

**PERFORMANCE MANAGEMENT AND  
JUDICIAL PRODUCTIVITY IN THE HIGH  
COURT**

**Paper presented by**

**The Hon. The Principal Judge of the High  
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## **Introduction**

I have the pleasure to welcome you all to this Annual Judges' Conference.

The beginning of a new year fills us with hope. Like a birthday, it invites us to reflect on our past, imagine a better future and rise to a new level of expectation and determination.

The end of year 2010 saw the retirement of the former Principal Judge, Hon. Justice James Munange Ogoola, and my appointment as his replacement. As the new Principal Judge, I have had occasion, in various fora, to articulate my vision of the future work and operations of the High Court and the Magistrates' Courts of Uganda. In this connection, I hope to concentrate on consolidating reforms initiated by my predecessor in a bid to promote efficiency, effectiveness and specialisation in the administration of justice.

The content and extent of the reforms which I am spearheading are wholly in accord with the overall strategy and vision of the Judiciary which is: Justice for all. My own vision, is of a strong and independent Judiciary that delivers and is seen by people to deliver justice to all, and that contributes to the economic, social and political transformation of society based on the rule of law.

## **Performance Management**

Performance Management is a modern strategic and integrated approach to delivering a sustained access to an organisation by improving the performance of the people who work in them and by developing the capabilities of teams and individual contributions.

It is, so to speak, a process of establishing a shared understanding about:

- What is to be achieved?
- How it is to be achieved.

It is an approach to managing the human resource that increases the probability of achieving success.

In a nutshell, the performance management system is intended to link employees' activities with organisational goals. From the Conference programme, we shall be getting an expert on this subject.

However, suffice it to say that performance management includes:

- An agreement with staff about vision, aims, objectives and strategy
- Establishing a positive culture
- Putting in place a sound business planning system
- Effective leadership
- Clear targets and budgets cascaded down to individuals
- Monitoring and appraisal systems
- Training and development programmes
- Well thought out rewards linked to performance

The essential elements of performance management include:

- Effective business planning
- Top management leading by example and using the processes to set targets and to drive the business

- Well developed monitoring arrangements concerned with performance improvement
- Well developed appraisal systems

It is team based and concerned with the development of the organisation. It requires:

- Top management commitment
- Visionary leadership at all levels
- Patience
- Desire to change

All these are ideals which I am pursuing and will continue doing so during my term of office. In the case of the High Court, its work and operations are concentrated in the Divisions as its basic administrative and professional Units. The Divisions have overtime evolved into fully fledged specialised units, with clearly demarcated jurisdiction concerning the nature of their work.

Until recently, most judicial staff thought that their responsibility was only in respect of judicial work. They did not take keen interest in administration. Not any more. Just as we cannot afford a shallow performance in the judicial work, judicial officers in position of management cannot avoid administrative responsibility.

In the period under review, I have empowered Division Heads and their Deputies to exercise a good measure of administrative powers and responsibilities which were previously the preserve of the Principal Judge.

I am in the process of issuing suitable instruments for the formal devolution of these functions. In the meantime, Registrars who are shielding Heads of Divisions and Circuits from attending to the concerns of litigants are on the wrong side of history.

Each Division (there are 8 in number) is now equipped with a Registry, its own working space, filing and individual case numbering system. I hasten to add that currently the concept of Divisions only operates at the High Court headquarters in Kampala. It is yet to be rolled out to up-country High Court stations. With increased personnel, I intend to extend the concept to up-country stations, with the Division Heads at Kampala becoming responsible for supervising the corresponding operations in Circuits as well.

I intend to ensure that different registers be opened at Circuit level for different causes of action in accordance with the existing Divisions.

### **Alternative Dispute Resolution (ADR)**

All High Court Divisions and Circuits have been implored to explore the use of ADR. Although the rules provide for the application of ADR, many Magistrates do not apply it. It is high time all Magistrates Courts across the country began to use ADR more actively. In the year under review, ADR has been applied extremely successfully in the Commercial Court. It has been found to be an excellent and reliable tool for quick resolution of disputes. It has drastically reduced litigation expenses, for both the litigants and the lawyers. It has in turn increased the litigants' level of satisfaction with the end results of their disputes.

Relying on the use of ADR and funding from JLOS, the Commercial Court has continued to work tirelessly on the reduction of its backlog of cases. It is in light of these achievements that we have decided to roll out the Commercial Court reforms and innovations to all other Divisions and Circuits of the High Court. Training was successfully done in the Family Division in the period under review. Plans are in final stages in Civil and Land Divisions.

