

PRESENTATION ON NEW RULES & DIRECTIONS: AMICUS CURIAE, RECUSAL & ADJOURNMENTS.

**A PAPER PRESENTED AT A WORKSHOP FOR JUDICIAL
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BY

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INTRODUCTION

- The presentation deals with a set of 3 Rules/ Directions, namely;
 - *The Judicature (Amicus Curiae) Rules, S.I No. 54 of 2022.*
 - *The Constitution (Recusal of Judicial Officers) (Practice) Directions, Legal Notice No. 7 of 2019.*
 - *The Constitution (Adjournments for Courts of Judicature) (Practice) Directions, Legal Notice No. 5 of 2019.*
- The rules/ directions regulate trial procedures for both civil and criminal cases.

The Judicature (Amicus Curiae) Rules, S.I No. 54 of 2022.

- The Rules apply to civil proceedings in all Courts of Judicature (rule 2).
- The objectives of the Rules are —
 - to provide for the principles and procedure to be applied by courts when considering applications for admission of persons as amicus curiae;
 - to promote uniformity, consistency and transparency in considering applications for admission of persons as amicus curiae;
 - to promote the enforcement of article 126(1) of the Constitution by providing justified intervention by a person or organisation seeking to promote the public interest in conformity with the law and with the values, norms and aspirations of the people (rule 3).

Key Terminologies

- **Amicus curiae (friend of court):** a person or organisation that is not a party to a suit but who participates in the litigation by providing the court with important information intended to assist the court in making an informed decision;
- **Fidelity to the law:** faithfulness, trustworthiness, reliability, commitment, dependability or conformity to the law;
- **Novel:** the quality of being new, original, unfamiliar, unusual or unique;
- **Public interest:** includes the interest of society or any segment of society in promoting human rights, democracy, rule of law, and good governance (rule 4).

Requirements for Admission as Amicus (rule 5)

- The court may admit a person or organisation as amicus curiae who meets the following requirements —
 - (a) neutrality and impartiality;
 - (b) the court is satisfied that the submission of the person or organisation will give assistance to the court that it would not otherwise have;
 - (c) the points of law or facts submitted by the person or organisation are novel and will aid the development of jurisprudence;
 - (d) the interest of the person or organisation constitutes fidelity to the law;

Requirements – Cont'd

- (e) the submissions of the person or organisation draw attention to relevant matters of law that are useful, focused and principled;
- (f) the participation of the person or organisation is in the public interest; and
- (g) the person or organisation has demonstrable expertise or knowledge in the area under dispute.

See: Prof. Joe Oloka-Onyango & Others vs Amama Mbabazi & Others, SC Civil Application No. 2 of 2016 and Prof. Philip Alston v Initiative for Social & Economic Rights (ISER) Ltd & Others, HCMA No. 550 of 2022.

Procedure for Application (rule 6)

- A person or organisation who meets the requirements of rule 5 may —
 - (a) apply by notice of motion to appear in court as amicus curiae; or
 - (b) be invited by court by way of letter to appear as amicus curiae.
- The application shall be supported with a formal brief indicating the expertise or justification for consideration of the person or organisation to be admitted as amicus curiae.

Procedure – Cont'd

- The brief shall address the court on points of law not raised by the parties but which are of concern to the court and which could cause a wrong interpretation of the law to be made by the court, and shall comprise of —
 - (a) a table of contents, properly paginated;
 - (b) a statement of questions to be addressed, presented in a clear and succinct manner;
 - (c) a table of authorities, alphabetically arranged and distinguished under different heads of cases, statutes and other authorities, with reference to the page in the brief where the authorities are used;

Procedure – Cont'd

- (d) the identity and interest of the amicus curiae, clearly indicating the legal status of the amicus curiae and the capacity in which the brief is being presented; where applicable;
- (e) a statement of the expertise of the amicus curiae;
- (f) a concise summary of the arguments; and
- (g) the arguments of the amicus curiae, properly itemised under distinct heads and chronologically arranged.

Procedure – Cont'd

- The court may limit the length of the brief and shall, at the time of allowing the application for admission as amicus curiae, determine whether only a written brief should be allowed, or both a written brief and oral submissions.
- Where the court finds that there is need for clarification on the brief submitted by the applicant, the court shall summon the applicant to appear before the court within seven days, to give the required clarification.
- The letter and brief referred to in the rules above shall be copied to the parties to the suit.
- An application for admission as amicus curiae may be made at any time after the date of closure of pleadings or during the course of trial.

Disqualification from admission (rule 7)

- The court shall not admit a person or organisation as amicus curiae, where –
 - (a) the application does not state what point of law is overlooked;
 - (b) the application does not show the expertise in the matter and the assistance which the applicant is to give the court in resolving the dispute before it;
 - (c) the application introduces new evidence; or
 - (d) the hearing has already been closed and judgment reserved.

Objection to admission of Amicus Curiae (rule 8)

- A party to a suit may object to the admission of a person or organisation as amicus curiae where the party considers that —
 - (a) the applicant does not have sufficient expertise;
 - (b) the applicant is introducing new evidence;
 - (c) the applicant is not impartial or is biased or hostile towards one or more of the parties; or
 - (d) the applicant, through previous conduct, appears to be partisan on the issue before court.

Objection – Cont'd

- Where a party objects to the application of amicus curiae, the party shall notify the court within seven days, by affidavit in reply, and shall serve copies of the affidavit on the applicant and any other party to the suit, before the hearing.
- Except in exceptional circumstances as may be determined by the court, there shall be no objection to the admission of amicus curiae where the court has invited amicus curiae.
- Where no objection is raised within seven days, the court shall consider the application and notify the applicant of its decision within seven days.

Amicus Hearing (rule 9)

- The court shall set a date for hearing the application for admission of amicus curiae and shall notify the parties to the suit and any person who has raised an objection under rule 8.
- The court shall, on the day of the hearing, consider the application and objection, if any, and allow or reject the application.
- The court shall, in determining an application for admission as amicus curiae;
 - (a) consider the brief submitted;
 - (b) consider objections from any party to the admission of the amicus curiae;
 - (c) afford the applicant an opportunity to rebut any evidence submitted by an objecting party.

Presentation by Amicus Curiae (rule 10)

- Where upon hearing the application, amicus curiae is admitted, the court may give the amicus curiae an opportunity to present the brief on the date fixed for hearing.
- The court shall take into account the opinion expressed by amicus curiae, so admitted, but shall not be bound by the opinion.

Application of CPA and CPR (rule 11)

- Where a procedure is required for making an application or service of any process or other related matter under these Rules, the Civil Procedure Act and the Civil Procedure Rules shall apply, with necessary modifications.

The Constitution (Recusal of Judicial Officers) (Practice) Directions, Legal Notice No. 7 of 2019.

- The Practice Directions apply to all courts of judicature.
- The objectives of the Practice Directions are –
 - (a) to promote adherence to article 28 of the Constitution which enjoins the right to an independent and impartial hearing;
 - (b) to promote the application of all cardinal principles of natural justice;
 - (c) to promote uniformity and consistency on recusal among judicial officers;
 - (d) to promote harmony between the Bar and the Bench, even where a member of the Bar alleges bias against a member of the Bench;
 - (e) to avoid confrontations between counsel and judicial officers; and
 - (f) to give guidance on recusal to judicial officers, counsel and unrepresented litigants.

Key Terminologies

- **Bias:** Inclination or prejudice for or against one person or a group of persons especially in a way considered to be unfair; whether actual, imputed or apparent.
- **Actual bias:** the existence of a state of mind that leads to an inference that a person will not act with impartiality. E.g. a pronounced male chauvinist or feminist in a matter with clear gender dynamics.
- **Imputed bias:** a situation where a judicial officer has a pecuniary (monetary) or proprietary (property related) interest in the decision he/she is charged to adjudicate, and includes a situation where a judicial officer has personal or non-pecuniary interests in a decision.

Key Terminologies – Cont'd

- **Apparent bias:** a scenario where a judicial officer is not a party to a matter and does not have an interest in its outcome, but through his or her conduct or behaviour, gives rise to suspicion that he or she is not impartial. E.g. where he/she expresses a pre-determined mind on a given matter (not open to persuasion).
- **Recusal:** the act of abstaining from participation in an official action such as a legal proceeding due to conflict of interest of the presiding judicial officer.
- According to direction 5, of the Practice Directions, a judicial officer may, on application by any of the parties or on his or her own motion, recuse him/herself from any proceedings in which his/her impartiality will reasonably be in question.

Recusal on own motion

- A judicial officer shall refrain from participating in any proceedings in which his/her impartiality may reasonably be questioned.
- A judicial officer shall disqualify him/herself from participating in any proceedings where –
 - (a) He/she has personal knowledge of the disputed facts concerning the proceedings; or
 - (b) A member of the judicial officer's family is representing a litigant, is a party, or has interest in the outcome of the matter in dispute subject of the proceedings.
 - (c) It comes to his/her knowledge before the date of the hearing or during the course of the trial that, for any reasonable cause, he/she cannot handle the matter; he/she shall record the reasons and return the file for re-allocation.

Recusal at instance of parties

- A party may apply for recusal of a judicial officer where the judicial officer –
 - (a) has an interest in a subject matter or has a relationship with any person who is interested in the matter;
 - (b) has background information or experience, such as his/her prior work as a lawyer;
 - (c) has personal knowledge about the parties or the facts of the case;
 - (d) has ex-parte communications with lawyers or parties to the case;
 - (e) makes inappropriate comments or exhibits unacceptable conduct in the course of the hearing;
 - (f) has exhibited actual, imputed or apparent bias.

Procedure for Recusal at instance of Parties

- A party may by letter copied to all the parties and the Registrar of the court or orally in open court in the presence of the other parties request for recusal of a judicial officer.
- The judicial officer against whom recusal is sought shall be given opportunity to respond to the concerns raised by the party. Practically, the judicial officer does so in his/her ruling.
- Where a judicial officer allows to recuse him/herself, the parties shall be notified as such, an entry made on the record and the file returned for re-allocation to another judicial officer.
- Where a judicial officer declines to recuse him/herself, the reasons for declining shall be noted on record and the matter shall proceed for hearing.

Procedure – Cont'd

- Where a party is dissatisfied with the decision of a judicial officer not to recuse, the party shall state the reasons and the hearing shall continue.
- Any appeal arising out of the failure to grant an application for recusal shall be made after the matter has been determined by the trial court.

View of the Courts

- An application for recusal of a judicial officer from a particular matter is not a light matter and is, certainly, not one that should be made as a routine.
- Every judicial officer takes an oath to do justice impartially and in accordance with the Constitution, the laws and usages of the Republic of Uganda, without any fear or favour, affection or ill will. This oath has been described as having the effect of raising the judicial officer above an ordinary human being to a higher calling. This calling is something greater than a judicial officer's personal feelings. Judicial officers must stand to this calling if they are to serve in their capacities as administrators of justice.

View of the Courts – Cont'd

- See: *Republic v Raphael Muoki Kalungu HIGH COURT CRIMINAL CASE NO. 77 OF 2014(K)* cited in *Male Mabirizi Kiwanuka v Attorney General and Hon. Lukwago Erias & Others v Electoral Commission & Others, HC Misc. Cause No. 237 & 431 of 2019 (Consolidated)*.
- An applicant seeking recusal of a presiding judicial officer in a case must have sufficient material to support such an application and to execute the onus of proving that a judicial officer is incapable of acting impartially despite the dictates of his/her oath. This is because, such an allegation goes to the core of the administration of justice. See: *Simbamanyo Estates Ltd v Equity Bank (U) Ltd & Another, HCCS No. 198 of 2020*.

View of the Courts – Cont'd

- In *Locabail (UK) Ltd v Bayfield Properties Ltd & Others (Consolidated)* [2000] 1 ALL ER 64; [2000] 1 QB 451, the court held the following view;
 - The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the Judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is, a mind open to persuasion by the evidence and the submissions of counsel.
 - The reasonableness of the apprehension must be assessed in light of the oath of office taken by the judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training and experience.

View of the Courts – Cont'd

- It must be assumed that the judges can disabuse their minds of any irrelevant personal beliefs or pre-dispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves.
- At the same time, it must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial.

The Constitution (Adjournments for Courts of Judicature) (Practice) Directions, Legal Notice No. 5 of 2019.

- The Practice Directions apply to all courts of judicature.
- The objectives of the Practice Directions are to –
 - (a) promote practice that conforms to the requirements under articles 28(1) and 126(2)(b) of the Constitution aimed at speedy and fair hearings;
 - (b) promote consistency and uniformity in the management of adjournments;
 - (c) ensure readiness for trial with a view to hearing cases on a day-to-day basis; and
 - (d) provide guidance to the court and litigants on adjournments.

Application for Adjournments

- An adjournment shall be sought orally by any of the parties to the suit (or their advocate) or at the instance of court, with stated reasons.
- Except in exceptional circumstances, court shall not allow an adjournment of scheduled proceedings.
- Exceptional circumstances may include –
 - (a) unforeseeable circumstances or matters related to the trial which arise during the course of the proceedings;
 - (b) where a witness in a matter is unable to attend court proceedings and the trial cannot proceed without hearing that witness;

Application – Cont'd

- (c) where a litigant needs to seek legal representation or needs an interpreter;
 - (d) where evidence is presented to the court showing that the litigant or counsel is ill; or
 - (e) Any other cause as the court may deem fit. “Any other cause” means a cause that is akin to or related to the above stated factors.
- Upon grant of the application for adjournment, the court shall fix the next hearing to the earliest possible date.
 - An advocate holding brief for another advocate shall ordinarily be expected to have instructions to proceed in the matter.

Relationship with the CPR

- The Practice Directions are anchored on the provision under Order 17 rule 1(1) of the CPR which makes a general provision on adjournments and these directions come in with specific provisions on the matter.
- Order 17 rule 1(1) CPR provides that the court may, if sufficient cause is shown, at any stage of the suit grant time to the parties, or to any of them, and may from time to time adjourn the hearing of the suit.
- Reference to sufficient cause in this provision should carry the context of the exceptional circumstances set out in the Practice Directions.

Conclusion

- The set of Rules/ Directions dealt with in this presentation are geared at improving access to justice through easing court processes and promoting speedy and fair hearing. It ought always to be remembered that justice is administered in the name of the people and in conformity with law and with the values, norms and aspirations of the people. The judicial oath that we take is anchored on this core constitutional principle.

END

THANK YOU FOR LISTENING