOCATES (1975-2012).
2. **THAT** I am also a Chartered Mediator and the founder of FIDA Kenya Chapter as well as its first chairperson from 1985-1990.
3. **THAT** I have known Hon. Lady Justice Martha Koome since the late 80's when she was practising law at Mathenge & Mucheme Advocates at Agip House Building.
4. **THAT** our law firm was also situated in the same building.
5. **THAT** during my early legal practice I realized that women were being marginalized and discriminated upon, in all spheres of development particularly in family law because majority were not aware of their legal rights.
6. **THAT** I shared my concern with Hon. Justice Martha Koome who then came up with the brilliant idea of embarking on creating a legal awareness program tailor-made for women and society in general.
7. **THAT** in my capacity as FIDA Kenya Chairperson, I mobilized funds from the Norwegian Agency for Development Cooperation (NORAD) to publish a simple booklet entitled "A Kenyan Woman's Guide to Personal Law". I annex the booklet hereto as annexure "LWM 1".
8. **THAT** the purpose of the booklet was to teach women ~~about their legal rights~~ because knowledge of the law would be a powerful tool to the women of Kenya when advocating for their economic, political and social-cultural rights.
9. **THAT** the booklet was published in simple English and Kiswahili and 10,000 copies were distributed to women and youth groups at no cost to them.
10. **THAT** Hon. Lady Justice Martha Koome wrote Chapter 2 on ~~Marriages and Chapter~~ 5 on Violence against Women well in time, beating her deadline for submitting her contribution.




11. **THAT** during her private legal practice and indeed throughout her judicial journey, she has demonstrated her deep commitment in helping the marginalized and vulnerable members of the society, commitment to social justice, and respect of the rule of law.
12. **THAT** throughout her professional career she has dispensed her services with humility, hard work, a team-player approach, integrity and has been passionate and relentless in the protection of fundamental rights and freedoms of the society.
13. **THAT** as an established Advocate, I mentored Hon. Lady Justice Koome during her private practice and I am proud of her achievements.
14. **THAT** she demonstrated exceptional and transformative leadership qualities when she served as FIDA chairperson.
15. **THAT** I humbly submit that approval of Hon. Lady Justice Martha Koome as the Chief Justice of the Republic of Kenya and President of the Supreme Court will usher in a new and historic era in our judicial system, as she has what it takes to get the job done.
16. **THAT** I swear this Affidavit in support of Hon. Justice Martha Koome to be approved by Parliament as the Chief Justice of the Republic of Kenya and President of the Supreme Court
17. **THAT** what is deponed to hereinabove is true to the best of my knowledge, belief and information.

SWORN at Nairobi  
 on this 11<sup>th</sup> day of May.....2021  
 by the said

**HON. LILIAN WAKIYA MWAURA**

  
 \_\_\_\_\_  
 DEPONENT

BEFORE **JEFFREY MANYARA MOKUA**  
**ADVOCATE**  
**COMMISSIONER FOR OATHS &**  
**NOTARY PUBLIC**  
**P.O. Box 16512 - 00620**  
**NAIROBI**  
**COMMISSIONER FOR OATHS**

Drawn by:  
  
**HON. LILIAN WAKIYA MWAURA,**  
**P.O. BOX 50515-00200,**  
**NAIROBI.**

**Mr. Alexander Kireria**

**To Speaker  
The National Assembly Kenya  
Parliament Building  
Nairobi**

**Date: 6<sup>th</sup> May, 2021**

Email: clerk@parliament.go.ke.

**RE: PUBLIC MEMORANDA ON LADY JUSTICE MARTHA KOOME'S NOMINATION AS CJ**

I am writing this Memoranda following the National Assembly call on members of the public to submit views on the nomination of the Lady Justice Martha Koome for appointment as the country's fifteenth Chief Justice and the third President of the Supreme Court of Kenya.

### **1.0. Introduction**

My Names are Alexander Muriithi Kireria, a Kenyan and an Economist by profession and currently Senior Partner with Health & Economics Finance Development Consortium (HEFDC Group). The firm currently celebrating its 40 years since inception, is based in Nairobi Kenya with project sites in Eastern, Southern, Central and Western countries in Africa. Our clients include public institutions/Governments, parietals, NGOs, private sector and international agencies (UN, multilateral and bilateral agencies etc).

Therefore, based on our professional experience and wide ranging service clientele that cut across both the public, institutions and private sector, we have the necessary knowledge of judgment or recommendations of individual or institutional performance with equal measures.

### **2.0. Support for Koome's Suitability on the Position of Chief Justice**

I personally, have known the Chief Justice Nominee, Lady Justice Martha Karambu Koome for over 35 years, both as a neighbor, church and other professional interactions both as a practicing Lawyer, Judge of both High Court and Court of Appeal.

## **1. Her wide cross-cutting experience:**

Without mentioning her exemplary professional qualifications and impeccable track record as a Lawyer, administrator in justice system, human rights and children defender, Justice Koome is also a good researcher with professional acumen and God fearing person, humane and gets along well with people of all ages, gender and race. I strongly believe that these are among the trait that earned her broad acceptance, as exemplified by the JSC's unanimous decision and nomination that Lady Justice Martha Karambu Koome of the Court of Appeal would be Kenya's new Chief Justice of Kenya. Having interacted with her both professionally in public and private service, and also in various gatherings, I would not hesitate in joining the JSC's description of Martha as: highly efficient, accessible, friendlier and hardworking public servant.

## **2. Transparency and Accountability:**

*Chief Justices and other judges are called to champion transparency and accountability in all their endeavors as they dispense justice and judicial management affairs without fear or favour*

In demonstration of her transparency and accountability, Justice Martha Karambu Koome was the first judge to opt for public sessions for her interviews with the Judges and Magistrates Vetting Board in May 2012 and she never retracted during other interviews including not shying away from her detractors. Her crusade for transparency and accountability in domestic and public institution was well demonstrated during her career with the International Federation of Women Lawyers in Kenya (FIDA-Kenya) as chairperson, she lobbied and led the civil rights organization in securing women's participation in the constitutional review process, and championing the establishment of the family division of the High Court, as well as the enactment of laws to protect the rights of families and children.

### **3. Interpersonal Relationship and Networking Acumen:**

*The position of Chief Justice require, the holder to be well connected and one who gets along with different kind of people and institutions. During her various positions and appointments, spanning over 30 years, Justice Koome has built a strong national, regional and international networks, which she can use as CJ to strengthen judiciary through partnerships and collaborations in various ways including resource mobilization and professional networks to support judicial systems and judiciary as a whole.*

To mention only a few of her experience , her service on the African Union Committee on the Rights and Welfare of Children (ACRWC-between 2005-2010), she headed the Land and Environment Division of the High Court in various stations, serving in the commercial and family divisions of the High Court in Nairobi. Her performance as the chairperson of the Task Force on Children Matters which include comprehensive review legislation, policy and rules of procedure to promote and protect the rights of children, culminated in her being honored as a UN Kenya Person of the Year in 2020 runner-up for her advocacy to improve the legal rights of women and children in the justice system.

#### **3.0. Handling of the Dwindling Budget Allocations to Judiciary**

More than many other sectors, the Judiciary's annual budget allocations by the Government has been declining year after year. For instance, in 2020-2021 Financial Year, judiciary received Ksh18.1 billion that marked a marginal decline from Sh18.8 billion allocated under the 2019/2020 FY budget. Undoubtedly, the reduction in the allocation created a huge gap for the institution already hard-pressed to cope with rising caseloads, understaffed and strained infrastructure.

Under the circumstances, it is of noteworthy that instead of creating rapport with the institutions and systems that deal with budgetary processes and decision making to cement a strained relationship between the Executive and Judiciary, with a view to negotiate for improved annual budgets from persistent cuts, the immediate holder of the office Chief Justice continued widening the gap. The CJ continued to lamenting, complaining sometimes in public, while the institution continued to suffer.

Any further continuation with annual budgetary cuts to Judiciary, will mean crippling the institution to the extent of having a Judiciary not able to sustain mobile courts to expand access to justice by Wananchi, it also means suspending ongoing and future projects as well increased case backlogs given that more staff cannot be hired or deployed.

To move the institution from this kind of budgetary quagmire, it requires the holder of the Chief Justice office to be a person with strong interpersonal character, diplomat, a go-getter who will go out to create informal and formal working relationship with the Executive, Parliament, Development partners and other like-minded networks. Based on her experience and negotiating capacity, Lady Justice Koome meets all these characteristics, hence her suitability in the position of Chief Justice include goes far beyond imagination.

She has what it takes to push for better and improved budgets, grants and her own professional skills to initiate efficient and effective financial management to ensure the cash-starved judiciary gets out the hole it is currently in.

