POSITIONING UGANDA'S JUDICIARY TO CONTRIBUTE TO SOCIAL AND ECONOMIC TRANSFORMATION

LECTURE NOTES BY:

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ANNUAL JUDGE'S CONFERENCE HELD IN KAMPALA, REPUBLIC OF UGANDA

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EPIGRAM

Alexander Hamilton, who served as the first U.S. (Secretary of the Treasury) from 1789 to 1795 during George Washington's presidency, took on the responsibility of persuading the State's Constitutional Convention to ratify the newly drafted U.S. Constitution. In his argument, he highlighted several key points, including the relative weakness of the Judiciary compared to the other branches of government.

He asserted that:

> *…The Judiciary is, beyond comparison, the weakest of the three departments of power…*

Unlike the Executive and legislative branches, Alexander Hamilton noted that the Judiciary:

> *…has no influence over either the sword or the purse, no control over the strength or wealth of society, and cannot take any active resolution whatsoever...*

Because of this, he emphasized that the Judiciary:

> *...possesses neither force nor will, but merely judgment...*

Ultimately, he concluded that the Judiciary's effectiveness relied entirely on the Executive branch to enforce its decisions.

His Excellency President Yoweri Kaguta Museveni on a statement made on the 21st day of November, 2024 echoed this sentiment in addressing concerns over misappropriation of Parish Development Model (PDM) funds, stating:

> *...I will talk to the Chief Justice and assure him that the country does not belong to the judges and lawyers; it belongs to the people of Uganda...*

His Excellency President Yoweri Kaguta Museveni's remarks like Alexander Hamilton's observations centuries earlier, underscore the delicate balance between judicial authority and Executive power. Despite its structural limitations, the Judiciary can be strategically positioned as a key driver of social and economic transformation.

Early 1968, Dr. Dani Wadada Nabudere discussed the issue of Judicial Independence and in doing so he made a pithy statement in agreement made earlier on by Picho Ali, where he said:

> *…After everything is said, I think we ought to agree – and I here agree with Picho aLI– that there is no such thing as the independence of the Judiciary anywhere[1]. The Judiciary has always been created by the politics of the economic base and not vice-versa. So it is always pointless to talk about the Judiciary sitting in judgement of the economic base and its politics and hence its ideology. To say the Judiciary (should) be at par with the ideology of an independent Uganda is therefore to beg these questions: What is the ideology of an independent Uganda? Who has stated and propounded it? What is its economic base? Why is the Judiciary still colonial-oriented in spite of such ideology (if any)? ...*
>
> *[Dani Wadada Nabudere, 1968: 20] - African Social Scientists Reflections Part 2 Law, The Social Sciences And The Crisis Of Relevance*

[1] Picho Ali, The 1967 Republican Constitution of Uganda (Transition magazine, Issue 36, in July 1968.)

A. INTRODUCTION

The judicial systems of African countries, as we know them today, are largely a legacy of colonial administrations. These inherited structures were designed to serve colonial interests rather than the needs of the indigenous populations. Since regaining independence, Uganda has undergone significant constitutional transformations, reflecting the broader struggle to assert judicial independence while grappling with political interference.

Uganda's constitutional history is marked by key milestones:
i. The 1962 Constitution (Independence Constitution)
ii. The 1966 Constitution (Pigeonhole Constitution)
iii. The 1967 Constitution
iv. The 1995 Constitution (Current Constitution)

Throughout the chequered history of Uganda, judicial independence Uganda has been repeatedly tested, particularly during periods of political upheaval. The 1971 coup d'état and the subsequent military rule of President Idi Amin Dada severely disrupted Constitutional order, with the Judiciary operating under an environment of intimidation and executive overreach. Even after the National Resistance Movement (NRM) took power in 1986, Uganda's legal landscape continued to evolve under significant political influence.

The 1995 Constitution, often described as a "people-driven" legal framework, was an attempt to establish a robust judicial system that could withstand external pressures.

These historical realities underscore a critical truth—interference with the Judiciary is not a new phenomenon. From colonial times to post-independence Uganda, the struggle to maintain judicial independence has been an ongoing battle. Understanding this historical context is essential in addressing present-day challenges and positioning the Judiciary as a key driver of social and economic transformation.

