

**The Judiciary as an Electoral Arbiter: Judicial Adjudication and the Protection of Electoral Integrity  
in Democracies.**

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**Abstract**

In the heart of every democracy lies the quiet yet resounding role of the judiciary, a shining hope that ensures elections, the sacred expression of the collective will of the people. Elections are not merely theatrical ceremonies; they are real expressions of fairness and transparency in any country. Across the African continent, from sea to sea, where the scars of colonial legacies and aftershocks of political disorder remain, the judiciary remains a crucial guardian in upholding electoral integrity. This paper examines the critical contribution of the judiciary towards breaking and making those conflicts that arise after elections. It will tap into the daily lives of Kenyan, Malawian, Zimbabwean and Zambian citizens in order to show how the courts have the power both to cement and to destroy the social glue that holds society together. The paper argues for more judicial independence and capacity of the judiciary to enable a robust adjudication process. By traversing African literature, the article comes a long way in arguing that a robust judiciary does not just interpret the law but also feeds the human soul of democracy, peace and dignity for all. Lastly, it calls for reforms that include the ordinary aspirations of Africans, opening electoral justice as an entry point to enduring stability and prosperity for all.

**Keywords:** *Democracy, Electoral Disputes, Electoral Integrity, Judicial Independence, Rule of Law, Electoral Justice, Lawfare, Political Stability.*

## Introduction

The dawn of Election Day in an African village is an interesting scenery. It embodies a situation where queues are seen under the umbrellas of acacia trees, voices murmur with anticipation and votes are whispers of hope for a better life amongst the citizenry. But at night, when vote tallies begin to pour in, whispers turn to screams accusations of fraud, tampered votes or suppressed voices shutter the fragile peace that prevailed during the election period. Then the judiciary steps in, not as a distant institution but as a compassionate mediator that holds together the torn edges of democracy. Elections being the heartbeat of representative governance demand more than just adherence to procedures. They require the soul of justice to affirm that the voices of the citizenry resonate equally as regards the chosen representatives that are voted into power.<sup>3</sup>

The democratic journey in African is marked by transitions from one-party rule to multiparty contests as seen in many countries after independence from colonial rule. This has highlighted the role of the judiciary in electoral disputes across many countries within the African continent. From the bold 2017 nullification of elections in Kenya to the 2020 success in Malawi, the courts have risen as guards against electoral irregularities in recent times as opposed to the norm in the past. Evidence shows that risk from law fare the systematic use of legal tools to shift the balance awaits and has often entrapped judiciaries into dishonest pitfalls on matters regarding election dispute adjudication.<sup>4</sup> Scholars like Kaaba have researched this trend and revealed how incumbents exploit judicial processes to delay justice or disqualify their rivals before elections.<sup>5</sup> This has diluted the humanistic core of democracy on the African continent as leaders stay in power despite disapproval of the people. This has been a continuous trend in Africa with many leaders becoming imperial presidents.

This article traverses African literature and prioritizes continental voices to determine the ways in which judiciaries can navigate these tensions. The paper argues that empowering courts with independence and empathy is not just institutional reform but a moral imperative to heal societies, end violence and honour the dignity of the voters. By examining cases from Kenya, Malawi, Zimbabwe and Zambia, the paper uncovers avenues to electoral integrity that echo the spirit of resilience on the African continent.

## **The Role of the Judiciary in Democratic Governance**

The essence of democracy is the belief that power resides with the people. This power is temporarily entrusted for a period of time with leaders through free and fair elections. The judiciary, which is the conscience of this covenant, interprets the law not in isolation but as lifelines which connect individual rights and communal unity. In Africa, where colonial imprints remain in weak institutions, the courts must

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3 Emmanuel O. Ojo. Public Perceptions of Judicial Decisions on Election Disputes: The Case of the 2007 General Election in Nigeria. *Journal of African Elections*. 2011. Volume 10, No. 1: 101-113.