My overall recommendation for the Lady Justice Koome's nomination by Parliament is anchored on her following few achievements some of which are highlighted below:

- As the Chair of Special Taskforce on Children Matters (appointed vide Gazette Notice No. 369 of 29th January 2016), she spearheaded other team members in addressing all gaps regarding the administration of justice with regard to children and delivered all the Sixteen areas as mandated by the terms of reference.
- Through her personal initiatives, the US State Department of Justice pledged to support the Judiciary in ensuring that children cases are heard and determined expeditiously and in accordance to the Children Act to ensure that those in conflict with the law and victims of crimes are not negatively affected by the judicial processes;

- Developed guidelines for Child Protection Units and proposed mechanisms for the establishment of Child Police Unit in the National Police Service including improved co-ordination of the Juvenile Justice Actors at the National and County level;
- The Taskforce on Children Matters headed by Lady Justice Martha Koome trained Court Users Committee (CUC's) members in various courts across the country on Alternative Dispute Resolution (ADR) mechanisms such as plea bargaining and Court Annexed Mediation by partnering with the Mediation Accreditation Committee and the Office of the Director of Public Prosecutions to ensure successful clearance of cases;
- She lobbied the relevant Government Departments on the need for the National government to consider fully funding the National Legal Aids Fund to ensure children get the much needed legal support;
- Using the Task force recommendations and guidelines, the Ministry of Interior has been working to establish a fully functional Child Protection Unit in each Police Station to handle children matters.

Based on my presentations highlighted in paragraphs above, I am convinced beyond reasonable doubt that the National Assembly will favourably consider nominating the Lady Justice Martha Koome for appointment as the country's fifteenth Chief Justice and the third President of the Supreme Court of Kenya.

Yours Sincerely,

*akireria*

**Alexander M. Kireria**  
Chief Economist/Senior Partner  
HEFDC Group, P.O. Box 54250-00200  
Nairobi Kenya. Tel: +254722745828

**Mr. Jared Nyachiro**

*Abenayo Wako*  
*to write to, nominee of*  
*reply and detail*  
*legal officer to*  
*prepare letter*  
*the committee*  
*11/5/21*

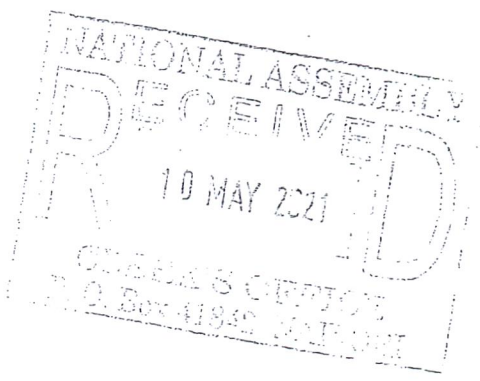
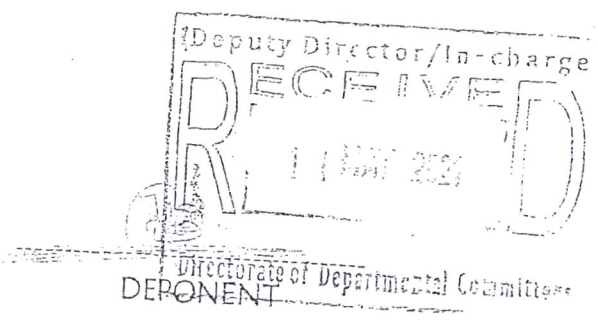
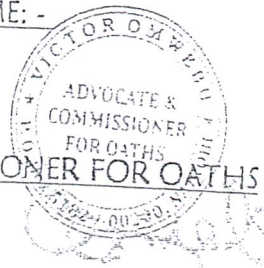
REPUBLIC OF KENYA  
IN THE MATTER OF THE OATHS AND STATUTORY DECLARATIONS ACT, CAP 15 OF THE LAWS OF KENYA

**AFFIDAVIT**

I, JARED NYACHIRO, a resident of Nairobi within the Republic of Kenya being an adult male of sound mind do make oath and state as follows: -

1. THAT I am a Kenyan citizen and the General Manager of Bedrock Security Services Limited.
2. THAT I have lodged memorandum on the suitability of the Chief Justice Nominee, Lady Justice Martha Koome, in response to an advert that appeared in the national newspapers inviting the public to present their submissions on the suitability of the nominee.
3. THAT I have lodged the memorandum on behalf of and with the authority of Bedrock Security Services Limited for the consideration of the parliamentary Justice and Legal Affairs Committee in the vetting of the said nominee.
4. THAT all that is deponed to herein above is true to the best of my knowledge, information, and belief.

SWORN at NAIROBI by the said }  
JARED NYACHIRO }  
This 7<sup>th</sup> day of May 2021 }  
BEFORE ME: - }  
COMMISSIONER FOR OATHS }  
}



International  
Commission of Jurists  
(ICJ)



**icj**

International  
Commission  
of Jurists

KENYAN SECTION Since 1959

MEMORANDUM ON THE SUITABILITY OF HON. LADY JUSTICE MARTHA KOOME  
AS CHIEF JUSTICE OF THE REPUBLIC OF KENYA

PRESENTED TO

THE NATIONAL ASSEMBLY -  
THE TWELFTH PARLIAMENT (FIFTH SESSION)

IN THE MATTER OF CONSIDERATION BY THE  
JUSTICE AND LEGAL AFFAIRS COMMITTEE

12 TH MAY 2021

SUBMITTED BY:

The Kenyan Section of the International Commission of Jurists

ICJ Kenya House, Off Silanga Road, Karen

P.O. Box 59743-00200, Nairobi, Kenya

Office Tel: +254-20-2084836/8 | +254 720 491549

Email: [info@icj-kenya.org](mailto:info@icj-kenya.org)

## 1.0 INTRODUCTION

- 1.1. The Kenyan Section of the International Commission of Jurists (ICJ Kenya) mission is to promote human rights, democratic governance, justice, and law rule in Africa. ICJ Kenya's strategic interventions include strengthening the justice sector institutions' capacity, integrity, and accountability by promoting adherence to applicable standards and best practices for judicial independence, transparency, and integrity.
- 1.2. In furthering our vision and mission, ICJ Kenya submits its memorandum of views to the Justice and Legal Affairs Committee of the National Assembly on the suitability of Hon. Justice Martha Koome as Chief Justice of the Republic of Kenya. Our views are premised on the principles and best practices of international, regional instruments on judges' appointment and the selection<sup>1</sup> and ICJ Kenya's memorandum to the Judicial Service Commission on the recruitment of the Chief Justice and Supreme Court Justice of the Republic of Kenya<sup>2</sup>

## 2.0 BACKGROUND/CONTEXT

- 2.1. On 20 January 2021, the Judicial Service Commission (JSC) publicly advertised the vacancy of the Chief Justice and the Judge of the Supreme Court of Kenya and invited interested persons to apply to the posts. This followed the declaration of the vacancies vide Gazette Notices No. 386 and No. 1606 dated 18 January 2021 and 21 February 2020, respectively.
- 2.2. On 10 February 2021, the JSC issued a statement on the applications received for vacancies in the Chief Justice and Judge of Supreme Court offices. The JSC received thirteen (13) applications for the position of the Chief Justice and nine (9) applications for the position of the Judge of the Supreme Court.<sup>3</sup>
- 2.3. Pursuant to the First Schedule of the Judicial Service Act, the JSC shortlisted candidates for interviews for appointment as the Chief Justice of the Republic of Kenya. Accordingly, and per Article 166 of the Constitution of Kenya, the JSC conducted interviews for the position of Chief Justice in the period between 12 and 23 April 2021.
- 2.4. The JSC, through a statement issued on 27 April 2021, noted that it had finalised the process of evaluation of the various candidates interviewed and unanimously nominated Hon. Lady Justice Martha Koome for the vacant position of Chief Justice of the Republic of Kenya. JSC forwarded her name to President Uhuru Kenyatta, who recommended her to the National Assembly for vetting and approval for appointment.

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<sup>1</sup> These include the Dublin Declaration on Standards for the Recruitment and Appointment of Members of the Judiciary; Lilongwe Principles and Guidelines on the Selection and Appointment of Judicial Officers adopted at the Southern African Chief Justices' Forum Conference and Annual General Meeting, Lilongwe, October 30, 2018; the Commonwealth Principles on Appointment, Tenure, and Removal of Judges under Commonwealth; and the Bangalore Principles on Judicial Conduct.

<sup>2</sup> Available on <https://www.jsc.go.ke/wp-content/uploads/2021/03/ICJ-Kenya-Submissions-to-the-JSC-on-CJ-and-SC-Judge-Final.pdf>;

<sup>3</sup> Judiciary Service Commission (2021) JSC statement on applications for vacancies in the offices of the CJ & Judge of Supreme Court, retrieved from <https://www.judiciary.go.ke/jsc-statement-on-applications-for-vacancies-in-the-offices-of-the-cj-judge-of-supreme-court/>

### 3.0 INDEPENDENT MONITOR

ICJ Kenya observed the recruitment process as an independent monitor. ICJ Kenya formally requested and informed the JSC of its intention to monitor the interview process. Consequently, ICJ Kenya developed a monitoring framework based on the guidelines and recommendations provided by international and regional principles, declarations on the recruitment of judicial officers.<sup>4</sup> ICJ Kenya also considered the constitutional and national legal frameworks on recruiting judicial officers, including the Constitution of Kenya 2010 and the Judicial Service Act 2011.

This memorandum is informed by qualitative and quantitative evaluations carried out by ICJ Kenya before, during, and after the process of recruitment by the JSC. The memorandum is further premised on feedback from public surveys and evaluations conducted during the process.

