

CURRICULLUM VITAE

CHIEF JUSTICE DAVID KENANI MARAGA



Bio Data:

Date of Birth: 12th January, 1951
Marital Status: Married with three children
Nationality: Kenyan

CAREER OBJECTIVE:

In obedience to God's Command and Will, and guided by the Constitution, to serve humanity, and Kenyans in particular, with dedication, honesty and integrity, striving at all times to uphold the rule of law and do justice to all.

A. PERSONAL PROFILE

I am a God fearing person who believes in, and endeavours to do, justice to all irrespective of their status in society. I have a great passion for upholding the rule of law, which is an essential ingredient for social justice, political stability and economic development. I value people as a core resource and have had great pleasure and success in building teams towards effective justice delivery.

I am results-oriented and have worked with a diverse range of partners, committee's, panels and other bodies to deliver the desired change and results consistently throughout my career to date. I am particularly keen on building a solid leadership pipeline and enabling people to achieve their fullest potential.

In this regard, I have taken up inspirational leadership as a hobby and mentoring young people and professionals as second nature.

I am self-driven with strong organizational and administrative skills and the ability to work independently as well as collaboratively. I particularly pride myself in my ability to positively interact with the various consumers of justice, regardless of their level, to address pertinent issues concerning the justice system. This has resulted in enhanced credibility of the Judiciary in the courts and stations where I have worked.

As a Judge, though I am occasionally provoked to anger by counsel, litigants or witnesses who try to frustrate the court process, I am, however, able to understand their situations, control myself and firmly, yet courteously and fairly, deal with the situation thereby maintaining court decorum. Further, utilizing my fluency in Kiswahili, when I realize that interpretation in court is not effective, I put counsel's questions to the witnesses in Kiswahili ensuring that the hearings proceed fairly and smoothly. I am also given to kindness; using that gift, I talk to parties especially those who are unrepresented, in order to make sure they are at ease. I explain to them the nature of the cases and ensure they understand what is required of them before we start the proceedings.

As a responsible citizen of Kenya, I am an Elder and one of the Bible-Study leaders of the Seventh Day Adventist Church. I have also served as Member of the Board of Governors of Sironga High School in Nyamira, Njoro Girls High School and Lanet Secondary School.

B. Professional Profile

I am a senior legal professional with extensive experience in the Bar and on the Bench, and with a nascent but growing interest in academia. I was admitted to the Roll of Advocates 38 years ago, and I have served as judge of Kenya's two Superior Courts for about 13 years.

I have a strong track record both in the Judiciary and private practice, where I have successfully served both as a professional and a leader. I have also been exposed to many different facets of law, varied working environments, people, and communities making me a well-rounded individual.

Currently, I am the Presiding Judge of the Court of Appeal at Kisumu; the Chairman of the Judiciary Committee on Elections; and the Chairman of a Tribunal appointed by His Excellency the President of the Republic of Kenya to investigate the conduct of a Judge of the High Court of Kenya. Previously, I served as the Presiding Judge of the Family Division of the High Court at Nairobi; and the Resident Judge, High Court of Kenya at Nakuru.

Before being appointed a Judge of the High Court, I was a legal practitioner in private practice for twenty-five (25) years, engaged in civil and criminal litigation as well as conveyancing matters. During that period, I was also a judge at the Nakuru Agricultural Show Trade Stands from 1985 to 1990. My contribution led to boosting of the Agricultural Show's activities and as a reward, the Kenya Farmers Union sponsored myself and others to attend the Royal Agricultural Show in the UK in 1989. I also served as the Chairman of the Rift Valley Law Society.

I hold a Master of Laws Degree (LLM) from the University of Nairobi; a Bachelor of Laws Degree (LLB) from the same University, and a Diploma in Legal Practice from the Kenya School of Law, leading to my admission onto the Roll of Advocates in October 1978. I am also a member of the Chartered Institute of Arbitrators, London and the Law Society of Kenya.

I have presented papers in numerous seminars, conducted trainings in law, and offered lectures at the University of Nairobi as a visiting lecturer. I also served a member of the Constitutional Review Task Force of the Seventh-day Adventist Church, East Africa Union.

