

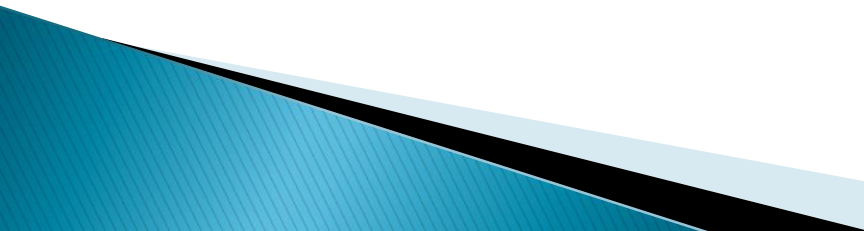
JUDGMENT WRITING FOR REGISTRARS.

- ▶ **BY GIDUDU LAWRENCE**
- ▶ **JUDGE**
- ▶ **MARCH, 2024**

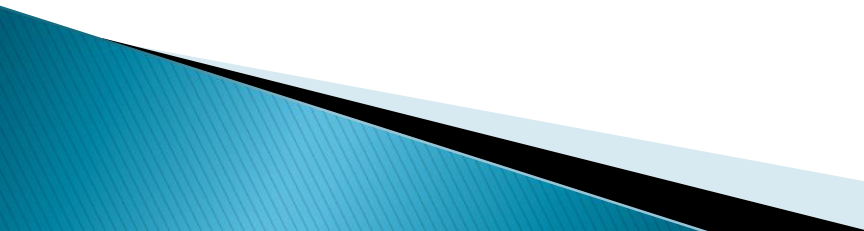
INTRODUCTION

- **The main function of judicial officers is to adjudicate and make decisions. It follows that writing Judgments/Rulings is a MUST.**
- **Research shows that delayed writing and delivery of Judgments/Rulings is partly due to lack of Judgment writing skills.**

ROLE OF REGISTRARS

- ▶ **JUDICIAL ADMINISTRATION**
 - ▶ **CASE MANAGEMENT, SCHEDULING, ALLOCATION, VERIFICATION OF FEES AND PLEADINGS, CUSTODY OF FILES, EXHIBITS MGT, SUPERVISION, CO-ORDINATION, CUSTOMER CARE**
 - ▶ **ADJUDICATION**
 - ▶ **HANDLING INTERLOCUTORY MATTERS, TAXATION OF BILLS, ADR, CONFERENCING, COMMISSIONS, EXECUTION/ENFORCEMENT OF JUDGMENTS**
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DECISION MAKING

- ▶ **ALMOST EVERY ACTION OF A REGISTRAR INVOLVES TAKING OF A DECISION**
 - ▶ **A DECISION SHOULD FOLLOW DUE PROCESS**
 - ▶ **REASONS MUST BE GIVEN FOR THE DECISION**
 - ▶ **IT FOLLOWS AN EVALUATION PROCESS**-weighing options
- 

JUDGMENT

- ▶ **JUDGMENT IS THE MENTAL ABILITY TO UNDERSTAND SOMETHING, FORM AN OPINION AND REACH A DECISION**– (Conscious decision)
- ▶ Judgment is different from instinct. Judgment is a conscious choice after weighing options.

JUDGMENT

- ▶ **The judicial act of a court by which it accomplishes the purpose of its creation. It is a judicial declaration by which the issues are settled and the rights and liabilities of the parties are fixed as to the matters submitted for decision. In other words, *a judgment is the end of the law.....* It constitutes the considered opinion of the Court and is a solemn record and formal expression and evidence of the actual decision of a law suit.**
- ▶ *B N Chaudhuri, The Art of Writing Judgments, 1984, p3.*

PURPOSE OF A JUDGMENT

- ▶ 2. ***“THE OBJECT OF A JUDGMENT IS TO COMMUNICATE– it should have the qualities which make for effective communication, among which I would list clarity, simplicity and brevity”*** Per Lord Bingham, CJ April 2007.
- ▶ . ***“ A judgment must be clear, precise, and say everything that needs to be said as to why a decision was reached and no more”*** Lady Justice Roslyn Atkinson. Judgment writing paper presentation, 13th Sept 2002.

PURPOSE OF A JUDGMENT

- ▶ **3. LEGAL REQUIREMENT. See sections 133 MCA and 82(2) TIA; Order 21(1) CPR**
- ▶ **4. To determine the guilt or innocence of an accused person.**
- ▶ **5. To settle matters in controversy.**
- ▶ **6. To communicate reasons to the parties for the decision.(public and appellate Court)**
- ▶ **7. To provide accountability by Judicial Officers.**
- ▶ **8. To serve as precedents.**
- ▶ **9. To develop Jurisprudence.**
- ▶ **10.To promote checks and balances under the rule of Law.**

STRUCTURE

- ▶ **(i) CAPTION:** The caption contains the court's/tribunal name, the number and title of the case being decided, the parties' names, the name of judge or Coram and date(usually at the bottom)
- ▶ **(ii) INTRODUCTION:** The opening paragraph designed to explain the basics of the case. It introduces the parties, summarizes the determinative facts and essential procedure and briefly states the issues.

