CASE MANAGEMENT

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INTRODUCTION

Case management is the process through which a case passes through commencement (filing) to completion. It is thus a system which ensuring that once cases are commenced in the courts and become defended (or even if not defended) they progress to trial without undue delays. The same process has been referred to as case tracking, case control, court management or court control in other jurisdictions.[2]

Case management is a new concept, which was introduced to expedite delivery of justice by removing bottlenecks in the judicial system that had literally made it impossible for cases to be resolved expeditiously. For a very long time, judicial staff and legal practitioners were content to use the civil procedure rules as handmaidens of justice. Many of them had crammed these rules heart and so were court precedents like Makula International known by letter and word. One was considered a good lawyer if they knew the rules by heart and a bad lawyer, if the reverse was true.

In spite of the clear CPR, judicial officers and legal practitioners for a long time could not understand why cases especially civil cases were difficult to complete and why delay had become a common problem. No one, just like the Europeans, who complain about the weather and do nothing about it, was able to come up with solution. Cases continued to delay in court, so were judgments and rulings. Trials continued to be by ambush, as legal practitioners pulled tricks on their friends to win cases by hook or crook. Adjournments came to be the order of the day. Judges, who should have been in the driving seat, too, sat back and watched as legal practitioners, took charge of the judicial process. It was like some one watching a roman arena, as slaves fought beasts.

1 Registrar, Civil Division of the High Court

2 Integrity in the Court Process, a paper presented by John Mary Mugisha (2002) at a workshop on survey report on integrity within the Uganda Judicial System.

As one trial judge, regretted that judges under the old CPR felt very frustrated under the previous system that the initiative was left in the hands of the parties and it was difficult for the court to exercise any kind of grip on what was happening.[1]

In the registries, files are filled of dust, because either judicial staff were not ready to hear the cases or the parties were not enthusiastic about setting down the cases for hearing. Indeed, it was common for litigants to file cases to stop an intending litigant from pursuing his/her rights, because many Ugandans fear and do still fear the courts. In land matters, a lawyer filed a case today, and got a perpetual injunction and sat back, because he had what his client wanted.

On the side of state attorneys, they sat back either because they were not facilitated to travel or they were simply not prepared to defend or prosecute their cases.

How about witnesses- these were the most difficult to come by in court because either their lawyers did not summon them or they knew that the court would not punish them if they failed to keep court appointments.

The judges on their part either did not come to court in time, never reported for duty or they were simply too lazy to attend to their dockets/cases.

Lawyers felt that the system had left too much scope for defendants to manipulate cases, especially were the plaintiff had an inexperienced lawyer.

But who was to blame for the despondent state of justice in the country?

According to Justice Tsekooko (JSC)[2], the problems of the justice system were caused by inability of judicial staff; I could also add lawyers to implement case management in the conduct of cases. Justice Tsekooko identified some of the major weaknesses in the system as:

1 Woolf 25

2 Recommendations in the Centre for Basic Research Report on Judicial Integrity; reported in the Report of Judicial Integrity Workshop 15th -17th December 2002.

- The failure by some judicial officers to effectively apply the standard guidelines i.e. Civil Procedure (Amendment) Rules;
- Negligence and failure of judicial officers to supervise subordinate staff and improve case management;
- Absence of a uniform system in the conduct of scheduling conferences
- Poor time management; and
- Lack of training, proper facilitation and poor work methods.

There was simply no case management of cases. Cases were being handled in court, like a ship without a captain. A case moved if, the parties wanted it to. If the parties did not, then they made the case to sleep or caused chronic delays in disposing off the case. The adversarial system that we adopted from the common law tradition, only helped to compound the problems further. No, one, let alone lawyers and judicial staff were willing to discuss the case or attempt alternative dispute resolution. If a litigant saw a lawyer discuss with a lawyer of the opposite party, then he would immediately suspect that the adversary had compromised his lawyer.

