



**POOR PUBLIC IMAGE? DEALING WITH
COMMENTS BY POLITICIANS AND THE
MEDIA**

PAPER PRESENTED BY

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**AT THE
COMMONWEALTH MAGISTRATES' AND JUDGES'
ASSOCIATION REGIONAL CONFERENCE HELD**

**AT
DAR ES SALAAM
24TH – 28TH SEPTEMBER, 2017**

Your Lordships,
Distinguished Participants,
Ladies and Gentlemen,

At the outset, let me begin by expressing warm welcome to all of you who have travelled from all over the world to attend this event.

My thanks also go to our distinguished speakers for their valuable contributions to this conference.

Distinguished participants, Ladies and Gentlemen,

The integrity and independence of the Judiciary has been the subject of attack for quite some time now. When it comes to abusing a judge, there is no first world or third world. All judges seem to face the same challenges wherever they dispense justice from.

So when the organisers invited me to speak on: **Poor Public Image? Dealing with Comments by Politicians and the Media**, I promised to contribute to the debate.

It is obvious that this is a problem that requires a unified approach from all judicial officers all over the world. How do we respond to attacks on the judiciary? Although considerable progress has been made in the fight for judicial impartiality and independence, we still have a lot to do in improving the image of the judiciary. This task is made even more difficult when politics finds its way into the halls of justice.

In the United States of America, President Donald Trump is on record as saying at a White House press conference after the ninth circuit court of appeals restrained his executive order affecting some countries:

“We had a very smooth roll out of the travel ban, but we had bad court. We’ve had a bad decision.”

In Uganda, following on-going agitation of salary enhancement by a cross-section of public servants among them public prosecutors and judicial officers, a government spokesman came out to say- ***“the trend points to a sinister and dangerous political direction, ... part of a wider political scheme to bring down the President’s term prematurely as some opposition elements and their backers have been promising”.***

Closer to home in Kenya, President Uhuru Kenyatta, after losing the just concluded presidential election called the Chief Justice of Kenya and his colleagues, “wakora”, or crooks. Ironically, “wakora” means well done in, Runyankore, my mother tongue.

Only a few of us, if any, may not be aware of politically motivated demonstrations bordering on violence against our brothers and sisters in a neighbouring Republic, clearly intended to intimidate the Judiciary and individual Judges, following the nullification of the Presidential Elections on September 1, 2017.

Politicians world over, have been known to throw cordiality out of the window and to lambast Judges who have delivered decisions against them. But, as custodians of the rule of the law, we must stand steadfast amidst political storms.

The outbursts from the politicians are often picked up by the media (social media inclusive) and this further exacerbates the public scrutiny of the justice system. There has also been a propagation of subjective media comment, including editorials and opinion columns about individual judges and cases, and also about the judiciary generally.

As the immediate former Lord Chief Justice of England & Wales, Lord Judge, told the House of Lords Select Committee on the Constitution on 15th December 2010:¹

“...I think that judges have to face the fact that they live in a very fast-moving information world and that what judges do is a matter of public interest, and sometimes concern..”

Now, whether or not to address such attacks, I believe must remain the prerogative of the judicial officer under fire. However, it is always safer to refrain from public rebuttals most often than not, all has been said in the judgment. But, on the other hand, it is important for all judicial officers to learn that delicate dance with the media. Where you don't say too much lest you're drawn into the crosshairs, and you don't say too little lest you let the riled politicians take the day without a challenge.

In 1989 the then Lord Chancellor of England & Wales, Lord Mackay, issued guidance to judges on how to address media interest in their work in the form of a letter to the Lord Chief Justice. His Lordship, emphasized that it should be left to judges themselves to decide whether, and on what conditions, they should give interviews to journalists or appear on radio or television. The tenets of his letter still hold true.

During the 1996 debate on public controversy and the judiciary in the House of Lords, Lord Irvine, then-shadow Lord Chancellor, said: ²

¹ **Media Guidance for the Judiciary, Including courts and tribunal judges, non-legal members in tribunals and magistrates, published March, 2012 and accessible at <https://www.whatdotheyknow.com/request/125047/response/307849/attach/8/mediaguide2012%201.pdf>**

² **Media Guidance for the Judiciary, Including courts and tribunal judges, non-legal members in tribunals and magistrates, published March, 2012 and accessible at <https://www.whatdotheyknow.com/request/125047/response/307849/attach/8/mediaguide2012%201.pdf>**

“There is a distinction between judicial participation in public controversy of a political nature and the judges’ participation in public controversy concerning the effective administration of justice I think that judges would be wise to confine themselves to controversy about the administration of justice. If they engage more extensively in political controversy, they risk undermining public confidence in their political impartiality.”

