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STRIKING A DELICATE BALANCE: **The Right to Demonstrate, Public Order, and Safety in Kenya**



In Kenya, the right to picket and demonstrate enshrined under [Article 37](#) of the **Constitution** serves as a crucial foundation for democratic expression. However, recent demonstrations have taken a concerning turn, escalating into violence and causing destruction. The violence has led to property damage, causing significant economic losses and disruptions to society, deviating from the intended purpose of peaceful demonstrations as a means of dialogue and activism. This creates a challenging scenario where the exercise of a constitutional right clashes with the necessity of upholding public order and ensuring safety.

Amidst the mounting violence, law enforcement agencies are confronted with the daunting responsibility of upholding public order and safeguarding citizen safety. Nevertheless, their conduct has come under intense scrutiny, as allegations of excessive and disproportionate use of force have surfaced, resulting in tragic loss of life and exacerbating tensions between demonstrators and authorities. Furthermore, both the public and the international community have accused the government of employing the police to commit human rights violations.

In the current political landscape of Kenya, both opposing parties are pointing fingers at each other, accusing their rivals of failing to uphold the **Constitution**. To understand the legal implications of these accusations, we must turn to the **Constitution of Kenya, 2010**, which serves as the supreme law of the land, laying out the foundations of governance, the rights of citizens, and the responsibilities of the government.



THE CONSTITUTION

[Article 37](#) of the Constitution explicitly grants individuals the right to peaceably and unarmed assembly, demonstration, picketing, and presenting petitions to public authorities. Nevertheless, this right is not absolute, as [Article 24](#) outlines the basis for restricting individual rights when they conflict with the rights and freedoms of others or the public interest. **CAP. 56** of the Laws of Kenya further address public meetings and processions, imposing restrictions on the possession of offensive weapons during such gatherings. These regulations aim to ensure the safety of participants and the public at large.

Furthermore, in the legal case of **Ferdinand Ndung'u Waititu & 4 others v Attorney General & 12 others [2016] eKLR**, the learned judge, *Onguto J*, addressed the issue of the right to assemble, demonstrate, picket, and petition and held that the same is not absolute and may be limited by law. The Court further held that the primary objective is to ensure that the rights of others in the vicinity of the assembly are not infringed upon. The court emphasized the importance of demonstrators acting responsibly and not interfering with the rights of others.

Therefore, finding a balance between upholding the right to demonstrate and preserving public order is essential for a cohesive and progressive

society. The **Constitution of Kenya 2010** serves as the supreme law of the land, establishing a system of checks and balances, a comprehensive Bill of Rights, and the principle of the rule of law to ensure adherence to its provisions. Additionally, devolution of power, independent institutions, and judicial review mechanisms further contribute to safeguarding the constitution's integrity. These legal frameworks are crucial in holding all parties accountable and promoting a just, inclusive, and prosperous Kenya. Any accusations of constitutional violations should be resolved through legal channels, reinforcing the nation's commitment to democratic values and the rule of law.

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