



OPENING REMARKS BY HON. PAUL J. NGWEMBE

JUDGE IN CHARGE – HIGH COURT MTWARA DURING TRAINING ON CAPACITY BUILDING TO JUVINILE COURT PERSONNEL

**HELD AT REGIONAL COMMISSIONER'S HALL – MTWARA
FROM 20TH TO 24TH JANUARY, 2020**

Honorable Mwaseba – District Registrar; Kisoka – Resident Magistrate; and Mnyukwa from Institute of Judicial Administration – Lushoto and trainers of this course;

Honorable Resident Magistrates; State Attorneys; Law enforcers; social Welfare Officers all being trainees of this course;

Ladies and Gentlemen;

Good morning.

I singularly feel privileged and honored to have this rare opportunity to officiate this very important training, designed specifically for Magistrates and prosecutors on how best to handle juvenile cases in our jurisdiction. I therefore, take this opportunity first to welcome you all to this part of Tanzania, which is rarely considered to be a place for training programs like this one. Second, I thank the organizers for inviting me to make these short opening remarks.

My sincere thanks should go to the Institute of Judicial Administration, Lushoto (IJA) and in particular to my **Lord Justice Dr. Paul F. Kihwelo**, for tireless and innovative ideas of organizing such training programs as part of the implementation of the Judiciary Strategic Plan of 2015/2020. Special thanks to the

trainers of this program Hon. Mwaseba, Hon. Kisoka and Ms. Myukwa, for your readiness to travel all along up to this part of Tanzania (Mtwara in Southern part of Tanzania), to impart legal knowledge to your fellow magistrates and prosecutors on how to conduct trials related to children and the required environment in a juvenile court.

I am also grateful to all of you, participants, for having accepted the invitation to participate in this training. I hope you will find it not only interesting, but also an eye opener to the diverse legal professionalism and experiences you have.

Ladies and Gentlemen,

The objective of this training is to provide you, Juvenile Justice Frontline Workers, with sufficient knowledge and skills on how to interpret and enforce the Law of the Child Act, No. 21 of 2009 and its Rules and Regulations more effectively and to share best and uniform practices in handling matters involving children, especially those brought before Juvenile Courts

The training will thus, provide you with an understanding of juvenile delinquency, including its genesis, causes and development of delinquent behaviour. I understand you are aware of the development of Juvenile Courts in Tanzania and protection of child rights. We have gone a long way until we have come up with a Law of the Child, which define who is a child, rights of the children and the designated courts for children offenders.

Ladies and Gentlemen,

The enactment of the Law of the Child has been a remarkable development in the administration of juvenile justice in Tanzania.

One scholar, **Bruce Abramson**, in *Juvenile Justice: An analysis of the Concluding Observations of the Committee on the Rights of the Child in regards to Juvenile Justice from 1993 – 2000*, says this:

"Children and adolescents are in a period of development. What happens to them or fails to happen at each step of the way in the law enforcement process not only affect them in the here-and-now but will also shape future development for good or ill. States thus, respond to the criminal activity of minors, certainly for the sake of society and for the sake of offence".

Ladies and Gentlemen,

Upon launching of the National Plan of Action to End Violence Against Women and Children in Tanzania 2017/2018 – 2021/2022 (NPA-VAWC) in December 2016, the publication of the Regulations through Government Notice No. 314 of 2016 on 9th December 2016, namely, Law of the Child (Designation of Juvenile Court) Notice of 2016, the coming into force of the Law of the Child (Juvenile Court Procedure) Rules of 2016 (JCR), (and its amendment through GN No. 367 of 2017, together with the developments in terms of jurisprudence through case laws, IJA assumed its role of providing training to judicial officers and other

justice sector stakeholders with the aim of responding to the identified developments while fulfilling its mandate as provided for in the establishing Act.

Ladies and Gentlemen,

This training is thus aimed at building your career capacity on how to properly handle juvenile cases in accordance with The Law of the Child, The Juvenile Court (Procedure) Rules, GN No. 182 of 20th May 2016 and the Regulations. I believe that this training will add to your understanding of the legal regime governing juvenile justice and, at the end of the training, you will leave this place armed with all the important knowledge and information that should make your duties much easier and much more professional. This training should equip you with sufficient and necessary skills that will enhance your ability in carrying out your respective duties of adjudication.