It was not therefore surprising that the President made the following remarks about justice in Uganda[1]:

> We are opposed to a situation where justice is a preserve to (of) the privileged few and where it is sold like a commodity to the highest bidder. Justice is not for sell, the moment you make justice for sale, then it is not justice....Justice must be made easily accessible to every Ugandan that requires it; this principle is a cornerstone of our judicial policy-justice for all not for just a few.
>
> There is an outcry about delays in hearing cases completion of cases. I am informed that Hon. Kitariko, our Minister of Agriculture, is still waiting for his judgment in respect of an election petition he filed in 1981. Since then I think there have been four or five governments since he filed this case!

Such was the nature of civil litigation before 1987 and for much of the ten years that followed.

1 Proceedings of the Seminar on the administration of justice in Uganda held in 1987

THE NEED FOR REFORM

In 1997, the Rules Committee under the Chairmanship of the Chief Justice met and discussed the impasse in the Civil Justice system with a view to identifying the impediments to the civil justice system.

The meeting found that the main encumbrances to the civil justice system were:

- The Civil Procedure Rules made it more difficult to prosecute or defend cases in time;
- That the adversarial system, which we inherited from United Kingdom did not provide a quick medium of resolving cases;
- That lawyers/parties instead of the court were setting the agenda for the court ;
- That lawyers were abusing interlocutory orders and applications to delay cases
- That lawyers and judicial officers were not always prepared to hear the cases
- That courts were very quick to grant adjournments
- That the lawyers and courts were resistant to use Alternative Dispute Resolution to resolve cases.
- That courts were not using the Civil Procedure Rules to avoid delay of cases and punish litigants who were not keen to take up their cases e.t.c

The Rules Committee in its wisdom decided to amend the Civil Procedure Rules to facilitate the quick disposal of cases.

The Committee was of the view that the biggest problem to dealing with delay of cases, lay in parties failing to start cases in court –specifically in the area of pre trial stages of the case. The Rules Committee also found that using alternative dispute resolution to settle some of the cases would in a way clear out some of the cases where parties were willing to settle. The Civil Procedure Rules were therefore amended to expedite pre- trial proceedings of a case.

Another impetus to amending the Civil Procedure Rules came from Article 28(1) of the Constitution. This article provides that:

> In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair , speedy and public hearing before an independent and impartial court or tribunal established by law.

Article 28(1) of the Constitution is reinforced by Article 126(2) of the Constitution, which provides that:

In adjudicating cases both of a civil and criminal nature, the court shall, subject to the law, apply the following principles-

a) justice shall be done to all irrespective of their social or economic status;
b) justice shall not be delayed;
c) adequate compensation shall be awarded to victims of wrongs;
d) reconciliation between parties shall be promoted; and
e) Substantive justice shall be administered without undue regard to technicalities.

The core principles echo the mandate of the Judiciary in article 126(1) of the Constitution. Article 126(1) provides that:

Judicial power is derived from the people and shall be exercised by the courts established under this constitution in the name of the people and in conformity with the values, norms and aspirations of the people.

WOOLF REFORMS OF THE CIVIL PROCEDURE RULES IN ENGLAND

In addition to the Constitutional provisions and the problems that for long had beset the civil justice sector, the Rules Committee in proposing reform of the Civil Procedure Rules was influenced by the Woolf Reform of the Civil Procedure Rules in England and Wales.

England and Wales had also faced similar problems though not in great intensity like our own. Lord Woolf was thus appointed to chair a Commission of Inquiry into the Application of the Civil Procedure Rules.

Lord Woolf at the beginning of the inquiry remarked that

> The overall aim of my inquiry is to improve access to justice by reducing the inequalities, cost, delay and complexity of civil litigation and to introduce greater certainty as to time scales and costs[1].

Lord Woolf was of the view that if the Civil Procedure Rules were to be realistically reformed then, the reform programme had to have these objectives:

- Provide appropriate and proportionate means of resolving disputes;
- Establish equality of arms between parties involved in civil cases;
- Assist the parties to resolve their disputes by agreement at the earliest possible date; and
- Ensure that the limited resources available to the courts could be deployed in the most effective manner for the benefit of every one involved in civil litigation.

