



REPUBLIC OF KENYA

THE JUDICIARY



THE SUPREME COURT

OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

SPEECH BY HON. JUSTICE MARTHA KOOME, EBS, CHIEF JUSTICE & PRESIDENT, SUPREME COURT OF KENYA DURING THE LAUNCH OF THE KAJIADO LAW COURTS COMPLEX AND THE ALTERNATIVE JUSTICE SYSTEMS (AJS) MODEL, 19TH OCTOBER 2021

*‘Expanding the Doorways of Justice:
Collaborative Justice as An Avenue for
Social Transformation.’*

**Governor of Kajiado County, H.E. Joseph Ole
Lenku**

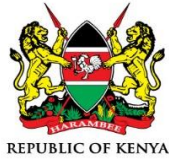
**Senator of Kajiado County, Senator Philip
Mpaayie**

**Chief Registrar of the Judiciary, Hon. Anne
Amadi**

**Hon Lady Justice Stella Mutuku, Presiding
Judge, Kajiado High Court**

**Hon Justice (Prof) Joel Ngugi, Judge of the High
Court and Chairperson, National Steering
Committee for the Implementation of
Alternative Justice Systems (AJS) Policy**

Members of Parliament present



REPUBLIC OF KENYA

THE JUDICIARY



THE SUPREME COURT

OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

**Speaker and Members of the County Assembly
present**

**Chair, National Land Commission, Mr. Gershom
Otachi**

County Commissioner, Kajiado County

**Food and Agricultural Organization (FAO)
Country Representative to Kenya, Amb. Carla
Mucavi**

**Ambassador and Head of Delegation, European
Union Delegation to Kenya, H.E Henriette
Geinger**

Judges, Judicial Officers and Staff

**Judicial Program Improvement Program (JPIP)
Coordinator, Ms. Nancy Kanyago**

Distinguished Guests

Ladies and Gentlemen

Good Morning!



REPUBLIC OF KENYA

THE JUDICIARY



THE SUPREME COURT

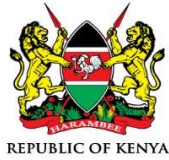
OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

INTRODUCTION

It gives me great pleasure to join you today as we jointly inaugurate the Kajiado Law Court Complex and launch the operation of Alternative Justice System (AJS) model. These two events resonate with and speak to the aspirations that animate the ‘Social Transformation through Access to Justice’ Vision for the Judiciary.

The vision for the Judiciary lays emphasis on access to justice by placing a target of ensuring that no litigant travels for more than 100 kms to access a court station. To achieve this, we hope to have in place a High Court station in every County and a Magistrates’ court station in every sub-County (constituency). Thus, the inauguration of the Kajiado Law Court complex goes a long way in improving access to justice.

In addition, the vision for the Judiciary lays emphasis on the need to embrace a **multi-door approach to the delivery of justice**. What this means is that the Judiciary is to promote access to alternative mechanisms of access to justice beyond courts. This is aimed at ensuring that litigants have various options in redressing social grievances. Thus, the launch of the Alternative Justice System (AJS) model in Kajiado County is an additional step



REPUBLIC OF KENYA

THE JUDICIARY



THE SUPREME COURT

OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

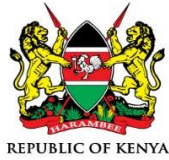
geared towards the realisation of the goal having in place an accessible, efficient, cost-effective, and expeditious system of justice.

THE IMPACT OF THE WORLD BANK (JPIP) PROJECT IN ENABLING THE JUDICIARY TO DELIVER ON ITS MANDATE

I would like to sincerely thank the World Bank which through its Judicial Performance Improvement Project (JPIP) has proved to be a valuable partner to the Kenyan Judiciary. The Judicial Performance Improvement Project (JPIP) which is a US\$ 120M (Ksh.12 Billion) project was signed in December 2012 and implementation began in 2014.

