



A Report on the Performance of the Supreme Court of Uganda

**Presented By
The Hon. Mr. Justice J.W.N. Tsekooko
Ag. Justice of the Supreme Court.**

**During the
17th Annual Judges' Conference**

**Held on
February 24, 2015**

At

Golf View Hotel, Entebbe.

PROTOCOL:

- My Lord the Hon Ag. Chief Justice,
- The Hon Principal Judge,

- The Justices of the Supreme Court,
- The Justices of The Court of Appeal,
- The Chairperson, Judicial Training Committee,
- The Hon Judges of the High Court,
- The Executive Director, Judicial Studies Institute,
- The Director of Public Prosecutions,
- Your Worship the Chief Registrar,
- The Secretary to the Judiciary,
- Your Worships the Registrars,
- Distinguished Invited Guests,

INTRODUCTION:

Upon my return from leave last Wednesday, I found a letter dated 10th February, 2015 requesting me to present a paper on *the Performance of The Supreme Court*. This topic was based on the theme of the conference which is “*The Role of the Judiciary in Accelerating the Transformation of Uganda’s Economy.*” According to the invitation letter, I was advised that the presentation should mainly focus on —

- *Previous year performance of the Supreme Court;*
- *Strategies put in place to improve on this performance;*
- *Planned way forward for effective Case Management in the running law year.*

I was given this responsibility because my colleagues in the Supreme Court had asked me to do some bit of administration in that Court. And the cause

of all this is that since end of June, 2013, we have not had the official Chief Administrator of the Court who is the Chief Justice and who is the overall Chief Administrator of the Judiciary. Even then the time given to me to prepare the paper was short. The Baganda have a saying that “*Omusigire Tamala Byonna*” which as I understand it in effect means a **Care Taker cannot do much**. This is worse when the Care Taker has a short time to do preparations.

I understand my task is to explain what is and should be done by the Supreme Court as an appellate Court to accelerate the transformation of Uganda’s economy.

I proceed to present a general report.

Much as the Judiciary may indirectly contribute to improving the growth of the Uganda Economy, I am not sure that the Judiciary or indeed the Supreme Court, can accelerate the transformation of the Uganda Economy. We know that this duty lies elsewhere. Of course it can be argued that the Judiciary can do this by expeditious disposal of disputes relating to payment of taxes. Our law reports and our registries show that many tax disputes cases take time to be disposed of. Many take years. Some of such tax disputes may involve investors. So delay in disposing of such disputes can have negative results.

We all know that the Constitution and certain laws enacted by Parliament set out generally the functions of courts including the Supreme Court. Thus—

Article 126 of the Constitution spells out exercise of judicial powers as follows:

- 1) Judicial power is derived from the people and shall be exercised by the courts established under this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people.*
- 2) In adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the following principles—*
 - a) justice shall be done to all irrespective of their social or economic status;*
 - b) justice shall not be delayed;***
 - c) adequate compensation shall be awarded to victims of wrongs;*
 - d) reconciliation between parties shall be promoted; and*
 - e) substantive justice shall be administered without undue regard to technicalities.*

Some Articles that follow give the general principles and guidelines.

As I understand it, courts including the Supreme Court are expected to uphold the rule of law. Judicial Officers are expected to determine cases or disputes between litigants including the Uganda Revenue Authority (URA) in accordance with the Constitution and the relevant laws and not according to whims which may be influenced by corruption and other unlawful means. One may be tempted to make a general statement that the economies of some countries where the **rule of law is respected are better than those where the opposite is the case.** Those of us who were old enough during the rule of Idi Amin know what happened to our economy after Amin took

over and especially when he recklessly and unlawfully expelled Asians who virtually controlled the Uganda Economy. The impact of the murder of Chief Justice Kiwanuka (RIP) in 1972 speaks volumes. The Uganda Economy collapsed. Many ugly things happened because of the Rule of man rather than the Rule of law.

After the over-throw of Idi Amin, the rule of law slowly came back and many Judicial Officers participated in restoring the rule of law. Many expelled Asians returned to Uganda because of the apparent confidence in the rule of law and according to my perception, the economy picked up. I am tempted to believe that the growth of the economy was due mainly to stability and also to the respect for the rule of law.

