



# INNOVATIONS FOR SUCCESSFUL SOCIETIES

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Interviewer: Maya Gainer

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GAINER: This is Maya Gainer. I am here with Dr. Willy Mutunga, the Chief Justice and President of the Supreme Court. Thank you so much for speaking with me this afternoon.

MUTUNGA: Sure.

GAINER: To begin with, when you came into the judiciary in 2011, you've talked quite detailed about the kinds of problems that were facing the institution and eventually the sort of solutions that were encapsulated in the JTF (Judiciary Transformation Framework), but on a more personal level, what were the key things that you really wanted to accomplish during your time as Chief Justice?

MUTUNGA: *It is basically what is in the JTF, realized that we had four years and we had to prioritize the key issues, the pillars that are in the JTF. But outside the JTF it was really about implementing what the judiciary wanted to implement. There were a lot of very good recommendations and proposals that were not implemented because there was no political will on the part of the leadership. I wanted to bring about that strong will for implementation.*

*I applied for that job because I realized that there was a project of creating a new judiciary. I had been involved in the Constitution making for quite a while and I thought this was my opportunity to basically participate in this implementation. I knew that it wasn't going to be easy. That is why the notion I came up with of transformation from the margins was born. That is something can always be done. You can't basically say it is impossible. That is a very, very pessimistic, defeatist culture.*

*Implementing the Constitution for me is a patriotic project as I've said when I was talking to John Githongo. It is a cause that I was committed to.*

GAINER: Like you said, this was not going to be easy. What did you see as the key challenges to implementing the ideas that you had come up with?

MUTUNGA: *It is the status quo inside the judiciary and outside the judiciary because when you transform you are challenging, changing certain vested interests that profit from the status quo that you want to change. It is not easy because they will fight back, they will resist. So you see from the transformation framework that there is a strategy of basically telling that status quo that it wasn't sustainable and it wasn't acceptable. To try even to dialog with the enemy, within and outside the judiciary, to basically say if you want to work in this institution you want an institution that is known for its corruption—you want an institution that every time there is a Constitution-making project the Kenyans say it is bad for these people. That message resonated with some judges as well.*

*So I think it is very, very important to emphasize that when you are transforming an institution there might be people whom you perceive as resisters but you can actually convince them. Some people are just – haven't thought through some issues so the dialog is the best way to go. As we say you intellectually win them over. That is through the process of argument, intellectual arguments, you get a following and you expand. You always have people who are committed to the vision of change. That is the majority of people working in the judiciary but actually those ones I am talking about who resist, who would not want everybody to train at the JTI (Judiciary Training Institute), who would want an insurance that only covers them and not the other people. So it is more money for them. People*

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*would basically think that certain judges should drive a Mercedes Benz and others would not.*

*So as much as the—those are the people you have to deal with and I'm saying you have also to engage them through intellectual debates and arguments as you write judgements, as you interpret the Constitution, provisions of equity, transparency, because they will be interpreting those provisions. So asking people to internalize them and to reflect is a very, very powerful argument to use against people who resist change. I personally think the Constitution has been a great help towards the transformation project.*

GAINER: So that is one strategy that you found effective to deal with resistance. Have there been other examples of ways you've brought people around?

MUTUNGA: *Yes. If you look at the external opposition, again, we are the ones who spearheaded the cultural dialog with the executive, with parliament, with state organs, basically to tell these organs what we do and what we don't do and what is expected of the judiciary under the new constitution, the necessary mind shifts that are required even by state organs.*

*That is basically useful when it is stated out front. Also it ensures that people don't second guess the judiciary. They don't say well, it is too [Indecipherable], too intimidating or whatnot. If the message of independence of the judiciary and the message that organs, other organs of the state and other arms of the state benefit from the judiciary and you can show that, that an independent judiciary is good for the executive, is good for the parliament, again by process of intellectual arguments, some people see it. The ones who associate themselves with reforms in the judiciary and basically say look at me, these reforms took place because I didn't interfere, because I believe that an independent judiciary is good for this country. Politicians are very good at that.*

