

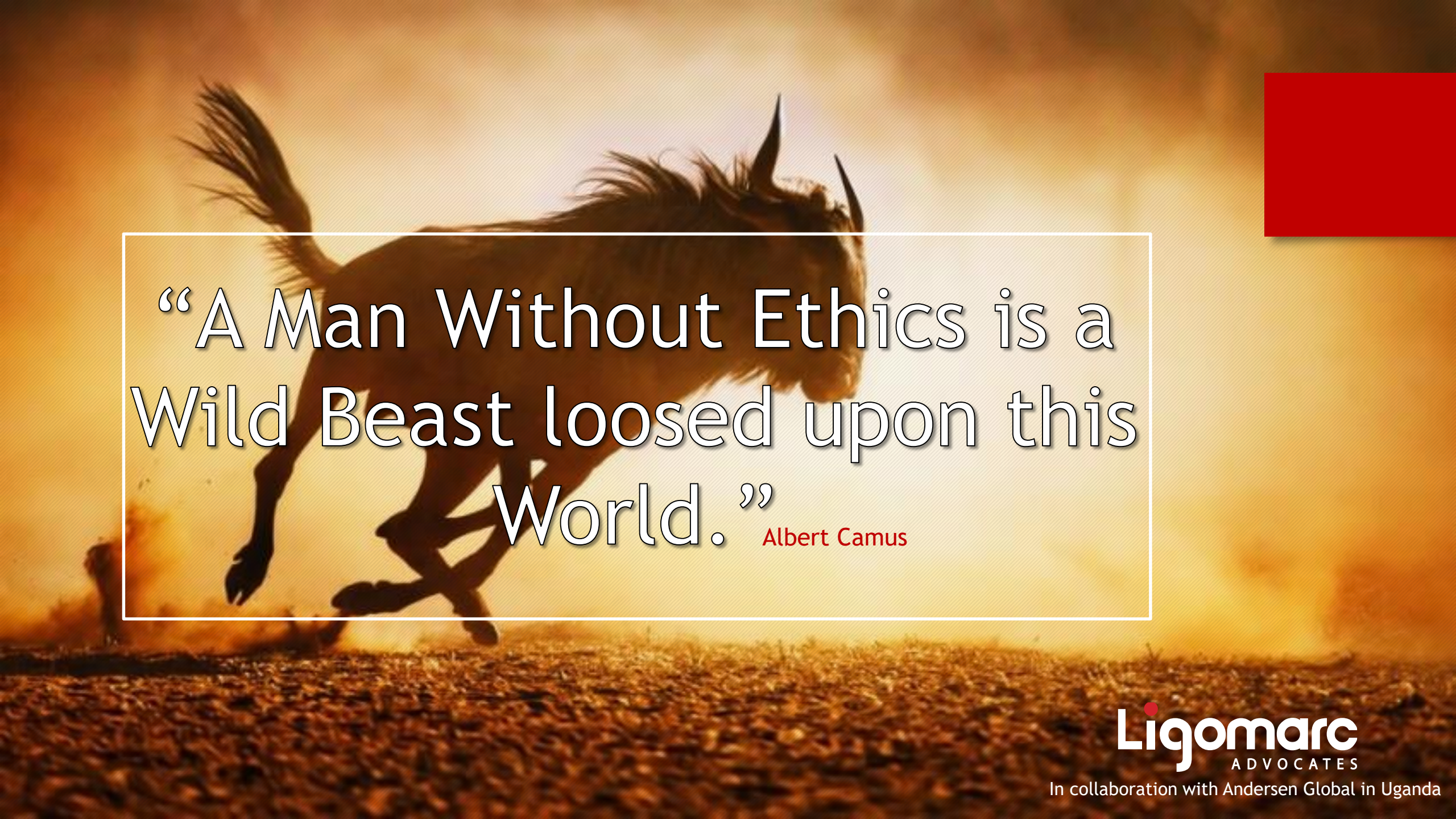
Judicial Ethics

A Presentation made at the 20th Annual Judges' Conference
21 – 25 January, 2018
at Commonwealth Resort Hotel, Munyonyo
Under the Theme:

“An Inclusive Judiciary for Sustainable Development”

By:

Ruth Sebatindira • Partner, Ligomarc Advocates • Member, Judicial Service Commission



“A Man Without Ethics is a
Wild Beast loosed upon this
World.”

