

SUPERVISORY ROLE OVER MAGISTRATES' COURTS AND MAGISTRATES

“SUPERVISION OR SMOTHERING JUSTICE” By Ms Acio Julia, Senior Principal Magistrate Grade one.

The establishment of the Magistrate's Courts and Appointment of Magistrates of various cadres is a creation of the MAGISTRATES' COURT ACT CAP.16 VOL.II Laws of Uganda. Part II Section 4(1) and (2) and (3) appoints the Magistrates and defines their various grades and jurisdiction. Part XV creates the supervisory hierarchy under which the magistrates directly fall. A good streamlined system for the delivery of quality and timely justice.

I like to think that supervision over magistrates has two contexts. On the one hand it is purely the normal superior *visa-viz* a junior supervision. Administrative supervision for the smooth and coordinated running of the department.

The other is the judicial supervision where this primarily lie in the areas arising from substantive handling of judicial issues in areas of case management involving substantive law, procedural law, and evidential assessment in handling cases before their worship of the mentioned above. I will basically concern myself in this writing with later.

I hope to steer clear of the shipwreck on the rocks of opposing supervisory role and demonstrate that the concept behind the word supervision go to the very heart of our role as judicial officers and the core of the meaning of our shared judicial oath to do justice to the parties who appear before us according to the law and without fear, favour, affection or ill will. This concept go to the heart of our role as judicial officers in promoting transparency and good image of the Judiciary both as the trial magistrates and the supervisory Chief Registrar or any other designated officer for that purpose.

I also hope to show how it is useful for our minds to be focused on those concepts from time to time when exercising supervisory role in any of the two instances above, track should not be lost so that justice is not seen to be compromised or smothered along the process thus helping us in our judicial roles.

Finally I will strive in this paper to point out some of the traps supervision hems the system into and to throw one or two tentative conclusions.

The first aspect of supervision I will tackle is where litigants raise complaints to the supervisors, over management of cases. I will also divide the area of cases where such complaints arise as preliminary and advanced. There complaints are bluntly put before the supervisor in these various manners. I have extracted here below. In complaints marked A and B respectively the supervisor here; if any should have been notified by a copy of the complaint. He has not been moved to act but none the less the file is called for supervision. It defeats me before which prosecutor the supervisor will put the case. To all purpose the prosecution file may not have moved and the victim shall not have been informed of the new developments hence stallation of the case. The supervisors do not give back these files or inform the trial court that the same has been fixed before another magistrate to enable the trial court inform the parties which venue to appear next when the file may be called. As can be seen these files are moving at preliminary stages of hearing. Arraignment and plea taking. For God's sake at this stage no one can tell whether the trial magistrate is biased or likely to be compromised. These are tactics to delay the trial. Apparently the supervisors may not have known that the end motive of these complaints are to delay and evade justice. The nub here is that such a case file moved on a copy of a letter for the supervisors is seemingly not acted upon by the supervisor. The clerks in these offices, their bosses being overwhelmed by pending files them; some of these their on creation for being overzealous in calling for files on unsubstantiated complaint; call for these files without evaluating and understanding the context of the complaint. As long as it is a complaint the clerk thinks the file must be called, writes the letter for his boss who signs. A file called on notification by way of a copy of a letter would only need the supervisor to note and the letter filed not to act. At times to all purposes the prosecutor may be having the file waiting for another prosecutor to be directed by his boss to take over prosecution. With lack of man power he continues to mention the file in court with a submission "this file is waiting reallocation before another prosecutor". Mind you the court after submitting the file to the superior does not open a duplicate file. The accused will not attend before supervising court, the victim is at a loss what next to do. That is the end of the road of justice to him. He now thinks the trial magistrate has been compromised. The difficulty is that we can be hemmed in by the supervisory processes to the extent of denying justice to the parties. Some of the extracts herein show the preliminary stages these case files as and how they are summarily called.

*"The Resident State Attorney
Mbale*

*Dear Sir,
Re: Sironko CRB 236/2006*

Uganda Vs. Gadaffi Akim

I wish to lodge my complaint to your office in respect to the above mentioned case file, expressing my dissatisfaction in the manner which your prosecutor (Sironko) is handling this file.

