A PARADIGM SHIFT IN JUSTICE MANAGEMENT: TRANSFORMING THE JUDICIARY CASE MANAGEMENT SYSTEM

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- I am delighted to have been invited to come and share with you views on the persistent challenges hindering effective service delivery by our judiciaries.
- I do understand that this conference is all out to share experiences especially on the successful steps taken to ameliorate those challenges so far by the participating countries.
- In the context of the conference theme, ***Transformation of the Judiciaries in East Africa for improved service delivery,*** one sees the need to move away from the status quo. A number of questions come to mind:
- What is the unsatisfactory situation that needs changing?
- Who considers it unsatisfactory?
- What are the undesirable effects of the situation?
- What situation is wanted?

- Who would benefit from it and how?
- What kind of resistance might there be?
- What does the resistance mean?

What then is the status quo?

- Courts are overcrowded.
- Disputants are angry about long court delays.
- Litigation costs are skyrocketing to the extent that justice is truly for the rich.
- The future of business and employment relationships is at stake.
- Commercial litigation is becoming more and more complex.

- For years, those who manage conflicts have questioned the efficiency of the adversarial system. Truth be told, adversarial advocacy is not really an inquiry into the truth. While judges will seek out the truth as best they can, the advocates' mission is most times different: use their skills to test the evidence, and to control the way the evidence emerges. Stifle the truth, if they can. May be it should not be so. But truth be told, that's what happens.
- When all is said and done, litigants want their disputes resolved fairly and speedily. But what do they get in the end? Protracted and expensive litigation, which a lot of them rarely understand or appreciate.

Common Judiciary challenges include:

- Limited personnel
- Absence of a robust case management system,
- Shortage of resources; and
- General inefficiency in the administration of justice.

- To meet these demands, dispute managers everywhere are re-engineering and developing dispute resolution strategies that provide litigants with better ways to resolve their disputes.
- ***Transforming the Judiciary case Management System,*** in the context of this conference, simply means that judicial officers themselves must be the change managers.
- From experience, litigants world over want their conflicts resolved quickly and fairly. They want a process which they understand and can control. One such process is **Mediation**. The other is **Plea Bargaining**. I will also comment on **Small Claims Procedure and Sentencing Guidelines** and thereafter shut up.

1. Mediation

Mediation in this country dates back to 1996.

When the Commercial Court opened its doors in 1996, there was a lot of excitement not only from the Judiciary but also from the business community and development partners. However, the new Commercial Court was suddenly faced with new challenges and among them was the emergence of a heavy case backlog.

Case backlog had been a factor to reckon with in all the courts but it could not be allowed to cripple the newly created Commercial Court. The Judiciary therefore undertook various innovations to deal with this problem. One of the measures adopted was the introduction of **Alternate Dispute Resolution (ADR).**

In 2003, the Judiciary launched a two year pilot project at the Commercial Court Division to introduce compulsory court annexed mediation.

The effect of the Pilot Project (2003-2005) was to make mediation an integral part of the Commercial Court case administration system.

Under the rules promulgated in 2007 mediation became a permanent feature of the Commercial Court processes and the Court became a multi-door Court house where mediation was to be attempted by all parties before a case could be fixed for hearing. The objective of introducing ADR was to assist in the efficient and effective dispute resolution and disposal of cases at the Commercial Court.

The rationale of introducing pre-trial protocols was based on the fact that the gap between filing a case and the time when the case comes before a Judge for hearing can be between 3 to 4 months and sometimes longer and during this period an attempt to resolve the dispute through mediation could be done.

In 2010 it was evident that the Commercial Court had achieved its objectives and in the process it had developed some of the best practices of Court Annexed Mediation in the African Region and far including Malawi, Zambia, Nigeria, Lesotho, Ghana and South Africa etc.

The Uganda Commercial Court has in one way or another helped these countries to open their own commercial courts modeled on ours.

In 2010 the Judiciary decided that time was ripe enough for the rolling out of the best practice of mediation to all courts. The then Registrar Mediation was tasked to come up with the new rules.

