



CMJA

conference

COPING WITH FINANCIAL AND JUDICIAL STRESS

Paper Presented

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Held at

BANK OF TANZANIA CONFERENCE CENTER

DAR-ES-SALAAM - TANZANIA

25TH – 29TH SEPT, 2017

INTRODUCTION

In my presentation, the discussion of financial and judicial stress is based on the key issues in the Conference theme and the Constitutional provisions that create Judiciary as an arm of government in different states.

I will use the Uganda's Constitution for purposes of my discussion which I am familiar to. Therefore, before going into the discussion, let me give operational definitions to the important terms that are going to form the basis of analysis and arguments.

Definition of Key Terms:

Effectiveness: for purposes of this discussion effectiveness will mean "doing the right things."

Accountability: for purposes of this discussion accountability will mean "doing the things right".

Inclusive-judiciary: This will mean a pro-people judiciary.

Financial Stress: A wanting financial position be it for the judiciary as an institution or a judicial officer as a person.

Judicial stress: This will mean that stressing working environment surrounding the justice delivery process both at individual and institutional level.

I cannot discuss the coping mechanisms before I point out the causes and associated challenges of the stress that is surrounding the justice delivery systems in states. In this paper I will use Uganda as a case to discuss today.

Stress is a burn-out situation where one undergoes a problem for so long a time without a solution and does not expect a solution in the near future.

Systemic Challenges that Cause Stress to Judicial Officers:

- 1. Governments' failure to operationalize constitutional provisions that protect independence of the Judiciary.**

In Uganda, the term "Independence of the Judiciary" sounds brief but it is wide and deep and creates special powers for the agency and the people therein, in this case (judicial officers). For purposes of this discussion I will point out only those powers that relate to the topic in discussion. The Constitution of the Republic of Uganda (1995) under Chapter Eight creates the Judiciary and vests the powers to administer justice in it. These powers go with a constitutional enabling environment that gives a Judicial Officer as a state moral agent powers to deliver justice to all in the most upright manner. These provisions are mainly under article 128 of the Constitution.

Article 128(1): *In the exercise of judicial power the courts shall be independent and shall not be subject to control or direction of any person or authority. (2) No person or authority shall interfere with the courts or judicial officers in the exercise of the judicial functions. (4) A person exercising judicial power shall not be liable to any action or suit for any act or omission by that person in the exercise of judicial power. (5) The administration expenses of the judiciary, including all salaries, allowances, gratuities and pensions payable to or in respect of persons serving in the judiciary, shall be charged on the Consolidated Fund. (6) The Judiciary shall be self-accounting and may deal directly with the Ministry responsible for finance in relation to its finances. (7) The salary, allowances, privileges and retirement benefits and other conditions of service of a judicial officer or other person exercising judicial power shall not be varied to his or her disadvantage.* Among others; (see the Constitution of the Republic of Uganda 1995)

The Constitutional provisions as you may see are very ideal but in practice the situation is different. Whereas Baron de Monstequie in his work "Spirit of Law 1748" exposed the doctrine of separation of powers that Judiciary is an equal arm of government in tandem with the Executive and Legislature; in Uganda's case the Legislature and Executive overpowers the Judiciary. Judiciary direct powers are only in courts but when it comes to administration and management of the Institution, its affairs are controlled to a large extent by Cabinet with the Legislature as a clearing house for its demands. This implies that Articles 128(5) (6) and (7) are not practicable.

The outcome of this exclusion has kept a Judicial Officer in a poor working environment both at work place and at home. Because, the court cannot have enough resources to support justice delivery. This at times causes long stay of files on the judicial officers' desks especially when a case needs more special input than just in-house hearing. For example, there are many land cases at the judicial officers' desks in Uganda which require locus visits, but they cannot be done effectively due to lack of vehicles in some cases and in other cases fuel.

2. Also lack of enough resources have caused workforce shortage because the judicial officers' appointing authority which is Judicial Service Commission cannot appoint enough workers when the paying Institution financial status is questionable. But on the community side, the number of people yearning for justice increase every other day due to increased population that has raised crime commission and misunderstandings amongst populations.

The result of poor financing and less manpower causes increase of unattended to files or call it delayed justice in the hands of judicial officers. This has prompted our administration to set basic performance targets, but this in its own from our observation as UJOA has increased stress and poor health among Judicial Officers due to over work and pressure. On this, UJOA as an organization intends to engage our

managers to deliberate on this issue. However, on the court users' side, they believe delays are outcomes of bribe sourcing which I cannot commit myself so much but from my explanation I think it is much on the poor facilitation and pay of Judicial Officers which causes instability in the process.

When it comes to personal financing, it is clearly known that judicial officers have families and children that go to school. Yet majority of them work in stations outside their home areas, but the salary paid compared to the cost of leaving do not match. That stressing condition of not having enough to cater for their personal problems undermines performance at work place, and others have lost marriages because of failure to fulfill their duties especially in home care and school fees for children. This matter sounds simple but very threatening especially to young officers with young families.