During the last Annual Judges Conference which was held in January 2014, I was asked to speak on the Supreme Court Performance about *WHAT COULD BE DONE DIFFERENTLY TO ENHANCE PUBLIC CONFIDENCE IN THE APPELLATE JUSTICE SYSTEM IN UGANDA.*

I mentioned what Uganda Law Society suggested courts should do to enhance public confidence. I referred to what the Chief Justice of Canada had said in 2012 about enhancing public confidence in the Judiciary in Canada.

I then stated that *“one of the most important ways of enhancing public confidence in the appellate justice system is expeditious disposal of appellate causes with due diligence and absolute honesty.”*

I still maintain that statement which is the reflection of what Article 126 of the Constitution says. Expeditious disposal of disputes can contribute to transformation of the economy. Because people with money will want to invest where their business disputes can be solved quickly and according to the law.

In countries with which we share the common law system, the question of public confidence in the judiciary is considered to be very important because public confidence in the judiciary is evidence of the commitment to the rule of law. This in itself enables the economy to grow.

I joined Public Service as a Government Lawyer at the end of 1968. Since then I have been involved in court work in various capacities. As I stated last year, from this experience and exposure I can say with confidence that one of the most important ways of enhancing public (including investors) confidence in appellate justice is **expeditious disposal of appellate cases with due diligence and absolute honesty.** I can repeat this statement many times and regardless of whether it relates to appellate justice in the Supreme Court of Uganda or the administration of justice generally in Uganda. I say this because I believe litigants take their disputes to courts to have their rights determined and settled quickly, fairly and honestly. They

want the settlement to be decided by competent, impartial and honest judges. This applies to ordinary but more so to business people. That is why the makers of our Constitution enacted Article 28 (1). That clause reads—

“In the determination of Civil Rights and Obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.”

The Supreme Court is a very important Court and what it decides matters. The jurisdiction of the Supreme Court is set in out in Article 132 of the Constitution. Clauses (1) and (4) shows the Court’s importance thus—

(1) The Supreme Court shall be the final court of appeal.

(2).....

(3).....

(4) The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so; and all other courts shall be bound to follow the decisions of the Supreme Court on questions of law.

In my view everything should be done to ensure that the Supreme Court performs its functions effectively and in an exemplary manner.

2014 PERFORMANCE OF THE SUPREME COURT:

Many factors affect the performance of any court including our Supreme Court. Failure to fill the position of the Chief Justice who is the Chief Administrator of the Court greatly affects the performance of the Court. I

hope I will not be accused of breach of any rule because of the pending appeal in the Supreme Court. Generally the many factors include—

- The experience of the Justices and Registrars.
- Extra Judicial work by the Justices.
- Collegiality among the Justices.
- In many common law systems like that in Uganda, the relevant Rules of Procedures e.g., Rule 90 which regulates withdrawal of Civil Appeals and Applications.
- The absence of the overall administrator. In September we held a meeting with the Minister and with the SJ and discussed problems.
- The Case Management System. This is affected because of inexperienced staff.
- Equipment such as computers, recording system for court work.
- The Non-Judicial Supreme Court Staff.
- The funding.
- The attitude and performance of other stakeholders such as advocates many of whom do not properly what is expected of them.
- The working environment such as the Court building and or offices. Many of us find problems moving around to discuss issues with colleagues.
- The communication system such as intercom.
- Staffing. Justices are supposed to have experienced secretaries. Most of us don't have these.

Our law stipulates that the Supreme Court of Uganda should have a Chief Justice and ten Justices of the Supreme Court. Currently, there are only eight justices. Sadly, there is no substantive Chief Justice. Four of us were at some stage or another deservedly elevated to the Supreme Court from the Court of Appeal. Therefore if any appeal arises from a case in which any of these participated in the Court of Appeal, whoever participated cannot participate in the hearing in the Supreme Court. This affects our work. Getting a temporary acting Justice of the Supreme Court to assist was not possible last year.

Because of what I have just pointed out and the vacancies in the Supreme Court, disposal of appeals especially Constitutional Appeals has delayed. Further, many appeals particularly constitutional appeals tended to take long to be disposed of. This affects the performance of and public confidence in the Court. I have always been wondering our Supreme Law, (the Constitution), should not make the justices of the Court of Appeal ex officio members of the Supreme Court so that whenever there is need to get an ad hoc justice for purposes of hearing any appeal, selecting a suitable justice to participate is faster. This would be one way of fast disposal of appeals and applications in the Supreme Court.