The effect of the rules made in March 2013 is that mediation is now mandatory to all civil actions filed in or referred to the High Court and any courts subordinate thereto. Of recent mediations are even under consideration in the Court of Appeal and Supreme Court.

Today, mediation may not be the answer for every dispute. However, parties in a settlement have a better chance of reconciling, and even carry on a productive relationship.

- The parties have control over outcome of dispute and settlement terms.
- Saves costs and time.
- More opportunities to explore options and develop creative and programmatic solutions.
- Improves relationships.
- Privacy and confidentiality.
- Without prejudice to other dispute resolution processes.
- Informal and flexible process.

In short, if there is any dispute resolution strategy that provides litigants with better ways to resolve their disputes to avoid stress, that strategy is mediation.

From our internal sources, of the 1210 cases that were referred for mediation in the budget year 2015/16, 671 had successful outcomes, equating to 55.5% success rate, while 539 were unsuccessful.

2- Plea Bargaining

2.1- In the spirit of the Constitution which calls for speedy

trials of accused persons, we have introduced plea bargaining with the objective of enhancing the efficiency of the criminal justice system.

The message under the policy of plea bargain is that whoever is ready to admit his/her offence, **voluntarily** and **genuinely**, will have his/her trial fast tracked, as an exception to the general principle or "first in prison, first out of prison".

The truth, as the Bible says, sets people free.

2:2- What is Plea Bargaining?

Negotiation between the prosecution and the defence – for a possible less severe sentence.

This pre-supposes that one admits guilt, voluntarily and genuinely, and all he/she looks forward to not so harsh a sentence.

God is pleased with those who admit their mistakes and confess their sins and the public is happy when those who committed offences own them up.

2:3- Our appeal to the victims, relatives of victims, the community and all those offended by their acts is to forgive them and receive them back in society after serving the sentence. We take the gesture of pleading guilty as evidence of deliberate amends with victims of wrongs.

2:4- Our appeal to offenders is that they do not commit offences again. It has happened to them once, let it never happen to them again. Respect for life, respect for children, respect for the elderly, and respect for other people's hard earned property are matters we stress to in-mates before they sign in.

Even with a heavy bargained sentence hanging over an offender, he/she should never lose hope. They can still be a blessing to society.

2:5- Truth be told:

Society feels good when its members participate in decision making. The process is more transparent than the conventional one which can easily be corrupted. Reintegration is easier after serving sentence.

Less inclination to appeal, since the agreement is reached with everyone's participation and consensus. Currently there are many appeals in Court of Appeal, over 6000. It is not uncommon for appellants to serve their full sentences before their appeals are reached.

And they can predict and actually decide when to rejoin their families.

Word of caution. Much as it is true that Judiciaries are underfunded, face human resource constraints; and there are endemic delays, plea bargains should never be dished out merely to save court's time and/ or reduce backlog, all at the expense of justice. Negotiations ought to be tightly controlled and principled. Both sides must negotiate for a 'winning deal'.

The Judiciary

PERFORMANCE UNDER PLEA BARGAINING FROM 2014 TO DATE

S/No.	Circuit	Committals for 2014	Plea Bargains for 2014/15	Committals for 2015	Concluded Plea Bargains for 2016 as at August, 2016	Pending Plea Bargains
1	Nakawa(Now Dissolved)	1,044	518	1,000		NIL
2	Mbarara	920	250	895	164	150
3	Jinja	845	130	950	22	NIL
4	Mubende/Kiboga		100		100	60
5	Masaka	478	35	432		NIL
6	Kabale	379	18	325	28	40
7	Fort Portal	377	67	613	250	150
8	Soroti	281	97	301	60	40
9	Gulu	364	120	458	40	NIL
10	Criminal Division	586	155	691	80	150
11	Mbale /Tororo	379	165	524	218	100
12	Lira	218	47	405	17	NIL
13	Masindi	432		458	22	NIL
14	Arua	344		500	28	40
15	Mukono				53	150
16	Mpigi				26	25
17	Arua				39	
	Total	6,647	1,702	7,552	1,147	905

Note:

Total Number of cases concluded through Plea Bargaining from May 2014 to August 2016 is 2,604. This means that without the Plea Bargaining intervention, the total number of committals pending trial would be 10,156 as at January 2016. This accounts for 13% reduction.

