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Keynote address by Hon Justice Martha Koome, EGH,
Chief Justice and President of the Supreme Court of Kenya,
during the launch of Attorney General Emeritus,
Prof Githu Muigai's book, 15th July 2022

**Book title: *Power, politics & law:
Dynamics of constitutional change in
Kenya, 1887-2022***

Hon Prof Willy Mutunga, Chief Justice emeritus of the Republic of Kenya, Prof Githu Muigai, Attorney General emeritus of the Republic of Kenya, colleague judges, retired judges and judicial officers, Senior Counsel present, members of the academic community, distinguished guests, ladies and gentlemen, good evening!

I thank Prof Githu Muigai, and the publisher of the book – Kabarak University Press, for the honour of inviting me to witness and give the keynote address during the launch of this timely book: *Power, politics & law: Dynamics of constitutional change in Kenya, 1887-2022*.

I welcome this timely contribution by Prof Githu Muigai, our Attorney General emeritus. This book, *Power, politics and law: Dynamics of constitutional change in Kenya, 1887-2022*, is more than one thing. It serves multiple roles. Firstly, it is a record of history. Few texts have traced our constitutional history to the founding of the Imperial British East Africa Administration, and I believe this is the only scholarly work to cover an analysis of the proposed constitutional amendments in the post-2010 era. This contribution to our country's history is important.

Secondly, this book is a study in political science. In tracing the powers and politics that have influenced our country's constitutional change, it is a worthy reference text for students of political science in Kenya. Thirdly, it is a primary text for the study of constitutional law. Not only does it describe the constitutional changes, both proposed and

effected in our country, it presents the analysis of their legal effect and how the practice of constitutional law was shaped by our country's politics. In these instances, this book is interdisciplinary.

In addition, the book shows a keen appreciation of a rarely acknowledged reality that the process of constitutional amendment straddles 'law and politics'. A constitutional amendment process by its nature often involves political maneuvering, bargaining and negotiations and the political positions, agreements and disagreements between groups and leaders come to the fore. It will always involve the 'ins' who are favoured with the existing state of affairs wanting to keep their advantage; and the 'outs' who feel excluded by the existing Constitution trying to get access to the table through new constitutional provisions that reflect their viewpoint.

Given these realities, the most important consideration to be taken into account by constitutional drafters in my view is to have constitutional amendment provisions that are 'deeply participatory, deliberative and inclusive' as done in Chapter Sixteen of the 2010 Constitution. This ensures that the Constitution always remains the 'people's Constitution', not a constitution for political elites, legal elites, or judicial elites. The point is that the ultimate fate of the Constitution must always lie with citizens.

The book also, I believe inadvertently, records the growth of the independence of the Judiciary in Kenya. It is an interesting point that no cases determined by Kenyan courts are responsible for or otherwise connected to any constitutional change for the first seven decades, from 1887 to the 1970s. However, from the mid-90s, the involvement of courts in the politics of constitutional change has increased, and in the last 20 years it has intensified. This aspect of Prof Muigai's book indeed explains something important about our country's constitutional history – that for the first seven decades, administrators and then later, politicians were the architects of our Constitution.

In a sense, the book tells the story of the growth of Kenya's democracy. Such contributions are important for the cultural life of a society. The intellectual life of a country matures when experienced State offi-

cials begin to discuss the intellectual questions that have marked their lives in public service, the professions and the academy.

I happily note that in the last 10 or so years, there has been an increase in such reflections by Kenyan senior officials including Prof Justice Willy Mutunga who since retirement from the Judiciary made a notable re-entry into the academy by delivering and publishing an inaugural lecture, *In search and defence of radical legal education: A personal footnote*. That Prof Muigai has contributed to this cultural heritage is commendable. We laud you Professor, for the good work.

Prof Muigai's book also contributes to the vibrancy of legal scholarship in Kenya. The practice of law in Kenya, and, in particular, judicial practice, is nourished by the vibrancy of legal research. In recognition of this, my office has embraced the importance of, and shown interest in, the intellectual growth of judicial officers, particularly through the Kenya Judiciary Academy. Such works by distinguished scholars, like Prof Muigai, will not only be useful reference points for judges adjudicating over related disputes, but will also inspire our intellectual growth, which is the very essence of the Judiciary Academy in the first place.

As I conclude, I wish to reiterate that the great tradition where senior government officials retiring from public service share their reflections with the greater public should be praised and emulated. Against this backdrop, I congratulate Prof Muigai for the job well done. I also congratulate Kabarak University through its publisher, Kabarak University Press, for publishing this book, and excellently so. I also honour all of you who have taken your time out of very busy schedules to come and witness this momentous occasion.

Thank you for your kind attention.

Hon Justice Martha Koome, EGH
Chief Justice, and President of the Supreme Court of Kenya



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