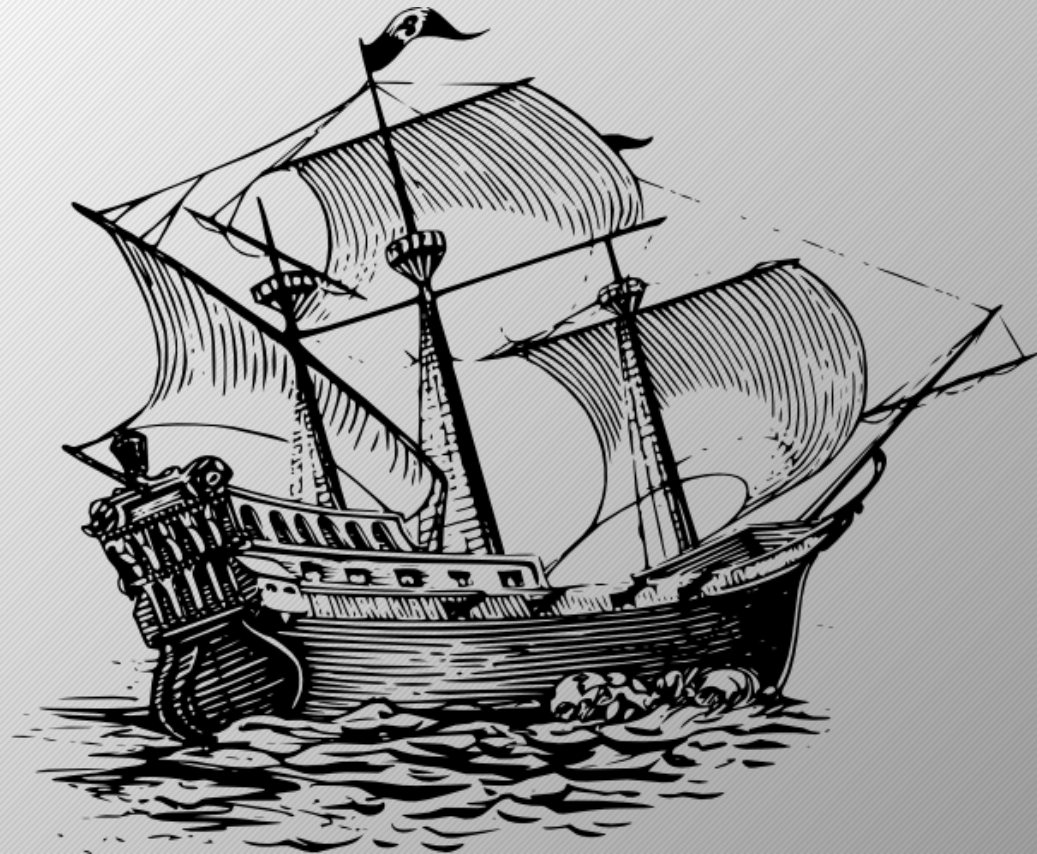
Albert Camus

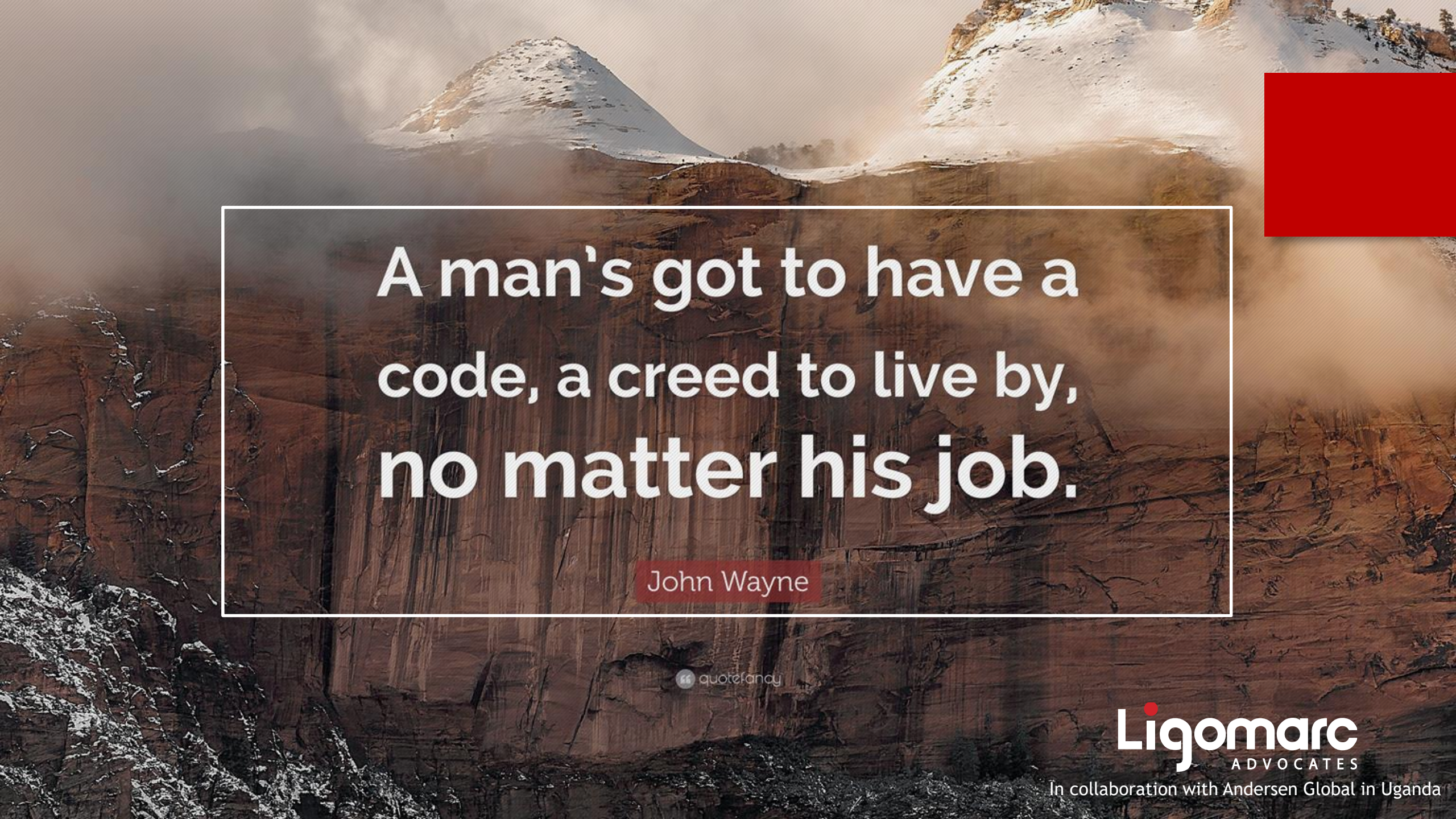
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Creed/Code

- Pirate's Creed
- Assassin's Creed
- Hackers' Creed
- Robinhood





**A man's got to have a
code, a creed to live by,
no matter his job.**

John Wayne

quote fancy

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Judicial Ethics (Definition)

- Unimpeachable character, high integrity and transparency in actions coupled with nobility and dignity.

*Saad Salam Ansari Vs. Chief Justice, High Court Sindh, Karachi.
2006 Plc (C.S)938*

- Judicial ethics consists of the standards and norms that bear on judges and covers such matters as how to maintain Independence, impartiality, and avoid impropriety.

