



**A JUDICIARY TRANSFORMED:
WHERE TRADITION MEETS
TRANSFORMATION**

BY

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The Honourable The Chief Justice

The Honourable the Deputy Chief Justice

The Honourable the Principal Judge

Honourable Justices and Judges

Your Worships

Distinguished Ladies and Gentlemen:

Dipped in age long tradition, she raises her arm in the air clasping of the scales of justice, confident, she stands, immaculate, majestic: her face covered in a dark bandana of a bandage to demonstrate her absolute independence and impartiality from influence by any person or persons appearing before her at the foot of the Bench of her Courtroom. I speak of the mythological “Lady Justice” who holds the Scales of Justice.

Lady Justice stands in that traditional posture to symbolize the hard-earned, long-held Traditions of the Judiciary as a non-biased, non-corruptible arbiter of society’s disputes. The Traditions of the Judiciary are innumerable, inescapable, near –unbreakable, unchangeable, inviolable, close to immortal. They have been tested by the exigencies of time and space, and found fit and true. They have served their purpose well. They are not modified or altered, save for good cause. They give confidence to the litigating public that the rules of the game will not be changed in the middle of the game or at the whims of the umpire, let alone the dictates of Caesar.

Today, in Uganda, we have found cause for modernizing the very pillars of our Judicial Structure. We have found grave cause for transforming the head and heart of our Judiciary. We are doing so, not at the whims of the umpire/referee, nor indeed, at the dictate of any external power or force. The transformation emanates not from forces outside the Judiciary. Rather, the fundamental changes at play come from within the Judiciary itself.

Yes, the Executive arm of State has played a key role in endorsing the Transformation, and the Legislative Arm of the State did indeed, table, and debate and pass the requisite Legislation to give legal effect to the Transformation of the Judiciary-which legislation as passed by Parliament, had to go back to the Executive for Presidential Assent.

Nonetheless, the genesis and the origins of the Transformation are deeply embedded in the working, aspirations and desires of the Judiciary itself. These have been aspirations and desires freely initiated, researched, written and freely debated and freely adopted by the Judiciary, without any compulsion, direction or influence from any quarter outside the Judiciary.

I can testify to all this, for I personally was mandated way back in 2007 or 2008 by the competent Administrative Committee of the Judiciary to put together a draft of the Administration of the Judiciary Bill. The Chief Justice, then, was the Honourable Ben Joses Odoki. The Chairperson of that Committee (Terms and Conditions of Service) was the Honourable Justice George Wilson Kanyeihamba. On that Committee, sat My Lord, The Honourable Justice Stella Arach-Amoko, of the Supreme Court, the only member of the Committee who still survives the retirement pull of gravity.

Later in time, after a great deal of consultation, internal and external to the Judiciary, the First Draft was added to and modified into another Draft by the Chief Justice, Benjamin Odoki. It again come back to me as the Chairperson of the Judicial Service Commission to add the Commission's official input.

It is from that genesis, that the Country finally matched to the Revolutionary Act. The Law took extremely long to enact: the process meandered through the Judiciary itself, Cabinet, the Judicial Service Commission, and Parliament. There was a time most of us lost hope of ever enacting that law, a law which sought to change the context of the Judiciary and of Uganda. Then, came the good news; the Administration of the Judiciary Bill had become the Administration of the Judiciary Act. Almost everything we had asked for in the Bill, had been passed. Certainly all the major hilltops on the Legislative terrain were passed. Finally, the Law was in place, awaiting Implementation. And that's where new challenges suddenly emerged, raising their multifarious tentacles like those of the Octopus. In implementation of the Administration of the Judiciary Act, we went from the soft general platitudes of the Act to the hard decisions of the detailed provisions of the nitty gritties of the revolutionary Law. It is in these details that the real challenges resided. Indeed, as they say, the **Devil is in the Detail!**

Having set the background for the revolutionary currents of changes that have swept through the present Judiciary to bring it to its present stage of Transformation, the temptation is high to attempt to cover every detail that is

contained in the Act. But, we will avoid that temptation, compelling though it may be.

