



THE REPUBLIC OF UGANDA

**COURT OF APPEAL /CONSTITUTIONAL
COURTREPORT**

TO

THE 18TH JUDGES ANNUAL CONFERENCE (2015)

BY

STEVEN B.K. KAVUMA

THE HON. THE DEPUTY CHIEF JUSTICE

The Hon. The Chief Justice,
The Hon. The Principal Judge,
The Hon. The Justices of the Supreme Court,
The Hon. The Justices of the Court of Appeal,
The Hon. the Judges of the High Court,
The Representative of the Judicial Service Commission,
The Secretary to the Judiciary,
Representatives of the JLOS institutions.
Your Worship The Chief Registrar,
Your Worships,
Distinguished guests,
Ladies and Gentlemen.

1.0 Introduction

1.1 The Court of Appeal is provided for in various articles of the Constitution, among them:

134. Court of Appeal of Uganda.

“(1) The Court of Appeal of Uganda shall consists of-

(a) The Deputy Chief Justice; and

(b) Such number of Justices of Appeal not being less than seven as Parliament may by law prescribe.

(2) An appeal shall lie to the Court of Appeal from such decisions of the High Court as may be prescribed by law.”

135. Composition of the Court of Appeal.

(1) “The Court of Appeal shall be duly constituted at any sitting if it consists of an uneven number not being less than three members of the court.

(2) The Deputy Chief Justice shall preside at each sitting of the court and in the absence of the Deputy Chief Justice, the

most senior member of the court as constituted shall preside.

(3)..."

1.2 The Court of Appeal also doubles as the Constitutional Court.

137 Questions as to the interpretation of the Constitution.

"(1) Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the constitutional Court.

(2) When sitting as a constitutional court, the Court of Appeal shall consist of a bench of five members of that court.

(3)...

(4)...

(5)...

(5)...

(6)...

(7) Upon a petition being made or a question being referred under this article, the Court of Appeal shall proceed to hear and determine the petition as soon as possible and may, for that purpose suspend any other matter pending before it.

(4)..."

1.3 According to Section 6 of the Judicature Act, a decision of the Court of Appeal pertaining to Parliamentary Elections Appeals is final.

2.0 From the above provisions of the law it is clear that the

role of the Court of Appeal in the administration of justice is three fold namely:

(i) To hear appeals from the decisions of the High Court both Civil and Criminal.

- (ii) To sit as a Court of first instance in constitutional matters.
- (iii) To sit as the final court of appeal in Election Petition Appeals from the decisions of the High Court.

3.0 Justice at the Court of Appeal

3.1 The Court is supposed to consist of 15 justices. During the year under review, it had 12 namely;

- (i) Hon. Justice Steven B.K Kavuma, DCJ
- (ii) Hon. Justice A.S. Nshimye, JA
- (iii) Hon. Justice Remmy Kasule, JA
- (iv) Hon Justice Eldard Mwangusya, JA
- (v) Hon. Justice Rubby Aweri Opio, JA
- (vi) Hon. Justice Faith Mwendha, JA
- (vii) Hon. Justice Richard Buteera, JA
- (viii) Hon. Justice Solomy Balungi Bossa, JA
- (ix) Hon. Justice Kenneth Kakuru, JA
- (x) Hon. Justice Geoffrey Kiryabwire, JA

- (xi) Hon. Justice Prof. Lilian. Tibatemwa-Ekirikubinza,
JA
- (xii) Hon. Justice Fredrick Egonda Ntende, JA

3.2 Five Justices of the Court were recently elevated to the Supreme Court and these are;

- (i) Hon. Justice A.S Nshimye, JSC
- (ii) Hon. Justice Eldad Mwangusya, JSC
- (iii) Hon. Justice Rubby Aweri Opio, JSC
- (iv) Hon. Justice Faith Mwondha, JSC
- (v) Hon. Justice Prof. Lilian Tibatemwa-Ekirikubinza,
JSC

3.3 The Court extends its most heartfelt congratulations to their Lordships upon their well-deserved elevation and wishes them successful careers at the highest Court of Uganda.

4.0 The following seven Justices were recently appointed to the Court of Appeal;

- (i) Hon. Justice Paul K. Mugamba, JA
- (ii) Hon. Justice Elizabeth Musoke, JA
- (iii) Hon. Justice Hellen Obura, JA
- (iv) Hon. Justice Simon Byabakama Mugenyi, JA
- (v) Hon. Justice Catherine Bamugemereire, JA
- (vi) Hon. Justice Cheborion Barishaki, JA
- (vii) Hon. Justice Owiny Dollo, JA

4.1 The Court congratulates their Lordships upon their worthy appointments and warmly welcomes them. Their appointment has improved by two Justices, on the previous number of 12 at the Court. This improvement should facilitate the Court in tackling its workload and the backlog more effectively.

4.2 However, one vacancy remains to be filled to bring the number of Justices to the current ceiling of 15.

5.0 Registrars and Registries

5.1 Last year, the Court had one Deputy Registrar and two Ag. Assistant Registrars. The Court established

three Registries i.e.the Constitutional, the Civil and the Criminal Registries.

