Time Management in the Adjudication of Cases
(Delivered to the Annual Judges Conference 2020 at Kampala, Uganda)

Introduction

When the Executive Director, Judicial Studies Institute, asked me to speak on the above subject, I tried to wriggle out of the assignment. 'I am not the right person to speak about this.' 'I am defaulter! A complaint was made against me to the JSC and may be under consideration.' 'Why not pick someone more senior or an abler judge to deal with this subject?' The Executive Director insisted that in spite of my objections this is the subject she had decided I speak about. So here we go. You know whom to blame in case you get disappointed!

As I understand, the topic is rather narrow but of the utmost importance to the users of the courts and addresses the management of time in the adjudication of cases. Adjudication, as you no doubt know, is a noun derived from the verb Adjudicate. Adjudicate is defined by the Oxford Dictionary of English, Second Edition, Revised, as,

> '**make formal judgment on a disputed matter.**'

In other words, adjudication is therefore the rendering of decisions by the judge after a hearing of a case.

Ecclesiastics 3 has a heading 'A Time for Everything'. In verse 1, the writer of this book, states,

> 'There is a time for everything, and a season for every activity under the heavens:'

This morning we are concerned with the time to render judgments and or other decisions by the courts and or individual judges in a timely manner.

Constitutional Foundation

This matter is of great constitutional importance in our country. Article 28 (1) sets out the right to a fair hearing and in article 44 declares that this right is not derogable under any circumstances. It cannot be limited whatsoever. It states,

> 'In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, **speedy** and public hearing before an independent and impartial court or tribunal established.' (Emphasis added)

The previous 1967 Constitution used the expression 'hearing within a reasonable time.' I take it that this change in phraseology was not by accident. It was deliberate. In 1995 the Constituent Assembly chose to redefine the standard within which hearing and determination of cases was to be based. 'Reasonable time' was no longer the standard or norm. Courts had to act speedily. The courts had to move with a little more haste in rendering decisions in the matters that came before them than they had done hithertofore.

This imperative is repeated in Article 126 (2) (b) of the Constitution. Article 126 (2) sets out the principles which the courts in Uganda shall apply in adjudicating cases of both a civil and criminal nature. Under (b) thereof one such principle is '**Justice shall not be delayed**.'

When it comes to constitutional matters before the Constitutional Court the standard is set even higher. Article 137 (7) states,

> 'Upon a petition being made or a question being referred under this article, the Court of Appeal shall proceed to hear and determine the petition as soon as possible and may, for that purpose, suspend any other matter pending before it.'

Likewise, when it comes to election petition matters both the High Court and the Court of Appeal are obliged to lay aside any other business and attend to the hearing of election petitions and appeals therefrom as fast as possible.

The Judiciary had, somewhat earlier on, recognising the problems that this matter of delay in rendering decisions had in the past caused, decided to set a standard that would be applied to the rendering of decisions, which has come to be known as the 60 days rule. This was in 1989 with the voluntary adoption of a code of ethics for judges and magistrates. Clause 6.2, under the sub heading '**competence and diligence**', provides,

> 'A Judicial Officer shall promptly dispose of the business of the court, but in so doing, must ensure that justice prevails. Protracted trial of a case must be avoided wherever possible. Where a judgement is reserved, it should be delivered within 60 days, unless for good reason, it is not possible to do so.'

International Arena

All the 3 Regional Human rights treaties, that is the African Charter on Human and People's Rights; the European Convention on Human Rights and the American Convention on Human Rights impose on member states the obligation to hold trials within a reasonable time. The minimum standard internationally is therefore that decision-making must be within a reasonable time. The standard set in our Constitution is therefore somewhat higher given that the word used to denote the same is a '**speedy**' trial.

Under the International Framework for Court Excellence, developed by an international consortium of courts and justice related institutions, ten core court values that an excellent court must espouse are set out. These values include '**timeliness**' and '**certainty**', which relate to acting within the time standards established either in the law or by the court and certainty that such time standards will be observed.

A modern, professional and effective judiciary, such as, I presume, the Ugandan Judiciary aspires to be, given the theme of this conference, must embrace the said values and in particular, **'timeliness'** and **'certainty**' in the delivery of judgments and other decisions.

Why is it important to have a time standard in this area?

Firstly, it would be to remind the Judges and Magistrates of the established standard and the need to observe the same as a measure of their competence and diligence. Secondly, it informs the public and court users of the standard that the courts have accepted to be held to. Thirdly it provides material upon which the legal practitioners can advise their clients on the likely timeline of litigation should they choose to pursue litigation. In addition, when observed it provides certainty to the court users as to the necessary time for which to wait for decisions from the courts.

What happens if the standard is not met?