### 4.0 ICJ KENYA VIEWS ON THE NOMINATION OF HON. LADY JUSTICE MARTHA KOOME

#### 4.1. Professional Competence, Leadership, and Commitment

ICJ Kenya acknowledges and profoundly appreciates Hon. Lady Justice Martha Koome's achievements in her illustrious career spanning a cumulative 33 years in private legal practice and on the bench. The leadership she provided at the International Federation of Women Lawyers in Kenya (FIDA Kenya) led to the development of the blueprint that established the Governance, Justice, Law and Order Sector (GJLOS) reform initiative, now institutionalised as the National Council on the Administration of Justice (NCAJ).

ICJ Kenya particularly commends the Honourable Judge for championing women's rights while at FIDA Kenya, her involvement in securing women's participation in the constitutional review process and championing the establishment of the family division of the High Court, as well as the enactment of laws to protect the rights of families and children. In addition, we appreciate the role that she played as a council member at the Law Society from 1993 to 1996 and treasurer of the East Africa Law Society, further to her service at the African Union Committee on the Rights and Welfare of Children (ACRWC) between 2005 and 2010.

ICJ Kenya further appreciates and recognises her leadership at the Land and Environment Division of the High Court in Nairobi, as a resident judge in Nakuru and Kitale, and commercial and family divisions of the High Court in Nairobi. She was also the elected Chairperson of the Kenya Judges and Magistrates Association (KMJA) in 2010 and is currently Chairperson of the Task Force on Children Matters with a mandate to review legislation, policy, and rules procedure to promote and protect the rights of children.

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<sup>4</sup> Ibid 1 above

ICJ Kenya acknowledges Justice Martha Koome's academic and professional competence. She holds a Master of Laws from the University of London (2010) and a Bachelor of Laws from the University of Nairobi (1986) and was admitted to the Roll of Advocates in 1987. Notably, in 2020, the United Nations in Kenya honored Justice Koome as "Person of the Year" for her advocacy to improve the legal rights of women and children in the justice system. The award was conferred to her following a joint nomination by the UN Office on Drugs and Crime (UNODC) and United Nations Children's Fund (UNICEF).<sup>5</sup>

#### 4.2. Integrity, Decisional independence, Fairness, and Good judgment

On 14 April 2021, ICJ Kenya keenly followed Hon. Lady Justice Koome's interview for the position of CJ. In the interview, she responded to concerns raised concerning the 2017 Court of Appeal decision to set aside a High Court judgment that found that the appointment of returning officers for the 26 October 2017 fresh presidential election in contravention with the law. In the interview, she gave compelling arguments to support the Court's decision, particularly that on appeal, the Supreme Court agreed with the reasoning of her bench.<sup>6</sup>

Despite interviewing panel's concern that she supplied Court of Appeal judgments as sample writings for the JSC interviews<sup>7</sup>, Justice Koome defended her decisional independence. It established her judicial philosophy amongst the multiple-member bench.

Hon. Lady Justice Martha Koome's decisions at the High Court and the appellate Court saw her break ranks with her colleagues on the bench. To a great extent, her contribution influenced the Court's decision in coming up with the formula for arriving at the date of the General Election in 2017. Further, Justice Koome demonstrated judicial independence and judicial philosophy through her submissions to the JSC and her various judgments.

As a Commission of jurists, we noted her legal essay submitted to the JSC as sample writing that provides insights into her judicial philosophy. She unpacked the legal challenges in the mandatory death sentence and the binding nature of the Supreme Court decision in *Muruatetu*. In her sample writing, she advocates for a revision of the Sentencing Guidelines to provide for degrees for categorising the circumstances in which offenders of serious crimes are sentenced— especially in mandatory death penalty and sexual offences cases.

#### 4.3. Regional orientation, networking, and management skills

Hon. Lady Justice Koome has demonstrated the ability to establish, draw support and collaboration from regional and global networks and partnerships. In her previous roles at FIDA Kenya, the KMJA, and Law Society of Kenya, she spearheaded resource mobilisation strategies, including partnerships/collaborations with national and regional organisations supporting capacity-building initiatives for judicial officers and advocates. This skillset puts the

<sup>5</sup> UNODC (2020) *UN recognizes Kenyan champion of children's rights to justice*, retrieved from <https://www.unodc.org/easternafrika/en/Stories/un-recognizes-kenyan-champion-of-childrens-rights-to-justice.html> 10.05.2021

<sup>6</sup> TV47 (2021) Lady Justice Martha Koome JSC interview for the position of Chief Justice, retrieved from <https://www.youtube.com/watch?v=z1wh7v17vS8> 10.05.2021

<sup>7</sup> This is attributed to the fact that she provided judgments made at the Court of Appeal which is a multiple judicial member bench.

Lady Justice at an advantage to address the challenge of resource mobilisation in the Judiciary.<sup>8</sup>

Further, ICJ Kenya contents that Lady Justice Koome inspires confidence in the entire region and community to drive the apex court to deliver decisions that will be groundbreaking at national and regional, and global levels.

ICJ Kenya acknowledges the critical role that Kenya plays in great lakes to maintain economic and political stability and the function the Judiciary has to play to ensure a stable business climate<sup>9</sup>. We posit that Lady Justice Martha Koome will build confidence in the ability of the Judiciary to undertake its Constitutional mandate of resolving disputes in a timely and expeditious manner, ensuring due respect for human rights and democracy. An efficient Judiciary is critical in establishing and strengthening the African Union and trade within Africa.

#### 4.4. Temperament and Emotional Intelligence

Undoubtedly, Hon. Lady Justice Koome has a calm demeanor, temperamental self-control, and exhibits immense humility.<sup>10</sup> In addition, she has impeccable interpersonal skills and emotional intelligence. These skills will increase confidence amongst peers and facilitate engagement with stakeholders at all levels, including development partners, civil society, and the public large.

#### 4.5. Propriety, appreciation, and application of internationally accepted human rights principles

Hon. Lady Justice Martha Koome exhibited an innate ability to understand and conform to conventionally accepted standards of behaviour or morals. As seen in her previous track record, achievements and awards, she espouses, appreciates, and applies internationally accepted human rights principles in her work. ICJ Kenya confirms this by virtue of the partnership with KMJA, where she served as the Chairperson. Through KMJA and, by extension, the East Africa Magistrates and Judges Association (EMJA), ICJ Kenya worked cordially to implement a project to enhance the application of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, popularly referred to as the Maputo Protocol,<sup>11</sup> through developing a gender policy for East African Judiciaries. Hon. Justice Martha Koome also supported the reform agenda to ensure vetting for judicial officers before the appointment to office.

<sup>8</sup> See W. Menya, 'Treasury CS Raids Judiciary Cooffers to Fund Presidential Poll,' retrieved from <https://www.nation.co.ke/news/Treasury-CS-raids-Judiciary-cooffers-to-fund-election/1056-4119008-e5wtec/index.html> on 15 March 2021

<sup>9</sup> Kenya's current ranking of 61 out of 180 countries in the World Bank's doing business.

<sup>10</sup> Ibid 5 above.

<sup>11</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, (the Maputo Protocol), was adopted on July 11, 2003 to complement and strengthen the articles of the African Charter related to the protection and promotion of women's rights. It is an important instrument of reference given its broad provisions that seek to protect the rights of women, and it is a symbol of the commitment of African States' to end discrimination, violence, gender stereotypes against women and other violations against women.

#### 4.6. Strategic engagement with the other arms of government

From her track record, achievements, and evaluation of her performance at the JSC interviews, Hon. Lady Justice Martha Koome is a bold and courageous jurist who can prioritise the ordinary '*Mwananchi*' needs. Notable, she exhibits skills in political strategy and demonstrated abilities to build relationships for political access.

During her interview, she articulated a clear roadmap to engage the other two heads of the Executive. She emphatically spoke to independence and interdependence between the arms of government. She highlighted the need to engage parliament on Judicial independence, particularly, to address the disobedience of Court orders and judicial funding – which are perpetual problems that stem from the fragmented relationship between the Judiciary and other arms of government.

#### 4.7. Equality and Inclusion Principle - The Gender Consideration

ICJ Kenya commends the JSC and the President of Kenya for considering gender equality as articulated under Goal 5 of the Sustainable Development Goals (SDG), which recognises the need for the provision of women and girls with equal access to education, health care, decent work, and representation in political and economic decision-making processes. Hon. Lady Justice Koome's nomination and appointment indicate the will to foster gender equality in Kenya's governance architecture and particularly within the judiciaries in the appointment and selection process. This is likely to inspire other states in the region, strengthen the administration of justice which is in line with regional instruments such as the Maputo Protocol.

### 5.0 CONCLUSION AND RECOMMENDATION

ICJ Kenya submits to the Honourable Members of parliament that it affirms its complete confidence in Hon. Lady Justice Martha Koome's innate abilities to serve as Chief Justice of the Republic of Kenya. We commend the JSC for undertaking this critical task in a manner that conforms to national, regional, and international principles and best practices on the appointment and selection of judges.

Finally, ICJ Kenya congratulates Hon. Lady Justice Martha Koome and wishes her the best as she makes history by becoming Kenya's first female Chief Justice.