4 Siri Gloppen & Lise Rakner. Legalised resistance to autocratisation in common law Africa. *Third World Quarterly*. 2024. <https://www.tandfonline.com/doi/full/10.1080/01436597.2024.2433699>

5 O'Brien Kaaba. The Challenges of Adjudication Presidential Election Disputes in Domestic Courts in Africa. *African Human Rights Law Journal*. (2015). 329-354

do more than mechanical adjudication but embody restorative justice so as to ensure that elections affirm and not alienate the will of the people.<sup>6</sup>

Electoral integrity encompasses aspects such as transparency, inclusivity and accountability and depends on the judicial sensitivity of a country. As Zambian scholar Sishuwa contends in his analysis of the post-1991 transitions, judiciaries must desist from legal autocratisation, where the law is used as a shield for incumbents.<sup>7</sup> The courts rule on voting complaints from registration to result certification that if left unattended, give birth to despair and violence. But such protection involves balancing a tightrope of the human cost such as the displacement of families by election violence or the frustrated young people whose dreams are set aside by manipulated systems.

African thought leaders like Enweremadu of Nigeria, emphasize that judicial independence is the pillar which allows the courts to humanize the law by prioritizing equity instead of expediency.<sup>8</sup> In Zambia, where multiparty democracy dawned in 1991, the role of the judiciary in petitions has evolved from one of deference during the colonial period to one of assertiveness, despite the fact that it may still be vulnerable to executive manipulation.<sup>9</sup> This path underscores the profound truth that the judiciary is not merely a referee but a healer that mends the scars on society through judgments that echo the people's quest for justice.

### **Electoral Disputes and the Threat of Lawfare**

Electoral disputes in Africa often stem from the raw pain of perceived injustice miscounted ballots, candidates barred or results shrouded in secrecy. In Africa, these disputes are amplified by political polarisation and weak institutions. These are not merely abstract legal arguments but are cries from communities that are yearning for representation. It has been observed that lawfare amplifies this agony by transforming courts into battlegrounds where litigation delays justice or disqualifies opponents.<sup>10</sup> This has been consistently seen in Zimbabwe's prolonged petitions that entrench the dominance of the ruling party.

In Zambia, as articulated by Banda et al, the happenings have revealed how lawfare plays out through selective prosecutions or harassment challenges, a phenomenon that undermines the moral authority of the judiciary.<sup>11</sup> In the 2016 Zambian elections, opposition petitions on the ground of irregularities could not progress because of procedural technicalities. This confirms the continental patterns in Africa where the incumbents use the law as a bludgeon on their political opponents.<sup>12</sup> African scholars like Tordoff and Young

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6 Everisto Benyera. *The Political Legacy of Colonialism in Zimbabwe. Implications for Justice and Elections in Africa*. 1<sup>st</sup> Edition. Routledge. 2024.

7 Sishuwa Sishuwa. *Elite and Popular Basis for Legitimacy of Democracy in Zambia since 1991*. *Canadian Journal of African Studies/ Revue Canadienne des Etudes Africaines*. (2025). Volume 59, 2. 361-82.

8 David U. Enweremadu. *The judiciary and the survival of democracy in Nigeria: An analysis of the 2003 and 2007 general elections*. *Journal of African Elections*. 2011. Volume 10, (1), 4-25.

9 John Bwalya, Robby Kapesa & Owen B. Sichone. *Predatory co-optation and party system reversal: A behavioural perspective on Zambian political parties*. *Journal of Eastern African Studies*. (2024). Volume 59, 1.

10 See Benyera, *supra* note 4.

11 Tinenenji Banda, O'Brien Kaaba, Marja Hinfelaar & Muna Ndulo. *Democracy and Electoral Politics in Zambia*. Brill. Leiden and Boston. (2020).

12 See Sishuwa, *supra* note 5.

warn that such tactics produce cynicism and turn elections from celebrations of appointing legitimate leadership to circus acts of hopelessness.<sup>13</sup>

The toll on citizens is immense in polarized settings as these unresolved disputes fester resentments and ignite violence, which in turn displaces families and deforms generations to come. The courts in such situations must assume their role of redemption to pierce the veil of lawfare with equitable judgments that restore the confidence of the judiciary and remind citizens that democracy is a shared home that is warmed by collective trust.

### **Judicial Responses to Electoral Disputes**

#### **The Presidential Election Nullification in Kenya**

The Judiciary in Kenya made global headlines in 2017 when the Supreme Court nullified the presidential election citing irregularities and illegalities in the electoral process. The Supreme Court decision in **Raila Odinga and Others v. Independent Electoral Boundaries Commission and Others**,<sup>14</sup> continues to be a golden page in African judicial history, invalidating a presidential election due to transmission irregularities. This decision marked a historic moment in African jurisprudence as it has demonstrated the willingness of the courts to hold electoral bodies accountable.<sup>15</sup> The decision followed allegations of irregularities in the transmission of results which undermined the credibility of the election won by the incumbent, Uhuru Kenyatta. This milestone ruling is a good example to emulate in terms of electoral accountability as no result is sacred if it is tainted with secrecy.<sup>16</sup> For the ordinary Kenyans, who had been exhausted from the 2007 violence, the ruling of the court was a painkiller. It validated their suspicion and prevented any other injuries that would have occurred had the court not come in to make this ruling.