This unique Project, being the *first* World Bank Project in Africa focusing on the Judiciary has been *instrumental* in transforming the institution to meet the aspirations of the public as envisioned in the Constitution of our Republic.

It has also been the single largest investment in the Development budget of the Judiciary in history. Some of the positive impacts of the JPIP project include:



REPUBLIC OF KENYA

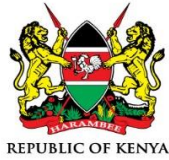
THE JUDICIARY



THE SUPREME COURT

OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

- (i) Enabled training of Judges, Judicial officers, and staff for Improved and Effective Service Delivery.
- (ii) Supported the first and most comprehensive assessment of the Judiciary's workload. This helped to determine the total caseload in the institution which was previously unknown.
- (iii) The project introduced and entrenched Performance Management in the Judiciary. This has enhanced transparency, accountability, and overall service delivery.
- (iv) Sustained development of manuals and standard operating procedures for many of our internal processes, including significant ICT support to subsequently automate some of these processes.
- (v) Enabled the Judiciary to recognise and adopt Alternative Dispute Resolution mechanisms as required by the Constitution. We now use Court Annexed Mediation since its roll out in 2017 and have developed an Alternative Justice Systems (AJS) policy and today we will be



REPUBLIC OF KENYA

THE JUDICIARY



THE SUPREME COURT

OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

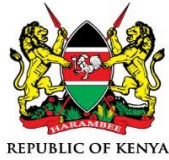
launching a pilot AJS mechanism here in Kajiado.

- (vi) The Project has supported various programmes by the Court User Committees (CUCs). The CUCs discuss the local issues plaguing justice delivery with the aim of addressing systemic issues that affect the delivery of justice and explore means and ways for resolving and mitigating such issues and work towards improving service delivery in our courts.
- (vii) The most revolutionary part of the project and the part that took up approximately 70% of the Project funds was investment in *increasing access to Courts* by reducing distances to courts and taking justice closer to the people.

Ladies and Gentlemen,

It is the JPIP project that has funded the construction of:

- 13 New High Courts (Kitui, Chuka, Vihiga, Nyamira, Nanyuki, Isiolo, Kakamega, Nakuru, Kajiado, Siaya, Kapenguria, Maralal



REPUBLIC OF KENYA

THE JUDICIARY



THE SUPREME COURT

OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

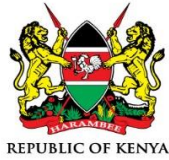
& Makueni and a new Court of Appeal (Nakuru).

- 8 Magistrates Courts

Though the JPIP project is coming to end on 31st October 2021, its legacy and impact on access to justice and improving service delivery in the Kenyan judiciary will endure for ages.

Going into the future, we will explore opportunities to partner and collaborate with the World Bank and other development partners in initiatives geared towards enhancing efficiency in disposal of cases and ensuring broader access to justice for all Kenyans. This includes the realization of our dream to fully digitize the Judiciary to enhance access to justice.

As we inaugurate this Kajiado Law Court Complex, the challenge is now upon the stakeholders in the justice chain, that is the Judges, Judicial officers, and staff and the Court Users to make use of the conducive environment availed by this wonderful Law Court Complex to improve on our service delivery.



REPUBLIC OF KENYA

THE JUDICIARY



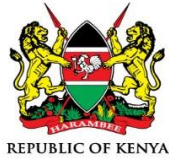
THE SUPREME COURT

OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

COLLABORATION BETWEEN THE JUDICIARY AND COUNTY GOVERNMENTS AND OTHER LEADERS AT THE LOCAL LEVEL

I thank the Governor, Senator, Members of Parliament and Members of the County Assembly of Kajiado County for gracing this occasion and for your unwavering support in establishing the AJS system and spearheading Court User Committee Initiatives to support the dispensation of Justice. Your presence at this event speaks to the spirit of the 2010 Constitution that calls for a **dialogic and cooperative mode of Governance that prioritises the needs and aspirations of the Kenyan people in our work as servants of the people.**