Cornell University Law School. https://www.law.cornell.edu/wex/judicial_ethics

The Laws

- The Constitution - Article 126, Judicial Oath
- Judicial Service Act, Judicial Service Regulations SI 87/05 & 88/05
- Anti-Corruption Act
- The Judicial Code of Conduct



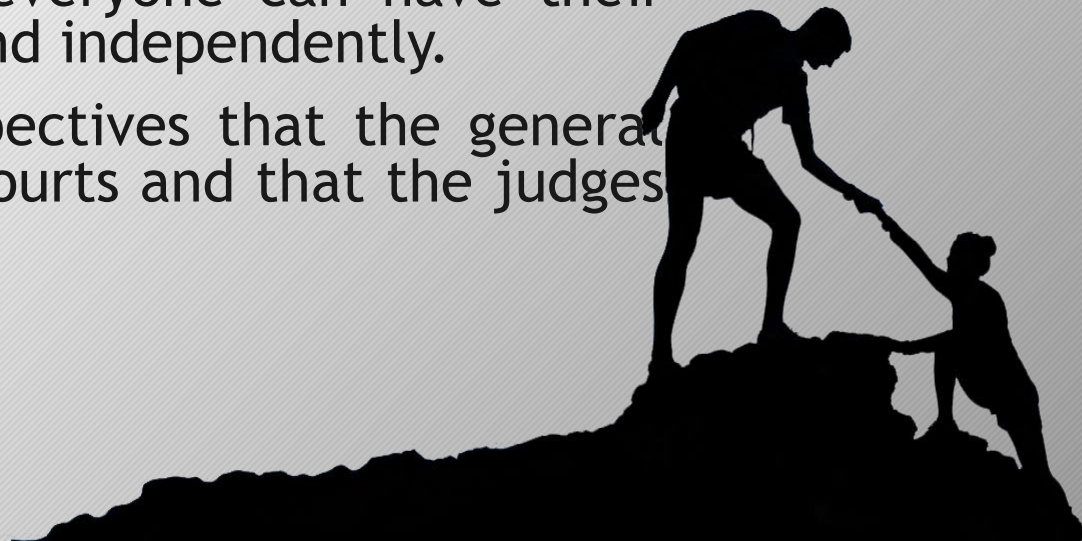
Principles Under the Uganda Code of Judicial Conduct

- Integrity (quality of being honest and having strong moral principles)
- Independence
- Impartiality (fairness, equal treatment of all, no bias)
- Propriety (decorum, decency, respectability)
- Equality (just, no discrimination)
- Competence and Diligence (ability to do something efficiently, with skill, mastery)

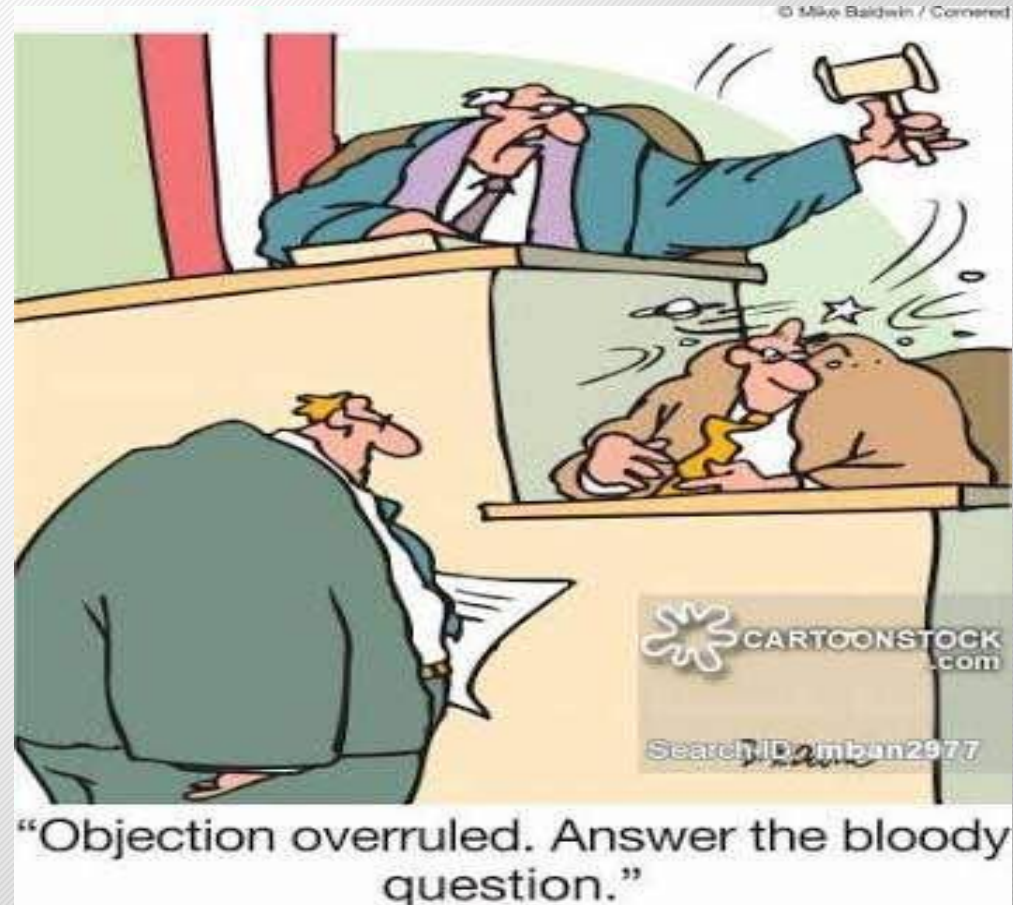


The Power of the Judiciary

- John Marshall said: “*The power of Judiciary lies, not in deciding cases, not in imposing sentences, not in punishing for contempt, but in the trust, faith and confidence of the common man.*”
- The ultimate task of the courts is to maintain the due process of law.
- The courts and judges must guarantee that everyone can have their rights and obligations determined objectively and independently.
- It is vitally important from a number of perspectives that the general public have confidence in the judges and the courts and that the judges and the courts maintain their credibility.