STRUCTURE

- ▶ **(iii) FINDINGS OF FACT: Mention the relevant facts and leave details for analysis.**
- ▶ **Only the facts and history that affect the analysis and the decision of the case need to be discussed.**
- ▶ **Facts can be discussed in three parts of the judgment: in the introduction; as part of the narrative to establish time and place; and in deciding issues of fact or law including credibility.**
- ▶ **Facts must be discussed accurately, precisely and impartially. The law belongs to court but facts belong to the litigants.**

STRUCTURE

- ▶ Litigants rarely agree on facts or their meaning and raise all sorts of issues which often times makes the stating of facts by court to be complicated.
- ▶ Judges hear conflicting testimony and must determine which testimony and witness is credible and why.
- ▶ (iv) STATEMENT OF ISSUES: After stating the facts of the case, identify issues to be resolved against the burden and standard of proof(trial) or standard of review (appeal)

STRUCTURE

- ▶ **(v) APPLICATION OF THE LAW:** After identifying the issues, analyse them by applying law to fact.
- ▶ **Because the court's objective is to declare what the law is, the judgment must state clearly the law on which the decision depends.**
- ▶ **A written judgment should not address every issue the litigants raise but only those necessary to decide the case.**
- ▶ **(vi) CONCLUSION:** This is the Court's final decision. No need to repeat facts or issues in the conclusion. It should be brief to the point.

STRUCTURE

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CONTENTS OF A JUDGMENT

- ▶ Substantive and procedural laws provide for the basic contents of a judgment.
- ▶ Sections 136 of the MCA and 86 of the TIA and Order 21 Rule 4 of the CPR provide for what should constitute a judgment.
- ▶ O21,R4– Judgments in defended suits shall contain a concise statement of the case, the points for determination, the decision on the case and the reasons for the decision.

CONTENTS

- ▶ **Must be written**
- ▶ **Language of the Court. (English)**
- ▶ **Points for determination**
- ▶ **Decision thereon**
- ▶ **Reason for the decision**
- ▶ **Dated**
- ▶ **Signed.**

IDENTIFICATION OF ISSUES, QUESTIONS AND INGREDIENTS.

▶ **ISSUES**

- **Proposition of law or fact made by one party but opposed by the other.**
- **Order 15 rule 1 and Order 12 CPR**
- **Each issue must be stated distinctly.**
- **Issues are of fact or law**

ISSUES....

- **Issues of law may dispose of the case and may be tried first. ie POs**
- **Issues are now framed at conferencing(O.12 CPR)**
- **Remember even after taking evidence, additional issues may framed(O.15 Rs. 3&4 CPR)**

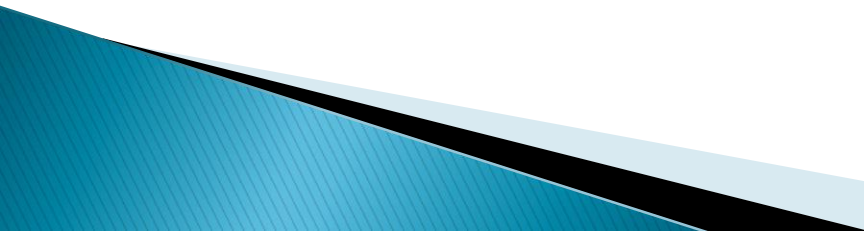
ISSUES IN INTERLOCUTORY MATTERS.

- ▶ **WHETHER TO PRESERVE THE STATUS QUO OR NOT.** There should be a serious issue to be tried by court.
- ▶ **WHETHER THERE IS A LIKELYHOOD OF IRREPERABLE DAMAGE WHICH MONEY CAN NOT ATONE.**
- ▶ **WHETHER THE ON THE BALANCE OF CONVENIENCE AN INJUNCTION SHOULD BE GRANTED OR NOT.** There must be greater hardship and mischief to the plaintiff that money cannot compensate. See *Noor Mohamed V Kassamali*(1953)20 E.A.C.A 8

APPLYING THE LAW TO THE FACTS

- ▶ **This is the crux of judgment writing.**
- ▶ **Evaluation of evidence is done at this stage.**
- ▶ **Evaluate the evidence as a whole for both sides.**
- ▶ **This is where the ratio decidendi is stated and the case is decided finally.**
- ▶ **Judgment should refer to the principles applicable(case law and statutory law).**

