



FOR GOD AND MY COUNTRY

ANNUAL JUDGES CONFERENCE 2014

**THEME: *ENHANCING PUBLIC CONFIDENCE IN THE
JUDICIARY***

Remarks

By

**The Principal Judge, Hon. Justice Dr. Yorokamu Bamwine,
at Imperial Resort Beach Hotel, Entebbe**

26th - 30th JANUARY, 2014

The Ag. Chief Justice

My Lords

Your Worships

Ladies and Gentlemen

I welcome you to this Annual Judges Conference.

The following topic was given to me:

“To what extent does the current structure and set up of the Judiciary enhance the realization of the Judiciary’s mandate of delivering timely and quality justice in Uganda”?

Topics like this used to give us hard time at High School. I will do the best I can within the allotted time of 30 minutes.

The Judiciary is one of the three co-equal arms of government. Its chief mission is to resolve disputes in a just manner with a view to protecting the rights and liberties of all.

In so doing, the Judiciary facilitates the attainment of the rule of law ideal.

As lawyers we all know that the rule of law is a system in which the following four universal principles are upheld:

- i) The government and its officials and agents as well as individuals and private entities are accountable under the law.*
- ii) The laws are clear, publicized, stable and just, are applied evenly, and protect fundamental rights, including the security of persons and property.*

- iii) *The process by which the laws are enacted, administered and enforced is accessible, fair and efficient.*
- iv) **Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number and have adequate resources.**

The rule of law is, so to say, the underlying framework of rules and rights that make prosperous and fair societies possible. Under this system, no one, not even the government is above the law. Laws protect human rights and justice is accessible to all.

The judiciary performs its function by providing independent, accessible and responsive fora for the resolution of disputes. In other words, our core function is resolution of disputes.

We all know that the Supreme Court is composed of the Chief Justice and not less than six other justices¹. It is the final court of appeal.

The current approved structure for the Supreme Court is **11** Justices, including the Chief Justice; Court of Appeal **15** Justices, including the Deputy Chief Justice; and **82** for High Court, including the Principal Judge. Opinion is for now divided as to the number **82** because of the apparent lack of a certificate of financial implications to increase the number from **50** to that figure. Since the Secretary to the Judiciary has highlighted the current and proposed structures, I will only highlight what I

¹ *Article 130 of the Constitution*

consider to be challenges which, if addressed, would make the theme of the conference reality.

1- Recruitment of Research Officers

Whereas the Judiciary's mandate is to deliver timely and quality justice, Judges rarely have time to do research thanks to heavy workloads. In any case the current structure lacks a provision for legal assistants. The adhoc ones are usually fresh university graduates hardly with any post qualification experience.

The agreed position in the proposed structure is the rank of Chief Magistrate for the appellate courts and experienced Grade 1 Magistrate for High Court.

I would propose that the post of legal researchers be legally provided for such that every Judge be entitled to services of a legal researcher on appointment who shall be an advocate of the High Court with at least two (2) years post-qualification experience. This should cut across all the three courts of Judicature.

2- De-linkage of Judiciary staff from mainstream public service

The quality of secretarial output from personnel presently attached to the officers of the appellate courts and Judges of the High Court plus of course the clerical staff is generally below standards expected in those offices. It is noteworthy that with the professionalization of the entire bench, it is necessary that support staff attached to courts be of acceptable grade. This point though emphasized in the Judiciary Administration Bill appears not to be appreciated by the Executive.

I am alive to the fact that this will require amending the Constitution and that there is an intended Constitutional amendment process in due course. Even then the matter is urgent, if public confidence in the Judiciary is to be our priority. Currently process servers and office attendants continue to serve as court interpreters, where courts are lucky enough to have them. I think we can have graduates for such posts.

The current situation is embarrassing and it cannot wait for the long constitutional amendment process.

Appointing and disciplining Judiciary staff critical to the independence and administration of the courts. The more we delay the more the image of the Judiciary is undermined and ultimately judicial service delivery in the country.

3- Appointment of Temporary Judges

Lack of quorum in the Supreme court, especially when hearing constitutional appeals, is a matter of great concern. The makers of the constitution anticipated this. Hence Article 142(2) of the Constitution which allows appointment of acting justices where any of the justices is not able to attend.

The proposed structure does recommend that the Judiciary seeks mechanisms for fast tracking such appointments to avoid case backlogs but offers no practical approach lies. One such practical approach has, in my view, in giving Article 133 of the Constitution liberal interpretation.

This Article vests the administration and supervision of the Judiciary in the Chief Justice. In that capacity he is empowered to issue orders and directions to the courts for the proper and efficient administration of justice in Uganda. Clearly the Constitution gives guidance on the functioning and administration of the Judiciary.