The Power of the Judiciary (cont.)



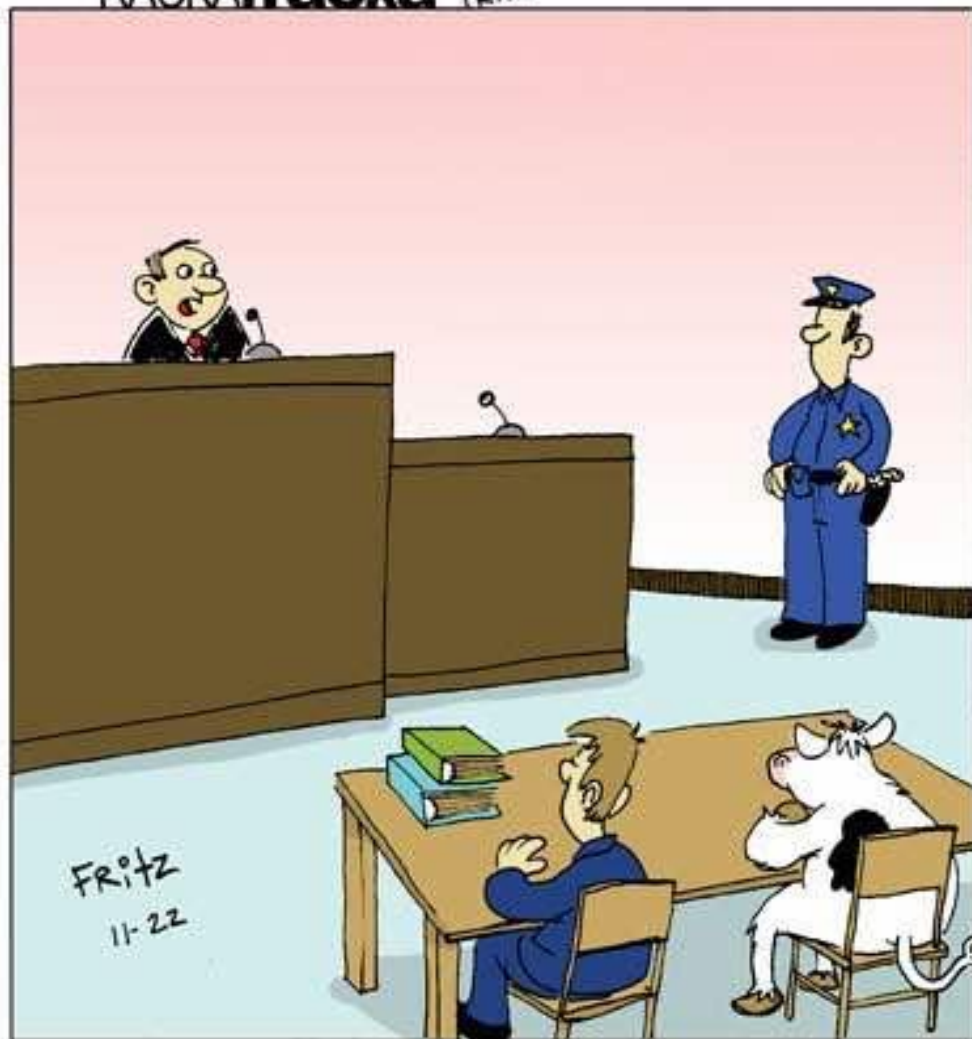


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A judge talks about sentencing

RACKAfracka by Fritz



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BEFORE I READ THE VERDICT, I'D LIKE TO INVITE EVERY ONE TO MY PLACE FOR A BARBEQUE AFTER.

At the Heart of Ethics

- At the heart of ethics is a concern about something or someone other than us and our own desires and self-interest.
- Ethics is concerned with other people's interests, with the interests of society.
- So when a person 'thinks ethically' they are giving at least some thought to something beyond themselves.

Judicial Misconduct Judicial Service Act

- **Judicial misconduct** occurs when a Judicial Officer acts in ways that are considered unethical or otherwise violate the Judicial Officer's obligations of impartial conduct.
- Actions that can be classified as judicial misconduct include: conduct prejudicial to the effective and expeditious administration of the business of the courts



Judicial Misconduct (Cont.)

- using the judge's office to obtain special treatment for friends or relatives; accepting bribes, gifts, or other personal favors related to the judicial office;
- having improper discussions with parties or counsel for one side in a case;
- Treating litigants or lawyers in a demonstrably egregious and hostile manner;
- Violating rules of procedure or rules of evidence;
- acting outside the jurisdiction of the court, or performance of official duties if the conduct might have a prejudicial effect on the administration of the business of the courts.



Common Complaints at the Judicial Service Commission

- Delayed delivery of rulings/judgments.
- Alleged corruption and bribery
- Hiding files in Chambers
- Frequent and unexplained long adjournments
- Laziness and production of poor standards of work.
- Delay or failure to avail certified court records of the proceedings and judgment for appeal purposes
- Abuse of judicial authority(especially during execution processes)



Common Complaints at the Judicial Service Commission (cont. 1)

- Loss or deliberate misplacement of the case files
- Failure to issue official receipt for bail deposits
- Recording on bail bond NC where cash has been paid.
- Delayed visits to locus which has led to delayed justice. Some land matters take over five years awaiting visiting locus
- Contributory scheme where parties are required to contribute towards transportation of Judicial Officers to visit locus.
- Exparte hearings more especially when Misc. Applications are filed



Common Complaints at the Judicial Service Commission (cont. 2)

- Backlog at JSC stood at 650 complaints in 2016 and as at December 2017, 250 files.