The standard has an exception where for good reason it is not possible to observe the same. Not all manner of excuses will amount to good reason. Good reason may include absence from station on of account sickness, leave, overseas mission, or other sufficient reason. If this exception is not met, litigants may be correct to complain about the delay and forward their complaints to an appropriate authority.

What is the current situation?

I imagine that the very fact I have been asked to speak about Time Management in the Adjudication of Cases would suggest that there is a perception, at the very least, that there might be issues of concern in this area. Given the time I have I will restrict myself to the situation nearest to me though a judiciary wide analysis would provide a more representative understanding of the extent of the problem, if at all, judiciary wide. As I am located in the Court of Appeal, I will look at the information that obtains at the Court of Appeal.

See Table 1: Pending Judgments (Constitutional and Civil) as at 31st December 2019 (from the CCAS).

As at 31st December 2019 there were 149 cases where judgments were pending delivery. Of those **45 cases** had judgments pending for more than 365 days (a year). **16 cases** had judgments pending for more than 2 years. 29 cases had judgments pending for 60 days or less. The majority of pending judgments (**89 cases**) as of the 31st December 2019 did not comply with the 60-day rule. Chances are, with the passage of time, this number has grown.

What brings this about?

The following extract from proceedings before the 6th successive panel attending to Phillip Ddumba and Anor v David Arthur Bagambe, Civil Appeal No. 5 of 2011 on 5th February 2019, may suggest some of the reasons why this unfortunate situation obtains.

> '**Mr. Byamugisha:**
> If it may please your lordships, Byamugisha Nesta for the appellants who are present, my learned friends Mafabi Godfrey, Kagwa David and Lillian Natukunda for the respondent. My lords I can also see the respondent.
> **Justice Owiny Dollo:**
> The parties are present
> **Mr. Byamugisha:**
> *Yes my lord.*
> *My lords in this case, the parties have been waiting for judgment since November 2013. My lord we appeared on 7th November 2013 before Justice Remmy Kasule, Richard Buteera and Prof. Lillian Tibatemwa. When we appeared before that panel we submitted and judgment was reserved. It was not delivered and subsequently Justice Tibatemwa was elevated. So we again appeared before a reconstituted*

panel which consisted of Justice Richard Buteera, Justice Kasule and Justice Cheborion Barishaki in 2015.

We adopted our earlier submissions, judgment was also again reserved. We have not received it to date my lord.

Justice Owiny Dollo:

Do you still expect it?

Mr. Byamugisha:

My lords, we would still expect it.

My lord we seek your guidance.

Justice Owiny Dollo:

You are before a new panel, you should have told your client unfortunately we are going for the hearing again because this is a new panel, they cannot write a judgment without our appearing before them. So now you have appeared before us, this judgment will be delivered by this panel.

Mr. Byamugisha:

Most obliged my lords.

Justice Owiny Dollo:

So the most important thing is to move forward now, forget the past it has happened and we apologize it shouldn't have but it has happened. Let's now deal with the situation, how do you intend to proceed?

Mr. Byamugisha:

My lords we intend to adopt our submissions which are on record of the 7th November 2013.

Justice Owiny Dollo:

You have not become wiser along the way?

Mr. Byamugisha:

No my lords.

Mr. Mafabi:

My lord we also do adopt our submissions both written and oral before the panel then of Justice Remmy Kasule, Justice Richard Buteera, and Justice L.E Tibatemwa now of the Supreme Court.

[The court asks some questions in relation to the matters in issue in the appeal.]

Justice Owiny Dollo:

Mr. Mafabi you have anything to say or you are contented with what we have on record?

Mr. Kagwa:

My lord we are contented with what we have on record, our submission was oral. We believe we have nothing more to add.

Justice Owiny Dollo:

We will deliver our judgment on notice.'

The said proceedings took place on the 5th February 2019. As of the 31st December 2019, judgment was still awaited by the parties.

On the first, second and third time this appeal came for hearing in 2012 (7/05/2012; 11/10/2012 & 29/11/2012) it was adjourned thrice in succession to the next session. The fourth panel that heard it on 28th October 2013 adjourned it with judgment on notice. The panel disintegrated without rendering judgment. Another panel heard it, in 2015, with counsel adopting their earlier oral submissions. That panel too disintegrated without rendering judgment. Now the current panel is still considering the matter after close of hearing on 5th February 2019. It is close to 10 years since this appeal was lodged in the Court of Appeal. In addition, it is almost 7 years since the parties were first promised a judgment of this court on notice.

The most frequent cause of disintegration of panels before rendering judgment is elevation of one member of the panel to the Supreme Court or retirement. At one point in 2017 or earlier the Chief Justice had to order the elevated justices and remaining justices to complete the affected judgments before the elevated justices assumed office upstairs. At the time, there were approximately 100 appeals affected and probably the instruction was obeyed in respect of 60% of that number.

