



REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – (FOURTH SESSION)

THE SENATE

COMMUNICATION FROM THE CHAIR

ON THE ADDRESS TO THE SENATE BY HON. (DR.) WILLY
MUTUNGA, THE CHIEF JUSTICE OF THE REPUBLIC OF KENYA
AND PRESIDENT OF THE SUPREME COURT

1. **Honourable Senators**, you may recall that on Thursday last week, the Senate Majority Leader while issuing his Statement on the Business of the Senate for this week, informed the House that the Hon. Chief Justice of Kenya who is also the President of the Supreme Court, the Hon. (Dr.) Willy Mutunga would address the Senate this week.
2. **Honourable Senators**, standing order 25 (1) of the Senate Standing Orders makes provision for a visiting dignitary to address the Senate. The specific section states as follows-

The Speaker may, after consultation with the Senate Majority Leader and the Senate Minority Leader, allow a visiting Head of State or other visiting dignitary, to address the Senate.

It is on this basis that I consulted with the Senate leadership and the Rules and Business Committee following which it was agreed

that the Hon. Chief Justice addresses the Senate on Tuesday, 14th June, 2016 at 2.30 pm. However, owing to his demanding schedule of work, the Hon. Chief Justice was not able to address the Senate as agreed instead opting to address the Senate today.

3. **Honourable Senators**, the Hon. (Dr.) Mutunga holds a Bachelor of Laws (LL.B) and a Master of Laws (LL.M) Degrees both awarded by the University of Dar es Salaam, Tanzania in 1971 and 1974 respectively and a Doctor of Jurisprudence Degree (JSD) degree awarded by Osgoode Hall Law School, Toronto in 1992. Dr. Mutunga has published many books, essays and papers on human rights, law and society. He has also presented conference papers at many national and international Conferences.
4. In his long and distinguished career, the Hon. Chief Justice has served in various capacities as Chair, Executive Director or Member of several professional and law-oriented organizations including, University Staff Union, Kenya; the Legal Advice Centre [Kituo cha Sheria]; the Law Society of Kenya; the Council of Legal Education; Citizens Coalition for Constitutional Change (4Cs); the Kenya Human Rights Commission; the East African Centre for Constitutional Development [Kituo Cha Katiba], Uganda; and the International Centre for Human Rights and Democratic Development (ICHRDD), Montreal, Canada. He has also undertaken professional consultancies in Kenya and abroad, in addition to being a Lecturer, at the Faculty of Law, University of Nairobi, among other positions. Prior to his appointment as Chief Justice, Dr. Mutunga was the Regional Representative of the Ford Foundation.
5. For his outstanding contribution to the development of law, human rights, good governance and social justice, Dr. Mutunga has

Madison retorted that a "pure" separation
of powers was neither what Montesquieu intended
nor practical:

"Montesquieu did not mean that these (branches)
ought to have no partial agency in, or no control
over, the acts of each other. His meaning... Can
amount to no more than this, that where
the whole power of one (branch) is exercised
by the hands that hold a whole power of another,
a fundamental principle of a free constitution
are subverted. There

There is not a single instance in which the
several (branches) of power have been kept
absolutely separate & distinct.

James Madison, Federalist # 47, 1788

received several national and international honours and awards including the national honour of Elder of the Golden Heart (EGH); the status and style of Senior Counsel; the Lifetime Award for the Protection and Promotion of Human Rights; the Jurist of the Year Award (2003); and the first Law Society of Kenya Distinguished Services Award for Constitutionalism, Rule of Law and Human Rights. The Hon. (Dr.) Willy Mutunga was appointed as the Chief Justice of the Republic of Kenya, on 16th June, 2011. It is indeed a great honour to have such an accomplished citizen as the Hon. (Dr.) Willy Mutunga, address the Senate.

6. The Hon. (Dr.) Willy Mutunga will go down in the annals of Kenya's parliamentary history, as the first Chief Justice to address the first Senate under the Constitution of Kenya, 2011.
7. This spectacular occasion will undoubtedly lend credence to the need to build and nurture closer institutional and organic engagement and collaboration; core values which the Senate holds in high regard. In the service of our people, it is most desirable that national, county and institutional leaderships should inculcate a culture of cooperation and consultation of talking to each other and engaging constructively rather than talking at each other.
8. **Honourable Chief Justice**, today is not a day of saying what one party or the other should do or not do, or has done or failed to do in our institutional relations. Or who has been right or wrong. It is not a moment of US versus THEM.
9. Today, as we assemble here to listen to your address, we pay tribute and appreciate you for your audacious leadership example, not just in our sister institution - the Judiciary, but also for your overall contribution towards the struggles to actualize the rule of

law, justice, and a culture of constitutionalism and institutional transformation in Kenya.

10. This Nation owes you a deep sense of gratitude and appreciation. Against great tremendous odds you have accomplished many feats and tackled difficult tasks.
11. Our Constitution of Kenya, 2010 is explicit on the functions and roles of the ~~the~~ ^{major} institutions of democratic governance. While interdependently constituted in the Constitution, there are quite distinct demarcations and operational zones for the various institutions.
12. This applies to the Judiciary and the Senate. By and large, we are duty-bound to co-exist harmoniously in the common dispensation of service to the people of Kenya. Indeed we ought to convene regular consultative consultations and engagements in our common endeavour.
13. However, as most of our African communities, would put it - **pots and pans in the same container will always clang and clash**. Yes, this jostling is sometimes necessary and healthy. This should not however, be left to detrimentally escalate into adversarial turf struggles that could polarize and tear apart our common obligation of delivering services to the people of Kenya.
14. We in the Senate strongly feel that a consultative and deliberative mechanism ought to be established to avoid *impasse* as we discharge our respective mandates. Both Institutions do have clear roles and functions, to provide the requisite Leadership in matters of common endeavour that will make ordinary Kenyans sleep soundly; knowing and having faith and trust in both the Judiciary and the Legislature.

