



THE SPEECH

OF

**HON. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO,
CHIEF JUSTICE OF UGANDA**

AT THE

5th BENEDICTO KIWANUKA MEMORIAL LECTURE

AT THE HIGH COURT GROUNDS, KAMPALA

ON 21st SEPTEMBER, 2022

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Your Excellency, The President of the Republic of Uganda,
The Hon. Deputy Chief Justice,
The Hon. Ministers present,
The Learned Attorney General,
The Hon. Principal Judge,
The Hon. Justices of the Supreme Court,
The Hon. Justice Prof. Emmanuel Kotey, JSC of Ghana & keynote speaker
The Hon. Justices of the Court of Appeal,
The Hon. Judges of the High Court,
Your Excellency the Heads of Diplomatic Missions,
The Honourable Members of Parliament,
Your Grace the Archbishop of the Church of Uganda,
The Inspector General of Government,
The Chairpersons of Constitutional Commissions,
The Director of Public Prosecutions,
The Hon. Retired Justices and Judges,
The Chief Registrar, Courts of Judicature,
The Secretary to the Judiciary,
The Lord Mayor, Kampala Capital City Authority,
Your Worships the Registrars and Magistrates,
The President Uganda Law Society & distinguished Members of the Bar,
The Administrative and support Staff of the Judiciary,
The Family of Chief Justice Benedicto Kiwanuka,
Our esteemed Participants attending Online,
Members of the Fourth Estate,
Distinguished Guests, Ladies and Gentlemen.

Your Excellency, today, the 21st of September, 2022 we have congregated here, as we have done for the past years, to honour the memory of Hon. Chief Justice Benedicto Kiwanuka, who was last seen alive on 21st of September 1972. The Judiciary of Uganda has continued to honour Ben Kiwanuka for his sacrifice and fortitude in defending the rule of law and the fundamental freedoms of the oppressed, from which the Judiciary service draws inspiration and motivation.

I take this auspicious opportunity, on my own behalf and on behalf of the Judiciary of Uganda, to warmly welcome you, and to particularly thank you for gracing this important Judiciary event, in spite of your busy schedules; something you have unfailingly done since the launch of this celebration five years ago.

In a special way I applaud Your Excellency because you have explicitly supported the Judiciary Transformation Agenda. Your Excellency we do not take your participation for granted: It assures us of your unwavering support to the Judiciary and evident contribution to the rule of law and access to justice services for the people of Uganda.

I specially wish to welcome **Hon. Justice Prof. Emmanuel Nii Ashie Kotey**, Justice of the Supreme Court of Ghana who has, on behalf of the Chief Justice of Ghana, travelled all the way from West Africa to East Africa in order to be with us and to share with us his extensive experience in Judiciary Service. We thank you heartily, Justice Kortey, and welcome you to the Pearl of Africa.

Your Excellency, the Judiciaries of Ghana and Uganda share a common history. Both have Martyrs of Justice. As highlighted by our keynote Speaker, they too lost three gallant judges (Justice Fred Poku Sarkodee; Lady Justice Cecilia Koranteng – Addow and Justice Kwadow Agyei Agyepong) who were abducted and murdered in 1982 for their boldness

and courage in the administration of justice, when the country was under military rule.

As you may already know, Ben Kiwanuka started his legal career at Gray's Inn in London in February 1956 but when Uganda achieved internal self-government on 1st March 1962 he became Uganda's first Prime Minister in the new National Assembly and he was later appointed Chief Justice on 27th June 1971 by President Iddi Amin Dadda.

Kiwanuka was the first Ugandan to serve in this Office. After assuming office, history has it that he immediately announced that he intended to meet with all local magistrates in Uganda to address problems of tardiness, drunkenness, lack of impartiality and delayed judgments. He also promised to protect Ugandans against Government abuses. It is his trademark '*sense of righteousness*' and commitment to the '*straight ways of justice*' that put him at loggerheads with President Amin.¹

It is reported that Kiwanuka met his death following his decision to hear the case of a British businessman Daniel Stewart, who had been arrested and detained without trial at a Military Barracks. Kiwanuka issued a writ of *habeas corpus*, directing the Government Military Authorities to produce him before the Court from the illegal detention for possible release. On 21st September 1972, shortly after 8 am, as Kiwanuka sat in his Chambers, at the High Court building, where we are now gathered, plain-clothed Government intelligence officers confronted him at gunpoint, forced him out of the High Court building and into the trunk of a waiting Peugeot car which sped off, and since then Kiwanuka was never seen alive again.²

¹ See: **Jonathon L. Earle & J. J. Carney**: *Contesting Catholics, Benedicto Kiwanuka and the Birth of Post-Colonial Uganda*, Fountain Publishers, 2021, p. 189.

² See: **Earle and Carney**: *ibid.* pp. 192-193

Today marks 50 years since Hon. Chief Justice Benedicto Kagimu Mugumba Kiwanuka was last seen alive. The Chief Justice was martyred for his unflinching advocacy against arbitrary arrests, extra judicial killings, torture, and the utter disregard for the rule of law, that painfully characterised the infamous President Idi Amin Dada regime.