C. PROFESSIONAL COMPETENCIES

In its determination dated 21st September 2012 (Par. 133), in which it unanimously dismissed all the complaints made against me, the Judges and Magistrates Vetting Board stated:

“At his interview with the Board, the Judge made a confident, forceful and dignified impression. The Board received positive reports from the legal profession in the Rift Valley, who complimented the Judge on his punctuality, seriousness with which he approached cases, and his control of the courtroom.” (Par.132].

I. Development of Jurisprudence

Both in legal practice and on the Bench, I have made a significant contribution to local and international jurisprudence as demonstrated in the Anguka, Julie Ward, Choge and Mohammed Harshi Cases, among others detailed herein below. As at 2012, about twenty five (25) of my judgments had been reported by the National Council for Law Reporting and many more are pending publication.

October 2014 to Date - Court Of Appeal, Kisumu

Executive of Kisumu & Others v. Ann Atieno Adul & Others, CA Nos. 17 & 18 of 2015 (Consolidated) - Precedent setting constitutional authority on impeachment of County Assembly Speaker. This decision helped to minimize impeachment motions in County Assemblies.

January 2012 to September 2014 – Court Of Appeal, Nairobi

In the Court of Appeal, Nairobi, I presided over several landmark appeals on Commercial and Labour Law as well as in Election Petitions including:

- A. Kenya Airways Limited v. Aviation & Allied Workers Union Kenya & Others, CA No. 46 of 2013***—Precedent setting on termination of employment on redundancy;

- B. *Attorney General v. Mohamud Mohammed Harshi & Others, CRA No. 113 of 2011***—Internationally cited authority on International Criminal Law (Piracy) on the Principle of Universal Jurisdiction. This decision led to minimizing piracy in the Indian Ocean.
- C. *Wetangula v. Kombo & Others, Kisumu CA (Election Petition) No. 43 of 2013***—Precedent setting on nullification of election on grounds of bribery.
- D. *Royal Media Services Ltd & Others v. Attorney General & Others, CA No. 4 of 2014***—This decision helped to settle a major Constitutional Freedom of the Media Regional Terrestrial Broadcasting Digital Migration and Broadcasting Signal Distribution Licensing

2008-2010 High Court, Nakuru

- A. *Reliable Concrete Works Ltd v. Municipal Council of Nakuru & Other, Nakuru High Court Constitutional Reference No. 3 of 2009*** - In this case I declared Section 12 of the Valuation for Rating Act unconstitutional for authorizing Local Authorities, which are parties to valuation for rating disputes, to appoint members of the Valuation Courts.
- B. *Catherine Waithaka Mwangi v. Gervas P. Mwangi, Nakuru HCCC No. 19 of 2004***—In this case I refused to follow Court of Appeal decisions in *Bwana v. Said & 2 Others*, [1991] KLR 454 and *Kenganga v. Ombwori*, [2001] KLR 103 which held that adverse possession claims not commenced by Originating Summons are incompetent, but instead followed *Mariba v. Mariba & Another*, [2007] 1 EA 175.
- C. *Anne Mwaura & Others Vs David Wagathua Gitau & Others, Nakuru HCCA No. 171 of 2008*** – In this case I set the record straight with regard to the Court of Appeal obiter dicta in *Tiwi Beach Hotel Ltd v.*

Julian Stamn [1990] 2 KAR 189 which had hitherto been followed without question in regard to the issue that the Business Premises Tribunal had no jurisdiction to issue injunctions.

D. *Simon P. Kamau & Others v. Teachers Service Commission, Nakuru HCCC NO. 65 of 2006*— In this case I held that the pension of the retired teachers entitled to salary increment the Government granted them in 1997 should be based on that increment. The decision, which provided relief to about 52,000 retired teachers, was upheld by both the Court of Appeal and the Supreme Court.

E. *Republic v. Stephen Kiprotich Leting & Others, Nakuru HCCRC No. 34 of 2008* —This case is now an authority and seminal material for teaching in university law schools on the offence of murder.