Collegiate courts where an uneven number of members renders decisions typically require good coordination for everyone to move at the same step and ensure that decisions are rendered in a timely manner. Somehow, this has eluded this particular appeal and probably a significant number of other appeals. It points to serious issues in relation to not only time management but also case **management** and **command and control issues** that seem to have bedevilled the COA for a significant part of the last decade. If you are looking for evidence for this statement, you need not go beyond Civil Appeal No.5 of 2011.

The way the COA should work is that after hearing a matter the judges would retire and discuss the case; take a position and the presiding judge may ask one member to write the lead judgment. The lead judgment would then be circulated and members would comment on it and decide whether to concur without writing a full opinion too! On the other hand, in case there are differences a judge may write his / her own judgment explaining why he or she agrees with the decision but for different reasons or simply express oneself differently in arriving at the same decision.
Thereafter the final judgments would be written, signed and the presiding judge would direct as to delivery of the same to the parties and the public.

I recall that while I was still practising law several decades ago as well as my first assignment at the Court of Appeal in 1996/1997 the normal practice was for judgments to be delivered by the panel that heard the appeal. The latest practice especially in civil cases is to assign the registrar to do so. Maybe it is time to consider returning to the old practice.

For a number of reasons what should be the norm was not happening and the result is the picture painted in Table1. I am sure you must have heard of the impressive figures of cases completed in 2018 and 2019 with the targets being exceeded significantly. Some of my colleagues have observed that this is the type of problem, which shows that the court is working. It is a 'good' problem. The Court is hearing cases, which is a correct first step. It is a view that I do not share. Hearing and timely decision-making must be part and parcel of the same process. You cannot divorce one from the other without running into the kind of problems that have afflicted Civil Appeal No. 5 of 2011.

Corrective Measures

The Court of Appeal Justices have recognised that this situation needs to be averted and have had discussions on how to improve the situation. In meetings on the 15th October 2019 and 22nd January 2020, chaired by the Head of the Court, the Honourable the Deputy Chief Justice, a protocol on reducing delay in delivery of judgments has been agreed. I set it out below.

> **'PROTOCOL ON REDUCING DELAY IN DELIVERING JUDGMENTS AT THE COURT OF APPEAL OF UGANDA (MEASURES AGREED TO BY THE JUSTICES OF THE COURT OF APPEAL IN THEIR MEETING OF THE 15TH OCTOBER 2019)**
>
> [1] We shall maintain the 60-day rule within which to deliver judgments after close of hearing. Colour code for this period shall be green. Judges writing the judgment of the court or lead judgment shall endeavour to write and circulate the same not later than 30 days from cessation of hearing. Whenever a judgment is circulated by the judge originating the lead judgment, or dissent other panel members ought to comment upon the same or take position within 7 working days. In case of a lead judgment to which there is a dissent the dissent ought to be circulated no later than 30 days from receipt of the lead judgment.
>
> [2] If for any sufficient reason such as absence from station, sickness, leave, or complexity of the matter, it is not possible to do so judgments shall be delivered no later than

90 days from cessation of hearing. Colour code shall be amber or orange for this period (60- 90 days)

[3] Thereafter colour code shall be red for all outstanding judgments requiring immediate action. Colour code red implies that the situation is unacceptable.

[4] It is the duty of heads of panels to ensure that judgments are written and delivered in time. They shall be responsible to reporting to the collegium of judges periodically.

[5] All judgments that have been pending for a year or more must be delivered in the next 30 days. There shall be an extra ordinary meeting of the court to review the position and determine if there has been compliance. At this meeting the heads of panels will report on the position of cases that they have presided over and brief the collegium of judges on the steps being taken to comply with the standards set out above.

[6] Thereafter a deadline shall be set for all cases whose judgments have been pending for more than 3 months which the panels seized of them must comply with.

[7] Back to back sessions are hereby discouraged. Time must be allocated for writing judgments. If the court holds a session for one month the succeeding month must be set aside for writing of judgments for the judges that were engaged in the session the previous month.

[8] The judges undertake to use technology to ease the process of judgment writing like sharing drafts by email or other electronic mediums that they may agree upon which render face to face meetings irrelevant and hastens sharing of information.

[9] The court shall develop time standards for the life of the cases at the court, including specific events, that the court will adopt and publish in a **Customers Charter for the Court of Appeal** to which the court will assure the public and the users of the court that it will adhere to and upon which its performance can be evaluated.

[10] In order to keep abreast with the demands and expectations of the court users the court shall establish a **Court Users Committee** that will meet regularly to discuss the performance of the court and any other issues of interest to the court and users.'

