

**CASE MANAGEMENT FOR THE AFRICAN COURT OF PEOPLES' AND HUMAN
RIGHTS ***

by

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CASE MANAGEMENT FOR THE AFRICAN COURT OF PEOPLES' AND HUMAN RIGHTS

1. Introduction

1. The concept paper specified a desire to address principles of case management to confront problems such as inordinate delay and uncertainty in the disposal of court proceedings and to facilitate easy access to justice by addressing mechanisms and techniques of effective case management and its best practices.
2. Addressing such an august and learned group on a subject like this runs the risk of touching on matters with which you are already familiar. I am sure that there are elements of practice and interpretations of your rules with which I may not be familiar. But in a presentation like this interaction is essential and I expressly invite your participation where it is necessary.

2. Court Excellence

1. Court excellence is not a state that some courts achieve. It is rather the practice of continuous evaluation and improvement in the quality of court services. I would like to introduce very briefly the Framework for Court Excellence developed by the International Consortium for Court Excellence. The idea is based on the process of continual review of court systems and initiatives with a view to assessing the court's performance against detailed areas of court excellence. Particularly highlighted is the need for benchmarking and performance measurement systems in court administration to assist in the assessment of the court's health and progress over time. The Framework encourages courts to actively and continuously reviewing its performance while adopting specific values. I set out these

values, although I am sure they are a very familiar part of the court's operations, not only in its adjudicatory role. The values are:

- i. equality before the law
- ii. fairness
- iii. impartiality
- iv. independence of decision-making
- v. competence
- vi. integrity
- vii. transparency
- viii. accessibility
- ix. timeliness
- x. certainty.

These core values significantly impact on the effectiveness of a court, particularly in the area of citizens' perception of the work of the court and the administration of justice.

The Framework identifies specific areas that courts must target if they are to truly improve their standard of operation, Seven Areas of Court Excellence. These are critical aspects of court administration and need to be addressed in a sustainable and meaningful way. The areas are:

1. court leadership and management
2. court planning and policies
3. court resources (human, material and financial)
4. court proceedings and processes
5. client needs and satisfaction
6. affordable and accessible court services
7. public trust and confidence.

The Framework offers a methodology involving a four-step cycle that is to be repeated throughout the life of the court.

The first step is for courts to conduct a self-assessment to determine its present condition and the level at which it operates.

The next step is for courts to engage in an in-depth analysis of its operations to determine the areas of its work capable of improvement.

After an in-depth analysis, courts are to develop an Improvement Plan that will provide a detailed road map for improvement.

The final step is for the court to go through a process of review and refinement that monitors the implementation of the Improvement Plan.

This four-step process is to be repeated at appropriate intervals to ensure the maintenance of high levels of efficiency in a court's operations and service delivery. Periodic self-assessments allow a court to assess the progress the court has made towards needed improvements. This methodology assist the court to develop a culture embracing innovation, collaboration and measurement as the process of continually reviewing and refining the court's approach ensures steady progress toward court excellence.

I provide access to three documents which set out in detail the principles which you would have an opportunity to consider in due course.¹ However, I would now like to have a break while you consider the self-assessment checklist. I would think that in the time available this would be the most effective way to identify the key elements for introducing a program of continuous evaluation and development for court excellence.

1



The International Framework 21E 2013.ashx



Self-Assessment Checklist 2E 2013 V2.ashx



Global Measures_V3_11_2012.ashx

The idea is not to answer the entire questionnaire but to notice the behavior which expresses adherence to the seven areas of excellence.

In order to introduce the session on case management, I would like you to answer the questionnaire on area of excellence #4 Court Proceedings. I have printed it out and distributed it.

BREAK

3. Define Case Flow management

(a) "Case Flow Management is the coordination of court processes and resources so that court cases progress in a timely fashion from filing to disposition. Judges and administrations can enhance justice when a court supervises case progress from the time of filing, sets meaningful events and deadlines throughout the life of a case, and provides credible trial dates. Proven practices in case flow management include case-disposition time standards, early court intervention and continuous court control of case progress, use of differentiated case management, meaningful pre-trial events and schedules, limiting of continuances, effecting calendaring and docketing practices, use of information systems to monitor age and status of cases, and control of post-disposition case events." From NCSC Website

(b) Essential quality is the supervision by the court of the progress of case from filing to disposition according to time standards. Case management could refer to the development and management of a modern, efficient, fair and transparent court system and judicial proceedings, from a judge's perspective.

