



THE JUDICIARY

**SPEECH BY THE HON. THE CHIEF JUSTICE
OF THE REPUBLIC OF UGANDA**

**AT THE 2ND BENEDICTO KIWANUKA MEMORIAL
LECTURE**

ON THE 20TH SEPTEMBER, 2019

AT THE HIGH COURT, KAMPALA

**SPEECH OF THE HON. THE CHIEF JUSTICE AT THE SECOND
BENEDICTO KIWANUKA MEMORAL LECTURE ON THE 20TH
SEPTEMBER, 2019 AT THE HGH COURT IN KAMPALA**

H.E The Vice President of the Republic of Uganda

The Rt. Hon. Speaker of the Parliament of Uganda

My Lord The Hon. Dr. Willy Mutunga, The Rtd. Chief Justice of the
Republic of Kenya

The Hon. The Deputy Chief Justice,

The Honorable Minister of Justice and Constitutional Affairs,

The Hon. The Principal Judge,

My Lords the Justices and Judges,

The Head of the Public Service,

Your Excellences the Ambassadors and High Commissioners,

The Family of the Late Benedicto Kiwanuka

Heads of JLOS Institutions,

The Chief Registrar,

Permanent Secretaries,

Your Worships,

Invited Guests,

Ladies and Gentlemen.

I welcome you all to this occasion of the commemoration of the Late Benedicto Kiwanuka. In a special way, I welcome H.E The Vice President of Uganda and thank you for presiding over this function.

In the same vein, I wish to express my gratitude towards Hon. Justice Dr. Willy Mutunga for accepting to come and deliver the key note address in commemoration of the late Benedicto Kiwanuka, the first Ugandan Chief Justice of the Republic of Uganda. Hon. Justice Willy Mutunga as we all know, is a distinguished scholar and jurist and former Chief Justice of the Republic of Kenya.

I also take this opportunity to thank our international partners in the administration of justice, our national partners from JLOS institutions, and all our invited guests for accepting our invitation to attend this ceremony. We value your friendship and support towards the rule of law in this Country.

My Lords the Justices and Judges; thank you for gracing this occasion and for always standing firm in defence of the Independence of the Judiciary and the Rule of Law. I urge you to

remain steadfast as this is the best way of keeping alive the legacy of Benedicto Kiwanuka.

The theme for this year's Memorial Lecture is – “***Benedicto Kiwanuka: The quest for Justice and the Rule of Law.***”

As we may all know by now, Chief Justice Benedicto Kiwanuka was dragged from his Chambers here at the High Court in 1972 by the Late President Idi Amin's soldiers and presumably murdered in cold blood. To date the whereabouts of his remains are unknown.

The legacy of the late Benedicto Kiwanuka, particularly as a Judge and a Chief Justice, is worth celebration; if not for anything else, for his boldness and steadfastness in defending and dying for the independence of the Judiciary and the rule of law.

As Judicial officers we hold our offices in trust for the people of Uganda and we are accountable to the people through the Constitution. As such, we must uphold the rule of law through independent and impartial decisions. Under article 128 of the Constitution, we are called upon to administer justice independently and without undue influence.

Judicial independence and the rule of law are often misunderstood as principles that are for the benefit of the judge which is not the case. These principles are meant to ensure that a judge will be impartial in the administration of justice. They are derived from the principle that ***'justice must not only be done but must be seen to be done'***. The principles are therefore intended to protect the people to whom justice is administered.

Judicial independence implies that judges have the responsibility and privilege to administer justice without any form of undue influence. Judges therefore have a responsibility to protect their independence and impartiality. They do so not out of self-interest, but as an obligation to the public, which has entrusted them with decision-making power under Article 126 of the Constitution of the Republic of Uganda and; to whom they are ultimately accountable to maintain public confidence in the administration of justice.

Let me point out one truth: The Judiciary does not go to villages and streets to solicit for cases to be filed in court. The people, sometimes even the Government, do so as a constitutional right to seek redress in Court whenever they have a justice need. In resolving these disputes, the Courts must only be guided by the

Constitution and the Law. Perhaps we need to remind ourselves of Article 126 on the exercise of Judicial power.

“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 the values, norms and aspirations of the people.”

And also Article 128(1) and (2)

- 1) “In exercise of judicial power, the Courts shall be independent and shall not be subject to the control or direction of any person or authority.”**
- 2) “No person or authority shall interfere with the Courts or Judicial officers in the exercise of their judicial functions.”**

It is therefore of utmost importance that in the proper discharge of their constitutional functions, the Courts should not be undermined by the other organs of the State. Judges should be at liberty to exercise their functions with independence and without fear of consequences of their decision. When Judges make decisions, they should be respected irrespective of whether we agree with them or not. The law clearly provides for a remedy every time a person is

genuinely aggrieved with the decision of a Judge. Therefore, acts such as the continued re-arrest of suspects or accused persons released by the courts are most unfortunate in this day and age. We should not be seeing such incidents any more. The agencies concerned must stop such impunity and sense of lawlessness. Such conduct is a direct affront to the independence of the Judiciary and has the effect of eroding public confidence in the Judiciary and other law and justice institutions.

The nature of the death of Chief Justice Benedicto Kiwanuka reflected how the functionality, effectiveness and independence of the judicial system had been seriously undermined. Perhaps nothing has been more damaging than the abduction and disappearance of the country's Chief Justice from the very headquarters of the Judiciary.

Nobody should ever imagine and impute that Judges are not concerned about the security of the State or the need to preserve law and order. Criminals must be arrested and prosecuted. All we urge is that the organs of the State charged with those responsibilities must do so in accordance with the Constitution and the Law. Article 99 of the Constitution is clear that even the

exercise of Executive authority by the President must be **“in accordance with this Constitution and the Laws of Uganda.”** That means that all those members of the Executive to whom certain executive powers have been delegated must themselves act accordingly. Furthermore, we must all remind ourselves of the Provisions of Articles 43 and 44 of the Constitution, which clearly state as follows:

Article 43 – General limitation on fundamental and other human rights and freedoms

- (1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.
- (2) Public interest under this article shall not permit –
 - (a) Political persecution;
 - (b) Detention without trial;
 - (c) Any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and

democratic society, or what is provided in this Constitution.

Article 44 - Prohibition of derogation from particular human rights and freedoms

Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms –

- (a) Freedom from torture and cruel, inhuman or degrading treatment or punishment;
- (b) Freedom from slavery or servitude;
- (c) The right to fair hearing;
- (d) The right to an order of habeas corpus

We must all be wary of cutting down the forest of laws for the sake of the devil lest the devil turns against us and we have nowhere to hide.

I urge Judicial officers to fully uphold the principles enshrined in the Code of Conduct for Judicial Officers since they are premised on the rule of law which we must protect and uphold at all times. Efficient and effective administration of justice is only possible under a situation that is positively responsive to the rule of law. This is a call to everyone involved not only in the administration of

justice but also in the running of all affairs of the State. Uganda is our Country. We all owe it a duty to provide good governance in accordance with the Constitution and the Law. Let us work together to achieve that objective. In that way we shall ensure that there will be no more Ben Kiwanukas.

I once again thank you all for gracing this momentous occasion with your presence.

Bart M. Katureebe
CHIEF JUSTICE