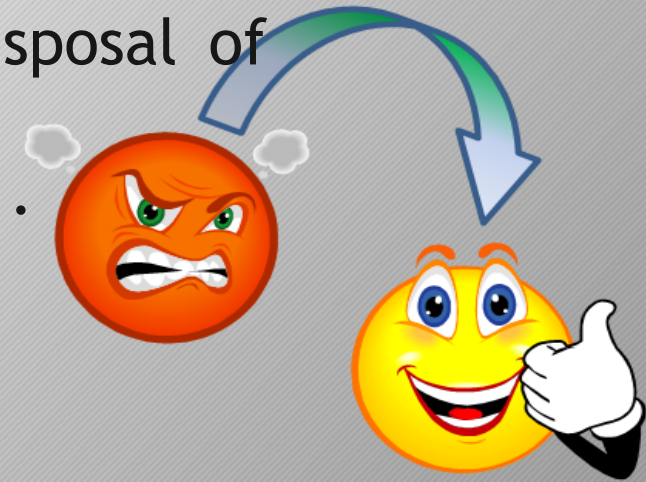
Strategies for clearing backlog

- Disciplinary Committee Retreats. The Committee holds two retreats in a year to stem case growth
- Increasing number of DC meetings from two to four a month.
- Disciplinary Committee increasing the sitting time from half a day to full day.
- Disciplinary Committee has adopted a practice of plea hearing.
- Use of evidence statements to shorten the hearing process.



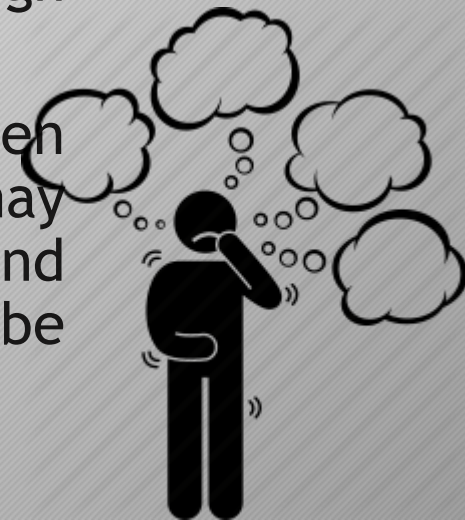
Common Complaints at the Judicial Service Commission (cont. 3)

- Admissibility criteria where complaints that do not relate to judicial misconduct are referred to the relevant institutions.
- Sensitization of the public on complaints mechanism and the JSC mandate.
- Training the JSC staff in investigation skills.
- Interfaces, where you do not have to go through the full trial.
- Review of the JSC Regulations to ensure expeditious disposal of the complaints.
- Automation of the Public Complaints Management system .



Some concerns from the Bar

- **Wasting lawyers/ litigants time.** The judges fixing cases at the same time like fixing 30 cases at 9.00. this causes unnecessary commotion in court corridors.
- **Judicial officers coming to court late**
- Lawyers and litigants travel only to find the judge is not present. Why not inform litigants and counsel in advance? Lawyers thank Mbarara High Court which informs lawyers whenever any of the judges is absent.
- **Judges hiding files,** there is a trend that judicial officers hide files when a party expresses interest to appeal. They fear that their decisions may be overturned on appeal which may affect their performance and promotion. Also, files are kept in Judges Chambers, they cannot be accessed and then the Judge travels



Some concerns from the Bar (cont.)

- **Doctoring the record of proceedings.** Other judicial officers change the record of proceedings when a party has appealed to frustrate their appeal.
- **Abusive in court.** Judges abusing lawyers and litigants calling them of incompetence before their clients; *asking which school did you go to?*
- **Incompetence,** poor grasp of the law and procedure especially by lawyers. Court orders which have been circulating on social media.



Judicial Corruption

- the abuse of entrusted power for private gain
- “Private gain” must be interpreted broadly to include gains not only accumulated by the person in question, but also by his/her family members, close friends, political party, favourite charity, hometown, corporation or other entity in which the judicial officer or their family or close friends have a financial or social interest - Transparency International.



Judicial Corruption



IMPACT OF JUDICIAL CORRUPTION



- Limits access to justice
- Violates the rights to non-discrimination and a fair trial
- Affects fundamental rights such as: the right to life, liberty, freedom of speech and expression, property, freedom of association, thought and religion
- Prevents victims from receiving appropriate remedies
- Allows for public money to be misused, depriving the tax-paying majority of proper state services and investments



- A judiciary vulnerable to financial temptations
- Limited judicial taxes to the public budget
- No money recovered from the corrupt
- Public money embezzled and limited resources for the state to fulfil its obligations towards the citizens
- Prevents investments in a country, especially foreign investments
- Increase economic gaps



- Lack of check and balance system between branches of government
- No rule of law
- No supremacy of the constitution
- No democracy



- Prevents development and innovation
- Generates poverty and inequality
- Prevents social justice
- Erodes public trust in judiciary
- Prevents fair competition
- Erodes the social values and the democratic values
- Corrupt behaviour by judicial officials or tolerance of corrupt behaviour encourage bad practices by state powers, companies and people
- Leads to people taking the law into their own hands, with additional violation of others' rights
- Prevents citizens from participating in democratic processes
- Generates social segregation



- Affects the independence of the judiciary, and makes it susceptible to political interference
- Limits the judiciary's capacity to uphold individual rights, lawfulness and constitutionalism
- Affects the impartiality of judicial decision makers
- Makes the judicial process unfair and leads to an improper administration of justice