The claim that the Judiciary is truly independent is difficult to sustain in light of its colonial origins and continued political entanglements. African judiciaries are entangled in a history of inherited legal regimes right from Dutch Roman Law to English Common Law. The legacy of English common law, as articulated by Lord Atkin and Lord Denning, underscores the difficulty of adapting a foreign legal system to an indigenous context. While traditional African justice systems once provided a more culturally relevant and accessible means of dispute resolution, these were largely sidelined by colonial rule. In the post-colonial era, Uganda and other African nations must navigate the challenge of reclaiming judicial autonomy while addressing contemporary political and economic pressures. Achieving a truly independent Judiciary will require deliberate efforts to integrate customary law, insulate Courts from political interference, and ensure financial autonomy for judicial institutions.

B. THE INFLUENCE OF ENGLISH COMMON LAW

The Judiciary, as an institution, is often perceived as an independent arm of government, tasked with upholding justice and ensuring the rule of law. However, this notion of judicial independence is debatable.

English common law has long been recognized as a robust and deeply rooted legal system but it is not without its limitations, especially when applied in African society set ups. Lord Atkin, ***in Conway vs. Rimmer (1968)***, famously stated:

> *…Just as with the English oak, so with English common law Just as the English oak so is with the English common law. You can not transplant it to the African continent and expect it to retain the same tough character which it has in England*[2]*…*

This analogy suggests that English law, much like an oak tree, is deeply embedded in tradition and resistant to radical change. In essence, legal systems transplanted from England into former colonies, maintained their foundational principles and structures, making true judicial independence a challenge.

Mwalimu Julius Kambarage Nyerere, former president of the Republic of Tanzania, aptly captures the need for independent legal systems and methods for African countries, when he declared in 1995:

> *…we refuse to adopt institutions of other countries even where they have served those countries well because it is our conditions that have to be served by our institutions. We refuse to put ourselves in a strait-jacket of constitutional devices not of our own making. The Constitution of Tanzania must serve the people of Tanzania. We do not intend that the people of Tanzania should serve the Constitution…*

[2] Conway v Rimmer [1968] AC 910 (HL).

Earlier, Lord Denning, in ***Nyali vs. Attorney General ([1955] 1 All ER 646–653),*** acknowledged that English law, though adaptable, does not easily fit into different cultural and social contexts. He observed that common law was designed for a particular environment, much like an English tree, and that transplanting it to foreign lands required careful modification. However, despite such acknowledgments, former colonies like Uganda have largely retained English legal principles, limiting the Judiciary's ability to evolve independently.

C. AFRICAN TRADITIONAL JUDICIAL SYSTEMS: THE PRE-COLONIAL EXPERIENCE

African traditional judicial systems played a crucial role in maintaining order and ensuring justice within societies long before the advent of colonial rule. These systems were deeply rooted in the customs, values, and beliefs of different African communities, offering a justice mechanism that was accessible, community-driven, and centered on reconciliation. Unlike the Western adversarial legal systems that emphasize retribution, traditional African judicial systems prioritized restorative justice and social harmony.

i. UBUNTU AND TRADITIONAL AFRICAN JUDICIAL SYSTEMS

Ubuntu, a core principle in African philosophy, emphasizes human interconnectedness, compassion, and collective responsibility[3]. In traditional African judicial systems, Ubuntu guided dispute resolution by focusing on

[3] CHAPTER FOUR: THE AFRICAN UBUNTU PHILOSOPHY https://repository.up.ac.za/bitstream/handle/2263/28706/04chapter4.pdf?sequence=5 accessed 23 January 2025

rehabilitation, reconciliation, and the reintegration of offenders into society. This approach contrasts with the Western legal system, which often prioritizes individual guilt and punishment.

ii. CUSTOMARY LAW IN AFRICAN SOCIETIES

Customary law refers to the unwritten legal norms and practices developed over generations within African communities. These laws were derived from traditions, spiritual beliefs, and social practices. They covered various aspects of life, including marriage, inheritance, land ownership, and criminal justice.

One of the key features of customary law is its flexibility and adaptability. Unlike statutory laws, which are rigid and codified, customary law evolved based on societal changes. However, the colonial era led to the marginalization of customary law in many African nations, as European legal frameworks were imposed in their place. Despite this, customary law continues to play a vital role in legal systems today, particularly in rural areas where traditional authorities still hold judicial powers.

iii. RWANDA'S TRADITIONAL JUSTICE SYSTEM: THE GACACA COURTS

Rwanda's Gacaca Courts are a prime example of traditional African justice adapted for modern times. Historically, Gacaca (meaning "grass" in Kinyarwanda) was a community-based conflict resolution system used to settle disputes at the grassroots level[4]. Elders would listen to cases and encourage reconciliation between disputing parties.

