

The role of the opposition in a multi-party Government  
:Towards reinstating the parliamentary supremacy.

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by

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(i)

DEDICATION:

1) To the tens of Kenyans who lost their lives in the fight for a multi-party Kenya.

2) To my parents Mr and Mrs Jonothan Kimata Mukui for their constant struggle in mouldering and steering me to the zeneth of my academic ambition.

3) To Mr Cosmas Mwaura whose constant and unending love is a real blessing to my heart.

Table of contents

Dedication	(i)
Acknowledgement	(ii)
Table of contents	(iii)
Table of cases	(iv)
Introduction	(v)
<b><u>Chapter 1:</u></b> The historical development of opposition in independent Kenya-----	1
1:1 Kenya as a de facto one party state-----	1
1:2 Kenya as a de Jure one party state-----	6
1:3 The multi-party debate-----	9
<b><u>Chapter 2:</u></b> The doctrine of parliamentary supremacy vis-A-vis KANU single era-----	24
2:1 The constitutional basis of parliament supremacy----	24
2:2 Parliament or KANU Supremacy-----	33
<b><u>Chapter 3:</u></b> The role of opposition in party government ---	48
3:1 The role concept of opposition-----	49
3:1 Role of opposition-----	51
<b><u>Chapter 4: conclusion and recommedations</u></b>	
4:1 Conclusion-----	68
4:2 Recommedations-----	70
4.3 Bibliography-----	76

Table of cases

- Chaney V R (1968) inlr 242.
- National democratic party V AG (unreported)
- R V Kaggia EALR (1966) 56
- Karmari coner bar and Restuarant Vs Embu liqour licencing court (1967) EA 426

Table of Statutes

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## INTRODUCTION.

The history of multi-party system of the government of Kenya dates back to 1963 when Kenya became independent. The provisions of the 1963 independent constitution intended Kenya to be a multi-party state. However, the KANU government which took over power at independence up to the present day, never favoured the idea of opposition in its government. Every move by any group of individuals to form an opposition in parliament was seen as great threat. The government did everything in its disposal to silence such people which included changing the existing laws the constitution not being an exception, to detention of such multi-party advocates.

Kenyans on the other hand could not dispense with the need of opposition in the government. This need marks a great struggle by Kenyans from independence to 1991 to have this institution in the government. Soon after independence Oginga commented on this need thus :

Not long after the dissolution of Africa APP and KADU that signs begin to appear which indicated that one party system was not going to serve the people's needs of Kenya under KANU policies.<sup>1</sup>

Thus in an attempt to stamp out any form of opposition the KANU government soon after independence swallowed KADU and APP. It later on in 1969 banned the Kenya peoples union (K.P.U). Effect of such actions by the government was to make Kenya a *de facto* one party state. This move did not discourage Kenyan's in their struggle to go multi-party.

Thus in 1982, two political figures in the country attempted to form another party, the Kenya Africa socialistic Alliance. The KANU government reaction to this led to a constitutional change to make Kenya a *de jure* one party state, thus the inclusion of the infamous section 2A of the constitution.

Further attempts to go multi-party with the changing politics of the world however, saw the KANU government bend low enough to allow the country to go multi-party in 1991. However this did not come on a silver plate. Tens of Kenyans lost their lives while other were locked in prisons and detention.

One of the cardinal characteristics of liberal-democracy is that it stands for a multi-party system of government. It is through participation in many political parties that citizens seek to achieve democracy. A supreme parliament is essential in such a democratic country as it enables a parliament that can fully perform its role effectively.

The Kenyan constitution provides for a framework of the principle of parliamentary supremacy. This is by giving parliament power to make and unmake laws, to amend the constitution, make its own standing order to regulate the procedure of parliament, has power of constituting or changing the government by passing a vote of no confidence, control government expenditure and representation. The principle therefore entails the exercise of power by parliament in finality without fear of prerimand from, any

other higher authority. However, a number of activities transpired in Kenya initiated by KANU which reduced this doctrine into a myth. KANU had managed to reduce parliament into its hand-maiden thus doing away with the whole doctrine of parliamentary supremacy during the De Jure one party era.

Following the repeal of section 2A of the constitution in December 1991, Kenya legally accepted the multi-party system of democracy. This opened the doors to competitive politics. With the advent of multi-party, KANU'S monopoly of power is expected to change. The opposition in parliament will act a watch dog to check the party from abuse and misuse of power. The Attorney General recognised this in moving the second reading of the constitutional amendment when he said:

'it would be unreasonable of this house to require KANU to continue exercising a monopoly on power which it freely wishes to relinquish'.<sup>2</sup>

The presence of opposition party has been cited as one of the ways through which parliament can restore its supremacy. This work therefore will seek to examine how the opposition can restore this parliamentary supremacy. It will be submitted that it is only in performing its role effectively that opposition can be able to reinstate this parliamentary supremacy. It is this role that will be the primary intention of this work.

Chapter one will examine the historical background of opposition in Kenya since independence to 1991 when Kenya went multi-party. This will be portrayed as a real struggle by Kenyans against the unwilling government to allow any

form of opposition. Thus the various attempts by the KANU government to suppress any form of opposition will be highlighted.

Chapter two will consist of two major parts. The first party will discuss the principle of parliamentary supremacy and explore whether the principle obtains in the Kenyan constitution. The second part will look at the activities that have transpired in Kenya parliament which have had the effect of weakening the principal as constitutionally given. It is submitted that it is by first showing how the parliamentary supremacy has been eroded that we can proceed to show how opposition can restore it, thus its role.

The third chapter will seek to establish the major legal ways in which the opposition in the seventh parliament can use to reinstate the original parliamentary supremacy. The role of opposition which can be used to achieve this will be dealt with.

Chapter Four contains the conclusion and the authors recommendations.



FOOTNOTES.

1. NATION : 9TH March 1966.
2. Weekly Review 20th December 1991.

## CHAPTER ONE

## THE HISTORICAL DEVELOPMENT OF OPPOSITION IN INDEPENDENT KENYA

## 1.1 Kenya as a de facto one party state

The history of multi-party system of the government of Kenya dates back to 1963 when Kenya became independent. This can be explained partly by its colonial past and the practice immediately after. The 1963 constitution intended Kenya to be a multi-party state. It was within the constitution that there be more than one party.

In the 1963 general elections, the Kenya African National Union (herein referred to as KANU) won with overwhelming majority. Other parties which were contesting the election were the Africa Peoples' Party (APP) and Kenya African Democratic Union (KADU). By virtue of this success, KANU formed the first government in independent Kenya. The Kenyan political scene at this time was however dominated by KANU and KADU. Differences in outlook were not based on any major principle save for ethnic particularism and conflicting views especially to the kinds of concessions which should be made to foreign interest under the new constitutional order.<sup>1</sup>

A provision for majimbo (feudalism) was retained in the constitution. Also a senate was created and retained power to prevent assault on constitutionally defined minority rights. KANU wanted to do away with this in order to be able to consolidate its power in the new

found republic. It is clear that KADU and APP were formed because of leaders' personal ambitions. People wanted power and when they could not get it, they formed another party. Soon after members of these parties were promised big positions with KANU, they crossed the floor. Binon Henry commenting on this says

what followed was the process of wooing through political patronage and bargaining in terms of appointment of KADU defectors into ministerial posts and statutory boards.<sup>2</sup>

This therefore led to tricking of KADU members of parliament and dissolution of KADU on 10<sup>th</sup> November, 1964. APP had been swallowed already and therefore Kenya became a de facto one party state.

The only form of opposition left in Kenyan parliament was the senate. In June 1966, the government announced its proposal to abolish the senate. With merger of KADU with KANU, the viability of regionalism could not be maintained because it could only happen if there was adequate representation in the senate. The government had undermined the senate for it was established with the strong objection of KANU.<sup>3</sup> To abolish it required its own consent. The only way its members could retain the privileges they acquired from their membership in the institution was to dissolve it to the house of representatives. This was done by increasing the number of constituencies by forty one and declaring members of the senate as the elected members of these constituencies. On December 20<sup>th</sup> 1966, a legislation was introduced into the senate for the merger of the two houses.<sup>4</sup> Recently formed opposition

put up a spirited resistance but the Bill was overwhelmingly supported by both chambers taking no more than four days from its first publication to its final approval.<sup>5</sup>

So far, it is clear that KANU managed to do away with any form of opposition after regaining power. By 1964, Kenya was a de facto one party state. However, the need for an opposition in the government was felt by a number of Kenyans. In 1963, the KADU chairman Daniel arap Moi, as he then was, had observed on this requirement thus

if Kenya is to advance it needs a strong effective opposition. The people of Kenya whether they belong to KANU or KADU would like to see an effective opposition which would keep the government on its toes and not merely let it go to sleep. Governments must be kept awakened to the needs of the people. An opposition can do that. Without opposition there is no life.<sup>6</sup>

Oginga Odinga also commented on the need of opposition when he said

Not long after the dissolution of APP and KADU that signs began to appear which indicated that one party system was not going to serve the peoples' needs of Kenya under KANU policies.<sup>7</sup>

The formation of Kenya Peoples' Union (KPU) in 1966 was the other incident that interrupted the thriving of one party state in Kenya. The reasons which lead to the formation of this party was rivalry within KANU<sup>8</sup> and the differences in practice and ideology between the conservatives and the radicals. The conservatives on one hand were after maintaining the *status quo* after achievement of independence. Radicals were on the other hand reformists. They wanted total transformation of the Kenyan society in the interest of the masses. They

resented the British co-operation and advocated for socialist relation. By mid 1965, it became difficult to contain the two in the same party. Kaggia was the first to resign from KANU in June, 1965.

What followed was the Limuru conference which took place in 1966. This was a KANU delegates conference which was called without consulting the National Executive Council. Radicals opposed this but Kenyatta agreed to have the conference held. When it commenced, only Mboya's hand-picked delegates were allowed into the conference. Pro-Odinga delegates were excluded. The conference changed the constitution so that eight Vice Presidents replaced the position of the former one Vice President. These Vice Presidents were each from every Province and one for the Nairobi area. Odinga was the Vice President before this amendment and therefore his position was weakened. The whole purpose of the conference was to cripple the radicals.

