

THE ROLE OF LAW REPORTING IN IMPROVING SENTENCING JURISPRUDENCE

A case for the institutionalization of the Uganda Legal
Information Institute (ULII) www.ulii.org
a paper presented at the 20th Annual Judges Conference
By Hon. Mr. Justice Geoffrey Kiryabwire, JCA/Chair Law
Reporting Committee

PRESENTATION OUTLINE

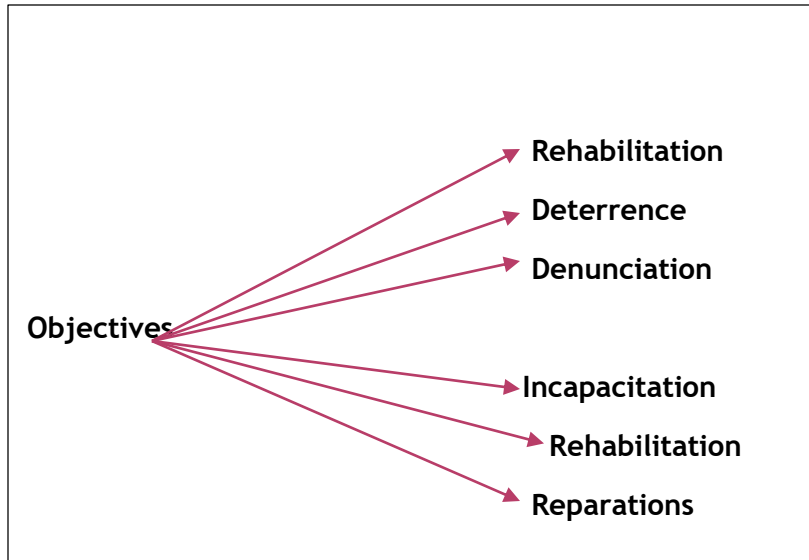
1. Importance of a good sentencing regime
2. Sentencing perceptions in Uganda
3. Improving sentencing through guidelines
4. The nexus between sentencing & law reporting
5. The experience of law reporting in Uganda
6. Way forward
7. Conclusion.

IMPORTANCE OF A CREDIBLE SENTENCING REGIME

- ◉ Sentencing is the judicial determination of the penalty for a crime following a trial and conviction.
- ◉ The sentencing court has a duty to impose an appropriate sentence and largely rests in discretion of the sentencing judicial officer.
- ◉ Sentencing can be a daunting task for a judicial officer- *Uganda V Kiwalabye Mohammed HC Crim Case 20 of 2013 per Stephen Mubiru, J.*
- ◉ The purpose of sentencing is to promote respect for law in order to maintain a just, peaceful and safe society & to promote initiatives to prevent crime.

IMPORTANCE OF A CREDIBLE SENTENCING REGIME

○ Sentencing objectives are:-



IMPORTANCE OF A CREDIBLE SENTENCING REGIME

- ◉ The measure of punishment depends on what is provided by law & a matrix of considerations e.g.
 - Motive for the offence
 - Its gravity
 - The character of the offender
 - Age
 - Antecedents
 - Extenuating or other aggravating factors
 - Previous conviction
 - etc

IS SENTENCING PRODUCING THE DESIRED RESULTS

- ◉ A pre sentencing guidelines JLOS Report
(<http://www.commonlii.org/ug/other/UGJLOS/report/R5/5.pdf>)

Noted that

- Prisons were overcrowded due to slow processing of cases
- too much discretion was given to judicial officers in sentencing
- Low use of non custodial sentences
- Safety & well being of victims was not looked into
- Little diversion of cases from prosecution i.e. mental & juvenile cases.

IS SENTENCING PRODUCING THE DESIRED RESULTS

- many reports which express concern on the growing of mob justice (public lynching) which is attributed to
- Wide spread lack of confidence in the justice system

“Criminals and perpetrators can be easily let off with just a slap on their wrist as long as they are able to bring forth a substantial bribe. The public’s dissatisfaction for this system has resulted in them taking the law into their own hands and even public support for mob justice as an alternate form of enforcement.”