[4] Joireman, Sandra F. and Corey, Allison, "Retributive Justice: The Gacaca Process in Rwanda" (2004). Political Science Faculty Publications. 114. http://scholarship.richmond.edu/polisci-faculty-publications/114

After the 1994 Rwandan genocide, the government revived Gacaca Courts[5] to address the overwhelming number of genocide-related cases. Unlike formal Courts, which would have taken decades to prosecute all suspects, Gacaca Courts prioritized truth-telling, confessions, and community-based sentencing. This approach allowed communities to heal while ensuring accountability for crimes committed.

iv. BUGANDA CUSTOMARY LAW AND THE ROLE OF THE OMULAMUZI

In the pre-colonial Buganda Kingdom, the legal system was hierarchical and well-structured. At the top of the judicial hierarchy was the Kabaka (king), who held ultimate judicial authority. Below him, the Omulamuzi (Chief Judge) played a crucial role in overseeing the judicial system and resolving complex disputes[6].

The Omulamuzi presided over legal cases brought before the royal Court, working alongside clan leaders, elders, and local chiefs. Decisions were made based on Buganda customary law, which covered issues such as land disputes, inheritance, and criminal justice. The system emphasized dialogue, restitution, and reconciliation rather than harsh punitive measures.

[5] "Gacaca Courts," Encyclopaedia Britannica (Encyclopaedia Britannica) accessed 22 January 2025.
[6] A.F Robertson, Uganda's First Republic (Cambridge University Press, 1982)

D. THE SHIFT: POST-COLONIAL JUDICIARY: UGANDA'S 1995 CONSTITUTION

Whenever I think of contemporary society, I think very much of a trial of instant justice. Chinua Achebe, in his novel Things Fall Apart, captures this concept through the case of Egwugwu, a man brought before the traditional justice system for domestic violence. After hearing both sides, the Evil Forest, acting as a judge, issues a verdict that is neither punitive nor retributive but seeks reconciliation:

> *…we heard both sides of the case. Our duty is not to blame this man or praise that, but to settle the dispute. He then directs Egwugwu, 'go to your in-laws with a pot of wine and beg your wife to return to you. It is not bravery when a man fights with a woman*[7]*…*

This form of justice—rooted in customary law—bears a striking resemblance to the indigenous legal traditions that existed in Uganda before colonialism. Like the Igbo society in Achebe's novel, pre-colonial Uganda had traditional dispute resolution mechanisms that emphasized mediation and communal harmony over rigid punitive measures.

The 1995 Constitution of Uganda[8] marked a significant shift in the country's legal landscape. It not only reaffirmed the independence of the Judiciary but also recognized the role of customary law in dispute resolution, particularly in family and land matters. In many ways, this was a return to the principles reflected in Achebe's story—where justice is not just about punishment but about maintaining social harmony. The Constitution allowed for a dual legal

[7] Chinua Achebe, Things Fall Apart (Penguin Publishers, 1994)
[8] The Constitution of Uganda, 1995

system where both formal Courts and traditional justice mechanisms could coexist, ensuring that the legal system remained accessible to all Ugandans.

Thus, the evolution of Uganda's Judiciary—from colonial imposition to the 1995 constitutional reforms—illustrates a shift toward a more inclusive and culturally relevant legal system. While the Courts uphold the rule of law, customary justice continues to play a significant role, much like the judgment of the Evil Forest in Things Fall Apart.

The 1995 Constitution of Uganda has undergone several amendments affecting the Judiciary, particularly regarding its independence and structure. Below are the key amendments related to judicial independence:

i. The 2005 Constitutional Amendment: Judicial Service Commission (JSC) Strengthened

The role of the Judicial Service Commission (JSC) was reinforced to ensure a merit-based appointment system for judicial officers. It expanded the powers of the JSC in disciplining judicial officers, reducing Executive interference[9].

ii. Removal of Presidential Term Limits (Indirect Impact on Judiciary):

The removal of presidential term limits affected judicial independence because it allowed for potential Executive influence over long-term judicial appointments.

[9] The Constitution of Uganda, 2005

iii. The 2017 Constitutional Amendment (Age Limit Removal)[10]

Extended the Tenure of the Chief Justice and Deputy Chief Justice:

The retirement age for:

Chief Justice & Deputy Chief Justice in Uganda was increased from 70 to 75 years.

Other judges (Supreme Court, Court of Appeal) increased from 65 to 70 years.