5.2 The composition of the Registry then was as follows;

- (i) H/W Deo Nizeyimana Deputy Registrar; head of the Registry
- (ii) H/W Joyce Kavuma; Assistant Registrar, Constitutional Registry
- (iii) H/W Eleanor Khainza; Assistant Registrar, Criminal Registry

6.0 This year, the number of Registrars has been increased to five. These are;

- (i) H/W Harriet Ssali, Ag. Registrar
- (ii) H/W Deo Nizeyimana, Deputy Registrar
- (iii) H/W Didas Muhumuza, Assistant Registrar, Criminal Registry
- (iv) H/W Rosemary Bareebe, Assistant Registrar, Constitutional Registry
- (v) H/W Daniel Lubowa, Ag. Assistant Registrar, Appellate Mediation Project.

6.1 The Court warmly welcomes all and wishes them successful careers at the Court.

6.2 The following Assistant Registrars have left the Court on transfer and/or promotion to other stations;

(i) H/W Eleanor Khainza

(ii) H/W Joyce Kavuma

6.4 The Court thanks them for their service and wishes them success at their new stations.

7.0 Court Staff

7.1 The Registrars are assisted by Records Assistants, Clerical officers and other support staff. The total number of support staff at the Court is 107.

7.2 One member of staff, Ms. Nalongo Nandawula, retired last year after serving the Judiciary for 37 years. The Court congratulates her on her completion of such a

long and dedicated service and wishes her success in retirement.

8.0 Court performance

8.1 For the year under review, the Court of Appeal had a set target of disposing of 600 cases. Subject to the final tally from the ongoing census of cases in the Judiciary, the Court achieved its target and the details of it's performance areas follows:-

Table 1. Registered and Completed Cases- 2015

CASE TYPE	B/FOWARD	REGISTERED	COMPLETED	PENDING
Criminal Appeals	2578	759	103	3234
Criminal Applications	301	279	468	112
Civil Appeals	965	246	95	1116
Civil Applications	1238	374	223	1389
Constitutional Petitions	275	44	35	284
Constitutional	205	45	41	209

Applications				
Election Petition Appeals	18	1	4	15
Election Petition Applications	24	4	3	25
TOTAL	4400	1,706	972	5844

8.2 Given the targeted performance of the Court, it

superseded it by 62%. Compared with the previous years, however, the Court of Appeal performed as follows:

Table 2 Court Performance 2010-2015

YEAR	CASES B/F	FILED	DISPOSED OF	PENDING	NO. OF JUSTICES
2010	2174	846	386	2634	7
2011	2634	876	288	3222	8
2012	3222	1002	251	3973	7
2013	3485	1184	564	4105	11
2014	4105	1368	1073	4400	12
2015	4400	1,706	972	5844	12

- 8.3 The overall performance was less than that of the previous year 2014. Many factors impacted on and explain the level of performance of the Court. To give just a few examples, these were:
- 8.4 The increased volume of work as reflected in the big number of new cases filed.
- 8.5 The large numbers of cases pending in the Court of Appeal system due to unavailability of records of proceedings from the lower Court, totaling 2311 files.
- 8.6 Inadequate funding of the Court which makes it difficult for it to execute its mandate effectively.
- 8.7 Inadequate physical facilities, tools and the human Resource.
- 8.8 Challenges of managing the transition precipitated by the elevation of 5 Justices from the Court of Appeal to the Supreme Court.

8.9 The Court was for a period of over four years not functioning properly due to lack of a sufficient number of effective Justices to conduct its business. Even now, it is not yet fully constituted. This has resulted in the backlog of cases that the Court is still struggling to clear.

8.10 The cumulative effect of all the above should not be ignored when assessing the performance of the Court.

9.0 Achievements

9.1 Improvements in the number of Justices and staff at the Court:

- (i) The appointment of additional Justices underpins the improved performance of the Court and the improved access to justice by the number of court users who were able to access it.

(ii) Three Court Recorders and three Court Clerks were appointed to the Court. However, one of the Court Recorders left for greener pastures.

9.2 Under JLOS support, the Court received 753 copies of various Law Reports.

9.3 The Judges and staff were trained in various ways by the Judicial Training Institute and other training institutions to enhance their skills. The Court wishes to single out the training it received for Justices and Registrars in Appellate Mediation.

9.4 The Court extends its gratitude to the Training institutions, the trainers and the administration for facilitating the training.

9.5 The Court received several computers from the administration to enable it to improve on its case management.

9.6 The Justices of the Court received laptops and training in computer skills. This has enhanced their skills in the management of computer applications.