3. The other problem is the sensitivity of cases especially land cases which are normally involving emotionally charged parties.

Every other day, the lives of Magistrates are at stake, especially those who operate in lower courts, majority of which are up-country and rural. Increasing land conflicts have dramatically intensified mob actions amongst communities to the extent that locus visits are becoming more insecure to the side of anyone representing a government agency. Yet, the lower courts security caters for courts only but not personal security of Judicial Officers, except in special circumstances. Magistrates would use nearby police but the cost of maintaining the privately solicited security is not manageable by a judicial officer privately. As you will appreciate, this is two way, it is an issue of finance and at the same time an issue of environment unfriendliness, yet many land matters cannot be decided without visiting locus. In the end, this causes inaccuracy in judgment or

case backlog. With inaccuracy it causes unnecessary appeals and with case backlog, it undermines judiciary integrity in the eyes of court users.

4. **The court process involves other stakeholders.** On the criminal side, initially it involves police and DPP's office, lawyers and then court. However, the Judiciary does not have powers over those other stakeholders' competencies. This means that mistakes done by other stakeholders can only be referred. This in such times result in delayed justice. In other times, when not referred, it causes unnecessary appeals in the judicial system. But on the face of it, it's the judiciary to blame in case of delay of omission or erroneous commission. This implies that sometimes the Judiciary carries blames because they are the known agents. In the process, judicial officers and the judiciary generally lose its integrity because of other people's in-competencies.

CONCLUSION:

In conclusion, judicial dependency which is contrary to the constitution has undermined effective and efficient justice delivery which has claimed judicial integrity in Uganda. On the side of the Judicial Officers, denial of independence in all terms as stated in the Constitution has caused the whole court environment stressful to the extent of stalling the justice process directly and indirectly.

RECOMMENDATIONS:

In order to rectify the situation, the following should be done: -

1. **Judiciaries in all commonwealth countries should be granted full independence.** This will sort out the operational challenges, they are faced with now. Total independence comes with autonomy this will enable the Institution to hire competent staff, also to rationally motivate

them and to manage discipline which will increase inclusiveness on the court users' side.

- 2. Judicial Officers should get subsidized salary loans** to help them bridge the economic gap they are experiencing which is compounded by poor pay and national economic depression.
- 3. A friendly working environment mindful of judicial officers' lives should be created.** For instance, Judiciaries should provide Counselling services, to help declining family relations and also to help individuals in qualitative problems they have, plus creating judicial social clubs where juniors can interact with seniors for mentoring, and also to freely socialize in a safe place. Interaction with fellow colleagues builds confidence of individuals through sharing problems and safely discussing sensitive issues that confront them at workplace.
- 4. There should be a clear synchronized working policy** to streamline the justice delivery process amongst all stakeholders in the Justice, Law and Order Sector in all countries, if justice delivery process has to be effective, transparent and pro-people (or inclusive).
- 5. Administration of the Judiciary Acts** to operationalize Constitutional Provisions on the Judiciary should be enacted across Commonwealth countries. In Uganda, such an act has been on the shelves for the past 15 years, and failure or inordinate delay by the Executive and the Legislature to table it in Parliament is one of the reasons that triggered the Industrial Action. Such an act seeks to guarantee the Uganda Judiciary's Financial Autonomy through provision for a Judiciary fund and Human Resource autonomy i.e. (delinking all Judiciary staff from Ministry of Public Service).

6. Unity and Solidarity

From the Benkort sessions on welfare on Monday, it was evident that the majority Judiciaries in the Commonwealth are stressed in one way or the other through marginalization by the other two pillars of state.

UJOA recommends as follows;

Executives usually issue congratulatory statements whenever a head of state is elected in any country. Sometimes, they even come for the rescue of their peers through military intervention (like Tanzania did to oust Field Marshal, life president, Conqueror of the British Empire etc. Idi Amin in 1979).

Can we have each Commonwealth country study and issue a statement, whenever a unique situation manifests in a given Judiciary.

For instance, UJOA once again applauds Chief Justice Maraga and the Supreme Court of Kenya for that historical precedent that was set. But the Executive has severely bashed and threatened the court for executing its Constitutional mandate.

On 22nd July, 2017, Judicial Officers through their Association, Uganda Judicial Officers Association resolved tools to employ Industrial Action for necessary tools of trade like Adequate operational funds to meet performance targets, motor vehicles to facilitate supervision and land justice, housing, medical insurance, salaries befitting Judicial Officers and security. These concerns I believe cut across the Commonwealth and therefore there is need for support.

CMJA should also rise to the occasion whenever need arises.

7. Austerity measures and frugality among Commonwealth Judiciaries.

- Resources in the Judiciary are limited and therefore should be expended wisely.

The following is recommended;

- Resources to the 3 Arms of state should be appropriate and proportionate.