Lord Woolf rightly concluded that:

> in order to achieve the overall aim and the specific objectives of the reforms, there was no alternative but to shift fundamentally the responsibility of the management of civil litigation in England and Wales from litigants and their legal advisers to the courts[2].

Our Civil Procedure Rules have adopted the paradigm set out by the Woolf reforms in England and Wales. Suffice to mention the English Civil Procedure Rules are more detailed than ours are.

Changes introduced by the Reformed Civil Procedure Rules[3]

The Civil Procedure Rules were amended to introduce in the following changes in the pre-hearing stages of litigation:

- Order 5 –Imposed limitations on service of summons and gave courts power to dismiss cases where summons had remained unserved for 21 days after issue.

- Order 5 Rule 3-removed the requirement for a defendant to enter appearance instead of directly filing a written statement of defence.

1 Access to Justice Interim Report, chapter 5
2 Page 2 Woolf
3 SI 26 of 1998, The Civil Procedure (Amendment) Rules, 1998.

- Order 5 Rule 2(b) imposed a duty on litigants to provide a brief summary of the evidence, a list of witnesses, list of documents and a list of authorities to be relied upon. The object of the rule is two fold: a) to ensure that parties adequately prepare their cases before filing and b) that parties give the opposite notice of their case to avoid the element of surprise and, c) to give the court an opportunity to adequately prepare for the hearing of the case.

- Order VI Rule I , like the preceding order requires the defendant to provide a brief statement of the material facts on which the party pleading relies for claim or defence as the case may be;

- Order VI Rule -Dispute to Jurisdiction- a defendant who wishes to dispute the jurisdiction of the court shall within the time limited for service of a defence apply to court for:
  Order setting aside the summons

  1. An order declaring that summons have not been served upon him
  2. Discharge of any order giving leave to serve the summons on him out of the jurisdiction
  3. The discharge of any order extending the validity of the summons
  4. The protection or release of any property of the defendant seized or threatened with seizure in proceedings
  5. Declaring that in the circumstances of the case the court has no jurisdiction over the defendant in respect of the subject matter or the relief or remedy sought in the action.

- Order XII is perhaps the most far-reaching reform of the Civil Procedure Rules in Uganda. Order XB introduced in the concept of a Scheduling conference before the trial starts and Alternative Dispute Resolution. Order XII 1(1) a and b, require the court to set down the case for a scheduling conference

- Within 7 days after the order of interrogatories and discovery has been made under rule 1 of Order X; or

- Where no application for interrogatories and discoveries has been made

under rule 1 of Order XII , then within 28 days from the date of the last reply or rejoinder referred to in sub rule (5) of rule 18 of Order VIII

The Objectives of the scheduling Conference are:

- Sort out points of agreement and disagreement
- Find possibility if mediation
- Find possibility of arbitration and any other form of settlement. (the time may be extended)
- For the court to refer cases that have a high chance of being resolved to ADR
- In terms of ADR, Rule 2(2) ADR provides that ADR shall be completed within 21 days after the date of the order, except that the time may be extended for a period not exceeding 15 days on application to court, showing sufficient cause.
- Rule (3) the Chief Justice may issue directions for the better carrying into effect of ADR. The Chief Justice is yet to issue rules under this provision.

INTERLOCUTORY APPLICATIONS

As mentioned earlier, lawyers had previously used interlocutory applications and orders to delay litigation. The Rules Committee therefore amended the CPR to put time limitations on when one can apply for interlocutory order.

- Accordingly, Rule 3(1) provides that all remaining interlocutory applications shall be filed within 21 days from the date of completion of ADR and where there has been no ADR, within fifteen days after completion of the scheduling conference.

- While Rule 3(3) provides that, an interlocutory application shall be fixed for hearing within 21 days from the date of service of the reply on the applicant.