*That is another strategy that has worked in some cases and failed in other cases because the Constitution doesn't allow for a judiciary that is aloof, that is [Indecipherable] distant. It is a judiciary that is accountable, has to build confidence, the public confidence in it. That is why the JTF, you will see the emphasis on NCAJ (National Council for the Administration of Justice), emphasis on Court Users Committees. That is part of it and judicial officers explaining to the public why cases are heard. All those strategies are very, very important because the judiciary realizes that it gets its money from parliament and if parliament says it won't give you money, the only people who can help you out are the public and if the public thinks that you are not doing a good job then they won't support you.*

*So the judiciary is facing these challenges. But just to come the strategies can actually demand that you get more money, that the county governance can actually say, well, we'll give you a line, we'll give you money to build a court here. Because they realize that access to justice is important. I think that is a great opportunity for judiciaries to be—what is it—to basically have this close relationship with the public. That is why we also are doing the pilot projects on access to justice that is broad--.*

GAINER: [inaudible]

MUTUNGA: *The alternative ones, traditional justice systems. It is also a way of reaching out to the public and telling the elders and their councils and religious organizations*

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*and others that actually they do act as forums for the administration of justice and what we need to do is connect the formal with the informal under the dictates of the Constitution and move forward.*

GAINER: So public engagement is something—.

MUTUNGA: *It is an important strategy.*

GAINER: It is a big shift for the.

MUTUNGA: *Yes it is.*

GAINER: In terms of openness to the public, explaining what you're doing and also getting feedback.

MUTUNGA: *Right.*

GAINER: So over the last four years have there been ways that you've had to adapt your strategy in terms of public outreach and engagement?

MUTUNGA: *Yes. I think JTI has been the engine of that because it is a training institute. The JTI has interacted more with the public than me, but their observations, their strategies become very, very important in terms of who I talk to, particular messages, where the public feels we are not engaging. So JTI has been a critical think tank because if you're going to transform the judiciary you must have a think tank, a center, a center of this transformation so that you are not just ad hoc. If there are challenges you know how to view the challenges from a position of research. That is why we are now saying that data is the emperor, is the king. We want to be scientific in the ways we move magistrates and judges to particular stations and how we deal with backlog, how we deal with individual performances.*

*So the first thing is for the judiciary is to basically give us the data so that we can come to you and say you're not working, you should be removed. That is something that we started recently but it is for me I found it very, very useful in leading the judiciary when I can tell people that you are entitled to only two judges because look at your case backlog and look at the case backlog of these other groups.*

GAINER: In terms of the data, that process of deciding how to collect and how to analyze the data, and it has been kind of ongoing and very long and has gone through a lot of iterations.

MUTUNGA: *Yes.*

GAINER: What did you envision at the beginning in terms of this kind of data collection and how has it evolved in your perspective to what it is now with the daily court returns.

MUTUNGA: *When it started it started as an idea that I liked but I personally didn't understand it. That is why I say that having a think tank institution is important because you bring a multidisciplinary approach to judiciary transformation. It is not just about jurisprudence. It is not about hearing cases and deciding them in a vacuum. Under the Constitution it is something different, something broader. That is why these capacities are important. When they started with the notion of performance*

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*management we could see it is important, we could see that this is a way to judge those who work hard. In fact I think we were looking at it from the perspective of rewards and sanctions at that point. But as they worked on it and we—the process was explained to everybody and people agreed that it should happen and the details of how it was going to happen were agreed upon, it became very, very, very clear that it was a very, very, useful tool.*

*Now at the moment, as we talk we are trying to perfect it because there are still people giving us data that is incorrect, data that is fake. So you know for me the struggle we are in is not difficult. We basically tell people if you don't give us the right data we will punish you because once we come back and we find that what you gave us was misleading, there are sanctions. But the structure is there now.*

*We just issued a circular on that issue. It is part of our accountability tool. It is very, very important. That is how the public order is accountable and that is how we can answer to critics about our performance.*

GAINER: It sounds like the people who would be resisting the transformation might be especially taken aback by this idea of really monitoring performance and really tracking it. Can you talk a little bit about the process of coming to a consensus on this tool?