Later that year, shortly after his appointment as Lord Chief Justice, Lord Bingham of Cornhill echoed this sentiment when he said:

“I think it is absolutely fundamental that judges should be very careful indeed to make sure that they do not publicly make statements that undermine their reputation for impartiality and neutrality.”

In giving evidence to the House of Lords’ Constitution Committee in 2010, the former Lord Chief Justice, Lord Judge, said: ³

“We have to be very careful not to be seen to be entering into the political arena, so that if a proposal is—if I may put it this way—party-political in the sense that there appears to be a political divide between the Government and the Opposition, we have to be extremely careful and tactful about it, but where there is a consultation paper, there is absolutely no reason why we should not respond to it....We have to be very careful that judges cannot get mixed up in the political process and, more importantly, be seen to have got mixed up in the political process.”

So, whether you are the “I’ll just shut up!” type, or you’re the “let me clear the air” type, these comments and media scrutiny may still affect you and it’s important to learn how to develop a thick skin. We must all learn and accept that just because a politician criticizes a judicial decision you just made, it doesn’t mean that all would have been well if you’d held the other way. Justice usually means that where there is a winner, there is most likely a loser. Eventually, the condemners and nay sayers will move on to some other issue and so you should also.

But, I admit that this may be easier said than done because sometimes we are faced with decisions that may mean life or death for an individual or a country. It is easy for a politician or the public to plant seeds of doubt into the mind of even the strongest of Judges. Research has also found that you are most likely to remember negative criticism than praise.

³ *Media Guidance for the Judiciary, Including courts and tribunal judges, non-legal members in tribunals and magistrates, published March, 2012 and accessible at <https://www.whatdotheyknow.com/request/125047/response/307849/attach/8/mediaguide2012%201.pdf>*

Reputation for a Judge is often more important than money or praise. We must remember that our decisions are not validated by politicians or the public but by the greater purpose of upholding the rule of law and administration of justice. So for me the Chief Justice of Kenya, Justice David Maraga, makes my day when he says: ***“The greatness of any nation lies in its fidelity to the Constitution and adherence to the rule of law and above all, respect to God”.***

Let your decision stand the test of time. Today, you may be the butt of a bad joke, but tomorrow you will be remembered as the Judge who did not waiver in the face of adversity.

You must also remember that human beings, love controversy. Colourful comments from politicians will be shared over and over on social media; many a reader will be ready to offer thought provoking and detailed analyses on the appropriateness of the said politician’s comments.

I would also urge politicians to pause before assaulting and insulting the judiciary and the legal system. An independent judiciary is a crucial component of a free and democratic society. Demeaning statements against the Institution undermine its integrity. Courts of law are last resort for all of us.

In a recent interview⁴, Lord Neuberger properly pointed out that there was nothing wrong at law with the attacks on the courts during the Article 50, Brexit litigation, but there is a concern about the effect on rule of law from unfair criticism. He stressed that the courts are there to decide cases according to the law: that is what they do. His implication is that the ones who are “out of touch” are the ones who do not understand that is the function of the judiciary.

As I conclude, I should also emphasize the need for Judges to bridge the gap between the Judiciary and the public. This may require us to make our decisions more reader friendly and easily understood or to make our judgments more accessible. This may prove essential as when a politician calls you all sorts of names, the public may respond on your behalf.

All said and done, the Judiciary should also learn to leave its comfort zones and speak out when need arises.

We should do a lot of stakeholder engagements, outreach campaigns, radio and Television talk shows and court open days in order to demystify ourselves and to counteract some unfair attacks. A strong communication network in our jurisdictions may be one of our strong points in this endeavour.

⁴ <http://www.bbc.com/news/uk-38986228>

We should respond to situations quickly, honestly and decisively. When dirt is uncovered, it is better to face up the situation so as to restore the reputation.
I thank you.

Hon. Justice Dr. Yorokamu Bamwine

About the Presenter:

- Hon. Justice Dr. Yorokamu Bamwine is the Principal Judge of the High Court of Uganda.
- He is a graduate of Makerere University, Uganda and the University of Sydney, New South Wales, Australia.
- He has keen interest in judicial reforms that enhance service delivery and improved public image of the Judiciary.