Justice is a **shared responsibility**. This fact is reinforced by Article 6 of the Constitution which provides for Devolution and Access to Services in Kenya. It commands that Government entities in the National and County Governments must conduct their mutual relations based on consultation and Cooperation. In addition, the realisation of the right to access to justice in Article 48 of the Constitution is an obligation of all state organs. Thus, the presence of the Leaders from the County Government, Parliament and County Assembly in this event speaks to our collective appreciation of the need to embrace the



REPUBLIC OF KENYA

THE JUDICIARY



THE SUPREME COURT

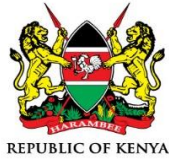
OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

constitutional imperative of cooperative governance.

Given that delivery of justice to the Kenyan is a shared obligation which will be made possible by a **coordinated, multi-stakeholder approach that is anchored on the need to open more avenues of access to Justice**, I see an opportunity for the leaders and the people of Kajiado county to partner with the Judiciary at the sub-county (Constituency) level in delivery of judicial services.

County Governments, County Assemblies, and other structures at the local level like the National Government Constituencies Development Funds are essential pillars to the delivery of justice to every Kenyan. Due to resource constraints, the Judiciary cannot realise the aspiration of having a High Court in every County and Magistrate's Court in every sub-County immediately on our own. Hence, in several Counties across the country, we have partnered with the County Governments and the National Government Constituencies Development Funds to avail land and build court premises.

My request to you today as leaders and the people of Kajiado county is that you partner with the Judiciary in this quest to develop court structures at the sub-county level. By doing this, we can fulfil



REPUBLIC OF KENYA

THE JUDICIARY



THE SUPREME COURT

OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

our joint obligation to ensure access to justice to our people. I therefore welcome discussions and initiatives aimed at collaboration between the County Government or Constituency leadership with the Judiciary geared towards making the quest to have a Magistrates' Court in each Sub-county within Kajiado county a reality.

ALTERNATIVE JUSTICE SYSTEMS (AJS) AS AN AVENUE FOR RESOLUTION OF SOCIETAL GRIEVANCES

In this event, we are also launching an Alternative Justice Systems (AJS) model. The development of this model has been made possible by the County Government, the National Land Commission, the National Steering Committee for the Implementation of the Alternative Justice Systems (AJS) Policy and the people of Kajiado county.

While for a long time, Kenyans have approached the delivery of justice as the exclusive preserve of the mainstream Judiciary, the Constitution envisages a broader dispute resolution system. Article 159(2) of the Constitution points us to the possibility of open-ended pursuit of justice beyond the confines of state institutions. It does this by commanding the Judiciary to promote the use of alternative forms of dispute resolution including reconciliation,



REPUBLIC OF KENYA

THE JUDICIARY



THE SUPREME COURT

OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

mediation, arbitration, and traditional dispute resolution mechanisms.

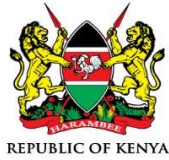
These alternative forms of dispute resolution allow for the resolution of disputes outside the courts. By commanding us to embrace the **multi-door institutional approach to the pursuit of justice**, the Constitution is alive to the need for efficient and timely delivery of justice.

It should be appreciated that the courts **are not the sole forum for the delivery of justice**. It is in appreciation of this reality that one scholar by the name Marc Galanter has famously observed that¹:

*“Just as health is not found primarily in hospitals or knowledge in schools, so justice is not primarily to be found in **official justice-dispensing institutions**. Ultimately, access to justice is not just a matter of bringing cases to a font of official justice, but of enhancing the justice quality of the relations and transactions in which people are engaged.”*

The **multi-door approach to justice** has the potential of deepening access to justice. The desirability and utility of this approach is that it has

¹ Marc Galanter, “Justice in Many Rooms” in Mauro Cappelletti (ed), *Access to Justice and the Welfare State* (Sijthoff and Noordhoff, Alphen aan den Rijn, 1981) pp 147, 161–162.