This means judges can serve longer, reducing political pressure on retirement but also raising concerns about prolonged Executive influence.

iv. Increased Executive Influence in Appointment Process:

The amendment allowed the President to reappoint judges after retirement on a contractual basis, raising concerns over Executive control over the Judiciary.

v. Financial Autonomy:

The Judiciary was granted a separate budget, but delays in financial disbursement from the Executive still pose challenges.

Judicial Service Commission's Role: Ensures appointments, promotions, and discipline of judges remain professional, although the President still has the final say in top appointments.

E. USE OF TRADITIONAL JUSTICE IN CONTEMPORARY AFRICA AS A CONDUIT FOR SOCIAL TRANSFORMATION

With growing recognition of the limitations of Western legal frameworks in Africa, there has been renewed interest in integrating traditional judicial

[10] The Constitution (Amendment) (No. 2) Bill, 2017.

systems into contemporary governance to address the unique socio-cultural dynamics of African societies. Traditional justice mechanisms, deeply rooted in African cultures, offer alternative avenues for dispute resolution that allow for:-

i. **Easier Accessibility** – Traditional Courts are more accessible to local communities, particularly in rural areas where formal Courts may be distant or expensive.
ii. **Restorative Justice** – Emphasizing reconciliation over punishment helps to maintain social harmony and reintegrate offenders into society.
iii. **Cost-Effectiveness** – Traditional dispute resolution mechanisms are often less costly than formal legal proceedings.
iv. **Cultural Relevance** – Customary law aligns with local traditions and values, making it more acceptable to communities. These systems prioritized mediation, consensus-building, and restorative justice, often involving elders or community leaders as arbiters which were functions of the Traditional African Justice System.

F. CURRENT DEVELOPMENTS IN THE AFRICA JUSTICE SYSTEM

Across the continent, various countries are exploring ways to integrate traditional justice mechanisms into their formal governance structures:

i. **Kenya:** The Judiciary has been proactive in institutionalizing traditional justice mechanisms. The establishment of the Alternative Justice System Centre in Lodwar[11] is a testament to this commitment. The suite aims to

[11] Cj Koome Launches Lodwar Alternative Justice System Centre, Promises To Gazzete Lokichar And Lokitaung Courts https://turkana.go.ke/2023/08/30/cj-koome-launches-lodwar-alternative-justice-system-centre-

provide a space where traditional dispute resolution can be conducted formally, ensuring that cultural practices are preserved while aligning with the broader justice system.

ii. **Uganda:** The Judiciary has finalized arrangements to dispense justice using traditional mechanisms. This initiative seeks to resolve disputes expeditiously and reduce the case backlog in Uganda's judicial system. The Chief Justice has emphasized the importance of formalizing informal mechanisms to bring people together and ensure harmonious living[12].

iii. **Ethiopia:** The Oromia Region has seen the establishment of customary Courts that handle a significant number of cases annually[13]. These Courts operate alongside formal judicial institutions, providing accessible and culturally relevant avenues for justice. However, the impact of these customary Courts on reducing formal Court caseloads has been mixed, indicating the need for a nuanced understanding of their role within the broader justice system.

promises-to-gazzete-lokichar-and-lokitaung-courts/#:~:text=CLIMATE%20CHANGE%20GRM-,CJ%20KOOME%20LAUNCHES%20LODWAR%20ALTERNATIVE%20JUSTICE%20SYSTEM%20CENTRE%2C%20PROMISES%20TO,for%20the%20Lodwar%20Law%20Court. Accessed 23 January 2025

[12] APPROACHING NATIONAL RECONCILIATION IN UGANDA. Perspectives on Applicable Justice systems: A compilation of traditional justice mechanisms in Uganda to date https://land.igad.int/index.php/documents-1/countries/uganda/conflict-7/1172-approaching-national-reconciliation-in-uganda-perspectives-on-applicable-justice-systems/file accessed 21 January 2025

[13] Teferi Bekele Ayana, Administration of Justice in Customary Courts in Oromia, HARAMAYA LAW REVIEW 12: 1-24 (2023)

G. JUDICIAL INDEPENDENCE AND ECONOMIC BASE

The Chief Justice (Emeritus) David Kenani Maraga of the Republic of Kenya aptly describes the role of financing in a Judiciary. He states:

