



A REPORT ON THE NATIONAL DIALOGUE ON EXECUTION OF COURT ORDERS IN UGANDA HELD ON FRIDAY, 27th MAY, 2016 AT HOTEL AFRICANA



LEGAL AID SERVICE PROVIDERS' NETWORK (LASPNET)

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LIST OF ACRONYMS

ACTV	African Center for Treatment and Rehabilitation of Torture Victims
CJAF	Community Justice and Anti-corruption Forum
JLOs	Justice Law and Order Sector
JURIA	Justice Rights Associates
LASPNET	Legal Aid Service Providers Network'
LASPs	Legal Aid Service Providers
UCBA	Uganda Court Bailiffs Association
UPRF	Uganda Public Rescue Foundation
PILAC	Public Interest Law Clinic
FIDA	Association of Women Lawyers
UCLF	Uganda Christian Lawyers Fraternity
KCCA	Kampala Capital City Authority
ULA	Uganda Land Alliance
AAV	Action Against Violence
MCJL	Muslim Center for Justice and Law
AHURIO	Association of Human Rights Organizations

EXECUTIVE SUMMARY

Following the formation of the Execution division to deal with matters of execution, one would have ordinarily thought that the execution process would become easier, efficient and free of irregularities. However, the practice has proved different. Therefore the national dialogue on execution of court orders was convened by LASPNET to provide an opportunity for the key stakeholders in the Execution process to discuss the challenges, lessons learnt in practice and establish a way forward.

The dialogue revealed a number of issues in the execution process including: limited funding for LASPs; fraud by Bailiffs and Advocates; political interference; the long clearance process; low Bailiff remuneration and; interference from the RDC's and the police to mention but a few. Some of the key resolutions given by stakeholders include: All stakeholders should act professionally in the Execution of court process; Lawyers and court bailiffs should encourage parties to pursue out of court settlements instead of engaging in endless litigation such as applications for stay, setting aside execution or judgment and decree, or filing appeals with no merit; Politicians should keep hands off lawful execution orders from court and allow the courts and bailiffs to act independently of coercion or manipulation; There is need to establish a body/an authority by law or practice direction to regulate the court bailiffs to ensure professionalism and accountability; There is a need to have a dialogue to develop guidelines to regulate Bailiff Services in Uganda; the UCBA should strengthen its monitoring mechanism to ensure quality control beyond that we should allow more strengthened regulation that is legally binding; amend the Judicature Court Bailiffs' rules to increase on the bailiffs remuneration; have refresher courses and training of Bailiffs on procedures and ethical standards is necessary; encourage Bailiffs to enroll on Pro-bono (free) services and; clearance of warrant is decentralized to DPC except for Eviction/ Vacant possession is to be cleared at the RPC's level to mention but a few.

This report therefore presents a summary of the dialogue proceedings. It is divided into the introduction part which make a justification and background for the dialogue, outlines the objectives and methodology of the dialogue; It also provides a summary of the opening session with introductory remarks of the Executive Director, welcome remarks by both the LASPNET Board Chairperson and the President Uganda Court Bailiffs Association and: a keynote address given by the Deputy Head of the High Court Execution Division. The last part of the report is the proceedings session which includes a summary of the panel presentation, plenary, recommendations and conclusions.

1.0. INTRODUCTION

Under the laws of Uganda namely the civil procedure act and rules, the court bailiff's Act and the rules, it is provided that successful parties /judgment Creditors are entitled to realize the remedies granted by court through the process of execution of court orders. To facilitate this process they often engage court bailiffs as officers of the court warranted to carry out the execution of judgments. Informed through experiences of the difficulty in coordination and supervision of the process of execution, the judiciary came up with an innovation of creating an Execution Division of the High court of Uganda to harmonize and efficiently facilitate the execution process of judgment orders. Following the formation of the division to deal with matters of execution, one would have ordinarily thought that the execution process would become easier, efficient and free of irregularities. However, the practice is proving different. There are still continued gaps and challenges associated with execution of orders such as incidents of lack of professionalism among some advocates and bailiffs, parallels court proceedings where for example appeals or stay of application are filed when at the same time there are ongoing execution process in the execution division, delayed execution of warrants , defrauding of judgment debtors by bailiffs and advocates; political interference often by offices of RDC, Presidents' office and others associated with execution .

In the case of the indigents, the problem is exacerbated by the fact that the process is frustrating with technicalities and expensive to their detriment. While most Legal Aid Service Providers (LASPs) have programs supported by donors to represent indigents in court, they are unable to support them in the execution of court orders as such process are usually not catered for in the programme budget. LASPs have therefore noted with concern that executing court orders through engaging court bailiffs is an expensive venture to them as it is often delayed with technicalities, limited by resources and in several instances bailiffs not only live short of the ethical standards required of them as officers of the court, but also overcharge for the execution process. This therefore makes obtaining the services of a bailiff expensive thus rendering useless in many aspects the purpose of the court order or remedies granted by courts of law. These factors among others have invariably hindered access to justice for the poor and marginalized.

The Legal Aid Service Providers Network (LASPNET) is a membership-based NGO that works to strengthen the individual and coordinated capacity of Legal Aid Service Providers (LASPs) in Uganda to provide quality legal aid services to the poor, vulnerable, and marginalized populations. LASPNET's mandate is to strengthen the coordination and

networking of LASPs, harmonization and standardization of legal aid service provision by the different service providers, lobbying and advocacy to facilitate a favorable legal and policy environment.

Therefore, LASPNET in partnership with the Uganda Court Bailiffs Association (UCBA) with support from the Democratic governance facility (DGF) organized a half stakeholders dialogue to discuss the process of execution of court orders, share experiences and lessons; appreciate gaps and challenges and; make practical recommendations on how to engage and build synergies that will simplify the process of execution especially for the indigents and vulnerable.

The dialogue was an interactive session where stakeholders highlighted the gaps, challenges and lessons learnt in the execution of court orders. It was well attended by over 50 stakeholders from across the Justice System such as the representatives from the judiciary, JLOS the police, LASPs, court bailiffs and the media fraternity.

1.2. Overall purpose of the Dialogue

Under the theme **“Facilitating Access to Justice for all through effective and efficient execution of court orders”** the overall goal of the dialogue was to enable stakeholders in the justice system and Legal Aid Service Providers’ share experiences and challenges faced during the execution of court orders.

The specific objectives were:

- I. To provide an interactive session between key actors to appreciate the law and practice of execution of court orders;
- II. To deliberate, share experiences, lessons learnt and good practices in execution of court orders;
- III. To negotiate the possible avenues in which to support LASP clients in the execution process;
- IV. To identify opportunities of working modalities and forge a way forward.

1.3. Methodology

The dialogue was an interactive session where stakeholders highlighted the gaps, challenges and lessons learnt in the execution of court orders. The dialogue was well attended by over 50 stakeholders in the Justice, Law and Order Sector, bailiffs from across the country, media and legal aid service providers. Introductory remarks were given by the Executive Director LASPNET whereas the welcome remarks were given by the Board Chairperson

LASPNET and the President UCBA. The introductory and welcome remarks were followed by a presentation of a key note address from the Chief Guest (Hon. Justice Flavia Anglin Ssenoga) and closely followed by panel presentations from key players in the execution process of court orders in Uganda; a plenary; a summary of key recommendations by the Rapporteur and concluding remarks from the RDC- Gulu.

2.0. OPENING SESSION

2.1. Introductory Remarks by the Executive Director LASPNET, Ms. Sylvia Namubiru Mukasa

The Executive Director, LASPNET, Ms. Sylvia Namubiru Mukasa appreciated the participants in their respective capacities for honoring the invitation and for the continued support in ensuring that collectively the lives of persons in Uganda are improved through creating enabling laws and environment for their protection. Ms. Sylvia also appreciated Hon Justice Anglin Flavia Ssenoga, Deputy Head of the Execution Division (the Chief guest) and Registrars from the division; LASPNET's Development Partners Democratic; the Governance Facility (DGF) for providing the resources; the partners in the dialogue: the Uganda Court Bailiffs Association (UCBA) for agreeing to corroborate with LASPNET to have the dialogue, the representatives from the Justice Law and Order Sector (JLOs), the Membership, the media present and the staff of LASPNET who had worked tirelessly in preparing for this event.



She noted that the overall objective of the dialogue was to enable Legal Aid Service Providers' (LASPs) and stakeholders in the justice system to share experiences and challenges in execution of court orders and the specific objectives of the dialogue were to; provide an interactive session between key actors to appreciate the law and practice of execution of court orders; deliberate, share experiences, lessons learnt and good practices in execution of court orders; negotiate the possible avenues in which to support LASP clients in the execution process and; identify opportunities of working modalities and forge a way forward.

Ms. Sylvia in her concluding remarks and quoting the Visionary Charles S. Ryan had this to say, “Protection and equal Justice under Law is our creed and constitutional right. Our Constitution guarantees every citizen ‘equal protection’ under the law. Not ‘some protection.’

And this means equal justice under the law to the poor and to the rich, to the weak and to the powerful alike. However, there is a missing link to accessing equal justice as majority of indigent Ugandans often find it difficult to pursue their cases which are many times protracted and later to execute judgments orders as engaging court bailiffs is not only an expensive venture to them but also, the process is often delayed by technicalities; limited resources and in several instances, bailiffs live short of the ethical standards as well as overcharge for the execution process.”

She concluded her remarks by saying that her hope was to see that the stakeholders presents would reflect on their respective responsibility, picking lessons and the challenges and in the process, invoke their abilities and inner man to see what they can do in their various capacities and endeavors to address the gaps and ethical issues that have marred the execution process of court orders in Uganda rendering justice useless to those in most need of it.

2.2. Welcome Remarks by Board Chairperson LASPNET; Mr. Samuel Hebert Nsubuga

The Board Chairperson LASPNET; Mr. Samuel Hebert Nsubuga warmly welcomed all stakeholders to the National Dialogue on the Execution of Court Orders where LASPs come together with other stakeholders in the justice system to engage on one of the critical aspects to complete the chain of justice.

He noted that currently, the Justice System faces a number of challenges that affect its performance and delivery of justice, especially in the aspect of execution; the tail end of routinely rigorous civil proceedings. He further noted that under the Civil Procedure Act, the Court Bailiff’s Act and the Rules established there under, it is provided that Successful parties /Judgment Creditors are entitled to realize the remedies granted by court through the process of execution of court orders and to facilitate this process, successful parties often engage court bailiffs as officers of the court warranted to carry out the execution of judgments however, the execution process comes with vast challenges and is far from being smooth as envisaged under the law.



According to Mr. Nsubuga, the challenges faced during execution of court orders range from increasing loss of ethical standards from some advocates and bailiffs; to delays in the execution process; contempt of execution orders by the police and security agencies, centralization of the execution division resulting into huge case backlog; high costs of execution; undue and complex procedural technicalities of execution which are not understood by majority of the public especially the indigent persons and the vulnerable like widows and orphans.

Mr. Nsubuga said, “Legal Aid Service Providers’ (LASPs) have noted with concern that their clients after successful litigation many times encounter challenges in executing those judgments owing to the fact that engaging court bailiffs is quite expensive to them in addition to the process having technicalities and lacking ethical conduct exhibited from the justice system actors.”

He also noted that stakeholders present are looking forward to a fruitful and respectful deliberation amongst themselves as views, experiences and challenges in execution of court orders are shared.

As he concluded, Mr. Nsubuga appreciated all of those who had made it possible for the dialogue to happen and specifically to the Hon. Justice Flavia Anglin Ssenoga, Deputy Head of the Execution Division of the High court and her colleagues from the same division; all the distinguished guests who took time off their busy schedules to grace LASPNET with their presence at the Dialogue; the Development Partners, Democratic Governance Facility (DGF) who have continuously funded LASPNET since 2008 and also provided resources for the dialogue; the justice system actors, the Court Bailiffs and institutional representative from JLOS, police, Presidents office; CSOs and; LASPNET’s membership. He also thanked the media fraternity for being with LASPNET in all their endeavors and keeping the public aware and informed about these critical issues of access to justice. Last but not list, Mr. Samuel thanked the Board, Management and staff of LASPNET for their various input and support in organizing the Dialogue and wished all a fruitful Dialogue.

2.3. Remarks by the President Court Bailiff's Association; Mr. Seremosi Bonny Rwamukaaga

Mr. Rwamukaaga noted that it was a great pleasure to address a distinguished gathering like the one before him and thanked all for responding to the invitation despite their busy schedules.