Instead, it is more profitable to zero in on a few critical themes that dot the rich landscape of the Administration of the Judiciary Act, and which give that unique Legislation its peculiar iconic form.

I propose to deal with the following Themes:

1. The Reformed Structure of the Judiciary.
2. The Novel Authority and Independence conferred on the Judiciary.
3. The Comprehensive Staffing of the Judiciary.
4. Performance Management System as a unique feature of a Transformed Judiciary.
5. Appellate Court Devolution/ Decentralization
6. Automation as a sine qua non of a Revolutionized Judiciary.

There are many, many other themes and sub-themes out there that merit discussion. But, for our purposes today, we would do well to confine ourselves to a vision of the total forest, and leave a surgical discussion of the individual trees to another time, another space.

1. STRUCTURE OF THE TRANSFORMED JUDICIARY

The Structure of the pre-AJA Judiciary is encapsulated in Article 133 of the Constitution of the Republic of Uganda. In that Article, the Chief Justice , an individual officer, is the be-all, see-all, do-all of the Judiciary; the 3rd Arm of the State. The CJ is the head of the Judiciary, responsible for the administration and supervision of all courts in Uganda. In carrying out these administrative functions, the CJ is not officially required to consult anybody, except for some consultation with the Attorney General under Article 135 (3) (b) in respect of the venue for the sittings of the Court of Appeal of Uganda. Similarly, on the whole, the CJ is also not answerable to anybody in particular; nor accountable to any authority or person; and need not seek approval or recommendation from any quarter.

The only substantive exception, indeed, quasi-exception to the above position, is that the CJ is assisted by the DCJ and the PJ with regard to the administration of the Court of Appeal/Constitutional Court and the High Court and subsidiary courts, respectively. But even here, the Constitution adds to the qualifier: “*subject to the provisions of Article 133*”.

The above is basically the pre-AJA position.

Post-AJA, the position relating to the exercise of the administration of the Judiciary has become drastically different.

First, the scope of the exercise of the administrative powers of the Chief Justice under Article 133 of the Constitution has been vastly expanded. Section 3 of AJA empowers the CJ to temporarily assign administrative duties to any Judicial Officer for a specified time. Even more important Sec 3 (b) empowers the CJ to establish Performance and Evaluation System for the Judiciary. This Section, read with the substantive Section 18 of the Act, create a truly revolutionary thought in the Judiciary; the idea of formalized performance evaluation of Judicial Officers. In the traditional Judiciary of pre-AJA, concepts of Performance Management and Performance Evaluations were totally taboo. They were conceived of as interference in the professional service of a Judicial Officer and, therefore, inimical to the doctrine of the independence of the Judicial Officer, in particular, and the Independence of the Judiciary in general.

Second, another revolutionary concept of mega proportions has been introduced by Sections 4, 5, 6 and 7 of AJA namely: the establishment of the Judiciary Council- comprising high level legal officers from outside the Judiciary (notably the Attorney General, Solicitor General, DPP, representatives of Judicial Officers from the Superior and Lower Benches, the President of the Law Society, Chairperson of the Law Council, etc.), including two members of the general public.

The Council, meets quarterly. Its mandate is to advise the CJ on policies, ethics and integrity, ways and means of securing funding; personnel and staff development; and monitoring and evaluation.

And so, for the first time in the history of the Judiciary of Uganda, the CJ is formally required to be advised on the performance of his responsibilities under the Constitution. Truly, a great transformational step here.

Similarly, the CJ is, under Section 6(1) and (3) required to establish Committees of the Judiciary, and in consultation with the Council, to determine the composition and procedure of those Committees, and to set out the Committee members', Terms as recommended by the Council.