**Dr. Jennifer Riria of  
Democracy Trust  
Fund**



*Abarigo Wabike*  
*pls facilitate consideration*  
*11/5/21*

DEMOCRACY TRUST FUND  
*Karambu*

07-05-2021

To: The Clerk,  
The National Assembly  
Twelfth Parliament – Fifth Session  
Att. Mr. Michael R. Silai

*D/D C*  
*11/5/21*

ASSEMBLY  
EIVE

10 MAY 2021

CLERK'S OFFICE  
P.O. Box 41870

Dear Sir,

REF. Approval by the National Assembly for Hon. Lady Justice Martha Karambu Koome for the Appointment as the Chief Justice of the Republic of Kenya and the President of the Supreme Court

The Board, Management and staff of Echo Network Africa ( ENA) formerly Kenya Women Holding (KWFT) together with our Local implementing partners represented by the Democracy Trust Fund ( DTF) make this submission in response to the public advertisement by the National Assembly inviting Kenyans to send views on the nomination of Hon. Lady Justice Martha Karambu Koome as Chief Justice of the Republic of Kenya and President of the Supreme Court.

Lady Justice Martha Karambu Koome has been known to Echo Network Africa and myself since 1992. She has been part of the journey that has seen the institution grow from a small entity until 2010 when it transformed into two distinct institutions namely: KWH which adopted the development mandate and the KWFT-Bank which has since grown from one of the first credit-only institutions into a Bank – the KWFT Bank. Hon Lady Justice Martha Karambu Koome was one of the first Board Members of this institution that has now evolved into KWFT Bank, Echo Network Africa, and the Democracy Trust Fund. When she joined KWFT as a Board Member the institution needed to develop its policies and procedures to support the development, implementation, and monitoring of initiatives. Additionally, the institution needed to put in place systems, including all legal statutes required to ground the institution. Lady Justice Martha Karambu Koome played a pivotal role in the development and

*11/5/21*  
Directorate of Departmental Administration

growth of the governance structures of the institution. These structures formed the basis on which both ENA and KWFT-Bank have grown their portfolio to serve women over the whole country over the last three decades plus.

The Hon. Lady Justice Martha Karambu Koome is a dependable, honest, truthful, and committed partner who goes out of her way to support causes she believes in. She is a God-fearing and humane individual who demonstrates true servant leadership while exhibiting tolerance to dissent and respect for all regardless of their social strata.

The Hon. Lady Justice Martha Karambu Koome is well read and does not settle for the mundane. She always seeks to increase her knowledge base and sharing the same with others to ensure she does not leave others behind.

Despite her vast experiences and growth in her career spanning over Thirty years, Hon. Martha Karambu Koome does not ride roughshod and treats people with dignity and respect regardless of their class in life. She is humble, approachable, and down to earth. Always considering other people better than herself and giving everybody room to express themselves and seeking the best out of others.

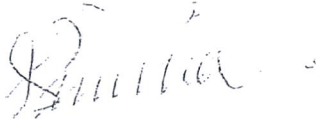
The Hon. Lady Justice Martha Karambu Koome is unsettled by injustices especially to the less fortunate and vulnerable especially children and women. She has spent a considerable time advocating and seeking justice for such, attracting the attention of the United Nations who awarded her Runners up Person of the Year 2020 in recognition of her advocacy for the rights of children and women.

Lady Justice Martha Karambu Koome brings into the Judiciary expansive knowledge from a practical perspective. She upholds the principle that "A great Nation is nothing without an efficient workforce". In addition, she will indeed, lay emphasis on servant leadership principle, accountability for results and espouses the principle of a "complete finisher" at the judiciary.

We at ENA and DTF are completely convinced that Hon. Lady Justice Martha Karambu Koome is fit for the job of Chief Justice of the Republic of Kenya and President of the Supreme Court and that given the opportunity, she will take this critical arm of government to the next level. Our country will be the richer with Lady Justice Martha Koome at the helm of the Judiciary.

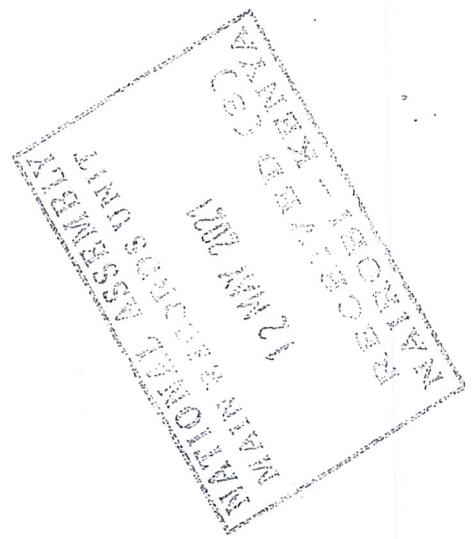
We, therefore, urge the National Assembly to move with speed and confirm the appointment of Hon. Lady Justice Martha Karambu Koome to the position of Chief Justice of the Republic of Kenya and President of the Supreme Court.

Yours sincerely,



DR. JENNIFER RIRIA, PH.D., EBS, MBS, HRH/GOODWILL AMB, ICON/HP  
GROUP CHIEF EXECUTIVE OFFICER, ECHO NETWORK AFRICA  
PATRON, DEMOCRACY TRUST FUND

**FEDERATION OF  
INTERNATIONAL WOMEN  
LAWYERS (FIDA)-KENYA**



## MEMORANDUM TO THE NATIONAL ASSEMBLY- TWELFTH PARLIAMENT

In the matter of the Approval by the National Assembly of Hon. Lady Justice Mariha Karambu Koome for appointment as the Chief Justice of the Republic of Kenya and President of the Supreme Court

*Read on  
Supports*

May 2021

SUBMITTED BY:

FEDERATION OF WOMEN LAWYERS-KENYA  
Amboseli road-Off Gitanga Road  
P.O Box 46324-00100 Nairobi Tel: 254 202 2604043/4  
Website:[www.fidakenya.org](http://www.fidakenya.org)

## INTRODUCTION

The Federation of Women Lawyers (FIDA) -Kenya is a non-governmental, non-partisan, non-profit making organization established in 1985 with a mission to promote women's individual and collective power to claim their rights in all spheres of life. The organization works towards addressing challenges facing women's access to their social, political, and economic rights.

FIDA-Kenya is responding to the call by the National Assembly dated 30th April 2021. The notice sought views from the public and stakeholders on the suitability of the Chief Justice. Taking cognizance of the constitutional provisions that guide this recruitment process and the express provisions in the Public Appointments (Parliamentary Approval) Act FIDA Kenya adds its views that are core to its mandate and related to the outcome of this recruitment process. In particular, the memorandum will seek to reflect on the exemplary contributions of Hon. Justice Martha Koome, Court of Appeal Judge and FIDA-Kenya Chairperson Emeritus in advancing social, political, and economic rights and women and girls.

### 1. Outstanding Jurist

The Judiciary is the state's primary symbol of justice. Justice through the Judiciary must be perceived to advocate the laid principles of access to justice. As it has been documented by many scholars and FIDA-Kenya, access to justice permeates all aspects of the justice chain from the actual physical access to facilities; to the right of appearance and representation in the court; to advocacy and public education for the poor; to reforms in the justice sector; to ultimately measuring the quality of the judicial outcomes by managing the obstacles faced by those trying to access the judicial system. Access to justice in present times has incorporated adaptation to the COVID- 19 pandemic and its negative effects. Access to justice must also be within reach for all sections of society including the vulnerable and marginalized in the society.

Justice Martha Koome commands over 33 years experience in the legal profession and has immense experience on matters access to justice. Justice Koome is a renown legal practitioner nationally and regionally having practiced law for over 15 years before she joined the bench in 2003. Justice Koome was actively involved in public interest matters and has previously served as a Council Member of the Law Society of Kenya as well as a Chairperson of FIDA-Kenya, the premier women rights institution in the region. During her tenure at FIDA-Kenya, she was at the helm of law reform and participated in the review process that culminated in the Constitution of Kenya 2010. During her

engagement in the process she was pivotal in the review of family laws which she is passionate about and provide pro bono services to many indigent women and children for sort help and assistance from FIDA Kenya. Justice Koome also represented FIDA-Kenya in the GJLOS initiative that was instrumental in the reform of the justice sector in Kenya. Justice Koome was also pivotal in the establishment of the East African Law Society and was the inaugural Council Treasurer.

She has been core and thorough in her case management initiatives during her tenure as the Presiding Judge at several High Court stations by improving customer relations, reducing the perennial backlog and improving the expeditious disposal of cases. In this, she has been feted both Nationally and Internationally. She has also employed her rich experience in human rights law and family law in advancing jurisprudential discourse through access to justice innovations as was in the case of *Echaria vs. Echaria*<sup>1</sup>.

## 2. Exemplary Judge

Justice Martha Koome was appointed to the bench as High Court Judge in 2003. Her first posting was to the Family Division where she initiated transformative reforms in the case management. FIDA-Kenya alongside other stakeholders who actively practice in this division attest to the reforms that were people centered and aimed at enhancing access to justice for all persons in society especially the vulnerable and marginalized. This is a key tenet of any effective judicial system. Justice Koome has worked beyond the family division of the High Court and has worked in other divisions such as the Commercial Division and the Environment and Land Division which attests to her all round knowledge and expertise in the law.

