

KENYAN COURTS AND THE POLITICS OF THE RULE OF LAW IN THE POST-AUTHORITARIAN STATE

By Migai Akech & Patricia Kameri-Mbote

ABSTRACT

This article examines the performance of the judiciary as a neutral and legitimate arbiter among competing political interests in Kenyan society. It illustrates the failure of the judiciary in executing this mandate by examining the role that courts have played in the establishment of the rule of law in the post-authoritarian state by providing an account of judicial engagement with political processes since the return to multi-party democracy in 1991. It attributes this failure to a lack of institutionalization which has predisposed judicial officers to manipulation both by the executive branch and the Chief Justice (who heads the judiciary). It commends the 2010 Constitution of Kenya for setting out the principles and mechanisms that can provide the requisite institutionalization of the Judiciary, and sees a need for fortitude in the reconstituted Judicial Service Commission, and vigilance among citizens to ensure faithful and speedy implementation of the provisions of this constitution.