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THEME: 'ENHANCING PUBLIC CONFIDENCE IN THE JUDICIARY'

REPORT BY THE EXECUTION & BAILIFFS DIVISION OF THE HIGH COURT.

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1. INTRODUCTION:

Following the creation of the Execution and Bailiffs Division of the High Court of Uganda under Administrative Circular No.4 of 2011, execution of all decrees and orders made by all the High Court Divisions, as well as High Court Nakawa Circuit, the Nakawa and Makindye Chief Magisterial Areas, the Kampala Chief Magisterial area (Buganda Road and Mengo Chief Magistrate's Courts), and Nabweru Chief Magisterial Area are handled by the Execution Division of the High Court.

The Execution Division is commenced by the decree holder as provided for under the Civil Procedure Act, the Government Proceedings Act, and the Rules made there under. Other Execution orders are also issued as mandated by the circular such as Certificate to Levy Distress under Distress for Rent (Bailiffs) Act and other orders authorized under the aforementioned circular. Ordinarily, one would not have expected any need for a Division of the High Court independent of the Civil Division to deal with matters of execution since execution is in fact the tail end of civil proceedings. Unfortunately however, litigants and their legal representatives have

in the main failed to play by the plain clear rules laid down in the various laws; thus necessitating the response with the creation of the Execution Division.

2. VOLUME OF WORK AT HAND

At the beginning of 2013, 2501 cases had been carried forward from 2012, pending Execution; and this was after 1358 cases had been fully executed and disposed of. As for the year 2013, under review, the table below clearly illustrates per month, the cases registered, those executed and completed, those pending execution, and those carried forward to 2014.

Month	Case B/F	Registered	Completed	Pending Execution
January	2501	69	52	2518
February	2518	158	49	2627
March	2627	199	75	2751
April	2751	239	183	2807
May	2807	284	106	2985
June	2985	222	107	3100
July	3100	287	141	3246
August	3246	203	81	3368
September	3368	259	162	3465
October	3465	277	126	3616
November	36616	307	101	3822
December	3822	368	127	4063

It is therefore apparent from the backlog shown in the diagram above that there is something wrong about the execution process. It is this

that necessitates an approach that rises to the occasion to restore order and sanity in the twilight of the litigation process.

Upon the current Head of the Division assuming office, he convened a useful dialogue meeting with members of the law society and representatives of the police, at which useful views were shared to find ways and means of ensuring that the execution process enables a successful litigant to realize the benefits of the decree, while mindful of the need to have execution carried out with a humane face. To this end, the approach pursued by the Head of the Division from September 2013 when he assumed office has witnessed out of the 97 Misc. Applications made to the Judge, 51 Misc. Applications have been disposed off, while 46 are pending hearing and disposal.

A number of the applications have been promptly and decisively determined, while others have been thrown back to the parties to pursue an amicable settlement with the guidance of the need for humane handling of matters of execution.

3. CHALLENGES FACED BY EXECUTION & BAILIFFS DIVISION:

Execution is the stage when a successful litigant is anxious to realize the fruits of litigation whereas conversely the judgment debtor goes to great pains to avoid satisfaction of the decree. This exerts enormous pressure on the Court which is required to reconcile these competing demands. Particularly the Registrars, who are charged with the responsibility to issue orders for execution, are put to great test; and invariably they bear the greatest brunt of the pressure that come with execution. Complaints and all sorts of allegations of bribery are made by either party because of the decree holder's anxiety to realize the fruits of the Judgment and the strong opposition from the judgment debtor. However, we have endeavoured to deal with the situation albeit the continuous attacks by errant advocates and Court

Bailiffs who exhibit the highest level of indiscipline to the detriment of the integrity of the Court.

(i) LACK OF JUDICIAL OFFICERS:

Because of the centralization of the process of execution in the Kampala area, and the attendant volume of cases, this has resulted in a high increase in case backlog. At the moment, there is one Judge (who heads the Division), and two Registrars; namely His Worship Henry Twinomuhwezi and Her Worship Cissy Mudhasi. There is need for more Registrars in the Division as the present two are manifestly overwhelmed by the many cases forwarded for execution from the various Courts named above. This has resulted in the high number of cases pending as per the statistics shown herein above. There is also need for an additional judge in the Division to enable the process move more smoothly in view of the fact that Execution matters need urgent and timely attention.

(ii) UNSCRUPULOUS COUNSELS AND BAILIFFS:

There are cases where counsels have lived short of the ethical standard required of them as officers of the Court; and have acted unprofessionally or with utmost greed. There are equally instances where bailiffs have acted in excess of the powers granted to them in the warrant or with outright defiance of a directive from the issuing Court recalling the warrant issued to them and have instead gone ahead to execute the warrant regardless. All these have invariably resulted in protracted litigation challenging the action.