<https://tunasangwiches.wordpress.com>

“Slap on wrist” here refers to slap on wrist.

SENTENCING EXPECTATIONS

- ⦿ Free from influence
 - ⦿ Lawful
 - ⦿ Appropriate (not manifestly inadequate)
 - ⦿ Rational
 - ⦿ Consistent (not with wide variations in process and penalty from judicial officer to judicial officer).
 - ⦿ accessible
- What is the role of law reporting as an enabler in meeting sentencing expectations?

SENTENCING GUIDELINES 2013

- ◉ Para 3 provides for the objectives of the SG
 - (a) to set out the purpose for which offenders may be sentenced or dealt with;
 - (b) to provide principles and guidelines to be applied by courts in sentencing;
 - (c) to provide sentence ranges and other means of dealing with offenders;
 - (d) to provide a mechanism for considering the interests of victims of crime and the community when sentencing; and
 - (e) to provide a mechanism that will promote uniformity, consistency and transparency in sentencing.

SENTENCING GUIDELINES 2013

◉ Para 5

the court shall in accordance with the sentencing principles pass a sentence aimed at (a) denouncing unlawful conduct; (b) deterring a person from committing an offence; (c) separating an offender from society where necessary; (d) assisting in rehabilitating and re-integrating an offender into society; (e) providing reparation for harm done to a victim or to the community; or (f) promoting a sense of responsibility by the offender, acknowledging the harm done to the victim and the community.

SENTENCING GUIDELINES 2013

- ◉ Sentencing guidelines do not remove judicial discretion in sentencing.
- ◉ Not a rigorous departure test
 - “court must not lose sight of these guidelines”
Busiku V Ug Crim App 33/2011 (SC)
 - JO who departs from the guidelines should give reasons Ug v Baiga Kuchika HC Crim 67 of 2014
 - Northern Ireland courts have a duty to “have regard to” the guidelines
 - England “must follow” unless contrary to interests of justice.

How can law reporting help in fashioning compliance with and departure from the sentencing guidelines?

SIGNIFICANCE OF LAW REPORTING IN SENTENCING

- Though judicial officers in Uganda have discretion in sentencing as a common law country we rely on the doctrine of stare decisis or precedent.
- A good knowledge of what the superior courts of record have decided on the issue of sentences of given offences
 - Allows for proper application of discretion
 - consistency in sentencing processes & ranges
 - Faster case disposal
 - Makes decision accessible

QUALITIES OF A GOOD LAW REPORT

- ◉ W.T.S. Daniels QC who was behind the setting up of the Incorporated Council of Law Reporting for England & Wales (in 1865 said that a good law report should have certain qualities and these have not changed to this day.

QUALITIES OF A GOOD LAW REPORT

a good law Report must necessarily include:

- i) All cases which introduce, or appear to introduce, a new principle or a new rule,
- ii) All cases which materially modify an existing principle or rule,
- iii) All cases which settle, or materially tend to settle, a question upon which the law is doubtful, and
- iv) All cases which for any reason are peculiarly instructive.

LAW REPORTING IN UGANDA & ITS USE IN THE JUDICIARY

- ◉ The collapse of the Uganda Law Reports and the East African Law Reports created a big gap in legal information flow. As we may recall, the Uganda Law Reports were last published in 1973. The East African Law Reports went out of print in 1975. Though it recently made a come back, it does not reflect the last series that covered East African courts fairly and comprehensively with the courts of all three countries participating in the editorial work. The current series mainly concentrate on reporting Kenya court decisions.
- ◉ This gap affected majorly judicial officers who are the authors of this content (judgments)
- ◉ Judiciary embraced the idea of law reporting to try and close that gap.
- ◉ Judiciary once had the Commercial Law Reports in 2 vols. 1997-2004
- ◉ ULII began by publishing their content on Commonlii, later to SAFLII and now to ULII

