

Citizen Miguna

At 6'4", and with an even bigger ego, Miguna Miguna has never been one to shrink from a fight. His latest confrontation with the authorities may have began with Raila Odinga's swearing in on January 30, 2018 but the authorities' attempts to target the lawyers who participated in the swearing-in has turned, in Miguna's case and by the government's acts both of impunity and incompetence, into a fundamental question of the meaning of citizenship.

On February 1, 2018, police arrested lawyer and Ruaraka Member of Parliament Tom Joseph Kajwang and charged him for participating in the swearing-in event. His arrest provoked the legal team that prosecuted Raila's presidential election petition at the Supreme Court into action, convinced that who might be targeted after Kajwang. Miguna was high on the list.

Lawyers John Khaminwa, James Orenge, Julie Soweto, Nelson Havi and Cliff Ombeta had begun preparing applications for anticipatory bail, but a curve ball was heading their way.

At dawn on February 2, 2018, police raided 486 Runda Meadows, Miguna's home. Miguna would later say that they used an explosive device to blast open his front door; shards of stained glass lay strewn at the entrance. A video circulated of neighbours and relatives in the aftermath of the police raid, protesting Miguna's arrest while surveying the extensive damage done to the property.

A day earlier, police chief inspector Joseph Gichuki had obtained a warrant from the chief magistrate's court at Milimani, Nairobi, to search Miguna's residence for weapons and anti-government materials. Miguna was seized but no returns for the search have ever been filed in court.

Fearing that the police would attempt to hold Miguna over the weekend, his lawyers went before Justice James Wakiaga by 10

am on the day of his seizure and secured anticipatory bail, together with orders for his production in court on February 5. Makadara MP George Aladwa had also been arrested the previous day and released without charge, but Miguna was the big catch.

This was not the first time Miguna's citizenship had been questioned. Back in January 2010, Party of National Unity spokesman Moses Kuria wrote to then Prime Minister Raila Odinga demanding that Miguna be fired from his position as advisor on grand coalition affairs since he held a Canadian passport.

Police refused to release Miguna despite the court order, and declined to disclose the place of detention, forcing a frustrated and futile search of police stations in Kiambu County over the weekend. His lawyers were informed that he was in a bad way at Lari Police Station but had no access to him.

It would mark the start of a five-day cat-and-mouse game that culminated in Miguna's forcible removal from Kenya aboard a KLM flight to Toronto, via Amsterdam, and a repeat performance nearly two months later.

Public anger was swift in coming. One man was shot dead by police in protests to demand Miguna's release in Ahero, Kisumu. For the army of young people, the millions unemployed, the slum-dwelling *kibarua* youth who forfeited their daily wages to take part in the NASA protests and had been radicalised by police brutality after the August 8 elections, they now increasingly identified with Miguna's brand of radical politics: loud, direct and unambiguously, eloquently anti-Jubilee.

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advisor on grand coalition affairs since he held a Canadian passport. Miguna fought off those allegations, saying he had done what he needed to do to take on a dictatorial regime, and was defended by Immigration minister Otieno Kajwang, who said Miguna had never renounced his Kenyan citizenship.

The abrasive 55-year-old lawyer and author, who unsuccessfully contested the governor's seat in Nairobi in 2017, fled into exile in 1988 after he was expelled from the University of Nairobi for his activism. He did not have a Kenyan passport. He became a naturalised Canadian after Kenya denied him a passport, and that citizenship was for years the only document standing between him and statelessness. His seizure at dawn was not only meant to detain him but also to revisit his passport issue, notwithstanding that the new constitutional regime allows for dual citizenship.

In the same week that Miguna was waging battles in court, the Director of Immigration suspended the passport of 15 senior NASA officials. Miguna's personal travails were now part of a State's agenda to punish collectively the opposition's leadership. And in attacking Miguna's right to Kenyan citizenship, they had headed in a direction beloved of failing republics in Africa.

Deportation, involuntary exile and banishment are stock-in-trade tactics of independent African nations. Bequeathed to them by their colonial predecessors, these are effective instruments for decapitating the organic leadership of restive populations. In the early colonial era, recognizing that they were not yet then strong enough to crush African resistance without provoking a wider revolt, the nascent colonial administrations routinely employed these tactics to subdue the African political leadership.

The record of deportations in colonial and post-colonial East Africa is long and infamous. To wit: Waiyaki wa Hinga, leader of the Kikuyu stood up to colonial officials: sentenced to

deportation in Mombasa (he died at Kibwezi en route from Nairobi. It is said that he was buried alive and sitting); Mekatilili wa Menza and Wanje wa Mwadorikola: arrested in October 1913 for resisting labour conscription among the Giriama – deported to Mumias in western Kenya, but escaped a few months later and walked back home to continue with the resistance; Harry Thuku, founder and secretary of the Kikuyu Central Association: deported to Kismayu in Somalia in 1922 for agitating for improved living conditions for Africans. Here, we see a successful case of regime conversion. Thuku returned a changed man, conservative and pro-government and, to the end of his days in independent Kenya, deeply suspicious of African liberation.

Similar tactics were employed against Kabaka Muwanga of the Kingdom of Buganda, and Omukama Kabalega of the Bunyoro-Kitara kingdom. Both kings were deported to the Seychelles for resisting British occupation in the 1890s. Interestingly, their deportation officer, Frederick Lugard, was the same man who as a company man for the Imperial British East African Company at Fort Smith in Dagoretti, had made a treaty of friendship with Waiyaki wa Hinga, leader of the Kikuyu. When Lugard was forced to leave suddenly to organise the colonial forces in the Battle of Mengo in Buganda, his replacement at Fort Hall, George Wilson, abrogated the terms of the treaty, which included formal terms for the procurement of food and livestock, and turned Waiyaki into a rebel.

