

The Judiciary of Uganda

STRUCTURE AND FUNCTIONS OF THE JUDICIARY

A PAPER PRESENTED DURING THE INDUCTION OF NEW MAGISTRATES GRADE ONE AT RIDAR HOTEL, SEETA, MUKONO ON THE 24^{TH} SEPTEMBER 2012

BY

HENRY PETER ADONYO

ACTING CHIEF REGISTRAR

CHIEF REGISTRAR P.O.BOX 7085 Kampala

E-mail: hadonyo@judicature.go.ug

1. Introduction

Let me take this opportunity to welcome you all to this Induction/ Orientation course for newly appointed Magistrates Grade One. I am indebted to the organizers of this conference for their invitation which has enabled me to participate and contribute to a better understanding of the Structure and Functions of the Judiciary.

This paper is presented in six parts namely;

- (1) Introduction, which I have already handled;
- (2) General background to the Judiciary;
- (3) Vision, Mission, Mandate, Objectives and Functions of the Judiciary;
- (4) Current Management Structure of the Judiciary;
- (5) Challenges
- (6) Conclusions and Way forward;

I intend to make a tutorial presentation coupled with interactions from you.

2. General Background to the Ugandan Judiciary

When Britain colonialists took control of Uganda in 1884 after the Berlin Conference they found that the judicial system of Uganda consisted of a number of local authorities such as tribal kings, tribal chiefs, clan leaders, kin group, elders all who worked primarily to enforce local customary law. Islamic law was also practiced in some areas of northern Uganda.

The Uganda Order-in-Council promulgated by the British Monarch in 1902 established the High Court of Uganda and other subordinate Courts. Thereafter,

British jurisprudence was gradually imposed, spreading more quickly across the South than the North of Uganda where Islamic law was prevalent especially in West Nile region.

At independence, the above mentioned provisions were re-enacted with slight modifications. The Order-in-Council imported into Uganda, English law and English legal culture which continue to form the basis of the country's legal system even now with slight modifications.

The resulting legal system consisted of the High Court, which heard cases involving murder, rape, treason, and other crimes punishable by death or life imprisonment; and subordinate magistrates' courts, which tried cases for crimes punishable by shorter terms of imprisonment, fines, or whipping. Magistrates' court decisions could be appealed to the High Court.

However, the 1967 Constitution declared that decisions of the High Court could be appealed to the Court of Appeal for Eastern Africa (CAEA), or to a new Court of Appeal established by Parliament. This became the de facto legal system until the collapse of the East African Community (EAC) in 1977 when the Uganda government withdrew from the CAEA and created a national Court of Appeal.

It should be noted, however, that the legal system virtually broke down during the 1970s, in part because Idi Amin undermined the judicial system when it attempted to maintain its independence on decision making. The end of Amin's regime, did itself bring any significant improvement in the criminal justice system.

When Yoweri Museveni became president of Uganda in 1986, he pledged to end the army's tyranny and reform the country's Criminal Justice System. The NRM government then introduced the Constitution (Amendment) Bill, 1987, and the Judicature Act (Amendment) Bill, 1987.

The name of the Court of Appeal was thus changed to the Supreme Court of Uganda. The Chief Justice became its head and the chief administrator of the judiciary.

Two new positions were created, a Deputy Chief Justice of the Supreme Court and a Principal Judge, who became head of the High Court. Appeals from any decision of the High Court were referred to the Supreme Court. The current Court of Appeal is thus a child of the 1995 Constitution.

In 1988, the Government began the process of developing a new Constitution based on public consultation. The 1995 Constitution now forms the supreme law of Uganda and spells out more specifically the key obligations of the Judiciary in Chapter 8.

Also in 1988, the NRM government substantially changed grass-roots adjudication by giving judicial powers over civil disputes, which up until then had been exercised by chiefs, to elected Resistance Committees (now Local Council Courts) in each village, parish, and sub-county. With a predominantly rural population, many Ugandans seek justice at the local level. State sponsored local tribunals or Local Council Courts (LC Courts) apply customary norms and provide local fora for dispute resolution. Local council courts are established from the village level (LC1), to the parish level (LC2), and on to the sub-county level (LC3). The L C III Court consists of independent persons other than the LC Committee members. The courts have jurisdiction over limited civil matters and petty criminal offences. They also deal with cases governed by customary law including property, interstate inheritance, and marital disputes. There are close to 56,000 LC Courts countrywide.