> *…How the Judiciary plans and manages its finances, and the nature of the role that other arms of government and external agencies play in the planning and management of resources allocated to it has a critical bearing on the independence, efficiency and operations of the Judiciary. Specifically, how the Judiciary determins its priorities for funding, which priorities are funded, and the manner of funding can limit or enhance its independence[14]…*
>
> - Chief Justice (Emeritus) David Kenani Maraga, FCIArb, EGH

The argument that the Judiciary is never truly independent finds strong support in the works of African legal scholars. Nabudere (1968) contends that judicial institutions are shaped by the politics of the economic base rather than being an autonomous force. He states:

> *…After everything is said, I think we ought to agree – and I here agree with Picho – that there is no such thing as the independence of the Judiciary anywhere. The Judiciary has always been created by the politics of the economic base and not vice-versa[15]…*

The reality that is the Judiciary is inherently tied to the ruling class's interests and the prevailing political ideology. Even when budgets are approved, the Executive often delays disbursement, crippling judicial activities and reducing operational efficiency.

[14] Conrad Bosire (ED) Judicial Financial Independence in Kenya (Kabarak University Press, 2024)
[15] Ibid 1

i. **Political Interference in Judicial Finances:** A Judiciary that depends on the government for funding is vulnerable to political interference. When the judiciaries in Africa rule against the state, funding cuts have been used as punishment[16].

ii. **Corruption:** While external interference is a challenge, internal corruption within judicial institutions also weakens financial autonomy. Mismanagement of funds damages public confidence and provides the Executive with an excuse to maintain control.

iii. **Overdependence on Donor Funding**: Some African judiciaries rely heavily on foreign aid for critical projects. While donor funding can be beneficial, it also raises concerns about long-term sustainability and external influence on judicial policies.

iv. **Weak Legal Frameworks and Enforcement Mechanisms**: Without strong implementation, financial independence remains theoretical rather than practical. Countries have laws that support judicial financial autonomy, but these laws are not adequately enforced.

H. JUDICIARY INDEPENDENCE: BALANCING ACTIVISM AND RESTRAINT

Now, let's be clear: judicial humility does not mean judges should shy away from their duty to protect Constitutions. It calls for a nuanced approach, a

[16] Uhuru Kenyatta to court: 'We shall revisit this' https://www.aljazeera.com/news/2017/9/2/uhuru-kenyatta-to-court-we-shall-revisit-this accessed 20 January 2025

careful balance between deference and intervention. This balance is particularly crucial in these situations:

i. **Ambiguous Constitutional Provisions**: When Constitutions are open to interpretation, judges may need to step in to safeguard individual rights or uphold the checks and balances that keep our democracy functioning. However, they must exercise utmost caution, relying on established legal principles and precedents, not personal beliefs.

ii. **Legislative Overreach:** When the Legislature clearly oversteps its constitutional authority, judicial intervention is not just permissible, it's necessary. Even in these instances, humility demands that the Court strive to minimize disruption while upholding the rule of law.

At its core, judicial humility acknowledges the limitations of judges in shaping policy. It recognizes that the Legislature, as the elected body, holds the primary mandate to reflect the will of the people. This principle is grounded in the presumption of constitutionality[17] – a cornerstone of legal systems. This presumption requires Courts to initially assume that laws passed by the Legislature are in line with the constitution.

Instead of approaching every law with a skeptical eye, ready to strike it down, exercising judicial humility demands careful examination of the reasons

[17] Jain, Tarun, Presumption of Constitutionality (December 31, 2007). PRESUMPTIONS, Icfai University Publications, Forthcoming. https://ssrn.com/abstract=1087388 or http://dx.doi.org/10.2139/ssrn.1087388 accessed at 20 January 2025

behind the law, the process through which it was passed, and its place within our historical and social context. Only when these factors point to a clear and significant violation of the Constitution should the Court intervene.

It is however important to take note that in special cases, the will of the people is at times misrepresented by the will of the Legislature and elected representatives. This in itself is a problem with democracies, where sometimes the elected do not represent what the electorate needs and it therefore becomes, the Court's duty to protect the will of the people while defending the Law. Article 126 (1) of the Constitution of Uganda 2005 aptly captures the role of the Courts to stand by the people in the following words:

…126. Exercise of judicial power.