(iii) MALPRACTICE BY THE BAILIFFS

Bailiffs are debt collectors. Many a time Bailiffs are driven by the need to make as much money as possible out of the execution process. Many of these bailiffs in fact have no clear offices and are housed by law firms. There is need to revisit the criteria for appointment of

bailiffs; and the rules governing their remuneration as debt collectors. It would appear this is an area that has not been given commensurate attention before.

(iv) MOVEMENT OF COURT FILES

There has been an unacceptable practice wherein it was left to litigants to facilitate movement of files from the Courts that issue the decree to the Execution and Bailiffs Division; and yet at that stage the successful party's Bill of Costs was already taxed and that expense is not reflected anywhere. This has always been a recipe for corruption, misplacement of important documents in the files, and other forms of malpractice and abuse; thus leading to complications and aggravation of matters, resulting in endless litigation.

(v) FUNDING:

Funding of the Division is insufficient given the fact that a Judge and other support staff have been posted to the Division. There is need for more funding to the Division to facilitate the Execution process. Execution and Bailiff's Division has increased transport expenses due to files being transported almost on daily basis from every Kampala Court to Execution and Bailiff's Division for Execution. Whenever a Miscellaneous Application or an appeal is lodged, transport costs have to be incurred to return the files to the relevant Courts.

(vi) SUBMISSION OF RETURNS:

There are Bailiffs who fail to submit returns in time after executing, or file any returns at all. This causes falsification of the record mainly by understating the number of cases that have been fully executed. At times, consents are entered into by the parties as to how the decree should be satisfied but without involving the Court in the process for closure of the file hence giving a false statistic of backlog of cases.

(vii) NOTICE TO SHOW CAUSE:

This is an execution remedy which, while necessary at times, is pursued more with an abuse than justification. Notice to show cause against impending arrest for judgment debt should be the last resort in the execution process, after the decree holder has satisfied the Court that the judgment debtor has nothing known for attachment to satisfy the decree. Often judgment debtors are not served with the Notice to Show Cause issued by Court; and yet counsels for judgment creditors falsely allege such service of process, and then request for the issuance of a warrant of arrest. It is this type of unscrupulous practice that results in further litigation in response, thus leading to case backlog and waste of Court's valuable time.

(viii) NEED FOR ADEQUATE COMPUTERIZATION:

The CCAS System is yet to be installed in the Division. Once this is done, it is hoped it will facilitate better follow up of cases before the Registrars and Judge; and thus achieve more efficiency and effectiveness. Work can also be done more economically.

(ix) STORAGE FACILITIES:

Very soon there will be no space for storage of files. Already, most files in the Division are stored on the floor. This therefore calls for urgent procurement of effective storage space and facilities. Worse still, the Division's Registry is in the vicinity of the toilets which is vulnerable to flooding; thus exposing the files, computers, and other vital items such as Land Titles, Motor Vehicle Log books, Passports, Laptop, Computers etc kept in the Registry at risk of defacement or outright destruction from potential water outflow into the Registry.

(x) NON TAX REVENUE RECEIPTS:

The Judiciary's Integrated Financial Management System (IFMS) Network is unreliable as it is at times off. This causes difficulties for the payment of the necessary Non-Tax Revenue by the Bailiffs; and thereby slowing the execution process.

(xi) POLICE AND EXECUTION OF COURT ORDERS:

A number of times, the police have failed to appreciate their role in the execution process. They have arrogated unto themselves the role of interpreters of the lawfulness or otherwise of a warrant duly issued by Court and have on many occasions refused to clear some warrants (especially vacant possession and Attachment) issued by Court and hence offer no protection to the Bailiffs. Unfortunately they do this without recourse to the Courts that have issued the warrants. This leaves no option to the Bailiffs but to suspend the execution hence slowing down the process considerably.

(xii) POLITICAL INTERFERENCE IN EXECUTION :

The political high and mighty of our society have most unfortunately increasingly interfered with the execution process. Such culprits include Ministers and Resident District Commissioners who get wrongfully involved in issues of execution of warrants for vacant possession, and attachment of property. In his address to members of the Law Society, the Head of the Division urged the advocates to be more vigilant and fight this vice within the provision of the law.

WAY FORWARD FOR EFFECTIVE MANAGEMENT OF DIVISION

- Additional Registrars and an additional judge.

- Ensuring that Bailiffs make return to Court to enable certification of a clear number of cases that have been disposed off and those pending.
- Encouraging parties to pursue settlement instead of endless litigation such as application for stay, setting aside execution or judgment and decree.
- A Police post should be put in place to deal with matters of execution, as this would save time for court bailiffs moving from one police Station to another thus wasting time and escalating costs.

In the end, it is through continuous engagement of the various stakeholders that will make them realize that litigation has to be firmly brought to an end; and that advisably, as the best practice, execution can be carried out satisfactorily but with a humane face.

Thank you.

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JUDGE

HEAD OF DIVISION