MUTUNGA: *In my view that has been reached because when the most senior committee that prepared this, when it was launched observed the value of public participation within the judiciary. The fears of this tool were expelled. People made suggestions, it is just like our transfer policy. We basically asked people, look, you can't be in one station for a long time; how do you want this transfer policy to be, a policy you own. They sat down and discussed it and the Judicial Service Commission approved it. That is very democratic in my view. They worked on the exceptions which is very, very useful. I think these democratic processes are very, very important. They also disarm those people who are going to resist because there is no basis. Having been heard and having been part of the consensus they have no business sabotaging the tool. When they get punished by the JSC or by their leaders, then they can't complain.*

GAINER: I see. But one of those challenges which it sounds like has been coming up with this relates to the sort of decentralized nature of the judiciary. We're here in Nairobi and there are port stations all over the country and I imagine it is very difficult to effectively monitor what people in each station are really doing and make sure that they're adhering to the policies set here whether it is in terms of filling out the daily court returns accurately or whether it is a procedural issue.

MUTUNGA: Yes.

GAINER: So how have you set up structures to kind of ensure that policies are actually being followed?

MUTUNGA: *Well, at the moment we're analyzing the data that we get because we issued a circular, of what to be done. But one way of monitoring is to talk of rewards. Heads of stations are paid much more. If you're a magistrate you get 100,000 shillings a month; if you're a judge you get 150,000. There is an allowance to run a station and make sure everybody complies with the requirements of this too. The sanction is if you don't do it we'll replace you. So it is, you will be short by quite a substantial sum at the end of the month if you are replaced. So there is a lot of pressure from us as well basically saying there are consequences if you*

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*don't look at this. But there are others, we're building other structures, whether it is the office of the judicial person, whether it is the registrar of magistrates, whether it is the director of performance management. There are monitors who will be able to deal with cases where we feel, wait a minute, this court in [Indecipherable], what they are giving us doesn't tally.*

*We have also the communication from the court users and minutes of the court users come to us and we see what was discussed and so forth. You can pick that also from those minutes because there will be people who are arguing about delay of cases and people saying magistrates are coming to court late and so forth. So in terms of monitoring there is a lot of material that can be analyzed. Then you basically deal with specific cases. You basically use them as an example if violations are not required.*

*Then there is also the JTI organizing reflection workshops, modification of the tool. What are the challenges, what do people want changed. So I think those are the structures that are in place. I'm quite certain if they're efficient and effective we should be able to know how to perfect the tool.*

GAINER: So then one of the things you mentioned earlier is that this reform program in a lot of ways is just following through on things the judiciary had wanted to do in the past.

MUTUNGA: Yes.

GAINER: So in terms of structuring it and creating the institutions that will be responsible for implementation, how did you decide what committees, what directorates were necessary to make sure reforms actually happened because there has been a lot of administrative restructuring?

MUTUNGA: *That was JTI. Also the Judicial Service Commission. It was also informed by perusals of the various taskforce reports that the judiciary was engaged in. We had to dust them off and look at them. So I would think that we were not—in terms of reforms, we were not reinventing the wheel. There was a lot of stuff that was done. As I said, people were very, very clear that they needed the office of the judiciary Ombudsperson. It was there in the Ouko Taskforce Report of 2010.*

*When I got there after a month or so I appointed one. So [Indecipherable] the JSC that—and that is its mission and its mandate in the new judiciary. That was also pretty helpful.*

GAINER: So then how did you chose the key team members who would be responsible for a lot of the implementation, people like Justice (Joel) Ngugi who was leading the JTI, people like Duncan (Okello) who was handling your office, what were you looking for in a reform team?