The gist of the matter is that the accused person was arrested and appeared in court on charges of removing boundary marks. He was granted bail after which the accused person did not report to court again for almost 3 months. A warrant of arrest was issued and the suspect was arrested again to my surprise when the accused was produced before court the prosecutor ordered for his release and told him to report on the 4th of July 2006.

I have been transporting my witnesses over five times to court and no evidence is recovered from them up to date.

I am therefore requesting that the case file be transferred to Mbale and allocated to any other prosecutor. I am ready to transport my witnesses so as justice is seen to be done.

Signed:

Complainant:”

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Second aspect of supervision is the transfer of cases to Chief Magistrate Part XV Section 170 and S.171. (These powers are evoked when there is a complaint) S.170 Transfer cases to Chief Magistrates.

If, in the course of any trial before a magistrate, other than a Chief Magistrate, the evidence indicates that the case is one which should be tried by some other magistrate, he or she shall stop further proceedings and submit the case with a brief report on it to the Chief Magistrate having jurisdiction”

Further Section 171 provides, “A Chief Magistrate may transfer any case of which he or she has taken cognizance for trial to another magistrate.

(b) direct or empower any magistrate who has taken in such case or not, to transfer the case to himself or herself or to any other specified magistrate within the magisterial area of the Chief Magistrate’s jurisdiction, who is competent to try the accused person; and any such case shall be disposed off accordingly.

It has been demonstrated that more often than not these case files stop at the calling of the file and tantamounting to the discharge of the accused person. This is so because when the accused in the instant case or relative have in their complaints caused the file to move from the trial court to the Chief Magistrate, the prosecution files remains in the office of the prosecution or police station where the

case originates. The prosecution file does not move. The victim does not know when the case will be called again and there is no feed back to the trial court as to how at times find the matter has not been allocated it is still in the pending tray before the Chief or Registrar. Two or three journeys is enough to frustrate the effort of a peasant whose sole asset is his labour. The end result is the case is stalled and to all purpose the end of the matter.

*The difficulty is that we can be hemmed in by the supervisory processes to the extent of denying justice to the victim/parties.

An example of such a case is one which recently appeared in the **SUNDAY MONITOR OF 20/08/06 NO.232** which has been taken up by Human Rights. A case of Rash Neglect Act **c/s 228 (f) PCA No. MBA 32 CO.CR....100/2006 CRB 26/2006 UGANDA VS. OUNYO LAWRENCE**. Where a baby girl had the arm amputated due to unskilled intravenous administration of quinine injection which led to the medicine going into the tissue killing it, causing rot and resulting into amputating of the arm. The accused who was arraigned before a competent court in a complaint through his lawyer caused the file to be moved on flimsy ground to the Chief Magistrate. This was a complaint raised at a preliminary stage of hearing. The stage of arraignment and plea taking in court. He was released by the supervisory court and disappeared. What followed thereafter was that the whole case seemed to have been fouled along the process. The father of the child victim made endless journeys to Mbale in vain and has tried his luck with Human rights. I earnestly pray he gets justice. The Hospital Shared Blessing where the child was treated has since disowned the medical officer nor did it admit that the child was ever hospitalized in the said hospital. The Sironko police through the DPP has since denied the case was reported at Sironko.

This is similitude of denying justice. The criteria in which the transfer of cases at plea taking is stalled is similar to smothering justice. The criteria on which supervision is sought should be the ultimate timely delivery of quality justice. Supervision must not be seen to serve the interest of the strong this would draw us back to medieval thinking that law served the interest of the strong²:

The sensitive cases:- these are complaints which no doubt have no basis. Cases where relatives of the accused persons are big government and political shots, a simple case of assault, grievous harm finds its way to the Chief Magistrate in the exercise of powers given in section 170 and 171 to appease these big shots. The G.II or G.I's are "too small" to handle such cases of political heavy weight relatives in

² Thrasymochu, Dias and Jurisprudence p.g,79

the villages or country side. These are the traps supervision drags the system into. Suffice to state it this may, and not go into the little details of such naïve complaints the supervisors succumb into, and sincerely such in such cases the lower magistrates court would get a calling letter in this terminology: “Please dispatch the above file to my office with immediate haste”.

