

CONGRATULATIONS TO THE KENYAN SUPREME COURT: BY MARTIN A. B. K. AMIDU

For the first time in the history of Africa, the Kenyan Supreme Court, made all students and activists of free, transparent and fair elections in the emerging democracies in Africa proud by having the faith of their conviction to declare the Presidential election held in that country null and void. The Supreme Court cited irregularities in the vote, particularly the tampering with the electronic transmission of the results of the elections from the polling stations, and ordered a new one within 60 days. The Supreme Court has shown that Kenya is not a country where some past Governments and political parties violate their Constitution by considering citizens and the courts as being on their leash.

Coincidentally, the head of a group of the election observers is reported to be our own John Dramani Mahama whom activists of free, transparent and fair elections, and anti-corruption crusaders had accused during the 2016 Presidential election in Ghana of using his appointment powers under Articles 43 and 70 of our Constitution for a rigging agenda. Having won the 2012 Presidential elections by a razor thin edge vote of the Ghana Supreme Court, he was cynical in advising the losing party in the Kenyan elections to concede defeat or challenge the results in the Kenyan Supreme Court, in the belief that once incumbent Presidents are declared winners of an election their Supreme Courts normally docilely endorse the declarations of the Electoral Commission even in the face of the glaring rigging of the election.

John Dramani Mahama had benefitted from such a situation in the Presidential petition of 2013 and cynically thought his good friend, the President of Kenya Uhuru Kenyatta, whom he had invited as the special guest of honour during Ghana's independent Celebrations in 2016, would have the benefit of the docility of the Kenyan Supreme Court just as he was the beneficiary of Ghana's razor thin edge Supreme Court decision in 2013. I also have no doubt that John Dramani Mahama's cynical advice to Mr. Odinga was informed by past decisions of the Kenyan Supreme Court where incumbents have been declared winners of the Presidential elections and his personal experience in Ghana.

By breaking the cycle of automatic endorsement of rigged elections in favour of incumbent Presidents in Africa, the Supreme Court of Kenya has made not only Kenya but the whole of Africa proud in showing that there are Supreme Court Justices who will maintain their oaths of office to do justice even if the heavens fall.

The Kenyan Supreme Court decision annulling the Presidential elections and ordering a new one within 60 days is just an interim but welcome victory for those of us who believe in free, transparent and fair elections in African constitutional democracies run under a regime of good governance and the rule of law. Kenyans need the support of the whole of Africa and the world in general to re-run a successful free, transparent, and fair election within the next 60 days.

The incumbent Kenyan Government's responsibility in this regard is very onerous but the condemnatory pronouncements of President Uhuru Kenyatta against the Supreme Court at a rally on 2nd September 2017 do not appear to help the situation. I can personally understand his pain in the annulment of the flawed elections since I went through worse losses in the 2000 Presidential elections in Ghana with the late Prof. Atta Mills. But Kenyatta ought to remember that the hallmark of a good sportsman is his ability to accept temporary defeat. In the Kenyan case there is another chance for both alleged winner and loser within the 60 days election and who knows upon whom success will shine.

The Kenyan Supreme Court decision is a land mark decision in Africa and must be acknowledged without any attempt to intimidate the Court. I salute the justices of the Supreme Court of Kenya for a bold and unprecedented decision. May other Supreme Courts or Constitutional Courts in Africa be bold to follow such independent steps in the future where the facts dictate similar outcomes.

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