

ABSTRACT

This paper provides a historical analysis of the power intrigues between parliament and the executive in Kenya, over the past 45 years. The focus is on how Kenyan presidents have jostled for power with parliament, and how they have used executive authority to undermine parliamentary sovereignty during the First Republic. For over 45 years, the life of parliaments in Kenya depended on the whims of the President. The President had power to prorogue parliament or call for elections any time. Under the old constitution, the President determined the life of parliament, set up its calendar and influenced its decisions. Presidents Jomo Kenyatta and Daniel Moi abused the constitutional provisions that granted them power to control the legislative branch. Sometimes they went out of their way to abuse this power by calling for snap elections to deal with their perceived enemies in parliament. Kenyatta used this in 1969 when he called for a snap general election to get rid of elements sympathetic to his former Vice President Jaramogi Oginga Odinga, who had broken up with him. Odinga had left the ruling Kenya African National Union (KANU) party in a huff and founded an opposition party, the Kenya Peoples Union (KPU), after openly disagreeing with Kenyatta. In the snap elections, Kenyatta succeeded in rigging out all Odinga's supporters in parliament. Kenyatta also purged the cabinet and civil service of all members and civil servants suspected to be sympathetic to Odinga. Former President Daniel Arap Moi used similar draconian tactics in 1983 when he called sudden general elections following the 1982 attempted coup. It will vet all executive appointees and provide a mechanism of checks and balances. This paper will show how under the old constitution in the First Republic, parliamentary privileges were often suspended to serve the whims of the President. It will show, how for example, two Members of Parliament, Martin Shikuku and Jean Marie Seroney were arrested in the precincts of parliament under the pretext of national security, for accusing Kenyatta's regime of covering up the assassination of the popular Member of Parliament for Nyandarua North, J.M Kariuki. During Moi's reign, MPs were often arrested around parliament buildings and taken into detention. The paper will show that during Moi's period, parliament was used a rubber stamp. For example, in 1982, it was used to change section 2(A) of the constitution which ushered in a one party rule. The paper will provide a way forward and possible ways in which the new constitutional order in the Second Republic can avoid the pitfalls of the First Republic.