MUTUNGA: *I had to pick a team that had the same vision as me. It was a small team but very quickly I worked to expand it. Ngugi in particular I picked him because the judges always said that they wanted who would train them so I thought it was important to get a professor of law and a judge who had done a lot of training even in Seattle to head the JTF, the secretariat and the JTI. That was important. I've always said that when I was appointed I had eight bodyguards and two secretaries. So the capacity of this office in terms of a chief of staff, office of the judiciary office person, the communication, the legal counsel and the bringing in people who had done their masters in law and were magistrates and who could*

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*come would also help in building the capacity in this particular office. It became very, very critical.*

*We got recommendations from JTI, from their professors if they went abroad, from the heads of stations and so forth. We would bring them in and if they were not up to the standards required we would change them. That struggle is still continuous.*

GAINER: Then as Chief Justice you have this kind of oversight and management role. You also have the judicial role, how do you sort of decide at what points in these kinds of management initiatives there needs to be a decision from you or an intervention?

MUTUNGA: *The Office of the Chief Justice faces various tensions. As the President of the Supreme Court, I happen to chair the Judicial Service Commission, I happened to be the head of the judiciary, I chair the national Council for the Administration of Justice; I chair the National Council for Law Reporting. Particularly the head of judiciary vis-à-vis chair of the JSC and the President of the Supreme Court they are definitely tensions.*

*Whenever there have been those tensions I've always used the tool of dialog and negotiation. I don't want to be in a position where offices are captured by any of those institutions because that is the beginning of a lot of problems. So bringing institutions, whenever there are issues, do not want discussion, it is very, very important. I guess the Supreme Court would like to enslave me. The JSC would love to enslave me. Then there is this administrative thing which is called the heads of the judiciary which is bigger than all these others. So if I think about the Supreme Court—it is—what it is doing, might harm the judiciary, either the other superior courts or the magistrates, then I have to take a position. But I don't take it by basically imposing it. I basically have serious discussions with my colleagues, just like I have serious discussions with my colleagues in the JSC and their issues.*

*There are some issues where the feedback from the courts is that they are overstepping their mandate. That is always discussed. It is difficult but I think I have found dialog very, very effective in arriving at a consensus. People always argue from a position of self-interest. When they hear the other side—this is what judging is all about isn't it? It is the process of hearing the conflicting viewpoints except in our case we don't have to reach a decision. We always try to make a consensus.*

GAINER: Balancing these roles is very interesting. Could you maybe give an example of a time when you've had to initiate that kind of dialog to deal with a certain issue?

MUTUNGA: *Yes, there was an issue of a former chief registrar of the judiciary which at some point split the JSC. There was a vote taken, five to four. The argument at that point was look, we didn't have evidence that she had committed an offense. We said, let's have the evidence. When it was produced the JSC collectively moved to terminate her service. That was one case where you could see that if the data or the evidence didn't come through we wouldn't have proceeded the way we did. What that taught us is that you need actually to observe due process. The JSC has eight lawyers out of eleven members. It is scandalous if you don't give people who we allege have done certain wrongs, if they are not given due process.*

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*I think the other one is to continuing; they would debate between the Supreme Court and the JSC which is over the 774 which is going on, it is in court. ( the 774 It is about the court case by judges to determine the retirement age under the new constitution. The courts are to decide whether judges who were hired under the old constitution should retire at 74 and not at 70 as decreed by the new constitution). But I must say that we have tried as much as possible to negotiate. It is very, very difficult when judges of the high court have to hear disputes that are brought by judges who are their superiors. You put your colleagues in a very—they have to decide—but if it is something that can be negotiated, and people talk about it, it is so much better. Not to mention that the litigation itself does harm the institution. But that will be another example but it is ongoing.*

GAINER: So I also wanted to talk a little about the vetting process and what the impact has been on the judiciary and on the reform process. I know that is run obviously independently but what do you think has been the effect on the work that you have been doing here?

