

# **JUDGMENT WRITING**

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CONFERENCE AT COLLINE HOTEL MUKONO, 23<sup>RD</sup>  
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# DEFINITIONS

- THE OFFICIAL AND AUTHENTIC **DECISION** OF A COURT OF JUSTICE UPON THE RESPECTIVE RIGHTS AND CLAIMS OF THE PARTIES TO AN ACTION OR SUIT THEREIN LITIGATED AND **SUBMITTED** FOR ITS **DETERMINATION**

# DEFINITIONS

- **ANY DECISION GIVEN BY A COURT ON A QUESTION OR QUESTIONS OR ISSUE BETWEEN THE PARTIES TO A PROCEEDING PROPERLY BEFORE COURT.- Halsbury's Laws of England.3rd edition**

# DEFINITIONS

- THE **DECISION** OR **SENTENCE** OF A COURT IN A LEGAL PROCEEDING. ALSO THE **REASONING** OF A JUDGE WHICH LEADS HIM TO HIS **DECISION**, WHICH MAY BE REPORTED AND CITED AS AN AUTHORITY, IF THE MATTER IS OF IMPORTANCE, CAN BE TREATED AS A PRECEDENT.- ( Osborn's Law dictionary, 7th edition.)

# NOTES

- THE JUDGMENT MUST **COMMUNICATE A DECISION** OF A COURT.
- THE DECISION MUST BE ACCOMPANIED WITH **REASONS**.
- THE DECISION MUST RESOLVE THE **ISSUES/QUESTIONS** IN CONTROVERSY.
- THE DECISION MUST BE **FINAL** ON THE **DISPUTE BEFORE** THE COURT.

# PURPOSE OF JUDGMENT

- **LEGAL REQUIREMENT. See section 133 MCA; 82(2) TIA; Order 21(1) CPR**
- **To determine the guilt or innocence of an accused person.**
- **To settle matters in controversy.**
- **To communicate reasons to the parties for the decision.( public and appellate Court)**
- **To provide accountability by Judicial Officers.**
- **To serve as precedents.**
- **To develop Jurisprudence.**
- **To promote checks and balances under the rule of law.**

# **STRUCTURE OF JUDGMENTS**

- **JUDGMENTS ARE CONSTRUCTED LIKE OTHER PHYSICAL STRUCTURES ON PAPER.**
- **THEY HAVE A FOUNDATION, THE SUPERSTRUCTURE, THE HEAD AND OTHER ACCESSORIES.**
- **BUT UNLIKE PHYSICAL STRUCTURES THAT DON'T TALK, JUDGMENTS HAVE LIFE; THEY COMMUNICATE.**

# STRUCTURE

- **HEADING.** ( Title, Court, Parties, Case number, Judge)
- **INTRO.** ( Facts, issues/ingredients)
- **BODY/SUPERSTRUCTURE.** ( Analysis/Evaluation of evidence, application of the law, resolution of issues/elements, ratio decidendi)
- **CONCLUSION.** ( Decision)



# CONTENTS

- **SEC. 86. TIA; 136 MCA; O.22 R. 4 CPR.**
- **KAGOYE V R (1959) EA 900; OKENO V R (1972) EA. 32**
- **Must be written**
- **Language of the Court. (English)**
- **Points for determination**
- **Decision thereon**
- **Reason for the decision**
- **Dated**
- **Signed.**

# **FINDINGS OF FACT**

- **State relevant facts without detail.**
- **State only facts and history that affects the analysis and decision**
- **Sift the grain from the chuff**
- **Be accurate, precise and impartial**
- **Consult the record to avoid errors**

# **FINDINGS OF FACT.....**

- **Facts be written in chronological order but if complicated, then use a thematic approach.**
- **Point out discrepancies, if any, and make findings of fact**
- **Consider the credibility of witnesses ie body language, audibility**

# **CASE LAW**

- **Kifamute Henry V Uganda. Cr app 10/1997 (SC)**
- **Abdalla Bin Wendo and anr vrs. Rep (1953) 20 EACA. 166**
- **Abdalla Nabulere and anr vrs Uganda (1979) HCB 77**

# **IDENTIFICATION OF ISSUES, QUESTIONS AND INGREDIENTS**

- **ISSUES**
- **Proposition of law or fact made by one party but opposed by the other.**
- **Order 15 rule 1 and Order 12 CPR**
- **Each issue must be stated distinctly.**
- **Issues are of fact or law**

# ISSUES....

- **Issues of law may dispose of the case and may be tried first. ie POs**
- **Issues are now framed at conferencing(O.12 CPR) Note that a PO may also be framed as an issue if it involves taking some evidence.  
Kasibante v Hon. Singh Katongole. El.Petition 23/2011(unreported)**
- **Remember even after taking evidence, additional issues may framed( O.15 Rs. 3&4 CPR)**

# QUESTIONS

- **Questions are similar to issues but usually arise after evidence has been adduced. They are framed during judgment writing. They are sub issues which should be stated fairly and impartially.**
- **They are common in applications supported by affidavits. ( whether an affidavit discloses a source of information, place of deposition, or is based on hearsay.) In criminal cases, they arise from evidence which the prosecution adduces but which the defence denies. (Whether a witness made statements that were not recorded or is giving different evidence.) Contradictions in evidence also raises questions for resolution.( Factors for proper identification)**