- Rule 3(4) provides that all interlocutory applications shall be heard and finalised within forty-five days from the date fixed for the hearing of the application unless the court, for sufficient reason, extends the time.

From the foregoing exposition of the law, the objectives of the amended Civil Procedure Rules are the following:

- Introduce case management in the management of cases;
- Empower courts to control the pace of litigation;
- Empower Courts to submit cases to ADR;
- Prevent abuse of interlocutory applications and orders by limiting the time for making and resolving them;
- Ensure that litigants/lawyers are better prepared when they appear before the court to argue cases. To this effect, the rules require counsel to research his case before filing it;
- Ensure that parties give as much information to their adversaries before the trial, to avoid trials by ambush and unnecessary adjournments;
- Empower courts to dismiss without notice un meritorious cases;
- Empower litigants and practitioners to effectively use ADR;
- To philosophically re orient the landscape of civil litigation from an over aggressively adversarial system to one which is collaborative and engaging;
- Fast track cases; and
- Reduce costs of civil litigation.

After the amendments to the CPR, the Judiciary, in September 2003 enacted two pieces of legislation:

a) **The Constitutional Commercial Division (Mediation Pilot Project Rules) Practice Directions.**[1]

This law is aimed at:

> Delivering to the Commercial Community an efficient, expeditious and cost effective mode of adjudication of disputes that affect directly and significantly the economic, commercial and financial life of Uganda[2].

b) **The Commercial Court Division (Mediation Pilot Project) Rules** [3]

These rules provide rules of procedure for carrying out mediation by the Centre for Arbitration and Dispute Resolution (CADER).

When the pilot ended, the Commercial Court initiated in-house mediation under Order XB rules 1 and 2 of the CPR. Since 2005, the Registrar Mediation conducts mediations.

1 Legal Notice Number 7 of 2003
2 Preamble to the Legal Notice
3 S1 71 of 2005

ELECTION MATTERS

The Chief Justice amended the Parliamentary Elections (Election Petitions) (Amendment) Rules SI 26 of 2006 to provide for alternative dispute resolution of election petitions.

OTHER CHANGES INTRODUCED IN CASE MANAGEMENT

Apart from the legislative changes the Judiciary has introduced a number of administrative mechanisms to improve case manage cases. These include:

- **Creation of Specialised Divisions of the High Court:**

Administrative Circular No. 2 of 2004, issued by the Principal Judge divided the High Court Registries into the Civil, Land, Family, and Criminal Divisions. The object of the Divisions is to create highly specialised manpower to expedite delivery of cases. The Judiciary appears to have borrowed a leaf from the Woolf Reforms in England and the success engendered by the Commercial Court to create specialised divisions. It is hoped that with time, these Divisions will be centres of excellence in dealing with various aspects of the law. I hope that cases will also better be managed than they are currently done.

- **Expansion of the Powers of Registrars**

The Chief Justice in Practice Direction No 1 of 2002 expanded the powers of the Registrars to handle mainly interlocutory matters. The object of the Practice Direction is to free judges from interlocutory matters so that they can concentrate on substantive issues.

- **Use of Alternative Dispute Resolution**

All Courts have been implored to use alternative dispute resolution as a case backlog reduction strategy[1], and to give effect to article 126 clause

1 PJ-Report to Judges,' meeting

2 Paragraph d of the Constitution that enjoins the courts to promote reconciliation. Courts have for various reasons not taken up ADR. However, the Commercial Court, which has pioneered in this area, is reaping tremendous results.

According to the Registrar, Mediation in the Commercial Court, he settles on average one case per day as compared to 0.3 cases that are settled through ordinary trials[1]. In 2005, 778 cases were filed in the Commercial Court. 475 cases were completed. Out of the 475 completed cases, 170 cases were settled through mediation, 212 through interlocutory judgments and 84 cases were resolved through adversarial trials[2].

