

MOCK TRIAL

THE APPLICATION OF UNIVERSAL JURISDICTION FOR INTERNATIONAL CRIMES IN KENYAN COURTS

Republic v. Lieutenant Mohammed Juma



PROSECUTION TRAINING INSTITUTE · NAIROBI, KENYA

On Friday, 8 March 2024, the Wayamo Foundation and the Prosecution Training Institute will be holding a one-day mock trial based on a fictional set of circumstances, designed to test the application of universal jurisdiction for international crimes in Kenyan courts. The mock case will examine the provisions of the International Crimes Act No.16 of 2008 and explore its applicability to situations where neither the perpetrator nor victims have Kenyan nationality, and the alleged crimes have not been committed on Kenyan territory.

The mock trial will bring together preeminent international and Kenyan judges and prosecutors who will guide the audience through some of the thornier issues facing lawyers seeking to apply international law domestically. The aim is to make the International Crimes Act more accessible and actionable for the Kenyan legal practitioners in the audience. Time has been set aside for a spirited question and answer session on conclusion of the trial.

FRIDAY, 8 MARCH 2024

9:00 – 9:30 *Registration and coffee*

9:30 – 10:00

Welcoming remarks and introduction

- **Renson Mulele Ingonga**, Director of Public Prosecutions, Kenya
- **Alloys Kemo**, Deputy Director Public Prosecutions and Head, Prosecution Training Institute
- **Bettina Ambach**, Director, Wayamo Foundation

10:00 – 10:30

PART I

Setting: Pre-trial

Preliminary matters and pre-trial disposition of jurisdictional challenge

1. Judges discuss the background to the case and current forum, and introduce the parties to the proceedings;
2. Judges explain their decision on the issue of “Whether the High Court has the authority to exercise universal jurisdiction through the application of the International Crimes Act.”

- **Lady Justice Diana Mochache**, Judge, High Court of Kenya
- **Ben Gumpert**, QC, Crown Court Judge and former barrister, former Senior Trial Lawyer at the International Criminal Court

10:30 – 12:30 **PART II**

Setting: Trial, Prosecution case

Dispute: Whether the forms of open-source and/or digital information relied upon by the Prosecution can be tendered as evidence and, if so, the weight that should be attributed to it

1. Prosecution submissions, including presentation of expert witness, **40 minutes**

Prosecution counsel:

- **Tabitha Ouya**, Head of Civil Rights Division, Office of the Director of Public Prosecutions
- **James Stewart**, former Deputy Prosecutor at the International Criminal Court
- **Victor Owiti**, Principal Prosecution Counsel, Office of the Director of Public Prosecutions

Expert witness:

- **Robin Taylor**, Research Assistant, Crisis and Conflict Division, Human Rights Watch

2. Defence submissions, including brief cross-examination of expert witness, **40 minutes**

Defence counsel:

- **Alexander Jami Yamina**, Ag. Assistant Director of Public Prosecutions, Office of the Director of Public Prosecutions
- **Kirsty Sutherland**, Barrister at 9 Bedford Row, UK

3. High Court decision, including determinations on weight and other considerations, **40 minutes**

Judges:

- **Lady Justice Diana Mochache**, Judge, High Court of Kenya
- **Ben Gumpert**, QC, Crown Court Judge

12:30 – 13:30 *Lunch*

13:30 – 15:30 **PART III**

Setting: close of Prosecution case, start of Defence case

Dispute: Whether the incident in question, an attack on a single day, can be characterised as a crime against humanity and thus trigger the application of the International Crimes Act (and Kenyan jurisdiction)

1. Prosecution submissions, **40 minutes**;

2. Defence submissions, **40 minutes**;

3. High Court decision, including determinations on weight and other considerations, **40 minutes**.

15:30 – 16:30 **Q&A session**

Moderator:

- **Mikel Delagrange**, Senior International Legal Advisor, Wayamo Foundation

16:30 **Closing remarks**

- **Bettina Ambach**, Wayamo Foundation
- **Alloys Kemo**, Prosecution Training Institute

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