3. Vision, Mission, Mandate, Objectives and Functions of the Judiciary

The Vision

The Vision of the Judiciary is "Justice for All"

The mission

The mission of the Judiciary is; "An independent, competent, trusted and accountable Judiciary that administers justice to all."

The Mandate

The mandate of the Judiciary as enshrined in Article 126(1) of the constitution of the Republic of Uganda states that "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 aspiration of the people". In addition, Article 128(1) states that; "In the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority".

Objectives

The main objective:

The Judiciary's main objective which is in line with the J/LOS goals and objectives is "To improve access to Justice for all people in Uganda"

Specific objectives:

The specific Objectives of the Judiciary include;

 To ensure that Justice is done to all irrespective of their social or economic status.

To ensure that Justice is administered in a timely manner without delay.

- To ensure that adequate compensation is awarded to victims of wrongs.
- To promote reconciliation between parties.
- To administer substantive Justice without undue regard to technicalities.

Functions

The main functions of the Judiciary are to:

- Administer justice through resolving disputes between Citizen and Citizen and between the State and Citizen;
- Interpret the Constitution and the laws of Uganda;
- Promote the rule of law and to contribute to the maintenance of order in society;
- Safeguard the Constitution and uphold democratic principles;
- Protect human rights of individuals and groups.

4. Current Management Structure of Judiciary

Headed by the Chief Justice, the Judiciary is administered under a two-tier system; judicial; headed by the Chief Registrar and assisted by Registrars and Chief Magistrates in their respective Jurisdictions; and the Finance and Administration; headed by the Secretary to the Judiciary and assisted by the Under Secretary.

5. Current Court Structure

The current court structure consists of the Supreme Court at the top, a Court of Appeal/ Constitutional Court, the High Court and the Magistrates Court. Also there are the Local Council Courts.

5.1 The Supreme Court

The Supreme Court is established by Article 130 of the Constitution and stands out at the top of the judicial pyramid as a final court of Appeal in Uganda. It has no original jurisdiction save as conferred by law like in the case of Presidential Elections petitions.

The Court is constituted by the Chief Justice and not less than seven justices, as Parliament may by law prescribe. It is duly constituted at any sitting by five Justices, but when hearing appeals from decisions of the Court of Appeal, a full bench of justices has to be present. Parliament has increased the number of justice to ten excluding the Chief Justice. The decisions of the Supreme Court form precedents followed by all lower courts.

5.2 Court of Appeal / Constitutional Court

The Court Appeal is a child of the 1995 Constitution. It is the second Court of record, and inter-positioned between the Supreme Court and the High Court.

The Court of Appeal as the title suggests has appellate jurisdiction over the High Court. It is not a Court of first instance except when hearing constitutional cases since it is also the Constitutional Court.

The Court of Appeal of Uganda came into being following the promulgation of the 1995 Uganda Constitution, and the enactment of the Judicature Statute, 1996. Article 134 established the structure of the Court of Appeal to consist of:

- The Deputy Chief Justice, and
- Such number of Justices of Appeal not being less than seven as Parliament may by law prescribe. This has been increased to fourteen

5.3 High Court

The High Court of Uganda is established by Article 138 of the Constitution and stands as a symbol of Justice. It is the third court of record in order of hierarchy and has unlimited original jurisdiction i.e. it can try any case of any value or crime of any magnitude in Uganda. Appeals from all Magistrates Courts go to the High Court. The High Court is headed by the Honourable Principal Judge and is responsible for the administration of the court and has general supervisory powers over Magistrate's Courts.

The High Court conducts most of its business at its headquarters but with the decentralisation of the High Court, its services are now obtained at its eight divisions in Kampala: the Civil Division, the Commercial Division, the Family Division, the Criminal Division, the Land Division, the Execution and Bailiffs Division, the International Crimes Division and the Anti Corruption Division.

The High Court is also decentralised into circuits at Fort Portal, Arua, Masindi, Gulu, Jinja, Masaka, Mbale, Mbarara, Soroti, Lira, Nakawa, Masindi and Kabale. Its current approved posts of judges are 51 judges including the Principal Judge. It is hoped that the Parliamentary resolution to increase this number to 82 will soon come to pass

The High Court is situated on Plot 2, The Square just by the Constitutional Square. The building is comprised of three wings that house the Chief Justice, Deputy Chief Justice, Principal Judge, Judges of the High Court, Chief Registrar, Registrars and the Secretary to the Judiciary/staff.