The protocol is a work in progress and we await assessment of compliance after the first quarter of this year or at whatever time this will be. Unfortunately, the first deadline was not met.

Who is responsible for time management in rendering decisions?

The **primary responsibility** lies with the **individual judge** in single judge jurisdictions and in collegiate courts with **panel members** with the **head of the panel** coordinating the process to ensure that, the time standards that the court has agreed upon or are expressed in the law are met.

In case the standards are not met, you may require a timekeeper to call time out! You will remember in school in our time (60s and 70s) of the last century it was customary for a school to have a timekeeper who would sound the bell or a drum to signify end of periods in class, or meal times, or announcing a school assembly. Maybe the equivalent in our system is the **Chief Inspector of the Judiciary** appointed by the Chief Justice. I have never heard him report on this subject.

The **Head of the Court or Division** must necessarily bear primary responsibility in ensuring that the court he or she supervises is meeting the standards set out in the law or agreed upon by the court or its judges. He or she needs to draw the attention of his or her colleagues in default.

Thirdly though our courts and judges are independent they are still accountable and the **Head of the Judiciary and Chief Justice** must take responsibility for ensuring that the courts under his or her over all supervision meet the constitutional or legal standards or standards he or she has established as a matter of policy.

I am aware that the Chief Justice has appointed a Backlog Monitoring Committee, with the purpose of monitoring the implementation of backlog reduction measures that have been adopted by the Judiciary and reports to him on the progress of backlog reduction measures. I happen to be Vice Chairperson of that Committee which has made periodic reports to the Chief Justice.

One of the measures was that each court had to prepare and submit to the Chief Justice a Backlog Reduction Plan that would include rendering of delayed decisions. I am not aware that the Court of Appeal submitted such a plan. It is of course known given the numbers of cases (over 7,000) at the Court of Appeal that the current complement of Justices at the COA is insufficient to deal with

the current caseload and needs to be doubled. However, this does not, and cannot, explain delayed judgment delivery.

Can delayed delivery of judgments amount to misconduct requiring disciplinary proceedings including removal from office?

Possibly. As you know this is a matter connected with competence and diligence under our Judicial Code of Conduct. I would, however, leave this matter to the Judicial Service Commission, the administration of the Judiciary, the legal profession and members of the public affected adversely by egregious delays in rendering judgments. Suffice it to say that as judges we ought to be aware that this is a possibility, much as the JSC representative who spoke on 27th January 2020, indicated that the JSC, have avoided travelling this route. As I indicated at the beginning of this address, a complaint was made against two colleagues and me to the JSC, which I imagine, in light of the comments by Ms Norah Matovu on 27th January 2029, was resolved without requiring us to appear and or answer the complaint.

Conclusion

The cost of delayed decision-making is enormous not only to the affected parties but to the country in terms of holding back resources that could be deployed for development. The damage it inflicts on public trust and confidence in the Judiciary is severe.

As I come to the end of my brief remarks, I leave you with the words of Ecclesiastics 3, 16-17;

> ‘16 And I saw something else under the sun:
>
> In the place of judgment—wickedness was there,
> in the place of justice—wickedness was there.
>
> 17 I said to myself,
>
> “God will bring into judgment
> both the righteous and the wicked,
> for there will be a time for every activity,
> a time to judge every deed.”

Would the foregoing remarks resonate with the party in Civil Appeal No. 5 of 2011, who has suffered most, and continues to suffer, on account of the delay in determining that appeal? Or would he or she be more inclined to the Dickensian

view expressed in Bleak House about another court far removed from ours in time and location, but perhaps, not in consequence and effect, in the following words,

> 'This is the Court of Chancery, which ……. has ruined suitor with his slipshod heels and threadbare dress, borrowing and begging through the round of every man's acquaintance, which gives to monied might the means abundantly of wearying out the right, which so exhausts finances, patience, courage, hope, so overthrows the brain and breaks the heart, that there is not an honourable man among its practitioners who would not give—who does not often give—the warning, "Suffer any wrong that can be done you rather than come here!'

We maybe masters of the courts that we serve on but first and foremost, we are servants of the people that we serve. We shall be called to account, surely, if not in this world, then most certainly in the next. As one colleague succinctly put it on one of the WhatsApp groups in the Judiciary, in relation to another subject, '**We need to shape up or ship out**', or words to that effect.

Timely decision making in accordance with the Constitution and our canons is not an option. It is a must. 2020 must be the year that the parties in Civil Appeal No. 5 of 2011 are put to rest with the receipt of their judgment. So must it be with the other 89 or whatever, appeals and petitions, whose judgments have been pending beyond the accepted standard.

I thank you for listening to me.

Fredrick Egonda-Ntende
Justice of Appeal
29th January 2020