2. INDPENDENCE OF THE JUDICIARY

The scope of the pre-AJA Independence of the Judiciary was articulated in Article 128 of the Constitution. That Article confers Independence of the Judiciary, at the basic levels- namely:

- (i) Independence of the individual judicial officer in the exercise of their judicial power (including security of tenure, of salary and of allowances, etc.)
- (ii) Corporate Independence of the Court System generally.
- (iii) Quasi-financial independence, (i.e. Judiciary is self-accounting, may deal directly with Ministry of Finance).

In brief, pre-AJA, the Judiciary enjoyed professional and financial independence. Post-AJA, the position has been vastly changed. Section 2 of the Act, is categorical about the objects of the Act, including 2 (d) *“to strengthen the independence of courts”*.

This, the Act does by strengthening the provision and management of funds for the Judiciary and establishing structures within the Judiciary to improve the performance of the Judiciary.

By establishing the Council and the Judiciary Committees, AJA has introduced another dimension to the Independence of the Judiciary; the dimension of Administrative Independence- which sitting side by side with the existing traditional professional and financial independence, now completes the Trinity of Judicial Independence.

With that, the Judiciary has now attained the lofty ideal of an Independent Commission, comparable to the Parliamentary Commission - clothed with ample authority to administer its own Constitutional mandate without interference or direction from anywhere.

But with that new comprehensive Independence, comes a concomitant responsibility to be answerable/accountable to somebody in the State and to the people of Uganda.

Accordingly, Section 39(1) of AJA mandates the CJ to make and publish an Annual Performance Report with copies distributed to the President and to the Speaker of the National Assembly.

This new dispensation is, indeed, as it should be. For with Independence, comes not irresponsibility (much less recklessness), but responsibility. In 1 Peter 2:16 the Bible says: *“Live as free people, but do not use your freedom as a cover for evil”*.

Martin Luther King Jr. put the same thought, equally, succinctly. The great orator once intoned: *“Free at last, Free at last, Thank God Almighty, we are free at last”*. But, with freedom gained, the former Negro slaves simply assumed the responsibilities of free people.

And so it is with the Judiciary of Uganda. AJA’s expanded Independence of the Judiciary has brought with it added responsibility for the Judiciary- starting with the requirement for publication of an Annual Performance Report; and with the requirement for Management Performance and Evaluation.

3. EXPANDED JUDICIARY STAFFING: THE JUDICIARY WORKFORCE

The merger of the Judicial and Non-Judicial staff of the Judiciary into one Judiciary Service, is a most welcome change. Hitherto, the non-judicial staff of the Judiciary were purely temporary; here today, gone tomorrow: even when such staff had consumed enormous Judiciary Resources for training and re-tooling. They were always answerable to the Public Service and liable to be deployed and transferred elsewhere in the Public Service of Uganda.

Now, with AJA, that is no more. All Judiciary Staff, legal, judicial and non-judicial are to be recruited by the Judicial Service Commission exclusively for deployment in the Judiciary. All staff of the Judiciary, other than those appointed by the President, are to be appointed by the JSC. The Judiciary Staff is to be bound by the Judicial Code of Conduct and similar Professional Codes applicable to the judicial and the non-judicial staff.

Secondly, and equally importantly, are the massive numbers of staff envisaged in the Judiciary Service. Already approved by Cabinet awaiting physical implementation are 228 Superior Court staff, plus 964 Lower Bench personnel. The increase in numbers is very much appreciated to combat the enormous workload and backlog in the Judiciary. Therefore, the staff expansion will, no doubt, help enormously with the supply-side of the Judicial work and service. For the longest time, the demand side for judicial services has been struggling, leaving a gaping hole of caseload and backlog. In large measure, Staff Expansion will be the answer.

At the same time, however, a flood of judicial staff will create its own challenges.

The first and foremost challenge, will be massive pressure on the Judicial Budget to meet the massive remuneration, welfare, staff transport and staff accommodation,- both residential and court space (court rooms, judicial chambers and staff residences, all across the present 150+ stations at the Local Government Districts of the Country)

For starters, a Staff Establishment of approximately 1,200 judicial officers (up from about 400), will exert enormous demand on the Judiciary's infrastructure.