2003-2007 High Court, Mombasa

A. *HC Election Petition No. 1 of 2005—Hassan Joho v. Hotham Nyange & Others*—Precedent setting on, inter alia, the standard of proof in Election Petitions.

B. *Charles Philip Mason v. Vennesa Kahaki Mason, Mombasa HCCC No. 11 of 2006 (OS)* - Precedent setting on distribution of Matrimonial Property.

PUBLICATIONS

1. Chapter on “Scrutiny in Electoral Disputes: A Kenyan Judicial Perspective,” in the Book: ‘Balancing the Scales of Electoral Justice: Resolving Dispute from the 2013 Elections in Kenya and the Emerging Jurisprudence.’ Edited by Dr. Collins Odote and Dr. Linda Musumba; February 2016;

2. LLM Thesis—“The Legal Implications of Article 2(6) of the Constitution of Kenya, 2010”; and
3. Numerous Judgments.

II. Legal Practice

I have demonstrated superior legal capability while defending landmark criminal cases such as the Choge Murder Case, which ran for two years up to the Court of Appeal; the Anguka Case (in relation to the Ouko Murder); and the Julie Ward Murder. I have also prosecuted and defended civil cases majoring on commercial law and land cases while in private practice.

III. Transformational Leadership and Policy Influence

I am a transformative leader with proven strategic judicial and organizational value-driven leadership and focus. Leadership is one of my core competencies and has easily emerged in most of my work and social settings. Many times I have been invited or asked to lead teams and/or tasks. This has been further augmented by my reliability, communication skills, responsibility and amiable nature, which are assets, I bring to every new opportunity. Below are some illustrations of this competence:

October 2014 to Date - Presiding Judge, Court Of Appeal, Kisumu

I currently serve as the Presiding Judge of the Court of Appeal, Kisumu. This Court serves 14 Counties with a total of 26 Judges of High Court, Environment and Land Court as well as Employment and Labour Relations Court. Between October 2014 and June 2016, which is the period under which I have so far served in that station, the Court has disposed a total of 1,200 appeals and applications.

I also serve as Chair of the Bar-Bench Committee of the Kisumu Court of Appeal, as well as the Chair of the Court Users’ Committee. Under my

leadership, the relationship between the Bar and the Bench has tremendously been enhanced with more advocates now taking pauper briefs.

During my term in Kisumu, I have paid visits (some impromptu) to Kisumu and Eldoret Prisons and attended to prisoners' concerns thus enhancing the relationship between the Judiciary and consumers of justice.

April 2010 to December 2011 - Presiding Judge of the Family Division of the High Court in Nairobi

As the Presiding Judge of the Family Division of the High Court in Nairobi, I presided over and determined several succession causes and applications in landmark succession disputes including the Mbiyu Koinange; Gerrishom Kirima and Kanyotu Succession Causes. I determined an average of 10 applications for grant of letters of administration per day. In that Division, I was also the Chair of the Bar-Bench Committee of the Family Division which brought together Advocates practicing in the Family Division and, inter alia, developed a system of expeditiously disposing of causes in the Division, especially child adoption by foreign applicants.

May 2009 to August 2010 – Resident Judge, High Court of Kenya, Nakuru

As the Resident Judge of the High Court at Nakuru, I was also the Chairman of Court Users' Committee, which regularly met and resolved bottlenecks in regard to the expeditious disposal of cases. I made several visits to Nakuru Main Prison and Naivasha Maximum Prison to check on the welfare of prisoners and remandees. In 2010 I resolved a potentially explosive hunger strike that had been staged by prisoners and remandees in protest against the manner in which they were being handled by certain Magistrates and a Judge. Had the strike succeeded, it would have caused substantial damage to public confidence in the Judiciary. On a subsequent visit to that prison by the Court of Appeal Judges, the prisoners and remandees commended me and my actions to those visiting Justices.

In the administration of justice, I realized the need for the training of Chiefs, Assistant Chiefs, and Village Elders as the first ports of call by victims of sexual offences and on the handling of evidence on sexual offences. I obtained World Bank funding, and got over 100 Chiefs, Assistant Chiefs and Village Elders trained. In its said determination dated 21st September 2012 (Par. 133), the Judges and Magistrates Vetting Board commended me for that action and for taking steps to decongest prisons in his region.