4. **Performance Measurement**

- (a) Whenever a court considers improvement one of the essential principles that need to be embraced is the issue of the establishment of measurable performance standards and systematic measurement of performance in relation to those standards.
- (b) In a brief overview of the important performance measurement system developed by the National Center for State Courts the reasons for measurement are explained².
- i. Performance evaluation sorts out whether what court insiders think is going on is, in fact, taking place.
 - ii. By clarifying and measuring key outcomes relevant to the individuals and groups being served, the court averts the problem of making incorrect assumptions about what will best satisfy the public.
 - iii. Setting the desired outcomes in terms of clear measures (e.g., 90% of case files could be retrieved within 15 minutes) help staff better understand their individual contributions and empower court staff to devise creative means to achieve the desired outcome.
 - iv. Performance assessment is a critical foundation for building evidence-based requests for new initiatives and additional resources.
 - v. Since courts use public resources, taxpayers and their elected representatives are legitimately entitled to raise questions about efficiency



and effectiveness in the expenditure of court funds. In response, performance assessment provides the means for courts to demonstrate the value of services delivered.

(c) There are 5 measurements that are linked to performance measurements for case management:

- i. Clearance rates
Examines court productivity in keeping current with the incoming flow of cases.
- ii. time to disposition
calculates the length of elapsed time from case filing to case resolution,
- iii. Age of pending case load
an increase in the age of pending cases foreshadows difficulties a court might have
- iv. Certainty of trial dates
tool to evaluate the effectiveness of calendaring and continuance practices
- v. Reliability and Integrity of Case Files
A well-performing court maintains case files completely and correctly in recordkeeping systems, which also permit expeditious retrieval and support timely case processing.

(d) Setting performance standards

- a. Court should set its own standards and measure performance

5 **Characteristics for case management**

- (a) Judicial leadership
- (b) The role of the judge as manager
- (c) Judicial integrity: ethics and codes of conduct for judges
- (d) Case management principles and practices
- (e) Technology for case management
- (f) An efficient clerk's office: filing and other systems

6. **Case Management Principles and practices**

(a) *Early Judicial intervention*

- i. The court should manage the progress of the case from inception and provide guidance and regulation to the litigant to ensure performance in accordance with expectations of the bench.

(b) *Objectives of judicial intervention*

- i. To limit the number of interlocutory applications that the court would have to deal with during the continuance of the proceedings.
- ii. To weed out cases which should not have filed
- iii. To identify the issues for trial and to make orders limiting the scope of the dispute
- iv. To assist the litigants in rule compliance and getting ready for trial in a manner that provides the best opportunity for fairness, expedition, convenience and economy
 - i. To set time standards for the performance of tasks by litigants and by the court
- vi. To identify matters that are suitable for ADR and to recommend methods or provide assistance to attain it
- vii. To calendar to ensure trial date certainty
- viii. To deal with issues relating to evidence management
- ix. To deal with the hearing process – making orders for order of speeches and their duration – well before the trial date

(c) *Avoid too many separate hearings before trial.*

There are several events in a case. If the court was reactive these matters could be addressed one at a time and cause wastage of time and expense. It would be better to try to group them together. This is a classification exercise that the court could take in its case management strategies.

▪ **Table showing proceedings specified in rules**

Tables showing interventions and stages

| Court interventions before trial | | |
|--|--|---------------------------------|
| Rule 35.2 re transmission of pleadings | Rule 37 extension of time to reply | Rule 38 dismissal without merit |
| Rule 39 – 40 preliminary examination of competency | Rule 41 power to order filing of documents | Rule 42 power to fix date |
| Rule 43 power to hold hearing in camera | Rule 45 – 46 +50 evidence management | Rule 51 interim measures |
| Rule 52 preliminary objections | Rule 53 interventions | Rule 54 joinder |
| Rule 55 judgment in default | Rule 56 – 57 ADR | Rule 58 discontinuance |

| Court interventions after trial | | |
|--|--------------------------------------|-----------------------------------|
| Rules 59-65: Judgment issued | Rule 66: Appl. to interpret judgment | Rule 67: Appl. to review Judgment |

7. Assignment of Pre-Trial Benches

(i) An important tool for case management is the assignment of the case to a judicial bench immediately after it is filed. This is an area which may involve innovation.

(ii) Legal Questions to be answered?

a. What is the power of the President to appoint a pre-trial bench of less than 7?

a. As an incident of efficiency and economy the pretrial bench could normally does not exceed 3 judges. It does not usually make decisions affecting the outcome of the case, and if required to do so the president can appoint the full bench where necessary.

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- b. But it is not apparent whether the AC has power to appoint any bench of less than 7 in the face of art 17 setting out the requirement of a quorum for a sitting although, but sitting is not defined in the rules. This is a matter of law for the court! Or perhaps rule amendment?

2. How cases are managed between ordinary sessions?

- a. Art 14 prescribes that the court should sit in 4 ordinary sessions of 15 days per year. Has this rule been amended, or how is it interpreted? How does the court do its work in 60 day per year and what happens when the case load increases?
- b. Secondly how are the cases managed between the ordinary sessions? These are matters of law and or practice for the court! Or perhaps rule amendment?
- c. Whatever the size of the bench there are two types of pretrial proceedings; the case management conference, and the pre-trial review.
 - 1. The CMC is the mechanism for ensuring the efficient management of the pretrial process. It is at these conferences that time standards are fixed, the issues are identified, ADR is considered and many of the interlocutory proceedings are decided. Of course the bench, or perhaps the President can exercise a discretion in determining whether any interlocutory matter is of sufficient importance that it requires the full bench.
 - 2. The pre-trial review is the mechanism for ensuring that everyone is ready for the trial on the dates fixed.

