



# THE COMMISSION ON ADMINISTRATIVE JUSTICE (Office of the Ombudsman) *Hata Mnyonge ana Haki*

## PRESS STATEMENT

NAIROBI, Tuesday, February 4, 2025

### Promptly Resolve and Publicise Complaints against the Judiciary: The Ombudsman Asks the Judiciary

The Commission on Administrative Justice (Office of the Ombudsman) expresses deep concerns over the Judiciary's delayed resolution to complaints and petitions filed against the judicial officers and staff.

The CAJ has received and forwarded over 700 cases of maladministration to the Judiciary in the last five years, nearly 60 per cent of which remain unresolved, undermining the quest for justice for aggrieved Kenyans.

The complaints received by the Commission are documented in *Status of Administrative Justice and Access to Information Report, 2012–2023*.

The complaints relate to the delay in issuing judgements, inefficiency, unresponsive official conduct, unlawful official conduct, manifest injustice, unfair treatment, abuse of power, and discourtesy. Some complaints raise serious issues such as fraudulent access to money from the judiciary's deposit account, fraudulent use of deposited security through doctored proceedings, solicitation of bribes, inordinate delay in delivering judgments, and delivering 'air judgments'.

The Commission requested for Status report on the complaints that have simultaneously been lodged with the Judicial Service Commission (JSC) and Office of the Judiciary Ombudsman (OJO) including but not limited to the following;

#### i. **Complaint Against a Magistrate (Fraudulent Access to Funds)**

- **Allegation:** The magistrate was accused of fraudulently accessing funds from the judiciary's deposit account.
- **Status:** The removal process for the magistrate accused was initiated in 2019 but remains unresolved. Nearly six years later, the magistrate is still in service.

#### ii. **Complaint Against a Magistrate (Abuse of Power)**



- **Allegation:** The magistrate allegedly manipulated court proceedings and used a litigant's title deed as security without their knowledge or consent. This conduct was reportedly replicated in other cases, making this magistrate a repeat offender.

- **Status:** Despite the seriousness of the allegations, the JSC has not concluded investigations or provided an outcome.

### iii. **Complaint Against a Magistrate (Misconduct and Delayed Proceedings)**

- **Allegation:** The magistrate was accused of alcoholism, soliciting bribes, and delaying court proceedings, with cases often starting at 11 a.m. or noon.

- **Status:** The complaint, lodged with the Office of the Judiciary Ombudsman (OJO) in 2024, remains unresolved, raising concerns about inefficiency.

### iv. **Complaint Against Two Magistrates (Delayed Delivery of Judgments)**

- **Allegation:** One magistrate was accused of delaying 30 judgments, while another accused of delaying 250 judgments. A third was accused of delaying delivery of over 100 judgements, with some judgements delayed for more than four years.

- **Status:** The first magistrate, accused of delaying 30 judgements, was dismissed, but the second, accused of delaying 250 judgements, was acquitted. This raises questions about the fairness and consistency of handling similar complaints. There is no update so far provided in the third case.

### v. **Complaint Against a Magistrate (Corruption and Bribery)**

- **Allegation:** The magistrate was accused of corruption in a traffic case where two Public Service Vehicle drivers were allegedly asked to pay a bribe of Kshs. 20,000 each for their release.

- **Status:** The complaint remains unaddressed, highlighting concerns about unlawful official conduct.

### vi. **Complaint Against a Judge (Backlog and "Air Judgments")**

- **Allegation:** The judge was accused of having a backlog of 32 delayed judgments and issuing "air judgments" (verbal rulings without written judgments), making them inaccessible to litigants and advocates.

- **Status:** The complaint, lodged three years ago, remains unresolved, raising concerns about inefficiency.

### vii. **Complaint Against a Judge (Questionable Ruling in a Commercial Case)**

- **Allegation:** The judge upheld a lack of jurisdiction in a commercial case but proceeded to award a counterclaim of Kshs. 59 million in the same ruling, resulting in a loss of over Kshs. 400 million to the State.

- **Status:** The complaint remains unaddressed despite its significant implications.



Pursuant to its mandate under the Constitution, the Commission on Administrative Justice Act, and the Access to Information Act, the Commission on Administrative Justice (Office of the Ombudsman) has, vide a letter dated 3<sup>rd</sup> February 2025, urged the Chief Justice, Hon. Martha K. Koome, to speedily and conclusively resolve complaints against the Judiciary.

In addition, the Chief Justice has been urged to publish and publicise a status report on all such complaints in fulfilment of the provisions of Article 35(3) of the Constitution and Section 5 of the Access to Information Act. The CAJ has further requested the Chief Justice to submit a compliance report on the status of such complaints to the Office of the Ombudsman within the next twenty-one (21) days.

The Commission's action is part of the continuous engagement between the Commission, the Judiciary, and the JSC regarding matters falling within their respective mandates. This action is anchored on the Constitution and the law and routinely carried out to address maladministration in the public sector, and enforce transparency and accountability in governance. The Judiciary is one of the public institutions against which many complaints of maladministration have been lodged at the Commission;

The Judiciary is the citadel of the rule of law and occupies a special place in Kenya's governance system. In this regard, while recognising the independence of the Judiciary, the Constitution enjoins the Judiciary to be accountable to the public. In particular, Article 10 requires the Judiciary, like any other State organ, to apply and promote the national values and principles of governance, including good governance, integrity, transparency and accountability. Similarly, Article 172 enjoins JSC to, among others, promote and facilitate the accountability of the Judiciary. Efficient, effective and transparent redress of complaints of maladministration against judges, judicial officers and staff is, therefore, a constitutional imperative;

While appreciating the provisions of Article 249(2) of the Constitution on the independence of Constitutional Commissions and Independent Offices, that provision does not exempt them from the jurisdiction of each other. Their general roles as stated in Article 249(1) of the Constitution, is to provide checks and balances, thereby protecting the sovereignty of Kenyans and ensuring compliance with the Constitution. To this end, in matters relating to maladministration and access to information, the Judiciary and JSC are amenable to the jurisdiction of the Commission. To state otherwise would be tantamount to overthrowing the Constitution.

CAJ urges the Judiciary to publish and publicise its decisions of the resolved complaints on the website and other available platforms. This would give meaning to Articles 10, 35(3), 172, and 232 (f) of the Constitution and the Access to Information Act.

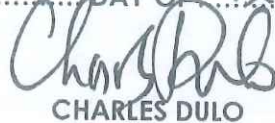
In light of the above, the Commission urges the Chief Justice to comply with the directives outlined in its letter of 3<sup>rd</sup> February 2025. The Commission reiterates its commitment to redressing maladministration in the public sector and advancing open governance in

Kenya. To this end, the Commission will continue to engage with the Judiciary and other stakeholders to fulfill its mandate effectively.

The Commission's call to action underscores the importance of transparency, accountability, and efficiency in the Judiciary. The Commission looks forward to continued cooperation with the Judiciary and remains committed to safeguarding the rights of Kenyans by ensuring that complaints are resolved promptly and fairly.

The Commission encourages Kenyans to continue raising complaints whenever they encounter service failures in the public service to ensure accountability of public officers.

DATED AT NAIROBI THIS 4<sup>th</sup> DAY OF February 2025

  
CHARLES DULO

COMMISSION CHAIRPERSON