The ruling of the Kenyan Supreme Court was grounded in the commitment to electoral integrity, it emphasized transparency and adherence to constitutional standards. However, it is seen that the decision faced significant backlash, including accusations of judicial overreach and political bias from the ruling party.<sup>17</sup> Thus, this backlash continues to expose the vulnerability of the judiciary in Africa as the ruling government sometimes dominates the courts by preventing justice. The continued threats on judges who rule against the ruling party underscores the political risks that the judiciary faces. Nigerian scholar Ojo, did explain how this pressure challenges the humanistic commitment of the courts to serving people, rather than power.<sup>18</sup> The subsequent rerun election that was marred by opposition boycotts and further irregularities underscored the challenges of implementing judicial rulings in polarized contexts in Africa.

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13 William Tordoff & Ralph Young. *Electoral Politics in Africa: The Experience of Zambia and Zimbabwe*. Governments and Opposition. Cambridge University Press. 2014

14 Presidential Petition No. 1 of 2017.

15 O'Brien Kaaba & Charles M. Fombad. *Adjudication of Disputed Presidential Elections in Africa*. Democracy, Elections and Constitutionalism in Africa. Stellenbosch Handbooks in African Constitutional Law. 2021

16 Alisand Singogo. *The Nullification of a Presidential Election Result: The Case of Kenya and Malawi*. PhD Thesis. 2023

17 Mukami Wangai, Linus Mwangi & Josephat Kilonzo. *Developing Jurisprudence beyond the Horizon: A Critique of the Supreme Court Decision in Raila Amolo Odinga & Another v. IEBC & Others 2017*. Kabarak Journal of Law and Ethics. Volume 5, 2020.

18 Emmanuel O. Ojo. *Bunker Democracy and the Challenges of Sustaining Democratic Values in Nigeria: An Appraisal of the 2011 Elections*. Journal of African Elections. 2016. Volume 15.

### **The Constitutional Court Ruling in Malawi**

The annulment of the elections of Malawi in 2020 demonstrated similar courage when the Constitutional Court annulled the 2019 presidential election. The ruling of the court in the **Saulos Chilima & Another v. Peter Mutharika & Another**,<sup>19</sup> case evoked nationwide jubilation as the court exposed irregularities like tampered tallies in the election. The court found evidence of widespread irregularities including the use of correction fluid commonly referred to as ‘Tipp-Ex’ on result sheets.<sup>20</sup> This phenomenon is said to have compromised the integrity of the election as the election results were seen to have been tampered. The ruling ordered a fresh election, which resulted in the defeat of the incumbent, marking a significant victory for electoral justice in Malawi. By reflecting on regional parallels this ruling should be praised as a humanistic triumph where judges honour the dignity of voters by mandating a fresh election. The victory of the opposition in the fresh poll symbolized renewal and hope for the citizens of Malawi.

The independence of the judiciary in Malawi was critical to the outcome of this matter on the contest of the election result. Despite political pressure and limited resources, the court delivered a transparent and evidence-based judgment.<sup>21</sup> This in turn was bolstered by public hearings and the detailed reasoning given by the court in this matter. The decision not only upheld electoral integrity but also set a precedent for judicial oversight in African democracies. However, the case highlighted resource constraints, as the judiciary struggled with delays and logistical challenges.<sup>22</sup> These delays and logistical challenges underscore the need for institutional strengthening.

### **Ongoing Threats to Judicial Independence in Zimbabwe**

In contrast, the judiciary of Zimbabwe has faced significant obstacles in resolving electoral disputes. These challenges arise largely due to political interference and the lack of judicial independence in the country. The 2018 presidential election dispute in **Nelson Chamisa v. Emmerson Mnangagwa and Others**,<sup>23</sup> saw the Constitutional Court dismiss allegations of electoral fraud, despite widespread concerns about irregularities. A number of critics argued that the judiciary had close ties to the ruling ZANU-PF party which undermined impartiality of the court in the matter.<sup>24</sup> These assertions highlight the risks of a compromised judiciary in electoral processes in Africa.