This extensive knowledge of the law is crucial for the effective leadership of the Judiciary through the office of the Chief Justice. Justice Koome already espouses this attribute among many other qualities. It is these qualities that have seen Justice Koome rise from the position of High Court Judge to that of Court of Appeal Judge where she has continued her impressive and stellar execution of her duties. Justice Koome has been a trailblazer in the creation of progressive jurisprudence that encompasses the social economic and cultural rights espoused in the bill of rights under the Constitution of Kenya 2010. Justice Koome was part of the bench that delivered the landmark

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<sup>1</sup> Peter Mburu Echaria vs. Priscilla Njeri Echaria (2007) eKLR

decision on the Teachers Service Commission and their vicarious liability on protecting children from sexual harassment and defilement.<sup>2</sup>

Within the Judiciary, Justice Koome has continued to play significant roles besides her discharging her tasks in the administration of justice dutifully. She is a past Chairperson of the Kenya Judges and Magistrates Association (KMJA). Justice Koome is also a past Council Member of the East African Judges Association(EAJA). In both of these positions, Justice Koome has been instrumental in enhancing the welfare of members of the judiciary in Kenya and in East Africa.

### 3. Exceptional Leader

Throughout her illustrious career, Justice Koome has demonstrated strong and outstanding leadership qualities. She has been a past Council Member of the Law Society of Kenya and where she was instrumental in driving legislative reform in public interest matters. Justice Koome was actively involved in FIDA-Kenya matters as a member and also in the governance of the organization which is a leader in championing women rights matters globally.

Justice Koome was a Vice Chairperson of FIDA-Kenya between the years 1996-1998 and subsequently took over the Chairpersonship from 1998-2002. These were definitive years for Kenya that key milestones achieved in the quest for multi-party politics in Kenya and also saw the reign of Kenya's longest serving President come to an end. It was a historical era for the change in the country and Justice Koome did not shy away from the clamour as a jurist but was at the fore front of leading the change. While at the Judiciary, Justice Koome has very ably occupied key leadership roles and executed her duties with great diligence and commitment. She has headed the Family Division of the High Court and has been a Resident Judge in various courts such as Kitale and Nakuru. In her leadership, she was able to display outstanding management skills that helped address key challenges such as case backlog and bar-bench relations.

Justice Koome has also headed the NCAJ Special Task Force on Children matters which has been instrumental in shaping the interaction of children in Kenya with the law. This was a huge undertaking given the high numbers of children in conflict or in need of the protection of the law. Justice Koome displayed great leadership in steering this taskforce that has proposed landmark reforms to the Children Act in Kenya. In execution of this task, she was able to establish and build rapport as well as network

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<sup>2</sup> Teachers Service Commission v WJ& 5 others (2020) eKLR

with international, regional and national actors who were part of the taskforce and additionally was able to resource mobilize for the activities of the taskforce which brought out her ability to coalesce like-minded actors towards a common goal.

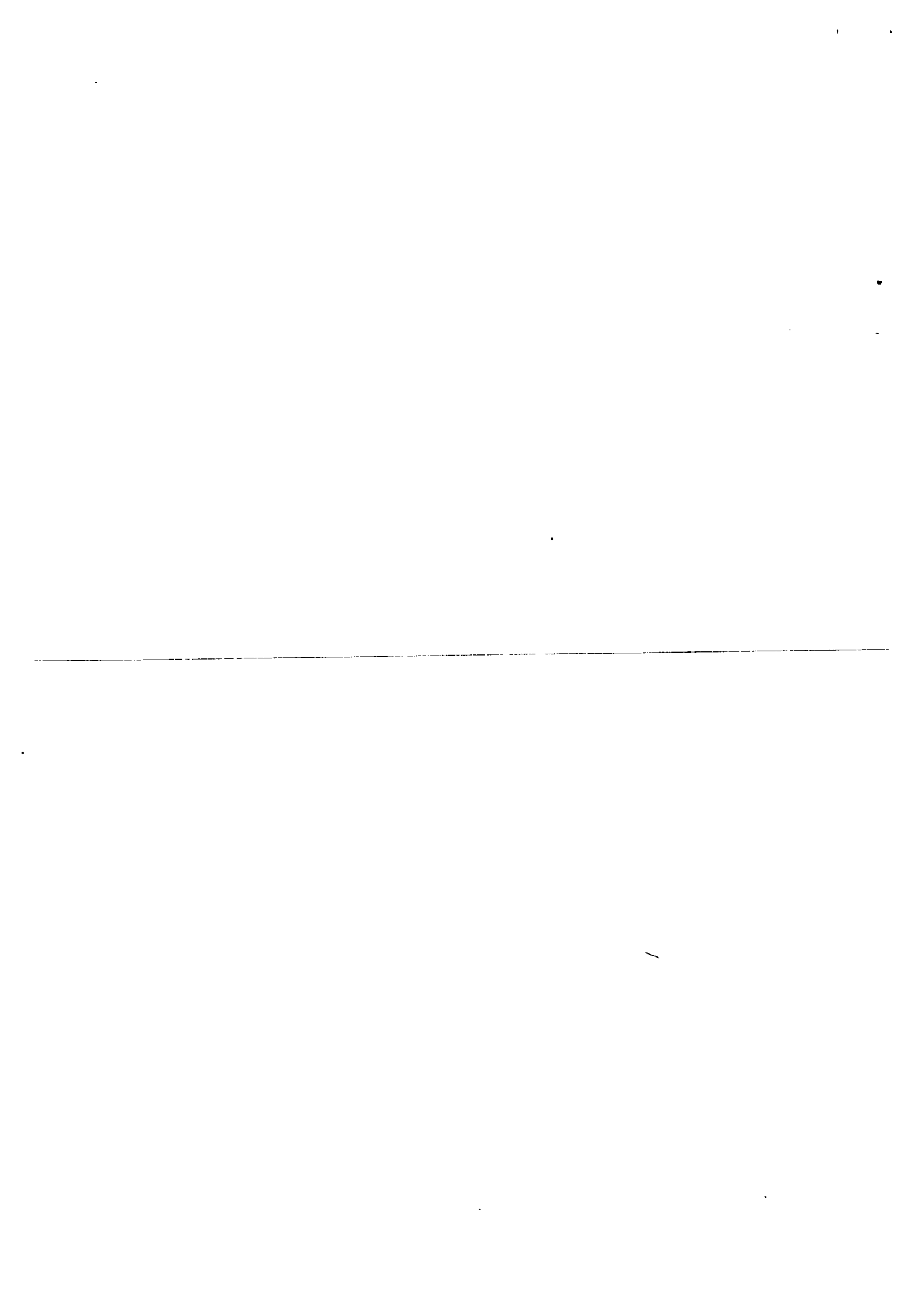
In recognition of her great leadership ability, Justice Koome was feted as the United Nations Runner up Person of the Year in 2020. These are great attributes that the judiciary will hugely benefit from by having Justice Koome as Chief Justice of the Republic of Kenya.

#### 4. Constitutional Imperatives

The Constitution of Kenya 2010 is a progressive text that advances women's participation in the political, social, and economic life of Kenya and establishes important gains concerning women's rights and gender equality. The Constitution also establishes a set of values and principles in which inclusiveness, equality, and non-discrimination are underlined as core values and trump any discriminatory law, practice, or action - including those related to customary norms and tradition (Arts 10 and 27) (while embracing ethnic, cultural and religious diversity). Article 27 enunciates the equality tone by establishing that every person is equal before the law and has the right to equal protection from, and benefit from it. Further, women, and men have the right to equal treatment, including the right to equal opportunities in the public sphere. In a nutshell, the principles of equality and freedom from discrimination mean the same thing. If every person is equal before the law and is treated equally, then the question of equality and freedom from discrimination has been largely achieved.

The affirmative action principle is a woman rights discourse that the Kenya women rights movement has been advocating for from the onset of the constitutional reform process. Further, FIDA-Kenya has consistently submitted that the appointment of the Chief Justice Republic of Kenya should be aimed at achieving meritocracy and leadership values in Chapter 6 of the Constitution of Kenya 2010. We wish to reiterate that Justice Martha Koome has made her mark as an outstanding jurist, exceptional Judge and exemplary leader who fits fully the requirements of the esteemed office of Chief Justice. She has set herself apart as a great mind and trailblazer of unquestionable character and integrity.

FIDA-Kenya therefore urges the National Assembly to view her nomination as timely. Timely in principle, timely in law, and timely in a deliberative democracy such as ours. Her commitment to a democratic approach will be key for the growth at the Supreme Court of Kenya in its mandate as envisaged under Article 163 of the Constitution.