The mediation of cases has been so successful that some cases are being settled in just one day. For example, in Krone Vs DFCU Bank Limited[3], after preliminary meetings, the parties allowed attendance an interested party who was living in USA. On the day fixed for hearing, the American flew into the country, attended mediation, which settled, and the following day flew back to the USA. This was not only a timely intervention in the dispute; the dispute concluded 6 other related suits that were lying in the other courts including the division.[4]

Apart from speeding up the resolution of cases, ADR has drastically reduced litigation expenses, for both the litigants and lawyers. It has increased the per capita volume of cases handled by advocates. It has increased the litigants' level of satisfaction with the results of their disputes[5].

I could also add that ADR has cultivated or promoted better relationships among litigants. For example in Hajji Twaha Vs Kobil Oil[6], Kobil Oil locked out Hajji Twaha's petrol station and deployed armed guards at the station. This was because Haji Twaha wanted to evict Kobil and operate under Shell Logo. Haji Twaha was bitter because the good will of his business was

1 Haduli
2 Haduli
3 citation
4 Haduli, Mediation, a new case management strategy in the commercial court an over view, a Paper presented to the Commercial Court Users Committee, on 21st of June 2006 at Grand Imperial Hotel, Kampala.
5 PJ paper
6 Citation

damaged by the closure coupled with the deployment of armed guards. Kobil too was bitter because Hajji Twaha was breaching the subsisting contract agreement. In mediation, the dispute was profit margin, which Twaha wanted increased. Kobil agreed to increase and the parties started working together again.

- **Use of Sessions in Civil Cases**

The Judiciary is now piloting use of sessions to target case delay of case and to introduce disciplinarian case management techniques for dealing with civil cases. Already the High Court has successfully held two sessions at the Headquarters. Currently the High Court is holding sessions for election petitions. It is hoped that when petitions are completed, the Judiciary will hold a civil session in Gulu for two months to clear a case backlog of 214 cases.

- **Use of Settlement Weeks**

The High Court has also introduced settlement weeks to give litigants who want to resolve their cases through out of court settlements or with the aid of the court. So far, settlement weeks done by Justice M S Arach Amoko have shown that such initiative, which is budget neutral, can do wonders in reducing case backlog and indirectly enhance the courts management of cases.

CASE MANAGEMENT FOR STATE ATTORNEYS

Article ... of the Constitution gives mandate to the Attorney General to sue or be sued on behalf of the Government. The Government Proceedings Act provides that suits against the Attorney General shall be instituted after giving statutory notice of 45 days to the AG. The statutory notice is more less like a plaint. It sets out the case of the intended plaintiff, the legal basis for the intended claim and remedies the intended plaintiff is seeking.

The Statutory Notice serves a number of functions, suffice to mention the following:

- It notifies government of the intended action

- It gives government chance to study the claim with a view to settling it or eventually defending it in court.
- It gives the AGs chambers sufficient time to contact the responsible government departments for better particulars about the case
- It also helps the AG to research and prepare himself for the case should it be filed in court.

The main objective of the Statutory Notice is however to help government prepare itself for the potential litigation. The AG should therefore utilise the Statutory Notice, as his first tool of case management.

The Next Step: Filing of the Suit-When a suit is filed, the AG, should as soon as it is filed allocate the case to a state attorney. The AG should discuss the file and the intended defence with the State Attorney. This discussion is necessary because it puts the facts of the case within the knowledge of the state attorney in advance. It also avoids, instances of ill preparation of attorney or attorneys lacking instructions.

The next step, is for the State Attorney to draft the written statement of defence. At this point, the State Attorney must consult the pleadings, the responses he got from the responsible government department and statement of intended witnesses. A good state attorney should not have any problems in drafting a WSD, if he or she handled the proceedings of the statutory notice and consulted well in advance.

The State Attorney must draft the WSD and submit it to the Head for approval, amendments and ownership of the pleadings. On approval, the WSD should be filed in court registry and served on the plaintiff.