MUTUNGA: *I think the vetting process gave us a great opportunity to carry out reforms. We were able to do a lot of things because you know the internal resistance to reforms was already engaged by the vetting. They were fighting for their dear lives and their professions, for almost three years. The vetting, you have to see the vetting through the historical context of the debates that took place before the promulgation of the 2010 Constitution.*

*The public wanted the police and the judiciary disbanded and they wanted judges and magistrates to reapply for their positions and be basically vetted. The compromise was, you can't do that, you basically destroy the institution. Why not keep the judges and the magistrates intact, vet them. There is a statute that gave comprehensive criteria on which this vetting was going to take place, Section 18 of the Judges and Magistrates Vetting Act. It is very clear.*

*But the Constitution also now provided for the kind of recruitment that would also help the creation of a new judiciary. The vision was that the Constitution was that the new judiciary would comprise the vetted judicial officers and the recruited.*

GAINER: Would go through a similarly thorough process.

MUTUNGA: *Yes, so both thorough processes would weed out women and men of integrity who would sit on the judiciary. So that was the vision of the Constitution, very powerful in the sense that the framers of the Constitution expected the new judiciary to implement this particular Constitution. They relied on the much maligned judiciary but it was a new judiciary that the Constitution created as I said. So that's the one that was tasked with interpreting the Constitution, protecting the Constitution, carrying out the judiciary reforms, etcetera.*

*So the vetting itself and recruitment itself has not given us a new judiciary. There are two cases where the new people have not displayed the integrity that was expected of them. There are cases where people escaped removal by the vetting board and have gone back to their old ways. That is why now the next frontier is going to be forensic life style audits as yet another front for making sure that the judiciary is one that has integrity.*

GAINER: So you brought up a couple of things that might fall into this category. What would you say were kind of the unexpected challenges that you encountered during the course of implementing this reform program?

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MUTUNGA: *Unexpected?*

GAINER: Yes.

MUTUNGA: *There weren't any; they were all predictable. They were all very, very predictable. That is one of the great things about having think tanks, people who have looked at the institution. They basically have no illusions about the challenges that they're going to face.*

GAINER: So then—.

MUTUNGA: *I didn't expect that there wouldn't be internal resistance. I wasn't surprised that there was going to be external resistance. I was prepared to build a judiciary that was independent. All those face challenges because I knew they would face challenges. I knew that the best way to do that was to get public support, get the support of the judicial staff. Magistrates and judges are only about a tenth of the judicial officers and staff because it is about 5000. The judges and magistrates are about 500.*

*If you look at that constituency and then you work towards the 4500, that is a critical mass following. We focused on that to make the reforms have support. By giving the judicial staff good salaries and the benefits as stated this was one way of basically telling them that these reforms are about you and you've got to protect them and making more demands. The judges also realized that the judiciary is not about them; it is about everybody. The institution to be an institution requires that. The bureaucrats, at some point when we had problems with the [Indecipherable], it was about the bureaucrats thinking they were the mainstay of the judiciary. Through that struggle I would determine that they were—they are in the judiciary to facilitate the whole mandate of the judiciary which is the administration of justice.*

*That's it, they cannot Lord it over judges, judges who stay out of procurement and tendering and the committees that are administrative and what not so that the administrators can do that. But then they are doing it to basically support the core function of the judiciary which is the administration of justice.*

GAINER: So then what would you see as sort of the biggest accomplishments so far of this reform program and what are the sort of things that are still outstanding?

MUTUNGA: *I think Duncan has a full list so I cannot give you a full list of what I call irrevocable, irreversible, indestructible and permanent reforms. I think they have become foundational and start with the key issues that I've mentioned. It starts with the key issue of salary disparities that we've dealt with, insurance for everybody, car loans for everybody. A system where the Chief Justice cannot have backlog in terms of admitting lawyers to the roll of advocates because there used to be a lot of people waiting for years before they were called to the Bar. That is no longer the issue with the Kadhi courts, with expanded lawyers from 15 to 50 and I think that is the system that is, for me that is a reform that is ongoing. We have demarginalized those courts and mainstreamed them; they are part of our judicial system which is a reform that cannot be reversed.*