The alienated and frustrated group met at Jogoo house, Nairobi and agreed to meet again at a later date in March 1966. It was during this second meeting that K.P.U. was formed. They discussed whether they should go on fighting for change within KANU or in a new party and majority favoured a new party to struggle for a meaningful liberation of the country. The government was silent about the formation of the new party until Odinga resigned from KANU and joined it. A government statement was issued that

The government is vigilant and determined to deal firmly with any person or group who may be

tempted to undermine the stability, progress and authority of the government.<sup>9</sup>

A KANU parliamentary meeting was called and demanded the expulsion from parliament of those who left KANU. This was to prevent others from joining the new party. Other laws were made<sup>10</sup> and the constitution amended<sup>11</sup> to reduce KPU membership. Okoth Ogendo says that these changes were based on political survival.<sup>12</sup> The sixth amendment of the constitution allowed for the Amendment of Preservation of Public Order Act<sup>13</sup> which empowered the president to detain any citizen likely to endanger the security and authority of the government. This was therefore a complete free hand of KANU to intimidate and hamstring the opposition. The Act was later used to detain all KPU MPs and national officials. Also public meetings were to be licensed and this was to make sure that KPU never held a public meeting. The case of R v Kaggia<sup>14</sup> is an example of that intimidation. This led to some KPU leaders returning to KANU e.g. Kaggia returned back and expressed the view that he returned because KPU had no future.<sup>15</sup>

The year 1969 saw the revival and also the death of KPU. The assassination of Tom Mboya early that year made KANU lose support and KPU regain it. This was coupled to the oathing which was taking place in Central Province. This oathing started after the Mboya function in parliament and it created a lot of resentment among people from other provinces. Against this background, Kenyatta went to Kisumu to open a Russian-built hospital. Kisumu by then was a strong-hold of KPU and

therefore he was met with KPU slogans and placards. Kenyatta blamed Odinga for this. As he left the town, his motorcade was stoned. This prompted police to open fire and people were killed and others were wounded. The president thereafter used his power under the Preservation of Public Order Act and detained the leading KPU leaders. On October 30<sup>th</sup> 1969, the KPU's ban was announced. The reason given for the ban was

it has been established that KPU was seeking active resistance for the essential purpose to overthrow the lawful and constitutional government of the Republic of Kenya.<sup>16</sup>

The government thereafter muzzled opposition without appearing to be in the wrong. KANU was using its power to manipulate the existing laws to stop the revived KPU from winning the 1970 general elections.

So far, we have seen how Kenyans struggled to have an opposition in Kenya upto 1969 without much success. During its life as an independent state, Kenya has been characterised by single party situation. Even during the brief spells when opposition parties existed, it had been apparent that what really matters is the party then in power and this had been KANU. This is quite evident in the way KANU used to change laws to suit its purpose. By 1969, there had been ten major constitutional changes. Ojwang is of the view that the amendments which took place from 1965 to 1969 main aim was to serve the cause of political expediency.<sup>17</sup> The changes passed at the Limuru conference are pure anomalies since KANU had been fighting for the abolition of regionalism. The amendment that expelled KPU members from parliament

could also have been made when KADU members crossed the floor to join KANU in 1963. Thus the KANU government managed to use its position to see to it that Kenya was a defacto single party state. We now turn to Kenya as a de jure one party state.

## 1.2 Kenya as a de jure one party state

Kenya acquired this status on 9<sup>th</sup> June 1982 when a bill was passed in parliament which saw the inclusion of Section 2A of the Kenyan constitution. The Section stated

There shall be in Kenya one political party, the Kenya African National Union.<sup>18</sup>

The passing of the bill must be viewed with the monopoly by KANU as being the only political party. KANU as we have seen had used unscrupulous method to kill any form of opposition in Kenya. However, it did not have any legal basis for defeating every opposition attempt. This therefore led to underground political groups like the Mwakenya which tried to form an opposition in Kenya. Thus, it is against this background that the constitutional amendment was passed which made Kenya a de jure one party state.

Two radicals spearheaded the debate. Since the ban of KPU, its members were always denied clearance in the general election. It is this denial in having a hand in political life that led Oginga Odinga and George Moseti Anyona to attempt to legally seek the registration of a second political party, The Kenya African Socialist Alliance (KASA). In 1982, Odinga gave a lecture in London where he criticized African leadership and said



African leadership stamped opposition parties existence through constraint, harassment and detention of opposition leaders: ultimately opposition leaders get banished. Next they turn round punting the very parties they claim to lead, in the end denying those parties any meaningful role in the country. Sooner other than later, these one party states become no party states.<sup>19</sup>

He continued to say

Political parties of the 1980s must be the parties of the people - of the peasantry, the workers and the proletariat.<sup>20</sup>

He advocated for the formation of a socialist party in Kenya. This was followed by violent reaction of the members of parliament. Anyona came up to support Odinga and said

Kenya must return to its constitutional position by the formation of a second party. Through the formation of another political party the Kenyan people will decide by free and democratic elections who their leaders will be.

He said on one party system.....

.....such a system had ended up in monstrous dictatorships. The constitution provided for a *de jure* multi party state. Formation of a political party was a constitutional right since 1960. To argue against or challenge the formation of another party is to argue against or challenge the constitution and all the freedoms and rights entrenched in it.<sup>21</sup>

KANU's fears were aroused by these sentiments especially since they were constitutional. The constitution is the supreme law of the land. The only way out was therefore to change the relevant constitutional provisions to suit the government hence the inclusion of Section 2A of the constitution. The president after this kept on accusing Odinga as a prophet of doom. He later expelled these radicals from KANU. The Governing Council and the National Executive

Committee of KANU ratified the expulsion. The ruling party passed a resolution instructing the party's parliamentary group and the country's Attorney General to pass a legislation making Kenya a de jure one party state. The bill to that effect was passed on June 9<sup>th</sup> 1982. It passed through parliament with no dissenting voice. According to the then Constitutional affairs Minister, Mr. Charles Njonjo,

For nineteen years Kenya had been a de facto one party state and all the bill was doing was to translate that status into law by turning it to a de jure.<sup>22</sup>

Thus when Anyona and Odinga were expelled there arose a danger of forming another party. KANU was not ready for this and so they resorted to the traditional style of tilting the law to suit their purpose. To clear this threat, the constitution was changed. The threat had to be done away with for ever. Anybody who would seek to form another party would be criticized for acting unconstitutionally and such a party would henceforth be declared null and void. To KANU's advantage, the people who proposed that legislation to make the country a de jure one party state were the same people who voted for it in parliament since they were parliamentarians. There was no way they could vote against the bill for that could have been contradicting themselves.

Other relevant provisions of the constitution were changed to correspond with the newly asserted Section 2A. Section 5 of the constitution for example was amended so that it now stated that

.....every candidate for the president shall be a member of KANU and shall be nominated by that party in a manner prescribed by or under the Act of Parliament.<sup>23</sup>

The words "political party" as they formerly appeared in the constitution were substituted with "KANU". Also according to Section 34(d) where a candidate had to be nominated by a political party, he now had to be a KANU member and nominated by KANU.

The amendment however did not receive much support outside parliament as it did in parliament. Several people came up to condemn it and even went to an extent of asking for its repeal. The Students' Organization of Nairobi University (SONU) leaders demanded that Kenyans should be given a right to decide on who their leaders are and saw the amendment as a contravention of peoples' freedom. A lecturer at the same University criticized the amendment and added thus

closing all avenues of legitimate dissent could lead to underground manifestation of opposition.<sup>24</sup>

Thus KANU undermined any form of opposition party formed. It is KANU's traditional fear of opposition parties that led, *inter alia*, to the passing of Section 2A. For the next nine years that followed this amendment, Kenya was a de jure one party state. The era was characterized by harassment and even detention of anybody who expressed multi party ideas. They were taken to be a threat to the good governance and dissidents of the "island of peace". The situation was however changed with the wind of change towards democratization of Africa. It is this that we now turn to.

### 1.3 The multiparty debate

This section covers the period between 1990 and 1991 activities which ultimately saw Kenya going multiparty. The era as we shall see was also characterized by KANU's harassment, detention, imprisonment and even deportation of multiparty advocates. However, the Kenyan government had at long last succumb to peoples' will internally and externally and allow Kenya to go multiparty at the end of the year 1991. This therefore was the last era of Kenyans' struggle against KANU's dominance in the government affairs and the constitution.

The greatest debate was launched by the Rev. Timothy Njoya at the beginning of 1990 when he delivered a New Year's sermon at St. Andrews church in Nairobi. He said that in view of the crumbling of one party communist regimes in Eastern Europe, it was necessary that African leaders, including Kenyans to re-examine their preferences for one party system with a view to avoiding similar upheavals as were occurring in Eastern Europe.<sup>25</sup> The actual debate was however sparked off in April by the Church of the Province of Kenya bishop of the Maseno Diocese, the Rev. Dr. Henry Okullu who issued a stinging press statement where he averred that Kenyans were vigorously discussing the country's political future but the discussions were not free and open because KANU prevented free debate. He said that one of the solutions was to turn Kenya into a multiparty state. He called for the repeal of the constitution amendment that made Kenya a de jure one party state and a two term limitation of

presidential tenure. He concluded

let us accept change or change will change us.<sup>26</sup>

Such sentiments as predicted were met with politicians' condemnation on Njoya and Okullu. The then KANU National Chairman, Peter Oloo Aringo described Njoya's suggestion as "absolute madness and folly". Behind Okullu's remarks was the politicians' placing of a foreign master. The matter assumed new proportions when pro-change activists, now emboldened by the need for change, stepped up the campaign. Outspoken lawyers and clergymen therefore came in support of Okullu. In the debate that followed, multiparty proponents alleged a lack of openness and accountability in the political system which they argued could only be rectified by the introduction of a multiparty system. Supporters of the one party system argued that apart from the fact that a multiparty system would only fester tribalism and divisions, examples from other African countries showed that multiparty system *per se* did not guarantee basic freedoms, peace and democracy.

The debate rose to yet another level in mid May when two former cabinet Ministers, Mr. Kenneth Matiba and Mr. Charles Rubia entered the fray in favour of multipartyism. They said that the single party system was the root cause of the political, economic and social ills facing Kenya. In a press conference on May 3<sup>rd</sup> 1990, they said in a joint statement

And like everywhere in Africa, and the world generally the single party system must now go and not tomorrow. Twenty seven years of experience are enough.<sup>27</sup>

They also called for the repeal of Section 2A and parliament's immediate dissolution and fresh elections free of rigging. They were dismissed as tribalists and puppets of foreign masters by the KANU government.

The debate became even more animated when the American ambassador to Kenya Mr. Smith Hempstone announced that the US Congress was linking foreign aid to the introduction of multiparty democracies. By mid June, the political temperatures had reached alarming rates. The president held country-wide tours and addressed huge gatherings on the virtues of a single party. At the same time, Matiba and Rubia continued issuing statements in the furtherance of their campaign. President Moi banned the multiparty debate but Matiba and Rubia continued issuing statements. They even sought a licence to address a public rally at Kamukunji in Nairobi on the 7<sup>th</sup> of July, 1990. Attempts by the government to cool political temperatures were not helped because in Nairobi music shops were flooded with music cassettes on what was happening in the country.

