

THE COMMISSION ON ADMINISTRATIVE JUSTICE
"OFFICE OF THE OMBUDSMAN"



Hata Mnyonge ana Haki

Hon. Justice Martha K. Koome, EGH

Chairperson and Chief justice,

Judicial Service Commission,

CBK Pension Towers, 13th Flr

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23rd December 2024

Dear

Martha

**RE: ADVISORY ON PROACTIVE DISCLOSURE OF COMPLAINTS RECEIVED AND DECISIONS
MADE BY THE JUDICIAL SERVICE COMMISSION**

The Commission on Administrative Justice, also known as the Office of the Ombudsman, (hereinafter referred to as the Commission) is a Constitutional Commission established pursuant to Article 59(4) and Chapter 15 of the Constitution of Kenya, as read with the Commission on Administrative Justice Act, 2011. Under Article 249(1) of the Constitution,

the Commission, alongside others, has the mandate to protect the sovereignty of the people, while also ensuring observance by state organs of fair administrative action, democratic values and principles on which the Constitution is based. Further, The Commission is the Oversight and Enforcement Agency of the Access to Information Act, 2016 (ATI Act, 2016).

The Commissions' attention is drawn to the Female Representative of the Law Society of Kenya to the Judicial Service Commission (JSC) and the Chairperson of Committee on the Administration of Justice, Hon. Jacqueline Ingutiah's interview aired on Spice FM, "The Situation Room" on Thursday, December 19, 2024 on the "**Judiciary in Question: Addressing corruption and public concerns**" wherein, she stated that since inception of the JSC in 2011, a total of 935 cases against judges have been lodged with 862 being finalized leaving a backlog of 73 cases.

Hon. Jacqueline Ingutiah further, alluded that out of the 862 concluded cases, 772 translating to 82.5% were dismissed by the JSC on the ground of decisional independence. Of the 73 pending cases, she stated that one was awaiting plenary discussion, five hearings were ongoing, twenty were awaiting responses from concerned judges with three having been halted by virtue of court orders. Additionally, out of the 12 complaints lodged against judges, seven had been recommended for removal with one judge being reinstated as a result of a Supreme Court decision.

The Commission appreciates that one of the key functions of JSC is to receive complaints against, investigate, petition His Excellency the President to appoint a tribunal in accordance with Article 168(4) & (5) of the Constitution and discharge of its disciplinary mandate over judicial officers and staff under Article 172(2) (c) of the Constitution. Therefore, the JSC complaints management structure plays an important role in maintaining and enhancing high standards of judicial conduct and ensures that any shortcomings are addressed effectively. Moreover, the complaints procedure must be fair and transparent to the parties subject to the complaint. The process is envisioned to help maintain, enhance public trust and confidence in the judiciary, and to protect the independence, impartiality and integrity of the judiciary.

Article 35 of the Constitution provides the right of every citizen to access information. Further, Section 5 of the Access to Information Act, 2016 requires public entities to proactively disclose information which is relevant to members of the public or which is likely to affect or give effect to the realization of citizens' fundamental rights and freedoms. Specifically, Section 5(1)(d) requires public entities to **“provide to any person the reasons for any decision taken by it in relation to that person ...”**

Whereas, the Commission lauds the JSC for making progress in consistently informing the public through press statements and releases on the number and status of the complaints/petitions lodged against judges. There is need for the JSC to go a step further in publishing and publicizing the complaints and petitions lodged against the judges, the responses received, the analysis of issues and consequently the determination thereof. This is crucial in enhancing transparency and accountability; in turn increasing the citizens confidence in the judiciary.

The inadequate information can lead to speculation about judicial misconduct, perceived corruption etc that may hinder the ability of citizens to hold judges accountable for their actions, ultimately affecting the overall perception of the administration of justice.

In recognition of the mandate of JSC in promoting and facilitating the independence and accountability of the Judiciary and the efficient, effective and transparent administration of justice under Article 172 of the Constitution, The Commission on Administrative Justice recommends that the JSC publish as a matter of routine and publicize at a minimum on its website and other platforms, the following information taking into account the provision of the Data Protection Act 2019, the:

- I. Number of complaints/petitions lodged against judges;
- II. Nature of complaints/ petitions lodged and processed against judges;
- III. Timelines for processing the complaint/petition;
- IV. Complaints and petitions analysis on the basis of hierarchy, division and geographical location and
- V. All determinations made to date.

In light of the foregoing the Commission requests for a compliance report with the proactive disclosure requirements within Twenty one (21) days from the date hereof in accordance with Sec 5 of the Access to Information Act.

DATED AT NAIROBI THIS 23rd DAY OF December 2024 .



CHARLES DULO

CHAIRPERSON OF THE COMMISSION