In addition, as at January 2016 the total number of committals was 7,552, Plea Bargaining has reduced this number by 902 cases accounting for 12% reduction. Assuming the 730 cases are cleared before the end of the 1st quarter the percentage in reducing the number of committals will increase by 11%.

Plea bargaining is a winner. Ordinary trials are expensive, time consuming and full of surprises which do not enhance confidence and trust in criminal justice.

3. The Small Claims Procedure

3.1 The Uganda Judiciary introduced the Small Claims Procedure (SCP) as a means of enhancing access to, and speedy dispensation of, civil-commercial justice. The SCP is aimed at strengthening the administration of justice and contribution to Uganda economic development.

3.2 The procedure was established under the authority granted to the Chief Justice in section 41 of the Judicature Act. Under statutory Instrument No. 25/2011, the Judiciary established the SCP that came into force on 30th May, 2011. Judicature (Small Claims Procedure) Rules 2011. The Jurisdiction of the SCP is limited to cases where the subject matter does not exceed Uganda shillings (Ush) 10 million.

3.3 The SCP as a case management strategy is expected to contribute to the Judiciary's

mission to establish an independent competent, trusted and accountable judiciary that administers justice to all. The SCP also aligns with priorities in Uganda's National Development Plan which plan stresses access to justice for accelerating growth and development.

3.4 The SCP minimizes legal and procedural technicalities, introducing new roles for magistrates as inquirers and mediators, excluding technicalities such as cross examination, and including increased informality and an emphasis on mediation within the proceedings. The type of civil-commercial disputes dealt with by the SCP include: failure to pay rent; supply of goods (for example faulty goods, failure to pay); supply of services (for example unsatisfactory supply or failure to pay); and loans (failure to repay).

3.5 The SCP was piloted in 11 Magistrates courts; initially piloted in six Chief Magistrates Courts (Mbale, Lira, Arua, Kabale,Mengo and Masaka), it was later expanded to include other Magistrates Courts. Many Grade 1 magistrates have received training in the procedures in preparation for roll-out. The Judiciary is in the process of rolling out SCP nationally.

The average span of such a case in the system is now 2 weeks.

4- Sentencing Guidelines

In 2001, the Justice Law and Order Sector through the Uganda Law Reform Commission undertook a study on reform of the law on sentencing. The study established wide inconsistencies and disparities in sentencing by judicial officers and recommended enactment of sentencing guidelines to promote uniformity and consistency in sentencing.

Against this background the Chief Justice constituted a committee chaired by the Hon. Principal Judge to develop Sentencing Guidelines. The Committee undertook nationwide consultations and made proposals that informed the enactment of the Constitution Sentencing Guidelines for Courts of Judicature, Legal Notice No.8/ 2013.

These guidelines are now in place and they have helped a lot in promoting a uniform approach to sentencing. They have improved the image of the Judiciary and consequently trust and confidence in the administration of criminal justice.

In addition, the Chief Justice has now established a Sentencing Guidelines Committee also chaired by the Hon. The Principal Judge to among other functions, conduct public awareness on sentencing and establish a research, monitoring and development program on sentencing and their effectiveness.

Hanging Fruits of the reform process.

In comparison to other jurisdictions, Uganda has risen in the index of Judicial Independence from 2.8 in 2014/15 to 3.41 in 2015/16. The Country's overall ranking has also improved from position 128 out of 144 countries in 2014/15 to 91 in 2015/16. This is reported in the Global Competitiveness Report of 2016. The World Bank Doing Business Report also noted an improvement in the Doing Business Index from position 135 in 2014/15 to 122 in 2015/16. These improvements in the global perception of Uganda indicate that our reforms are beginning to bear fruits.

In local talk the reforms are real game changers in as far as transforming the judiciary case management system is concerned.

I thank you for listening to me.

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