

**Our Ref: CAJ/OM/7/21/2014**

16<sup>th</sup> June 2014

**His Excellency, Hon. Uhuru Kenyatta, CGH**

President and Commander in Chief of the Defence Forces  
of the Republic of Kenya  
Executive Office of the President  
State House, State House Road  
P. O. Box 40530 - 00100

**NAIROBI**

**RE: DELAY IN APPOINTMENT OF JUDGES AS RECOMMENDED BY THE JUDICIAL SERVICE COMMISSION**

---

Kindly receive warmest compliments from the Commission on Administrative Justice (Office of the Ombudsman).

Your Excellency, this Commission is a Constitutional Commission established under Article 59(4) of the Constitution, and the Commission on Administrative Justice Act, 2011. The Commission is empowered to, among other things, investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government, and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct. Additionally, the Commission has a quasi-judicial mandate to deal with maladministration, and to adjudicate on matters relating to administrative justice. Further, and through Advisory Opinions, the Commission is expected to render proposals on improvement of public administration, including review of processes and procedures where appropriate.

Your Excellency, we wish to express concern regarding delay in appointing the nominees of the Judicial Service Commission for the position of Judges of the High Court. The Commission is particularly concerned by the unjustified delay in making the said appointments even after the names were forwarded to your Office upon the conclusion of the process by the Judicial Service Commission in January 2014.

Your Excellency, we wish to restate the requirement of Article 166(1)(b) of the Constitution which provides that the President SHALL appoint all other Judges in accordance with the recommendation of the Judicial Service Commission (JSC). This provision makes it obligatory for the President to appoint the nominees for the position of Judges once the names have been forwarded by the JSC. This requirement is further buttressed by Article 132 on the functions of the President, which includes making appointments to offices such as those of Judges, as in the present instance.

Your Excellency, the Constitution envisages a seamless and expeditious appointment process of Judges, which invariably requires the relevant Offices to undertake their respective roles in line with the Constitution. We have, however, noted the delay of Five Months in making the appointment and no reason has been offered at all. It is our considered view that such delay is inordinate and may be contrary to Article and 129 of the Constitution which requires Executive Authority to be exercised in accordance with the Constitution, and in a manner compatible with the principle of service to the people of Kenya, and for their well-being and benefit. In addition, it may negate the requirements under Article 3 of the Constitution of respect, upholding and defence of the Constitution by every person.

Your Excellency, we take note of the role of the Judiciary in our new dispensation. In particular, the Judiciary is required to administer justice without undue delay and in accordance with the Constitution. Accordingly, failure or delay in making the appointments once the names have been recorded may be deemed to be against this principle and the Constitution in general. In this regard, we wish to humbly request you to formally appoint the Judges in line with Article 166(1)(b) of the Constitution at the very earliest convenience, to avoid further legal challenges.

Your Excellency, we assure you of our highest regards and commit to every effort to support the Government in its commitment in improving public administration.

Yours Sincerely,

**CMMR. OTIENDE AMOLLO, EBS**  
**CHAIRPERSON OF THE COMMISSION**