



Exploring the Roles of Court Assessors in the Administration of Justice in the Criminal Division of the High Court of Uganda

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ABSTRACT

This article explores the roles of court assessors in the administration of justice in the criminal division of the high court of Uganda. Besides being professionally educated, judges may not always have the required expertise to analyse and measure the probative value of expert evidence. To avoid miscarriages of justice and the expense of appeals, a second head with the requisite knowledge, experience and skill of reasoning in the relevant field will serve as a potential benefit, saving litigation costs and raising public confidence in the judicial system. On this note, the article calls for the disagreement on matters of fact and law between the assessors and the judge should not be done in open court but in the chambers. This will help create some confidence in the public that the assessors are one together with the judge; presently the lay assessors are totally controlled by the professional judges and this creates a doubtful impact in the public as to the relevancy of these people.

Keywords: Court assessors, Criminal division, Judges, Justice administration, Magistrates.

INTRODUCTION

In the Ugandan judicial system court assessors were mainly introduced with the advent of the 1902 OIC whereby for the Colonial Judges to better apply the repugnancy test on the Ugandan customs, it was imperative that they get to use the benefit of Ugandan court assessors so as to understand Ugandan customs and judge best as to their repugnance to the test of natural Justice [1]. The provision of the order in council that was later to be renamed the Repugnancy Clause provided that "in all cases, civil and criminal to which the natives are parties every court shall be guided by native law so far as it is applicable and is not repugnant to justice and morality or inconsistent with any order in council or any regulation or rule made under any Order in Council or Ordinance"[2]. Presently in the Ugandan Laws the Court assessors are embedded in various Legal documents i.e. the Constitution of the Republic of Uganda 1995 as Amended Articles 28 (On fair hearing) and Article 126 2(e) on the premise that substantive Justice should be administered without undue regard to technicalities. The Trial on Indictments Act Section 3 requires that all criminal trial in the High Court be conducted with at least two assessors. Section 3 of the Trial on Indictments Act provides that except as provided by any other written law, all trials before the High court must be with the aid of assessors, whose number must be two or more [3, 4]. The TIA Empowers Court to summon to its assistance one or more competent assessors who shall attend and assist accordingly. From the foregoing submissions, it turns out that lay assessors are deeply influenced by their evaluations of fairness and justice in the court [5]. Sadly, the role of an assessors is generally not very well understood today in Uganda. This may be because its use has gained traction only in the past few years. Second, this may also be due to the fact that there are myriad contexts in civil and criminal litigation arises, and what the judge requires from an assessor varies from case to case. It can even be difficult to tell how useful an assessor's counsel is before the trial begins. Third, the legislation provides very little guidance on what an assessor can or cannot do. In this regard, the Rules of Court only state that the assessor shall assist the Court in dealing with a matter in which he or she has skill and experience, and shall take such part in the proceedings as the Court may direct. Beyond that, there are no signposts [6-9]. This article explores the roles of court assessors in the administration of justice in the criminal division of the high court of Uganda.

The Impact of Assessors in the Administration of Justice

According to Prakash[10], an assessor in law is a person who is appointed to advise the judge. In Uganda, there are as yet no detailed rules on how the court should conduct its proceedings with assessors, though this is something that should be put under active consideration. In the present context, the role an assessor plays will

depend very much on the dispute at hand, and more precisely, on the assistance that the judge desires. Mandi [11], notes that After the summing up if any the Judge shall require each of the assessors to state their opinion but it need not be unanimous. Kong et al.[12], contends that an expert assessor in any jurisdiction should expect to find him playing the role of a scientific adviser. In short, he/ she assists the judge to come to grips with material that is beyond his usual range of expertise. Evolving paradigms for Expert witnesses in cases like Medical and Engineering fields where Judges have limited Knowledge, an expert assessor occupies a special position in the judicial process, there are two house rules as far as the lawyers are concerned. Dwyer[13], notes that the assessor is not an expert witness and is not offered for examination by either party and for this reason, he should not be giving evidence but merely helping the judge understand the evidence being given. Second, the assessor renders advice that is likely to affect the judge's decision even if he does not have decision-making powers. It was further noted that the parties should know what he has told the judge and be given a chance to respond to it.