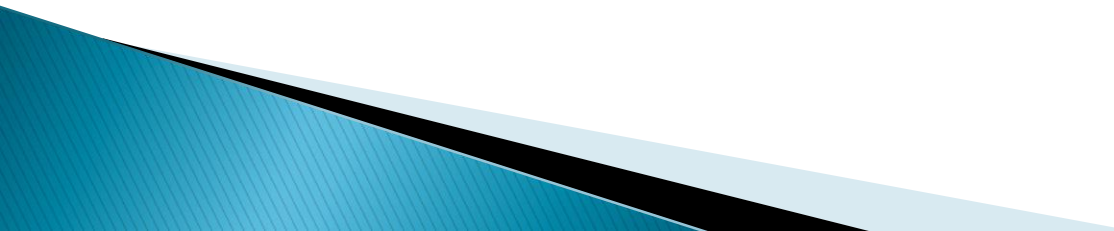
EVALUATION OF EVIDENCE

- ▶ **The proper approach is to consider the strength and weakness of each side, weigh the evidence as a whole**
 - ▶ **Apply the burden of proof as always resting upon the Plaintiff/Applicant**
 - ▶ **Decide whether the plaintiff/applicant has proved the case on the balance of probabilities or not.**
 - ▶ **It is a mis-direction to accept one version and then hold that because of that acceptance the other version is unsustainable.**
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EVALUATION OF EVIDENCE

- ▶ **EVALUATION IS ABOUT WEIGHTS THAT A JUDGE ATTACHES TO EVIDENCE ADDUCED BY PARTIES**
- ▶ **THE TOOLS OF ANALYSIS INCLUDE Demeanour, Consistency, Other Independent Evidence in Support(exhibits)**

AFFIDAVIT EVIDENCE

- ▶ **MOST APPLICATIONS BEFORE REGISTRARS ARE SUPPORTED BY AFFIDAVIT EVIDENCE**
 - ▶ **AFFIDAVITS ARE WRITTEN EVIDENCE GIVEN ON OATH. IT IS NOT EASILY VERIFIABLE AND MAY REQUIRE PUTTING THE DEPONENT ON THE STAND FOR CROSS EXAMINATION.**
 - ▶ **AFFIDAVITS WITH ANNEXTURES ARE EASILY VERIFIABLE ON THE FACTS DEPONENT.**
 - ▶ **AFFIDAVITS FOLLOW RULES.**
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AFFIDAVITS

- ▶ **A WRITTEN STATEMENT IN THE NAME OF A PERSON, CALLED A DEPONENT, BY WHOM IT IS VOLUNTARILY SIGNED AND SWORN TO OR AFFIRMED.**
- ▶ **IT MUST BE CONFINED TO SUCH STATEMENTS AS THE DEPONENT IS ABLE OF HIS/HER OWN KNOWLEDGE TO PROVE**
- ▶ **BUT IN INTERLOCUTORY MATTERS, MAY CONTAIN STATEMENTS OF INFORMATION AND BELIEF WITH THE SOURCES OF GROUNDS THEREOF. Osborn's Concise Law Dictionary. 7th ed by Roger Bird.**

AFFIDAVIT RULES. O 18 CPR

- ▶ **POWER OF COURT TO ORDER PROOF OF A FACT BY AFFIDAVIT**
- ▶ **COURT MAY UPON REQUEST ORDER THE DEPONENT TO BE CROSS-EXAMINED**
- ▶ **AFFIDAVITS TO BE CONFINED TO MATTERS OF HIS/HER OWN KNOWLEDGE AND BELIEF**
- ▶ **BUT IN INTERLOCUTORY MATTERS INFORMATION AND BELIEF OF DISCLOSED SOURCES MAY BE DEPONENT TO**
- ▶ **AFFIDAVITS SHALL NOT BE ARGUMENTATIVE OR CONTAIN HEARSAY.**

AFFIDAVIT RULES

- ▶ **AFFIDAVIT TO STATE IN JURAT THE PLACE AT WHICH AFFIDAVIT WAS SWORN. See Gordon Sentiba & 2 ors Vrs IGG . ULR 356 (COA)**
- ▶ **INCONSISTENCIES IN AFFIDAVITS AMOUNTING TO FALSEHOOD RENDERS THE APPLICATION INCOMPETENT. See Mugume Ben & anr Vrs Akankwasa ULR. 682.**
- ▶ **RULES ALSO RELATE TO ANNEXTURES .**
- ▶ **WHERE A DEPONENT IS ILLETERATE THE COMMISSIONER SHOULD CERTIFY THAT A TRANSLATION WAS DONE.**

CONCLUSION

- ▶ Write in a style you are comfortable
- ▶ Ensure the judgment covers the facts, the law, analysis and a decision/conclusion
- ▶ Timely delivery of judgments is important for the credibility of courts and confidence in the judicial system.

Enjoy judgment writing

THANK YOU