**A CORRUPT JUDGE
IS NOT QUALIFIED
TO INQUIRE INTO
THE TRUTH**

HORACE

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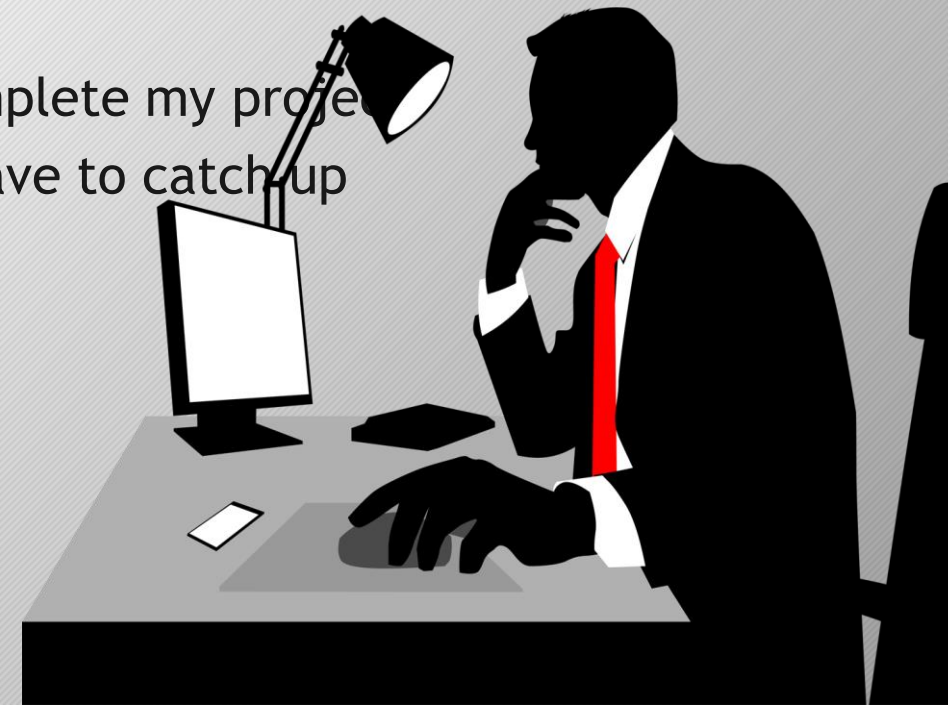


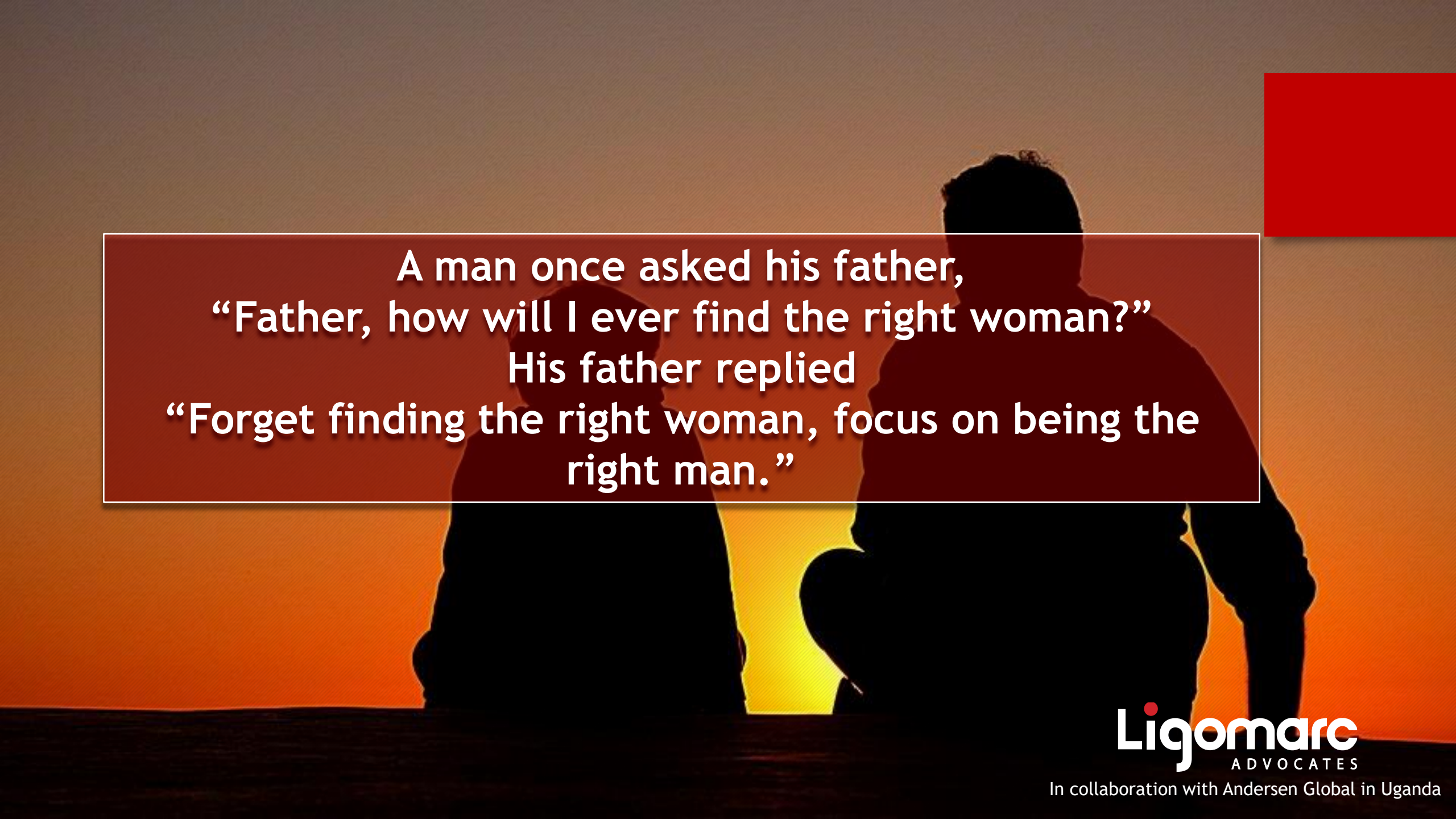
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Rationalizing unethical behaviour

- If you cant beat them, join them
- The Judicial Service Commission is toothless, No complaints against Judges
- It is almost impossible to remove a Judge
- No one will know
- I have school fees to pay, I have a mortgage, I have to complete my project
- My classmates in private practice are more successful, I have to catch up
- My supervisor is doing it, you cant be the only saint
- It is for my community, rotary, church,
- Leaders are not working, are traveling and not supervising



The background of the slide features the silhouettes of a man and a woman standing together, looking towards the right. The background is a gradient of warm colors, from a bright yellow at the bottom to a dark orange at the top, suggesting a sunset or sunrise. A solid red square is positioned in the top right corner. A dark red rectangular box with a thin white border is centered on the slide, containing white text.