The nub is that the supervisory court is the only person who knows the context of the complaint. It is incumbent on the supervisory office not to take every complaint to warrant the call of the file. At times a request to the officer to substantiate such complaints can do much more into the resolution of the complaint and even dispensation of the case.

The guarantee against misuse of supervision lies in imposing stringent conditions on would be complainants. Measures like making the complaint on oath or by way of an affidavit. To double check, in order that the supervision does not lose course because at the rock bottom lies the principle of fair, quality and speedy delivery of justice. Looking at these complaints from behind your eyes, entertaining them do make supervision a blessing to those who are bent on evading justice, smothering it.

These suggestions may be irksome but it is the only way to check their fraudulent claims/complaints which continually dent the image of the judicial officers. As said earlier on I like to steer clean from being seen as opposed to supervision, but sure these are the traps.

In some instances this may be unfettered way of interfering with the trial court; independence of the judicial officer, or judicial independence where by a judicial officer whether a judge or a magistrate is to decide a case before him or her without fear, favour or ill will but in accordance with the facts of the case as adduced by evidence and in accordance with the law³ ; influenced by some persons dressed in the name of supervision. Why not let these men and women conscientious of their judicial oath do their job. Where they do badly the appellate jurisdiction comes into play. In this direction a crucial distinction between a genuine complaint and a fraudulent one lies, in the former the task of the supervision is to get true justice, in the later it is to delay, smother, evade and ultimately deny justice, the process of supervision is like rewinding a tape and then replay. Where appellate jurisdiction is allowed to come into play, delay in the delivery of notice would be curbed. The time spent in the supervisory process would sincerely have been taken care of by the appellate court. As I said earlier

³ Judicial Code of Conduct

these complaints are one sided hence denying from the very start the principle of fair hearing, Audi Alem Partem. These complaints can't be substantiated they have by popular usage become a fiat in the delay of justice.

I have made up a few suggestions which I believed shall go along way to help safe guard against the traps I have eluded to in the paper.

The more accepted traditional approach; though this trend has actually died of to the detriment of the image of the judiciary; should be for the supervisor to refer the complainant to make in open court his complaint where by the trial magistrate in the matter and the person complained against of wrong doing gets to know what is in the mind of the complainant. The trial magistrate complained against make his ruling clearing himself/herself and steps down. Every stake holder in that case gets to know what is taking place and even the next course and fate of the file is determined. The parties shall even know where to convene next. This is a very transparent and healthy way of registering ones dissatisfaction. It gives no one/party a polite way of gossiping. The likelihood of compromise if any will be seen to be defeated. The image of a trial magistrate will be spared because the allegation will resolve itself in the process. Sweeping claims of corruption is checked in this way. The due allegation of corruption does not always depend upon eliciting the truth; they are blanket complaints in most cases. It is a desperate attempt by one party to stop the judicious process of the matter or to draw punitive measure against the trial magistrate/Judge thus disrupting the due judicial process from continuing timely. And attempt to derail the course and speedy trial.

Another way is to introduce a mode that is relatively strict on the would be complainants. To introduce a system of lodging such complaints on oath, by way of affidavit. The process may be elaborate but this checks on wanton complaints; and falsehood. The measures when taken shall go along way to check the falsehood complaints against judicial officers denting their images and delay in administration of justice. Supervision should not be devoid of the principle of delivering quality and timely justice. The ethics of cultural neutrality should be seen in the process of supervisory role of Chief Magistrate and Registrar. Not wanton intervention and interference in a judicious trial because a complaint has been lodged. There is a lot of hiccup in the process to the detriment of case management. I would like to conclude this piece of work by quoting from the judgment of Lord Denning in *Rahintoola V. The Nizan of Hyderabad* 1958 AC 379 in his modest conclusion said, "I have stirred these points which wiser heads may settle". And that is what you must consider.