The government started issuing warnings that it would not hesitate to take stern action against anti-government elements. A KANU Annual delegates' conference held on June 21<sup>st</sup> 1990 empowered the government to crack down on trouble makers. A similar message was sent out in an even stronger tone when president Moi issued a lengthy statement from State House in which he argued that the security of state was not negotiable. He warned that the government would

deal with utmost severity with any blatant attempt to undermine law and order in the country.<sup>28</sup>

Following this statement, the following day July 4<sup>th</sup> 1990, saw the flag-bearers of multiparty crusade, among them Kenneth Matiba, Charles Rubia and Raila Odinga arrest and detention later on.

It is worthy noting at this juncture that the proponents of multiparty wanted a peaceful transition and never advocated violence. On this, Rubia in an interview with the *Finance* magazine had said

We are law abiding and patriotic citizens using lawful means and civilized language to express our wish for what we sincerely believe would be a truly democratic Kenya where all can enjoy their God-given rights and freedoms.<sup>29</sup>

Never in their multiparty crusade had Rubia and Matiba expressed any intention of launching another political party. Their detention did not scare Kenyans as much as it would have been expected. On the 7<sup>th</sup> of July 1990, a large crowd gathered at the Kamukunji grounds in Nairobi for a pro-multiparty meeting that the government had warned was illegal. The ensuing clash between the crowd and the police sparked off a wave of riots in Nairobi and several other parts of the country. These are the Saba Saba riots. Twenty one people died in these riots and several others were injured. The detentions and the riots looked like the multiparty crusade had heaved its last breath.

The establishment of the KANU Electoral Review Committee breathed new life into the issue by providing a government sponsored forum for Kenyans' grievances invited without any substantial threat to the

government itself. People turned in large numbers to register their dissatisfaction with certain political and economic misgivings. They wanted the political bad weather cleared. The unanimous opinions of the majority of Kenyans who made their presentations as highlighted in the media were, *inter alia*, amendment of the constitution to allow multiparties. Oginga Odinga observed that the submissions made to the committee were crystal-clear that Kenyans stand against monolithism and depotism.<sup>30</sup> At the December 3<sup>rd</sup>-4<sup>th</sup> KANU Delegates' Conference, the Committee recommended to receptive conference members that Kenya remained a "one party democracy".<sup>31</sup> The fact that the committee ignored most of peoples' grievances was to a large extent a leading pointer to peoples' anger and their craving to speeding up of multiparty installation.

The Saitoti Review Committee despite its major shortcomings, left Kenyans awakened to political reality and the Kenya they wanted. It also allowed people to express their political awareness and exercise their right to express, dissent and criticize their leaders. This factor gave Kenyans more courage in their call for multipartyism. For example, Oginga attacked president Moi on his speech on 1990's Kenyatta Day for having convinced himself that the demand for a multiparty system of government in Kenya "is not and cannot be of our freedom". He challenged KANU to allow for competition with other political parties, a competition which he deemed essential



for the healthy working of our democracy, for restoration of sustainable accountability in the government and for long-lasting political stability in the country.<sup>32</sup>

Warning that the establishment of a multiparty political system was not negotiable as far as Kenyans were concerned, Odinga stated that for himself and those who had been expelled from KANU, they were no longer interested in any way in going back to KANU. Their stand was to form their own party.

The year 1990 ended on a political balance sheet of uneven mixture of failure and success on the kind of political order Kenya wished to have. Odinga in his 1991 New Year message, described the year as an year of action. He described 1990 as an year of debate and 1991 as an year of action. He said

Last year Moi stated that he was not against multiparty democracy in Kenya but argued that time was not yet ripe. I assure him as other Kenyans do that 1991 is an year of political pluralism. He should not let this golden opportunity pass over this year, for now is the time.<sup>33</sup>

Thus it did not surprise Kenyans when on 13<sup>th</sup> February 1991, Odinga launched the National Democratic Party (NDP). One of the party's objectives as stated in its manifesto was the repeal of Section 2A of the Kenyan constitution which made Kenya a one party state in 1982. He sought the registration of the party with the Registrar of Societies which the registrar refused. Odinga continued pursuing this objective through the last remaining channel, that is the court of law. In the case that followed of National Democratic Party Vs the AG<sup>34</sup>, the judge, Norbury Dugdale dismissed the suit

challenging the Registrar of Societies for refusal to grant it registration.

The registrar's refusal was mandated by the clear provisions of Section 2A of the Constitution which provides for only one political party - KANU.

KANU through its manipulation of the Judiciary was therefore able to suppress any political party from registration through the constitutional amendment which brought about Section 2A.

After the court's dismissal, it looked like forces critical of the government had stalled. As it were, the forces were re-grouping. Even as NDP attempts to secure registration failed, a new campaign was launched and Alliance of the Justice and Peace Commissions of the Church of the Province of Kenya, NCKK and the LSK was formed. The stated objective of this alliance christened the Justice and Peace Convention of Kenya JPC(K) was to shake the foundations of the country by a series of co-ordinated prayers country-wide. Ridicule poured on the organizers, curried with all too familiar warnings and thinly-veiled threats that "dissidents" were "planning to have people killed" at the meetings.<sup>35</sup>

At a time when the campaign for political pluralism seemed dominated by a younger group of activists, FORD brought together a group more reknowned for the role it played in the independence struggle. Forum for the Restoration of Democracy (FORD) was formed on 2<sup>nd</sup> August 1991. Its six founding members had highly chequered public careers. They said that they were brought together by a shared vision of

multiparty democracy as the most effective mechanism for the established governance, public accountability, the rule of law and social justice.<sup>36</sup>

They demanded, *inter alia*, the immediate convocation of a constitutional convention to freely debate and draft a constitution that would provide for multiparty democracy.

Barely three months after the launching of FORD, Kenyan most outspoken clergyman and active multiparty crusader, the Rev. Dr. Timothy Njoya re-surfaced again in the multiparty debate. This time, he on 28<sup>th</sup> October 1991, announced the formation of Moral Alliance for Peace (MAP), a five member political pressure group. He and his co-founders termed it as

God's instrument of peaceful change and reconciliation.<sup>37</sup>

One of the aims in the manifesto was, *inter alia*, to pray that the amended Section 2A of the constitution be addressed to God to change the hearts of those who inserted it.

It is interesting how these two pressure groups, FORD and MAP survived the harassment of KANU. These two groups avoided registration through a legal technicality since neither of them had ten members which is the requirement of the Societies Act for any society formed in Kenya to be registered. KANU's intemperate reaction to FORD formation was personified in the attitude of the Secretary General Joseph Kamotho. He dismissed FORD members as "politicians bankrupt in ideas". An interesting footnote to the FORD denunciation is the threat by some KANU die-hards that if the agitation for

pluralism continued, they would introduce a bill in parliament for the conversion of Kenya into a Federal republic. This was the call for *majimboism*. The very thing behind this call is that KANU cited as the central pitfall of the multiparty system the breaking up into tribal groupings.

Other activities were transpiring the world and especially in Africa after the collapse of Socialist dictatorship in Eastern Europe. The condition was that political reforms embracing multiparty in the monolith single party states of Africa must be instituted if these states wanted to continue receiving bilateral financial assistance from Western Europe. Meetings were being held in Africa since 1990 with the aim of impressing upon African leaders the necessity for political change in their individual countries. An example of such meetings was the African Leadership Forum which took place in Kampala Uganda. It acknowledged that Africa was standing on the threshold of momentous change. A paper presented at the opening session declared that lasting stability in Africa must be rooted in political pluralism and popular participation in decision making process. It said

The core of governance problem is the lack of viable state institutions. Such institutions can only be sustained if African governments adhere to pluralistic political structures that can freely monitor the accountability and promote compliance with the constitutional requirements.<sup>38</sup>

It is against such background that FORD earned a lot of support and followers. In order to have their views

passed across to a large cross section of citizens than those they had already reached, FORD applied for a licence to hold a public rally at the Kamukunji grounds Nairobi on the 5<sup>th</sup> of October, 1991. The Nairobi Provincial Commissioner to whom the application had been made, denied the request. When Oginga Odinga and his group petitioned court to order the grant of the licence by the PC, the court's delay tactic could not keep pace with the urgency of the matter. While FORD's counsel was struggling for the fixing of an early hearing date of the application, a heavier outpour of condemnations subdued the applicant's hope of ever getting the licence. This followed the government's official declaration that a licence could not be issued for the public rally scheduled by FORD. President Moi wondered how FORD, in his opinion a non-existent organization, could be licensed to hold a public rally.

The result of such stern warning from the government led to FORD members to calling off the meeting at the eleventh hour. The political climate at that time seemed to dictate that no opposition would exist while KANU was still in power. However, FORD leaders in their unbeatable spirit decided to wield to its own big stick and hold the rally "with or without a licence" on November 16<sup>th</sup>, 1991. They called for a peaceful rally at the Kamukunji grounds on that day and called on the government to provide security under the Public Order Act to control traffic and ensure that there was law and order. The government said that the organisers of the rally were anarchists out to cause chaos. Determined to

emerge the top therefore, the government still tried to crush the rally before it took off. First they criminalized it by denial of a licence. The then Police Commissioner, Phillip Kilonzo said it would be unsafe for anybody to venture into the Kamukunji grounds for purposes of observing, monitoring, witnessing, holding, attending or otherwise participating in that intended "illegal rally".

Secondly, a major police crackdown was organised ahead of the proposed unlicensed public rally. This saw the arrest of the self-proclaimed members of the unregistered FORD, except one by the 15<sup>th</sup> of November, a day before the scheduled date for the rally. Together with them, the police also arrested a number of pluralism activists. On the same day, armed policemen cordoned off the Kamukunji grounds and sealed all pathways traversing the grounds. This act did not scare the public for thousands of people turned out for the meeting together with six prominent multiparty advocates. Members of public who attended the rally carried green twigs as a sign of peace and sung songs in praise of FORD.

The originally intended peaceful meeting was soon to be turned into a confusion characterized by arrests, road blocks and violent responses from members of the public to the security forces. The gathering degenerated into incidents of stoning, tyre burning and clashes with the police. The arrested leaders were deported to their home districts for trial. This made these criminal cases

unique. Also those arrested were charged at odd hours of the day , for example, Odinga and Obok were produced at the Kisumu law courts at 6.25p.m. The court clerks were got from social places and clubs as they had already retired from the day's work. The effect of such deportation was to make FORD even more stronger as large groups of people from the rural areas turned in courts to listen to the cases and this provided a forum for FORD rally. For example, at the Kiambu court Paul Muite's appearance attracted huge crowds which were dispersed with tear gas and firing of guns in the air. The November 16<sup>th</sup> confusion left one person dead and several others injured.