### **Case backlog reduction**

I have already indicated that performance management requires effective business planning. When we realised that backlog had become a real problem, we strategically devised case backlog reduction as a case management tool.

Within the period under review, and more specifically by the end of September 2011, 102,001 cases had been disposed of against 110,692 cases filed over the same period in all the courts. This translated to 92.14% disposal rate of cases filed.

JLOS launched and implemented the pilot case backlog Quick Wins programme which resulted into drastic reduction in the average length of stay on remand from 27 months in 2009 to 15 months in the reporting period.

At the same time, the ratio of convicts to remands increased from 44.5% to 47% countrywide. Some prisons like Luzira Upper now have more convicts than remands for the first time in many years. Also as a result of the roll out of the Quick Wins programme to lower Courts, there has been a complete elimination of criminal cases older than one year in the Magistrates' Courts countrywide.

On a positive note, the definition of criminal case backlog in Magistrates' Courts has now changed to mean cases in the system that are a year old, thanks to the new approach to performance management in the Judiciary.

I thank their Lordships and Worships for the brilliant performance in the area of criminal justice. We are in the process of doing the same in civil justice. In the period under review, we launched civil sessions in worst hit areas, namely, Masaka, Jinja and Mbale. The results are very encouraging.

## **Challenges**

### **(i) Inadequate Staff:**

The increase in the number of Circuits from 9 to 12 was intended to take services nearer to the people and bring relief to up-country court users. At the moment, however, all Circuits are managed by one Judge yet they are geographically too big to even be managed by only two Judges. With the recent re-constitution of the Judicial Service Commission, it is my hope that new Judges will be appointed so that we revert to the original plan of strengthening High Court Circuits.

### **(ii) Delays in delivering judgments.**

To the dismay of stakeholders, judgments in many instances were in the period under review inordinately delayed, resulting in embarrassing situations for the Judiciary. I have on a one to one basis taken up the matter with the concerned Judges.

In the meantime, I have in the process discovered that some Judges leave stations with unfinished business, and spend years with files without

informing the parties and/or their lawyers or even the successor Judges as to what is going on.

I have impressed it upon all Judges to schedule their work professionally. It is pointless going on criminal sessions and/or hearing fresh cases when there is a heap of unfinished work. It is my hope that come next Annual Judges Conference there will be no mention of 'delayed judgments' as a challenge.

Current position of delayed judgments is as follows:

Criminal Division	: Nil
Civil Division	: 81
Land Division	: 36
Family Division	: 7
Commercial Division	: <u>77</u>
<b>Total</b>	<b><u>201</u></b>

### **Poor Case Flow Management.**

Poor case flow Management is the leading cause of backlog. Case flow management is the process through which a case passes from the time of filing, up to the time of its disposal. In the High Court, case flow management has continued to be a thorn in the flesh because of:

- Failure by the judges to take an active part in the management of cases till time of hearing
- Granting unnecessary adjournments



- Failure to apply rules of procedure consistently and to take advantage of new changes in the law.

The Civil Procedure Rules (the CPR) set out rules that should be applied by the courts. The Rules have provisions, such as 0.9rr.17 and 22; order 17rr.4 and 6; etc, which if applied consistently would contribute to quick disposal of cases. These rules give the courts sufficient powers to manage civil cases, to prevent delays and to avoid clogging the system. However, some Judges have been reluctant to apply these rules, resulting in chronic backlog. On a happier note Judges have this time more than ever before, resolved to be more proactive. Come same time next year, I hope to report a positive change in this regard.

### **(iii) Interlocutory Applications**

Many cases are pending due to the practice of filing multiple interlocutory applications. Much of courts' time is wasted in hearing the interlocutory applications and passing elaborate orders. Simply put, there is over concentration on interlocutory matters to the prejudice of substantive justice. In the most recent meeting with Heads of Division, we underscored the need to adopt a uniform approach to disposing of interlocutory applications. For instance, there is no need for the orders in interlocutory applications to be so detailed and lengthy. They should be brief and to the point. Whenever suits having interlocutory applications come up for hearing, every endeavour should be made to hear both sides and pass orders there and then. We look forward to a time when appeals against interlocutory decisions will be outlawed so that parties appeal only against the final orders in a case. I will be seeking the intervention of the Rules Committee in this regard.

#### **(iv) Part heard cases**

There are Judicial officers who keep a number of part heard cases and they do not endeavour to complete. This normally happens where the officer is at the verge of transfer. In some courts, some part heard cases are left pending for a long time, simply because the Judge who had started on them has not been replaced; and in others some Judges have been reported to pass on the files in which judgments have been pending for a long time to their successors to write those judgments for them. Heads of divisions have been implored to put to end to this practice.

