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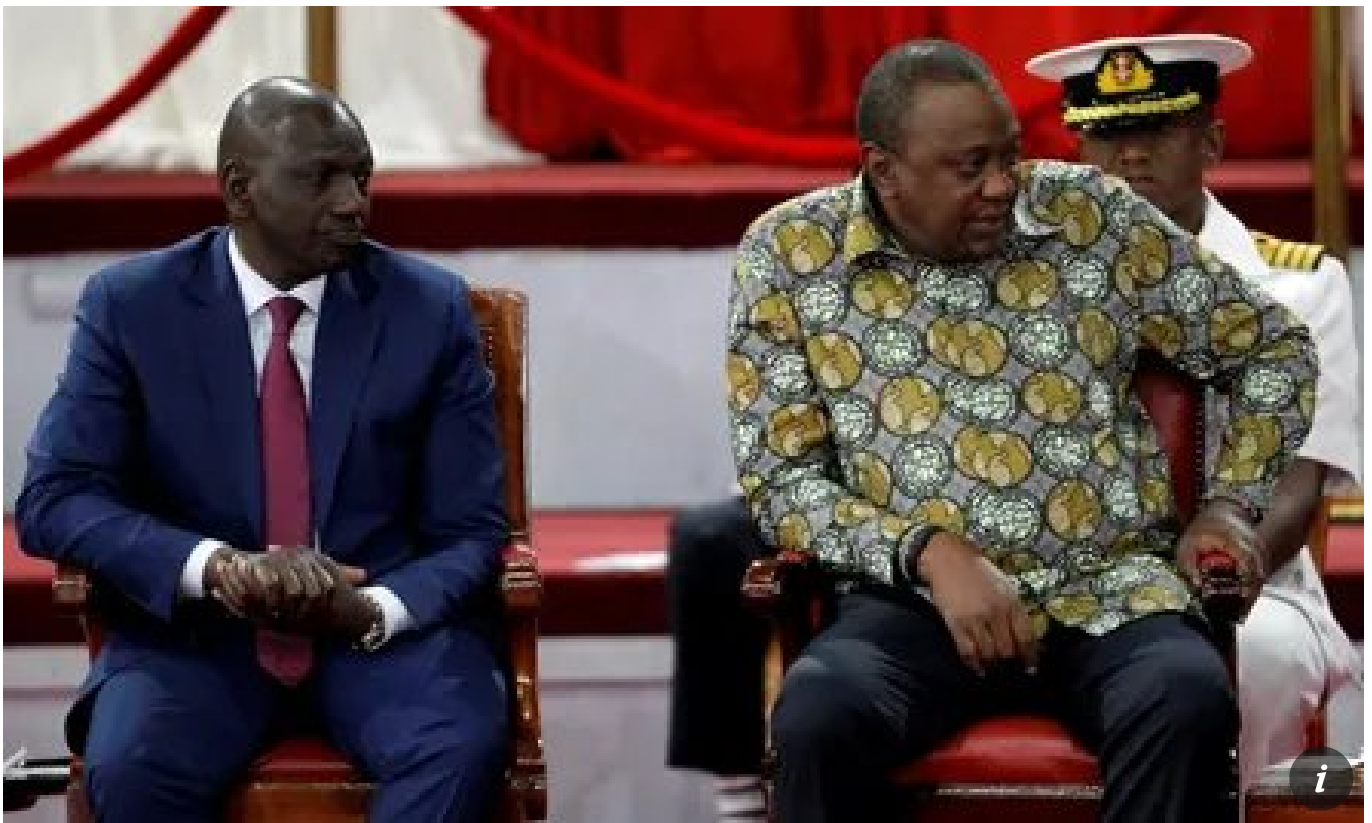
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Kenya's high court overturns president's bid to amend constitution

Judges rule that Uhuru Kenyatta, who claimed BBI plan was to end country's cycle of post-election violence, overstepped his authority and can be sued



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In a ruling heavily critical of President Uhuru Kenyatta, five judges said he had no authority to bring forward plans to create more executive positions and parliamentary constituencies.