15. While we applaud and acknowledge that working closely is desirable, we also remain cognizant of the principle of separation of powers which is a key pillar of our 2010 Constitution. The Executive, the Legislature, the Judiciary and the Independent Offices /Commissions have an obligation to effectively discharge and further develop their mandates. Kenyans yearn to understand and feel their beneficial impact. Our governance tribulations insidiously commenced when the distinct lines demarcating the various Arms of governance became blurred and were emasculated. Only the civil society attempted to check the monolithic and overbearing Executive. This was with a high price as our Lordship here can vividly attest.
16. The need to continuously bolster and nurture our democracy and promote institutional capacity development cannot be over-emphasized. We must never become complacent. Democracy is a fragile baby - it must be cautiously nourished and affirmed. unchecked, autocratic and anti-democratic ideologies can creep back on us through innocuous ways. We must therefore exercise utmost vigilance at all times.
17. Our national and county-based institutions of governance are under obligation to be accountable and demonstrate responsiveness to public aspirations and needs, embrace sound corporate governance practices, fidelity to the rule of law, legality; and ultimately safeguard and advance democratic ideals and practices.

Dr. Willy Mutunga and the Honorable Senators,

18. While a considerable number of Kenyans regret your exit at this time, it is useful to heed the words of a renowned British author and satirist, *Malcolm Muggeridge* who once said and I quote.....

“Few men of action have been able to make a graceful exit at the appropriate time.”

19. *I dare say that this is an audacious and instructive example to all our leaders across the board. The proponents of the culture of extending leadership terms limits – be they presidential, institutional or county leadership term limits in our African countries can borrow a leaf from Dr. Willy Mutunga. It is possible to go home and still lead an enriching life.*

Honourable Chief Justice, the Senate of the Republic of Kenya wishes you well in your retirement and in your future endeavours!

20. **Honourable Senators**, the Hon. Chief Justice is accompanied by a 16 member-delegation from the Judiciary who are seated at the Speaker’s Gallery. As I recognize each member of the delegation by name, I will request each to stand when called out so that we may acknowledge them in the usual Senate tradition. They are-

- i) Prof. Margaret Kobia- Vice-Chairperson, Judicial Service Commission;

- ii) The Hon. Justice Dr. Smokin Wanjala, Judge, Supreme Court;
- iii) The Hon. Mr. Justice Paul Kihara Kariuki - President, Court of Appeal;
- iv) The Hon. Justice Mohammed Warsame, Judge, Court of Appeal;
- v) The Hon. Lady Justice Hannah Okwengu – Judge, Court of Appeal;
- vi) The Hon. (Prof.) Justice J. Otieno Odek – Judge, Court of Appeal/Director, Judicial Training Institute;
- vii) The Hon. Justice Aggrey Muchelule, Judge, High Court of Kenya;
- viii) The Hon. Mr. Justice Richard Mwongo - Principal Judge, High Court of Kenya;
- ix) The Hon. Mr. Justice Mathews Nduma Nderi - Principal Judge, Employment & Labour Relations Court;
- x) The Hon. Justice (Prof.) Joel Ngugi – Judge, High Court of Kenya;
- xi) The Hon. Emily Ominde, Chief Magistrate;
- xii) The Hon. Anne Amadi - Chief Registrar of the Judiciary;
- xiii) The Hon. Teresia Matheka - Chief Magistrate, Mombasa;
- xiv) Mr. Duncan Okello - Chief of Staff, Office of the Chief Justice;
- xv) The Hon. Moses Wanjala - Resident Magistrate, Office of the Chief Justice; and
- xvi) Ms. Martha Mueni - Assistant Legal Researcher, Office of the Chief Justice.

Karibuni Nyote!

21. **Honourable Senators**, I wish to bring to your attention that after the address by the Hon. Chief Justice, I will suspend this sitting of the Senate for 30 minutes to allow the Hon. Chief Justice to take his leave. Honourable Senators will join the Chief Justice and his

delegation for a cup of tea immediately outside the Senate Chamber during which Senators will also have the opportunity to interact with the Hon. Chief Justice and his delegation. Thereafter we shall all proceed for photo session at the Parliament Lawns.

22. The bell will thereafter be rung and the sitting will resume. On resumption and in accordance with standing order 25, the Senate Majority Leader shall lay the address of the Chief Justice on the Table of the Senate and give Notice of the requisite Motion. I will additionally, permit the moving of the Motion and debate thereon immediately thereafter.

23. **Honourable Senators**, it is now my singular honour and privilege to invite Hon. (Dr.) Willy Mutunga, Chief Justice of the Republic of Kenya and President of the Supreme Court to address the Senate.

I THANK YOU.

SEN. EKWEE ETHURO, EGH, EBS, MP
SPEAKER OF THE SENATE

15th June, 2016