

Statutory immunity protects bailiffs only when they act lawfully and in accordance with court warrants.

BY ANTHONY WESAKA

The Constitutional Court has outlawed the practice of Resident District Commissioners (RDCs), security agencies and local government officials interfering with the execution of court orders by court bailiffs, declaring such actions illegal.

In a landmark judgment, the court ruled that requiring court bailiffs to seek 'clearance' or 'approval' from RDCs, district security committees or security agencies before executing lawful court orders amounts to an unlawful encroachment on judicial authority.

"Any conduct by executive officers that purports to halt execution, confiscate court process, subject judicial warrants to extra-judicial 'clearance' or 'approval,' or otherwise frustrate lawful execution amounts to a direct encroachment upon judicial authority and is inconsistent with Articles 2, 126, and 128 of the Constitution," Justice John Mike Musisi ruled in the lead judgment.

He added: "Security agencies do not possess authority to review, vary, suspend, veto or otherwise sit in judgment over court orders. The direction and supervision of execution remain the exclusive preserve of the courts."

The judgment was concurred with by Chief Justice Flavian Zeija, as well as justices Fredrick Egonda-Ntende, Ketrah Katunguka and Florence Nakachwa.

The judges, however, clarified that security agencies may assist during the execution of court orders in situations where violence or breach of the peace is anticipated, particularly during contentious land evictions.

"Security organs may facilitate the peaceful implementation of lawful court processes, but they may not substitute themselves for the court or assume powers that belong only to judicial officers," the court held.

The judges further noted that security agencies are permitted to verify the authenticity of court orders because forged orders occasionally arise, but warned against using verification as a pretext to delay or obstruct justice.

"Such verification, however, must remain strictly limited to confirming au-

Court bars RDCs, security from interfering with bailiffs' work



Justice John Mike Musisi delivered the lead judgment



Chief Justice Flavian Zeija concurred with the judgment

thenticity. It must not be turned into a process of questioning the legal validity, correctness, propriety or enforceability of the order itself," the court ruled.

The petition was filed by the Uganda Court Bailiffs Association Ltd. through its director and president, Brian Kanyesigye, alongside several members who argued that executive interference had frustrated execution of court orders and undermined access to justice.

The bailiffs contended that over the years, RDCs, security agencies and local government officials had unlawfully halted executions, confiscated court documents and imposed extra-judicial requirements before enforcement of judicial orders.

They also challenged several provisions of the Judicature (Court Bailiffs) Rules, 2022, which introduced reforms governing licensing, qualifications and conduct of court bailiffs.

However, out of the 13 constitutional issues raised, the court only ruled in favour of the bailiffs on executive interference in the execution of court orders.

The other issues where the court did not agree with them included: whether the Judicature (Court Bailiffs) Rules, 2022 are inconsistent with articles 1, 2, 79 and 91 for

GIST OF THE RULING

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lack of a signature of the Chief Justice and were not laid before Parliament as required by Section 45 (5) of the Judicature Act, with the court holding that no law requires the signature of the Chief Justice.

The third issue that was answered in the negative by the court was whether Rule 27 (1)(f) criminalises a bailiff from following legal steps in conducting execution. They had contended that this provision was unconstitutional for being vague, overbroad and inconsistent with various constitutional guarantees.

However, the court held that Rule 27 (1) C constitutes a regulatory measure with-

in constitutional bounds and promotes legality, accountability, and protection of rights in line with the constitution.

The other contentious issue was the requirement under Rule 11 for bailiffs to furnish security in the sum of one hundred currency points (Shs2m) through a bank guarantee, insurance bond or cash prior to the issuance or renewal of a licence, arguing that it placed a disproportionate burden on individual bailiffs and smaller firms.

But the court ruled that the same rule requires security not as a fee or tax, but as a performance bond guaranteeing the faithful discharge of duties, and that the rule provides three alternative forms of security and applies uniformly.

"Such security measures are legitimate regulatory tools intended to safeguard the integrity of the execution process," ruled Justice Musisi.

The court also held that the bailiffs did not demonstrate that the requirement is manifestly excessive, arbitrary or discriminatory.

The other issue of contention by the bailiffs was that Rule 8 (1)(b) and Rule 28 (3) of the Judicature (Court Bailiffs) Rules that prescribed minimum educational qualifications for appointment and licensing

of court bailiffs, being a diploma holder in law, preferably from the Law Development Centre (LDC).

The same rules demand that a bailiff has a two-year transitional period for existing bailiffs who do not hold such qualifications to acquire them in order to qualify for renewal of their licence.

The bailiffs had argued that such provisions were discriminatory, unreasonable, and unconstitutional.

But the court held that the requirement of legal training addresses real deficiencies historically experienced in Uganda's bailiff profession.

"The previous Judicature (Court Bailiffs) Rules permitted persons with only O'level qualifications to become bailiffs, resulting in inconsistencies in knowledge and skills among bailiffs. The 2022 Rules were enacted to correct this anomaly and establish a uniform professional standard," ruled Justice Musisi.

The bailiffs also claimed that Schedule 3 of the Judicature (Court Bailiffs) Rules imposed a fee structure that is illegal and unconstitutional. They argued that the 3% scale fee set out under Schedule 3 is applied in a manner that disregards constitutional guarantees and procedural safeguards, thereby violating the rights of judgment debtors and other parties.

But the court ruled, "The petitioners didn't show how the application of the Schedule undermines rights... the court finds no evidence that the Schedule interferes with judicial independence or procedural fairness."

The bailiffs also challenged Rule 12 (1) (2)(e) of the Judicature (Court Bailiffs) Rules on the ground that it grants the licensing authority discretionary powers to deny or refuse renewal of a bailiff's license when the applicant is undergoing disciplinary proceedings.

The other contentious issue was Rule 17, which imposed criminal liability on bailiffs for certain acts done in the course of execution of their work.

They had argued that bailiffs, as officers of the court who execute court orders, enjoy immunity from liability under the law.

But Justice Musisi ruled that, "Statutory immunity protects bailiffs only when they act lawfully and in accordance with court warrants. It does not shield them from liability for unlawful or unauthorised acts."