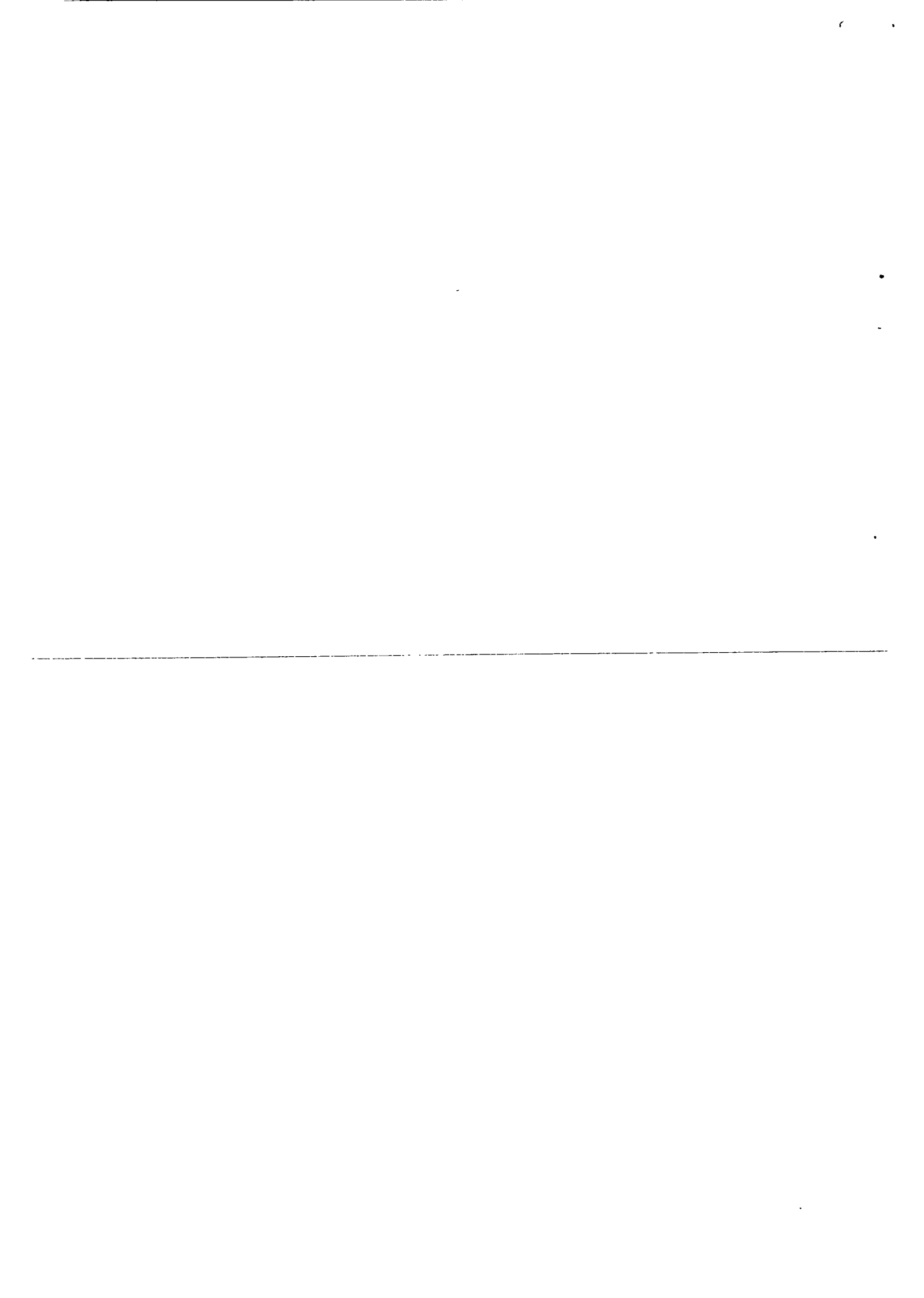
Article 10 of the Constitution of Kenya outlines our national principles and values and in particular that good governance, integrity, transparency and accountability will form part of the making and implementation of public policy decisions. The recruitment process as implemented by the Judicial Service Commission and that subsequently announced Judge Koome as the Chief Justice Nominee factored in the above values. The process was additionally keen on public participation that saw FIDA-Kenya and other stakeholders consulted in the preparation of the process of selection suitable candidates. There was also access to information as espoused in Article 35 of the Constitution of Kenya 2010. The public was given sufficient opportunity to raise any matters they have concerning the shortlisting of Judge Martha Koome. It is crucial to note that her interview to the post of Chief Justice was conducted in a transparent manner and it was televised across all the major main stream and social media channels in real time.

During the interview, Judge Koome was granted an opportunity to outline the attributes she brings to the post of Chief Justice. She was also put to task about matters that had been raised by the public and in doing so put up a spirited defense of the matters. FIDA-Kenya therefore underscores that the Judicial Service Commission has already addressed the matter therein and largely that which has to do with the handling of *IEBC v Khelef Khalifa & another Civil Application No. 246 of 2017 (UR)*. It is important to note that this same matter has previously been dealt with numerous times and dispensed with. It is therefore our submission that it is in bad taste that this matter keeps on being brought up with the intention of soiling an otherwise stellar track record of Justice Koome. This matter was handled by the Supreme Court of Kenya through *Supreme Court Presidential Petitions 2 and 4 of 2017(consolidated)*<sup>3</sup>. The Supreme Court in handling this case found fault with the High Court's dealing with this matter in the first instance as it lacked jurisdiction to handle the matter. The Supreme Court further proceeded to uphold the ruling of the Court of Appeal delivered by Justice Koome and two other Judges.

We further wish to emphasize that the Judicial Service Commission has also previously dealt with this matter. This same issue was brought as a complaint in January 2019 and was heard and dispensed with. The JSC in handling the matter found no merit in the complaint leveled against Justice Koome regarding the handling of the above case and proceeded to dismiss the same. FIDA-Kenya therefore reiterates that it was in bad faith to bring up this matter a second time during the public interview of Justice Koome for the position of Chief Justice in April 2021. However, we also note that the JSC

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<sup>3</sup> *Jon Harun Mwau & 2 others v Independent Electoral and Boundaries Commission & 2 others (2017) eKLR*



proceeded to address itself on this same issue and still found no merit in the matter. This was evidenced in the unanimous decision arrived at to submit the name of Justice Koome as outstanding and the nominee for the position of Chief Justice Republic of Kenya. FIDA-Kenya would therefore like to implore the National Assembly to totally reject any attempts to re-open matters that have been handled by the Judicial Service Commission as this will infringe on Judge Koome's right to equal treatment under the law as enshrined in Article 27 of the Constitution of Kenya 2010.

## CONCLUSION

FIDA-Kenya fully and unequivocally endorses the nomination Hon. Justice Martha Karambu Koome to the post of Chief Justice and President of the Supreme Court Republic of Kenya. A decorated, dynamic, dependable, and democratic leader of the third arm of justice is what we see and what should be presented to Kenya.

We especially laud the bold step taken by the Judicial Service Commission to nominate on merit the best emerging candidate who happens to be a woman. We urge the National Assembly to make history by confirming the appointment of Justice Koome as the first Chief Justice of the Republic of Kenya who is female on account of her merit, integrity and dedication to the pursuit of justice for all.

GOD BLESS KENYA!



Nancy Ikinu  
CHAIRPERSON

**Kenya Women  
Finance Trust  
(KWFT)**

6<sup>th</sup> May 2021

To: The Clerk,  
The National Assembly.  
Twelfth Parliament – Fifth Session

Att. Mr. Michael R. Silai

Dear Sir,

**REF. Approval by the National Assembly for Hon. Lady Justice Martha Karambu Koome for the Appointment as the Chief Justice of the Republic of Kenya and the President of the Supreme Court**

The Board, Management and Staff of Kenya Women Microfinance Bank PLC (KWFT) writes in response to a request by the National Assembly for public submissions in respect to the recent nomination of Hon. Lady Justice Martha Karambu Koome as Chief Justice of the Republic of Kenya and President of the Supreme Court.

From the onset, we wish to confirm that the Hon. Lady Justice Martha Karambu Koome is well known to us at the KWFT having served as a one of the first Board Member for Nine years. Hon. Lady Justice Martha Koome was part of a small team of women who believed in the vision for a gender equal society in general and women's financial inclusion in particular.

It was the foundation that Hon. Lady Justice Martha Koome and others laid that has since given rise to the Institution we now know as KWFT whose services extend to 45 out of the 47 Counties in Kenya solely focusing on accessing financial and non-financial services to over 800,000 women and their families.

Our recommendations and position are based on this very deep experience and interaction with the Hon. Lady Justice which are as follows:

- 1. Judicial Philosophy.** Hon. Lady Justice Martha Karambu Koome espouses a clear view of her judicial philosophy which is evidenced through her writings, landmark rulings and long legal practice, management skills and deep mastery of the Judiciary. Further, the Hon. Lady Justice Martha Koome articulated her judicial philosophy through the lengthy interview with the JSC and which she handled with depth, clarity, maturity, understanding and conviction. These are very much part of the character of the Hon. Lady Justice. She is a person of conviction and a stickler to the rule of law.

2. **Judicial temperament.** Throughout her work and life, the Hon. Lady Justice Martha Karambu Koome exhibits compassion, decisiveness, open-mindedness, respect, tolerance, patience and impartiality. Her passion for justice for all is well known and documented both in her private and public service. Her unparalleled record as a human rights defender further attests to this fact.
  
3. **Integrity.** The Hon. Lady Justice Martha Karambu Koome is a lady of high moral values, independent mind and a stickler to the rule of law. As a firm believer in the Biblical teachings of truth, love and respect for all human beings, we know the Lady Justice as impartial, honest and one who is committed to her work. She seeks to reflect and live out these values and exercises them in her work in and out of office. In Lady Justice Martha Karambu Koome at the helm of the Judiciary, Kenya is in a safe pair of hands. We are confident she will give herself to this work.