The final straw towards multiparty struggle that broke the camel's back was the Paris Club meeting. On 23<sup>rd</sup> November, the then Minister for Finance Prof. George Saitoti departed for Paris France to attend the meeting between Kenya and its principal aid donors. This was amid the unprecedentedly strong warnings from Britain that donor countries will look closely at Kenya's will to clear up corruption and move to multiparty democracy. In an interview with the British Broadcasting Corporation, The British Overseas Development Minister, Lynda Chalker said

Western donor countries will take tough action to ensure that President Moi ended one party rule and respected human rights.<sup>39</sup>

The two day Paris Club meeting gave Kenya six months to show it can put its fiscal and political house in order before it agrees to even discuss how much it is prepared to pledge assistance to Kenya. Two events

followed the Paris meeting. First, all the charges preferred to people arrested and charged with the November 16<sup>th</sup> illegal meeting were withdrawn by the State. They had been charged with publishing, printing, circulating and advertising notices to hold an illegal meeting under the Public Order Act.<sup>40</sup> The second and the most important was the December 3<sup>rd</sup> 1991 KANU special delegates' conference at Moi International Sports Centre, Nairobi. At the meeting the party voted unanimously, at the urging of president Moi, to ask parliament to remove from the constitution Section 2A which turned Kenya into a de jure one party state in 1982. This would pave way for the formation of other parties thus the re-usher in political pluralism.

On December 10<sup>th</sup> 1991, parliament repealed and reinstated multiparty democracy in Kenya when it speedily repealed the controversial Section 2A of the constitution. This was done through a constitutional amendment<sup>41</sup> which was unanimously passed. Similar Clauses which outlawed pluralism in Kenya were also outlawed. The bill therefore, also repealed Section 5(3) (a) and introduced that instead of a candidate for the president being nominated by KANU, each political party taking part in the general elections will have the right to nominate a candidate to stand for election of the president. Section 34 was amended by deleting the provision which provided that only a KANU member would stand for parliamentary elections. In future, members of any political party duly registered will be eligible to contest. The bill was passed on a 149 - Nil affirmative



vote count.

Monopolies are for keeping others out of the market and this also applies to political monopolies. From the foregoing, it is clear that KANU gave birth to the opposition when, to keep political monopoly, it condemned, vilified, suspended, expelled and de-registered members who were critical to some of its policies. People thus treated exercised their constitutional rights of assembly and association and this led to the formation of pressure groups. The strongest of such pressure groups which managed to break the KANU monopoly was the Forum for the Restoration of Democracy (FORD). It is also clear that opposition in Kenya was not granted on a silver plate. The reason for KANU to recommend multiparty during the Kasarani meeting was not that it had become kind or because Kenyans had become cohesive overnight. It was the result of unprecedented pressure both locally and internationally.

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## CHAPTER 11

### THE DOCTRINE OF PARLIAMENTARY SUPREMACY

#### VIS-A-VIS KANU SINGLE PARTY ERA.

At independence, Kenya adopted the West Minister model of the constitution from Britain. The concept of parliamentary supremacy is a fundamental rule of British constitutional law and practice. Those who advocate for parliamentary supremacy argue that a supreme parliament would be an effective check upon the executive to prevent the executive from assuming extra constitutional powers and ignore the country's elected representative thus the people themselves. This rationale has been articulated time and again in Kenya whenever the role of parliament appears to be compromised by executive encroachment underlying its supremacy.

A number of questions arise with regard to the concept of parliamentary supremacy. Such questions are, what is parliamentary supremacy? Does the principle have any basis in the Kenyan constitutional framework? How far has the Kanu government preserved this doctrine in the De jure and de facto one party state? It is this, that is our concern in this chapter.

#### 2.1 THE CONSTITUTIONAL BASIS OF PARLIAMENTARY SUPREMACY

Parliamentary supremacy entails the exercise of power by parliament in finality without fear of reprimand from

any other or higher authority. It is that power given to parliament to make and unmake laws without being challenged by anybody or any organ.

De smith describe it as The queen in parliament is competent according to British law to make or unmake any law whatsoever, and no British court is competent to question that validity of an act of parliament.<sup>2</sup>

Every other law making body within the realm either derives its authority from parliament or exercise it at the sufferance of parliament. It cannot be superior to or even coordinate to parliament.

An editor of local newspaper wrote that the principle is based on the "decorum , dignity and the rationality of honorable members".<sup>3</sup> Parliament is therefore supreme because it is rightly the source of all authority exercised by the other arms of the government. It has to be respected and treated by other arms of government as such. This represent the general view of the constitutional place and role in kenya.

The principle then of parliamentary supremacy may, looked at from its positive side be thus described: Any Act of parliament or any part of an act of parliament, which makes a new law, or repeats or modifies an existing laws, will be obeyed by the courts. The same principle, looked at from its negative side may be thus stated. There is no person or body of persons who can, under the English constitution (and Kenyan constitution in this case) make rules which override or derogate from an Act of parliament

or which will be enforced by the courts in the contravention of an Act of parliament.<sup>4</sup>

Attempts to impugn the validity of Acts of parliament because of their inconsistency with the rules of international law have been rejected. In the case of Choney v Conn<sup>5</sup> for example, a taxpayer challenged the validity of assessments made under a finance Act on the ground that they were directed partly to an unlawful purpose (the manufacture of nuclear weapons with a view to their possible abuse). It was held that even if such a purpose were contrary to international law:

"what the statute itself enacts cannot be unlawful because it is the highest form of law and it is not for the court to say that a parliamentary enactment is illegal.

This further explains how supreme parliament is and particularly in the legislative function. To this extent therefore, the power and jurisdiction of parliament is so transcendent and absolute that it cannot be confined, either for causes or persons, within any bounds.

The Kenyan constitution does not have an express provision that stipulates parliamentary supremacy. However such supremacy can be inferred from sec 30 which states:

The legislative power of the republic shall vest in the parliament of Kenya.<sup>6</sup>

Since no other institution is expressly given that power constitutionally, parliament must be taken to be supreme in law making in Kenya. De Lolme summed up parliament in a grotesque expression which has become proverbial.

He said:

supreme and yields to that supremacy when properly exercised. The relevant provision of the constitution states:

subject to this section, parliament may alter this constitution<sup>11</sup>.

The constitution in reflecting the changing needs of the society for which it is made allows parliament to change it towards this needs.

Parliament also has representative functions. It is expected to give heed to the views of various national interests and provide a forum for the articulation of grievances. This expresses the views of the nation and Ghai and Mc Auslan says that it forms and demonstrates the 'conscience of the nation'.<sup>12</sup> Kenyatta recognizing that parliament should be placed in its right place said,

"This parliament represents our republic and the republic is the people... so we feel it proper that the right of final sanction for all country's laws should reside in the representative of the people<sup>13</sup>.

At such times of policy articulation, the opposition may frequently attack the government in debate and at question time on issues of principle and detail. Parliament is the only public forum in which minister are obliged to present reasoned answers to these criticisms thus its supremacy over the other government organs .

Parliament has power to constitute and change the government. In the constitutive power, the president must first be an elected Member of Parliament. The ministers are also appointed from members of the National Assembly<sup>14</sup>. This therefore means that being a parliamentarian is a pre-

condition for one to qualify to be a president or a member of the cabinet. Parliament can also change the government in power by passing a vote of no confidence in the government. It gets this power from section 59 (3) which stipulates that:

if the national Assembly passes a resolution which is supported by the votes of a majority of all the member of the Assembly ... declaring that it has no confidence in the government of Kenya and the President does not within three days of the passing of that resolution either resign from his office or dissolve parliament, parliament shall stand dissolved on the fourth day.

Such a vote as already stated can lead either to the dissolution or the resignation of the government This shows that parliament has power over the executive and can only stay in power as long as the 'conscience of the people' or the majority of the nation's representatives have confidence in it. This is a clear illustration that constitutionally, the parliament is supreme over the government.

Parliament once dissolved must commence within three months of such dissolution 15. This is because the constitution does not wait to allow a situation where the government will run the country in the absence of parliament as such would not give the government's acts the legitimacy which parliament alone is constitutionally empowered to give. This therefore shows its importance in running the country and hence its supremacy. According to Gicheru,

"The danger of an excessively long recess or suspension is that it creates the impression in the minds of the masses that the country would after all



dispense with parliament. It is an executive coup and a threat to the solidarity and credibility of parliamentary government"16

The relevant constitutional provision to this effect is sec 58 (3). It provides:

whenever parliament is dissolved, a general election of members of the National Assembly shall be held, and the first session of the new parliament shall commence within 3 months after that dissolution.

Another constitutional ground to assert that the principle of parliamentary supremacy obtains in Kenya is the provision that empower parliament to make standing orders regulating the procedure of the Assembly and to establish committees in such a manner and for such general or special purposes as it thinks fit17. Also parliament may provide for powers, privileges and immunities of the Assembly and its committees and members.18 In relation to this parliament has passed the National Assembly standing orders and also the National Assembly powers and privileges Act19. The preamble of this Act clearly states that the Act defines certain power, privileges and immunities of the National Assembly and of member of the National Assembly to secure freedom of speech in the National Assembly. Section 4 of the Act provides that:

No civil or criminal proceeding shall be instituted against any member for words spoken before, or written in a report to, the Assembly or written in report to, the Assembly or a committee or by reason of any matter or thing brought by him there in by petition, Bill, resolution motion or otherwise.

Such an Act which is provided for by the constitution is clear indication of the constitution's recognition of the supremacy of parliament.

**ques:** Parliament also has power to extend its life beyond five years in time of war. The constitution on this states:

**conc:** Any time when Kenya is at war parliament may from time to time provide for the extension of the period of five years for not more than 1 month at a time.<sup>20</sup>

The only other time that the life of parliament can exceed the usual term of five years is when the president may prorogue it<sup>21</sup>. The power granted to parliament to extend its term is a constitutional recognition that parliament is supreme in running the country. The country will not be able to continue with its war efforts without parliament.

**bas:** Parliament controls the government raising of funds and its expenditure. It is, therefore, the custody of public fund. The government minister of finance tables the annual budget before parliament to discuss it<sup>22</sup>. The parliament has to vote for or against the budget. If it votes against the budget this means the failure of the government in power. It's only when the budget is approved by the National Assembly that an Appropriation Bill shall be introduced providing for the issue from the consolidated Fund of the sums necessary to meet that expenditure and the appropriated sums. If an estimate presented does not meet all the needs of a ministry, a supplementary estimate will have to be tabled before parliament and parliament can pass or reject the bill. Such trust on parliament to manage the public funds clearly demonstrates its supremacy.

