



THE JUDICIARY

**REMARKS BY THE HONOURABLE THE DEPUTY CHIEF
JUSTICE OF THE REPUBLIC OF KENYA AND VICE-
PRESIDENT OF THE SUPREME COURT, LADY JUSTICE P.
M. MWILU DURING THE LAUNCH OF THE NAKURU
ALTERNATIVE JUSTICE SYSTEMS MODEL AND SMALL
CLAIMS COURT**

MONDAY 16TH MAY 2022

NAKURU

***The Honourable the Chief Justice of the Republic of Kenya and
President of the Supreme Court, ,
His Excellency the Governor of Nakuru County, Mr. Lee Kinyanjui,
EGH,
The Presiding Judge at Nakuru High Court, Hon. Mr. Justice (Prof.)
Joel Ngugi, MBS and all judges of the superior courts here present,
The Head of Station at Nakuru Law Courts, Hon. Edna Nyaloti and
all other Judicial Officers here present,
Representatives from our Justice System partners here present
(DPP, Police Service),
Learned Members of the Bar from the Rift Valley Law Society and
the LSK Nakuru Chapter,
Ms. Charity Kagwi, Head of Crime Prevention and Criminal Justice
at the UNODC Regional Office for Eastern Africa,
Ms. Teresa Mugadza, IDLO Country Director,
Members of the Nakuru CUC-AJS Working Group,
Our Judiciary Staff here present,
Distinguished Guests, Ladies and Gentlemen,***

The **Social Transformation Through Access to Justice (STAJ)** blueprint for the Judiciary was launched by Her Ladyship the Chief Justice in September last year. The vision therein is of an independent, efficient, and accessible Judiciary, responsive to the aspirations of Kenyans and a true guardian of the rule of law. To my mind, few initiatives mirror what is

at the core of the STAJ strategy more than Alternative Justice Systems (AJS) and Small Claims Courts (SCCs). The launch of the Nakuru SCC and the Nakuru AJS Model are symbolic of the Judiciary's continued transformation journey and our commitment to widen the doorways of justice for all Kenyans.

Alternative Justice Systems (AJS) are traditional, informal, and other mechanisms used to access justice in Kenya. Framed by Art. 159 of the Constitution 2010, AJS capture the myriad of dispute resolution and justice provision mechanisms that exist outside the formal court system and through which majority of Kenyans access justice in our urban and rural communities across the country.

Established under Article 169 and the Small Claims Courts Act 2016, Small Claims Courts (SCCs) are subordinate courts that hear matters of a pecuniary jurisdiction of up to one million shillings through a process characterized by simplicity of procedure, cost effectiveness and speedy resolution of disputes.

Allow me to focus on the potential of both AJS and SCC to positively impact on performance, a key aspect of access to justice, in the Judiciary. As you are all aware, since 2012, the Judiciary has been institutionalizing performance management across and within itself. Since April 2015, we have had in place a formal performance-based management and measurement system that seeks to, inter alia:

- promote accountability for results
- track progress on areas of focus and key priorities
- promote efficiency and effectiveness of Judiciary processes and systems; and
- Provide accurate and actionable information for more effective policy interventions.

Since July 2021, the Milimani SCC has been signed up to the Performance Measurement and Management Understandings (PMMUs) and the other twelve SCCs are expected to sign up during the next round of performance negotiations. The measurement of the SCC performance will enable the crafting of more effective solutions and interventions to address the challenges and emerging issues that SCCs face.

As we launch the Nakuru SCC, the 13th SCC station, we must pay attention to the statistics and emerging performance data. Since we launched the SCC pilot in Milimani in April 2021, the demand for the court's services evinces a significant enhancement in access to justice for many people previously unable to access justice through the orthodox court systems.

This demand however must be met simultaneously with adequate financial, infrastructural, and human resource support for the SCCs. Otherwise, we shall see the backlog and inefficiencies that plague the rest of the court system manifest themselves at the SCC, negatively impacting performance and thus access to justice. This must, at all costs, be avoided.

Regarding AJS, our performance management assessments are evolving to take into consideration the full gamut of access to justice, both qualitative and quantitative. In the current 6th cycle of PMMUs, for example, contains a performance assessment that measured the number of files in a station that were diverted to alternative modes of disputes resolution. However, whilst diversion is important regarding the quantity

and speed with which matters can be determined, equally important are the methods, the reconciliatory processes involved, and the quality of the justice outcomes that parties enjoy through alternative mechanisms such as AJS.

Since the launch of the AJS Policy on Katiba Day 2020, this is the 2nd AJS suite and model established by the Judiciary after

those in Kajiado. It is vitally important that we pay attention to accurately recording the experiences, information, and data emerging from these novel processes. The performance mantra is 'that which gets measured gets done'. AJS mechanisms are not exempt from this.

However, viewing access to justice merely as statistics on the expeditious determination of matters will alienate us from a more meaningful ideal of justice. Within our constitutional dispensation, access to justice is not limited to physical access to dispute resolution mechanisms and the decisions emanating therefrom. Methods, processes, and content are vitally important considerations too. This aspect of substantive

access to justice demands problematising and rethinking our concepts of justice. Strengthening and promoting AJS has the potential to significantly impact social transformation through access to justice.

I am particularly interested in the idea of **justice as freedom** contained in the AJS Baseline Policy and being implemented

through AJS models across the country, including the Nakuru Model we are launching today. These are sites and opportunities for this re-conceptualisation of our ideas of justice and its role in social transformation. Amongst our tasks however is to ensure that we improve our data collection and performance assessment methodologies to see how they can

better bring out these important quantitative aspects of justice provision.

AJS and SCCs, innovative mechanisms towards expanding the doorways of justice in the Judiciary, enjoy the unequivocal support of the Honourable the Chief Justice and the entire Judiciary leadership. I laud the Chair of the AJS Steering

Committee, the Hon. Mr. Justice (Prof.) Joel Ngugi for continuing to lead the Judiciary on this AJS journey with such dedication and passion. I thank the Ag. Registrar SCCs, Hon. Stella Kanyiri for the fantastic work she, the adjudicators, and her entire team are doing in rolling out SCCs despite the huge workloads, financial and infrastructural constraints. Keep up the good work. I thank all our justice system partners, county

leadership, and development partners, for continuing to walk this journey with us; thank you, the people of Kenya are better for it.

It is now my singular duty and honour to invite the Honourable the Chief Justice of the Republic of Kenya, to deliver her remarks.

God Bless Us All, God Bless Our Judiciary, and God Bless
Kenya.

Hon. Lady Justice P. M. Mwilu, MGH

**Deputy Chief Justice & Vice President of the Supreme
Court**