The same mode should apply to similar proceedings filed after the WSD.

The next step: When pleadings have been closed and the case set down for a scheduling conference, the State attorney should consult the head of the section on all matters concerning the case including settlement if there is a chance. It is advisable that instructions at this point should be written down, because this is a crucial stage of the case.

The next step: The case will be set down for hearing. State attorneys should take minutes of all the proceedings in the case and minute the same for the consideration by the Head of the Section.

At the close of the plaintiff's case, the state attorney, who should have obtained prior addresses of the witnesses should summon them to attend court.

Next Step: Preparation of submission-Proper preparation of submissions require the state attorney to be well versed with the record and the law. It also requires the state attorney to have the confidence and instruction of the head of the section. The State Attorney should draft submissions, discuss them with the head of section, before agreeing on the final points for presentation in court.

The following additional points should be noted as well:

- Government must facilitate and properly remunerate state attorney well, if they expect them to perform.
- The Solicitor General/AG should have a tracking mechanism for all cases against the Government; to safe guard government inters and ensure that government is being protected well in court.
- The Solicitor General should develop a habit of meetings with his state attorneys to prepare cases well in advance before they go to court.
- The Solicitor General should regularly evaluate the performance of state attorneys to enhance and maintain efficiency.
- Government should recruit sufficient attorneys.

CHALLENGES TO CASE MANAGEMENT

Challenges to successful case management can be broadly divided into two categories- these are challenges faced by the legal practitioners, in this category are state attorneys and litigants and then the second category are the challenges faced by the courts.

- **Over reliance to the adversarial system**

Many lawyers are still very reluctant to adopt modern case management system that discourages the catholic use of the adversarial system. Many do feel that the adversarial legal system is superior to a collaborative and cooperative mode of settling disputes. Such lawyers not only delay disputes, but they increase costs of litigation and bog down the case management system.

- **Ill preparation of cases by Attorney General's Chambers**

Pleadings drafted by the AG chambers are normally very scantly and far below the standard required by the amended Civil Procedure Rules. Written statements of Defence are mere denials without substantive factors to back up the defences. In fact, many of the WSD's are more of proformas than defences. The danger with such blanket defences are two fold: a) A court cannot meaningfully resolve a case through alternative dispute resolution, b) a state attorney cannot ably defend a case against a well-prepared plaintiff. It is thus not surprising that the AG loses most of the cases through carelessness.

Coupled with this, state attorneys in most cases are ill prepared to defend or represent government in court. It is a common scenario for many to come to court without files, others are specialists in seeking adjournments, senior colleagues to hold their briefs apparently with no instructions to proceed deploy others in court-the common phrase is that state attorney 'Q' has the personal conduct of the case. In very unfortunate cases, states attorneys are just unable to proceed or to respond to arguments of private lawyers because they did not do research before coming to court. Such attorneys are a danger to the state and an anathema to successful case management.

- **Few Legal Practitioners are conversant with ADR**

Most legal practitioners are ill trained in modern case management techniques. This is courtesy of the legal education system in Uganda that concentrated mainly in training legal lieutenants than dispute solvers. State attorneys who fall in this category find it difficult to engage in ADR...

- **Incomplete instructions to proceed**

A number of state attorneys appear in court with inadequate instructions

from their superiors. Quite often, it becomes difficult for these attorneys to argue cases during scheduling conferences or to settle them.

- **New State Attorneys**

New state attorneys are not very conversant with the amended Civil Procedure Rules.

- **Absence of Time Standards**

Lack of time standards measuring post-scheduling conference of cases. Therefore, cases proceed at the speed of the judge or the lawyers depending on who is in the driving seat.

- **Inability to stick to court diary**

Lawyers and litigants find it difficult to stick to court diaries as against judges, who for want of attending official functions and seminars, equally find it difficult to be in court.

Lawyers cannot freely communicate to Judges as they wish. The rules here provide that lawyers must go through registry staff to meet the Judges. It would all be fine, if clerks were readily available and conscious about case management. But as issues stand, there appear to be impermeable walls between lawyers and judges. Cases, suffer in the process.