August 2015 to Date - Chairman of the Judiciary Committee on Elections (JCE).

This Committee is the predecessor of Judiciary Working Committee on Election Preparations. After disposal of the election petitions and appeals arising from the 2013 General Elections, pursuant to **Article 10** of the Constitution, I brought together all the Judges and Magistrates who had heard those petitions and appeals; all the government institutional stakeholders; representatives from the Law Society of Kenya; representatives from political parties in Kenya; as well as representatives from Civil Society Organizations and obtained their views on electoral law reform and issues which should be addressed for a seamless electoral dispute resolution after the 2017 General Elections.

Having completed the launch of its Strategic Plan by the Hon. Chief Justice on 26th February 2016, an event attended by seven Ambassadors, the JCE is now engaged in preparations (including electoral law reform) for the seamless disposal of as many as 500 election petitions expected to arise from the 2017 General Elections.

From our history, I know that Presidential Elections are emotive and high-pressure processes. If mismanaged at any stage (including determination of petitions arising therefrom), Presidential Elections can lead to instability in our country. In this regard, I presented a paper to the Parliamentary Justice and Legal Affairs Committee (JLAC) at Nairobi and Mombasa in 2015 and urged them to amend **Article 140(2)** of the Constitution and extend the period for the determination of Presidential Election Petitions from **14** to **30** days in order to

give the Supreme Court sufficient time to properly determine Presidential Election Petitions. JLAC has approved that proposal and a Bill to that effect is pending before Parliament.

May 2012 to August 2015 – Vice-Chairman of the Judiciary Working Committee on Election Preparations (JWCEP)

The JWCEP was set up by the Hon. Chief Justice and tasked to liaise with other stakeholders in the conduct of elections and to advise the Judiciary on how to efficiently and expeditiously deal with the numerous election-related disputes then anticipated to arise from the 2013 General Elections. I chaired over 50 Committee and Stakeholder Meetings; facilitated 5 training sessions that equipped the Judges and Magistrates with skills and knowledge for the expeditious and competent determination of election petitions and appeals. Under my leadership, the Judiciary successfully determined **192** election petitions (including the Presidential Petitions) and **84** appeals (a total of **276** matters) within the timeframes set out in the Constitution.

IV. Training & Capacity Building

I am an accomplished trainer and facilitator, who has facilitated several capacity-building sessions at the Judiciary Training Institute; the Law Society of Kenya's Continuous Legal Education (CLE) workshops; as well as seminars and conferences at other institutions. I am also a visiting lecturer at the University of Nairobi.

CONFERENCES, TALKS AND SPECIAL ENGAGEMENTS

March 2016

I appeared for one and half hour talk show dubbed "*Cheche*" on Citizen TV and informed the country on how the Judiciary had expeditiously disposed of election petitions arising from the 2013 General Elections and the preparations the Judiciary is currently undertaking to handle the election disputes expected to arise from the 2017 General Elections.

April 2015

The Zanzibari Judges and Magistrates Workshop on Electoral Dispute Resolution Process held at Melia Beach Hotel on the 14th and 15th April 2015 where I presented a paper entitled “*Electoral Dispute Resolution: The Kenyan Experience.*”

December 2014

I made a presentation to the Joint Supreme Court and Court of Appeal Judges Conference in Nanyuki on “*The Internationally Accepted Special and Limited Jurisdiction in Election Disputes*”. This led to the proposals pending before Parliament to extend the period for the determination of Presidential Petitions from **14** to **30** days and to limit the jurisdiction of the Supreme Court to Presidential Petitions only.

July 2013

The International Institute for Counter-Terrorism Conference on “*Law & Security: A Perspective from the Field and Beyond*” held at the Interdisciplinary Centre in Herzliya, Israel from 30th June to 2nd July 2013 where I presented a paper entitled “*Maritime Security: Trial of Piracy Cases in Kenya.*” This followed my leading judgment in ***Attorney General v. Mohamud Mohammed Harshi & Others, CRA No. 113 of 2011***

September 2012

The Commonwealth Eastern and Southern Africa Regional Judges Forum on Economic and Financial Crimes in Collaboration with the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) Pretoria, South Africa organized by the Commonwealth Secretariat.