A theoretical problem arises with this concept of parliamentary supremacy. The concept as already discussed leads to the conclusion that parliament is supreme. The

while parliament is supreme in that it can make or unmake government, a government once in power tends to control parliament<sup>23</sup>. Yet another writer, Kenyaihembe, emphasizing on the equality of these organs states:

-----that each organ should have the capacity to impose restrictions on the other two so that they may not abuse their powers and if they have to do so there should be an effective method of correcting what they have done<sup>24</sup>.

Most writers who have carried a thorough search on the doctrine of the separation of power have only managed to prove how hard it can be to strictly apply the doctrine. Kalume Kioko, one of such researchers comes up with the opinion that the most important factor is not how the doctrine is interpreted or applied but rather whether its spirit and purpose have been adhered to and achieved<sup>25</sup>. Beyond this spirit, it is clear that it has been compromised and other concepts of constitutional law like checks and balance have been incorporated.

Thus it is the authors considered opinion that the concept of supremacy of parliament in no way contradicts the doctrine of the separation of powers. Rather it is the impossibility of a strict application of the doctrine of separation of power that gives way to the doctrine of the supremacy of parliament. However it is worthy noting that the concept of parliament supremacy does not make parliament superior over the other two arms of the government. It is humbly submitted that parliament is only supreme in its role to the extent provided for in the constitution.

To this end, therefore, it is quite evident that the principle of parliamentary supremacy obtains in the Kenya constitutional framework. Whether the principle is effectively applied in practice and whether parliament has succumbed to influences by the government and the party is the subject of our next sub-topic.

## 2.2 PARLIAMENT OR KANU SUPREMACY:

Our aim here is to see how KANU has imported on the doctrine of parliamentary supremacy. This will be an enquiry into the status of parliament vis-a-vis that of KANU in the practical reality of Kenya in its single party era. This can be achieved by analysing the events that have transpired in Kenya especially during the de jure on party state

The question to be answered eventually is whether the principle of parliament supremacy established as existing in Kenya's constitutional system obtain in practice, or it is only a myth lingering over Kenya's political atmosphere.

Though the Kenyan constitution provides for parliamentary supremacy, in practice it has been to the contrary. Though not provided for in the state constitution the party in the past single party era seemed to supersede parliament in supremacy.

The legal basis for the connection between parliament and KANU was found in both constitutions. The state constitution provided that for one to contest for a parliamentary seat he had to be nominated by KANU. The preamble to the KANU constitution states.

KANU'S policies will be reflect and implemented in the actions administration and legistration of the cabinet and parliament and the establishment of the necessary machinery for consultation and co-operation between the party, public and government.

Prof. Ojwang commenting on the effect of this preamble said:

The effect is to cast legislative institution more as a hand-maiden of the party, whose critical role is the implementation of party decisions, then as an organ that enjoys autonomy flowing from the domain of normative validity under the constitutional framework 26.

We fully concur with Professor Ojwang in his analysis. As will be seen the party succeeded to great heights in making parliament its hand-maiden and infant a rubber stamp to the KANU policies.

According to the state constitution the manner in which KANU nominated candidates was not an issue. One had to be nominated by KANU. KANU'S role in doing this was legally sanctioned so that members held office at KANU'S pleasure and according to the loyalty plead they bound themselves to be loyal to the president ,party ,party-policies, principles and all development programmes of KANU'S government<sup>27</sup>. If one deviated he was suspended or expelled. Its under such stringent powers that KANU used to make and control parliament. Anybody with different thoughts

was barred from parliament by denial of clearance. This meant that it was KANU through its nominees that dominated all the affairs of parliament and there is no way such a parliament could have claimed to be supreme.

KANU had on a number of instances been able to influence and even show indication of direct control over parliament. As already indicated, its influence was based on the fact that it nominated the MPS. The effect of this was that KANU could gauge the combination of parliament even before a general election was held. An example to this is when the mp for Bondo, Hezekiah Ougo stepped down ostensibly for a prominent politician Mr. Odinga in 1981. The by-election held gave KANU an opportunity to tell public that it was the sole determinate of who should go to parliament through party nomination. It therefore barred Odinga by not nominating him<sup>28</sup>. This decision was backed by KANU branches country-wide. Thus KANU has been clearing those it think are not opposed to it's policies and ideas.

Another example was the introduction of section 2A of the Kenyan constitution which made Kenya a *de Jure* one party state. The KANU governing council directed the Attorney General and KANU parliamentary group to legalise the one party state in Kenya. The order was duly carried out by parliament when it unanimously passed the one party state bill in 45 minutes without a dissenting voice<sup>29</sup>.

The reality was that the party had met the previous day and had made a resolution and this was the same group of people who now acting as parliament, were supposed to

debate the bill. They could not turn round and contradict what they had passed in a meeting chaired by the president the previous day. So theirs was just a rubber stamp to the resolution. This means that KANU had wholly manipulated parliament so that what was left was a yes saying parliament.

As it were, parliament during the single party era did the will of KANU. In the face of KANU parliament was just a tool of convenience set up to put into motion party policies. The people's power of choosing their parliamentary representatives was also reduced to that of endorsing KANU'S choice through the secret ballot. For one to retain the parliamentary seat he had to sing to KANU'S tune. In 1984 the Vice President Mr. Mwai Kibaki while moving a motion of allegiance to the president and the party said:

What we owe to ourselves is to preserve that Kenyan system and to honour the party... and to tailor our behaviour so that we are within the rules and discipline of the party.<sup>30</sup>

KANU also had the power to make and unmake parliament. This was done through expulsion from KANU of any parliamentarian who objected KANU policies. This was followed by one losing the parliamentary seat. This disciplinary measure as exercised by KANU caused a lot of fear among the parliamentarians since no one wanted to lose his seat. Thus they had to adhere to KANU'S policies however much they were opposed to them. Example of people who lost their seat through expulsion from KANU and ultimate loss of parliamentary seat is the 1988 MP for

Kiharu, Mr. Kenneth Matiba Anyona also lost his parliamentary seat when he was expelled from KANU after their attempt to form another political party was Oginga. This is the event which led to Kenya being declared a De jure one party state in the same year. Saying that Kenya had matured from multi-party state into one party state the KANU National organising secretary said:

Any party worth its salt must make sure that those whom it sponsors for elections are its true loyal members who will foster unity of the party and support and implement its programmes.

Thus parliament had been reduced to a creation of KANU to carry out, not its wishes, but the will of KANU. The question that would arise at this point is how, could parliament exercise its supremacy in such a state? We therefore examine the effect of party or KANU supremacy over parliament in relation to:-

(i) Parliament power, privileges and immunities.

As already stated, the constitution provides parliament with power to enact a parliamentary power, privileges and immunities Act. This is for the purpose of the orderly and effective discharge of the business of the National Assembly. The Act defines certain power, privileges and immunities of the National Assembly and of members of the national Assembly to secure freedom of speech in parliament. Kenyan parliament has fully enacted such an Act through which it operates. However KANU in its manipulation of parliament has also tempered with this Act. A few examples will suffice to explain this.



There has been two instances where attempts have been made to repeal this Act so as to temper with the parliamentary's qualified privileges. Such came through the executive or have been uttered with the blessing of the party. The first instance was in 1977 when the Attorney General, after Anyona's detention, expressed the wish to have parliament powers, privilege and immunity Act repealed. This was due to what he termed as:

misuse of the Act by certain MPs who say anything in parliament which they cannot substantiate and are afraid to say it outside parliament. If this Act is repeated newspapers would publish such matters at their own risk.<sup>34</sup>

Another incident was when Shariff Nassir called for the amendment of the Act to assert the supremacy of the party. He was of the view that the party should be supreme and not be overshadowed by any privileges and powers including those of parliament because the MPs receive their mandate from the party. He said:

If members of parliament talk loosely and at whim the party should discipline them. This should enhance the confidence of the members of the party who voted for such MPs<sup>35</sup>.

Nassir therefore overlooked a very crucial fact namely, the purpose for which the privileges and immunities were provided for which is immunity from civil and criminal proceedings in respect of words spoken before or written in a report to the National Assembly. He also neglected other freedoms like freedom from arrest for civil debts during sessions<sup>36</sup>. Without such privileges, parliament would be like a horse without a rider. Shikuku commenting on the above statement told MPs to guard against moves by people

like Nassir to 'castrate parliament'. It is therefore quite clear that to temper with this immunity is to temper with the very sub and core of democratic rule which Kenyans cherish so much.

It is within such atmosphere that parliament existed. This created a climate of fear because the disregard of such standing orders and privileges led to detention, imprisonment and expulsion of MPs from KANU and also parliament. A clear incident which manifested such abuse of parliamentary privileges was the detention of Mr, Martin Shikuku and the late Seroney for questioning the existence of the party. 37 Shikuku had said:

'Anyone who tries to lower the dignity of parliament is trying to kill parliament the way KANU had been killed.

Asked to substantiate, the deputy speaker Mr Seroney as he was then said:

According to parliament procedure there is no need to substantiate the obvious.

The result of such a discussion which had taken place in parliament was the arrest and detention of the two in parliamentary precincts. This was inspite of the provisions of the powers and privileges Acts.

The Minister of lands and settlement Mr. Angaine said:

---- The public has seen what KANU can do if anyone fools around with it, he's likely to get into the kind of trouble which the two colleagues have suffered.

This was a clear admission that KANU had a lot of power over parliament and the parliamentary powers and privileges could not be pleaded as defence against KANU'S disrespect.

(ii) Legislative powers of Parliament.

This is another attribute of parliamentary supremacy in Kenya. The parliament is the only institution constitutionally clothed with this function. Any legislation once approved or assented by the president becomes law and is binding throughout Kenya. The justification for this parliamentary power in legislation is that laws should be obeyed by everybody. People should therefore be consulted when these laws are being made. Parliament is the only best placed institution to do this since it consists of the people's representatives.

Due to the party's supremacy over parliament, parliament had during the one party era been unable to exercise this function effectively. Such power had been taken over by the party and the executive. Any bill initiated by the party or with the party's support used to sail through parliament with little or no opposition. A good example of such is the Bill that turned Kenya into De Jure one party state in 1982. The Bill was Gazetted on 4th June 1982 38 On the 8th June 1982 KANU parliamentary group met under the chairmanship of the president. The president had earlier expressed his wish that Kenya should be a one party state:

to defeat the intention of a few misguided elements who wanted to form another party 39.

The meeting directed the Attorney General to introduce the Bill in parliament. The following day the Bill was introduced and only four people (members) contributed to it. The Bill went through the three readings without a

dissenting voice. This is a clear departure from the procedure of legislation formulation. According to such procedure a Bill once Gazetted should be introduced after the lapse of 14 days. It also can't go through the same readings on the same day as various procedures should be followed every time the Bill is read. It's therefore clear that it was the KANU'S procedure that was followed in this legislation instead of parliamentary procedure.