A man once asked his father,
“Father, how will I ever find the right woman?”
His father replied
“Forget finding the right woman, focus on being the
right man.”

Questions to ask yourself to see if you are on Ethical Thin ice

- Does your decision conflict with any of the core ethical values
- Think of someone whose moral judgment you respect. What would that person do?
- How will your decision affect others?
- Are my actions legal? Are there regulations, rules, or policies that restrict your choices/ actions?
- Would your decision be perceived as unethical?
- Could you rationally and honestly defend your decision?
- Will you sleep soundly tonight?
- Would you be proud of your choice if your children were to find out? Would you want them to make the same choice?
- what would society be like if everyone conducted their moral selves like you do.



Competence

Creating a Visible Expert

Unconscious Incompetence

You don't know that you don't know how to do something.

Conscious Incompetence

You know that you don't know how to do something and it bothers you.

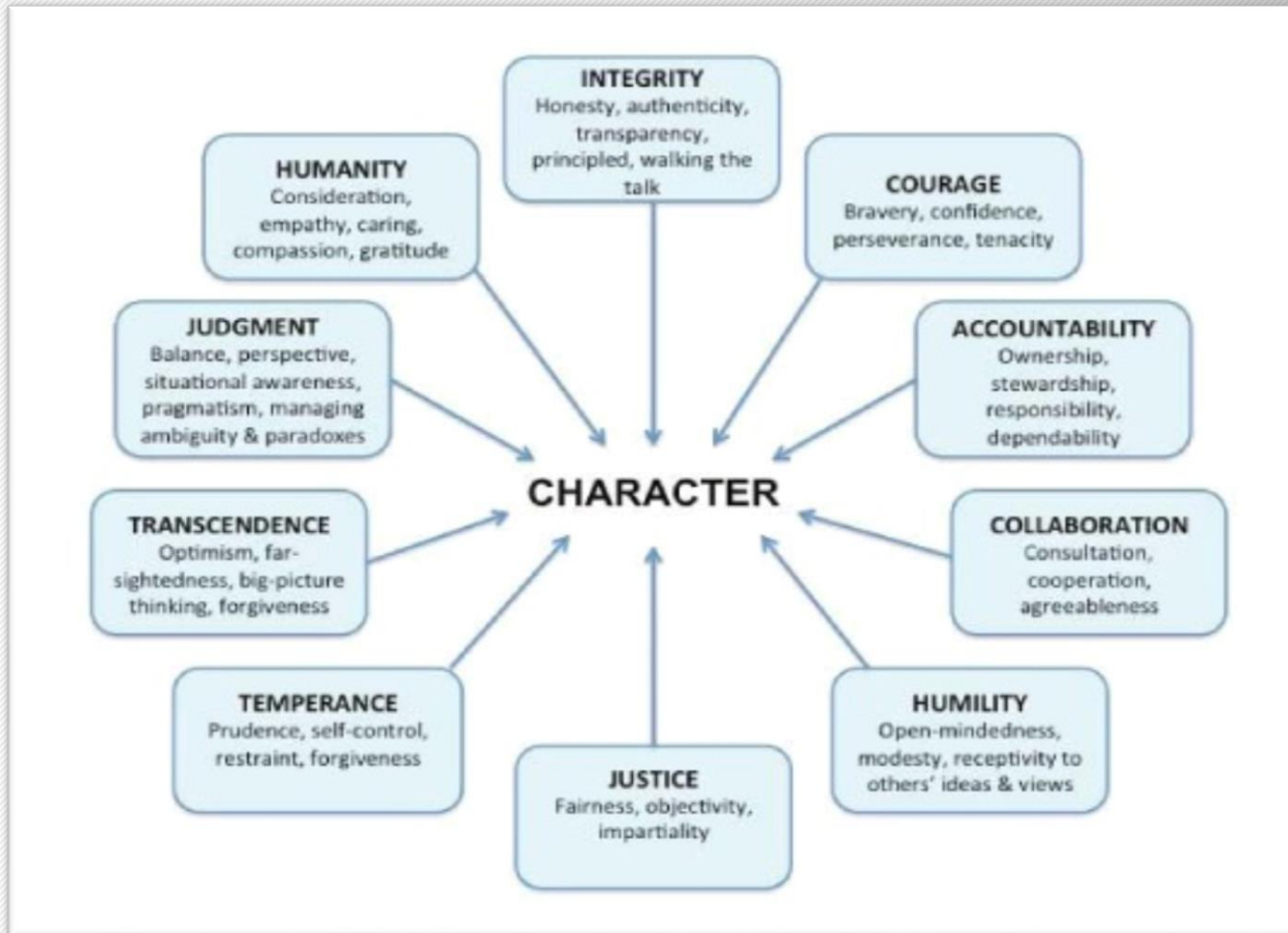
Conscious Competence

You know that you know how to do something and it takes effort.

Unconscious Competence

You know how to do something and it is second nature; you rock at it.

What is Character



What Good Character Does

Good character . . .