Mr. Rwamukagaa noted that as an Association of Bailiffs, they realize that to stay relevant in the market, it is important to hold such trainings and workshops because they not only help Bailiffs strive for excellence in service provision but also help them solve some challenges encountered daily in the profession. He further noted that the Bailiffs profession, is one of the most disliked professions by the public because there is little knowledge on what services they offer and in order to consolidate an awareness session, there is need to sensitize the public on what services the Bailiffs offer and how they execute those services and if not done, the negative perceptions about the bailiffs won't change.



To emphasize the above sentiments, Mr. Rwamukaaga quoted an author and writer named Steve who said, “However much you do your best, a person who dislikes you will never appreciate your work” and noted that training and creating awareness about the bailiffs is key in neutralizing the negative perception towards the bailiff's work.

After noting that the goal of the Bailiffs is to offer valuable service to the Public, Mr. Rwamukaaga inspired the audience with a quote from an American Author Dr. Who, “Whereas a clear realization of a goal is a first step to success in life, a goal without an action plan is a day dream.”

He promised to continue working hard to improve on the services the Bailiffs offer especially how they deal with the public and he's message to all of stakeholders present was that they should advocate for an Act of Parliament as a remedy.

In conclusion, he thanked everyone for attending the workshop, wished them a memorable experience in the workshop and invited the chief guest to deliver the Key Note Address and officially open the dialogue.

2.4. Key Note Address and Official Opening of the Dialogue by the Chief Guest; Hon. Judge Flavia Anglin Senoga, Deputy Head of the High Court Execution Division.

Justice Anglin with great pleasure welcomed all present to the National Dialogue on the execution of court orders by bailiffs. She thanked the organizers especially the Legal Aid Service Providers Network (LASPNET) for inviting her to be part of the important dialogue.

On behalf of the Justice Law and Order Sector (JLOS) and on her own behalf, Justice Anglin also extended sincere gratitude to the Development Partners especially the DGF for their financial and technical support in enhancing access to justice.

She defined the term “**execution**” as enforcement or implementation or giving effect to an order or judgment passed by a court of justice so as to enable the Judgment Creditor /Decree holder to realize the fruits of the judgment and decree. She emphasized



that the execution process is complete when the judgment-creditor/ decree-holder gets money or other things awarded to him/her by the judgment, decree or order and is the last crucial process in the chain of justice when the successful party supported by either a Court Bailiff or Advocates realizes the remedies awarded by the court.

Justice Anglin explained that the Bailiffs and Execution Division of the High Court of Uganda is one of the eight divisions of the High Court presided over by two Judges; one being the head and supported by 3 Registrars and was created under Administrative Circular No. 4 of 2011 to handle execution of all decrees and orders made by all the High Court Divisions (namely: Civil Division, Commercial Division, Criminal, Family, Land, Anti-Corruption and International War Crimes Divisions); as well as the High Court Nakawa Circuit, the Nakawa and Makindye Chief Magisterial Area, the Kampala Chief Magisterial areas (Buganda Road and Mengo Chief Magistrate’s courts), and Nabweru Chief Magisterial Area. In due course after a pilot study, the operational benefits of the division could be rolled out to the rest of the country.

She also explained that the Execution Division supervises the operations of Court Bailiffs in such matters, and exercises such other functions including but not limited to :- Issuing Warrants of Execution including warrants of attachment, warrants of arrest, warrants to give vacant possession / eviction under Order 22 of the Civil Procedure Rules, and garnishee orders under Order 23 of the Civil Procedure Rules; Issuing of other execution orders as may be required by any court; Issuing distress under the Distress for Rent (Bailiffs) Act; Taxation of bills of costs; Carrying out quality assurance audits of Bailiffs offices and stores to ensure compliance with industry and institutional standards; Formulation and review of guidance on execution of Court decisions in consultation with the Management structures of the Judiciary as well as stakeholders; Monitoring and coordinating executions with other stakeholders; Keeping and monitoring inventory of executions; Conducting regular meetings with Bailiffs and other stakeholders to review the performance of executions and making recommendations to guide policy reforms; Preparing and filing monthly returns and reports; Ensuring the safety in movement and storage of files for execution and returning them to their respective Divisions/Courts after execution; Coordinating with the Judicial Studies Institute and Development Partners to provide training and other capacity building assistance to the Division staff in best practices in execution of Court orders; Overseeing the discipline of Court Bailiffs and referring of errant Court Bailiffs to the Disciplinary Committee for Bailiffs for punitive action; Evaluating and recommending applicants for appointment as Bailiffs, and for renewal of licenses of bailiffs already in service.

“The last 3 years indicate an increasing number of cases in the Execution Division, with an average of about 1400 cases handled annually. For example in 2013, - 1076 Cases; 2014 - 1465 cases; 2015 - 1848 cases,”
Hon. Judge Flavia Anglin Ssenoga said as she emphasized the cases load at the division

Under the Innovations and good practices of the Division, Justice Anglin noted that it created a one stop center for the execution process of the Courts of Judicature which has promoted cooperation, communication and coordination between courts, advocates and bailiffs in matters of execution and also enabled the other Divisions of the High Court to concentrate on substantive hearing of the cases while the Execution Division devotes its energy to the execution process and procedures. Despite these innovations and good practice,

She also acknowledged that the execution process is not as smooth as envisaged under the law and practice. There are various challenges which range from Centralization resulting in huge cases backlog for cases to Increasing lack of Ethical standards by Advocates and Bailiffs; Malpractices by bailiffs; Elusive Judgment Debtors; Poor Movement of court files;

Limited resources for the Division; Requirement to clear warrants with police; Abuse of the Notice to show cause; Contempt of Execution orders by Police and Security Agencies and; Political interference in execution.

Thereafter, stakeholders were informed that currently a Bailiff named Herbert Zirahuka has petitioned the Constitutional Court to scrap the Execution and Bailiffs Division on grounds that it is unconstitutional. She went ahead to note that this case like others before courts probably arise out of frustration with the current execution process but also offers opportunities to have interpretation and guidance on how to effectively and efficiently execute court orders and the fact that stakeholders are having a dialogue today is in itself an opportunity to share and discuss the lessons learnt; identify the existing gaps and make appropriate recommendations to move forward meaningfully for the court users to be achieved.

- On behalf of the Division charged with execution, the Judge offered the following recommendations.
- All stakeholders should act professionally. She emphasized that Lawyers and bailiffs are officers of court so while they are pursuing their clients' interests and their personal interest which is to earn a living, they should remember to do so in accordance with the established laws and in the interest of justice for all parties.
- Ensure timely execution and return of warrants to Court to enable certification to inform cases returns and also gauge the successful executions.
- Encourage parties to pursue out of court settlements instead of engaging in endless litigation
- Politicians should keep hands off lawful execution orders from court and allow the courts and bailiffs to act independently of coercion or manipulation.
- The police role should be to read and act on court orders as they appear, if not satisfied they should consult, otherwise they should offer protection to execution process.
- A body/an authority should be created by law or practice direction to regulate the court bailiffs to ensure professionalism and accountability.
- The bailiffs should be reasonable and avoid exorbitant costs especially in cases of warrant of arrest. Among the litigants are the poor and vulnerable that despite lack

of resources need to be supported to realize remedies from courts. Bailiffs' Bills of costs should be filed in each case for taxation.

In her conclusion, she emphasized the urgent need to address the challenges faced in execution of judgments and court orders to enable successful litigants to enjoy the fruits of their judgments. Issues such as inadequate training for bailiffs, low remuneration, weak regulatory framework, unfair distribution of warrants by Judicial Officers, and interference in the execution process by Government Agencies and Politicians must be addressed in consideration of the domestic, regional and global trends.

She further emphasized that all stakeholders have a contribution to make in making access to justice for all a reality and it is through continuous engagement of the various stakeholders that will make the court users and the public appreciate that litigation should always be the last option or has to be firmly brought to an end as soon as possible; and that advisably, as the best practice, execution can be carried out satisfactorily but with a humane face.

With those remarks of wisdom, Justice Anglin declared the dialogue officially opened.

3.0 THE DIALOGUE SESSION: PANEL PRESENTATIONS

This session was chaired by Ms. Sylvia Namubiru Mukasa, Executive Director LASPNET who stood in for Hon. Justice Lydia Mugambe, Judge of the Civil Division of the High Court who was not able to make it due to other pressing official engagements. Presenters included: Ms. Lillian Adriko Byarugaba who shared the experiences and challenges in enforcing court Orders faced by LASPs; Mr. Opok who presented on the role of Court Bailiffs in Concluding the chain of Justice, SSP Emilian Kayima who presented on the role of Security Agencies in execution of Court Orders and finally; His Worship Musimbi Muse who presented the law and practice in Execution of Court Orders; experiences from the Execution Division of the High Court.

3.1 Sharing Experiences and Challenges in Enforcing Court Orders: Legal Aid Perspectives: Ms. Lillian Adriko Byarugaba¹

Ms. Adriko started off her presentation by defining ‘Legal aid’ as the provision of assistance to people otherwise unable to afford service of private lawyers for legal representation. She then mentioned the categories of Legal Aid namely: primary and secondary services of which primary refers to actual litigation while secondary is on access to legal/ human rights information and ADR. It was highlighted that the definition of ‘legal aid’ has moved beyond mere representation by a lawyer in a court. The Lilongwe Declaration on Accessing Legal Aid in Criminal Justice Systems in Africa, 2004² broadened the meaning ‘to include legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution’ (Lilongwe 1).



¹ Ms. Lillian Adriko is the head of legal Aid clinic of FIDA Uganda. She previously worked with Kakooza and Kawuma Advocates and the City Advocates Office KCC

In her presentation, Ms. Adriko noted that Legal Aid is important because it makes access to justice accessible for the disadvantage & vulnerable; It addresses Property rights, Labor rights and Poverty issues through economic empowerment; creates spaces in the communities that allows for public debate, demand for accountability and provides space for them to air their grievances, restores harmony in homes and the community; helps clients navigate complex processes in the judicial system; helps clients to interpret the law/sensitization; provision of legal aid through partnerships contributes to the Sustainable development goals SDGs that aim to eliminate poverty, gender inequality, and to promote peace justice and strong institutions and; provides an opportunity for the poor and vulnerable to enforce their economic, social and political rights which are often violated by those empowered and with access to resources thus fostering development.

THE LEGAL FRAMEWORK on Execution

- The Judicature
Court Bailiffs Rules
- Civil Procedure Act
(S.27; S.30; S.45)

She highlighted the following as areas for improvement by the stakeholders

- *Increase empathy for legal aid clients*
- *Improve professionalism on the part of the advocates and bailiffs*
- *Improve the monitoring mechanism and a quality assurance program to ensure effective service delivery*
- *Address the Systemic failures in the Justice Law and Order sector , that make it difficult to navigate an already complex system for the poor and vulnerable*
- *Reduce on delayed execution of warrants of arrests and others especially on the judgment debtors*
- *Political interference*

- *Bailiffs should avoid inflating fee that make the service prohibitive thus resulting in a miscarriage of justice especially on the poor that can neither afford the prescribed fees nor are they guided on the due processes.*
- *The Uganda Court Bailiffs Association should strengthen its monitoring mechanism to ensure quality control beyond that we should allow more strengthened regulation that is legally binding*
- *Ensure strict adherence to the law and the requirements therein there by bringing honor to the occupation of court bailiffs*
- *Introduce legal aid in the curriculum at the source of training e.g. LDC*
- *Streamline mechanisms and or guidelines on the roles of police and the auctioneers and publication of key extracts of these guidelines in key public places*
- *Draw from practice principles such as the welfare principal to expedite execution processes*
- *Streamline the high court execution division section to ensure quality control Lobby for the administration of Justice Bill to streamline and align the admin control*
- *Incorporate mandatory pro bono service provision as a prerequisite to the renewal of certificates*
- *Innovate collaborative efforts to minimize costs of execution through partnerships with the police who can perhaps streamline the activities related to these processes in their budgets/streamline their remuneration*
- *Lobby for sufficient budgets for JLOS institutions such CFPU that are first points of contact for family matter.*
- *The court should use their discretion in favor of the poor and marginalized and in as much as possible complete the matters other than referring them to the division staff to the judiciary to ensure ethical conduct and quality.*

She concluded her presentation by thanking all those present for listening to her.

3.2 The Role of Court Bailiffs in Concluding the Chain of Justice: Mr. Opok Pascal,²

Mr. Opok defined a Bailiff as an officer of the Court who enforces court orders and in the olden days, a Bailiff was referred to as a Court Broker.