**Conclusion:**

In view of the foregoing, we wish to unequivocally recommend the Hon. Lady Justice Martha Karambu Koome to the position of Chief Justice of the Republic of Kenya and President of the Supreme Court.

With her vast experience, skill sets, good standing in society, knowledge of the judiciary and fidelity to the rule of law, she will no doubt make an excellent Chief Justice.

Furthermore, being the first female holder of this office will put Kenya in very good standing with the world which is struggling to shore up women's full participation in all spheres of society.

KWFT, therefore, supports the decision by the JSC and highly recommends that the National Assembly confirms the appointment of Hon. Lady Justice Martha Karambu Koome to the position of Kenya's 15<sup>th</sup> Chief Justice and the first female to hold this position. This is good for Kenya and even better for the girls and women in Africa.

Signed on this .....<sup>th</sup>..... day of May 2021 by:

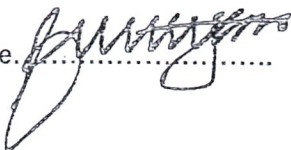
**Mwangi Githaiga**

**Managing Director - KWFT**

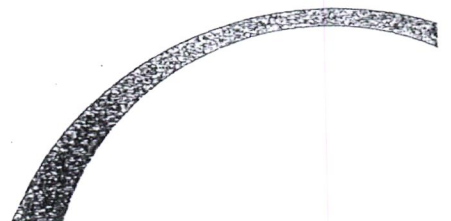
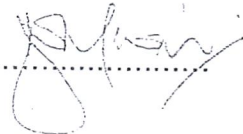
**Dr. Jaine Mwai**

**Board Chair - KWFT**

Signature.....

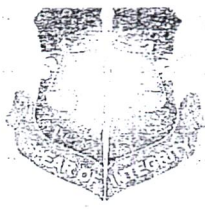


Signature.....



# **ANNEXURE 7**

## **CLEARANCE CERTIFICATES BY STATE AGENCIES**



**ETHICS AND ANTI-CORRUPTION COMMISSION**

INTEGRITY CENTRE (Jakaya Kikwete/Valley Road Junction) P.O. Box 61130 – 00200, NAIROBI, Kenya

TEL.: 254 (020) 4997000, MOBILE: 0709 781000; 0730 997000

FAX: 254 (020) 2240954 EMAIL: [eacc@integrity.go.ke](mailto:eacc@integrity.go.ke) WEBSITE: [www.eacc.go.ke](http://www.eacc.go.ke)

When replying please quote:

Our Ref: EACC.7/10/5 VOL. XVII(146)

5<sup>th</sup> May, 2021

The Clerk of the National Assembly

Clerk's Chambers

Parliament Buildings

P O Box 41842 - 00100

NAIROBI

(Attn: Jeremiah W. Ndombi)

D/DE  
Abenayo Wanjiku  
pls facilitate good  
10/5/21

**RE: VETTING OF HON. LADY JUSTICE MARTHA KARAMBU KOOME FOR APPOINTMENT AS THE CHIEF JUSTICE OF THE REPUBLIC OF KENYA AND PRESIDENT OF THE SUPREME COURT**

Your letter referenced NA/DC/JLAC/2021/04 dated 29<sup>th</sup> April, 2021 on the above subject matter refers.

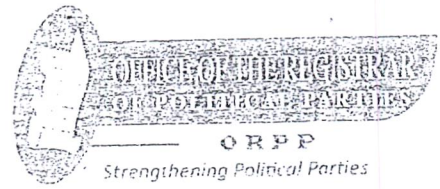
We confirm that the Commission has not undertaken any investigations where Hon. Lady Justice Martha Karambu Koome of ID No. 4322591 has been found culpable.

The information provided herein is based on records available as at 5<sup>th</sup> May, 2021.

TWALIB MBARAK, CBS

SECRETARY/CHIEF EXECUTIVE OFFICER

LCK/tm



Telephone: +254(0)204022000  
 Mobile: 0772281357  
 Email: [info@orpp.or.ke](mailto:info@orpp.or.ke)  
 Website: [www.orpp.or.ke](http://www.orpp.or.ke)  
 When replying please quote

Lion Place, 1st & 4th Floor  
 Off Waiyaki Way  
 P.O Box 1131-00606  
 Sarit Centre, Nairobi.

Ref: RPP/ORG/034 Vol. IV (63)

Date: 5<sup>th</sup> May 2021

The Clerk,  
 National Assembly,  
 Clerk Chambers, National Assembly,  
 Parliament Buildings,  
 P.O Box 41842-00100,  
**NAIROBI.**

*D/DC*  
*Pse deal.*  
*CNA*

*6/5/2021*  
*Mr. [Signature]*

*Assessing  
 his file*  
*please deal*  
*[Signature]*  
*6/5/21*

Dear Sir,

**RE: VETTING OF HON. LADY JUSTICE MARTHA KARAMBU KOOME FOR APPOINTMENT AS THE CHIEF JUSTICE OF THE REPUBLIC OF KENYA AND PRESIDENT OF THE SUPREME COURT**

The above subject matter refers.

This Office acknowledges receipt of your letter dated 29<sup>th</sup> April 2021 and duly notes the contents therein.

According to the records held by this office as at 5<sup>th</sup> May, 2021, the **Hon. Lady Justice Martha Karambu Koome ID No. 4322591** is not an official of any registered political party.

Yours faithfully,

*[Signature]*

**Ann N. Nderitu, MBS**  
 For: Registrar of Political Parties



# NATIONAL POLICE SERVICE

Telegrams: "FDLN CRIMINAL" Nairobi  
Telephone: 020-3812089/98  
Fax: 020-2996149  
E-mail: [identsabi@gmail.com](mailto:identsabi@gmail.com)  
When replying please quote reference and date



Criminal records office  
P O Box 30460 - 00100 GPO  
NAIROBI

*Mr. Jeremiah  
Ndombi  
please deal  
[Signature]  
6/5/21*

## DIRECTORATE OF CRIMINAL INVESTIGATIONS

DCI/CRO/SEC/6/7/2/A/VOL.IX/153

5<sup>TH</sup> MAY, 2021

Clerk of the National Assembly  
Clerk's Chambers  
National Assembly  
Parliament Buildings  
P O Box 41842-00100  
NAIROBI

*D/DC  
6/5/2021*

Attn: Jeremiah W. Ndombi

RE: VETTING OF HON. LADY JUSTICE MARTHA KARAMBU KOOME FOR APPOINTMENT AS THE CHIEF JUSTICE OF THE REPUBLIC OF KENYA AND PRESIDENT OF THE SUPREME COURT

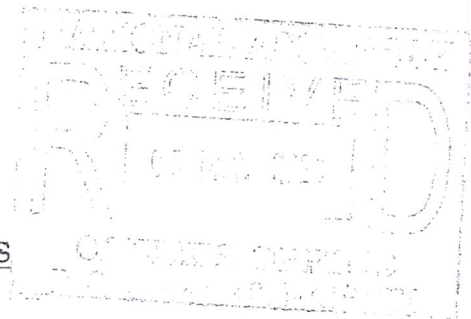
Your correspondence Ref. NA/DC/EDUC/2021/014 dated 24<sup>th</sup> March, 2021 refers.

We write to confirm that the above listed applied for Police Clearance Certificate earlier and was issued with one.