- Attracts the trust and respect of other people.
- Allows you to influence others.
- Changes your perspective about failure.
- Sustains you through difficult times or opposition.
- Improves your self-esteem, self-respect, and confidence.
- Creates a foundation for happy, healthy relationships.
- Helps you stay committed to your values and goals.
- Improves your chances of success in work and other endeavors.

Living an Ethical Life

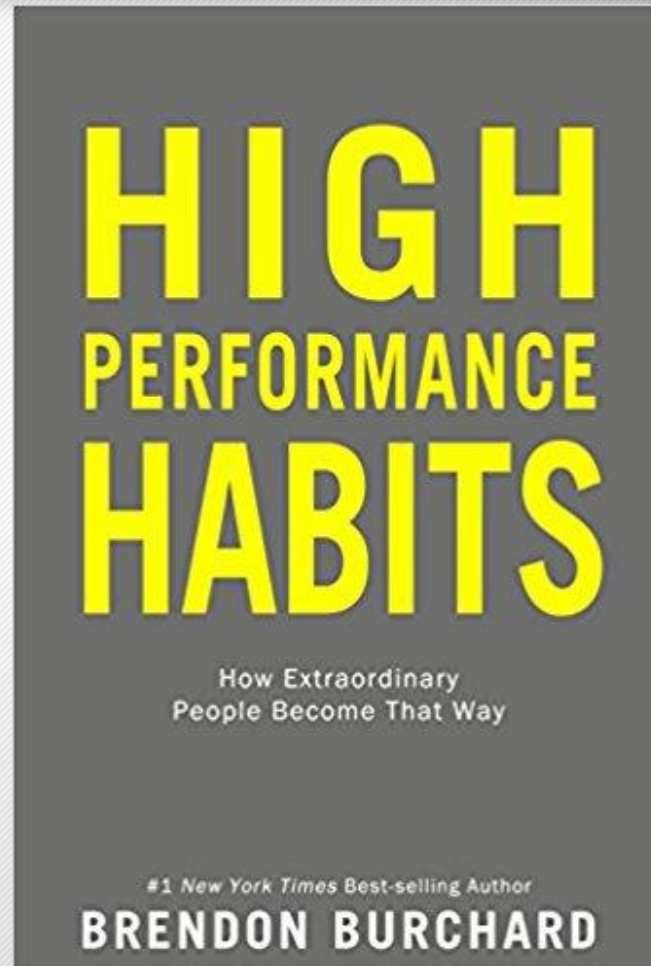
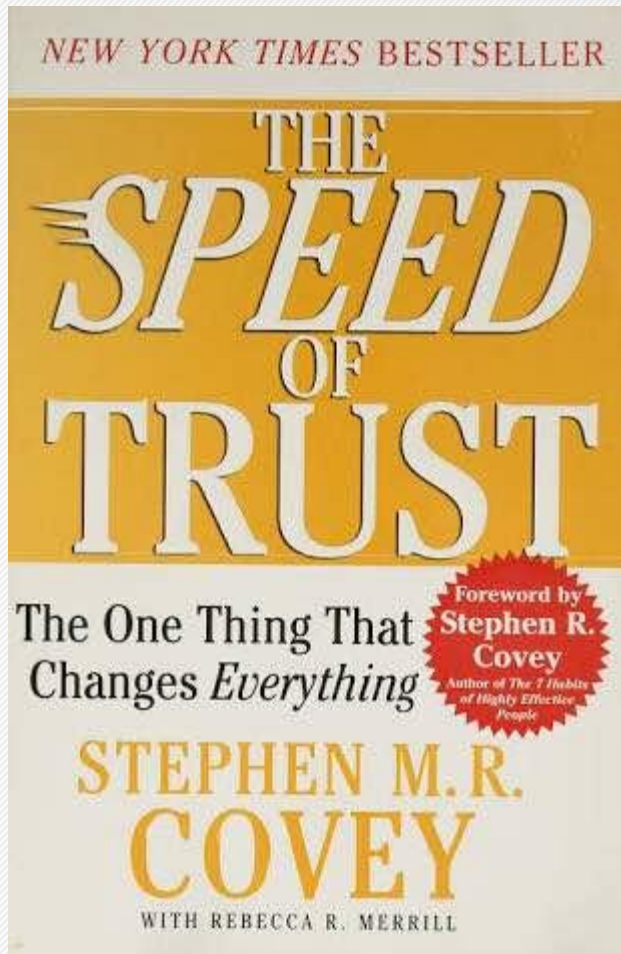
Acts attributable to official functions as a Judge	Concerning his conduct while in public glare	The expectations of him during his private life
<ul style="list-style-type: none">✓ Faithful to the constitution✓ Adjudicate without fear or favour, affection or ill-will✓ Even-handed✓ Consistent✓ Open mind✓ No room for personal idiosyncrasies✓ Apply law as established✓ No personal whims or caprice✓ Consistency✓ Compliance with procedures✓ Thorough, studious, prepared & well conversant	<ul style="list-style-type: none">❖ morally right❖ Just❖ Fair & impartial❖ Merciful❖ Decisive❖ Exact❖ Upright❖ Resolute❖ Diligently & faithfully❖ Uninfluenced❖ Open court❖ Full control & command❖ Fully committed	<ul style="list-style-type: none">➤ shun social interactions➤ Transparency➤ A judge remains judge 24 hours a day➤ Cherish solemn duty➤ Calm➤ Resolute firm in control➤ Polite & considerate➤ Accountable➤ Humane and considerate➤ Non partisan➤ Above narrow consideration➤ Financial or property transactions no nexus with official dealings➤ Behaviour role model

Become Solid

“I am inviting you to go deeper, to learn and to practice so that you become someone who has a great capacity for being solid, calm, and without fear, because our society needs people like you who have these qualities, and your children, our children, need people like you, in order to go on, in order to become solid, and calm, and without fear.” -*Thich Nhat Hanh*



Recommended Reading



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ANY
QUESTIONS?