*Women. The Court of Appeals didn't have a single woman; now there are eight. The whole project of gender equity and equality has taken root. What I hear basically now is that this isn't enough, we want to get to 50/50 or more. That is*

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*useful. This thing we were talking about, the tool for performance enhancement, can't be reversed. People have signed on it. It is the basis of assessment of what goes on. Data will always be the king and emperor, the Judicial Training Institute which was so—it didn't exist. The Judicial Training Institute used to organize one colloquium once a year, a judges' colloquium. They would go there and they'd just drink and make merry; they never reflected on anything. Now that is history.*

*The training of everybody—clerks, secretaries, drivers, executive officers, the fairness in terms of promotions, the fairness in terms of scholarships which are competitive, travel. A few people used to travel, now we don't allow people to do that; we want that to be a democratic as possible. These are benefits in my view that are important.*

*Progressive jurisprudence in the high courts, the Supreme Court, Court of Appeals is taking root thanks to the Constitution. But as you know our Constitution is activist but activism for me has two sides, I mean reflects two sides of one coin. You can be activist in a conservative sense. There will be people who will be trying in their interpretations and so forth trying to basically subvert the vision of the Constitution and there are others who have basically—are basically loyal to it. I think the Supreme Court has—when you look at some of the decisions we have mainstreamed what we have called the theory of interpreting the Constitution which binds the courts. I think that has been a great achievement because it ties all the judicial officers to interpreting the provisions of the Constitution to ensure that they are not staunch positivists.*

*You've got to look at the history of that particular provision, the economics of it, the politics of it, what mischief was cured by that particular provision. The values and principles of Article 10. The Constitution is a living document, that is why Article 259 gives that theory.*

*Also the Supreme Court Act, section 3, it is also—it gives that. It is the only Constitution—and I've written about that—it is the only Constitution in the world that actually states how it is to be, the theory of its interpretation. The others leave it to the canons of interpretation that are grown through the common law. That has been exposed by judges in the US and other places. You know there are various categories, people who adopt originalism, all kinds of stuff.*

*Our Constitution says look at the purpose, look at the values, look at the principles, look at the history, the culture, the economics of Kenyan's context when you interpret the Constitution. So that is an ongoing debate I think and project. I am very hopeful that it will continue in a positive way.*

*It is not insular as you know. Our Constitution makes international law part of our system and treats it well. We have [Indecipherable] and ratified. So we feel very free in basically following cases from all over the world as long as they actually reflect our needs and our context. That is basically the formula we used when we looked at Indian cases, Colombian, German, Philippines, African places.*

*It is actually very, very interesting. We don't feel married to the old common law principles. Common law cannot really support the vision of the Constitution.*

GAINER: So you're saying a lot of these things are kind of irreversible in a way; that they have taken root.

MUTUNGA: Yes, they have taken—.

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GAINER: Are there certain things that as you're looking at stepping down pretty soon that you are worried could be reversed?

MUTUNGA: Oh, yes, yes.

GAINER: What do you think might be at risk here?

MUTUNGA: *Yes, I think the struggle against corruption is impassible because it is still there. The new judicial culture of humanizing justice it is still not consolidated. Judges haven't become missionaries of justice as we say. There are still some who are aloof, arrogant. So there could be a reversal. They could go back and say that we want to wear wigs, go back and say we want there to be—judges should be addressed as My Lord, Your Lordship, so on and so forth. There are certain things of the culture that—they might not be ashamed of reversing, but they will laugh. In my view, they know that they will not have the assistance from the public person. A lot of those cultural reforms have been very popular.*

*What else? The whole issue of the independence of the judiciary is also—it is always a worry. I know the judiciary is assertive, it has demonstrated its own independence but you don't see that as a collective gain. You still feel that sometimes there are people second-guessing the executive, parliament. There are new forces, the corporate interests, the civil society interests. And above all the communities.*