REPUBLIC OF KENYA

THE JUDICIARY



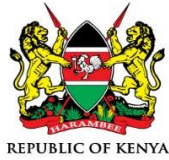
THE SUPREME COURT

OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

the possibility to address the concerns around the cost-effectiveness and speed of dispute resolution. By channeling a significant number of disputes for determination outside the courts, we will avoid the current problem of courts that are swamped and paralysed with disputes that might be better resolved elsewhere. We will also unlock valuable resourced trapped in pending cases, most of which can be resolved quickly and efficiently if we empower citizens as agents of justice.

To illustrate this point, family disputes are better resolved in a non-adversarial process. Thus, mediation and reconciliation processes, including those conducted within our traditional justice mechanisms, would be ideal for resolution of family disputes given that they are collaborative processes that foster long-term relationships. In contrast, court litigation takes an adversarial approach therefore tends to work against maintaining social harmony.

It is in consideration of this that the Constitution urges us to dig up our indigenous systems of justice by instructing us to promote the use of traditional dispute resolution mechanisms. This unique constitutional requirement is in response to the fact that our communities have used elements of facilitated **consensus-building** in dispute and



REPUBLIC OF KENYA

THE JUDICIARY



THE SUPREME COURT

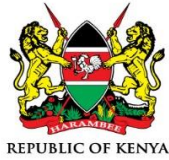
OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

conflict resolution outside state structures for centuries. Thus, it is time for us to **re-imagine and re-conceive** these traditional mechanisms to serve our need for making justice accessible to our people.

It is in this context that we are launching the Kajiado Alternative Justice (AJS) model. We are therefore relying on Kajiado County to show the Judiciary and the entire country the utility and way forward on how the AJS structures can be harnessed to ensure accessible, fair, and expeditious delivery of justice.

I therefore urge Kenyans in general and the residents of Kajiado County to make use of the diverse menu of dispute settlement processes and options available to them including the AJS mechanism. By embracing the AJS Mechanism, the public will resolve their conflicts in an efficient way thus **strengthening social harmony and state stability**.

To show the Judiciary's commitment to the multi-door approach to access to justice, we will be giving room in our court buildings across the country to AJS and mediation suites. We will also be availing rooms to the Small Claims courts and Tribunals in areas where we have adequate physical



REPUBLIC OF KENYA

THE JUDICIARY



THE SUPREME COURT

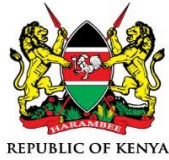
OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

infrastructure to provide conducive environments for all these mechanisms to operate. Today, I also declare the **Court Annexed Mediation** apparatus in Kajiado fully constituted and operational.

CONCLUSION

Let me at this juncture extend my appreciation to the National Steering Committee for the Implementation of the Alternative Justice Systems (AJS) Policy led by its Chairperson Justice (Prof.) Joel Ngugi for the good work the Committee has done. That is from developing a policy framework on AJS, a first of its kind in the world, to rolling out the AJS mechanism starting right here in Kajiado County. I assure you that the leadership of the Judiciary is behind you and supports you even as you continue with the roll out of the AJS mechanisms in other parts of the country.

I also offer gratitude to the Food and Agricultural Organisation (FAO) for supporting the development of this AJS Model specially to deal with disputes involving land. Land is an essential factor of production and a guarantor of food security and communal identity. It is a source of life and livelihoods and therefore at the heart of justice and human dignity. The European Union through the



REPUBLIC OF KENYA

THE JUDICIARY



THE SUPREME COURT

OFFICE OF THE CHIEF JUSTICE / PRESIDENT, SUPREME COURT OF KENYA

PLEAD program has also been instrumental in supporting Judicial reform.

We thank all our partners and call for continued solidarity in our collective mission to enable access to justice by fostering deeper partnerships and collaborations.

Thank you very much.

**Hon. Justice Martha Koome, EBS,
Chief Justice & President of the Supreme Court
of Kenya**