The effectiveness of Assessors

A study by Yeates [14], observed the situation of lay assessors and their effectiveness. After analyzing their correlations, the final measure was formed by a number of reasons as expounded to be; In order of the courts to function, lay assessors should follow the Presiding judge's opinion without question, that there are few qualities more admirable in a lay assessor than dedication and loyalty to his/her court and that If lay assessors trust professional judges completely, the court will be most successful. In the early studies of Machura [15], another aspect was stressed and that is the aspect of voice which is to the effect that persons should have the capacity and opportunity to present their case and be heard. Ibhawoh [16], contends that it was clear that an assessor in English courts was an expert witness. In Africa, the time-honored English convention became an entirely new institution, which defied easy definition or classification, even by colonial officials and legal experts. Joireman [17], argued that the 'native assessor' in Africa was unique because he had both the duty to assess (like jurors) and the duty to give advice (like expert witnesses). He further reasoned that the functions of assessors can be collected under two heads - their duty to assess and their duty to advice. In the light of their special knowledge of Ugandan habits, customs and modes of thought and language, they are peculiarly qualified to judge the probability of a story told by a witness, and they may detect in his demeanor what may escape the presiding judge. In this role the assessor's task is similar to that of a juror's though he gives no verdict, but only his opinion on the evidence. Secondly, the assessor's duty is to advise the judge or magistrate on matters of which they have special knowledge, and to give their view, in the abstract, of what the custom or law is in the circumstances postulated. The assessor though serving as an expert witness is not, therefore, an expert witness in the ordinary sense [18].

The Competence of Assessors in the Administration of Justice

Heikki [19], has noted that from compurgators to mixed courts: reflections on the historical developments of Finnish evidence law and court structure notes that in the system of mixed courts, the Judge with legal training had three assessors. He notes further that before the reform, they were seven assessors a panel of which had to be unanimous to overrule the legally trained chairman. Therefore, the assessor's role is a highly complete one and given the concerns already raised within this text, many are the factors which could impinge upon performance of the assessor and upon the quality of the evaluation process. Peter [20], notes that concomitant with the change in the role of the assessor came in that of crown Attorneys. In the 17th Century they rendered opinion when called on as protectors of the Indians or when there was a crown interest somehow involved. Trial by judge and assessors was originally introduced because the British Government had thought that trial by jury 'would not doing inter racial cases [21]. Velasco [22], also notes that in the first years of court under Luis de Velasco II, the assessor acted as a legal advisor to the viceroy, who sat in the audience and gave orders for the appropriate decrees in accordance with his advice.

Legal framework

The Constitution of Uganda 1995 as Amended

The Constitution of the Republic of Uganda, 1995 [4], is the legal norm where all other laws in Uganda derive their legality from. The Provisions of the Constitution contains binding provisions on Uganda and the state must observe the same. It has elaborated provisions regarding administration of justice. In the National Objectives and Directive Principles of State Policy, which are binding on Uganda by virtue of Article 8A, requires the Government of Uganda to take measures to ensure that substantive justice is delivered for and on behalf of the people of Uganda. The national objectives of state policy provide that the State shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance. Objective no III provides for National unity and stability. Subsection (i) states that all organs of State and people of Uganda shall work towards the promotion of national unity, peace and stability.(ii) Every effort shall be made to integrate all the peoples of Uganda while at the same time recognizing the existence of their ethnic, religious, ideological, political and cultural diversity.(iii) Everything shall be done to promote a culture of cooperation, understanding, appreciation, tolerance and respect for each other's customs,

traditions and beliefs.(iv) There shall be established and nurtured institutions and procedures for the resolution of conflicts fairly and peacefully [4]. Objective V provides for Fundamental and other human rights and free dooms. (i) The State shall guarantee and respect institutions which are charged by the State with responsibility for protecting and promoting human rights by providing them with adequate resources to function effectively. The Constitution of the Republic of Uganda 1995 as Amended under Article 17 provides for the duties of a citizen which among others is the duty to cooperate with lawful agencies in the maintenance of law and order and for performance of other such duties as parliament may by law prescribe [4]. The fair hearing provides that there shall be a fair, speedy and public hearing and right to just and fair treatment in administrative decisions. Article 42 provides that any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her. Article 126 2(e) on the premise that substantive Justice should be administered without undue regard to technicalities [4].

