

Training for Magistrates Grade One
at Ridar Hotel, Seeta
25th Sept 2012

Caseflow management skills

What is case management

Definition of case management and related concepts:

- ***Case management***: The process through which a case passes from filing to disposition (Wangutusi, 1997).

Case management cont'd

- ***Case management:***

This is a term used to describe processes involving the control of movement of cases through a court or tribunal (case flow management) or the control of the total workload of a court or tribunal (caseload management). Case management in courts is often, but not always, performed by judges. When it is performed by judges it is referred to as 'judicial case management' (Lane, 1993:3).

Case management cont'd

- ***Judicial management:*** This is a term used to describe all aspects of judicial involvement in the administration and management of courts and the cases before them. It includes procedural activism by judges in pre-trial and trial processes and in case management (sometimes referred to as 'managerial judging'). At its broadest, it also encompasses questions of court governance and court administration.

The role of the Court in Case Management

- An effective case flow management system is a must to ensure the functions of the court are accomplished. These functions include;
- Dispute resolution
- Providing redress
- Uphold the law and promote constitutionalism

Roles Cont'd

The system should be designed in such a way that it ensures;

- Fair treatment to all
- Provision of sufficient time to a case for its sound disposal
- Quality of the litigation process
- Enhancement of public trust in the court

Roles Cont'd

Furthermore, the case flow management system should;

- Facilitate non trial disposition (settlements) as early in time of the court's process which would reduce cost of litigation.

Why Manage Case flow

- So as to avoid undue delay?
- **Undue delay** such as provided in ECHR should be brought out and exceptions say due to the complexity of the matter or delays attributed to the parties themselves.

Cont'd

Note that under the ECHR a delay of two years is undue delay.

- Put emphasis on the right to be tried “**without undue delay**” or “**within reasonable time.**” Article 14(3) (c) of the International Covenant, Articles 20(4) (c) and 21(4) (c) of the Statutes of the International Criminal Tribunals for Rwanda and former Yugoslavia provide for persons facing criminal charges “***to be tried without undue delay.***”

Cont'd

- Furthermore **the African Charter**, article 7(1) (d), **the American Convention** article 8(1), and **the European Convention**, article 6(1), provide that everyone who has matters in court has the right to be heard “***within a reasonable time.***”

Meaning of undue delay:

- To be tried “**without undue delay**” is spelt out in General Comment No 13 of the United Nations Compilation of General Comments, p. 124 para 10 as that which “*relates not only to the time by which a trial should commence, but also the time by which it should end and judgment be rendered*”; all stages must take place ‘without undue delay.’

Cont'd

Condition for expedition

- This of course is only possible where the right procedures are in place not only in the first instance court but also in the appellate courts.

Delay Cont'd

- This right of *speedy trial* was in my view designed to prevent oppressive protracted pre-trial and trial remand periods, reduce anxiety and concern and possible trial prejudice, see, *Zvikomborero Chadambuka (Essex Human Rights Review, Vol. 9, No.1 June, 2012), "Serious Offences and the Right to Trial Within a Reasonable Time"*.

Benefits of case management

- (also refer participants to Justice M. Jagannadha Rao n.d. *Case Management and its Advantages*)
- Early resolution of disputes
- Reduction of trial time
- More effective use of judicial resources
- The establishment of trial standards

Benefits Cont'd

- Facilitating planning for the future
- Enhanced public accountability
- Improved attendance of witnesses
- Certainty of hearing

Benefits cont'd

- More effective punishment
- More confidence in the justice system
- More confidence in the Courts
- Promotion of economic development

Benefits cont'd

- Monitoring of case loads
- Development of information technology support
- Increasing accessibility to the courts

Meaning of delay:

- ‘delay’ in the context of justice denotes the time consumed in the disposal of a case, in excess of time within which a case can be reasonably expected to be decided by court,
***Chief Justice of India, Shri Y. K Sabharwal,
25th July 2006***

Delay with focus on;

- Executive,
- Legislature,
- Judiciary,
- The public,

Delay cont'd

- Procedures,
- Adjournments,
- Time management,
- Injunctions, and
- Lack of training.

Causes of delay

- Adjournments;
 - a. should only be granted for sufficient cause, the discretion is in the judges' power see **Shaban vs Karada Co Ltd [1973] EA. 497.**
 - b. by letters should not be accepted **Acaali Manzi vs Nile Bank Ltd, civil suit No 87/93.**

Delay cont'd

- c. Unnecessary adjournment cause delay:
Uganda vs Kooky Sharma & another High Court Criminal Case no 44 of 2000.
- **Injunctions**
are many times used by the litigants to delay cases

Delay cont'd

- **Delays by the Courts**

arise from an inactive judge due to laziness or simply lack of knowledge.

Preparation

is important because an unprepared judge will normally welcome an application for adjournment

Delay cont'd

- **Service of process**

if not properly done usually leads to non-attendance of parties and witnesses which causes adjournments and therefore delays

Delay cont'd

- *insufficient service.*
 - **Pirbhai Lalji & Sons Ltd vs. Hasanali Davji [1969] EA. 439.**
 - **Balenzi vs. Wandera C.S 1047/90.**
 - **Erukana Kavuma vs. Metha [1960] EA. 305**
 - **Waweru vs. Kiromo [1969] EA. 172.**

Delay cont'd

affidavit of the process server must indicate his knowledge of the person he serves and how he knows him or name the person who identified him or her.

