

Press Release

It is clear to even the dispassionate observer that the crisis in the SCOK is self-inflicted. We are watching a distressing internecine battle between judges and their employer the JSC.

While nobody questions her right to due process, the granting ex-parte of conservatory orders to DCJ the Hon. Kalpana Rawal by Supreme Court judge the Hon. Njoki Ndungu represents the greatest challenge to the apex court. of the country.

The challenges that will arise are that as it effectively places Justice Rawal by operation of Section 5(4) of the Judicial Service Act the acting CJ for 6 months, upon the retirement of the current CJ in a few weeks, and in the position to constitute the bench of 5 that will hear her case. Whether she can act as CJ while beyond the constitutional age limit for that office is likely to attract legal challenge.

A further challenge will be achieving a quorum of 5 judges not conflicted in one way or another over the dispute of the retirement age of judges for the hearing of Justice Rawal's appeal or indeed any application to set aside the conservatory orders.

The Doctrine of Necessity, already stretched to its absolute limit cannot be repeatedly cited to justify the continued function of the SCOK in defiance of established judicial norms.

This situation is rushing the judicial establishment towards the precipice of a full-blown constitutional crisis. Some have begun to question the rationale of the existence of the SCOK.

It is time the actors in this dispute ask themselves whether, the merits of the retirement age case notwithstanding, the agitation of their respective positions is worth placing the judiciary and the country in this precarious position.

I have reached out and spoken to both parties to offer the LSK to lead a process of mediation that avoids risking upon the judiciary and the country a constitutional crisis. Both have expressed openness to this initiative.

There must be found a resolution to this matter that does not destroy the institution of the SCOK and undermine the credibility of the judiciary.

The proper functioning of the courts is critical to the administration of justice and the rule of law. As the most significant stakeholder in the administration of justice the LSK shall apply to join the pending proceedings as amicus curiae.

Isaac E.N. Okero
President LSK