The Trial on Indictments Act Cap 23

In its long title, the Trial on Indictments Act [3], states that it's an Act to consolidate the law relating to the trial of criminal cases and for matters connected or incidental thereto. Section 3 of the Trial on Indictments Act provides that except as provided by any other written law, all trials before the High court must be with the aid of assessors, whose number must be two or more. Section 3(3) gives power to the minister responsible in consultation with the chief Justice to amend the Assessors Rules except rules 2 and 9. According to section 68, before assessors are sworn the accused and or his advocate and the advocate for the prosecution have the right to challenge the propriety of the choice of a particular assessor. They can do so on the following grounds:

- a) Presumed or actual partiality- an assessor who goes to court with a preconceived idea as to what the judgment of the court should be even before hearing the evidence is not what is required or expected of an assessor or an assessor who has an interest in the case.
- b) Personal cause such as infancy, old age, deafness, blindness or infirmity.
- c) His or her character in that he or she has been convicted of an offence, which in the opinion of the judge renders him unfit to serve as an assessor. His or her inability adequately to understand the language of the court According to section 68 (2) TIA, when a challenge is disputed, it becomes a triable issue and the person challenged may be examined by the court as to the allegations about his incompetence [3]. See case of Ndirangu s/o Nyagu v R [1959] EA 875 [23]. According to section 69 of the TIA, if in the course of the trial and before verdict an assessor is from sufficient cause unable to attend throughout the trial or absents himself, and it is not practicable immediately to enforce his attendance, the trial shall proceed with the aid of the other assessors. According to section 69(2) TIA, if more than one of the assessors are prevented from attending or absent themselves, then the proceedings shall be stayed and a new trial shall be held with the aid of different assessors [3].
- d) 70% also makes it a requirement for assessors to attend adjourned hearings and any subsequent sitting until the conclusion of the trial. Section 88 provides for Assessors and confession. The section inter alia provides that the assessor shall not be required to leave court while the issue of admissibility of a confession is being tried. The section however adds that the decision on any such fact or question of law shall be for the judge alone to determine. The assessors' selection, qualification and attendance are governed by the assessors' rules set out in the schedule to the Trial on Indictment Act.
- e) Under the schedule, every chief magistrate is required to prepare, before the first day of the month of March in each year, a list of persons in his magisterial area who qualify to serve as assessors. Rule 1 of the assessors' rules. The list of assessors must be posted at the court house for inspection by the public and any person who wishes to object to a particular person being included on the list of assessors may do so Rule 3(1). Any such objection is heard and determined by the chief magistrate or a magistrate grade 1 of the area. After the hearing of the objections about a person's suitability to serve as an assessor, the chief magistrate will amend the list and strike out the name of the person not suitable, in his judgment to serve as an assessor. Rule 4(1). A copy of the list so revised shall then be sent to the chief registrar. Rule 4(2). The list so prepared shall be again revised once in every year and if any person suitable to serve as an assessor is found in any magisterial area after the list has been settled, her name will be added to the list by the chief magistrate of the area. Rule 4 (4).
- f) All citizens in Uganda who are not exempted and who are between the ages of 21 and 60 and who are able to understand the language of the court with a degree of proficiency sufficient to be able to follow the proceedings shall be liable to serve as assessors at any trial held before the high court. Rule 2 (1).
 - Must be a citizen of Uganda
 - Between the ages of 21 and 60

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g) Must understand the language of the court- English

Rule 2 (2) makes provision for persons exempted from liability to serve assessors.

- Persons actively discharging the duties of priests or ministers of their respective religions
- Medical practitioners, dentists and pharmacists in active practice
- Legal practitioners in active practice
- Members of the armed forces on full pay (it is not clear why these categories of people are exempted from serving, perhaps as these are professions or callings which require active and full attention, it might not be easy for those concerned to perform fully their duties as assessors which frequently involve long sittings, without causing serious disruptions in their normal duties)
- Members of the police forces or of the prison services
- Persons exempted from personal appearance in court under the provisions of any written law for the time being in force, relating to civil procedure- diplomats, president.
- Persons disabled by mental or bodily infirmity (these are exempted for obvious reasons- an assessor must be able to understand and follow the proceedings and must also be able to stand for long hours)
- Persons exempted from serving by statutory instrument made by the minister challenging the appointment of an assessor.