Magistrates Courts

Magistrate's Courts are the lowest subordinate courts whose decisions are subject to review by the High Court. There are three levels of Magistrates courts: Chief Magistrates, Magistrates Grade I and Magistrates Grade II. These courts handle the bulk of cases in Uganda. Presently the country is divided into 38 Chief

Magisterial areas administered by Chief Magistrates who have general powers of supervision over all magisterial courts within the area of their jurisdiction.

There are currently 38 Chief Magistrates' Courts, 120 Magistrates' Grade I Courts and over 100 Magistrates' Grade II Courts. Each Chief Magistrates' Court has a Chief Magistrate, and Magistrates Grade I. Magistrates Grade II's have recently been posted to individual station to provide wider coverage of services to the people.

The Judiciary also supervises the Local Council courts as well as tribunals.

6. Challenges

There are several challenges embedded in the structure and functions of the Judiciary. I will mention only one. The Constitution provides in Chapter Eight the post of the Chief Registrar and a registrar. The functions, privileges and duties of these offices have not been provided just like for many constitutional posts. Even though the Judicature Act, the Civil Procedure Act and Rules, the Magistrates Courts Act etc try to define the functions of these positions but these are not adequate. You may recall that the functions of these judicial offices have traditionally been by practice or legal inheritance from the British colonial masters yet no efforts have been made to clearly define and provide for these positions. The vacuum created has brought in mal administration of the Judiciary. These posts should be properly defined to avoid the current vacuum in the administration of this important arm of the state. This scenario can possibly be cured if an administrative law is put in place to clearly define the administration of the Judiciary taking into account its superior position as an independent arm of the state.

7. Conclusion & Way Forward

Overall, the Management Structure of the Judiciary is continuously evolving as we search for better mechanisms for administering Justice in Uganda.

We look forward to getting more ideas from this workshop on how to better the management of the Judiciary so as to perform its prescribed functions.

Together we can ensure that people access and appreciate the role of the Judiciary in the administration of justice in Uganda.

Thank you for your kind attention.

Henry Peter Adonyo
Ag. CHIEF REGISTRAR

CHART I: ADMINISTRATIVE STRUCTURE

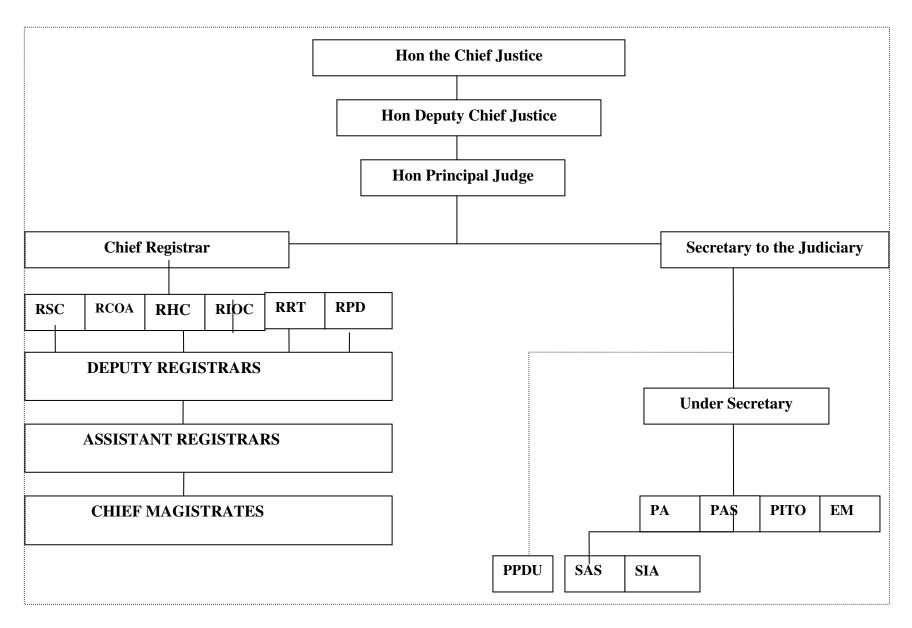


CHART II: THE JUDICIAL STRUTURE