COMPOSITION OF THE SUPREME COURT:

By the Judicature (Amendment) Act 2007), which amended S.3 of the Judicature Act and Article 130 of the Constitution, now the Supreme Court

consists of eleven (11) Justices of Supreme Court inclusive of the Chief Justice.

Under article 131(2) of the Constitution

“When hearing appeals from decisions of the Court of Appeal sitting as a constitutional court, the Supreme Court shall consist of a full bench of all the members of the Supreme Court; and where any of them is not able to attend, the President shall, for that purpose, appoint an acting Justice under article 142(2) of this Constitution”

Under article 131(3) of the Constitution

The Chief Justice presides at each sitting of the Supreme Court and in his absence; the most senior member of the court as constituted presides.

The Supreme Court is currently composed of the following Justices:

1. The Hon Mr. Justice B. Katureebe, JSC.
2. The Hon Mr. Justice J. Tumwesigye, JSC.
3. The Hon Lady Justice Dr. E.K. Kisaakye, JSC.
4. The Hon Lady Justice Stella Arach Amoko, JSC.
5. The Hon Justice Dr. B.J. Odoki, Ag. JSC.
6. The Hon Mr. Justice J.W.N. Tsekooko, Ag. JSC.
7. The Hon Mr. Justice G.M. Okello, Ag. JSC.
8. The Hon Lady Justice C.B.N. Kitumba, Ag. JSC.

That was the same position last year.

The Justices are less than the number provided for by the relevant legal provisions. This has affected the performance of the Supreme Court, especially in constitutional appeals.

OTHER STAFF OF THE SUPREME COURT:

The other members of staff of the Supreme Court are the Registrar, His Worship Mr. Roy Milton Byaruhanga, Deputy Registrar His Worship Mr. A.G. Opifeni, eight Research Assistants, Office Supervisor, Senior Accounts Assistant, a Librarian, Assistant Librarian, a Systems Administrator, a Data Entry Clerk, a Records Assistant, two Clerical Officers, a Senior Personal Secretary, two Personal Secretaries, three Steno-Secretaries, a Stenographer, two Copy Typists, a Process Server, eleven Drivers, seven Office Attendants, a Cleaner and two Tea Girls.

As can be seen we need more personal secretaries. Indeed each Justice is entitled to an experienced secretary. Experienced secretaries expedite work.

COMMITTEES:

There are a number of committees which help the Supreme Court in management.

The Finance Committee. It is composed of three Justices of the Supreme Court, the Registrar and his Deputy, the Office Supervisor and the Senior Accounts Assistant.

The Finance Committee oversees the management of funds released to the Court.

The Peers Committee. There are three Justices who are members of this committee. The Peers Committee performs the following functions:

1. Encourage upholding judicial conduct by Supreme Court Justices and to adhere to the Uganda Code of Judicial Conduct.
2. To give appropriate counseling / advice to a Justice of the Supreme Court who may be engaged in conduct unbecoming of his/her office.
3. Give appropriate guidance to Justices of the Supreme Court who needs it.
4. To do anything else that in its opinion would strengthen judicial integrity within the Supreme Court.

The third Committee, which was constituted last year, **is the Court Users Committee.** It is an inter-agency committee and is expected to discuss and come up with best practices for the Supreme Court. The committee was established in 2014. It comprises of stake holders in the Justice system. The members of the committee are:

1. Hon Justice Tsekooko, Ag JSC – Chairperson.
2. Hon Justice G.M Okello Ag JSC – Member.
3. Mr. Roy Byaruhanga – Registrar.
4. Mr. Godfrey Anguandia Opifeni – Deputy Registrar.
5. Ms. Ruth Sebatindira – President ULS
6. Mr. Michael Wamasebu – Asst DPP.
7. Mr. Cheborion Barishaki – Director Civil Litigation.
8. A representative of Uganda Prisons Service.

Unfortunately due to lack of funding the committee was not able to sit in 2014, we hope that adequate funds will be availed this year to enable the committee to carry out its business.