Court Bailiffs in Uganda originate from the colonial legal system where laws like the Judicature Act, the Civil Procedure Act & Rules, the Auctioneers Act, and the Distress for Rent (Bailiffs) Act all recognized Court Brokers. He noted that the Judicature (Court Bailiffs) Rules SI 13-16 empowers the Chief Registrar to license court Bailiffs but a judicial officer can also appoint any person to act as a court Bailiff only in a particular matter if a licensed court bailiff is not available.

Mr. Opok highlighted the requirements for licensing Court Bailiffs which include a Certificate in Court Bailiff/Broker from Law Development Centre; an application which is made to the Chief Registrar, Courts of Judicature; a certificate of good conduct from Police Interpol Department; license fees of UGX: 45,000= and an insurance cover for fire and Burglary etc.

The role of Court Bailiffs in concluding the chain of justice is to implement Court orders after the Judgment and Decree is delivered. He also noted that a Bailiff's work starts when a Judge/Registrar' or Magistrate appoints a Bailiff by issuing a warrant that specifies the nature of execution therein and ends when he files Returns in Court within seven (7) days explaining circumstances in which the warrant was executed

He presented a number of challenges faced by court bailiffs in enforcing court orders which include; subject

Ignorance of Procedures among some Bailiffs: Some Bailiff wrongly use warrants e.g. warrant of distress is used to evict occupants from the house or erroneously evict people from the exact land that is being contested in Court either due to failure to survey the subject land or failure to ascertain boundaries of the Kibanja land with no land titles. The suggested way forward



Mr. Opok Pascal said, “According to the UCBA records, a total of 480 Bailiffs were licensed in 2015 and only 9 are female.”

² Mr. Opok Pascal is a lawyer by profession with 10 years' experience as a court bailiff and is the current general Secretary of the Uganda Court Bailiffs' Association; a position he has held for four years.

was to have refresher courses and training of Bailiffs on procedures and ethical standards is necessary.

Long chain of Police clearance of warrant which is costly: He observed that clearance of court orders starts from Police land Protection Unit at Kibuli in Kampala to Metropolitan, RPC's, DPC's, DISO's, D.C Stations which involves high transport costs e.g. from Kabale, Arua, Kotido, Gulu and facilitation allowances given to officers makes it almost impossible to execute Decree where amount is small e.g. 2 million and the victims are small claim litigants, upcountry litigant and women recovering maintenance order which are usually small amount. The suggested way forward is that Bailiffs be enrolled on Pro-bono (free) services or a Bailiff is paid a minimum transport allowances by Judiciary and Clearance of warrant is decentralized to DPC except for Eviction/ Vacant possession is to be cleared at RPS's level.

Imposters who are not Court Bailiffs: Imposters do dubious things e.g. they evict at night, they corn money from the Public in the name of a bailiff owing to the fact that sometime the warrants are not properly drawn i.e. they are drawn in the business or company name yet not all persons working under the Company are Bailiffs. Drawing warrants in the business name or company name gives anyone in the organization power to execute the orders so the support staff who is not a Bailiff tries to use that lacuna to exploit the system.

Political interference: He added that there is a lot of interference during the execution processes especially from security operatives and politicians.

Poor remuneration of Court Bailiffs: Mr. Opok noted that the Judicature Court Bailiff's Rules that govern taxation of Bailiffs fees was enacted in 1987 and gives a very low rate of 3% as remuneration, which has stimulated illegal tendencies of extortion of money from litigants in form of facilitation and exaggeration of bill of costs by Bailiffs. He then suggested that the Judicature Court Bailiffs' rules amended to cope up with the current economic and inflation standing.

Failure to tax/delayed taxation of Bailiff's Bill of Costs: Mr. Opok said that some judicial officer's do not tax bailiff's bill of cost presented when the initial sum is recovered but rather asks the bailiff to recover the entire sum being claimed which may not be possible before their Bill of costs is taxed.

He concluded his presentation with a rhetoric question whether the Bailiffs should be paid out of the amount recovered or at the end of the entire recovery and a note of appreciation to all present for listening.

3.3 Role of Security Agencies in Execution of Court Orders: SSP. Emilian Kayima³

SSP. Kayima started off by delivering warm greetings from the Commandant Land Protection Police Unit, ACP Julius Twinomujuni who was unable to come for the dialogue because of other State duties. He noted that the police are extremely delighted to be party to the important dialogue where all stakeholders meet to deliberate on very important issues that should facilitate access to justice for all through effective and efficient execution of court orders.

He stated that his role in this dialogue is to explain the role of security agencies in execution of court orders in Uganda. He started off by explaining the various orders issued for example; interim orders, temporary injunctions, vacant possession orders, demolition orders, attachment warrants.



Originally, the police were not involved at all in execution process but over time as land and property conflicts intensified across the country, management of the force took a stand to form the Land Protection Police Unit in February 2008 to focus on land related conflicts and address them appropriately. The Land Police Protection Unit handles many tasks some of which include; investigating land related frauds, stopping illegal evictions of enforcement of court orders. But mainly, police undertakes awareness creation through sensitization in the community policing initiatives where they directly interface with members of the public or communicate to them through media programs like interactive radio and television talk shows as well as newspaper articles. The intention is to create a society that appreciates the law, abides by the law, a community that pursues their rights using legal and legitimate means to resolve conflicts.

SSP. Emilian Kayima said,

“Enforcement of court orders was top on the list of those areas that continued to cause conflict in the communities resulting in other forms of crime like murders, assaults, acts of arson malicious damage and many others.”

³ SSP Emilian Kayima is currently the Public Relations Officer, Community Liaison Officer of the Land Protection Police Unit; CID Headquarters. He joined the police force in 2004 and previously has worked with Kampala Metropolitan and headed the child and family protection unit. He also columnist with the New vision

He agreed to the fact that some genuine court orders were being enforced irregularly or misinterpreted, other court orders were ex parte orders that were hurriedly executed against innocent people (substituted service) and some were out rightly forged court orders. He gave examples of interim orders used to maintain the status quo that have been used to evict people! Worst of all, some fraudsters purporting to be bailiffs would descend on peoples' property and cause mayhem like demolishing structures, destroying foodstuffs and injuring people. As a result, the anger that comes with this madness often results into further madness as communities take the law in their hands and fight back. The Police therefore agreed to provide security to the bailiffs executing their duties in the administration of justice in Uganda. However, to give them security, the Police has to know what they are going to do, to verify whether they have genuine court orders so that they can assertively and explicitly communicate to our officers on ground to support this process. So when court orders are issued, court bailiffs are required to channel them through the commandant Land Protection Police Unit who writes to the unit commanders on what they have to do.

He added, "Police training largely focuses on criminal justice system not civil justice system however, that gap is purged by the legal officer's role when we verify the authenticity of the court order. Therefore, we facilitate rather than frustrate justice."

SSP. Kayima concluded by noting that the role of security agencies is threefold i.e. to provide security to the bailiffs as they execute court orders as directed by courts of laws; to ensure there is rule of law, order and respect of human rights in the process and lastly; to ensure that justice is done through avoidance of fraudsters in the whole process of administration of justice in Uganda.

3.4. The Law and Practice in Execution of Court Orders: Experiences from the Execution Division of the High Court: His Worship Musimbi Muse⁴

His Worship Muse noted that the Execution and Bailiffs Division of the High Court of Uganda was established by an administrative circular No. 4 of 2011 issued by the Principle Judge. The Law Governing Execution is the Civil Procedure Act Cap 71 of the Laws of Uganda; the Civil Procedure Rules S.I 71-1 and; Case Law.



The Execution Division was therefore established following complaints by the public on the execution of court decisions with a view of attaining a more efficient and smooth delivery of judicial services. It is a specialized Division to deal with enforcement of court decisions. It is currently on pilot project to cover the activities of the High Court divisions including Nakawa circuit (now being disbanded), the Chief Magisterial areas of Kampala (Mengo and Buganda road), Nabweru, Makindye and Nakawa.

His Worship Muse explained the execution process as involving:

Application for Execution: Where the litigant or his advocate who holds a decree has to make an application for execution of the decree or order. This one is accompanied by the certified decree or orders from the trial court for execution.

Issuance of Notices to show cause why Execution should not issue: Which follows the application where by the Judgment debtor is called upon to give reason why the execution should not get against him or her. At this stage, a willing judgment debtor may schedule payment in agreement with the decree holder or his advocate. Usually a consent settlement may be drawn and the court endorses it. It becomes a fair way of getting around the problem without incurring a lot of expenses of a bailiff and the costs that follow. On failure to show cause the bailiff may come in when the court orders that a warrant of arrest or attachment be issued.

⁴ His Worship Musimbi Muse was the Assistant Registrar for 8 years' and is now the Deputy Registrar of the Execution Division. He joined the Judiciary in 1989 as a Magistrate Grade 1 after serving as a State Attorney with the DPP. He has served in different Parts of Uganda including Karamoja as a Chief Magistrate.

The execution challenges highlighted by His Worship Muse ranged from the renewal of most warrants several times without completion of execution to stay of applications; bailiffs work (it seems the a bailiff want to be fully paid before he executes, then after the execution he prefers a bill of costs to be taxed and he takes another full basket of costs from the proceeds after the decree holder has been paid); property valuation and; the lawyer client relationship (the lawyer as an agent of the judgment creditor is involved in the process of execution and may receive the proceeds of sale or the deposits into court from the judgment debtor to be passed on to his client. At some time later, the creditor is in court asking for the deposits which have long been taken by the lawyer to pass on to the client. The matter then goes to the Law Council to handle as between the client and the lawyer. It so becomes a jump from the pan into the fire).

“Concern has been raised in relation to execution of court orders. I have time and again since my posting to the division in June last year, found that the warrants issued for execution have not been completed. There are pending execution applications to a tune of more than 4000,” His Worship Musimbi Muse, Deputy Registrar Execution



For a smooth flow of the services of the Execution Division to all the court users, His Worship Muse made the following recommendations as he concluded;

- Find a way of harmonizing the operations. With good practices being put in place, all the role players will have to observe them. Such that the problem of misplacement of files for execution at the court are reduced. It is alleged that some debtors cause the same to be misplaced so that time is bought in delay of executions.
- Default judgments due to false affidavits of service be avoided and illegal eviction where non-parties are involved be reduced.
- list of accredited valuers should be provided to the court by their board, to be able to sieve the non-credible ones
- The responsible police officers should do is necessary within time and avoid the illegal charges on clearing warrants.
- Use the law for dealing with delayed execution applications in the Division.
- Court to instruct the bailiffs but not the lawyers to carry out the execution of orders or decrees.
- Strict compliance of the bailiffs in returning the warrants of execution.
- Ownership of land, property need to be ascertained as for the judgment debtor before its attachment to reduce on wrong attachment of property.

4.0. PLENARY DISCUSSIONS & SUMMARY OF RECOMMENDATIONS

After the presentations, the dialogue was opened up to participants to raise their issues. A number of issues related to funding, fraud, notice to show cause, political interference, the clearance process and the bailiffs bill, Bailiff Remuneration and provision of pro-bono/ Legal Aid services, interference from the RDC's and the Police were raised as discussed below. The third session therefore consists of plenary discussions & summary of Recommendations by the Rapporteur; closing remarks; conclusion and way forward.

4.1. Plenary Discussions and Issues emerging

Funding

A representative from Justice Rights and Associates (JURIA) inquired what an advocate should do when indigent clients come to them for legal help yet funding of the project has ended. He narrated two Scenario's where he had clients with no money and yet the funding for the project had stopped. This forced him to take up the matters with personal finances (The first case took up to 7years and the bill of costs was about 90million. The second case took a shorter period and the bill of costs was about 20million). However, the indigents don't want to pay the fees.

Notice to show cause

A representative from Uganda Public Rescue Foundation (UPRF) inquired on what one ought to do to put into consideration before issuing a warrant of distress for rent. A representative from JURIA inquired the divergence between practice and the law on the period within which a notice to show cause can be issued.

Political interference

A representative from the UCBA noted as a general observation that there is political interference in the process of execution. The Hon judge also pointed out individuals who choose to use the state house name to intimidate judicial officers and how their identity can be established

The clearance process and the Bailiff Bill

A representative from the UCBA noted that the police and bailiffs have been represented at the different forums and discussed certain challenges such as the need to lower the clearance process. The Bailiffs in these forums specifically requested for decentralization of

the clearance process by police to the legal officers of police at the regional level to reduce on the cost of execution. Despite these engagements nothing has been done yet.

The same representative noted that in a previous forum they had been informed that there is a Bill governing the Bailiffs in the pipeline however, 3 years down the road the Bill hasn't been passed into law and the status of the Bill is still not known to the Bailiff.

A representative from World Voices Uganda inquired why the Land Protection Police Unit gets involved in the clearing of warrants of execution not directly involving land matters.

