

The Shrinking Nature of Parliamentary Immunity in Kenya: A Proposal for Judicial Restraint

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Abstract : Parliamentary immunity is grounded on the notion that parliaments need certain rights or immunities to ensure they can operate independently make fair and impartial decisions without capitulating to political pressure or intimidation. The 2013 election in Kenya marked an important milestone in the development of the law of parliamentary privilege. Such importance relates to the dramatic increase in the number of legislatures in the country from one unicameral parliament, to a bicameral national parliament and forty-seven other regional legislative assemblies. The increase in legislatures has resulted in a dramatic increase in political contestations which have led to legal wrangles. The judiciary in Kenya, once considered submissive, has been invited to arbitrate on various matters pitting individual rights and parliamentary privilege and have invalidated a number of legislative action. While judicial intervention is indeed necessary to ensure that legislatures in Kenya live true to the constitutional aspirations of the Kenyan people, certain judicial decisions have had an effect on eroding parliamentary immunity. This paper highlights a number of instances in which it could be argued that parliamentary privilege came under attack by the courts in Kenya. The paper aims to make a case that while Kenya's progressive constitution necessitates the scope and extent of legislature's immunities and privilege to be determined by the courts, it is important that courts exercise restraint in its review of legislative action. The paper makes the argument that unrestrained judicial action in Kenya on questions within the realm parliamentary privilege may undermine the functioning of Kenya's legislatures. The paper explores approaches taken by a number of jurisdictions in establishing a proper balance between maintaining a viable parliamentary privilege regime in a rights-based constitutional system.

Keywords : Kenya, constitution, judicial restraint, parliamentary privilege

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