As the Judiciary family acknowledges the noble role Kiwanuka played in the promotion of the observance of the rule of law and respect for human rights for which he paid the ultimate price; we are called upon to mirror the life of the indomitable Ben Kiwanuka and ask ourselves what we have so far done, and what else we can do, for our people. Our reminiscent theme this year is: *“Benedicto Kiwanuka: Reflections on the Independence of the Judiciary in Modern Times.”* The martyrdom of Ben Kiwanuka was a consequence of his determination to assert the judicial independence in the face of the Chief Executive who had no regard whatsoever for the rule of law.

In 1985 the United Nations outlined: **Basic Principles on the Independence of the Judiciary**,³ as follows:

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

³ Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the Judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

From these Principles, it is clear that Judicial independence operates on a number of facets. Foremost, is the exercise of obligation by the State, second, is the availability of an enabling legal system, third, is the exclusive exercise of judicial authority by the Courts, fourth is the Courts' effort to ensure that the laws are properly interpreted and appropriately applied; and lastly is the duty of the State to provide sufficient resources to the Judiciary to enable it operate effectively.

Judicial Independence will also be guaranteed through, *inter alia*, appointing suitable and qualified persons into judicial positions, ensuring judicial officers enjoy security of tenure, willingness to respect and enforce court decisions, regardless of who is affected by the decisions; and making the Courts accessible to the common man seeking for justice.

Your Excellency, as we reflect on the independence of the Judiciary today, I must state that this theme resonates with the theme of the just concluded Commonwealth Magistrates and Judges Conference in Accra, Ghana; which was '*access to justice in the modern times*'. I was privileged to attend this conference together with 25 Chief Justices from

across the Common Wealth. One of the highlights was the need to strengthen the financial and administrative independence of our Judiciaries. I must thank you Your Excellency once again for the Administration of the Judiciary Act, 2020 through which we have gained a lot. However, administratively we still desire more involvement in the recruitment, promotion and discipline of our Staff. At an opportune time, Your Excellency we shall seek the necessary support to address this impediment.

Your Excellency, save for a few incidents such as the *Black Mamba* saga⁴ of 16th November 2005, I am happy to report that the Judiciary has enjoyed relative independence over the years. The Courts have been able to make decisions, even against the executive, that have been respected and enforced. The voice of the Judicial Officers has been heard and understood by the Legislature and the Executive when we demanded for improved terms of service. We are also progressively receiving tools of work such as automation of Court processes, ICT equipment, vehicles and legal reference materials, among others. We are grateful to Government for this endearing support.

In order to break the chains and make the rule of law more tangible in our lives, we are working on enhancing access to justice services across Uganda. We hope to achieve this through concentrating on a few key areas. These are:

- (i) Continued construction of courts, recruitment and deployment of more judicial and non-judicial Officers, and providing working tools to the staff;
- (ii) Establishing more Courts across the country in order to eliminate case backlog and to bring justice services nearest to the people;

⁴ See: James Katabazi and 21 Others V Secretary General of the East African Community, The Attorney General of the Republic of Uganda EACJ, Reference No. 1 of 2007.

- (iii) Strengthening the Judicial Training Institute to offer up-to-date capacity building and refresher training to the judicial and non-judicial staff;
- (iv) Reinforcing the Inspectorate of Courts, to effectively supervise court operations, promote judicial accountability and curb corruption; and
- (v) Promoting innovations, simplifying court processes and enhancing use of ICT in case management and delivery of justice services.

We have seriously embarked on the pursuit of our transformation agenda; with remarkable impact registered across the Country. When Your excellency visited us, on this very ground, on 29th January 2021 at the opening of the New Law Year, we had only **42** Chief Magistrates in this Country. Out of the 42, 27 were circuiting between 2 to 6 Magisterial areas. For instance, the Chief Magistrate of Fort Portal was caretaking Kamwenge, Bundibujjo, Kasese, Ntoroko and Kyenjojo. The one of Soroti was caretaking Kumi, Katakwi, Amuria and Kaberamaido.

This critically fettered service delivery in those Courts. Today we have **77** Chief Magistrates, this is the highest number of Chief Magistrates the Judiciary has had in our country. Consequently, we have operationalized **16** Magisterial areas of Dokolo, Mayuge, Sironko, Katakwi, Rakai, Kiryadongo, Kyenjojo, Bubulo, Kumi, Kamuli, Isingiro, Kotido, Kira, Lugazi and Pader. Karamoja sub-region now has 2 Chief Magistrates, while Acholi Sub- region has 4 Chief Magistrates.

Regarding the Magistrates Grade one, by February 2021, we had only **186**, but today we have **301** Magistrates. As a result, we have operationalized Magistrate Grade One Courts of Kyotera, Kyanika, Kole, Lamwo, Kyazanga, Kalungu, Amuria, Atanga, Kalongo, Kangulumira, Namugalwe, Kibiito and Nyarushanje; plus, Municipal Courts of Mbarara, Masaka, Tororo and Arua. The improved coverage of the Judiciary at this rank has reduced case backlog from **4,894** backlog

cases (out of 25,846 pending cases during FY 2020/2021) to only **2,602** out of the total caseload of **22,995** that were pending before Magistrates Grade I Courts.