The Fourth Committee is the Bar / Bench Committee.

STRATEGIES PUT IN PLACE TO IMPROVE ON PERFORMANCE:

The Supreme Court is part of the Public Service of Uganda. It is therefore required to observe Public Service Standing Orders which regulate performance in addition to the Constitution and relevant laws. There are also Judiciary Management Procedures such as Case Management. As mentioned earlier, the Supreme Court has set up four committees to help in management.

REGISTRIES AND ARCHIVES:

There are two main registries of the court, namely, the Civil and the Criminal registries. These handle the registration, filing and processing of pleadings and documents relating to civil, criminal and constitutional appeals and applications. The registries also maintain the court database and handle service of court process/documents. Old files are stored in the archives. At present, the majority of the old files are still being kept at Mengo where the Supreme Court operated since 1980s until 2009.

JUDICIAL PERFORMANCE OF SUPREME COURT IN 2014:

1. A constitutional appeals session was held in March .5 constitutional appeals were heard.
2. A criminal appeals session was held from 12th to 23rd May 2014. 17 cases were heard.
3. A Civil Appeals session was held from 17th June to 26th June 2014. A total of 7 cases were cause listed.
4. A session for Constitutional Appeals and Civil Appeals commenced on 2nd September 2014 and ended on 25th September 2014. A total of 19 Constitutional Appeals, Civil appeals and applications were handled.
5. A criminal session was held from 24th November to 1st December 2014, 9 criminal appeals were handled

In summary, the court performed as follows last year:

| Pending | Completed | Filed | B/forward from 2013 | |
|----------------|------------------|--------------|----------------------------|------------------------------------|
| 20 | 4 | 15 | 9 | Civil Appeals |
| 14 | 32 | 37 | 10 | Civil Applications |
| 13 | 8 | 5 | 16 | Constitutional Appeals |
| 11 | 11 | 18 | 4 | Constitutional Applications |
| 20 | 14 | 13 | 21 | Criminal appeals |
| 0 | 3 | 1 | 2 | Criminal Applications |

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As already pointed out, extra judicial work of some Justices affects the number of causes to be fixed for hearing.

STRATEGIES TO IMPROVE ON PERFORMANCE:

Over the years, the court has developed mechanisms for managing appeals. The production of Monthly Status Reports is one such mechanism. This helps in knowing status of cases e.g., pending judgments. Presiding Justices follow up where there are pending judgments or rulings. The court also produces annual Calendar System, arranging Court Sessions, before which Pre-Hearing Conferences are held.

PLANNED WAY FORWARD FOR EFFECTIVE CASE MANAGEMENT IN 2015:

At the beginning of every year the Registrar produces an annual session’s calendar.

The Sessions Calendar is considered by the Justices of the Supreme Court and once it is approved, preparations for a session commences according to the dates indicated in the sessions calendar. A pre-hearing conference presided over by a Justice of the Supreme Court is held normally 2 weeks prior to the commencement of a session. The purpose of conducting pre hearing conferences is to fix hearing dates, determine the format for presentation of arguments and time frames for filing written submissions. Single Judge Applications, full bench references and other categories of applications are handled before, during or after sessions where necessary.

Monthly Statuses of Business Reports are circulated to update Justices on the performance of the court in the previous month.

These practices have been planned and are being implemented during this year. I trust that when more Justices are appointed the performance of the Court will improve.

In 2015 we intend to improve on our performance by employing the following strategies:

- We shall hold 2 sessions for each category of cases (constitutional appeals, civil appeals and criminal appeals). In total we plan to hold 6 sessions.
- Hold pre hearing conferences before the commencement of each session.
- Use Case Management techniques.
- Adhere to the rules of pre - hearing conference on time frames for filing submissions and authorities.
- Ensure that Advocates comply with the Chief Justice Practice Direction No. 2 of 2005 on presentation of oral and written submissions/ arguments in the Supreme Court and that Advocates comply with standards in the Supreme Court
- Hold Peers Committee meetings whenever necessary.
- Hold court users' committee meetings with stake holders to exchange ideas on reducing case backlog.
- Hold Bar / Bench Committee meeting.

- The registry shall prepare status of business reports. This will enable us to monitor our performance.