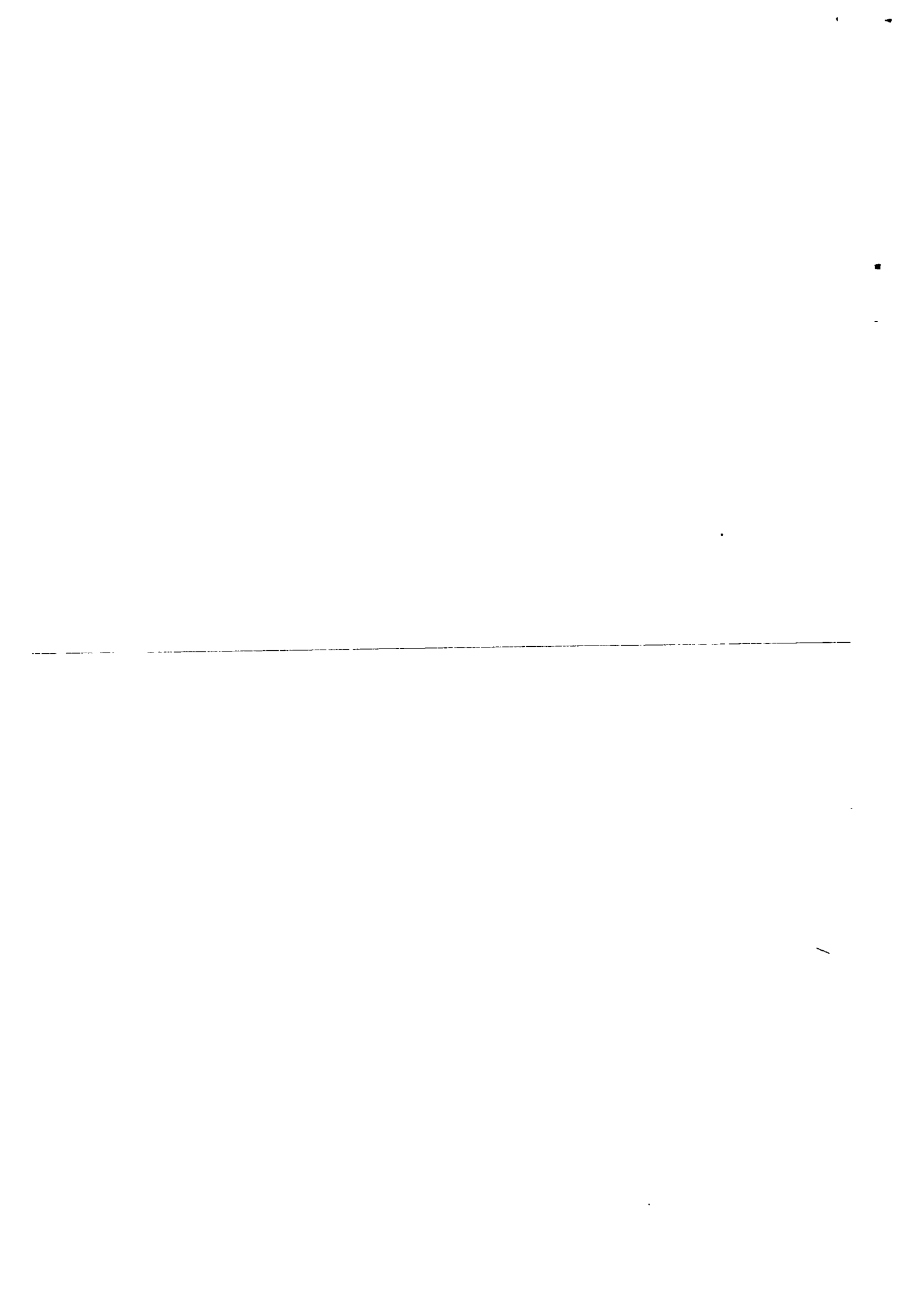
It is deemed that as at the date of issuance of the Police Clearance Certificate to the applicant, there **were negative results** from both our nominal index and criminal database.

Thank you for your continued cooperation.

*[Signature]*  
**P.M. ONYANGO**  
**FOR: DIRECTOR CRIMINAL INVESTIGATIONS**



OUR VISION: To be the best forensic fingerprint science laboratory with emphasis on continual linkage of the Crime, the Crime-Scene and the Criminal  
FACES CAN LIE. FINGERPRINTS NEVER.





## HIGHER EDUCATION LOANS BOARD

Tel: 0711052000  
E-mail: [contactcentre@helb.co.ke](mailto:contactcentre@helb.co.ke)  
Website: [www.helb.co.ke](http://www.helb.co.ke)

Anniversary Towers  
University Way  
P.O Box 69489-00400  
Nairobi, Kenya

HELB/RR/112009/108

07<sup>th</sup> May 2021

Mr. Michael R. Sialai, EBS  
Clerk of National Assembly  
Parliament Buildings  
P.O Box 41842-00100  
NAIROBI

Dear *Michael,*

**VETTING OF HON LADY JUSTICE MARTHA KARAMBU KOOME FOR APPOINTMENT AS THE CHIEF JUSTICE OF THE REPUBLIC OF KENYA AND PRESIDENT OF THE SUPREME COURT**

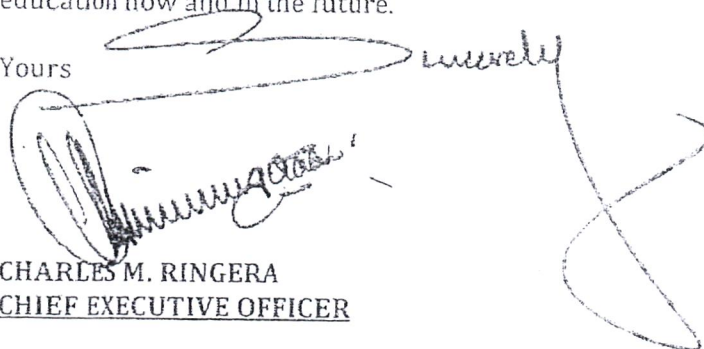
We acknowledge with thanks the receipt of your letter dated 29<sup>th</sup> April 2021 requesting HELB to provide a report on repayment of any loans that may have been advanced to Hon Martha Karambu Koome for the purpose of vetting to the above position.

The Higher Education Loans Board wishes to inform you that **Hon. Martha Karambu Koome (ID No. 4322591; Pin No.(A001112665F)** was a beneficiary of the GOK/HELB Loans Scheme and has cleared paying her university loan and was issued with Clearance Certificate Number Cert Ref No. 17729 on 22<sup>nd</sup> Sept 2009.

We kindly urge you to continue encouraging applicants to seek their compliance certificate from HELB as part of testimonials and conformity to Chapter six of the constitution of Kenya.

We wish to thank you most sincerely for allowing us to provide you this information as this kind of collaboration goes a long way in assisting HELB finance needy Kenyans pursuing higher education now and in the future.

Yours

*Charles M. Ringera*  
  
**CHARLES M. RINGERA**  
**CHIEF EXECUTIVE OFFICER**



ISO 9001:2015 Certified.

KENYA  
2021  
2020




KENYA REVENUE  
AUTHORITY

## e-Return Acknowledgment Receipt

For General Tax Questions  
Contact KRA Call Centre  
Tel: +254 (020) 4999 999  
Cell: +254(0711)099 999  
Email: callcentre@kra.go.ke

www.kra.go.ke

Personal Information and Return Filing Details			
PIN	A001112665F	Return Period	01/01/2018 - 31/12/2018
Name and Address	MARTHA KARAMBU RUTERE RUNDA ESTATE, NAIROBI CITY (WEST), Kiambu District, 00200, 60362.		
PIN of Wife (If Applicable)	N.A	Name of Wife (If Applicable)	N.A
Tax Obligation(Form Name)	Income Tax Resident Individual(IT1)	Original or Amended	Original
Station	Thika	Acknowledgement	13/05/2019 14:33:07
Return Number	KRA201905655796	Barcode	

Return Summary			
Sr.	Particulars	Self Amount (Ksh)	Wife Amount (Ksh)
1.	Adjusted Taxable Income	0.00	0.00
2.	Employment Income	14,894,100.00	0.00
3.	Income from Estate(s)/Trust(s) /	0.00	0.00
4.	Gross Total Income	14,894,100.00	0.00
5.	Deductions	0.00	0.00
6.	Taxable Income	14,894,100.00	0.00
7.	Tax Payable	4,397,001.10	0.00
8.	Reliefs	16,896.00	0.00
9.	Tax Credits	4,425,105.60	0.00
10.	Tax Due / (Refund Due)	-45,000.50	0.00
11.	Tax Due / (Refund Due) (Combined)		-44,999.60

Note : We acknowledge receiving your Return through ITMS Web. You can track your status by using search code from web portal.

Search Code: 142001054657LCV

Notice: Employers are reminded that the due date for PAYE Returns and remittance is the ninth day of each calendar month.

Certificate Date : 26/02/2020  
Personal Identification Number  
A001112665F

This is to certify that taxpayer shown herein has been registered with Revenue Authority

**Taxpayer Information**

<b>Taxpayer Name</b>	MARTHA KARAMBU RUTERE
<b>Email Address</b>	MARTHA_KOOME@YAHOO.COM

**Registered Address**

<b>L.R. Number :</b>	<b>Building :</b> RUNDA ESTATE
<b>Street/Road :</b> KIAMBU	<b>City/Town :</b> NAIROBI CITY (WEST)
<b>County :</b> Kiambu	<b>District :</b> Kiambu District
<b>Tax Area :</b> Ruaka	<b>Station :</b> KIAMBU*
<b>P. O. Box :</b> 60362	<b>Postal Code :</b> 00200

**Tax Obligation(s) Registration Details**

Sr. No.	Tax Obligation(s)	Effective From Date	Effective Till Date	Status
1	Income Tax - PAYE	11/02/2021	N.A.	Cancelled
2	Income Tax - Resident Individual	04/03/1993	N.A.	Active

The above PIN must appear on all your tax invoices and correspondences with Kenya Revenue Authority. Your accounting end date is 31st December as per the provisions stated in the Income Tax Act unless a change has been approved by the Commissioner-Domestic Taxes Department. The status of Tax Obligation(s) with 'Dormant' status will automatically change to 'Active' on date mentioned in "Effective Till Date" or any transaction done during the period. This certificate shall remain in force till further updated.

**NATIONAL ASSEMBLY  
MAIN RECORDS UNIT  
22 JUL 2021  
RECEIVED (3)  
NAIROBI - KENYA**

**NATIONAL ASSEMBLY  
MAIN RECORDS UNIT  
22 JUL 2021  
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**NATIONAL ASSEMBLY  
MAIN RECORDS UNIT  
22 JUL 2021  
RECEIVED (3)  
NAIROBI - KENYA**

Disclaimer: This is a system generated certificate and does not require signature.