PETITION RULING ABSOLVES UHURU, BREATHS NEW LIFE INTO RAILA’S PROSPECTS

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Kenya’s Apex Court delivered an earthshaking ruling following a petition on the outcome of the just concluded Presidential Election by President Uhuru Kenyatta’s main challenger Raila Odinga. While the Electoral Management Body (EMB) known as the Independent Electoral and Boundaries Commission (IEBC) was roundly criticized for mishandling the election, President Kenyatta was not found to have meddled in the elections. As a result, his pedigree as a champion of democracy has been further boosted while Mr. Odinga’s decision to seek legal redress rather than resort to mass action is widely supported. The real win for Kenya in this unfortunate and expensive debacle, however, lies not with the two main protagonists, but with the deepening of the democratic space and regained confidence in the electoral process by the Kenyan citizenry.

The Supreme Court of Kenya asserted its independence on September 1, 2017, by nulling the August 8, 2017, Presidential elections in its entirety. In so doing, the key constitutional tenet preserving the sovereignty of the people of Kenya that is exercised through voting to elect their representatives, and supremacy of the Constitution as captured in Articles 1, 2, and 3 of the Constitution of Kenya 2010 was upheld. As a result, Kenya has maintained its global position as a small but aggressive global pacesetter by becoming the fourth among an elite group of precedent-setting nations namely: Ukraine (2004); Maldives (2014); and Austria (2016), that have similarly annulled a presidential election.

Of note, however, is that despite the loss and disheartening prospects of yet another grueling election campaign to be held within 60 days following the ruling, Mr. Uhuru Kenyatta has represented himself superbly well throughout this ordeal. It should be recalled that when he first took a stab at the presidency in 2002 and lost, he stated that: ‘I accept your choice, and, in particular, now concede that Mr. Kibaki will be President’. This despite the fact that his main benefactor, former President Moi, still held the instruments of power and the option of an election petition was available to him. Furthermore, earlier on in 1997, Uhuru ceded defeat to a political minnow, in the name of Moses Mwihia, despite his
seemingly indisputable political pedigree in Gatundu.

To his credit, this is not the first time that Mr. Kenyatta has accepted to co-operate with the courts as was the case in October 2014 when attended the International Criminal Court at The Hague. In this unusual circumstance for a head of state, President Kenyatta, in an extraordinary bold move, transferred power to his deputy allowing him to attend the trial as an individual stating that he was determined not to drag the “sovereignty of Kenya (or) 40 million Kenyans” with him in the crimes against humanity charges emanating from the 2007/8 post-election violence. This time around, Uhuru has for the second time subjected himself to the authority of the Supreme Court, the first being in 2013 when Raila Odinga, though unsuccessful in that instance, once again petitioned the result. Each time following the judgment, Mr. Kenyatta has accepted the decision of the Court, albeit with severe reservations this time around.

The so called “Maranga Four” ruling is undeniably bound to spark off a flurry of angry denunciations of the judiciary and inevitably trigger bitter recriminations within the Jubilee rank and file. Calm acceptance, self-control, and deep introspection are thus strongly recommended after this ruling that has been described using an abundance of superlatives. What remains irrefutable however is the incontrovertible fact that as a result of Mr. Kenyatta’s tolerant posturing during this period, his patriotic and democratic credentials have been highly boosted and are now, more than ever before, indisputable. Of vital significance in the current petition ruling is the fact that, while the judgment was a strong indictment against the conduct of the Independent Electoral and Boundaries Commission, the Court fully absolved Mr. Kenyatta, the third respondent in the case, of any wrongdoing. His decision to adhere to the judicial process has therefore increased the deepening of institutional confidence by the public and further expanded Kenya’s democratic space under his watch, without diminishing his stature in any shape or form. Not only has the President been exonerated but his reputation for putting country before self not only remains intact and beyond doubt, but has been further enhanced.

In like manner, the former Prime Minister, Raila Odinga, exercised his constitutional right in challenging the election result through the judicial process. Obviously, Mr. Odinga’s strategy of focusing on the integrity of the entire election process rather than the technicalities of reversing Uhuru Kenyatta’s one million plus win yielded a winning result. Of more consequence, however, is the fact that he took what seemed to be an extremely painful path on his part, which was to take the legal route rather than have our democracy degenerate into violence and sustained conflict.

While much acclaim belongs to both Mr. Kenyatta and Mr. Odinga for their key role in reigning in their supporters, the biggest winners in this trial are the citizens of Kenya. It is the hope of most Kenyans that the two dominant Presidential contenders will maintain their statesmanship and gentlemanly mien as we move forward to the looming election, and in so doing, ensure we collectively continue to benefit from the peace dividend arising from this petition and the subsequent ruling. Elections must remain a process of citizen’s exercising their democratic right to self-determination rather than a series of unending episodes of acrimonious political warfare.

The highly esteemed lawyer Steve Mwenesi, representing the Law Society of Kenya, best summed it up when he aptly lauded the
landmark decision as “a celebration of Kenya’s maturity as a democratic country” leading to institutional deepening whereby the judiciary has now edged even closer to becoming an integral part of the electoral process as it well should be.

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