ANNUAL CALENDAR SYSTEM:

The Registrar, Supreme Court, prepares an annual calendar of court activities in consultation with Justices of the Supreme Court at the end of every calendar year especially regarding official work and leave schedules and other official work. The calendar enables court to plan a year's work in advance and serves as a guide on the dates for court sessions. In this way the Court plans its work schedules in advance.

PROMPT AVAILABILITY OF SESSION FILES TO JUSTICES:

Files/records of appeal are normally made available to Justices two weeks in advance before session commences so as to enable their lordships to study records and prepare adequately.

FACILITATION OF ADVOCATES TO VISIT APPELLANTS:

In criminal matters, lawyers assigned state briefs are paid allowances by the court to visit appellants in prison for briefing before the session date. This method avoids the unnecessary consultation during hearing between the prisoner and his or her lawyer.

RECORDS OF APPEAL IN CRIMINAL APPEALS:

Under Rules 56 and 60(1) of the Supreme Court Rules, the Registrar of the Court of Appeal is supposed to expeditiously prepare and dispatch records of

appeal to the Supreme Court as soon as the notice of appeal has been lodged in the Court of Appeal.

If records of appeal are not expeditiously prepared and dispatched by the Registrar of the Court of Appeal, there is delay. This erodes the effect of the principle in Article 126(2)(b) of the constitution which requires justice not to be delayed.

Many Advocates do not number pages of records of appeal especially in criminal applications as required by Rule 14(4) so as to facilitate easy reference during hearing.

CONDUCT OF CIVIL MATTERS IN THE SUPREME COURT:

For orderly presentation of oral and written submissions and arguments in the Supreme Court, in 2005, the Chief Justice issued Practice Direction No. 2 of 2005. The Practice Direction requires arguments in the Supreme Court to be precise, relevant and in conformity with the rules of the Court. The direction sets out time frames within which a party is to file.

Rule 94 which is about written argument still applies. The Practice Direction also provides times for presentation of oral argument.

RECORDS OF APPEAL IN CIVIL APPEALS:

Here, our Rules require the intending appellant to file Notice of Appeal, memorandum of appeal and record of appeal. Memoranda of appeal are supposed to set forth concisely, under distinct heads and without argument or narrative the grounds of objection to the decision appealed against, specifying the points of fact or law or mixed fact or law which are alleged to

have been wrongly decided, and in third appeals the matters of law of great public or general importance wrongly decided. This is a requirement of Rule 62 of the Supreme Court Rules.

Many advocates do not follow the rules and this conduct shows lack of preparation on their part. In disregard of the Practice Direction, No. 2 of 2005, Advocates frequently file all types of documents which may not have been exhibited during trial, that are irrelevant or valueless to a required decision in the appeal.

Again contrary to Rule 14(4), many advocates do not number pages of records of appeals in civil matters so as to facilitate easy reference during hearing. Many advocates file any number of authorities and do not highlight relevant portions of authorities for the Justices to read.

Advocates allude to authorities casually in written submissions.

Court wastes useful time during hearing in seeking clarification as a result of the above breaches. **It is strongly recommended that this matter be included in Advocates' Continuing Legal education programme.**

SOME CHALLENGES FACED BY THE SUPREME COURT:

- **Lack of a Chief Justice.**

The most important challenge is failure by relevant authority to fill the vacancy of the Chief Justice. This has created many problems including administration of the Court.

- **Lack of Coram for hearing Constitutional appeals.**

Last year, I mentioned that there is a backlog of 16 Constitutional appeals pending hearing. As you can see from the above statistics, the appeals still remain pending two years on and yet these matters should be disposed of expeditiously if justice is not to be delayed.

- **Lack of prisoners holding cell.**

There is no cell for prisoners. When convicted prisoners are brought in court, they share space with the public and court staff. There is a risk posed to the Justices, victims of offences in attendance and members of the public. The convicts could also easily escape from the open court hall.

- **Inadequate funding.**

The Supreme Court is the highest court in the land but funding to the court for operations has not only remained perennially inadequate, but also, does not reflect this status. The operations of the court are most times affected by lack of funds. The decisions and judgments of the court are not regularly disseminated to Justices, Judges, Chief magistrates and Magistrates grade one, Judiciary, law reporting officer, LDC, lawyers and other interested persons, in addition to online websites such as www.saflii.org for international audience and to www.ulii.org.