Similarly, and even more importantly, enormous judicial staff numbers will pose hitherto unknown supervisory demands, especially so on the Top Management of the Judiciary, headed by the trilogy of the CJ, DCJ and PJ as well as the CR and SJ each of whom will be in supervisory charge of close to triple the staff currently under them. Let us concentrate especially on the Principal Judge with a constituency of 150 High Court Judges and over 900 Magistrates (not to mention, Registrars), the Principal Judge will simply be overwhelmed with purely administrative responsibilities - with hardly any quality time left for Judicial activities. The PJ will need a Secretariat of some sort in his/her Chambers, well beyond the current Personal and Research Assistants. The PJ may, for the first time ever, need a Deputy PJ (comparable to the Deputy PJ of the East African Court of Justice) or, at least, an Assistant PJ, perhaps on the basis of the special assignment envisaged in Section 3 of the AJA (in which the CJ may assign administrative duties of a higher status to any judicial officer for a specified time). Alternatively, the PJ might need to be beefed up by a kind of Court Administrator working directly under him/her.

Conversely, another solution could arguably be a PJ who is a full-time Administrator of the High Court and Subordinate Courts - with no personal judicial responsibilities at all! Unlike, the CJ and DCJ, the PJ doesn't "*preside over*" the sittings of the High Court as that Court sits as a single Judge. But, a scenario where the PJ relinquishes judicial work, would most likely run counter to the spirit, if not the letter of the Constitution, whose Articles 138 and 141 spell out the composition of the High Court and the administrative functions of the PJ - namely, the PJ and the other Judges constitute the High Court; and the PJ is the head of the Court who routinely /ideally gives a lead in difficult, complex or sensitive cases in the High Court.

There are other sets of Challenges is the envisaged increase in the Judiciary Staff.

Number One, it's ironic that the staff expansion should come at a time when the whole Country is lamenting a burgeoning Local Government Staff establishment, a bloated Parliament, a flooded Cabinet (spiced with an avalanche of Presidential & Senior Presidential Advisors), not to mention the Resident and Assistant District Commissioners. The Public Service, like an ill-fitting garment is bursting at the seams.

The appearance of adding another layer, a Judicial layer to the phenomenon of the massive Public Service, comes at an unfortunate time, but which is not within the making of the Judiciary, and which is, otherwise, merited by the wholly obvious needs of the Judiciary.

Number Two, the specter of a unified Judicial Service, pushes another feather in the hat of the Judicial Service Commission. The JSC will need retooling and reskilling itself to meet the new exigencies of recruiting especially non-judicial staff: Accountants, Administrators, Auditors, Engineers, Human Resource, Managers, Planners, Statisticians, Information and Communication Technicians, Librarians, Secretaries, and various others of that ilk. All these were traditionally recruited by or through the Public Service Commission, and then deployed to the Judiciary. With the passage of the AJA, under Section 13 (3) their recruitment, training, and deployment are now to be rooted in the JSC. To deliver on this, the JSC will need to re-invent itself with the necessary personnel, processes and procedures to meet the technical, personnel, and financial needs of the new dispensation given especially the enormous numbers of staff, both judicial and non-judicial that will be recruited over the short, medium, and long term.

4. APPELLATE COURT DEVOLUTION/DECENTRALISATION

Court Devolution or Decentralisation is not a new thought in the Judiciary. It has been with us for a long, long time. The High Court circuits have existed in all the major towns (now Cities) of the whole country.

What is brand new, however, is the Decentralisation of the Court of Appeal. The novelty and complexity of this devolution lies in the fact that the Court of Appeal is a Superior Court whose judicial decisions bind all courts subordinate to it, including, especially, the High Court.