The appointment of 16 Judges who were deployed on 15th August 2022 brings the number of High Court Judges to **72** up from **56**. This is the first time the High Court attains this number. Following this recruitment, we immediately operationalized the High Court Circuits of Moroto, Tororo, Iganga, Luwero, Hoima and Rukungiri. This will significantly improve physical access to justice for our people.

Your Excellency, this Financial Year we plan to recruit at least 10 High Court Judges. It is my desire to deploy more Judges in the Commercial Court and at the Land Division, where enormous amounts of money and land resources, respectively, are tied up. It is also my desire to operationalise 08 more High Court Circuits at Nebbi, Bushenyi, Kasese, Kamuli, Kitgum, Lyantonde, and Apac. This will significantly reduce case backlog and enhance access to justice services. The release of money tied up in the Courts, through the disposal of cases in Commercial Court and Land Division of the High Court alone, would have monumental impact on our economy.

Your Excellency, please allow me seek your indulgence regarding the Supreme Court. I appeal for the appointment of justices of the Supreme Court to fill the acute staffing gap and allow us deal with the case backlog that has grown at that Court by 16.4% to **333 cases** out of 686 last Financial Year (2021/2022) up from the previous **286 cases** out of 614 cases during the previous F/Y 2020/2021. This growth of case backlog is mainly because the Court is not fully constituted.

Access to justice will only be fully realised when the software – the Judicial Officers – are ethical and hardworking. For this, we are putting in place a robust Inspectorate of Courts and a focused training regime.

Regarding the hardware of the Judiciary, we have equally registered laudable progress. The construction of the Supreme Court and Court of Appeal, funded entirely by the Government of Uganda, is in sound progress at **85% completion stage**. By close of this year we shall be able to occupy the Supreme Court Block, and by the end of February 2023, the Court of Appeal Block would equally be ready. These structures further strengthen the independence of the Judiciary by allowing the Courts to sit in their own home. This will not only save us from threatened evictions but will also prevent scenarios where some landlords house Courts in which they also have cases.

I am also pleased to report that we have also accomplished construction and renovation of a number of Courts and Justice Centers across the Country, with funding directly from GoU and through JLOS donor support.

I am confident that, with your continued support, we shall be able to honour Chief Justice Ben Kiwanuka better, when a litigant is able to *walk* to court, testify in a matter and *walk* back home; when a litigant is able to file a case in January and pocket his judgement before December; when Orders issued by Courts are respected by every person and authority in the Land; and when cases of torture of suspects, incommunicado detentions and ‘paying for justice’ become history.

We owe it to Ben Kiwanuka to do all that is within our individual and collective power, to further advance the cause of justice. I call upon all the people of Uganda, the Government, and Non-Government Agencies, to join hands, so that together we strive for the Rule of Law, access to justice and observance of human rights for all persons as we brave the challenges for the good of our people.

Your Excellency, allow me to once again extend our appreciation to the *family of the late C.J. Benedicto Kiwanuka* and to all the distinguished participants for turning up to celebrate the memorable contribution of

Ben Kiwanuka to the administration of justice and the rule of law in our country.

In a special way I wish to congratulate the distinguished retired judicial officers who have won the *Benedicto Kiwanuka Award of 2022*. My Lord late *Laeticia Mukasa Kikonyogo Deputy Chief Justice Emeritus* and My Lord *Hon. Dr. Yorokamu Bamwine, Principal Judge Emeritus*. Your distinguished contribution to the Judiciary is much acknowledged and well appreciated. May the Good Lord reward you and give you good health in your retirement; and may he grant eternal rest to the soul of the departed DCJ. We thank your family members who have come to commemorate with us and we wish them the best of luck.

I also wish to pay special tribute to the Chief Justice of the Republic of Ghana, *Justice Kwasi Anin Yeboah*, who through the *Hon. Prof. Justice Emmanuel Nii Ashie Kotey* has delivered a memorable discourse on the imperatives of promoting and defending the rule of law to ensure judicial independence and excellence. We will treat some of the Ghanaian experience as best practices applicable to the Ugandan Judiciary.

I wish to thank you the *Hon. the Deputy Chief Justice and the entire Organising Committee* that you Chaired, for making this day a great success. I also thank the formidable *Top Management team* that is working with me on the transformation of the Judiciary. The Deputy Chief Justice, the Principal Judge, the Permanent Secretary/Secretary to the Judiciary and the Chief Registrar have offered to the Judiciary great contribution and support.

Your Excellency, your presence is reassuring; and is testimony of your deep seated quest for the rule of law and independence of the Judiciary to prevail in our country. We thank you once again for always responding to our call.

Lastly, I thank God who has protected all of us and taken us through the storm of Covid-19. At least this year, we have had a bigger function as we commemorate the 5th Benedicto Kiwanuka Memorial Day which is significantly 50 years after his disappearance.

God Bless You All.

For God and my Country.

I now have the singular honour to invite Your Excellency, to address your people. I thank you.

Alfonse Chigamoy Owiny – Dollo
CHIEF JUSTICE