All that is required is operationalisation of Chapter 8 of the Constitution which this conference can recommend that it be done through the fast tracking of the Judiciary Administration.

In my view the Judiciary is incapable of fast tracking appointment of "Acting Justices" since it is carried out by the appointing authority, that is, the head of the Executive. However the law can be reformed to give the Chief Justice the powers to appoint "contract Justices" and "contract Judges" on the advice of the Judicial Service Commission wherever need arises as is done in other jurisdictions.

4- Office of Chief Registrar/Secretary to the Judiciary

The proposed structure is silent as to how the two offices can co-exist. At the moment, both are at par although one is legally provided for in the Constitution and the other not.

I am of the view that without prejudice to the incumbents, continued ambivalence over the two offices is unhealthy.

In Kenya, the Chief Registrar is responsible for the overall administration and management of the Judiciary and the accounting officer. In that regard,

he/she monitors and enhances administration and office procedures to maximize on efficiency and the quality of service.

Either way continued ambivalence as to who is accountable to the other appears, in any view, not to enhance judicial performance, a necessary precursor for public confidence in the Judiciary.

5- Adequacy of Judges in the Courts of Judicature

Without going too much into the sea of arguments which we have heard over the years, the generally acceptable position now appears to be that in order to enforce people's fundamental rights, Articles 50 and 137 must be read together. If I am correct in this regard, then a lot of the Constitutional Court's time is currently lost in the enforcement of fundamental rights, a duty which any other court could perform. As a result, vital time of Court of Appeal is lost in Constitutional litigation, a factor that partly explains the problem of case backlog in that court and other courts which have to wait for outcome of references before they can proceed with cases that gave rise to them.

The point I am making is that by and large the Constitution currently overburdens the Court of Appeal in that over and above its appellate jurisdiction, it also doubles as the Constitutional Court. This has caused many cases to stall in High Court as we wait for the Constitutional Court and Supreme Court to exhaustively deal with matters before them.

From my records, the workload in Court of Appeal as at the end of 2013 stood at **2,149 Civil cases and 2,131 Criminal cases, a total of 4280 cases.**

Against this background, the Constitutional Court closed with a total of **492 pending** cases-election appeals, applications, petitions, etc. this number appears sufficient business for their Lordships, without the extra burden of cases specifically for Court of Appeal as I will show shortly.

Delayed disposal of appeals, civil and criminal, does not give credit to the court and in my view it does not enhance public confidence in the court.

I think the Judiciary should explore the possibility of having a Constitutional Court that is separate from Court of Appeal to exclusively handle constitutional cases. South Africa has such a court.

From my records also the current workload in the Courts of Judicature as at December 31, 2013 stood as follows:

Supreme Court:

Civil -----	39	(These are cases where lower court Records are available)
Criminal -----	27	

Court of Appeal:

Civil -----	2,149	(Civil Appeals -480; Applications 125; Election Petitions Appeals 27; Election Petition Applications 86;)
Criminal -----	2,131	

(I have already indicated the business of Constitutional Court is 492)

High Court

Civil ----- 35,621

Criminal --- 8,835 (**Ready for hearing**)

Lower Courts

Civil ----- 61,421

Criminal --- 57,426

Considering the current staffing levels (**S.C =11, C.A =15, H.C =82** though after the approval of the 4 recently announced H/C will have **60** in place).

It is clear to me that the Judiciary needs twice as many Judges as we have in the approved structure if the theme of this workshop is to be accorded the seriousness it deserves.

If this conference conveyed the same message to the Executive, the journey to enhancing public confidence in the Judiciary would have begun.

As for me, I must confess do not have much faith in the proposed structure. It appears to be a case of business as usual. I would instead call for a Judiciary Transformation Strategy, akin to the **Judiciary Transformation Framework 2012-2016** of Kenya, which would lay the foundation for the revamping of the Uganda Judiciary. This would be after the Judiciary Administration Bill has been enacted into law.

4- **Conclusion**

I join those others who have voiced concerns that the draft report on restructuring is not adequate and therefore should be referred back to the consultants to

consult further within the Judiciary taking into account the fact that the Judiciary has a very clear constitutional mandate and is an arm of the state and come out with acceptable recommendations that can be implemented and owned. The Judicial officers have career long interest in the restructuring and should be given ample opportunity to make their input. Restructuring of an institution is not an every day occurrence and therefore great care should be taken to ensure that the final document will stand the test of time.

(Registrars' consultative meeting on the Draft Restructuring Report, 28th October 2012 unreported).

I thank you all.