Bailiff Remuneration and provision of pro-bono/ Legal Aid services

A representative from the UCBA noted that the Remuneration for Bailiffs is very low.

A representative from the Justice Law and Order Sector (JLO's) suggested that while amending the Judicature Court Bailiffs' rules to cope up with the current economic and inflation standing, the Advocates Remuneration Rules should be looked at in order to act as a guide in the process. The representative also suggested that the Bailiffs not offer Pro Bono Services as had earlier on been suggested by the Secretary UCBA but rather offer Legal Aid Services.

The Executive Director of Uganda Law Society noted that currently there are regulations in place governing licensed advocates giving Pro bono services. He then suggested a dialogue be had to develop guidelines to regulate Bailiff Legal Aid Services in Uganda.

A representative from African Centre for Treatment and Rehabilitation of Torture Victims questioned whether increasing the bailiffs remuneration shall guaranty that professionalism shall be upheld!

Interference from the RDC's and the Police

Two representative from the UCBA noted that there is a lot of resistance from RDC's in the execution process. One of them noted that when he went to arrest the RDC of Oyam district, instead he was the one whom they sought to arrest.

A representative from Community Justice and Anti-Corruption Forum inquired on what could be done to curb on police interference of the execution process.

4.2. Responses to the issues raised during the Plenary

While responding to the issue of funding Ms. Adriko of FIDA advised that it is important to explain to the client from the start what the service provider can or cannot do. Have

clear stipulations on how the matter should be handled, how much it will cost and how the costs will be shared.

In his response to the divergence between the law and practice on notice to show cause, His Worship Muse urged the representative from UPRF to read the Distress for Rent Act which lays down the requirements to be met before a warrant of Distress for rent is issued. To the representative from JURIA, he noted that the law provides that notice to show cause may be issued after 2 years have elapsed. However, in the court's experience and due to mischief involved, it was decided that notice to show cause in execution matters should be within 30 days on making the order but can be extended with good reason.

The representative noted that State House usually doesn't interfere with the process of execution. What people may be looking at as political interference is not actually political interference as sometimes executors attach wrong property and when they are stopped from executing, they consider that to be political interference. Sometimes, the executors don't explain their roles to the community and the long chain of Police which may also be interpreted as political interference interferes with the chain of justice.

On the question raised on how one can tell the difference between the real personnel from state house from the too many "I have an order from state house" who usually try to interfere with the process. The representative responded by urging persons confronted with "I have an order from state house" scenario's to request the party claiming to be from state house to show them their identity cards.

To the representative from UCBA, SSP. Kayima noted that when the Bailiff's and the Police had a similar dialogue, the issue of centralization of clearance of warrants was agreed in principle that let the Bailiff's leadership present the issue in writing to the Director Legal Services and Human Rights so that the Police be internally guided by the letter. He then urged the Bailiff's to write a letter to the police to start the process.

To the representative from World Voices Uganda, SSP. Kayima noted that it's an internal policy/ mechanism that enables the Land Protection Police Unit to get involved in the clearing of warrants of execution not directly involving land matters as almost 80% of the warrants Police receives have a land related background.

4.3. Rapporteur's feedback and Summary of Recommendations

After the plenary and responses the Rapporteur (Ms. Nyaketcho Joan), presented the emerging issues and key recommendations as follows:

- All stakeholders should act professionally in Execution of court process. Lawyers and bailiffs are officers of court, while pursuing your clients' interests and personal interest which is to earn a living, they should remember to do so in a professional manner and in accordance with the established laws and in the interest of justice for all parties
- Ensuring timely execution and return of warrants to Court to enable certification to inform cases returns and also gauge the successful execution
- Lawyers and court bailiffs should encourage parties to pursue out of court settlements instead of engaging in endless litigation such as applications for stay, setting aside execution or judgment and decree, or filing appeals with no merit.
- Politicians should keep hands off lawful execution orders from court and allow the courts and bailiffs to act independently of coercion or manipulation.
- The police role should be to read and act on court orders as they appear, if not satisfied they should consult with the court, otherwise they should offer protection to the execution process
- There is need to establish a body/an authority by law or practice direction to regulate the court bailiffs to ensure professionalism and accountability.
- The bailiffs should be reasonable and avoid exorbitant costs especially in cases of warrant of arrest. Among the litigants are the poor and vulnerable that despite lack of resources need to be supported to realize remedies from courts. Bailiffs' Bills of costs should be filed in each case for taxation
- Increased empathy for legal aid clients/gender balance. There is need to seek smart justice, creativity in our mandates to ensure justice for the poor.
- There is a need to have a dialogue to develop guidelines to regulate Bailiff Services in Uganda
- There is need to address the systemic failures in the JLOS, that make it difficult to navigate an already complex system for the poor and vulnerable
- The UCBA should strengthen its monitoring mechanism to ensure quality control beyond that we should allow more strengthened regulation that is legally binding
- Introduce of mandatory legal aid in the curriculum at the source of training e.g. LDC

- Streamline mechanisms and or guidelines on the roles of police and the auctioneers and publish key extracts of these guidelines in key public place
- There is need to streamline the High Court Execution Division to ensure quality control
- There is need to lobby for the enactment of the Administration of Justice Bill to streamline and align the administration staff of the judiciary to ensure ethical conduct and quality control
- There is need incorporate mandatory pro bono as a prerequisite to the renewal of certificates for bailiffs
- Innovate collaborative efforts to minimize costs of execution through partnerships with the police who can perhaps streamline the activities related to these processes in their budgets/streamline their remuneration
- There is need to decentralize police services of the police land protection unit to legal officers at the regional level
- Lobby for sufficient budgets for JLOS institutions such CFPU that are first points of contact for family matters
- The court should use their discretion in favor of the poor and marginalized and carry out the execution where possible other than referring them to the division
- There is need to have refresher training of Bailiffs on procedures and ethical standards is necessary
- Bailiffs should provide pro bono services or they should be paid a minimum transport allowances by Judiciary
- Clearance of warrant be decentralized to DPC except for Eviction/ Vacant possession is to be cleared at RPC's level.
- There is need to amend of the Judicature Court Bailiffs' rules to increase the bailiff fees that can be charged in tandem with the current economic and inflation standing
- There is a need to provide a list of accredited values in order to avoid non credible valuers.
- To reduce allegations of corruption against the police, responsible police officers should play their role within time .This will avoid the illegal charges on clearing warrants
- Courts should instruct bailiffs but not lawyers to carry out the execution of orders or decrees.

- There is need to have strict compliance of the bailiffs in returning the warrants of execution
- Ownership of land and property need to be ascertained as for the judgment debtor before its attachment to reduce on wrong attachment of proper
- There was call to have a similar forum and dialogue
- There is need to sensitize the masses on the role and duties of a court bailiff in the execution process.

5.0. CLOSING SESSION

5.1. Closing Remarks by RDC-GULU; Captain Santos Okot Lapolo

The common man in the village has various Perceptions on the issue of Justice and

The RDC-GULU; Captain Santos Okot Lapolo, said “People in the villages think that the Bailiffs have swallowed their hearts.”

execution of order i.e. justice is not for the poor, the processes of courts seem to be creating more problems than solving them and finally; the Bailiff’s are rude and they can’t don’t have a human heart noted Captain Santos. He also noted that the common man in the village is ignorant of the law and therefore a victim of ignorance as the unknowingly commit offences. He then



reminded the stakeholders in the justice system that they should not act like they are above the law. He concluded by appealing to all stakeholders to execute their roles without fear or favor. With those few remarks the workshop was closed at 1:30Pm and participants were invited to a luncheon.

5.2. Conclusion and way forward

LASPNET is grateful to all those that made it possible for such an enlightening dialogue to happen, including DGF; the Chief Guest and the division Registrar; the Court Bailiff’s; the LASPs and the organizers. The national dialogue provided an opportunity for the key stakeholders in the Execution process to discuss the challenges, lessons learnt in practice and establish a way forward. This objective was met as participants’ raised various issues including but not limited to limited donor funding for LASPs, fraud, political interference, the long clearance process, low Bailiff Remuneration and; continued interference from the RDC’s and the Police.

The recommendations thereto addressed several common themes. Primarily, they called for all stakeholders especially the Bailiffs and the advocates to act professionally in execution of court process; Lawyers and court bailiffs to encourage parties to pursue out of court settlements instead of engaging in endless litigation; the establishment of a body/an authority by law or practice direction to regulate the court bailiffs to ensure professionalism and accountability; a dialogue to develop guidelines to regulate Bailiff Services in Uganda; the UCBA to strengthen its monitoring mechanism to ensure quality

control; the need to streamline mechanisms and or guidelines on the roles of police and the auctioneers and publish key extracts of these guidelines in key public places; the incorporation of mandatory pro bono as a prerequisite to the renewal of certificates for bailiffs; the need to lobby for sufficient budgets for JLOS institutions such CFPU that are first points of contact for family matters; decentralization of clearance of warrants to the DPC except for Eviction/ Vacant possession which should be cleared at RPC's level; amendment of the Judicature Court Bailiffs' rules to increase the bailiff fees that can be charged in tandem with the current economic and inflation standing and; sensitization of the masses on the role and duties of a court bailiff in the execution process.

Assessing from the number of stakeholders that turned up for the dialogue, the issues raised and the recommendations made, the dialogue meet the intended objectives and in the spirit of keeping up the good fight, LASPNET is recommended to have follow up meetings with the Bailiffs to discuss emerging issues; engage the judiciary and the Uganda Law Reform Commission on the possibility of amending the Judicature Court Bailiffs Rules to increase on the remuneration of Bailiffs; have a dialogue with the Police to discuss how clearance of execution warrants can be decentralized to the regional level and finally; have a dialogue with the Uganda Court Bailiffs Association to develop guidelines to Regulate the Bailiffs professional conduct.

THE END

6.0. ANNEXURES

Session four consists of Annexures including the concept note, agenda, list of participants; the introductory and welcome remarks, the keynote Address and; the panel presentations.

Annexure I: Concept Note



CONCEPT NOTE

THEME: “Facilitating access to justice for all through effective and efficient execution of court orders”

Hotel Africana

Friday, 27th May, 2016

1.0. BACKGROUND

The Legal Aid Service Providers Network (LASPNET) is a membership-based NGO that works to strengthen the individual members and coordinated capacity of Legal Aid Service Providers (LASPs) in Uganda to provide quality legal aid services to the poor, vulnerable, and marginalized populations.

Under the laws of Uganda namely: the Civil Procedure Act , the Court Bailiff’s Act and the Rules established , it is provided that Successful parties /Judgment Creditors are entitled to realize the remedies granted by court through the process of execution of court orders. To facilitate this process they often engage court bailiffs as officers of the court warranted to carry out the execution of judgments. Informed through experiences of the difficulty in coordination and supervision of the process of execution, the judiciary came up with an innovation of creating an Execution Division of the High Court of Uganda to harmonize and efficiently facilitate the execution process of judgment orders. Following the formation of the division, one would have ordinarily thought that the execution process would become easier, efficient and free of irregularities. However, the practice is proving different. There are still continued gaps and challenges associated with execution of orders

such as incidents of lack of professionalism among some advocates and bailiffs; parallels court proceedings where for example appeals or stay of application are filed when at the same time there are ongoing execution process in the execution division; delayed execution of warrants ; defrauding of judgment debtors by bailiffs and advocates ; interference often from offices of RDC, Presidents', Police and others associated with execution .

In the case of the indigents, the problem is exacerbated by the fact that the process is frustrating with technicalities and expensive to their detriment. While most Legal Aid Service Providers (LASPs) have programs supported by donors to represent indigents in court, they are unable to support them in the execution of court orders as such costs are usually not catered for in the Programme budget. LASPs have therefore noted with concern that executing court orders through engaging court bailiffs is an expensive venture to them as it is often delayed with technicalities, limited by resources and in several instances bailiffs not only live short of the ethical standards but also overcharge for the execution process. This therefore makes obtaining the services of a bailiff expensive thus rendering useless in many aspects the purpose of the court order or remedies granted by courts of law. These factors among others have invariably hindered access to justice for the poor and marginalized.

Therefore, LASPNET in partnership with Uganda Court Bailiffs Association (UCBA) and supported by the Democratic governance facility (DGF) has organized a half stakeholders dialogue to discuss the process of execution of court orders, share experiences and lessons; appreciate gaps and challenges and; make practical recommendations on how to engage and build synergies that will simplify the execution especially for the indigents and vulnerable .