Henceforth, whenever the officer takes charge in the new station, he/she should prepare a list of pending cases in all categories, draft a plan for him/herself and the court, as to how they are going to be disposed of. Heads of Division and Circuits will have to collect the particulars of pending cases in their respective Divisions/Circuits and impress upon those to whom the cases have been allocated to have a planned strategy for timely disposal of cases. In practical terms, Heads of Division will no longer be figure heads, but supervisors and managers in their own right.

#### **(v) Management and administrative skills**

As unit Heads of Divisions or Circuits, it is imperative on their part to call for periodic meetings. In those meetings, the officers under their superintendence are to be impressed upon, about the need for collective responsibility, are to be motivated for higher productivity and ultimately the efficient functioning of the court.

Such meetings help to share common goals and to proceed with time bound plans in the context of the Judiciary vision and mandate.

Units will in such meetings:

- Take stock of the pendency of the cases of each court and reasons for the pendency of the old cases.
- Dialogue with the judicial officers in the Division/Circuits to concentrate on the old cases.
- Know about the requirements of each Division/Circuit rather than to rely on the details furnished by the staff (which are rarely accurate)
- In the criminal cases, non-appearance of witnesses is a matter of concern. Suitable instructions are to be given to judicial officers to insist on the need for the prompt appearance of those witnesses or else termination of the proceedings for being an abuse of the court process.

In similar light, I am of the considered view that Magistrates in the field could benefit more from regular supervision by Resident Judges in addition to the current structures overseeing the conduct of judicial business in the field. I intend to strengthen the role of the Resident Judges as managers in the circuits so that they can take on a pro-active role in shepherding and managing judicial staff and business in the circuits. Under this arrangement, Resident Judges will be expected to hold quarterly meetings with Judicial staff in their circuits to discuss performance related issues and challenges hindering timely provision of justice at the grassroots, conditions in prisons, etc. Judges will also act as mentors and points of first contact to the many

judicial staff in the field. They will, so to speak, be our eyes and ears in the field for purposes of enhancing judicial productivity.

Like in the case of Heads of Divisions, I am in the process of issuing appropriate instruments for the formal devolution of this function.

### **Absence of Performance Evaluation for Judges**

While Judges are independent in performance of their duties, they hold the Office of public trust. We must therefore be accountable in order to enhance and maintain public confidence in the Judiciary. For now the Judicial Code of Conduct lacks sanctions against those who violate it with impunity. Evaluation of Judicial performance is essential for promotion of accountability. I hope that come next Annual Judges' Conference the Judiciary will have in place at least a draft copy of the performance evaluation process crafted by the experts. We shall then request the Hon. The Chief Justice to constitute a *Performance Management Committee to co-ordinate and implement the Performance Management System.*

#### **(vi) Lack of motivation**

Lack of rewards linked to performance has continued to be cited as a hindrance to performance. I welcome ideas on how this can be handled so that we act rather than talk. Motivation should aim at stimulating Judiciary staff to zealously achieve the mission of the Judiciary. In connection with this, I pledge to put in place a *mentoring process* for newly appointed judicial staff, especially High Court Judges, in a bid to link their activities with the Judiciary goals.

## **Conclusion**

The right to a speedy resolution of disputes is a fundamental aspect of justice. Delayed litigation itself constitutes a denial of justice. However, merely lamenting about the problems is not enough. We must be seen to be tackling the challenges mentioned above collectively and aggressively.

I consider the way forward to include:

- Setting of clear performance targets and benchmarks, aimed at boosting judicial productivity at all levels
- Heads of Divisions / Circuits leading by example in setting targets and driving the Division / Circuit business to greater heights.
- More involvement of Senior Managers in the Judiciary in matters of budget and performance evaluations to ensure value for money and spending on core judiciary business, to wit, settlement of disputes in a timely manner
- Rigorous and regular monitoring at all levels
- Ensuring all judiciary staff have real ownership of the Judiciary Strategic plan and are well motivated to implement them.
- Staff personal objectives, targets and development plans.

Once again, our work must reflect our heartfelt response to the core business of Judiciary, to wit, timely dispensation of justice.

I have in this paper concentrated on policy issues. The detailed statistics for Divisions and Circuits will be presented by the Division Heads and the respective Circuit Judges. I expect each Head of Division/Circuit's Personal

Development Plan against which his/her performance shall be measured same time next year.

I thank you for listening to me. Happy New Year and may the good Lord bless you all.