- (iii) The case is assigned to a judicial panel as soon as possible after the matter has been filed. This panel should continuously control the case progress. The pretrial role of the bench would be to establish meaningful pre-trial events and schedules and to make every effort to ensure that these are kept throughout the trial process. Every effort should be exercised to prevent the adjournment of proceedings set for hearing. This of course requires active consultation in the fixing of trial dates and taking steps to ensure that the parties are prepared and ready for trial.

- (iv) A major principle in efficient case management is to try and group as many of these events together for savings in time, expense and limiting the number of hearings. The Court should decide how many pre-trial sessions are desirable, how to group events and manage operations to achieve this. An access to justice issue is the question of attendance at the seat of the court and the extent to which it would improve justice to the parties to use video conferencing. Another element for the convenience of the party and efficiency of the court is the issue of limiting the use of paper. It is much cheaper and faster to file and serve documents electronically, as a court whose judges are located in various places the enhancement of the use of information technology needs to be constantly implemented.

- (v) An important benefit from the case management conference is that the litigant is not always aware of the policies of the court and this provides an opportunity for the court to provide information as to its expectations and to consult to ensure that arrangements and schedules are mutually convenient.

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- (vi) The timing of the CMC is for the court. But it is clear that once the reply has been filed in accordance with rule 37 the court is in a position to prepare for the trial. CMC could be scheduled with a specially crafted Checklist to bring out all the issues that need to be determined as far as it can see. It is served on all parties who are required to respond to the Checklist before the hearing. Thus the notice of hearing can identify the issues which the court considers appropriate for it to rule on for the fair and efficient progress of the trial. This is an example of notice with a checklist.



OA 001 of 2013
CMC Notice of Hearin

- a. As the case becomes more developed the issues to be addressed will increase and these can be drawn out in more extensive checklists



OA 003 of 2013 CMC
Checklist Rudisa.pdf

- (vii) The CMC is an important tool in making arrangements for the trial. One CMC can deal with several matters, at the initiative of the Bench; from procedural issues such as joinder, to issues relating to evidence management, the timing of submission of written submission, the duration of witness testimony or oral submissions: in complicated hearings there would normally be more than one CMC and also a pre-trial review for trial preparation. Many of these hearings can be conducted by video conference as an access to justice issue and to save expenses for the litigant and perhaps for the court.



OA 003 of 2013 CMC
Order of 5 11 2013.p



OA 003 of 2013
Rudisa Beverages & C

8. **Project Management techniques in case management**

(a) The development of these practices and their use should lead to increased fairness and efficiency. The project management systems that have been tried and tested in the business environment could be adapted to the court and improve the way in which cases are managed. The idea of treating each case as a project could improve case management considerably. The concept is not very difficult:

1. The first step is to review the rules and to prepare a list of the milestones in the case from commencement to completion.
2. The second step is to identify the dates by which each milestone must occur.
3. The third step is to identify the judicial officers who must make each milestone occur.
4. This can be done manually, and in courts where the case load is small it could easily be done as a word document. There is professional case management software, and one can also use the Microsoft suite excel or access which has the capacity to assist with calculations and producing reports.
5. Look at examples of the use of this technique at the CCJ:³
 - (a) See Myrie in Project
 - (b) See Tomlinson flows in excel
 - (c) See Rudisha flows in excel
 - (d) See commencement of AC flows

³ [Hardial notes for AC training](#)

(b) Creating Milestones:

- a. Review rules to identify steps
- b. the time between one step and another
- c. Identify the stages of the proceedings for judicial intervention
 - (a) Case management conferences
 - (b) Pre-trial reviews

(c) An abhorrence/avoidance of the word or terminology- "Adjournment" and let this Standard be portrayed/displayed as one of the most intrinsic performance standards, in which this Court could at any time be measured against. As a result all Parties will know that adjournments will not be allowed willy-nilly and that the Court is very serious and adamant about matters going speedily to disposition from commencement of proceedings.

(d) Having established this platform, in the future there will be no need to step down from it, but maintain it always.

(e) Break out session to prepare

- a. Milestones
- b. Project plan
- c. Provide answers to the questions on
 - (a) establishment of pretrial chambers
 - (b) case management between sessions.

Support material to be printed out

1. Self Assessment Check list
2. Table 4 in self-assessment checklist – Court Proceedings and Processes – to be filled out
3. Project Report – tasks – Myrie

4. Excel Reports on flows
 - a. Tomlinson
 - b. Rudisha
 - c. AC – Odongo
5. Blank Excel Work Sheets
6. Legal Questionnaires
 - a. What is the power of the President to appoint pretrial bench of no more than 3 judges
 - b. How does or should the court conduct pretrial duties between ordinary sessions of the court



The Right Honourable Sir Dennis Byron