# QUESTIONS.....

- **Questions relate to facts unlike issues that may involve law. Eg. Whether the witness could identify the assailant correctly or is honestly mistaken? These are questions of fact which must be resolved in the judgment.**
- **Focus on the questions you have framed to enable parties follow and understand why you have reached that conclusion**



# INGREDIENTS

- **Essential elements that constitute a crime charged.**
- **Every crime except for those crimes of strict liability, have elements for both the mes rea and actus rue.**
- **Ingredients should be stated clearly and fully resolved one by one in logical order to ensure the judgment flows. Remember you are communicating to the parties and other stakeholders.**
- **Should the need arise to reserve a resolution on one element until you have resolved the next, then state so clearly but remember to resolve the shelved issue.**

# **BURDEN OF PROOF**

- **REMEMBER TO STATE CLEARLY AND CORRECTLY WHO BEARS THE BURDEN TO PROVE THE CASE OR ISSUE STATED AND TO WHAT STANDARD.**
- **In criminal cases, the standard is beyond reasonable doubt.**
- **In civil cases, it is on the balance of probabilities with some exceptions where fraud is pleaded.**

# **“BEYOND REASONABLE DOUBT”**

- **“The degree of beyond reasonable doubt is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If evidence is so strong against a man as to leave a remote possibility**

# Proof

- **.. in his favour which can be dismissed with a sentence, of course it is possible but not in the least possible, the case is proved beyond reasonable doubt but nothing short of that will suffice”**
- **Per lord Denning: Miller v Minister of Pensions (1947) 2 AER 372.**
- **Art. 28(3)a Constitution.**

# **APPLYING THE LAW TO THE FACTS**

- **This is the crux of judgment writing.**
- **Evaluation of evidence is done at this stage.**
- **Evaluate the evidence as a whole for both sides.**
- **This is where the ratio decidendi is stated and the case is decided finally.**
- **Judgment should refer to the principles applicable( case law and statutory law).**

# Cont...

- **Each issue or ingredient framed should be disposed of separately though two or more issues may in civil matters may overlap and may be dealt with together.**
- **The demeanor of witnesses is assessed but this should be from notes already recorded.(O.18.r.10)**
- **Clear reasons must be given for the decision and demonstrate that both sides have had their propositions considered.**
- **Do not consider one side in isolation of the other.**

## Cont...

- **Apply only relevant cases and distinguish those you consider not applicable. Avoid loading judgment with authorities. Shah v Aguto (1970) EA 263.**
- **Decide only those issues that dispose of the case. This ensures clarity**
- **Analysis at this stage should be balanced and dispassionate.**

## Cont...

- **At this stage, the judgment should set forth the evidence on each issue sufficiently to show its nature, what it proposes to establish, and its credibility.**
- **Reference should be made to arguments for both sides, apply the law objectively and draw a conclusion on each issue.**
- **For example, in murder and robbery cases that occur at night, the issue of proper identification always comes up. Analyze those factors that**



## Cont...

- **Where there is an alibi, the prosecution evidence should be assessed against the defence denial before a conclusion is made.**
- **It is not enough to conclude that the evidence places the accused at the scene without comparing that evidence against the accused evidence on the alibi. See Moses Bogere's case.**
- **REMEMBER: CONSIDER THE EVIDENCE AS A WHOLE BEFORE DECIDING CASE FINALLY**

# **Evaluation of evidence of identification**

- **“The starting point is that a court ought to satisfy itself from the evidence whether the conditions under which the identification is claimed to have been made were or were not difficult and to warn itself of the possibility of mistaken identity.**
- **The Court should then proceed to evaluate the evidence cautiously so that it does not convict or uphold a conviction, unless it is satisfied that mistaken identity is ruled out.**

# Evaluation

- In so doing the Court must consider the evidence as a whole, namely the evidence if any, of factors favouring correct identification together with those rendering it difficult.
- It is trite law that no piece of evidence should be weighed except in relation to all the rest of evidence.”
- **Bogere Moses and anr v Uganda. Cr app. 1/97 (SC)**

# **Consider questions and defences below.**

- **Admissibility of evidence- hearsay rule. Sec. 59 Evidence Act. Cap 6**
- **Discrepancies, contradictions, credibility and demeanor.**
- **Identification by single witness. Factors for proper Identification**
- **Circumstantial evidence. See Simon Musoke v R.(1959) EA 715**
- **Corroboration. Accomplice, confession, Child evidence, etc**
- **Common intention. Participation or omission to disassociate**
- **Insanity. Complete defence**
- **Intoxication. Qualified complete defence**
- **Mistake. Complete defence**
- **Provocation. Removes malice or intent**
- **Claim of right. Complete defence**
- **Duress. Complete defence**
- **Self defence. Complete defence.**
- **Alibi. No duty to prove alibi**

# REMEMBER

- To decide on each count or charge to avoid omnibus convictions in criminal cases.
- Put a conclusion to the judgment. “The prosecution has proved its case beyond reasonable doubt, I find you guilty of the offence of... c/s... and convict you accordingly”. Or “the plaintiff has proved his/her claim on the balance of probabilities. I, therefore, make the following orders....”