2.0. OBJECTIVES OF THE DIALOGUE

- I. The overall goal of the dialogue is to enable stakeholders, LASPs, share experiences and challenges in execution of court orders. The specific objectives therefore are:
- II. To provide an interactive session between key actors to appreciate the law and practice of execution of court orders;
- III. To deliberate, share experiences, lessons learnt and good practices in execution of court orders;
- IV. To negotiate the possible avenues in which to support LASP clients in the execution process;
- V. To identify opportunities of working modalities and forge a way forward.

3.0. METHODOLOGY

The dialogue will be an interactive session that will be sparked off by a presentation of key note address and closely followed by panel presentations from key players in the execution process of court orders in Uganda.

4.0. EXPECTED OUTPUT

- An interactive forum for stakeholders that will highlight the gaps , challenges and lesson learnt
- A Report documenting the law , practice ,challenges and recommendations

5.0. PARTICIPANTS

Participants will be key stakeholders in the execution process and they will include: Court Bailiffs, the Justice Law and Order Sector institutions like representatives from the execution division of the high court, police who are directly involved with execution of court orders and Legal aid service providers.

6.0. DATE & VENUE

The National Dialogue will be held on Friday, 27th May, 2016 at Hotel Africana.

7.0. PROGRAMME

Please see Annex

Annexure II: Agenda



National Dialogue on the Execution of Court Orders in Uganda

Hotel Africana

Friday 27th May, 2016

Programme

Time	Activity	Responsible Person
Session I: Opening and Key Note Address		
08:30am – 09:00am	Arrival and Registration	LASPNET Secretariat
09:00am – 09:10am	Introductory Remarks	Ms. Sylvia N. Mukasa Executive Director, LASPNET
09:10am – 09:30am	Welcome & Remarks from the Conveners	<ul style="list-style-type: none"> Mr. Samuel Herbert Nsubuga, Chairperson, LASPNET Board Mr. Seremosi B. Rwamukaaga, President of the Uganda Court Bailiffs Association
09:30am – 10:00am	Key Note Address by the Chief guest & Official opening	Hon. Justice Anglin Flavia Ssenoga Judge of the Execution Division, High Court of Uganda
10:00am – 10:15am	Group Photo	LASPNET Secretariat
10:15am – 10:45am	TEA BREAK	HOTEL
Session II: Panel Presentation		
Session Chair : Hon. Justice Lydia Mugambe, Judge of the Civil Division of the High Court		
10:45am-12:00 am	Sharing of Experiences: Lessons Learnt , Challenges & Opportunities	Presenters: <i>Sharing Experiences and Challenges in Enforcing Court Orders: Legal Aid Perspectives</i> Ms. Lillian Adriko, Head FIDA Legal Aid Clinic

		<p><i>Role of Court Bailiffs in Concluding the Chain of Justice</i> Mr. Opok Pascal, Secretary General Uganda Court Bailiffs Association</p> <p><i>Role of Security agencies in execution of court orders</i> Representative of the Police</p> <p><i>The Law and Practice in Execution of Court Orders: Experiences from the Execution Division of the High Court</i> His Worship Musimbi Muse, Deputy Registrar Execution Division</p>
12:00am – 12:45pm	Plenary Discussions	Session Chair
12:45pm – 12:55pm	The Way forward	LASPNET Secretariat
12:55pm – 1:00pm	Closing Remarks	DGF Representative
1:00pm-2:00pm	Lunch & Departure	HOTEL

Annexure III: List of Participants

	NAME	DESIGNATION AND ORGANISATION	GENDER	CONTACT/ MOBILE No	EMAIL
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Annexure IV: Introductory remarks by ED, LASPNET

**INTRODUCTORY REMARKS BY THE EXECUTIVE DIRECTOR - LASPNET AT THE
NATIONAL DIALOGUE ON THE EXECUTION OF COURT ORDERS.**

Date: 27th May 2016

Venue: Hotel Africana

Your Lordship, the Deputy Head of Execution Division of the High court

Hon Judge Lydia Mugambe Ssali , Civil Division of the High court

Your worships, the Registrars

The Resident Commissioner Gulu

Representatives of the JLOS Institutions,

The Development Partners,

The President Uganda Law Society,

The President Uganda Court Bailiffs Association,

Court Bailiffs represented,

State and Non State Legal Aid Service Providers

The Media Fraternity

Ladies and Gentlemen (All Protocol observed

Good morning

I thank you all in your respective capacities for honoring our invitation. We appreciate your continued support in ensuring that we improve the lives of person in Uganda through creating enabling laws and environment for their protection. I wish in a special way appreciate Hon Justice Anglin Fravia Ssenoga, Deputy Head of the Execution Division, our Chief guest today and Registrars from the division, the Development Partners DGF for providing the resources , our partners the Uganda Court Bailiffs Association for agreeing to corroborate with us to have the dialogue the representatives from JLOS, Membership,

media present and the staff of LASPNET who have worked tirelessly in preparing for this event.

Protection and equal Justice under Law is our creed and constitutional right. Our Constitution guarantees every citizen ‘equal protection’ under the law. Not ‘some protection.’ And this means equal justice under the law to the poor and to the rich, to the weak and to the powerful alike. However, there is a missing link to accessing equal justice as majority of indigent Ugandans often find it difficult to pursue their cases which are many times protracted and later to execute judgments orders as engaging court bailiffs is not only an expensive venture to them but also, the process is often delayed by technicalities; limited resources and in several instances, bailiffs live short of the ethical standards as well as overcharge for the execution process.

LASPNET through its interface with its members and stakeholders in the justice system has come across voices raising concerns related to challenges and gaps confronted by court users when executing court orders especially for the indigent litigants. First and foremost, the cases take long to be resolved, even after they are resolved it is a night mare to realize such remedies granted due to poverty and vulnerability. **(to share a case scenario while working at LAP- ULS).**

Our mandate as LASPNET is to provide a collaborative framework and strategic linkages for Legal Aid Service Providers (LASPs) in order to make access to justice a reality for all especially the poor, vulnerable and marginalized.

LASPNET therefore champions three critical aspects of coordination:

- A collective role of bringing together different LASPs for solidarity in strategizing, sharing lessons and experiences, while minimizing duplication;
- A capacitating role of ensuring improved quality standards among LASPs but also linking international/regional developments on legal aid to national interventions; and
- A supportive role of documenting, providing needed feedback, and amplifying voice on key issues regarding access to justice/legal aid a

It is on this premise that we in collaboration with Uganda Court Bailiffs Association (UCBA) and supported by the Democratic Governance Facility (DGF) have convened a National dialogue on Execution of Court Orders under the theme, ***“Facilitating Access to Justice for all through effective and efficient execution of court orders”*** Whose overall objective is to enable LASPs and stakeholders in the justice system to share experiences and challenges in execution of court orders. **The specific objectives of the dialogue include:-**

- I. To provide an interactive session between key actors to appreciate the law and practice of execution of court orders;
- II. To deliberate, share experiences, lessons learnt and good practices in execution of court orders;
- III. To negotiate the possible avenues in which to support LASP clients in the execution process;
- IV. To identify opportunities of working modalities and forge a way forward.

This dialogue is meant to be an interactive session for stakeholders that will highlight the gaps, challenges and lesson learnt in the execution of court orders. The dialogue as per the programme will start off with a presentation of a key note address from our Chief Guest (Hon. Justice Ezekiel Muhanguzi) and closely followed by panel presentations from key players in the execution process of court orders in Uganda and a plenary.

I hope today we will reflect on our respective responsibility, picked lessons and the challenges and in the process invoke our abilities and inner man to see what we can do in our various capacities and endeavors to address the gaps and ethical issues that have marred the execution process of court orders in Uganda rendering justice useless to those in most need of it.

Let us be inspired by Marcus Tullius⁵ He had this to say

“For there is but one essential justice which cements society, and one law which establishes this justice. This law is right reason, which is the true rule of all commandments and prohibitions. Whoever neglects this law, whether written or unwritten, is necessarily unjust and wicked.”

And Hunter⁶

“We cannot expect people to have respect for law and order until we teach respect to those we have entrusted to enforce those laws.”

The question to go with us as individuals and institutions as we dispense our responsibilities will then be: Do we have respect to the law, are worthy to be entrusted with enforcement of the law? What is hindering our abilities to do our best in supporting Justice in Uganda .That remains the question we have to answer at the end of this dialogue.

⁵ [Marcus Tullius Cicero](#), [On the laws](#) was a [Roman philosopher](#), [politician](#), [lawyer](#), [orator](#), [political theorist](#), [consul](#), and [constitutionalist](#)

⁶ [Hunter S. Thompson](#), American journalist and author, and the founder of the [gonzo journalism](#) movement

I thank you and on behalf of **LASPNET**, I wish you fruitful Dialogue.

Sylvia Namubiru Mukasa

Executive Director

Annexure V: Welcome Remarks by LASPNET Board Chair

**WELCOME REMARKS BY THE CHAIRPERSON, LASPNET AT THE NATIONAL
DIALOGUE ON THE EXECUTION OF COURT ORDERS**

Venue: Hotel Africana

Date: Friday, 27th May 2016

Your Lordship, Hon. Judge Anglin Flavia, Execution Division of the High court

Hon. Judge Lydia Mugambe Ssali, Civil Division of the High court

Your worships, the Registrars

The Resident Commissioner, Gulu

Representatives of the JLOS Institutions,

The Development Partners,

The President Uganda Law Society,

The President Uganda Court Bailiffs Association,

Court Bailiffs represented,

State and Non State Legal Aid Service Providers

The Media Fraternity

Ladies and Gentlemen (All Protocol observed)

Good morning

I warmly welcome you all to the National Dialogue on the Execution of Court Orders, distinct in nature and the first of its kind where Legal Aid Service Providers come together

with other stakeholders in the justice system to engage on one of the critical aspects to complete the chain of justice.

The Legal Aid Service Providers Network (LASPNET) is a member-based organization focused on strengthening collaboration among Legal Aid Service Providers (LASPs) in complementing Government of Uganda's efforts of expanding access to justice. Within this realm, LASPNET synchronizes the execution of shared activities among LASPs with major emphasis on improving the quality of service delivery, monitoring and evaluation frameworks, supporting policy reform, capacity building initiatives, and promoting evidence based advocacy in setting the legal aid agenda.

Currently, the Justice System faces a number of challenges that affect its performance and delivery of justice, especially in the aspect of execution; the tail end of routinely rigorous civil proceedings. Under the Civil Procedure Act, the Court Bailiff's Act and the Rules established there under, it is provided that Successful parties /Judgment Creditors are entitled to realize the remedies granted by court through the process of execution of court orders. To facilitate this process, successful parties often engage court bailiffs as officers of the court warranted to carry out the execution of judgments. However, the execution process comes with vast challenges and is far from being smooth as envisaged under the law.

These challenges range from increasing loss of ethical standards from some advocates and bailiffs; to delays in the execution process; contempt of execution orders by the police and security agencies, centralization of the execution division resulting into huge case backlog; high costs of execution; undue and complex procedural technicalities of execution which are not understood by majority of the public especially the indigent persons and the vulnerable like widows and orphans.

We the Legal Aid Service Providers' (LASPs) therefore have noted with concern that our clients after successful litigation many times encounter challenges in executing those judgments. This is because engaging court bailiffs is quite expensive to them in addition to the process having technicalities and lacking ethical conduct exhibited from the justice system actors. Such scenarios many times affect realization of effective and efficient remedies from courts of law in civil related matters in which many of our clients engage with court as we shall be hearing from the representative of LASPs later in the discussion.

Therefore, today we are looking forward to a fruitful and respectful deliberation amongst us stakeholders as we share views, experiences and challenges in execution of court orders.

We are the voice from the demand side, the court users especially the indigent who would want to see justice not only said to be done, but also seen to be done.

I wish therefore to appreciate all of those who have made it possible for this dialogue to happen. Our sincere appreciation goes to the Hon. Justice Flavia Anglin Ssenoga, Deputy Head of the Execution Division of the High court and your colleagues from the same division and to you all our distinguished guests for taking time off your busy schedules to grace us with your presence at this Dialogue. Secondly to our development partners, DGF who have continuously funded LASPNET since 2008 and also provided resources for this dialogue; the justice system actors, the Court Bailiffs and institutional representative from JLOS, police, Presidents office ; CSOs and; our dear membership . We thank the media fraternity for being with us in all our endeavors and keeping the public aware and informed about these critical issues of access to justice.

Last but not least, I thank the Board, Management and staff of LASPNET for your various input and support in organizing this Dialogue. Thank you all for honoring our invitation and sparing time to contribute to this important dialogue

On behalf of **LASPNET**, I wish you a fruitful Dialogue.