*Judges still receive a lot of pressure from their own communities. The temptation to ethnicize one's public position is one that is a challenge across the public service. It is what you Americans call the pork barrel of politics isn't it? It is the same thing in the judiciary. People from your community expect you to give them goodies, otherwise why are you there? So the forces that can undermine and subvert the independence of the judiciary are always there. So you see reversals, you see the see-sawing of the progress that is being made. I think the cultural dialog with other organs of the state, the vision that the Constitution has of the separation of powers which is very, very progressive, robust, independent yet interdependence.*

*There is dialog on the consultation, collaboration, in the national interests. So when you look at this Constitution the sovereignty of the Kenyan people is key, is fundamental. It is the one that donated to the various arms. So when you collaborate and you dialog, you are actually doing it in the national interest. That hasn't shown a lot of progress. It vacillates and it depends on whether the judiciary will continue taking leadership integrating that culture.*

*The next CJ might not think it is a priority because there are certain aspects that of course we can deal with the vision, political and ideological and intellectual of whoever sits and how they prioritize. That aspect is also important isn't it. It is very, very important, the individual. It is also important. We need to wait and see when the successor pronounces himself or herself in terms of whether JTS remains important, whether the reforms that haven't—the reforms that are not reversible, the ones that we were talking about—they will be picked as the reforms that need to be consolidated and completed and whether the individual's vision is one that is loyal to the Constitution. I think that commitment which is part of our oath of office is something that the Chief Justice has to be very—be far more—it is an issue of the rule of law and the Constitution and the building of constitutionalism.*

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*Those are the issues that you want, you basically want to hear. You have to wait for that.*

GAINER: Wait and see. Thinking back on your time as Chief Justice, given the experience you now have in the institution, are there things that you would have done differently if you had known in the beginning?

MUTUNGA: *No. No, because, I said that everything we dealt with did not surprise us. We had anticipated it right?*

GAINER: Yes.

MUTUNGA: *In terms of dealing with the challenges we were being, very, very, very flexible. Again employing the rule of—employing dialog on the Constitution. I still think that if I was given five years I would just look at those things, those reforms that are reversible and work on their consolidation. That is what I would focus on.*

*As for the others, because the leadership has been collected—it is not just me. There is consolidation with leaders of the courts. There is a forum called JLAC (Judiciary Leadership Advisory Council) which brings in the leadership, the directors of the judiciary and other judges to advise me. There is the Capacity Building Office in the office of the CJ, there is JFC, there is—. So collective leadership, in my view I should have said is another reform that can be reversed. Because if a CJ doesn't believe in elective leadership, in democratic leadership—and there are forces that are basically saying we need an oppressor, we need what I call a judicial monarch just the same way Kenyans yearn for (Daniel Arap) Moi to return and others yearned for the return of the British as soon as they left. So that can happen in the judiciary as well. They'll say what we had before, Mutunga and his band of reformers came in was very good and let's go for it.*

GAINER: Final question then. This sounds like something the judiciary is already pretty actively engaged in. If there were something that you were going to advise someone who is coming into a similarly challenged judiciary in another country what would be the top one or two things that you would tell them that you can adopt from Kenya's experience?

MUTUNGA: *Well, I think the idea—Kenya's important idea of collective leadership I think is very, very important. The idea of not reinventing the wheel. Basically finding out what colleagues have suggested as reforms that are good for the judiciary. Also the key, the fourth one would be to basically tell people that if the people who count and if you have the confidence of the people that is very key, that kind of support, allied to a strong constituency within the judiciary itself. I see those as being very, very key. Of course you have to have a blueprint. You can't—that's where the think tank comes in. You can't do reform unless you have thought through theoretically and practically what you want to change. So a blueprint that prioritizes may be the four points I've given.*

*So what you do is—if you have the issues e-mail and we will basically respond and let's have—whatever reflections we'll have. This is a great project for us as well. We want foreigners to look at it and just be critical.*

GAINER: It has been a privilege and thank you so much for your time and for all of the support the judiciary has provided.

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*MUTUNGA:* We will continue the discussions. Joel and Duncan and myself—you've met Sarapai as well?

*GAINER:* Yes.

*MUTUNGA:* Those are the cogs of the transformation wheel.