# LANGUAGE AND STYLE

- Judgments have a purpose- to **communicate** to the parties and other stakeholders the **decision** of the Court in regard to the dispute.
- English is the language of Court and its proper use creates good impact.
- Judgments out live their authors. They act as precedents and should carry the message for posterity.
- Judgments should , therefore, be understandable by even those who have lost.

# Language and style

- **Give a brief prologue to introduce the story**
- **Avoid repeating pleadings and the law: set the scene simply and clearly.**
- **Avoid long, winding and boring sentences.**
- **Write in a style you are comfortable with.**
- **Use clear sentence structures and organisation**
- **Identify characters before telling what they did**
- **Use spot citations like exact pages**
- **Be formal, clear, simple and free of jargon. Use plain English. Latin may be used sparingly where necessary and inevitable.**

# Language and style

- **Be concise. Avoid repetitions and overlaps except if it adds colour to style.**
- **Be gender sensitive and avoid prejudices.**
- **Be respectful to the parties and other readers.**
- **Use quotes sparingly and only when they add value and emphasis.**
- **Where possible paraphrase the law or use short quotes**



## Cont...

- **Limit the use of italics for emphasis. Over use means that the reader is not alert enough to see your point without help.**
- **Minimise the use of Latin phrases. The parties and their counsel may not be impressed yet they are the primary target group to receive the judgment.**

## Cont...

- **Even in England the excessive use of Latin, has been a subject of criticism from as early as 1943. In *Ingram v. United Automobile Services Ltd.*(1943) 2 All E R 71 the Court observed “ I think the cases are comparatively few in which much light is obtained by the liberal use of Latin phrases. Nobody can derive any assistance from the phrase *Novus acus interveniens* until it is translated into English”**

## Cont...

- Use of headings in a very involved long trial is advised. Examples are in Election Petitions.
- Use of dramatic statements can be effective in summarizing the situation.
- “ In 1972 a sword fell on the Asians living in Uganda. It was the sword of the President General Amin”
- Per Lord denning in Thakrar v. Secretary of State (1974) 2 All E R. 261.

## **Cont...**

- **Avoid the straight narrative style which never really poses the question to be answered until the end. A judgment is not a detective story; it should consist of posing of questions and thereafter of findings of facts relevant to the questions and the stating of the answers to those questions based on the applicable law.**
- **Avoid the narrative of PW1, PW2, PW3, PW4....stated this..... Don't repeat the testimonies in the judgment.**

# Cont...

- **Use of paragraphs is advised to give readers a break. Long paragraphs are dull to read.**
- **Proper use of Grammar and punctuation shows professionalism and makes writing easier to understand.**
- **Read judgments by senior judges to appreciate the use of style and language in making judgments more professional**

# **Lord Denning, The family story,(1999)p207**

- **“ I start my judgment, as it were, with a prologue- as a chorus does in one of Shakespeare's plays- to introduce the story... I draw the characters as they truly are- using their real names... I avoid long sentences like a plague, because they lead to obscurity. It is no good if the reader cannot follow them... I refer sometimes to previous authorities- I have to do so-because I know that people are prone not to accept my views unless they have support in...**

# Denning

- **the books. But never at much length. Only a sentence or two. I avoid all reference to pleading and orders- They are mere lawyers' stuff. They are un intelligible to everyone else. I finish with a conclusion- an epilogue- again as the chorus does in Shakespeare. In it I gather the threads together and give the result”**

## **Cont...**

- **Write judgments regularly as a way of practicing and perfecting the science and art of writing understandable judgments.**



# **DELIVERY OF JUDGMENTS**

- **Time is of the essence in the delivery of justice. Parties come to Court because they are aggrieved.**
- **Delay in handing down the decision increases their agony and frustration.**
- **Art. 28 of our Constitution requires a speedy trial as part of a fair hearing.**
- **In Uganda, the Code of Judicial Conduct imposes 60 days as the time frame for delivery of the Court's decision.**

# Other Countries.

- **AUSTRALIA.** A judgment must be delivered within 90 days from the closure of the final addresses to Court. Beyond this time, a complaint may be lodged and the judge called to order.
- **PHILIPPINES.** It is a constitutional requirement under Art. 8(15) to deliver judgment within 90 days.
- **GUYANA.** A Judge may be removed from office for persistently failing to write and deliver judgments. Art. 197(3) of the Guyana Constitution.

# Other Countries

- **NIGERIA.** Every Court established under this Constitution shall deliver its decision in writing not later than 90 days after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within 7 days of the delivery thereof. Art. 294(1) of the Federal Constitution, 1999. A judgment delivered after the set time is null and void.

# CONCLUSION

- **A Judge's goal in writing a judgment is to put reason onto paper. The common law system of precedent depends on honest, reasoned, and well written judgments. Judgment writing is challenging. But writing clearly, with an effective structure and style, lets judges leave a lasting trail.**

# THANK YOU