LAW REPORTING IN UGANDA & ITS USE IN THE JUDICIARY

- ◉ ULII was set up in 2007 making it 10 years in existence.
- ◉ The law reporting office started its operation from the commercial court, went to the registry of planning and is currently annexed to the Judicial Training Institute as one of the departments.
- ◉ ULII is a member of the Free Access to the Law movement (FALM) this is a global Association of legal publishers who provide free legal information via the internet.

LAW REPORTING IN UGANDA & ITS USE IN THE JUDICIARY

- ◉ ULII app can be accessed on android phones
- ◉ ULII is now 3rd most visited legal website in Africa behind SAFLI & KenyaLaw.
- ◉ Judiciary has limited hard copies of law reports i.e. ALL ER; EACA; EA LR; HCB etc
- ◉ Under the new ICT strategy provision has been made to access on line resources like Lexus Nexus to access other jurisdictions
- ◉ Lexus Nexus will be available across devices like mobile phones tables and PCs.

LAW REPORTING IN UGANDA & ITS USE IN THE JUDICIARY

- ◉ ULII portal can be used to:-
 - Control excesses and abuse of discretion
 - Detect trends and analyze if the guidelines are being followed
 - Can assist management to monitor quality and performance of the individual judicial officers.
 - Helps JTI identify training needs and informs her training curriculum.

ULII-CHALLENGES & OPPORTUNITIES

- ◉ ULII is a project of the judiciary.
- ◉ It has a governing committee/council whose members are appointed by the Chief Justice.
- ◉ Accessibility problems due to internet coverage & equipment
- ◉ ULII reports everything and does not yet digest the content to meet the W.T.S. Daniels criteria of law reporting.
- ◉ We write our judgments with page numbers and not paragraphs suitable for on line reports
- Lord Woolf (CJ) PD of 11/01/01 on line judgments to be in paragraphs & neutral citation
- Same as KenyaLaw.

ULII-CHALLENGES & OPPORTUNITIES

- ◉ Collection challenges & pull down requests
- ◉ However ULII is a very small unit within the judiciary and cannot meet expectations under that structure.
- Trying to bench mark on KenyaLaw
 - Set up by statute
 - Has about 50 staff
 - Does digests
 - Publishes law journals
 - Specialized law reports
 - Kenya law weekly
 - Bench Bulletin.

We need to report better on sentencing and change protocol how these judgments are received at ULII.

STAFFING & FUNDING

- ULII started with 1 law reporter and only staff.
- it now has 2 fulltime law reporters (both judicial officers) with 1 data entry clerk and one volunteer.
- The staff are seconded to ULII by the judiciary but without a development structure.
- ULII relies mainly on interns from law schools and other tertiary institutions.
- ULII relies on the Judiciary ICT team and Africanlii for the backend technical support.
- There is need to boost staffing
- There is need to boost funding

WAY FORWARD

- ◉ Institutionalize ULII or at minimum make it a separate registry
- ◉ More funding
- ◉ Need practice direction from the Hon. CJ to ensure that each judge sends in their decisions
- ◉ Need more staff
- ◉ Need a Policy on anonymization of judgments so that judges adopt a uniform style while writing judgments

CONCLUSION

- ◉ Despite all the challenges, the judiciary, has been able to make a contribution to the grow of jurisprudence in Uganda.
- ◉ If, law reporting will is Institutionalized within the judiciary that will widen the scope of operation to improve service delivery.
- ◉ We acknowledge the Judiciary Administration & major partners of ULII i.e. Africanlii, SAFLII for support but we need to up the support of ULII to have the desired impact.

END

I THANK YOU FOR LISTENING TO ME

Justice Geoffrey Kiryabwire

Blessed & Happy New Year 2018