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Banishment became a regular form of silencing dissent in

apartheid South Africa, famously at its Robben Island Prison, as well as in the native Bantustans and the so-called free states.

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Changes in constitutions appear to have done little to wean African states off the colonial instinct. When Miguna landed aboard an Emirates flight on March 26, his right of return backed by a slew of court orders, the full complement of the public service and the police were summoned to deal with him. The first sign of what the government planned to do was revealed when immigration lawyer Fred Ngatia reached out to Nelson Havi, one of Miguna's lawyers, proposing that just the two of them meet Miguna on the airside. This was a suggestion that went against the court's explicit orders, which had directed that officials of the Kenyan National Commission on Human Rights observe the process of re-entry. During the next three days, as the stand-off against Miguna raged, the KNCHR would be systematically frustrated as they attempted to gain access to Miguna.

Two months after his first illegal deportation, Miguna was methodical in his dealings with the government. Arriving at the Jomo Kenyatta International Airport at about 2.30 pm, Immigration officials wanted him to hand in his Canadian passport – they were willing to give a visa gratis, but he declined, insisting that they comply with the various court orders.

Accepting to enter Kenya on a visa was made to appear like a small price for Miguna to pay: Officials had offered him the visa gratis, sweetened by making it for an unlimited time, and with no restrictions – and ultimately said they only wanted

his passport to note down a case number.

James Orenge – as one of Miguna’s lawyers he was a regular presence at the JKIA – believed that Miguna could postpone his fight with immigration officials. That is, until he spoke to some officials. Had Miguna handed in his passport, he would have been deported immediately, says Julie Soweto, a member of his legal team.

Unknown to Miguna’s lawyers, the immigration officials had already purchased a ticket for his flight on the 8.40 pm Emirates flight to Dubai. Officials had disobeyed all the other court orders and were only seeking to comply with one requiring him to use his Canadian passport in default. At 8 pm, any pretense at diplomacy fell away. Suddenly there were a lot more police at the airport; a commando unit either of the Administration Police or the GSU also arrived with Emirates cabin crew to take Miguna to the aircraft.

NASA leader Raila Odinga had arrived, apparently convinced that he could spring Miguna from the airport. But the police locked down the terminal. Odinga was reduced to sitting in a chair in the baggage hall, from where he made ineffectual phone calls. The image of the NASA leader helplessly trying to stop Miguna’s seizure by the police is perhaps the most eloquent summary of his influence in the wake of the ‘handshake’ deal with Uhuru Kenyatta.

Another Emirates flight was departing at 10.40 pm, but it was delayed for an hour. At 11.34 pm, police officers in jeans and t-shirts stormed the baggage hall and seized Miguna, frisking him in the hope of taking his passport. He had rehearsed this part, careful to avoid arrest. With one foot in the cabin, and the other outside the aircraft, he let rip: “Where are [sic] my luggage? Where is my passport?”

Indeed, immigration lawyer James Nyikuli called Havi to ask for Miguna’s passport, which he did not have. Miguna could not

be placed on an aircraft against his will; and the pilot could not fly with a screaming passenger shouting, "I am not boarding." Loud and boisterous, tall and intimidating, a lone ranger prone to going it alone, Miguna is an inconvenient victim – and many people have condemned him for not yielding ground. Yet, allowing his Canadian passport to be stamped on entry would have amounted to surrendering his Kenyan citizenship, even if only symbolically – a prospect he was unwilling to countenance.

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On Twitter, he would write: "In 1962, @RailaOdinga fled to East Germany on a Tanzanian passport. In 1991 @RailaOdinga fled to Norway on a Ugandan passport. Ngugi wa Thiong'o fled to the UK in 1982 on a Ghanaian passport. But they were not forced to return to Kenya as foreigners. Am I a second class citizen?"

With his deportation aborted, Miguna's lawyers returned to court on March 27 and obtained further orders for his release and production in court – all to no avail. Justice George Odunga, as duty judge, issued new orders for Miguna's production and the personal appearance of Dr Matiang'i, the Inspector General of Police Joseph Boinnet and Immigration Permanent Secretary Gordon Kihalangwa. When they did not show up or produce Miguna in the afternoon, he ruled that them in contempt but invited them to hear their sentence the following day. That order too, was ignored.

Advocates who went to the airport to serve Odunga's orders ran into a wall of 50 heavily armed police officers. Restaurants were shut, the doors to the terminal were blocked, and the lawyers faced off with the police. They were reading out the

court orders, complete with a Kiswahili translation, when a lorry-load of police drove in at high speed, abruptly putting an end to this latest attempt to force the government to comply with the courts.

At 6 am the following day, Miguna called one of his lawyers. His speech was slurred but he reported that over 30 people had stormed into the toilet where he had been confined, pinned him down, sedated him and put him on a flight to Dubai in the United Arab Emirates.

Memes of Miguna's trademark skullcap and glasses on a black background now immortalize the struggle of conscience versus state power. But the emblem is also a reminder of the difficulties of attempting revolutions by using the law. Miguna has stirred a deep revolutionary instinct in the restless Kenyan youth.

Despite the government's attempts to trivialise Miguna's experience, the desperation that has driven it to its present actions now hides in plain sight. Although designed to psychologically break the spirit of resistance, the consequences of deportation always outlive the crises that set them off in the first place, and sometimes fuel and spark bigger fires.