- **Unethical Practices**

Corruption and unethical practices-this relates more to clerks favouring certain cases over and above others. Favoured cases are heard quickly while the unfortunate ones gather dust in the registries.

- **Government Departments are slow to assist the AG**

Government departments rarely give the Attorney General's chambers adequate and timely documents and information about their cases. Sadly, the AG's chambers cannot manufacture or reinvent documents and evidence. All the chambers can do is to solicit as many adjournments as possible.

- Laziness
- Shortage of staff in the AGs chambers.
- Inefficient registries both at the Court and Attorney General's chambers.

- AG chambers are under funded.
- Limited number of judges.
- Inadequate specialisation by judicial officers and lawyers.
- Absence of a fast track cases mechanism for cases.

THE WAY FORWARD

- The AG should allocate cases on a timely basis
- AG should be vigilant in seeking instructions.
- Districts and Government departments, which are sued, should cooperate in giving the AG instructions.
- Government should adequately fund Ministry of Justice and Constitutional Affairs.
- Government should adequately remunerate state attorneys.
- AG should create specialised sections in his chambers to handle different cases.
- Government should recruit sufficient state attorneys.
- Ideological shift from adversarial system to a cooperative system, which relies more on a collaborative settling of cases.
- Introduce an evaluation mechanism for judges-if they cannot change, then changes from the evaluation programme will change them.
- Training of legal practitioners.
- Amendment CPR to provide for fast tracking and discovery mechanisms of cases.
- Introduce penalty costs on counsel who delay cases. Let them pay the costs personally.
- Introduce time standards for control of post scheduling litigation.
- Mediation-should be introduced in other divisions of the High Court.
- Targeted investment in the civil justice sector.
- AGs written statement of defences should strictly comply with the amended CPR.
- There should be continuity in the prosecution and defence of files by state attorneys.
- Newly appointed state attorneys should be trained, and reoriented.
- Continuous training of state attorneys.
- Proactive of judges and legal practitioners should use the CPR be used

to reduce backlog.

- Reform the law on experts[1]- by putting all expert evidence under the control of the court and leave will be required to adduce expert evidence. Experts' independence from the party instructing him will be bolstered by the preparation of instructions jointly by the parties whenever possible; use of a single expert in appropriate cases; where opposing experts are appointed, a cooperative approach should be adopted where possible, a joint investigation and a joint report. (An expert is to assist court and an expert is an independent adviser to court.)
- Districts-always, consult with AG and lawyers. It is cheaper to consult than to pay the costs of loosing a case. Adequately respond to the requests from AG for information.
- Use ADR, where possible to solve cases and reduce costs of litigation.
- Adopt Lord Woolf's Advice-my primary concern has been to improve access to justice. I believe the key to this is enabling people to resolve their disputes in a more cooperative and less confrontational way than our traditional litigation system allows. Litigation should be avoided wherever possible, use ADR; promote pre action protocols to enable parties to obtain earlier information about the other side's case with the aim of promoting settlements.
- Give Judges specialised training.[2]
- Active use of discovery and of notice to admit should be encouraged where lawyers are involved. Some time back, advocates told me that resorting to discovery leads to abuse of court process because unscrupulous advocates would employ delaying tactics. Delaying tactics may occasionally succeed. But where a judicial officer is proactive, delaying tactics should result in punishment.[3]
- The Rules Committee should amend the rules and introduce statutory forms. These forms should explain clearly the steps that must be taken in a case, so that lawyers do not take advantage of the current rules, which do not clearly regulate how much information a party must put in his pleadings.

1 The Impact of Lord Woolf's Reforms on Expert Evidence by Leigh-Ann Mulcahy
2 Reforms to make justice more civil by Terence Shaw, Legal Correspondent-Electronic Telegraph Monday July 29, 1996.
3 Tsekooko