



THE JUDICIARY

Justice be our Shield and Defender



**SPEECH BY HON. LADY JUSTICE JESSIE LESIIT AT THE
OFFICIAL LAUNCH OF THE ODPP'S CASE REVIEW
INITIATIVE OF PENDING CRIMINAL CASES IN NAIROBI
HELD AT THE INDUSTRIAL AREA REMAND PRISON
ON 22ND JANUARY 2018**

Mrs. Dorcas Oduor, Secretary Public Prosecutions; Senior Counsel Fred Ojiambo, invited guests, our hosts, all protocol observed:

Allow me to first convey my warmest New Year greetings. I am honoured to be present today, to join hands with the Office of the Director of Public Prosecutions. I thank you, Ms. Dorcas Oduor for extending this invitation. We highly value this continued partnership to promote the delivery of justice.

It is our united interest to see that justice is served to all. The Judiciary has launched several task forces and policy documents to reform the criminal justice system. It is our transformational commitment to deliver justice expeditiously as enjoined by the Constitution. This duty, in our context today, means that we should strive to minimize pretrial

detentions as much as possible. As the Constitution reminds us, every accused person is entitled to *'have the trial begin and conclude without unreasonable delay.'* And where this is not possible, a person who enjoys innocence ought not to have his trial prolonged. As the Judiciary, we are committed to ensure this is realised. This commitment therefore, joins hands with today's initiative led by the Office of the Director of Public Prosecutions. Justice to all demands that we also consider each case with an appreciation of its own particular circumstances including the nature of the offences, and the circumstances of the accused person, alive too to the special interest groups.

I am happy to echo the Chief Justice's commitment in this regard. In the *Sustaining Judiciary Framework: A Service-Delivery Agenda 2017-2021*, which is a carry-on from the *Judiciary Transformation Framework*, coordination between the Judiciary and other agencies is identified as one of the core strategies towards reduction of case backlog. Key to the Chief Justice's concern, is the reduction of pre-trial detentions. He encourages that we do not limit taking any action that can help realise speedy justice and reduction of backlog.

Service delivery is central to all the initiatives being undertaken by the Judiciary and actors in the criminal justice sector. This service delivery agenda is why we are here today and I appreciate the ongoing collaboration between the Judiciary and the Office of the Director of Public Prosecutions. Today's event is a laudable move. This is mirrored in the various collaborations such as the Bail and Bond Implementation

Committee, the National Taskforce on Criminal Justice Reforms, Task Force on Alternative Justice Systems, Nairobi County Criminal Court Users Committee, Active Case Management for Criminal Matters, and the Task Force on Children Matters among others. The Office of the Director of Public Prosecutions remains a key partner in all these processes, in fact an indispensable one, since the Judiciary cannot realise its functions alone. It is very encouraging, as demonstrated today, when we cultivate a common reform path, united in purpose.

In fact, today's function is close to processes that I am personally engaged in, as the Presiding Judge of the Criminal Division and Chairperson of the Bail and Bond Implementation Committee and the Nairobi County Criminal Court Users Committee. It concerns the operations of courts under my supervision. By being here today, I am registering an assurance to you all that we shall hear and act upon the outcome of this exercise. I encourage you therefore, as remandees and the prison authorities, to actively engage in the process, and share information that will help us serve you better. I also encourage you to always raise concerns regarding your cases beyond today's engagement. I note that the in-charge of this Remand Prison, Ms. Rutto and that of the Medium Prison from next door, Mr. Telo are here and have promised to raise issues whenever they arise.

Let me also highlight the issue of petty offenders. The Constitution prohibits detention of persons accused of offences whose sentence does not exceed 6 months' imprisonment or which are punishable by a fine

only. My interactions with various stakeholders on this issue has revealed various implementation challenges. While there is willingness to comply with non-detention of petty offenders, there has been a challenge since persons released on personal bond have been one of the highest absconders in attending court. It is in this regard, that I also wish to point out that even as we demand our rights, we need to also be alive to the duties corresponding to these rights. As an accused person, take it upon yourself to comply with the directives of the court, cooperate with the prosecution, police and probation officers, as it is in the interests of all that matters are concluded quickly. We do not delight in being part of the problem of case delays and injustice that results from spending prolonged periods in custody before trial.

I wish to highlight some of the good practices that we have documented in the process of implementation of the Bail and Bond Policy Guidelines: one of which is the filing of monthly returns by prisons to the courts on status of persons in custody. This practice is working well in some regions, enabling the courts to be alive to cases where prioritization and review for instance of bail/bond terms need to be done. In that regard, I am also going to send a returns template to this Remand Prison which they will use to file with us important information on bail and bond and delayed cases on a monthly basis. I hope to see these good practices replicated here and indeed the entire Nairobi region. I encourage the Industrial Area Remand Prison to set an example and even suggest better solutions.

I look forward to the conclusions of today's exercise, as it will assist the courts in delivering services to you, our primary consumers of our services. We frown upon encountering high numbers of detentions before trial. Every person deserves to have his case considered on its own merit. Our presence today, therefore, will not end with this stock taking exercise. Indeed, this engagement places the faces behind every case file that we handle in our respective functions. The Office of the Director of Public Prosecutions will share its findings from which the courts will be able to take up further interventions.

Furthermore, as deliverers of service to the public, we are required to be transparent and accountable to the very people we serve. This audit is a demonstration of our willingness to be open to you all, identify and rectify where we may have gone wrong and cultivate long-term solutions. It will also inform us of the actual status of cases pending in the Nairobi criminal courts, which will in turn enable us to implement solutions. I look forward to replication of this initiative to all other regions across the country.

The Judiciary, as other justice actors, is bound in delivering on its performance commitments and this, in line with today's theme is to keep making our criminal justice fairer. As Montesquieu (a renowned philosopher) noted in his work, *The Spirit of the Laws*, *'there is no greater tyranny than that which is perpetrated under the shield of the law and in the name of justice.'* We cannot be held purport to be defenders of justice when we are not held accountable. The Bail and Bond

Implementation Committee will continue to sensitise magistrates and judges on the need to give reasonable bail terms and review cases constantly as well as sensitise on other forms of securities to make it easier for remandees to post bail. We will also encourage magistrates to restrain from directing forfeiture of bail before an accused is heard. It is worth noting that the Chief Justice has directed that cases of five years and above should be completed by December 2018 and thereafter, all cases be finalized in good time. Delayed matters should therefore, be identified and speedy conclusion realised. We commit to act upon the report of this review exercise, which, we are hopeful will help us reduce the high remand population.

Allow me to close with the words in Isaiah 1:17, reminding us all to *learn to do good, seek justice, correct oppression*. Blessings spring from serving justice. This is therefore, a person call to us all – support us in delivering services to you.

With these few remarks, I declare the case review exercise officially opened.

Ahsanteni sana! May God bless you!

Hon. Lady Justice Jessie Lesiit

Presiding Judge Criminal Division of the High Court, Nairobi

Chair, Bail and Bond Implementation Committee