- Majority of Judiciary budgets should be expended on case adjudication the primary mandate, then on Administrative expenses.
- Expenditures which may be awarded should indeed be avoided. For instance, in 1799, Naporleon Bonaparte abolished the wig in his empire as being out fashioned and yet we still maintain them in Commonwealth countries.
Research has shown that wigs apart from scaring court users are also quite expensive and alien to Africa which traditionally is not a home to horses.
Can all Judiciaries then adopt simple, less costly robes reflecting our heritage e.g. robes bearing bark cloth, cowrie shells and opolipo leaves (of course modified as won by Obi Okwonko in Flingo Fall Apart Nigeria).

8. Bridging the gap between the Higher and Lower Bench.

When the British handed over the flag of independence, unfortunately the legal regime relating to the Judiciary and administration of Justice was largely left intact.

Executives and Legislatures have accordingly explained this rift of Higher-Lower Bench in a spirit of Divide and Rule to marginalize Judiciaries.

We recommend as follows;

Chief Justices should strive to ensure that their Judiciaries are administered as one unit whose primary mandate is to deliver a Judicial service to the citizens.

The comparison ratio pertaining to salaries and fringe benefits should be equitable and narrowed. The difference between the highest in the Judiciary should be proportionate to the lowest earning Judicial officer. Allowances and benefits should cut across board, including tools of trade.

Titles of "Judge", "Magistrate" that tend to promote discrimination and cause confusion among the public should be dispensed with. In one of our local dialects Luganda, "Mulamuzi" refers to either Judge, Justice or Magistrate. In a certain Cameroonian state, all judicial officers to the Supreme court are referred to as Magistrates. In Rwanda, they are all Judges. Can we have something like Judge of the court of first instance and second Appellate, instance third Appellate etc.

The Executive and the Legislature tend to take aim at as when we maintain titles like "Lordship", "Worship". During the mediaeval times, "Lordship" was associated to feudalism and nobility. "Worship" tends to confuse the public with worshipping God. I believe in the 21st Century, the common wealth should adopt the simple title of "Your Honor" just like the Magistrates.

Enhance both civil and criminal jurisdictions especially for the Lower bench to enable them have dignified and meaningful work. The Higher bench could then retain Appellate jurisdictions, to refine decisions of the Lower bench (or First instance counts).

Establish the unit cost of completing any given civil or criminal case and fund accordingly as per continual plans enhancement in jurisdictions should go hand in hand with enhancement in the Budget.

In order to improve access to Justice, translate the laws into local languages and adopt such during court proceedings where possible.

Simplify court procedures and embrace Alternative Dispute Resolution mechanisms like mediation, arbitration, small claims procedure etc.

Common wealth Judiciaries should adopt robust fundraising strategies as per their strategic plans but without compromising their codes of conduct. The Bangalore and Latimor House should drop the motion of sitting back and waiting for others "to do things for us". In Uganda, Chief Justice Bart Katureebe usually engages the President, Members of Parliament and other stake holders for the benefit of the Judiciary.

9. Human Resource manuals and policies.

Common wealth Judiciaries should enact all-inclusive Human Resource manuals and policies if stress is to be alleviated. "Adhocism" which is not tandem with modern institutional management practice should be dispensed with. Such HR manuals should include clear policies on things like Deployment, Promotions, Counselling, Health and safety, Disciplinary issues etc. "Public Service Standing Orders" which guide many internal operations in our Judiciary sound arbitrary and may not be tailored to suit the unique nature of the Judicial service.

10. Corporate Social Responsibility.

Simply defined, Corporate Social Responsibility simply refers to corporations and institutions giving back to the public in order to improve on their images. Activities here may include things to do with a Judiciary leaving suit land for tree planting to conserve the environment, free outreach programmes to schools to counsel them about the law and career development, charitable donations by Judicial officers etc. There is no doubt that this modern management practice of CRS once adopted by common wealth Judiciaries shall relieve both financial and institutional stress.

11. Networking and benchmarking in Common Wealth Judiciaries.

There exist a great disconnect and communication gap between common wealth Judiciaries. Can we have the CMJA secretariat share a catalogue of email addresses and phone contacts of all CMJA members, to enhance cohesion and networking among common wealth Judiciaries.

Can we have more benchmarking and exchange programmes so that judicial officers in our respective countries can learn from best practices.

12. Research

The Uganda Judicial Officers Association, UJOA in conjunction with the CMJA secretariat proposes to conduct a comparative research titled "An Overview of the Relationship between the 3 pillars of state in the Commonwealth and their resourcing."

The objective is to develop a comprehensive Report on all Judiciaries in the common wealth from which other and different variables can be compared so that no Judiciary is left behind.

A common wealth Judiciaries checklist shall then be developed and it is hoped, the Report shall be shared in the next CMJA in Australia.

A tool has been developed which shall be shared and completed by members through email.

In total, common wealth Judiciaries should stop reading from the Old Testament Book of Lamentations and resort to the New Testament Book of Acts of the Apostles, if the Judiciary is to reclaim her rightful place as a co-equal Arm of state, in tandem with the Executive and the Legislature. Otherwise, history and posterity shall never forgive our generation for sitting back, while the Independence of the Judiciary is fettered.