(1) Judicial power is derived from the people and shall be exercised by the Courts established under this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people[18]*…*

a) THE WAY FORWARD: SOLUTIONS FOR STRENGTHENING JUDICIAL FINANCIAL AUTONOMY

i. **Constitutional and Legal Reforms:** Judicial financial autonomy must be enshrined in national constitutions with explicit provisions that prevent Executive control over judicial funding. Governments should implement laws that ensure the Judiciary receives adequate funding without interference, and any attempts to undermine this should be met with

[18] Ibid 2, art 126(1)

legal repercussions. Judicial autonomy must not remain a theoretical aspiration but a legally protected reality.

ii. **Transparent Budgeting and Direct Fund Allocation:** A system where the Judiciary receives funds directly from the national treasury without Executive interference would ensure true financial independence. Judicial budgets should be determined by an independent judicial body, in consultation with financial experts, to ensure that resource allocation is based on need rather than political considerations. Furthermore, funding disbursements should be time-bound and protected from Executive delays or reductions.

iii. **Improved Financial Management and Oversight:** Judicial institutions must adopt transparent financial management systems to prevent internal corruption and ensure accountability. Establishing independent financial oversight committees within the Judiciary can help audit expenses and promote prudent financial management. Courts should also leverage technology to automate budgeting, procurement, and expenditure tracking to enhance efficiency and prevent financial mismanagement.

iv. **Stronger Advocacy and Public Awareness:** Citizens must be educated on the importance of an independent Judiciary. A well-informed public will hold governments accountable for ensuring judicial financial autonomy. Civil society organizations, bar associations, and media houses must play a pivotal role in promoting judicial independence. Public engagement through town hall meetings, legal literacy programs, and advocacy campaigns can build strong support for judicial financial autonomy.

v. **Sustainable Internal Revenue Generation:** Judiciaries should be allowed to retain and manage internally generated funds from Court fees and fines, reducing dependence on Executive-controlled budgets. However, such revenues must be managed transparently to avoid internal financial abuses. Legal reforms should be introduced to ensure that a portion of non-tax revenue collected by the Judiciary remains within the system for infrastructure development, capacity building, and operational costs.

vi. **Regional and International Collaboration:** African countries should learn from successful judicial financial autonomy models where legal frameworks support independent Judiciary budgets. Regional judicial bodies and international legal organizations can facilitate cross-border cooperation, technical assistance, and policy recommendations to strengthen financial autonomy. Conferences, research initiatives, and intergovernmental agreements can serve as platforms for sharing best practices and solutions to common challenges.

vii. **Decolonization of Legal Education** – Law schools should emphasize African jurisprudence and customary law alongside common law to create a more balanced legal system.

I. JUDICIAL BACKLOGS IN AFRICA: SOCIO-ECONOMIC IMPLICATIONS

Judicial backlogs across Africa have significantly impacted legal proceedings, particularly in economic and high-profile criminal cases. These delays have led to financial uncertainties, hindered economic growth, and denied justice to victims and litigants. The following table consolidates key cases, economic implications, and social effects of these backlogs.

Comprehensive Table on Judicial Backlogs in Africa

	Country	Case/Issue	Amount	Key Causes	Economic Effects	Social Effects
1.	**Africa**	AfCFTA Dispute Resolution	N/A	Judicial inefficiency deterring investment	Potential trade barriers, reduced economic integration	Frustration among businesses seeking cross-border trade solutions
2.	**International Chamber of Commerce**	International Disputes	**$53 billion annually**	Increased preference for alternative dispute resolution	Companies opting for arbitration over litigation, reducing court reliance	Faster resolutions, but national judicial systems remain underutilized
3.	**Kenya**	Anglo Leasing Scandal	N/A	Corruption, procedural inefficiency	Loss of public funds, reduced investor confidence	Erosion of trust in governance
4.	**Kenya**	Corporate Lawsuit Backlog	Kshs. 389 billion	Case congestion, slow judicial processes	Stagnation of business operations, financial instability	Companies unable to resolve disputes, loss of jobs
5.	**Kenya**	General Commercial Disputes	60,000 cases (as of 2018)	Delayed hearings, limited mediation mechanisms	Blocked capital flow, delayed contract enforcement	Entrepreneurs and SMEs unable to expand