Samuel Herbert Nsubuga

Chief Executive Officer, ACTV & Chairperson Board of LASPNET

Annexure VI: Keynote Address by Lady Justice Flavia Anglin Ssenoga

KEYNOTE ADDRESS BY LADY JUSTICE FLAVIA SENOGA ANGLIN AT THE NATIONAL DIALOGUE ON EXECUTION OF COURT ORDERS

TOPIC: “The Overview of the Law and Practice on Execution Procedures in Uganda: How Efficient and Effective are the Systems Actors in Promoting Access to Justice through Execution:”

VENUE: Hotel Africana

DATE: Friday, 27th May, 2016

Your Lordships,

Your Worships,

Distinguished Representatives of the JLOS Institutions,

The Development Partners,

Representatives of the various Government Agencies,

Court Bailiffs Representatives,

State and Non State Legal Aid Service Providers,

Ladies and Gentlemen

0.1 Introduction:

It is with great pleasure that I welcome you all to the National Dialogue on the execution of court orders by bailiffs.

I would like to thank the organizers especially the Legal Aid Service Providers Network (LASPNET) for inviting me to be part of this important dialogue.

On behalf of the Justice Law and Order Sector (JLOS) and on my own behalf, I also wish to extend our sincere gratitude to our Development Partners especially the Democratic Governance Facility for their financial and technical support in enhancing access to justice.

1.0. Background Information:

The term “**execution**” means enforcement or implementation or giving effect to an order or judgment passed by a court of justice so as to enable the Judgment Creditor/Decree holder to realize the fruits of the judgment and decree. The execution process is complete when the judgment-creditor/ decree-holder gets money or other thing awarded to him/her by the judgment, decree or order. It is the last crucial process in the chain of justice when the successful party supported by either a Court Bailiff or Advocates realizes the remedies awarded by the court.

The Bailiffs and Execution Division of the High Court of Uganda:

This is one of the eight divisions of the High Court presided over by two Judges one being the head and supported by 3 Registrars.

The Execution and Bailiffs Division of the High Court of Uganda was created under Administrative Circular No. 4 of 2011 to handle execution of all decrees and orders made by all the High Court Divisions (namely: Civil Division, Commercial Division, Criminal, Family, Land, Anti-Corruption and International War Crimes Divisions); as well as the High Court Nakawa Circuit, the Nakawa and Makindye Chief Magisterial Area, the Kampala Chief Magisterial areas (Buganda Road and Mengo Chief Magistrate’s courts), and Nabweru Chief Magisterial Area. In due course after a pilot study, the operational benefits of the division could be rolled out to the rest of the country.

The Execution Division supervises the operations of Court Bailiffs in such matters, and exercises such other functions including but not limited to :-

- Issuing Warrants of Execution including warrants of attachment, warrants of arrest, warrants to give vacant possession / eviction under Order 22 of the Civil Procedure Rules, and garnishee orders under Order 23 of the Civil Procedure Rules.
- Issuing of other execution orders as may be required by any court.
- Issuing distress under the Distress for Rent (Bailiffs) Act.
- Taxation of bills of costs.
- Carrying out quality assurance audits of Bailiffs offices and stores to ensure compliance with industry and institutional standards.

- Formulation and review of guidance on execution of Court decisions in consultation with the Management structures of the Judiciary as well as stakeholders.
- Monitoring and coordinating executions with other stakeholders.
- Keeping and monitoring inventory of executions.
- Conducting regular meetings with Bailiffs and other stakeholders to review the performance of executions and making recommendations to guide policy reforms.
- Preparing and filing monthly returns and reports.
- Ensuring the safety in movement and storage of files for execution and returning them to their respective Divisions/Courts after execution.
- Coordinating with the Judicial Studies Institute and Development Partners to provide training and other capacity building assistance to the Division staff in best practices in execution of Court orders.
- Overseeing the discipline of Court Bailiffs and referring of errant Court Bailiffs to the Disciplinary Committee for Bailiffs for punitive action.
- Evaluating and recommending applicants for appointment as Bailiffs, and for renewal of licenses of bailiffs already in service.

The last 3 years indicate an increasing number of cases in the Execution Division, with an average of about 1400 cases handled annually. For example in 2013, - 1076 Cases; 2014 - 1465 cases; 2015 - 1848 cases.

2.0. Innovations and good practices of the Division:

The Division created a one stop center for the execution process of the Courts of Judicature. This has promoted cooperation, communication and coordination between courts, advocates and bailiffs in matters of execution.

It has enabled the other Divisions of the High Court to concentrate on substantive hearing of the cases while the Execution Division devotes its energy to the execution process and procedures.

3.0. Challenges:

However, the execution process is not as smooth as envisaged under the law and practice. There are various challenges which include the following:-

I. Centralization resulting in huge cases backlog for cases:

The centralization of the execution process in Kampala has resulted in a huge number of cases pending execution. There is need to spread the execution process to other divisions and other parts of the country and this will support fast tracking and appreciation of issues emerging such as appeals, stay of execution etc.

II. Increasing lack of Ethical standards by Advocates and Bailiffs:

There are increasing cases where Advocates and Bailiffs have exhibited unprofessional behavior and un-ethical standards. In some instances bailiffs, have acted in excess of the powers granted to them by out rightly defying the directives from the issuing court and even in instances where court recalls the warrant issued to them, they have instead gone ahead to execute the warrant regardless.

Advocates are in a habit of applying legal gymnastics to delay executions especially where their clients are the judgment debtors, they will unnecessarily apply for stay of execution, appeal, resort to complaints and many more undesirable approaches to defeat justice. All these have invariably resulted in protracted litigation challenging the actions. (Examples)

III. Malpractices by bailiffs:

Bailiffs are also debt collectors. Many times bailiffs are driven by the desire to make as much money as possible out of the execution process. Furthermore some bailiffs have no clear offices and are housed by law firms. There is need for guidelines/ rules governing their remuneration as debt collectors.

Dishonesty in dealing with the proceeds of the execution by the bailiffs remains a challenge. Bailiffs, though officers of court and therefore expected to be persons of reputable and exemplary character, are, in many cases ruthless when carrying out execution. They engage in corruption to the extent of conniving and or colluding with judgment debtors not to execute warrants to the detriment of the judgment creditors; extort money from judgment debtors or both parties at times, misuse property attached during execution or deliberately misinterpret court orders to frustrate the process.

Delay in Submission of returns: There are bailiffs who fail to submit returns in time after execution, or do not file any returns at all. This causes falsification of the records mainly by understating the number of cases that have been fully executed.

At times, consents are entered into by the parties and bailiffs as to how the decree should be satisfied but without involving the court in the process so as to close the file, hence resulting into false statistics of backlog of cases. It is also a breeding ground for abuse of the execution process especially when bailiffs shield judgment debtors and return warrants of arrest without executing them and keep applying for extensions hence increasing delays and backlog.

Bailiffs are also very reluctant to file bills of costs to claim their due payments preferring to pay themselves from the proceeds of the sales or from money demanded from both parties.

Their misconduct goes unabated due to lack of adequate laws governing their actions. The bailiffs' actions are rarely checked by any authority and many times they go scot-free even after messing up the execution process.

IV. Elusive Judgment Debtors:

Some of the judgment debtors escape from the court's area of jurisdiction or have no known property to their names. For example, some companies, which I will refer to as "sham", do not register any assets/properties used for running of the business in company names.

V. Poor Movement of court files:

With the creation of the Execution Division of the High Court, movement of files from the trial court to the Division often delays. In cases where the judgment debtor files an application for stay of execution, the file keeps moving between the two courts making execution very hard to accomplish.

There is an unacceptable practice where it is left to litigants to facilitate movement of files from courts that issue the decree to the Execution and Bailiffs Division or the files are picked by the Bailiffs themselves. This has always been a recipe for corruption, misplacement of important documents in the files, and other forms of malpractices and abuse; thus leading to obstruction and inordinate delay of matters, resulting in endless litigation.

VI. Limited resources for the Division:

There is need for more funding to the division to facilitate the execution process.

The Division has increasing costs related to transportation of files from trial courts to the Division Registry at the High Court as well as return of the files to the relevant courts. It is a back and forth process which needs to be provided for. Otherwise, as earlier mentioned the process breeds corruption and enhances manipulation of court users by court staff, bailiffs or advocates.

More resources are also needed to enable the Division support the office of the Chief Registrar in inspection of Court Bailiff's offices before licenses are issued, to reduce on fraudsters.

There is also need to install lockable cabinets for safe storage of files to ensure safe custody of documents.

VII. Requirement to clear warrants with police:

The bailiffs face numerous challenges with the requirement to clear warrants with the police. The clearance of the warrant must come from the Commandant of Police Land Protection Unit, Regional Police Commander, Resident District Commissioner (RDC), District Internal Security Officer, District Police Commander and finally, Officer in Charge of Police Station of the area. Of late, the bailiffs have to clear the warrants through the State Minister for Lands. All these procedures that prolong execution are expensive and also facilitate corruption at various levels, to the detriment of litigants. The poor and vulnerable litigants are more exploited in this regard resulting into more destitution. However, the involvement of police is necessary for security purposes.

VIII. Abuse of the Notice to show cause:

This is an execution remedy which, while necessary, is at times grossly abused. Issuance of a notice to show cause is meant to give a judgment debtor a chance to appear before court to give reasons if any, why execution should not issue. But in cases where it is issued after the decree holder has satisfied the court that the judgment debtor has no known property for attachment to satisfy the decree and therefore arrest and detention in civil prison is the only other remedy available; it is now turning out to be used as a measure of coercion of the judgment debtor into releasing his property or his relatives coming to his rescue once they know he is threatened with imprisonment.

Often judgment debtors are not served with the notice to show cause issued by court; and yet Counsel for judgment creditors falsely claim service of such process, and then apply for warrant of arrest.

It is this type of unprincipled practices that result in further litigation in response, thus leading to case backlog and waste of court's valuable time.

IX. Contempt of Execution orders by Police and Security Agencies

A number of times, the police have failed to appreciate their role in the execution process. They have allocated unto themselves the role of interpreters of the lawfulness or otherwise of warrants duly issued by court and have on many occasions refused to clear them (especially vacant possession and attachment) without consulting the courts issuing the warrants. In such instances they have refused to offer protection to Court Bailiffs as they execute court orders. This leaves no option to the bailiffs but to suspend the execution hence considerably slowing down the process and denying the successful party access to justice.

X. Political interference in execution

The political high and mighty of our society such as MPs, Ministers, Resident District Commissioners, and others have most unfortunately increasingly interfered with the execution process by wrongfully getting involved in issues of execution of warrants for vacant possession, and attachment of property. Some RDCs at times, even go against the court orders to the extent of providing judgment debtors with armed guards.

4.0. Opportunities and Recommendations:

Currently a Bailiff Herbert Zirahuka has petitioned the Constitutional Court to scrap the Execution and Bailiffs Division on grounds that it is unconstitutional. This case like others before courts probably arise out of frustration with the current execution process but also offer opportunities to have interpretation and guidance on how to effectively and efficiently execute court orders.

The fact that we are having a dialogue today as stakeholders is in itself an opportunity as we are going to share and discuss the lessons learnt; identify the existing gaps and make appropriate recommendations to move us forward if we are to have meaningful justice for the court users.

The challenges and experiences in execution of court orders provide various opportunities to improve and ensure effective justice for all. As a Division charged with execution, we

would like to offer the following recommendations among others that will come up during this dialogue:-

1. All of us stakeholders should act professionally. Lawyers and bailiffs are officers of court, while you are pursuing your clients' interests and your personal interest which is to earn a living, remember to do so in accordance with the established laws and in the interest of justice for all parties.
2. Ensuring timely execution and return of warrants to Court to enable certification to inform cases returns and also gauge the successful executions.
3. Encouraging parties to pursue out of court settlements instead of engaging in endless litigation such as applications for stay, setting aside execution or judgment and decree, or filing appeals with no merit.
4. Politicians should keep hands off lawful execution orders from court and allow the courts and bailiffs to act independently of coercion or manipulation.
5. The police role should be to read and act on court orders as they appear, if not satisfied they should consult, otherwise they should offer protection to execution process.
6. Creation of a body/an authority by law or practice direction to regulate the court bailiffs to ensure professionalism and accountability.
7. The bailiffs should be reasonable and avoid exorbitant costs especially in cases of warrant of arrest. Among the litigants are the poor and vulnerable that despite lack of resources need to be supported to realize remedies from courts. Bailiffs' Bills of costs should be filed in each case for taxation.