With the expanded Court of Appeal from 15 to 56 Justices, and with the need to bring justice and judicial services closer to the people, the Court of Appeal will

work in circuits/clusters of 5 or so members resident in different parts of the Country.

Question: when, how and where will the different circuits coordinate their individual judgments in order to speak with one voice; the voice of one court; the Court of Appeal of Uganda?

The Court of Appeal sitting in Arua cannot afford to speak in discordant voices from the court sitting in Mbale or Kabale., nor can the Court in Moroto afford to differ in its judgments and holdings, from those of the “same” Court sitting in Tororo or Mbarara, let alone, Kampala!

The novelty of Appellate Court devolution/centralization in our East African region was started in the United Republic of Tanzania, and followed by the Republic of Kenya. Equally, the jurisdiction of the USA features a complex system of State and Federal courts including 50 Courts of Appeal whose judgments and rulings on appeal end up in the Supreme Court of the United States.

We will do well to compare notes with Tanzania and Kenya from the practical experience of their own experiment. A case for Uganda benchmarking with these countries, and others with similar experience, could be considered at an appropriate time- resources permitting.

5. AUTOMATION/ TECHNOLOGY

The duality of an enormously expanded Judicial workforce, operating from far-flung stations around the Country; plus the ravages of the Covid-19 pandemic that have left their mark on social interactions among persons and institutions, do dictate a drastic transformation in dispensing the business of the Courts and the services of the Judiciary at large.

More extensive reliance on appropriate IT and Digital storage, retrieval and communication information and data, needs to be explored and exploited intensively in the Judiciary of today and tomorrow.

Meetings, Hearings, Court Session, e-filings, Applications, e-payments, e-libraries and delivery of Judgments and Orders, will increasingly transform from real to virtual; from analogue to digital. More and more sophisticated, state-of-the-art applications will come into vogue. On-the-job trainings will become a substantive/ continuing feature of the Judiciary’s human resource/capital formation. Procurement of state-of-the-art equipment will become a heavy feature of the

Judiciary, imposing enormous pressure/demands on the Judiciary Budget. High tech machinery, will need to be placed in the hands of better tooled judicial minds to meet the challenges of a Judiciary spread out all over the far-flung terrain of the Country; a Court of Appeal/ Constitutional Court spread out over the four corners of the Country.

On this, the Judiciary has already started to meet the needs and to overcome the challenges of Automation of the Court processes, see Paragraph 5.8 of the Judiciary Annual Performance Report, for Financial Year 2020/21 at page 51.

While a good, effective start has been embarked upon, there remains a great deal to be done to strengthen electronic applications in the Judiciary. (see, Para 6.6 of the above Annual Performance Report at page 61).

I have concentrated on the foregoing 4 or 5 Themes touching the AJA and its wide network of ramifications. I have not exhausted the full array of important topics and themes ushered in by this historic AJA. Let me touch ever so slightly and tenderly on two or three other Themes, namely:

1. The Inspectorate of Courts

While the Inspectorate existed under the Old Order, under the AJA the Inspectorate is a much more strengthened enterprise. It has a full-fledged Head, scaled up from the part-time Registrar to a full Justice of the Supreme Court, specifically designated by the CJ for a renewable term of 3 years. Similarly, it has a full-time Secretariat headed by a full-time Registrar, no less. Equally important, the rejuvenated Inspectorate of Courts now has well-defined specific Terms of Reference, specifically embedded in the statutory law of the Country, namely: Section 9 of the AJA, which includes specific enforcement of the Judicial Code of Conduct and of the Public Service Code of Conduct.

To fulfill its functions more effectively, the Inspectorate has been accorded express statutory powers:

- (i) to access all courts or official records kept by a judicial officer,
- (ii) to require any person to supply information and answer any question relating to the conduct of a case or trial; and
- (iii) to compel the attendance of any person before the Inspectorate and to compel the production of any document necessary for the discharge of the functions of the Inspectorate.