At the end of the evidence for both the prosecution and the defence, the judge will be required to sum up the law and the evidence in the case to the assessors and shall require each of the assessors to state his or her opinion orally and shall record each such opinion. S. 82(1) TIA.

As far as summing up to the assessors is concerned, it should be done in simple language. In the case of *Uganda v Tinkamanyire* [24], it was stated that some of the matters which the judge should direct the assessors on are;

- a The contradictions and inconsistencies in the evidence
- b The weight to be given to certain pieces of evidence e.g. evidence of a hostile witness
- c When court may base a conviction on identification by a single witness
- d When court may rely on circumstantial evidence, etc.

In *Uganda v Semanda* [25], the Judge noted that the role of assessors in criminal trials before the High Court of Uganda is that they are Judges of fact. He went ahead to state that law on assessors is to make opinions on any fact relevant to the issues in the case. But the decision on any question of fact and the law shall be dealt with by the Trial Judge alone. The judge therefore, ruled that he was not bound by the advice of the two gentlemen assessors. In the case of *Uganda v Charles Kangamiteto* [26], it was stated that it is improper for assessors to form their opinions before hearing counsel's submissions and the summing up. After summing up, the judge will request each assessor to give her opinion orally and then the judge will record such opinion. S.82 TIA. The assessors may retire to consider their opinions after summing up and if they so wish and during such retirement, they may consult with one another. It should be pointed out that the assessors' opinions are not binding on the judge but where the judge doesn't conform to the opinions of the majority of assessors, she shall state her reasons for departing from their opinions in her judgment. S. 82(3) TIA.

Under rule 1 of the Assessor's Rules [27] under the TIA the chief magistrate is required to carry out appointments annually in every month of March. And under rule 3, in case the personality of an assessor has been attacked then it is the chief magistrate or the magistrate grade one in the area that should entertain the matter during the appointments. And according to rule 4 of the assessors' rules the chief magistrate is empowered to make further appointments during the year and forward such names to be considered or taken as assessors. Under section 82.4 the assessors have right to retire first and go and consult each other before giving their evidence and also under section. The judge has to give a reason for not taking the assessor's opinions.

The Evidence Act, Cap. 6

Section 165 of The E.A Cap 6 [28] provides for the power of assessors to put questions. The section gives proviso for the fact that in cases tried with assessors, assessors may put any questions to the witness, through or by leave of the Judge, which the Judge himself or herself might put and which he or she considers proper.

CONCLUSION

Besides being professionally educated, judges may not always have the required expertise to analyse and measure the probative value of expert evidence. To avoid miscarriages of justice and the expense of appeals, a second head with the requisite knowledge, experience and skill of reasoning in the relevant field will serve as a potential benefit, saving litigation costs and raising public confidence in the judicial system [29]. It is therefore a plausible argument for one to conclude that rather than abolish assessors as some authors and legal fraternity members have argued, it is better to reform the law relating to the way in which they operate, and train them as Lord

RECOMMENDATIONS

On this note, the article calls for the disagreement on matters of fact and law between the assessors and the judge should not be done in open court but in the chambers. This will help create some confidence in the public that the assessors are one together with the judge; presently the lay assessors are totally controlled by the professional judges and this creates a doubtful impact in the public as to the relevancy of these people.

More so, assessors should be occupationally competent. This means that each assessor must act according to current sector practice, be competent in the functions covered by the branch of law they are assessing. They will have gained their occupational competence working within the Justice, Community Safety and Legal sectors or within an appropriate occupational sector. They are not required to occupy a position in the court more senior than that of the accused they are assessing. However, courts must be alert to the risks that all such arrangements could present and ensure that justice is seen to be done to minimize the possibility of collusion between the public opinion and assessors. It is also recommended that provision of current records of assessors' skills and supporting knowledge and understanding in the context of a recent role directly related to the matter before court in which they are assessing. Assessors should be familiar with the culture and modus operandi of the cases in which they are appointed to assess; and must be able to interpret and make judgments on current working practices and technologies within the area of work. Finally, timely trainings and refresher courses are also needed to maintain the occupational competence of the assessors by actively engaging them in continuous professional development activities in order to keep up to date with developments relating to the changes taking place in the Justice, Community Safety and Legal sectors.

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