The decision in Zimbabwe is critiqued by African scholar Benyera, as symbolic of colonial legacies which stifled justice in many pre-colonial African states.<sup>25</sup> For the citizens of Zimbabwe who have suffered long enduring economic woes, this felt like a betrayal. To them, the decision of the court perpetuated exclusion and fueled unrest in the country. Benyera argues that the entanglement of the executive and judiciary

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19 (Constitutional Reference 1 of 2019) [2020] MWHC 2

20 Institute For Democracy and Electoral Assistance. Lessons From Malawi’s Fresh Presidential Elections of 23 June 2020. Conference Report Webinar, 31 August 2020.

21 See Kaaba & Fombad, *supra* note 13.

22 *Ibid*

23 CCZ 42 of 2018

24 Human Rights Watch. Zimbabwe: Post-election violence and judicial challenges. (2018). Available at: <https://www.hrw.org/news/2018/08/10/zimbabwe-post-election-violence-and-judicial-challenges>

25 See Benyera, *supra* note 4.

enables lawfare, echoing the same fears in Zambia of such similar erosion if not handled properly.<sup>26</sup> The human narrative here is one of quiet resilience where individuals cling to ballots as a source of hope in the midst of betrayal by the very institutions that must protect the will of the people.

The experience in Zimbabwe illustrates how lawfare can flourish in environments where judicial independence is weak. The combination of executive influence over judicial appointments and politically motivated lawsuits have eroded public trust in the courts, a thing that has contributed to post-election tensions.<sup>27</sup> This case underscores the need for reforms that will insulate the judiciary from political pressures and enhance their capacity to deliver electoral justice on the African continent as a whole.

### **Negotiating Petitions within a Fragile Democracy in Zambia**

The Zambian courts, whose activities have been studied by Kaaba, have adjudicated over pivotal disputes, such as the Hakainde Hichilema v. Edgar Lungu,<sup>28</sup> petition, where judges implemented verdicts despite charges of violence during the elections. The 2016 presidential petition exposed judicial vulnerabilities, with allegations of bias undermining public confidence.<sup>29</sup> Kaaba argues that limited operational independence allowed political interference which in turn led to disenfranchising voters and risking political instability in the country during this period.<sup>30</sup> It is however, observed that recent reforms in Africa signal hope, as the courts are increasingly asserting autonomy, a reflection of the humanistic evolution toward equitable justice. Banda et al, highlight how the 2016 disputes exposed delays from understaffing, a mirror of the strains experienced in Malawi but underscoring the unique tribal-political relationship that exists in Zambia.<sup>31</sup> For Zambians, these rulings are personal they are affirmations of belonging, in a nation striving for equity. These problems like those seen in other African countries are less prevalent in Zambia underscoring the adherence to the tenets of democracy in the country.

### **Conclusion**

The judiciaries in Africa are bearers of colonial burdens and democratic dreams. This phenomenon stands at the crossroads of democracy. From the victories in Kenya and Malawi to the trials in Zimbabwe and Zambia, they reveal a cloth that is woven with resilience and resolve. Traversing Zambian insights from legal luminaries such as Kaaba and Banda as well as continental voices like Benyera and Fombad, this essay contends that electoral justice is a humanist garment that shields not only votes but the souls of the people. Independence and capacity reforms are urgently required or else lawfare will overshadow the dawn of free and fair elections. In responding to this pressing issue, the courts of Africa may shine the pathways to peace, where the voice of every citizen echoes eternally within the chorus of progress.

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<sup>26</sup> *Ibid*

<sup>27</sup> Freedom House. (2019). Zimbabwe: Freedom in the World 2019. Country Report. Available at: <https://freedomhouse.org/country/zimbabwe/freedom-world/2019>

<sup>28</sup> (2016/CC/0033) [2016] ZMCC 4

<sup>29</sup> Oyvind Stiansen, Haakon Gjerlow & Lise Rakner. The Politics of Litigating and Adjudicating Electoral Dispute: Evidence from Zambia. Electoral Studies. Volume 96, August 2025.

<sup>30</sup> See Kaaba & Fombad, *supra* note 13.

<sup>31</sup> Banda et al, *supra* note 9.

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