Other KANU sponsored Bills are the one passed in 1982 on the removing the tenure of Judges and the controller and Auditor General. Only two MPs opposed these Bills despite the serious opposition on them from the NCCK and the Kenya law society. Thus it is clear that parliamentary power on legislation had been taken over by KANU. Only Bills introduced by Ministers passed in parliament. MPs feared being expelled from the party and hence losing their seats if they opposed the Bill. The worst part of it all is that constitutional Amendments were not excluded from KANU'S manipulation. This meant that parliament never used to lay down laws but KANU used to do it instead. Parliament role was that of endorsing and rubber stamping Bills coming from KANU.

(iii) Representation Function.

It has already been stated that during the single party era, Kenyan MPs used to go to parliament through the KANU ticket. This is because KANU was the only party that could nominate the members of parliament. Yet the members of parliament were supposed to represent the wishes of the

electorate. They were supposed to serve as a bridge between the government and the electorate. According to the House of representatives:

Parliament must give full modern expression to the traditional African custom by serving as the place where the elders and spokesmen of the people are expected to confer. Members must serve as a bridge between the government and the people<sup>40</sup>.

To the extent that the MPs get to parliament with the KANU'S ticket, it's clear that they would represent the electorate. This is because they used to fear that if they went contrary to the will of KANU, then KANU which used to serve as their sponsor would withdraw the sponsorship thus leading to loss of the parliamentary seat. There also was a fear that if one opposed KANU, then he would not be 'cleared' in the next general election. In the party politics, member of a party owes allegiance to his party and is under a duty to support it. So any time the party's interest conflicts with those of the electorate, he is bound to support the party. It is therefore clear that the one party parliament used to represent the party and not the electorate. To them the interests of the party took precedence to those of the electorate.

This can further be illustrated by the fact that MPs once elected to parliament never used to go back to their electorate. This way they never used to know the problems of the electorate. On the other hand, they used to be fed with KANU policies in and outside parliament. They would therefore harken to the party's cry. To the electorate, the MPs used to act when an election was called

for in their campaigns. Thus the party used to function then and all that remains of it is the song KANU Yajenga Nchi.<sup>41</sup> (KANU builds the nation).

It's the authors strong contention that the parliament which was supposed to be supreme through representing the people totally failed in this duty. It represented the party instead and thus had bowed low to the party's control. In an interview with member's of Kenya diplomatic club, that chairman Aringo, as he then was, said:

MPs need not to fear the growing status of the party. After all KANU is the voice of the people and MPs will know the priorities of the people through the party.<sup>42</sup>

This is a clear support of our contention that the parliament represented KANU and not the electorate in the single party era.

#### (iv)Vote Of no Confidence

The constitution section 59(3) provides the parliament can pass a vote of no confidence in the government which can lead to dissolution or resignation of the incumbent government. This shows that the government is accountable to parliament and can only stay in power if parliament has confidence in it.

However, this has never occurred with the Kenyan parliament. It had always been impossible for parliament to pass a vote of no confidence over KANU'S government. The reasons for this are that all the members of parliament used to be members of KANU. Therefore there is no way they would have passed a vote of no confidence on its own party. The KANU parliamentary group consisted all the members of

parliament. This also gave them a duty to support KANU in parliament. Secondly, there was no opposing party in parliament. Passing such a vote would therefore be almost impossible since the person moving such a vote should be able to show that he shall come up with an alternative government<sup>43</sup> This was therefore made impossible in Kenyan parliament because all the parliamentarians belonged to KANU. Thirdly, there was a link between government and party leader which in most cases overlapped. Those who would call for the vote of no confidence were party leaders and there is no way they would lack confidence in themselves. Lastly the infamous KANU 'clearing' system used to leaf no doubt that the intention of the party was to nominate only those people who would support it, the government and those in power and this shed away its supremacy and gave the party power over it.

To this end, we have been able to establish that the principle of parliamentary supremacy has its framework in the constitution. The constitution of Kenya intended Parliament to be supreme, through the powers and privileges it gave parliament. We have also been able to establish that Kenyan parliament was not able to preserve this principle during the single party era. Instead it is the party, KANU, that had been supreme all though such party supremacy had an effect of eroding all the parliament constitutional given powers and privileges. Thus we contend that it had become an unfounded end groundless myth to talk of a supreme parliament during the KANU single

party era. To this end, an important question remains unanswered. That is, does the opposition in the present multi-party parliament have any role in the reinstating the already eroded parliamentary supremacy? If yes, what's this role. Chapter 3 seeks to answer these questions.

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CHAPTER III3.1 THE ROLE OF OPPOSITION IN PARTY GOVERNMENT.

In chapter one, we were able to establish that the Kenya parliament repealed the infamous section 2A of the constitution and reinstated multi-party democracy in Kenya on 11th December 1991. The effect of such a move was to pave way for the formation of other parties in Kenya. In chapter two, we saw how the Kenyan parliament had failed in its role to control the KANU government to the extent of losing its supremacy to the executive and the party. A need for opposition has been cited as one of the solutions which can reinstate parliament to its constitutionally intended position.

In this chapter, we are going to address the question of the role of opposition in a multi-party system of democracy with special emphasis to Kenya. The ultimate question we shall seek to answer is how opposition in the seventh parliament can emancipate parliament from the KANU grasp to its independent and supreme position as constitutionally provided. We do not contend that it is only the opposition which can do this job, but it is contended that the opposition role would be of paramount importance towards achieving such a goal. In such a discussion we are going to borrow examples from other countries with common law jurisdiction and especially the opposition in British parliament. A further question would be whether it is possible for the opposition in Kenyan

parliament to reinstate the supremacy of parliament. However, this is outside the scope of this dissertation.

### 3.1 THE CONCEPT OF OPPOSITION;

The Opposition in a party government presupposes a plurality, multiplicity of the various group interests in the country. In all, active opposition operates in the context of party politics.

The nature and extent of active opposition in any country depends on the prevailing political order. It largely depends on the constitutional framework of government. Whether or not it is allowed or recognized under a given constitution is determining factor. But whether or not the political institution accommodates opposition in whatever form is secondary to the constitution. Thus Nwabueze contends that:

A constitution should be adopted to the needs of the country and to the aspirations of its citizens. This has been one of the reasons for the rejection of the Westminster system in favor of presidentialism.

Opposition presupposes the existence of a government. This is because as an institution, the political opposition has grown in response to government and hence it reflects to some extent the nature of the government, though without its powers and with more limited functions<sup>2</sup>. Its principal weapon is public opinion to which it largely owes its existence.

An essential element in the development of the system of institutions within which the political opposition emerges is the mechanism by which decisions are reached and

extent to which the right of minorities to dissent is recognized. In every process of decision making, there is bound to be an element of dissent on the part of some of the members of the government institution. This may be a result of an institutional process or public opinion. Thus the government institution is largely characterized by dissent hence opposition.

The democratic process in any plural society aims at creating political institutions which give all the various groups the opportunity to participate in decision making. These institutions may be created through pre-determined rules and principles of the constitution. They may also emerge as a result of reactions of the various groups to the prevailing political atmosphere. For instance, a system of government that is unsuited to open discussion and adaptation faces a mounting criticism. This criticism may take the more defined form of political party institutions. This presents the government with active opposition. Therefore it is clear that recognition and accommodation of the institution of opposition in government ensures organised expression of opinion in a democratic and constitutional system of government and the opposition is a characteristic of human society differing values and interests.

The official opposition in the Kenyan context has been defined as:

An opposition party or a coalition of opposition parties consisting of not less than 30 members.  
'opposition party' means a party offering to form an alternative government.

'party' means a parliament party consisting of not less than 7 members.<sup>3</sup>

Opposition may, therefore, be viewed as a step towards the establishment of a democratic process of equality and popular rule. It creates conditions under which the legislators and the chief executive officer may be regularly accountable to the public.

Opposition may not even be formalized into define institutions capable of influencing the processing of government at the polls or through the electoral process. However, as long as there exists the necessity for an organization of opinions, parties will continue to exist. For as long as opinions vary in principle and direction, then there will continue to exist a form of opposition.

Opposition does not totally defeat the interest and schemes of the government.

The government of the day has complete executive authority in the management of the affairs of the country subject only to the laws made by parliament and its financial control and heads the criticism of parliament as much as it thinks fit<sup>4</sup>

Thus opposition banks its hope on the majority support of its spirit in parliament, with majority support it can hope and indeed may influence or change government. This is because government depends on the support of the majority in parliament.

Party politics requires one party to be in power at a time and the rest in the opposition. The situation can be different with a coalition government which is not a denial

for party politics but a government of another form. Thus it is from these various claims of the opponent parties that opposition emanates. Opposition grows in respect to government. It does so irrespective of the form of government whether a plural or a single party government.

### 3.2 ROLE OF OPPOSITION :

In this section, we will examine the role of opposition in multi-party government. From the onset, it is contended that the effect of the opposition in the government is felt more in parliament than in any other area of governance. We have already seen that parliament is given power to control the activities of the executive as a check to its excesses. Given the nature of the Westminster model of constitution, it provides for a parliamentary government. This means that the president and all members of the cabinet are also members of parliament. Such a requirement makes the greatest number of MPs to be in the party forming the government. This therefore raises the necessity of opposition to help parliament carry out its role effectively. Such opposition will not be collectively responsible for the government actions.

The opposition offer to the house and to the nation an alternative government with a definite alternative policy and with their leader as the alternative president of the republic<sup>5</sup>. Thus to succeed in its competence in the eyes of the public which it claims to represent, it must prove its claims of being an alternative government. This is done through the criticism that it poses to the government



policies. It all the time wishes to present to the public that it has alternative policies to those of the government. Thus

Whether parliamentary or not, an opposition must know and believe and prove that it knows better than the government on those issues on which it chooses to oppose.<sup>6</sup>

For this reason, the ruling government recognises the leader of opposition by privileges given to him. In Kenya, he gets an allowance of the same level with the cabinet Ministers. He is entitled to an official car, an office within the parliamentary building, secretaries, driver and security. In Britain, the leader of official opposition is paid a salary charged on the consolidated Fund. The argument tendered to support such privileges in Britain is that the leader of the conservative or the labours party in the House of commons are either past, present or potential prime Minister.<sup>7</sup> De Smith says that such privilege is right and proper for he is the alternative prime Minister. A fundamental feature of British parliament system is that the leader of the largest opposition party should behave like an alternative prime Minister. Being a leader of the opposition is a full time job.<sup>8</sup>

As we have already stated, opposition in parliament seeks to get the support of the majority. By it's policies it tries to attract the members of the government party. Its position is bolstered by the tradition of collective responsibility when in office according to which all members of the government must be prepared publicly to

defend the whole record of the government or resign. There is therefore a need for the members of the official opposition party to be united. This is because to lend conviction to its claims to be the alternative government, the opposition party must show that it, too, is capable of promoting a correspondingly cohesive team. Politically, unity almost always brings strength.

