

the Big Question

JUDICIARY
AUTHORITY

Black Mambas Rape of the Judiciary. So shocked was the Judiciary that four days later, on March 5, 2005, the institution went on strike in protest over the government's actions at the High Court.

Can erosion of courts' authority be reversed?



Abuse. A suspect in the murder of former police spokesperson Andrew Felix Kaweesi is re-arrested after being granted bail by court on Tuesday. PHOTO BY ABUBAKER LUBOWA

Clashing. Security forces appear to convey a very clear message to the courts. It is either their way or no way, yet the Constitution guarantees citizens' rights.

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The latest attack on the independence of the Judiciary did not take place in the confines of the courtroom, but for those keenly following the developments in the country, the writing was on the wall the moment Nakawa Grade One Magistrate Noah Sajjabi hinted on granting bail to seven of the so many suspects in the murder of former police spokesperson, Andrew Felix Kaweesi, his bodyguard and driver.

So predictable have the security forces become that the men who had been released on bail by a competent court knew what was coming for them and had to use the easiest means to flee their tormentors.

The men, part of a group of 22 awarded Shs80m each only a few weeks before, perhaps on the advice

of their lawyers and relatives adopted a tactic used by government critic Frank Gashumba to evade re-arrest.

But shabbily dressed gun-brandishing goons were faster and brutally re-arrested most of them. While the spokesperson of the military, Brig Richard Karemiri, has said the military carried out the operation, the whereabouts of the men to date is unknown.

Clear message

Security forces appear to convey a very clear message to the courts. It is either their way or no way, yet the Constitution guarantees citizens' rights and it is incumbent upon the institutions of the State, including the security forces, to respect and protect them.

A decision of court the suspects had celebrated with their families

and friends turned out as another trip to the dungeons of injustice. Ideally, if not satisfied with a court's decision, one is expected to run to the same court and seek new orders that can be granted or denied.

In 2005, Justice James Ogoola described the military siege on the High Court as "a despicable act" and a "rape of the Judiciary". The "Black Mamba", an anti-terrorism unit, sieged the High Court and prevented the release on bail of suspects. At that time, Dr Kizza Besigye was the leading Opposition candidate running against President Museveni in the February 2006 election.

On March 1, 2005, the security forces would return to the courts this time to re-arrest five PRA suspects bailed after 15 months of detention. The suspects were charged with treason alongside Dr Besigye for their alleged membership in a rebel movement.

So shocked was the Judiciary that four days later, on March 5, 2005, the institution went on strike in protest over the government's actions at the High Court.

Justice Ogoola went as far as demanding that those responsible for the "despicable" appearance of the armed men in black T-shirts be

THIS... health to think about... open your mind, in order to prepare you for both life and death... - Freddie Stroma, British actor

tracked down. "The High Court witnessed the most naked and grotesque violation of the twin doctrines of the rule of law and the independence of the judiciary," he said.

Overtime, the Judiciary seems to have come to terms with the reality that the institution can be undermined with impunity. The security forces have a way if they don't agree with the courts.

Perhaps the worst for the Judiciary recently was the raid on Makindya Chief Magistrates Court by a mob of Police Kale Kayihura, which interrupted the court session scheduled for August 10, 2016. Gen Kayihura was due to appear before that court on several charges. The violence by the goons ensured the case died an unnatural death.

The cases are one too many. In 2016, Deputy Chief Justice Alfonso Owiiny-Dollo, then a High Court judge, acquitted five men after prosecution failed to prove that they were involved in bomb attacks that left 76 dead and scores injured.

The men: Dr Ismail Kalule and Abubakari Batemyetto (Ugandans), Omar Awadh Omar, Yahya Suleiman, Mbuthia and Mohamed Hamid Suleiman (Kenyans) were immediately re-arrested after being released from Luzira. It is not clear if they ever handed them to their tormentors. To date the five remain in prison with no trial scheduled for their "new" crimes. Ironically, the charges were only preferred against the acquitted.

Past cases

On January 12, armed men traveling in a car stormed the premises of Gulu High Court and re-arrested Oola Odiya, the Uganda Peoples Congress (UPC) national deputy mobiliser and his two co-accused, Mr Kenneth Otto and Mr Sam Ojok Obama. This was after the Director of Public Prosecutions (DPP) dropped charges including treason, concealment, murder by shooting and attempted murder against them.

Article 128(1) of the Constitution states that the Judiciary shall be independent and shall not be subjected to control of any person or authority.

In 2011, former Chief Justice Benjamin Odoki, while speaking at the annual Southern African Chief Justices Forum in Kampala, decried the interference by the Executive arm of government on the independence of the Judiciary, noting that the intrusion has been pronounced in the State's refusal to obey and enforce decisions of courts of law.

Analysts and scholars have previously observed that the independence of the Judiciary is an important issue in every country, but it has exceptional importance in countries, which have recently had or are currently having problems with democratic control over their government. Given the current political environment, the Executive and its attendant militia are becoming bolder.

INCIDENCES

Background:

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