2. Judicial Retirement Benefits

Under the old order, largely haphazard, unclear and near ex-gratia hand outs were given to retired judicial officers. Under the AJA, a well thought-out, comprehensive system of judicial retirement benefits is provided. The contents of the new system is comparable to the very best systems in Africa notably Zambia's and Tanzania's systems.

The Uganda Judicial Retirement Benefits System is spelled out in great detail in a total of 5 comprehensive Schedules to the AJA. But, more importantly, these benefits, like all other Judicial Benefits and Privileges, are securely anchored in the National Constitution, no less (especially Article 128 (7)). Note that, these Retirement Benefits have a secret Trilogy of Blessings to this Nation:

- (i) Upholds robust morale of Judicial Officers on and off the Bench.
- (ii) Offers potential for early retirements from the Judiciary, which enhances the refreshment and rejuvenation of the Judiciary workforce with new blood and fresh minds.
- (iii) Injects into the general population a pool of extraordinarily skilled and wise people of merit, a reservoir of the Nations, *eminence grise*.

3. Strengthened Judicial Training Institute

The JTI is now formally recognized by law under Section 19 of AJA, and is duly recognized as the engine of judicial training. This is an affirmation of the fact that the training and proper formation of judicial heads and minds is a critical factor of a Transformed Judiciary.

4. Judicial Officers' Service Outside the Judiciary on Secondment, Transfer, etc

This has been streamlined under the AJA. Pre-AJA, the position was ad hoc and haphazard. Post-AJA, the position of a judicial officer who opts to be or is transferred or seconded to serve in a position or institution outside the Judiciary, has been vastly rationalized, harmonized and legalized.

The officer concerned is now required to apply to the JSC for leave of absence without pay for a period of 3 years. A period beyond 3 years will normally require

retirement of the officer from the Judiciary. Additionally, gaps created through such transfers and secondments, will now be filled by the President appointing an Acting Justice for a period of the absence/secondment.

CONCLUSION

Be careful what you ask for. Your prayer might be answered. We, in the Judiciary asked for a slice of bread. Our prayer was answered with a gift of a whole loaf. Now, we have the blissful challenge of slicing the loaf, buttering and jamming it, and the enjoying full swallowship of the bread of Independence and Freedom.

We got more than we asked for. We got Independence and Responsibility: the latter discreetly shrouded in a fog of Implementation Challenges.

In 2010, our neighbor to the East, Kenya, got the same predicament. They asked for a liberal National Constitution. They got one with too much liberality. To implement that Constitution effectively, efficiently and logically, Kenya had to establish a special Commission on Implementation, headed by the present-day East African Court of Justice member, Justice Charles Nyachae.

We, in the Judiciary, may well consider establishment of a *Nyachae* kind of outfit or consultancy to explore the efficacies, efficacious and efficient way to implement all the important implications and opportunities and that have been delivered to us on the beneficial wings of the AJA.

Truly, the AJA has ushered in a Brand New Dispensation in the Judiciary in every sense of that word.

We can all afford to say without any fear of contradiction, that the Judiciary of Uganda has gone from **Tradition** to **Transformation**, courtesy of the AJA.

The ball is now in the Judiciary's own court.

Ours is the responsibility to effectuate the Judiciary's Fundamental Transformation wrought by the AJA, and to secure, uphold and protect the Benefits of the Transformation. While all these are great and impressive endeavours in themselves, let it never be forgotten that the central, critical, and cardinal purpose, and objective of all these, is to do Justice in the Land. So help us God!

Let Freedom and Liberty flow like a river.

Let Equity and Justice reign: from Tororo to Tooro, from Mbale to Kabale, and from Arua to Mbarara, and all other points in between.

Let both ideals overhang the canopy of the clouds and landscape of our dear Land
Let this Pearl of Africa rise and shine as a bastion of Harmony, Peace and Rule of
Law!

Justice James Ogoola

Emeritus Principal Judge of Uganda

31st January, 2022