To say that the function of the opposition is to oppose would be an over-simplification. This is because substantial majority of bills have passed in parliaments with opposition parties without any move to reject them. This means that there is a large area of common ground between the two main parties on matter of national policy. Thus the contention that the duty of an opposition is to 'oppose everything and propose nothing, and to turn out the government' would be a great misstatement of the day.

The truth of the matter is far from this negative contention. Opposition should and indeed must be viewed from its positive role in the directing of the process of government towards popular public demands and interest. There should not be a tendency to regard its prime duty as only the task of opposing government. Else as Rose Richard remarks:

'An opposition has to conduct a war against the government while at the same time considering the problems that it will face in the task of post-war reconstruction'

As already noted, the opposition guards public opinion by bringing out the needs of the people or the desirable policies. Thus it should work towards the benefits of the

people for it is to them that the benefits of development should and must accrue. Thus the opposition should scrutinise the institution of regime within which it operates with a view of directing the government to improve it. Opposition in parliament ensures popular participation in a democratic government. Therefore the members of opposition should always bear in mind that it is the will of the electorates that he is representing in parliament and should not therefore act irrationally: opposing for opposition sake.

Edmund Burke while driving a similar point home in a speech upon his election as an MP for Bristol in 1766 said:

parliament is not a congress of ambassadors from different and hostile interest which interest each must maintain, as an agents and advocate against other agents and advocates. Parliament is a deliberative assembly of one nation, with one interest, that of the whole-where not local purpose, nor local prejudice, ought to guide, but the general goods resulting from the general reasons of the whole. You choose a member, indeed, but when you have chosen him, he is not a member of Bristol, but he is a member of parliament.

We should always bear in mind that opposition is made up of one or more political parties. By virtue of being in the opposition, they do not loss their aims as political parties. The ultimate goal of every political party is to win the popular support so that it can one day be the ruling party and therefore be able to implement its policies. In its participation in parliament, it tries to influence the public that its policies can be the best. It should therefore guard against any act that can make it loss its popularity. Thus in opposing any government policy

in parliament it should be united in the support of its leaders and policies and so, at least, on all major questions it can rely upon the members to vote solidly together.<sup>12</sup>

Political parties which constitute the opposition are thus the means through which the citizen seeks to attain democracy. They refine and enlarge public views, by passing them through the medium of a chosen body of citizens whose wisdom may best discern the true interest of their country.<sup>13</sup> It is upon them that the citizen has placed his confidence and trust and it is these objectives that they should seek to attain. Thus whether ruling or in opposition, the political party should always seek to attain their objectives and not oppose for opposition sake. It should represent the interest of the citizen in every step it takes for it is by the citizens mandate that such MPs are in parliament.

However, in fulfilling its roles, the opposition will frequently attack the government in debate and at questions time in issues of principles and detail. In this way, the opposition will be able to control the government, a role it is designed to do. Presidential address normally delivered on the occasion of the start of a new parliamentary session is usually followed by long debates in the course of which MPs will criticise the conduct of the executive. Also each sitting in parliament is normally preceded by questions time in the course of which individual members will call upon the government to explain

particular matters. A member may also move an adjournment motion especially where he seeks an opportunity for parliament to discuss some issue and may call upon the government to account to the house for its conduct.<sup>14</sup>

In a parliamentary government, the opposition members are the ones best placed to control the government in the above mentioned ways. This is because the members of the cabinet are required to be collectively responsible to the acts of any Minister hence the government. They should therefore present oneness in their support for the government. Anyone not collectively responsible would either resign or lose his position through a vote of no confidence on him. Members of the opposition on the other hand have no fear of losing their seat or any requirement to be collectively responsible with the government acts or omissions. They therefore should pose questions to the Minister with a view of showing that the government acted wrongly on a particular issue and this way will be able to represent the opposition the one having better policies, thus an alternative government.

Another way and most effective on which the parliament can control the government is by passing a vote of no confidence on the government. On this, it has been said:

-----the government depends on the support of majority in parliament so if the government is too headless it will find that one day it governs no more. So long as it is the government its executive authority is supreme but anytime a vote of no confidence in this house has been passed it shows that it's no longer the government of this country, because it no longer has the support of parliament. It is there that lies the supremacy of parliament.<sup>15</sup>

In this regard therefore, opposition parties act like buffers against abuse of power by the government. The existence of opposition parties in parliament ensure that the government is not left in a vacuum in the event of a vote of no confidence. The opposition party that successfully deliberates upon a motion of no confidence should be prepared to take over the government at short notice. The opposition should therefore be alert to point out any improprieties committed by the ruling party. The philosophy behind the vote of no confidence is that the legislature can bring down a government which has failed to meet the peoples expectations.<sup>10</sup>

Before Kenya become a multi-party state it would have been impossible to pass a vote of no confidence on the government because all the MPs were from KANU and what such a vote would have done was to give the KANU government a chance to review its choice. Such a vote had been passed in Kenya twice during the brief Multi-party incidents. The first time was in 1964 when KADU sought to pass a vote of no confidence against the Kenyatta's government. KPU also moved a motion in 1967 both incidents of which they did not succeed to bring down the government. This was due to the nature of the opposition existing in parliament then i.e very few members in the opposition.

The essence of the vote of no confidence is that if government loses the support of MPs, it has to resign and be replaced by a new government which enjoys the support of the house. Only a government which has the support of the

people should govern over them. If such a vote is moved by the opposition, it is a device of power control whose successful application presupposes a disciplined opposition ready to assume power at the shortest notice should parliament by a majority vote adjudge the government of the day unpopular.<sup>17</sup> Such a vote can act as a challenge for matters of government policy in the struggle for power to win support which can ensure as a consequence of dissolution of parliament in the event of the vote.

Such mode of the opposition control over government makes the government to have a second thought before coming up or implementing any policies. Also an active opposition which would be alert of every government policy consideration presents the electorate continuously with a concrete choice the government or the alternative government. The opposition parties in parliament should not lie ideal and wait for the next election campaigns to raise such issues. It should be active right from the word go or the 1st session of parliament. They should always be aware that parties are not a reflection of majority groups but can change any time with the coming up of different events in the society.

The political stand of the opposition in doing all this should not be interpreted as less loyalty among members of the opposition. To the contrary a truly parliamentary opposition has one of its functions as:

'scrutinises the regime within which it functions with a view of improving them and adopting them to the changing conditions of political life.'<sup>18</sup>

Thus by its control of the government it does not threaten but complements the normal control of the government. Its competence must be seen in the government and to the extent to which public demands and opinions are frequently met as a result of its activity. This is the basis on which opposition is appreciated and justified. It must therefore reflect the populace its usefulness.

The opposition needs to show the influence of the modern executive minds and to see itself again as an opposition whose primary duty is to oppose, not to prean and muzzle itself with too much conceit of being an alternative government.<sup>19</sup>

The other area where the opposition in parliament needs to show its control over the government is in passing of Bills and constitutional amendments. The requirement of the Kenyan constitution is a two-thirds majority for any constitutional amendments.<sup>20</sup> No single party in the Kenyan parliament has such a number of MPs. That means that for any constitutional amendments that the present government wants to make, it will always require the support of the opposition. The opposition therefore should be on the watch out as to the effect of any bill they support in parliament. This will to a great extent help to check over any constitutional amendment with a spirit of suppressing the citizen. The opposition in parliament therefore has duty of providing checks on infamous constitutional change like the 1982 section 2A. Parliament has elsewhere being criticised for failure to safeguard this requirement, but the opposition will be expected to correct such anomalies.



Another area which needs the total participation of the opposition is passing of Bills in parliament. Bills often originate with the Ministers or members of the cabinet in parliament. They can also be private Bills. The leaders of government business together with the spirit of collective responsibility makes sure that the MPs supports the Bill. The opposition is therefore supposed to show their stand in choosing to vote for or against the Bill. The leaders of the opposition is given the first chance to reply to any bill moved in parliament. He stands for the opposition and should therefore give the opposition feeling and not his own feeling. AS such any Bill brought without the support of the opposition is bound to face a lot of opposition in parliament.

Another way that the opposition in parliament can carry out the role of legislation effectively is by bringing into parliament Bills whose aim is to make good the people's purpose of living. The government and the respective members of parliament are not expected to fail to support such Bills merely because they have been brought by the opposition. In this way the opposition will effectively play the part of complementing the government in the role of legislation in parliament. Such bills should come from the area neglected by the government or that which have been previously used by the KANU government to oppress the citizens. The recent bill to abolish the preservation of public order Act which came from the opposition is a very good examples of those Bills. Although

the bill did not pass, we have seen the government select committee to look into its amendments. This means that even if the government will not vote for the Bills in parliament, the opposition will have used the forum to put across their point thus has played its role in the final analysis.

Another great role entrusted to parliament is the control of public funds. The constitution requires that the Minister responsible for finance shall cause to be prepared and laid before parliament in each financial year the estimated of the revenues and government expenditure for the next following financial year.<sup>21</sup> The KANU government had through its parliament failed to execute this duty effectively. This is because the parliament had been found to be too willing to give permission to any suggestions of financial nature to the executive. An example was in 1978 when the president said that school children will be getting free milk from the government

He gave this directive in a public meeting. Such directing involved the use of public money to fund such a project. It had not been budgeted for in the financial budget and yet parliament passed such a bill later on.

In order to realise the control of finance, certain offices have been created to help the National Assembly. These are controller and Auditor general, Public Accounts committee, and the Estimated committee. Our main concern here will be with the public accounts committee since it is

the one that involves the opposition. Standing order No 147 of parliament provides that:

'When the house contain an official opposition party the chairman and the majority of the member of the public accounts committee shall be members who are not on the government side of the house.'

The primary duty of the public Accounts Committee is to examine whether money has been used for purpose for which it was voted. It's work is greatly aided by the annual report of the Auditors and controller general. The committee is supposed to lay in parliament the proceedings and a report of the committee.

Thus as we have already seen, the parliament empowers the opposition to counter check as to whether public money from the consolidated fund given to government officials has been used effectively. The general theory of constitutionalism encompasses accountability in the government. This therefore creates a need for control and responsibility on the legislature. Thus the opposition should be alert as to the use public money are put into and question any use that was not voted for in parliament during budget time and also in a supplementary appropriation Bill. The opposition should also cause the executive in parliament to explain why it has taken a particular project in the course of debates question time. This is the only way that and parliament, through the opposition, can be said to make the executive accountable to it and therefore live up to the expectations of the electorate.