- **Lack of public transport for support staff.**

Lack of suitable transport for support staff leads to late coming, slowdown in court work and even absenteeism by staff.

- **Lack of Computers for the staff.**

Since Computers were stolen almost two years ago they have never been replaced. Our staff especially research assistants do not have computers.

- **Delays by Data Centre to return computers and other related gadgets taken to their workshops for repairs.**

E.g., My laptop (Justice Tsekooko) was taken for repair by Data Centre but it is coming to a year, I have never been given a proper report concerning its status.

- **Delays in Toner Distribution by Data Centre at the Head Quarters.**

Judges are forced to call data centre in the High Court requesting for toner.

- **Absence of intercom /switch board.**

Ever since the court relocated to the present location in Kololo, calls to have intercom and switch board installed have gone unheeded. Justices are forced to use their mobile phones to communicate within and outside the court building. This is expensive.

- **Burglar proofing of ground floor.**

The ground floor of the court is not burglar proofed. This has actually exposed court property to theft and burglary. As a result, five instances of theft of court property have occurred at the court, the recent involving

theft of three complete computer units. Investigations are ongoing but the ground floor windows could first be secured.

- **Delayed Records from Court of Appeal.**

Delay by the Court of Appeal to forward records in criminal appeals. According to Rules 56 and 60(1) of the Supreme Court Rules, the Registrar of the Court of Appeal is required to expeditiously prepare and dispatch records of appeal to the Supreme Court as soon as the notice of appeal has been lodged in the Court of Appeal. We have files where records of the court of appeal have not been forwarded.

- **Lack of Coram for Constitutional Appeals.**

Lack of Coram in constitutional Appeals. In March 2014 we had a session for constitutional Appeals. We cause listed 12 cases, only 5 cases were heard, 7 cases were not heard due to failure to raise Coram. Two of the Justices available had previously worked in the Court of Appeal, they could not handle appeals from cases in which they handled in the Court of Appeal/Constitutional Court.

- Insufficient funds for the court users committee.
- The current building accommodating the Supreme Court was not meant for court.

WAY FORWARD:

- **Coram.**

There is a very urgent need to appoint a Chief Justice and the required number of Justices for the court to be able to dispose of the backlog of constitutional appeals and other matters.

Leaving the Chief Justice's place vacant for too long has created many obvious problems.

- **Funding:**

Funding to Supreme Court needs to be increased to reflect its ultimate mandate if the lower courts and other agencies are to benefit from its output.

- **Court premises.**

The current rented building is not user friendly. It does not have provision for disabled persons. To avoid losing further equipment and property, possible preventive measures need to be put in place while we await for our own Court building. **Building our own Court building is very very urgent.**

- **Library and reference materials.**

Most of the library reference materials of the court were destroyed by flood waters because of the leaking roof of the present building. The materials are now useless. Moreover, most are outdated. In this era of electronic information, the court should now have an e-library where recent and up to date legal reference resources can be accessed. The institution's Library Committee may consider this suggestion but the problem is funding. Related to this is the need for increase bandwidth of internet for conducting research.

- **Prisoners holding cell.**

To secure convicts separately from the rest of Member of the public, a holding cell needs to be constructed in the court if we shall continue renting the building.

- **Intercom system:**

This system is necessary for internal communications. It also reduces the costly use of mobile phones.

- **Renovations.**

If we have to continue occupying the same building, proper and lasting renovations on the court building should be effected to avoid disruptions of court business. The Estates Manager needs to pay regular visits to the court to assess the state of the building. **The building should be made user friendly particularly to the disabled persons.**

- **Staff Training:**

Court staff need to be trained periodically to enhance their skills and for effective service delivery and customer care with particular reference to integrity issues, code of conduct and ethics for Uganda public servants.

- **Transport for support staff** should be provided.

Let me end by thanking my colleagues for the extreme cooperation existing in our Court.

I thank the Registrar, Deputy Registrar and non judicial members of staff for their cooperation.

I thank you for your kind attention.

Thank you for your listening to me.

Justice J.W.N. Tsekooko.