**M. B. Automobiles vs Kampala Bus
Services [1966] EA. 480**

Mbonigaba vs Nkinzeruki [1972] HCB. 93.

Delay cont'd

Lack of Commitment and mismanagement of time.

- Failure to work long hours,
 - slow record taking,
 - reaching court late and leaving early,
- gravely reduces the work that a judge does thus leading to backlog.

Procedures

- Some of the procedures are too technical. Unfortunately, some judicial officers use this as an advantage to dismiss cases just for numbers of disposal as accountability at the end of the year.

Effects of delayed disposal

- economic effects of delayed case disposal.
- social effects of delayed case disposal.
- political effects of delayed case disposal.

Processes and records

Clerks are responsible for;

- Opening and obtaining case files
- Recording case activity
- Preparation of orders and documents
- Supplying information to judges and the public.

Cont'd

But clerks can only keep an accurate register of proceedings if the much required case information emanating from the court is timely and correct.

The information is needed to;

- prepare cause list,
- Communicate with parties and witnesses.
- To fix hearing dates,
- Rectify scheduling problems

Cont'd

- It is important to have co-ordination and communication between the clerks and the judges.
- Clerks are the 'traffic cops' of the courts.

Cont'd

- But they are only effective in the management of cases when they understand the goals and principles of the Courts and their judges.
- Periodic training sessions are therefore a must for staff of the Courts.

Detection of delays

- detect delays.
- identify Caseflow management problems.
- measure delays.
- develop a Caseflow Monitoring Tool
- monitor and evaluate backlog in the Courts systems

Cont'd

- There is need for the court to successfully build support for communicating, implementing and managing Caseflow(ICT)

Monitoring and Identifying

Caseflow requires looking at the Court's historical data. Where;

- the filings outpace the dispositions,
- the age of your pending cases exceed the set time in the rules,

Cont'd

- the age of the cases at disposition exceed set time standards,

Then there is a problem in the case flow management of your cases. This calls for stocktaking.

Meaning of stocktaking

In case management;

- This term is used to describe the process of going round and finding out which cases filed, disposed, pending and there length of time spent in the Court. That is to;
- *make an itemized list of files at hand*

Stock taking cont'd

- *reappraisal of their situation or position.*

In all it is the physical verification of the qualities and condition of the cases held in the inventory so as to conduct an accurate audit and valuation

- Key Words: ***examination, count and valuation*** of cases in court.

Stock taking cont'd

Where a problem is detected in the smooth flow of cases, you should immediately check;

- pending inventory report,
- the report indicating age at which cases are being disposed,

Stock taking cont'd

- filings, dispositions, activities, and adjournments. [Here the interest is in the monthly and annual aggregate data on cases filed, disposed, and the number of times the case has come up for hearing. Through this you will be able to determine the trends and effectiveness of your case processing because you will now be able to generate reports on;

Stock taking cont'd

- number of cases registered,
- pace of disposal,
- rate of adjournments, and
- number of cases pending.
-

Stock taking cont'd

- Where the clearance rate is found to be 100%, then the court is simply keeping up with current workload.
- Where the clearance rate is more than 100% of filings, the court is reducing the backlog.
- Where the clearance rate is less than 100% of the filings, then a backlog is being created.

Stock taking cont'd

- The importance of technology (ICT) in its support of case management through creation of records in respect of case processing, monitoring case progress and availing information regarding the statistics needed for management, should not be underrated.

Work performance

Possible responses when considering performance problems:

- Are job roles clear?
- Is the chain of command clear?
- Is the work flow well organized?
- Are workers over-loaded?

Work performance cont'd

- Is the effort greater than the reward?
- Is there waiting time while others perform?
- Is there role conflict with other workers?
- Are the work processes adequate to the desired outcome?

Work performance cont'd

- Are tools and equipment adequate and appropriate?
- Does the service match the competition?
- Is the level of economic activity driving the problem?
- Does legislation bear upon the situation?

Work performance cont'd

- Are technological factors operating against the current position?
- Are workers unaware of value of the services?
- Are there disagreements about how best to perform?
- Are there negative consequences of performing?
- Is the deficient area distasteful or socially negative?

Work performance cont'd

- Is punishment used as a management tool?
- Are there unpleasant working conditions?
- Are there rewards for non-performance
- Does the organization's culture support performance?
- Is there discontent and low morale?

Work performance cont'd

- Are workers new to task(s)?
- Are the tasks complex?
- Is decision-making required in the task(s)?
- Do general principles need to be applied in task(s)?

Work performance cont'd

- Have workers had guidance in how to perform well?
- Do workers get feedback on performance?
- Has inadequate performance been directly observed?

Work performance cont'd

- Have workers been trained in task(s)?
- Is there a history of inadequate training?
- Were workers unable to learn from training available?

Strategies for Case management

Essential elements

- Leadership and commitment
- Goals
- Certainty of a trial
- Early and continuous control of cases

Strategies cont'd

- Control of adjournments
- I.C.T
- Rules and procedure
- Bringup system

Strategies cont'd

- Training
- Communication and publicity
- Involvement of other agencies
- Time management

Time management

- What is time management?
- Causes of time mismanagement.
- Effects of mismanagement of time.
- Strategies of time management.