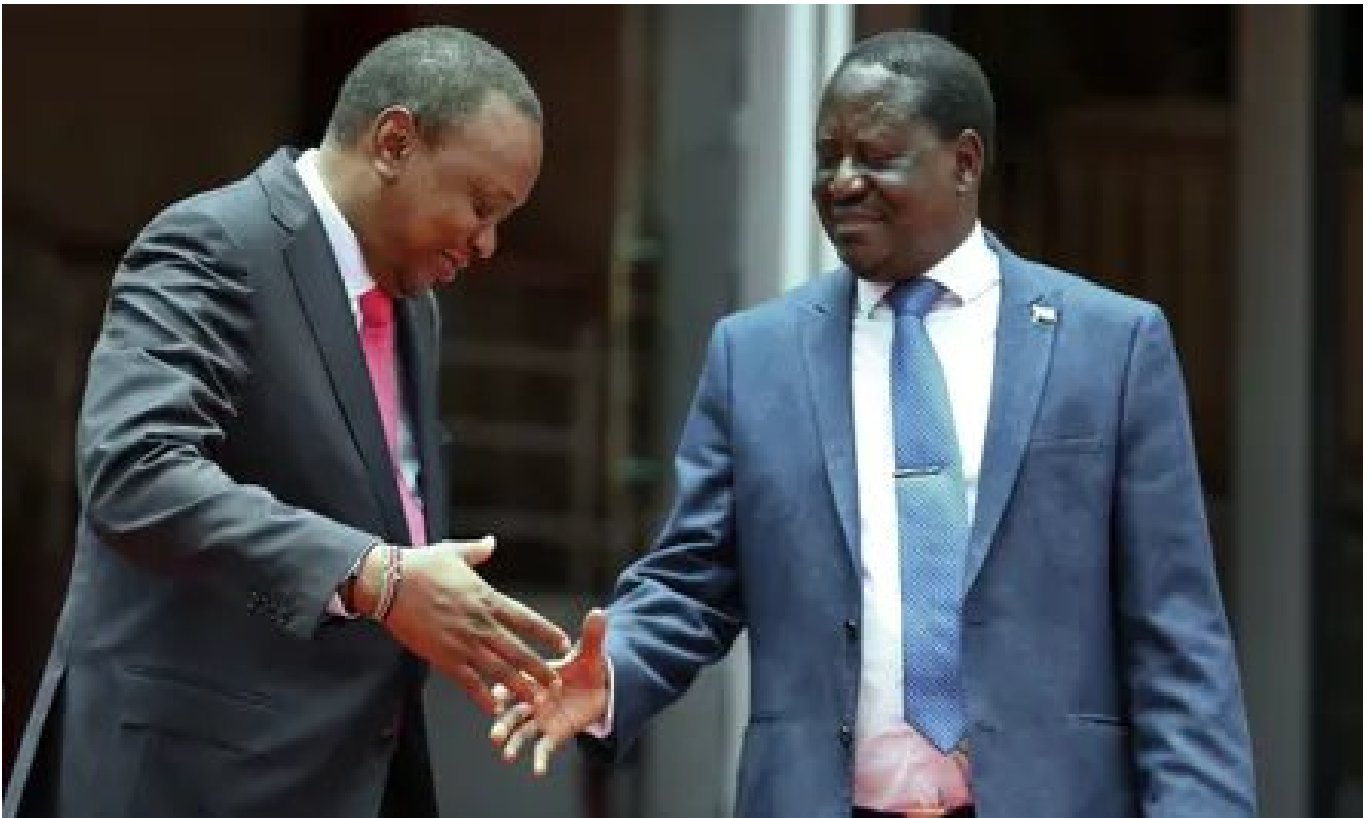
Kenyatta's quest to drive the process, the judges ruled, meant he had failed the leadership and integrity test, and could be sued while in office for contravening the constitution.

The amendments were among proposals agreed by Kenyatta and his erstwhile opponent Raila Odinga after the [so-called "handshake" in 2018](#) that cooled political temperatures after the disputed 2017 elections.

The 785-paragraph judgment said the constitutional amendment bill of November 2020, popularly known as the building bridges initiative (BBI), was illegal as it sought to alter the basic structure of the current constitution. Proponents of the bill, including the attorney general and the country's electoral commission, are expected

to appeal against the ruling.

The legislation sought to create 70 additional parliamentary constituencies but the high court ruling on 14 May said such a move would “establish a new form of government” other than that entrenched in the constitution. Parliament and regional governments had already voted in support of the amendments.



▲ President Uhuru Kenyatta, left, with the opposition leader Raila Odinga after they agreed to work to end election violence, out of which came the BBI. Photograph: Brian Inganga/AP

The judges said any proceedings to amend the constitution ought to be started either by parliament or through a popular initiative. For the president to institute such amendments would be akin to granting him the roles of the promoter and referee, since, after beginning the process, he would “sprint to the finishing line to

await and receive it and to determine its ultimate fate,” they said.

“A declaration is hereby made that the president does not have authority under the constitution to initiate changes to the constitution, and that a constitutional amendment can only be initiated by parliament through a parliamentary initiative under article 256 or through a popular initiative,” said the judgment.

The ruling is the most scathing since the supreme court nullified Kenyatta’s election win in August 2017. A repeat election, boycotted by the opposition led by Odinga and marred by violence, declared Kenyatta president in October of that year.

The proposed bill sought to bring back the post of prime minister (abolished in 2013), appointed by the president and approved by parliament. Previously that position was held by Odinga in a power-sharing move after the election of 2007 that sparked widespread violence, in which more than 1,000 people died.

Kenyatta and his deputy William Ruto **were later accused** at the international criminal court in The Hague of fanning the violence, charges later dropped amid allegations of “intolerable political meddling”.

The president said the BBI was meant to cure this “cyclic post-election violence”.

“The need to amend the constitution is evident in the never-ending threat of post-election violence and public concerns about its lack of inclusivity,” he said in a statement.



Kenyan police to flood streets as country braces for election violence

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In a damning accusation of Kenyatta, the judges said: “In taking initiatives to amend the constitution other than through the prescribed means in the constitution, the president failed to respect, uphold and safeguard the constitution and, to that extent, he has fallen short of the leadership and integrity threshold.

“Court proceedings can be instituted against the president or a person performing the functions of the office of president during their tenure of office in respect of anything done or not done contrary to the constitution,” the ruling stated.

The constitutional amendments have been [opposed by politicians allied to Ruto](#) with reports claiming that they were left out of key consultative forums overseen by the president.

In a [tweet](#), Ruto said: “All patriotic citizens must defend these tenets just like [the] judiciary did.”

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