March 2010

International Commission of Jurists Lawyers’ Symposium held in Maseru, Lesotho 4th to 5th March 2010 where I presented a paper entitled: “*Using Judicial Performance Evaluations to Secure Judicial Independence and Accountability.*”

August 2009

Council of Legal Education “*Pupil –Master Sensitization Workshop*”, in Nakuru, where I presented a paper on Integrity.

COMMUNITY SERVICE AND PRO BONO ACTIVITIES

I have been supporting Moi Children’s Home since the 1980s and St. Barnados Children’s Home, Nairobi since 1996. I have and continue to educate orphans and disadvantaged children, some of whom I have supported up to University level. I have helped build Churches at Mwereni in Kinango area of Kwale County; Yumbuni in Mutito Andei; Mutituni in Machakos County; Simerero in Siaya County and others in Nakuru, Nyamira and Kisii Counties. While in private practice, I gladly handled several pro-bono briefs.

I am a motivational speaker who has addressed young people and offered counsel and comfort to many. For instance, on 18thOctober 2014, I addressed a group of students at Alliance Boys High School; on 3rdOctober 2015, I addressed over 800 students of Segero High School in Uasin Gishu County; on 26thOctober 2015, I addressed students at Baraton University in Nandi County; on 2ndApril 2015 I addressed over 500 women from both Bomet and Kericho counties on their constitutional rights to property and their right to stand against domestic violence; and on 13thFebruary 2016 I addressed over 1,200 students of Nyambaria High School in Nyamira County.

EDUCATION

- **2010 to 2012**—Master of Laws Degree (LLM), Law, Governance and Democracy, University of Nairobi.
Thesis: “*The Implications of Article 2(6) of the Constitution in the Domestication of International Treaties*”;
- **1974 to 1977**—Bachelor of Laws Degree (LLB Hons.), University of Nairobi, Kenya;

- **1977 to 1978**—Diploma in Legal Practice, Kenya School of Law, Nairobi Kenya;
 - **1972 to 1973**—Kisii High School—East African Advanced Certificate of Education (A Level);
 - **1968 to 1971**—Maranda High School—East African School Certificate (O Level);
 - **1961 to 1967**—Sironga DEB Primary School—Certificate of Primary Education (CPE)
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EMPLOYMENT HISTORY

September 2014 to date—Presiding Judge, Court of Appeal, Kisumu;

January 2013 to August 2014—Judge, Court of Appeal, Nairobi;

April 2011 to December 2012—Presiding Judge, The Family Division of the High Court;

September 2010 to March 2011—Judge, Civil Division High Court, Nairobi;

May 2008 to August 2010—Resident Judge, High Court of Kenya, Nakuru;

January 2008 to April 2008—Judge, High Court of Kenya, Nakuru; and

2003 – 2007—High Court of Mombasa.

1978 – 2003 – Private Legal Practice

APPOINTMENTS AND ASSOCIATIONS

August 2015 to date—Chairman of the Judiciary Committee on Elections;

May 2012 to August 2015 Vice—Chairman of the Judiciary Working Committee on Election Preparations (JWCEP);

2014 to date—Chairman of the Tribunal Appointed by His Excellency the President of the Republic of Kenya, to investigate the conduct of a High Court Judge.

OTHER APPOINTMENTS

- Chairman Rift Valley Law Society (1987-1989);
 - Member of the Constitutional Review Task Force of the Seventh-day Adventist Church East Africa Union;
 - Leader of the Public Affairs and Religious Liberty Department Nairobi Central Seventh-day Adventist Church;
 - Member of the Board of Governors of Sironga High School in Nyamira; Njoro Girls High School, Nakuru and Lanet Secondary School, Nakuru; and
 - Judge: Nakuru Agricultural Show Trade Stands (1985-1990).
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MEMBERSHIP OF PROFESSIONAL ASSOCIATIONS

- Member, Chartered Institute of Arbitrators, London; and
 - Member, Law Society of Kenya.
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