



THE PRESIDENCY
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CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

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Ref. No., 20.....
and date

OP/CAB.1/38

14th July, 2017

The Hon. Attorney General
All Cabinet Secretaries
All Principal Secretaries
The Chairperson, Public Service Commission
The Chief Registrar of the Judiciary
The Clerk, Senate
The Clerk, National Assembly
The Chief Executive Officer, Council of Governors

**RE: RESIGNATION FROM OFFICE BY PUBLIC OFFICERS SEEKING ELECTIVE
POSITIONS IN 2017 GENERAL ELECTIONS**

The above matter and Circulars Ref. OP/CAB. 21 and Ref OP/CAB.70/7A dated 1st December 2016 and 5th May 2017 respectively from this office refers.

As you may be aware, the legality of Section 43(5) of the Elections Act, 2011 relating to the requirement of public officers to resign from public office at least six months before the date of election was successfully challenged in Kericho Employment and Labour Relations Court Petition No. 1 of 2017 (*Eric Cheruiyot and Others Vs IEBC and Others*). The provision was declared unconstitutional. Accordingly, Circular Ref OP/CAB. 21 dated 1st December 2016 was also quashed.

The Court also held that unless and until nomination, there was no compelling public interest that demanded the resignation of a public servant from public office. Whereas we have appealed the decision in the Court of Appeal, the Ruling of the Court is still in force.

The Ruling effectively means that any resignation that may have been tendered by a public servant to enable him or her seek elective office was conditional and effective upon that public servant receiving a nomination certificate or otherwise being cleared to run as an independent candidate in the forthcoming general elections.

In this regard, all public servants who resigned specifically to seek for elective positions but failed to secure nomination certificates and those who opted not to run as independent candidates, can be reinstated but upon application. If the vacancies had already been filled, they should be redeployed accordingly.

Where the reason for the resignation was not expressly provided in compliance with Section 43 (5) of the Elections Act, 2011 and the Circular, Ref. OP/CAB. 21 dated 1st December 2016, then the public officer does not qualify for reinstatement. For public servants who do not wish to be reinstated, their dues should be processed accordingly.



JOSEPH K. KINYUA, EGH
CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE