

WHAT THE ROBE DOES NOT TEACH

A Friday Bench Note

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To the Principal Judge, Hon. Lady Justice Jane Frances Abodo, who conceived these Bench Notes, and to the authors who went first. Thank you.

You have given this Bench something rarer than “*another Circular*.” You have given us a room in which we may be colleagues before we are offices.

I did not grow up intending to sit where I now sit. The Robe did not teach me the things that have kept the work human. People did. A few rooms did. This note is about that journey. Those people, those rooms and my experiences with them.

The career I had chosen

My first professional home was not chambers nor was it the judiciary. At twenty-five I was determined to climb to the helm of corporate leadership. I went very early for an MBA sojourn at Strathclyde University, Glasgow. In that class I shared an apartment with a Chinese friend and classmate, an accountant who would have given almost anything to exchange his profession for mine. His hunger for the law did something quiet to my career aspirations.

What followed upon completion of my MBA Course was a stint in private legal practice. I joined three former LDC friends and classmates, two of whom, Shaban

Muziransa and Andrew Wangoola, have since passed on. May their souls rest in peace. The detour to the law firm was a young lawyer deciding whether the law was worth leaving a planned corporate ascent for.

I transitioned into a long corporate sojourn entailing company secretarial work, seminal listings on the Uganda Securities Exchange, regulatory contests, public policy and tax affairs, corporate crisis rooms. The life was fast, exciting and sometimes adrenaline powered. Board packs at midnight to beat *date lines*. Filings that could not wait for morning. A product recall, product liability threats, a tax fight with policy makers and the tax collector, and more.

At British American Tobacco there were seasons when product liability litigation left almost no sleep, and still someone found a joke at the edge of the table, public-affairs issues moved at the speed of a headline. At Coca-Cola, local competition could have had us for lunch and dinner had we blinked on the job. At East African Breweries- (then under Diageo), you had to intentionally take personal responsibility to moderate affinity for the bitter. Later, at the National Social Security Fund, the Board table was a different temperature again. On the surface the room moved more slowly: papers circulated, minutes were read, voices stayed measured. Underneath, the weight was greater. This was not product or brand. It was other people's deferred wages, held in trust, watched by the public, and capable of becoming political overnight. Decisions that looked procedural in the agenda carried consequences that outlasted the meeting. You learned to listen not only to what was said, but to what the silence around the table was carrying.

There was fun in all of it: the travel, the banter after a brutal negotiation, the particular pleasure of a transaction that closed because someone had stayed late in the building. Very importantly, there was the creation of enduring friendships that

have outlived every title I held. Many of those friends and ex-colleagues still call and attend at my family occasions long after I left their payroll. That continuity matters. It is proof that the work was not only transactions, it was also companionship.

These friendships are a constant reminder that I once belonged to rooms that were not courtrooms. I have not forgotten those rooms. I have not forgotten the people who made them human.

Those years taught me how institutions actually decide, they did not teach me how a courtroom decides. That lesson came in a different context and it came hard.

Thirty minutes before Justice Manyindo, DCJ Emeritus

My first real courtroom blues were not in a Magistrate's court nor the High Court. It was before a panel of the Court of Appeal/Constitutional Court led by then Deputy Chief Justice Seth Manyindo. We had brought what we believed was a constitutional petition to compel the Electoral Commission to cause the gazetting of a Woman Member of Parliament seat and an election for a newly created district that had gone for nearly a year without a Woman Member of Parliament. With hindsight, a bizarre fit. I was, unenviably, Counsel in personal conduct of the matter.

On the occasion, I was “*taken to school.*” I was emptied in open court, before clients who had arrived expectant of a spectacular challenge to the Electoral Commission. The proceedings hardly lasted thirty minutes.

That morning taught me that Court is not simply an audience. Advocacy, I had thought, was the art of argument. No, it is a discipline. On the occasion, I walked out of Court with a different understanding of the difference between *a cause that*

is just and a case that is ready. I think it is on that day that I started my journey to the Bench, not because I left desiring the Robe, but because I left wanting and vowing never again to stand in a room I had not prepared to inhabit.

The vow I made that morning sent me back to work with a sharper fear of being unready. For a long time, the lesson lived inside the corporate rooms that I occupied, I always prepared as if the other side already knew some weaknesses, did not walk into a meeting I had not already inhabited in my mind.

That said, only later did that same discipline begin to look like a calling rather than a scar. Interest in the Bench grew quietly, not as an escape from a good job, but as a wish to stand in a different kind of room, and to stand there prepared. When I finally acted on it, I did so in the manner I still knew best.

In typical corporate pragmatism, or so I thought, I made a cold call at the Judicial Service Commission offices and asked to see the then Chair, Justice James Ogoola, PJ Emeritus. Back then the mode or procedure of recruitment was shrouded in some sort of obscurity. No one in my circles could tell with certainty how the process started or looked like. Fortunately, he gave me audience. I put my inquiry and expression of interest to him. He said no. He could not fathom how one could be leaving a well positioned job in a blue-chip corporate entity for the Bench.

Years later, my career aspiration was fulfilled. I was appointed a Judge of the High Court of Uganda in February 2018.

Paradoxically, when I was appointed, long after he had left the JSC, he was among the first people I sought out, not to spite him, but to take a sip from his Well of experience at the Bench. He gave me initial pep talk about the workings

and pathways of the judiciary, for which I remain deeply grateful. A well-meaning gentleman he was and still is.

Lesson learnt; some doors that close are not refusals. They are pauses that force you to ask whether you want the work, or only the title.

Day one on the Bench

I was appointed to the Bench in the Cohort that includes our present Principal Judge Lady Justice Jane Abodo, Lady Justices Olive Kazarwe, Joyce Kavuma, Cornelia Sabiti (JA) and Justices Musa Ssekaana (JA), Tadeo Asimwe, Paul Gadenya, Alex Ajiji and Emmanuel Baguma.

My initial deployment, on paper, was Fort Portal. However, owing to some last-minute considerations, I was instead posted to the Commercial Division. I therefore never set foot in Fort Portal, and so possibly missed out on an “*empaako*.”

After years in boardrooms, the Robe was a different garment. The work began in earnest. I inherited the chambers and files of Justice Christopher Madrama who had been elevated to the Court of Appeal. That inheritance was a mercy. I say so because whereas the then Transcriber for the particular Courtroom was unusually inept, Justice Madrama kept his own parallel, electronically transcribed record of proceedings. With Justice Madrama’s transcriptions, I was able to easily acquaint myself with the state of most of the files before I set foot in open court.

The files, however, were only half the inheritance. A transcribed record could tell me where a matter had reached. It could not tell me how that courtroom actually breathed, when to sit, whom to trust with a file, which application would collapse if called in the wrong order, and which silence from the bar was a warning. For

that map I needed someone who had watched the room longer than I had worn the Robe.

The person who "printed the procedural map" for me in my formative weeks at the Bench was not a judge. He was a very experienced and yet unassuming gentleman called Charles Okuni. A Court Clerk then but is now a properly qualified Advocate, - bless his career. On day one, Charles brought every file allocated to me into my chambers and we painstakingly went through them, one after another.

While Corporate life, where I had spent the netter part of my work life, rewards the person who can enter a meeting and sound briefed, the Bench, on the other hand, easily exposes and punishes the person who sounds briefed and yet is not. I had taken my lesson from Manyindo- DCJ Emeritus. So, on the eve of every hearing, for an extended period, I would, as a matter of routine, spend half the night preparing. I made "*idiot's-guide*" notes and hoped that nothing would fall out of sync when the real proceedings began. The *gods* (sic) did not let me down and the rest is now history.

The unwritten rule is slower than ambition. Sit only when you have read the record. Ambition wants the new judge visible on the bench and sounding like the office. The record asks for the opposite. It asks you to disappear into the file first.

As I was writing these Bench Notes, I was reminded that while the record will forgive slowness, it rarely or possibly never forgives haste. This is what happens when we borrow the voice of a judge without having done the work of one. The parties hear a confident order. The file, later, remembers that the confidence arrived before the reading. Slowness can be explained but a missed order, a silence in the record that you did not notice, a direction you gave because you

thought you already knew the case, those are harder to unsay. Haste does not look like haste in the moment. It looks like efficiency. It is only later, usually on appeal, that the file discloses what you did not read.

When the Cohort of Judges 2018, which includes PJ- Lady Justice Jane Abodo, walked into the Judiciary, about half of us were not "*children of the judiciary pedigree and ladder*" in the same way many of our colleagues were. Indeed, we were jokingly referred to as "*land grabbers*" and our other colleagues as "*sitting tenants*", We arrived with other work lives already partly lived. What we needed, and what we received from one another, was not a lecture on how to be a Judge. It was permission to ask and the willingness to give, and indeed for that purpose, doors and hearts stayed open and they so remain.

In the Commercial Division

I sat, first, in the Commercial Division of the High Court.

After years of advising boards, I thought I knew what a contract was. At the Commercial Division, I learnt that drafting one and deciding one are different trades. In the boardroom you can manage the diary. At the Commercial Court, the diary arrives already full and every adjournment has a price that does not appear in the Decree. As money dies in delay, so does confidence in the judicial process.

What I took from my time at the Commercial Court was not a catalogue of company-law points. It was two habits:

- **Predictability:** parties in commerce will live with a result they dislike if they can see when it will arrive and how it was reached.

- **Settlement as craft, not as escape:** a good mediation in a commercial cause is not the court growing tired. It is the court taking the parties seriously enough to let them design a result the judgment could not.

I commend the Commercial Bar and the colleagues on the Bench at the time; Justices Wangutusi, Mubiru, Adonyo, Paul Gadenya, Duncan Gaswaga and Lady Justice Mugenyi who sharpened that work and treated settlement as a discipline rather than a soft option. The Commercial Court is now a poster-child of consensual settlement of disputes. For that, I salute our colleagues who presently hold post.

At the International Crimes Division (ICD)

The International Crimes Division has taught me the people, not only the law.

Terror cases involving the shooting and murder of high-ranking public figures including religious clerics, government and military officers do not arrive as tidy files. They arrive with families, with security theatres, with a public that has already tried the accused in the headlines and with witnesses whose fear is not theoretical. I have done pre-trial and trial work in that climate.

The standard of proof does not change because the whole country is watching. What changes is the temptation to hurry. The work has forced me to slow down, to let a child-sensitive process be child-sensitive, to let a difficult human rights abuse application or witness protection application be heard without treating it as an insult, to remember that the person in the dock is still a person, even when the charge is grave.

That discipline is easiest to praise in the abstract. It is harder when the person in the dock does not return the courtesy. Slowing down then means something more than a careful timetable. It means hearing an application that wounds the court

without answering the wound in kind, and separating what is properly before the Bench from what is merely meant to provoke it.

There was a time when an accused person, writing from custody through the registry and the prison authority, asked me to recuse myself. His letters mixed process complaints with scandalous attacks upon me, the court, the prosecution, his own previous defence counsel and others. As a *Friday Bench Note* is not a second publication of a matter already answered on the file, I will not rehearse those allegations here.

What the moment taught me is simpler. An application to step aside is one of the few occasions on which a judge is asked to judge himself in public. Direction 8 of the Judicature (Recusal of Judicial Officers) (Practice) Directions, 2019 and case law set the test: *whether a fair-minded and informed observer, looking at the whole record, would conclude that there is a real possibility of bias*. Mere dissatisfaction on the part of the Accused with adverse rulings, bail refused or disdain for a witness-protection order made does not meet that threshold.

Where the law requires departure, you leave. Where it does not, you sit. Not out of stubbornness, and not because the letters, as in my case, were unpleasant to read, but because abandoning a cause without cause is itself a failure of duty. Independence includes the courage to remain, and then to get on with the hearing. In the instance, I remained.

That is one unwritten rule I would add to the first: do not confuse discomfort with disqualification.

A second formation

The East African Court of Justice has been a second formation in my judicial career.

I was appointed a Judge of the East African Court of Justice in February 2021. In November 2024 I was designated Deputy Principal Judge of that Court.

I arrived at the East African Court of Justice carrying the reflexes of a Ugandan common-law courtroom. The work of that Bench is treaty interpretation, yes, but it is also translation of procedure, of expectation and of what a hearing is supposed to feel like.

I came from a common-law system in which, for example, the affidavit is as ordinary as water. I sat with colleagues formed in civil-law traditions for whom that instrument is not a native tool. I have watched basic words fail to resonate; "affidavit," "without prejudice," even the temperature of an oral hearing is completely alien to the civil law practitioner.

Those challenges are not a curiosity of lunchtime conversation. They sit inside the way the Court is built.

At the EACJ, proceedings are before a panel of Judges. A panel is not a solitary judge with two polite witnesses. It is a deliberation where French and Kiswahili sit in the same courtroom and chambers as English. You write not only for the parties in the room but for Partner States who will read you against their own judicial systems and municipal circumstances, their own administrative law and possibly their own suspicion of the regional court.

The experience at the EACJ has impacted my approach in practice. I am inclined to hear matters back hear in Uganda with one extra ear. How would this reasoning look if it had to *travel*? Clarity is no longer a courtesy to the losing party alone, it is a duty to the next court and sometimes to the next country.

Alternative Dispute Resolution

The discipline of dispute resolution I studied at Pepperdine University returned me to a truth the Commercial Court Division had already begun to teach, that a good settlement is not a timid judgment. It is often the more exacting craft. I commend colleagues who still mediate across the different Divisions and Circuits as if the human being in the dispute and not the disparate positions is the point.

Who I consult, What I refuse, What I protect

When I am not in the know, I do not look for an oracle. I look for colleagues who still tell the truth in stories. The point of first call is my colleagues of Judges 2018 Cohort. You do not take them a narrow question in a hurry if you can help it. You sit. You chat, typically, at an up-end restaurant. You come away with more law and *knowing* than you arrived with, and usually with a rib-cracker of jokes besides.

In the same spirit, I have been formed by Justices Duncan Gaswaga, Andrew Bashaija and Lady Justices Alice Komuhangi and Susan Okalany in the ICD corridor as well. Repositories of institutional memory. Each has, at different hours, situations and subjects made the work less solitary than the Robe suggests.

I have learnt that the backlog monster will eat you if you let it. The judgment written at 2.00 a.m. in the morning by a sleepy, exhausted mind is not the judgment the parties paid for with their waiting.

An evening kept free of files is not self-indulgence. It is part of the work of remaining fit for the work.

One evening that is not for files is not a holiday from duty. Perhaps that this is precisely why *Wellness Thursday* ought to be taken as seriously as a Cause List. I

see, on the Judges-only WhatsApp group, that colleagues show up, stretch and laugh. That is how you arrive fit enough to hear. You cannot hear cases well if you have not kept yourself humanly well. That said, I am yet to make my debut appearance at the *Wellness Thursday*.

If today, a newly sworn judge asked me what to protect first, I would say: *“Protect your independence and your humanity in the same fist. Read the file before you sit. Ask for help before the draft hardens. Come to Thursday. The Robe will not make you wise. The people who correct you, and the ones who stretch beside you every Thursday evening, will”*.

I did not rise alone.

More than half of my working life had been lived before I put the Robe on. I do not regret the boardrooms. They taught me how power actually moves. But I rose to this work of a judge by a different grace: a classmate who wanted my profession more than I then wanted it; a panel of Constitutional Court Justices that humbled me in thirty minutes; a JSC Chair who said no and later shared his experiences with me; a clerk who refused to let me meet my Cause List unprepared; a cohort of Judges who have kept their doors and hearts open; the Bench at the EACJ who will read my draft when their own is unfinished.

Somewhere along the way, someone is watching. A clerk is watching whether you opened the file; a newly sworn judge, an intern, a research assistant, a driver, a body guard is watching whether your door is actually open; an accused person is watching whether the fear of adverse rulings has made you thin-skinned; a victim is watching whether speed has swallowed fairness and on a Thursday morning, Justice Anna Mugenyi is watching whether we still remember that we have bodies.

The Robe does not teach these things. People do.

Richard Wejuli Wabwire