6.	**Kenya**	Paul Nthenge Mackenzie Trial - **Republic through DCI v Mackenzie & 17 others (Criminal Miscellaneous Application E077 of 2023) [2023] KEMC 10 (KLR) (10 May 2023) (Ruling) Neutral citation: [2023] KEMC 10 (KLR)**	N/A	Shortage of prosecutors, procedural inefficiency	Delayed justice affects financial settlements for victims' families	Erosion of public trust in criminal justice
7.	**Kenya**	Post-Election Violence Cases	N/A	Prolonged hearings, systemic delays	Compensation delays for victims, unresolved reparations	Victims continue to suffer without legal closure
8.	**Rwanda**	Commercial Case Backlog	**18,400 cases (2011)** reduced to **6,700 (2018)**	Judicial reforms improving case management	Increased economic efficiency with improved resolution rates	Strengthened trust in the Judiciary
9.	**Uganda**	Business Lawsuit Backlog	**$2.2 billion**	COVID-19 delays, economic instability, inadequate mediation	Slowed economic activity, unresolved corporate disputes	Loss of business confidence, hindered entrepreneurs hip

i. <u>Recommendations</u>

Judiciary case backlogs in Africa continue to delay economic growth, deter investment, and deny justice to victims of crimes and corporate disputes. Addressing these issues requires urgent action in many ways as follows:

a) Increased judicial funding to hire more judges and prosecutors.

b) Adoption of alternative dispute resolution mechanisms such as arbitration and mediation to ease court congestion.
c) Technology-driven case management systems to streamline court processes and reduce inefficiencies.
d) Policy reforms that enforce strict timelines for case resolutions.

Without strategic interventions, Africa's judicial backlogs will continue to undermine economic progress, foreign investment, and justice for affected individuals and businesses.

J. JUDICIAL TRAINING: FUELING SOCIAL AND ECONOMIC TRANSFORMATION

In Africa, where legal systems grapple with inherited laws, customary practices, and evolving societal needs, the need for robust judicial training is paramount. For the Courts to truly fulfill this vital role, we must invest in the continuous growth and development of our judicial officers.

To effectively attain this, our training programs must do the following:

i. **Prioritize induction and continuous professional development:** New judges require comprehensive training to navigate the complexities of our legal system. Ongoing professional development through workshops, peer learning, and exposure to international best practices is essential.

ii. **Focus on emerging legal issues:** We must equip our judges to grapple with the challenges of the digital age, including cybercrime, data privacy, and the environmental crisis.

iii. **Embrace technology**: The digital revolution offers immense potential to modernize our Courts. Training in e-justice systems, virtual Court proceedings, and digital case management is no longer an option, but a necessity.

iv. **Promote alternative dispute resolution:** Mediation, arbitration, and conciliation can offer swift and cost-effective solutions to many disputes, reducing the burden on our Courts and fostering amicable resolutions.

v. **Strengthen financial and administrative management:** Judicial officers must have a strong understanding of Court administration, budget management, and resource allocation to ensure the efficient and effective functioning of our Courts.

The benefits of a well-trained Judiciary extend far beyond the Courtroom, to outline just but a few benefits:

i. **A just and equitable society:** Access to justice for all, including marginalized groups, is fundamental to social stability and economic development.

ii. **A corruption-free Judiciary:** A transparent and accountable Judiciary is essential for good governance and economic integrity.

Investing in judicial training must not be looked at as an expense, but as a strategic investment in the future of our nations. By equipping our judges with the knowledge, skills, and tools they need to excel, we can build a Judiciary that upholds the rule of law, promotes justice, and drives sustainable economic growth.

K. UGANDA'S JUDICIARY CONTRIBUTION TO ECONOMIC TRANSFORMATION

i. A thriving business environment

A well-functioning and independent Judiciary ensures contract enforcement, property rights protection, and dispute resolution, which are essential for a thriving business environment. Judicial independence from political influence boosts investor confidence, leading to increased foreign and domestic investments. Delays in judicial funding, Executive interference, and corruption weaken financial autonomy, impacting the efficiency of economic dispute resolution.

ii. Integration of Traditional Justice Mechanisms

The Ugandan Judiciary has embraced traditional dispute resolution methods, particularly in the Buganda Kingdom, to expedite case resolution.

This reduces the backlog in formal Courts and fosters social cohesion, enabling businesses to function without prolonged legal uncertainties.

iii. Legal Reforms and Policy Enhancements

The 1995 Constitution marked a significant shift by recognizing customary law in dispute resolution, particularly in land and family matters.

Legal reforms, such as strengthening the Judicial Service Commission (JSC), have sought to ensure merit-based judicial appointments and reduce Executive influence.

iv. Financial Autonomy and Judicial Efficiency

Establishing direct budget allocations for the Judiciary ensures financial stability, reducing reliance on the Executive and donor funding.

Transparent financial management and digitalized Court processes enhance judicial efficiency, attracting economic participation.

v. Protection of Property Rights and Business Confidence

The Judiciary plays a crucial role in adjudicating commercial disputes, enforcing property rights, and upholding business contracts.