6.0 Conclusion

There is an urgent need to address the challenges faced in execution of judgments and court orders to enable successful litigants to enjoy the fruits of their judgments. Issues such as inadequate training for bailiffs, low remuneration, weak regulatory framework, unfair distribution of warrants by Judicial Officers, and interference in the execution process by Government Agencies and Politicians must be addressed in consideration of the domestic, regional and global trends.

We all have a contribution to make in making access to justice for all a reality and it is through continuous engagement of the various stakeholders that will make the court users

and the public appreciate that litigation should always be the last option or has to be firmly brought to an end as soon as possible; and that advisably, as the best practice, execution can be carried out satisfactorily but with a humane face.

It is now my honour and privilege to declare the dialogue open.

Thank you for listening to me

FOR GOD AND MY COUNTRY

FLAVIA SENOGA ANGLIN

JUDGE

DEPUTY HEAD OF THE EXECUTION AND BAILIFFS DIVISION

HIGH COURT OF UGANDA

27.05.16

Annexure VII: Presentation by Ms. Lillian Adriko
Sharing Experiences and Challenges in Enforcing Court Orders: Legal Aid Perspectives



WHAT IS LEGAL AID

- 'Legal aid' is the provision of assistance to people otherwise unable to afford service of Private lawyers for legal representation. This legal Aid is categorized as primary and secondary services, primary refers to actual litigation while secondary is on access to legal/ human rights information and ADR. Legal aid is regarded as central in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial.



DEFN CONTINUED

The definition of 'legal aid' has moved beyond mere representation by a lawyer in a court. The Lilongwe Declaration on Accessing Legal Aid in Criminal Justice Systems in Africa, 2004² broadened the meaning 'to include legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution' (Lilongwe 1). Furthermore, legal aid extends equally to civil as well as criminal matters.

WHY LEGAL AID

- Legal aid is an integral part of human rights, it makes rights justifiable. It is absolutely necessary for remedies to be effective and function.
- It makes access to justice accessible for the disadvantage & vulnerable
- Litigation is a costly venture both in terms of time and money. In addition, individual costs of following up cases are high i.e. court filing fees, costs of advocates and execution costs.

CONT

- It addresses Property rights
- It addresses Labor rights
- It addresses Poverty issues through economic empowerment
- Create spaces in the communities that allows for public debate, demand for accountability and provides space for them to air their grievances



CONT

- Restores harmony in homes and the community.
- Helps clients navigate complex processes in the judicial system
- Helps clients to interpret the law/sensitization
- Provision of legal aid through partnerships contributes to the Sustainable development goals SDGs, that aim to eliminate poverty, gender inequality, and to promote peace justice and strong institutions

CONT

- Restores harmony in homes and the community.
- Helps clients navigate complex processes in the judicial system
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- Provision of legal aid through partnerships contributes to the Sustainable development goals SDGs, that aim to eliminate poverty, gender inequality, and to promote peace justice and strong institutions

CONT

- Legal aid thus provides an opportunity for the poor and vulnerable to enforce their economic, social and political rights which often violated by those empowered and with access to resources thus fostering development.



LEGAL FRAMEWORK

The Judicature Court bailiffs Rules that provide for licensing key considerations for licensing are

Administrative circular no 4

- Good repute, good financial standing among adequate storage for safe storage of goods and is not an undischarged bankrupt
- The bailiff should not be a convict of any criminal offence or dishonesty

LEGAL FRAMEWORK CONT'D.

Civil Procedure Act

Part 111 provides for execution S.27 provides for costs with sufficient discretionary powers. .leaves a lot of discretion on the part of the judge and or court.

s.30 provides a decree may be executed either by the court which passed it or by the court to which it is sent for execution.

s.45 No person in executing any process under this act directing or authorizing the seizure of movable property shall enter any dwelling place after sunset and before sunrise

AREAS FOR IMPROVEMENT

- > Increased empathy for legal aid clients/gender balance we seek smart justice, creativity in our mandates to ensure justice for the poor.
 - > improved professionalism on the part of the advocates and bailiffs
 - > An improved monitoring mechanism and a quality assurance program to ensure effective service delivery
 - > Address the Systemic failures in the JLOS SECTOR, that make it difficult to navigate an already complex system for the poor and vulnerable
- Parallel processes in the judiciary that are often time

AREAS OF IMPROVEMENT CONTD

- Delayed execution of warrants of arrests and others especially on the judgment debtors
- Political interference
- Connivance by some unscrupulous persons with the debtors
- Inflated fees/ excessive power bestowed upon themselves that make the service prohibitive thus resulting in a miscarriage of justice especially on the poor that can neither afford the prescribed fees nor are they guided on the due processes.
- External factors, the activity is largely



AREAS OF IMPROVEMENT CONTD

- Delayed execution of warrants of arrests and others especially on the judgment debtors
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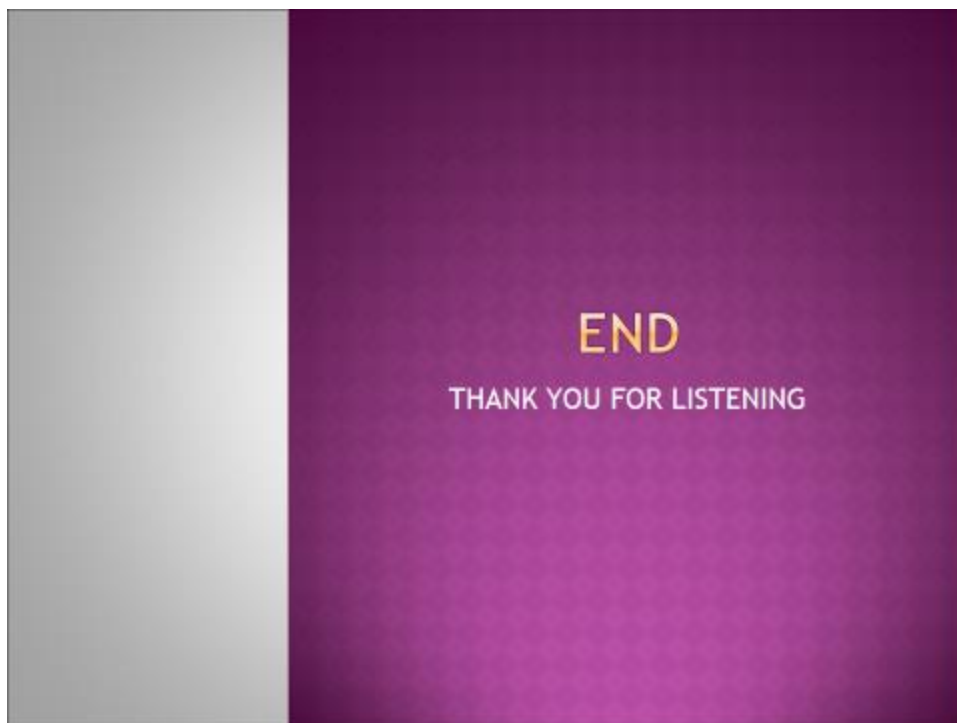


RECOMMENDATION CONTD

- Draw from practice principles such as the welfare principal to expedite execution processes
- Streamline the high court execution division section to ensure quality control
- Lobby for the administration of Justice Bill to streamline and align the admin staff to the judiciary to ensure ethical conduct and quality control
- Incorporate mandatory service provision as a prerequisite to the renewal of certificates

RECOMMENDATIONS CONTD

- Innovate collaborative efforts to minimize costs of execution through partnerships with the police who can perhaps streamline the activities related to these processes in their budgets/streamline their remuneration.
- Lobby for sufficient budgets for JLOS institutions such CFPU that are first points of contact for family matters
- The court should use their discretion in favor of the poor and marginalized and in as much as possible complete the matters other than referring them to the division.



**Annexure VIII: Presentation by Mr. Opok Pascal
Role of Court Bailiffs in Concluding the Chain of Justice.**

THE REPUBLIC OF UGANDA

STAKEHOLDERS' WORKSHOP FOR NATIONAL DIALOGUE ORGANIZED BY THE
LEGAL AID SERVICES PROVIDERS' NETWORK (LASPNET) IN COLLABORATION
WITH THE UGANDA COURT BAILIFFS ASSOCIATION (UCBA).

**THEME: FACILITATING ACCESS TO JUSTICE FOR ALL THROUGH EFFECTIVE AND
EFFICIENT EXECUTION OF COURT ORDERS.**

VENUE: HOTEL AFRICANA IN KAMPALA - UGANDA ON 27TH MAY 2016.

A Presentation by Mr. Opok Paskal the General Secretary Uganda Court Bailiffs'

Association (UCBA) on the topic **"THE ROLE OF COURT BAILIFFS IN CONCLUDING**

THE CHAIN OF JUSTICE”.

WHO IS A COURT BAILIFF?

Is an officer of the Court. In olden days, a Bailiff was referred to as a Court Broker.

1. BACKGROUND OF COURT BAILIFFS IN UGANDA;

Court Bailiffs in Uganda originates from the Colonial legal system where laws like the Judicature Act, the Civil Procedure Act & Rules, the Auctioneers Act, the Distress for Rent (Bailiffs) Act all recognizes Court Brokers.

2. LICENCING/APPOINTMENT OF COURT BAILIFFS;

The Judicature (Court Bailiffs) Rules SI 13-16 empowers the Chief Registrar to license court Bailiffs but a judicial officer can also appoint any person to act as a court Bailiff only in a particular matter if a licensed court bailiff is not available.

How many Court Bailiffs are in Uganda today?

A total of 480 Bailiffs were licensed in 2015

Requirements for licensing Court Bailiffs;

- Certificate in Court Bailiff/Broker from Law Development Centre.
- Application is to the Chief Registrar, Courts of Judicature.
- Certificate of good conduct from Police Interpol Department.
- License fees of UGX: 45, 0001=
- Insurance cover for fire and Burglary etc.

3. THE ROLE OF COURT BAILIFFS IN CONCLUDING THE CHAIN OF JUSTICE.

A Court Bailiff implements Court orders after the Judgment and Decree is delivered therefore bailiffs concludes end of justice this justifies the relevance of a court Bailiff.

The Orders issued by courts are; Order of Eviction/Vacant Possession, warrant of arrest, warrant of attachment and sale of movable and immovable property, an order of distress for rent and order for sale of unclaimed Properties etc

WHERE DOES A BAILIFF'S WORK STARTS AND ENDS

The Judge/Registrar' or Magistrate appoints a Bailiff by issuing a warrant that specify the nature

Of execution therein.

a) Clarence of warrants with Uganda Police- A Bailiff ears warrant with Uganda Police Force to avoid resistance, risk of attack or causing social disorder when enforcing the warrant.

b) Inventory – the bailiff is obliged to generate an inventory and people or officers present should sign as having witnessed the exercise.

c) Returns — Returns must be filed in Court within seven (7) days explaining circumstances in which the warrant was executed and that is when execution is id to have been brought to a end.

CHALLENGES FACED BY COURT BAILIFFS IN ENFORCING COURT ORDER

a) Ignorance of Procedures among some Bailiffs:-

-Some Bailiff wrongly uses warrant eg warrant of distress is used to evict occupants from the house.

- Eviction from land not subject of Court matter either due to failure to survey the subject land or failure to ascertain boundaries of the Kibanja land with no land titles.

Suggested way forward; refresher course and training of Bailiffs on procedures and ethical standards is necessary.

b) Long chain of Police clearance of warrant is costly:- Clearance starts from Police land Protection Unit at Kibuli in Kampala to Metropolitan, RPC's, DPC's, DISO's, D.C Stations which involves high transport costs e.g. from Kabale, Arua, Kotido, Gulu and facilitation allowances given to officers makes it almost impossible to execute Decree where amount is small e.g. 2million and the victims are small claim litigants, upcountry litigant and women recovering maintenance order which are usually small amount.

Suggested way forward:-

-Enrollment of Bailiffs on Probono (free) services or a Bailiff is paid a minimum transport allowances by Judiciary.

- Clarence of warrant is decentralized to DPC except for Eviction/ Vacant possession is to be cleared at RPS's level.

c) Imposters who are not Court Bailiffs: - they do dubious things e.g. they evict at night, they earn money from the Public in the name of a bailiff.

d) Political interference- A lot of interference during execution processes especially from security operatives and politicians.

e) Poor remuneration of Court Bailiffs- The Judicature Court Bailiff's Rule that governs taxation of Bailiffs fees was enacted in 1987 and gives a very low rate of 3% as remuneration, this has stimulated illegal tendencies of extortion of money from litigants in form of facilitation and exaggeration of bill of costs by Bailiffs.