Thus the opposition should bring to the notice of public any act of government misappropriation of funds. The present opposition in Kenya parliament met this requirement in the goldenberg scandal. This was an incident where public money had been misappropriated for private use using illegal means to obtain it.<sup>23</sup> The opposition has so far faced a lot of criticism for revealing this scandal. It is humbly submitted that such a move by the opposition was nothing more than doing its duty. In such a scandal the opposition is able to show the government's mistakes and can use such a scandal to show that the government has failed the public in the use of public money. As such any criticism that had been put on the opposition as a way of attempting to overthrow the lawful government cannot be justified. The opposition is the alternative government and whatever it is trying to tell the populace is that "the government has failed you but we can do better". It would not be illegal for the opposition to change the government to bring it down through revealing such scandals but it will be effectively performing its role.

To this extent therefore, the leader of the opposition and all members of the public Accounts Committee should be transparent and accountable in all their moves. There would be a great danger if such members would be corruptible to the expense of public funds. They should follow every cent remitted to the government and see that it has been put to the correct use. Thus, the present leader of opposition faced a lot of criticism when he agreed to have received

two million shillings from the director of the Goldenberg company. The Goldenberg issue has already been put under the scrutiny of the public Accounts committee to review. Whether funds were inappropriately used. If members of public

*What is this statement up to?!*

Accounts committee are corruptible, this will mean that there is no way they are going to point out any area of government misuse of public money. This will therefore be a failure on the side of the opposition to make the government accountable, the very essence of the opposition in parliament.

The opposition in parliament is supposed to choose its own shadow cabinet to help it control the events of the cabinet in the ruling party. The work of shadow cabinet is to monitor the activities of the Ministers in their respective ministries. This is very effective way because every member of the shadow cabinet will specialise in the government activities of a particular area. Since they do not have administrative duties like their counterparts in the ruling party, they have a great opportunity to scrutinize the activities of the minister. They bring out the results of their work in questioning the Minister at question time in parliament to explain why a particular course of event was taken over by the government.

The political party in its essence is a broad organization of people, set up for the purpose of articulating common ideological preferences and constituting these into a public platform for claiming

control of the vital machinery of the government. Such an organization is a creature of politics. The very goal of every party (opposition) is to gain ascendancy into the regular executive and legislative machinery of the state and thus to take charge of the implementation of the vital legal instrument which is the states constitution. 24 Thus once such party is in opposition, it will seek to win the peoples confidence by pointing out the errors and the deficiencies of the ruling party whenever it goes against the people's wishes.

The government assumes, though not always successful, that party and national interest are identical such a trend can put the opposition in the false position as being regarded as anti-national. The essential condition of parliamentary government is that the government should govern by agreement with the opposition. But it is equally vital that the opposition should be at liberty to criticise the government. Whenever differences are possible, they should be settled by agreement preceded by reasoned argument, for which side of which the opposition is mainly responsible. Thus the spectacle of a full accepted opposition is keeping the government on its toes and alternating with it in holding the reigns of power.

So far, it is quite clear that the opposition has a great role to play in any multi-party democracy. It's role is not to oppose merely for opposition sake. It is crucial and complementary to the government in any democratic society. In this view it may be conceded that:

Though the trend towards extending and strengthening the sphere of government cannot be arrested, there is no reason why it should not be accompanied by a proportionate strengthening and expansion of the opposition.<sup>25</sup>

Opposition therefore should be able to overcome the problems of the expanding center of power.

Given the above analysis, of the role of opposition, it is the author's considered opinion that parliamentary opposition can go a long way towards controlling the party in power for the benefits of the citizens. It is therefore submitted that opposition in today's Kenya parliament is not in any way excluded from this role. Thus it is strongly submitted that the opposition in the seventh parliament has a great role in emancipating parliament from the former KANU grasp. In performing its role effectively, it can restore the supremacy of parliament and put every action by the KANU government under the close scrutiny of parliament. This is its primary duty.

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## CHAPTER 1V

### CONCLUSION AND RECOMEDATIONS.

#### 4.1 Conclusion:

This work was a concern of the role of opposition in a multi-party democracy. Its to a great extent involved itself with the development of opposition in Kenya from independence to the present day multi-party Kenya. We were also able to show that the Kenya constitutional has provisions for parliamentary supremacy. We went further to see how these supremacy was usurped by the KANU government in the *De Jure* one party era. We also concerned ourself with a fairly thorough examination of the role of opposition as a means of reinstating the parliamentary supremacy.

Thus in chapter one,we were able to establish that Kenyans had since independence been struggling to have an opposition in the government. The KANU government had on the other hand been trying to suppress any form of opposition against it. This was both in the reigns of Kenyatta and also in the Nyayo era. Christopher Mulei summaries it thus,

The floodgates of opposition slammed shut by Kenyatta and firmly locked by Moi,slowly began to great open in 1990-91.<sup>1</sup>

To achieve this end, the KANU government resorted to changing the constitution in an attempt to legalise its actions. Anybody who held or advocated different we labeled dissidents who wanted to overthrow the lawful government of Kenya. The struggle was characterised with tens of Kenyans losing their lives while other spent years in prisons and detections. KANU'S intolerance of lawful opposition is betrayed by a series of events graduating the history of its reign. However, Kenyan government would not but with stand the wind of change blowing across Africa in the early 1990s. Many external and internal factors led to the KANU government legalising the formation of other parties in December 1991.

Chapter two tried to answer the question whether parliamentary supremacy exists in the constitution of Kenya. We were able to establish that the doctrine has its framework in the Kenya constitution. For parliament to effectively perform its role, it requires some liberties which would prevent any victimisation for any MP's words in parliament. We also went a long way to show that the KANU government had over the years of single -party state eroded this doctrine of parliamentary supremacy. Our inevitable conclusion was that KANU as a party had usurped the parliamentary supremacy so that we no longer had a supreme parliament instead it was KANU that was supreme with parliament as a hand-maiden of the party to rubber stamp its actions on this Okello-Ondong said:

"----this house has been loosing power slowly and slowly since we came to this parliament. According to changes

no candidate can stand for elections unless he has indicated on his ticket that he supports so and so as president.

Chapter three was an examination into the role of opposition in parliament with special reference to Kenyan parliament. We found out that the opposition in the seventh parliament has a great role to restore the parliamentary supremacy. It was submitted that the opposition should be at liberty to criticise the government with the aim of directing it towards the changing circumstances of the society and public opinion. Opposition should present itself as an alternative government and its actions should be directed towards this goal in the eyes of the republic.

4:2

#### RECOMEDATIONS:

The results of 1992 General election saw more than one parliamentary party in Kenya parliament. These parties are KANU, FORD ASILI, FORD-KENYA and the democratic party of KENYA. KANU won the most seats in parliament and also the most seats in parliament and also most votes in presidential elections and therefore formed the government. Since the elections, the seventh parliament has already ended its first session in parliament. The impact of the opposition in parliament had brought a lot of change in the house and also in the government. However, there is a lot left for the opposition to be seen as effectively performing its role. In this sub-topic, the author is going to give her considered recommendations as to what can improve the opposition in the seventh and subsequent parliaments.

For the opposition to play its role effectively, it should be united and speak in one voice in whatever action it wishes to criticise the government. Given the Kenyan situation where we have more than one political party in the opposition, this ideal is very hard to achieve. However, the situation is not yet out of control. The members of opposition can vote as a block against any government policy that seeks to suppress the citizens. The various MPs in different parties should show a spirit of unity within their party. Any divisions and defections within the party will have a less obvious and damaging results. It will only serve to make the work of the government easier because a divided opposition is less dangerous and the likelihood of attracting electoral support less. It is therefore recommended that the opposition parties should present a united opposition in any movement they decide to oppose the government.

It is further recommended that the parties should withdraw their support to any MP who seems to be a threat to the well being of the party and opposition as a whole. Kenya should borrow the example of British political parties on which Kenneth wheare observes that its only the conservative party which does not strictly control those of her candidates in parliament on how they vote.

The sanction that the party can unleash on member of parliament for not following or aligning himself to, the precepts of the party, is the threaten to disown him or to refuse to nominate him in the next elections. The parliamentarians in Britian act under the way of their political parties.

Thus in party politics a member of a party owes allegiance to his party and is under a duty to be loyal to the party and always support it. That this should be the position of political parties in Kenya is recommended in this work.

The opposition direct the government on the policies to take according to the public opinion of the populace. This requires them to be meeting with their constituents or else they would not be in a position to know what the public opinion is. It is therefore recommended that the members of parliament forming opposition parties should seek to know what the will of their constituents and of the general public is. This can be done by holding public meetings and through the press and other means of mass media. Thus it ought to be the happiness and glory of a representative to live in strictest union, closest correspondence and most unreserved communication with his constituents.<sup>4</sup>

Such member of the opposition entrusted with the role of making government accountable and transparent should themselves be accountable first. They should therefore be concerned with democracy and not with power and wealth. It is therefore recommended that the member of the opposition need to be the first in accountability, transparency and they should be unyielding missionaries of human dignity and equality. This accountability should to towards all persons and not to members of their tribes. Also they should be content with being in the opposition and should accept that

humble position instead of prostituting parties looking for morer power. They should seek to achieve this power by working in the opposition with the aim of presenting to the people as an alternative government.

The party in power KANU it is recommended should avoid "buying " MPs of the other parties forming the opposition. It should understand that "buying" an MP does not change the peoples wish and is not tantamount to "buying" the electorate. It should seek to get the support of the electorate by its policies to them for its the will of the electorate that can return it to power in the next general election but not a single MP. KANU MPs should also change the altitude of seeing or regarding opposition as a threat to its welfare. There is therefore a need of change of heart among the KANU leaders and MPs to regard opposition as a complementary to it. By this it will be in a position to compete with the opposition in a election times.

The worst problem that has come up with multi-partism is tribalism. Kanu has been accused of spreading this menace. The opposition ,it is recommended, should try to get off of ethnic lines towards a united Nation. The MPs should try to harmonise the tribal differences and know that their role is not for their own clans and tribes but to the whole Nation. Thus in every one of its policies, the opposition should aim to benefit the whole republic but not particular tribes.

FOOTNOTES.

1. Christopher MULEI -Factors which nature the growth and development of good government and accountability .(paper presented in the next step forward)1993 12-14 August.
- 2.National Assembly official report. Vol 16 pt 111 12/2/69.
- 3.Kenneth Wheare-Legislatures. O.U.F London 1968 p 43.
- 4.Edmund Burke-quoted by Gicheru N opp cit. p59.





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