9.7 The Court has established the following committees;

- (i) Finance and Welfare
- (ii) Information Technology
- (iii) Rules
- (iv) Peer
- (v) Court Users
- (vi) Library and Training

10.0 Challenges

10.1 During the period under review, the Court encountered various challenges notably:

10.2 Increased volume of work reflected in the numbers of the new cases filed.

10.3 The increase in support staff led to a challenge of insufficient office space, furniture and other equipment.

10.4 The Court lacks space for an archive and the space for the library is inadequate. This has implications for file storage and retrieval, as well as the storage of books.

10.5 Delay of transmission of records from High the Court continues to adversely affect the work of the Court.

10.6 Inadequate remuneration demotivates staff and negatively affects their performance.

10.7 The limited number of trained Research Assistants, Court Recorders and Secretaries poses a serious challenge to the effective performance of the Court.

10.8 Lack of transport for court staff, Registrars and a standby vehicle for the Honorable Justices affects the mobility and timely service of Court process.

10.9 The Justices' Chambers are poorly and not fully furnished.

10.10 The functioning of the various Court committees is constrained by inadequate funding.

11.0 Funding

11.1 The current levels of funding availed to the Court of Appeal is not commensurate to its workload and activities.

11.2 The Court of Appeal, which also doubles as the constitutional court has 3 Registries. However, the Court is treated like a division of the High Court when it comes to funding. For example, a High Court Judge on Circuit on an upcountry session is availed shs. 40M to conduct such a session for about one month. This compares dismally with the Court of Appeal where 3 Court of Appeal Justices, conducting an upcountry session, receive a total of shs. 90 Million for a session of the same duration. Further, a High Court Circuit with one Judge is availed shs. 10-13m for a monthly session but the Court of Appeal, with 12 Justices is given shs. 10m monthly to conduct a session at its headquarters. Yet an Appeal costs a lot of money because of, *inter alia*, the production of records.

11.3 The Court of Appeal submitted a work plan and budget to the administration but these have so far not been executed. On top of the Registrar of the

Court, the Court should be represented by the Chairperson of the finance and welfare committee at the Judiciary Finance Committee meetings.

12.0. Strategies to improve performance

12.1 The Court considers that given its current workload and the backlog, the current ceiling of 15 Justices is still low. The ceiling should be raised by Parliament to at least 21 Justices. Even as Parliament ponders the raise, the Court recommends that the remaining vacant position be expeditiously filled.

12.2 The statistics of the Court show that there is a heavy back-log of cases as well as an increase in the cases filed. The Court should be availed with funding commensurate with its work load, to cater for the increasing volume of work and activities of the Court so as to avoid delays in justice delivery.

12.3 The Court plans to hold more up-country sessions, at

least two in every one of its four circuits in a year for both Civil and Criminal cases depending on the availability of adequate funding.

12.4 The Court plans to continue holding sessions to clear Backlog, subject to availability of adequate funding.

12.5 Management should recruit additional qualified and experience Legal Research Assistants, Secretaries and Court Recorders.

12.6 The administration should avail the Court with transport for process servers (motor cycles) and a service standby van for the Court as a matter of urgency.

12.7 The administration's arrangements to provide adequate office space for Justices, Registrars and other staff should be expedited.

13.0. The way forward

It has been noted that the Court of Appeal is underfunded and understaffed. The Court makes a

legitimate demand to be provided with adequate funds and staff, among other things, if its performance is to continue being effectively and sustainably improved.

14.0 Appreciation

The Court commends the Justices of Appeal for the hard work and team spirit they exhibited during the period under review, despite the challenges and constraints encountered.

14.1 The Court commends the senior management of the Judiciary for their efforts in facilitating the Court's work. Nevertheless, as indicated above there is a lot of room for improvement.

14.2 The Court extends its appreciation to members of the Bar for supporting its work and for their cooperation with it.

14.3 The Court extends its appreciation to the Directorate of Public Prosecutions, the

Inspectorate of Government, the Attorney General's chambers and all the members of the JLOS family for their support to and cooperation with it.

14.4 Last, but not least, the Court extends its appreciation to all its staff at all levels for their hard work and support.

15.0 Conclusion

Let no one be tempted to think that our report is nothing but a catalogue of lamentations.

15.1 It only highlights the reality that it is:

- Grossly underfunded
- Understaffed
- Working in an inappropriate work environment
- Under facilitated in terms of physical infrastructure

- Frustrated by others who fail to give it all the necessary tools to do its work and
- Obligated to entertain work under a somewhat unfavourable legal frame work

15.2 In a nutshell therefore, all we are saying is, in the language of Oliver Twist ***give us some more*** and as Sir Winston Churchill once said ***"give us the tools and we shall finish the job"***

15.3 The Court's challenges notwithstanding, it shall continue to deliver justice to all people in Uganda who come seeking it, with all zeal and resolve at its command and without fear or favor.

The Court extends its best wishes to all the Justices, the Judges, their Worship and all the staff of the Judiciary and indeed all the Court users during 2016.

Thank you for your kind attention.

Steven B. K. Kavuma

**DEPUTY CHIEF JUSTICE/PRESIDENT OF
THE COURT OF APPEAL/CONSTITUTIONAL
COURT OF UGANDA**