Suggested way forward - Amendment of the Judicature Court Bailiffs' rules to cope up with the current economic and inflation standing.

f) Failure to tax/delayed taxation of Bailiff's Bill of Costs - some judicial officers do not tax bailiff's bill of cost presented when initial and instead the bailiff is asked to recover the entire sum being claimed which may not be possible.

Qn: The question is; should Bailiff's be paid out of the amount recovered at a time or at the end of the entire recovery?

THANK YOU.

**Annexure IX: Presentation by Mr. Emilian Kayima
Role of Security Agencies in execution of Court Orders.**

THE ROLE OF SECURITY AGENCIES IN EXECUTION OF COURT ORDERS

A paper presented to the National Dialogue on Execution of Court Orders in

Uganda under the theme;

“Facilitating access to justice for all through effective and efficient execution of
Court orders”

At

Hotel Africana, May 27th 2016

By SSP Emilian Kayima

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Introduction

My Lord, the Hon. Justice Flavia Anglin Ssenoga,

Head of the Execution Division, High Court of Uganda,

The Executive Director LASPNET,

The chairperson Board, LASPNET,

President of the Uganda Court Bailiffs Association,

His worship the Deputy Registrar Execution Division,

Representatives from the Democratic Governance Facility,

Court Bailiffs here present,

Distinguished Guests,

Ladies and Gentlemen,

I salute you all.

First, I bring warm greetings from the Commandant Land Protection Police Unit, ACP Julius Twinomujuni who is unable to be here with us because of other state duties. Nonetheless, I want to state it very clearly that we are extremely delighted to be party to this important dialogue where all stakeholders meet to deliberate on very important issues that should facilitate access to justice for all through effective and efficient execution of court orders.

My role in this dialogue is clear; to explain the role of security agencies in execution of court orders in Uganda.

It is important to note that when a conflict is born, and the parties involved fail to resolve them, they end up in courts of laws for litigation. These are the civilized ones. The uncivilized ones simply pick “arrows and bows” to fight, ready to shed blood in defence of their rights. Either way, the police will get involved; to investigate a criminal matter or to help in the execution of a court order.

But for today, I will restrict my discussion to that n enforcement of court orders and the role of security agencies in the country. There are various orders issued for example; interim

orders, temporary injunctions, vacant possession orders, demolition orders, attachment warrants etal.

Why and how are police and other security agencies involved?

It is imperative to appreciate the security set up at all levels. We have police headquarters at regional police headquarters, Districts! Division headquarters and police posts across the country. The other officers we work with are the Resident District Commissioners (RDCs) who Lead security at the District level. But we also have the local leadership we must respect. All of them play certain important roles that must be appreciated. That is why we always want the police, RDCs and DISOs to be involved in these matters to facilitate rather than frustrate the due process of administering justice.

Our police involvement as well and the other stakeholders has a history. Originally we were not involved at all but over time as land and property conflicts intensified across the country, management of the force took a stand to form the Land Protection Police Unit in February 2008 to focus on land related conflicts and address them appropriately.

The Land Police Protection Unit handles many tasks some of which include; investigating land related frauds, stopping illegal evictions a: of enforcement of court orders.

But mainly, we pride in awareness creation through sensitization in our community policing initiatives where we directly interface with members of the public or communicate to them through media programs like interactive radio and television talk shows as well as newspaper articles. The intention is to create a society that appreciates the law, abides by the law, a community that pursues their rights using legal and legitimate means to resolve conflicts.

Enforcement of court orders was top on the list of those areas that continued to cause conflict in the communities resulting in other forms of crime like murders, assaults, acts of arson malicious damage and many others.

Some genuine court orders were being enforced irregularly, other court orders were exparte orders that were hurriedly executed against innocent people (substituted service) and some were out rightly forged court orders. Some genuine court orders were being misinterpreted for example; interim orders to maintain the status quo have been used to evict people! Worst of all, some fraudsters purporting to be judicial officers would descend

on peoples' property and cause mayhem like demolishing structures, destroying foodstuffs and injuring people. (Share case of Lubaga if time allows).

As a result the anger that comes with this madness often resulted in further madness. Communities would take the law in their hands and fight back. Many people were killed as a result of all these, some have were maimed and all these escalate conflict, causing insecurity in the communities and in the country.

For example, what happens when your house is demolished and you have never gone to court over the matter? You report to police and police will investigate the incident but will probably serve the interest of the victim e.g. won't overturn the judgment. Where do we start from if we do not know who did this? If we know, shall we force the one who demolished to build the demolished house? Do the communities understand these things the way we understand them?

That was the rationale for suggesting the administrative measures in our various organs to work with all stakeholders; courts, court bailiffs and the security to ensure there is fairness, justice and peace. Therefore, we agreed to provide security to the judicial officers executing their duties in the administration of justice in Uganda. To give them security requires us to know what they are going to do, to verify whether they have genuine court orders so that we can assertively and explicitly communicate to our officers on ground to support this process.

Therefore, when court orders are issued, court bailiffs are required to channel them through the commandant Land Protection Police Unit who writes to the unit commanders as indicated above on what they have to do. Remember, police training largely focuses on criminal justice system not civil justice system. That gap is purged by the legal officer's role when we verify the authenticity of the court order.

It should be noted that we are not an appellant court. We are not courts of law and we cannot overstep our mandate. We do not therefore look at the merits and demerits of the case. We do not create unnecessary delays. We facilitate rather than frustrate justice.

It might create some inconveniences on the part of court bailiffs because most of them do it as a business and forget the legal protection and the need for justice for all; including those who lost the case in courts of laws. For example, when a litigant loses a case in court, vacant possession orders may be issued. The court bailiff may want to go immediately and execute and the litigant who lost may want to secure a stay order as they appeal. We play

a vital role here. Even if we shall have cleared a court order, if a stay order is brought to us, we immediately halt the exercise. In such an event, a court bailiff may lose business but justice will have been done.

Conclusion:

The role of security agencies is threefold; to provide security to the judicial officers as they execute court orders as directed by courts of laws, to ensure there is rule of law, order and respect of human rights in the process and lastly, to ensure that justice is done through avoidance of fraudsters in the whole process of administration of justice in Uganda. By that, we ensure that there is justice and fairness, and no clashes will be expected as each party can account for their action.

Annexure X: Presentation by His Worship Muse Musimbi

The law and practice in execution of court orders: Experiences from the Execution Division of the High Court

“THE LAW AND PRACTICE IN EXECUTION OF COURT ORDERS: EXPERIENCES FROM THE EXECUTION DIVISION OF THE HIGH COURT”

A PAPER TO BE PRESENTED AT THE NATIONAL DIALOGUE ON THE EXECUTION OF COURT ORDERS IN UGANDA.

HOTEL AFRICANA FRIDAY 27th MAY 2016

INTRODUCTION

The Execution and Bailiffs Division of the High Court of Uganda was established by an administrative circular No. 4 of 2011 issued by the Principle Judge. It was established following complaints by the public on the execution of court decisions with a view of attaining a more efficient and smooth delivery of judicial services. It is a specialized Division to deal with enforcement of court decisions. It is currently on pilot project to cover the activities of the High Court divisions including Nakawa circuit (now being disbanded), the Chief Magisterial areas of Kampala (Mengo and Buganda road), Nabweru, Makindye and Nakawa.

THE LAW

1. THE CIVIL PROCEDURE ACT CAP 71 OF THE LAWS OF UGANDA
2. THE CIVIL PROCEDURE RULES S.I 71-1
3. 3. CASE LAW

THE EXECUTION PROCESS

a) APPLICATION FOR EXECUTION

The litigant or his advocate who holds a decree has to make an application for execution of the decree or order. This one is accompanied by the certified decree or orders from the trial court for execution. Particularly to note, the lower courts have been sending the Judgement of the Court as well to the Execution Division.

b) ISSUENCE OF NOTICES TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE

This follows the application where by the Judgment debtor is called upon to give reason why the execution should not get against him or her. At this stage, a willing judgment debtor may schedule payment in agreement with the decree holder or his advocate. Usually a consent settlement may be drawn and the court endorses it assigned by the parties and their advocates.

It becomes a fair way of getting around the problem without incurring a lot of expenses of a bailiff and the costs that follow. On failure to show cause the bai may come in when the court orders that a warrant of arrest or attachment be issued.

Warrant of arrest.

In most cases a warrant of arrest is to be the last resort. It is becoming the most common mode with reasons to follow;

a) Some litigants are not traceable. It is not easy to find their assets like land as immovable property or their movable property. On their being arrested they can show where their property is, to be used for realizing the debt.

Warrant of attachment.

This is issued to a bailiff in respect of immovable property as well as movable property.

EXECUTION CHALLENGES

Concern has been raised in relation to execution of court orders. I have time and again since my posting to the division in June last year, found that the warrants issued for execution have not been completed. There are pending execution applications to a tune of more than 4000.

RENEWALS

Most warrants are renewed several times without completion of execution. I have noted that some warrants are being renewed for 3 or more times each year. And the bailiff's reasons are that the judgment debtors are elusive.

STAY APPLICATIONS

The division has to hear applications for stay, some for good reasons have been allowed and others are dismissed.

Upon dismissal the judgment debtors have often preferred to seek review or appeal. This causes the delay in realizing the fruits of judgment and where a judgment decree holder is faced with problems, it becomes very difficult for them to realize the decree held by them. He or she becomes desperate.

In one way the applicant has a right to appeal where he feel's dissatisfied, and the execution may be stayed.

BALIFF'S WORK

A bailiff of court has the duty of executing the assigned warrant by way of arrest or attachment of the judgment debtor's property. In this process it is complained that the

same is expensive. There is need to find a way of getting the bailiff working favorably with the judgment creditor.

Instructions to the bailiff are given by way of warrant issued by court but the actual end result is that the bailiff takes the advocate for his boss and that may cause the problem should there be realization of the debt by sell of attached property, the rules that the bailiff may pay directly to the decree holder the sum ordered alternatively, the bailiff is to deposit with court the proceeds of the sale and draw up his bill of costs to be taxed. How it becomes expensive for the decree holder must be where the bailiff asks for a lot of money before he begins on the execution.

I suspect that the bailiff may be wanting full payment before he executes, then after the execution he prefers a bill of costs to be taxed and he takes another full basket of costs from the proceeds after the decree holder has been paid. It is necessary to be probed so that the crying indigent is not put to a hard time.

VALUATION

Upon attachment of property of the judgment debtor, it is to be subjected to valuation. At this stage there are complaints that false valuations are tendered in court after the bailiff has connived with the valuer to arrive at a very low forced sale value. As court we have asked the valuer to revisit the report or otherwise advise for another valuer report.

We have also had instances where the bailiff is confronted by the judgment creditor to have the attached property valued to their favor to buy such that the judgment debtor remains indented yet the said property could cover the debt. It is common with motor vehicle transactions (used cars) by the car dealers.

The vendor sells on credit and when the purchaser defaults on payment, the same vehicle is attached and sold at a low price in execution. It is why the court has to be strict on the issuance of warrants by choosing the bailiffs to be not on the hand of the judgment creditor or his lawyer.

LAWYER CLIENT RELATIONSHIP

The lawyer as an agent of the judgment creditor is involved in the process of execution and may receive the proceeds of sale or the deposits into court from the judgment debtor to be passed on to his client.

At some time later, the creditor is in court asking for the deposits which have long been taken by the lawyer to pass on to the client. The matter then goes to the Law Council to

handle as between the client and the lawyer. It so becomes a jump from the pan into the fire.

CONCLUSION

For a smooth flow of the services of the Execution Division to all the court users, it is necessary to find a way of harmonizing the operations. With good practices being put in place, all the role players will have to observe them. Such that the problem of misplacement of files for execution at the court are reduced. It is alleged that some debtors cause the same to be misplaced so that time is bought in delay of executions.

Default judgments due to false affidavits of service be avoided and illegal eviction where non-parties are involved be reduced.

Non credible valuers to be avoided by providing a list of accredited valuers to court by their board.

The responsible police officers to do what is necessary within time and avoid the illegal charges on clearing warrants.

Find a law for dealing with delayed execution applications in the Division.

Reports on property and its current ownership may be useful reduce on wrongful attachment leading to objector proceedings.

Court to instruct the bailiffs but not the lawyers to carry out the execution of orders or decrees.

Strict compliance of the bailiffs in returning the warrants of execution.

Ownership of landed property need to be ascertained as for the judgment debtor before its attachment to reduce on wrong attachment of property.

I hope that the dialogue here will lead to best practices to arrest the awful situation that the indigent and others may be facing.

I THANK YOU
MUSE MUSIMBI S.L
DEPUTY REGISTRAR
EXECUTIONS AND BAILIFFS DIVISION