Ladies and Gentlemen,

This training will only be worth the efforts if you put the knowledge gained into practice. In this regard, I would end up my remarks this morning by referring you to a **criminal case No. 165 of 2018, between Hassan Kide Kandi Vs. R**, which was decided by the High Court of Tanzania at Mtwara. To recap just briefly, the facts of the case was that a boy of 17 years, in different times had carnal knowledge with a school girl aged 16 years. Three days later that boy was arrested and subsequently,

arraigned in court charged for two counts; rape and impregnating a school girl. On the first day when the charge was read to him, he remained silent, not knowing what to say. The case was adjourned to another date.

On that other date, when a charge was read to him, he responded by pleading guilty on the first count of rape and pleaded not guilty on the second count of impregnating a school girl. According to the charge sheet, the boy was recorded having 19 years old. Since the boy pleaded guilty to the offence of rape, the court proceeded to convict him and subsequently pronounced custodial sentence of thirty (30) years in jail. Being dissatisfied with that conviction and sentence, the boy timely appealed to the High Court.

On the hearing date of the appeal, both parties procured trained lawyers who bravely argued the appeal but without touching the age of the appellant. At the end of the hearing, the appellate judge looked on the appellant's face and physical appearance, hence was attracted to know his age. When the boy was asked on his age, he hurriedly, responded while trembling and looked confused, "***I am 17 years old, born in June 2001***".

Inquisitively, the court wanted to know more on his age and find necessary information on his age, instead of proceeding with the appeal based on the counsels' submissions. The boy had no birth

certificate and the case was not heard on merits, so the evidence on same was lacking. In such circumstances, the court, invoked section 369 of the Criminal Procedure Act Cap 20 R.E. 2002, to record additional evidence from a Head Teacher of Primary School where the appellant schooled.

The Head Teacher was summoned to appear in court and confirmed that the boy was registered in standard one in year 2006 and completed standard seven in year 2012. He produced a register book to authenticate his assertion. The boy started standard one at the age of five years and completed at the age of 12 years, thus at the time he committed the offence in year 2018, he was 17 years and the victim was 16 years. Legally, both the appellant and the victim were children below the age of majority and the trial court including the trial magistrate lacked jurisdiction to sit and determine that case. Based on that fact alone, the High Court ordered an immediate release of that boy from prison, unless otherwise lawfully held.

Ladies and Gentlemen

The advent of The Law of the Child, changed fundamentally the way of handling criminal cases in our jurisdiction. Determination of the age of the accused nowadays, goes to the root of the case itself; the jurisdiction of the court; and doing otherwise defeats not only the ends of justice, but also defeats the purpose of having The Law of the Child.

Courts, prosecutors and arresting officers, must be extra careful to verify the age of the accused, doing otherwise, I think, inflict more pain to the society and defeats the purpose of having different statutes governing matured and children offenders. Incarcerating young offenders in jail together with adult criminals, defeats the purpose of legislating The Law of the Child.

Ladies and Gentlemen

Let me rest my remarks by citing section 4 (1) of the Law of the Child which define a child to mean:-

"a person below the age of eighteen years shall be known as a child"

Section 97 (1) provides:-

"There shall be established a court to be known as the Juvenile Court for purposes of hearing and determining child matters relating to children"

In the same vein, Section 98 (3) provide:-

"The Juvenile Court shall, wherever possible, sit in a different building from the building ordinarily used for hearing cases by or against adults"

The provision of section 4 (2) of the Law of the Child Act, 2009, sets up a fundamental principle to be observed by whoever sits to decide any matter related to a young offender:-

"The best interest of a child shall be the primary consideration in all actions concerning a child whether undertaken by public or private social welfare institutions, courts or administrative bodies"

The principles embodied in these provisions are magnanimous one. They carry the spirit which all of you must be able to take back to your offices: The **"best interest of the child"** principle.

Only upon a clear understanding of the supremacy of this principle when dealing with matters involving children will the skills to be learnt in this week make a difference in the administration of juvenile justice, for the betterment of our children.

Ladies and Gentlemen,

I thank you for your kind attention and I wish you all a fruitful deliberations and successful training. It is now my singular honour to declare this training as officially opened.

**Paul J. Ngwembe
Judge in-Charge
High Court of Tanzania,**