A stable legal framework for property ownership, land tenure security, and intellectual property rights encourages investment and innovation.

vi. Combating Corruption and Strengthening the Rule of Law

Judicial oversight in tackling corruption, especially in business and government institutions, enhances economic governance.

Effective legal frameworks against fraud, bribery, and unethical business practices contribute to a fair and competitive market economy.

vii. Encouraging Alternative Dispute Resolution (ADR)

The adoption of mediation and arbitration mechanisms provides cost-effective solutions for business disputes.

ADR mechanisms expedite justice and reduce litigation costs, benefiting entrepreneurs and businesses.

L. THE JUDICIARY AS AN ECOSYSTEM: THE ROLE OF ADVOCATES, JUDGES, AND OTHER STAKEHOLDERS

a) The Advocate as an Officer of the Court

The Judiciary functions as a complex ecosystem, with multiple players—judges, magistrates, public and private sector actors, and advocates—each playing a crucial role in the administration of justice. Among these, the advocate holds a unique position as both a representative of clients and an officer of the Court. This dual role requires a delicate balance between duty to the client and a broader obligation to uphold justice.

The role of an advocate extends beyond merely articulating a client's interests. As officers of the Court, advocates are bound by ethical and legal duties that transcend client representation. The principle that an advocate's primary duty is to justice has been affirmed in numerous legal precedents. Advocates are not mere mouthpieces of their clients; they are bound by professional integrity to uphold truth and fairness in judicial proceedings. An advocate must act with independence and must never knowingly mislead the Court, even if doing so aligns with their client's desires. Their allegiance lies not just with their client but with the greater cause of justice.

b) Balancing Duty to the Client and the Court

While an advocate must vigorously defend their client's rights, this duty is not absolute. Historical legal discourse has often emphasized that an advocate's primary obligation is to the rule of law. Lord Brougham, in his defense of Queen Caroline, famously stated that an advocate must prioritize their client's interests above all else. However, this principle is not without limitation. The

duty to the client is subject to legal and ethical constraints, including statutory provisions such as the Advocates Act and professional codes of conduct[19].

An advocate must strive to reconcile their professional responsibilities with the overarching principles of truth and justice. This balance ensures that the Judiciary, as an institution, retains public trust and credibility.

c) The Courts as Guardians of Justice

Ultimately, the Judiciary, including all its key players, serves as the guardian of democracy and the rule of law. Courts must not only resolve disputes but also uphold justice in a manner that fosters public confidence. As Salmon L.J. stated in *Jennison v. Baker [1972] 2 QB 52 (Court of Appeal),* justice is not solely a concern for the litigants but for society as a whole[20]. Ensuring that justice is effectively administered is a collective responsibility shared by judges, advocates, and all stakeholders within the judicial ecosystem.

For the Judiciary to function as a well-balanced system, each player—judges, magistrates, advocates, and institutional stakeholders—must uphold their respective duties with diligence and integrity. Advocates, in particular, must recognize that their role is not just to serve their clients but to contribute to the broader cause of justice. This recognition is essential for maintaining a Judiciary that is fair, effective, and worthy of public trust.

[19] Prof. PLO Lumumba, The Legal Profession and Crisis of Ethics: The Legal Profession and The New Constitutional Order In Kenya (Strathmore University Press, 2014)
[20] Ibid

M. CALL TO ACTION: STRENGTHENING THE JUDICIARY FOR SOCIAL AND ECONOMIC TRANSFORMATION

The Judiciary plays a critical role in shaping the social and economic transformation of a nation. As highlighted in this document, the independence, efficiency, and adaptability of judicial systems are fundamental to upholding justice, promoting economic growth, and ensuring social harmony. However, true transformation requires collective action.

Now is the time for stakeholders—judges, legal professionals, policymakers, and the public—to champion reforms that enhance judicial independence, financial autonomy, and the integration of traditional justice mechanisms. Governments must ensure timely financial allocations, legal institutions should embrace digital advancements, and the legal fraternity must uphold integrity and professionalism.

Let us take decisive steps toward a Judiciary that is not only a guardian of the law but also a catalyst for national progress. Engage in dialogue, support judicial reforms, and advocate for policies that reinforce justice and economic development. The future of our legal systems—and our societies—depends on the actions we take today.

The Judiciary should strive to achieve substantive justice without undue regard to technicalities of procedure. At all times, procedure must be the handmaiden of substance.

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