

The Civil Judge In Ghana: Remuneration System And Promotion Possibilities

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INTRODUCTION

The title of this presentation is that proposed by the Konrad Adenauer Stiftung. In the context of Ghana, it does not really work, since all judges and magistrates in Ghana are both civil and criminal. The courts established by the Courts Act, 1993 (Act 459) and various Courts Acts dating back to 1960 and the First Republic have usually been vested with both criminal and civil jurisdictions. Under the current 1992 Constitution of the Fourth Republic, only the Regional Tribunals provided for under article 142 of the Constitution have an exclusively criminal jurisdiction. These Tribunals in any case have become in practice obsolete. An examination of the remuneration system and promotion possibilities of judges in Ghana therefore inevitably has to apply to all judges in the country.

THE LAW

This section provides an overview of the legal framework of the remuneration system for judges in Ghana. Article 71(1) of the 1992 Constitution provides that:

“The salaries and allowances payable, and the facilities, and privileges available, to
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a)
b) The Chief Justice and the other Justices of the Superior Court of Judicature;
c)

Being expenditure charged on the Consolidated Fund, shall be determined by the President on the recommendations of a committee of not more than five persons appointed by the President, acting in accordance with the advice of the Council of State.”

The purpose of this provision is to ensure independence in the determination of the salary and privileges of superior court Justices in Ghana. The remuneration determined for superior court Justices is safeguarded by article 127(5) which provides as follows:

“The salary, allowances, privileges and rights in respect of leave of absence, gratuity, pension and other conditions of service of a Justice of the Superior Court or any

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judicial officer or other person exercising judicial power, shall not be varied to his disadvantage.”

Thus the salary of a superior court Justice which has been independently recommended to the President and determined by him may not be diminished if he or she gives a judgment or order that displeases the Executive. Since the salary is charged on the Consolidated Fund, this implies that it does not need annual Parliamentary approval. There is constitutional authorisation for the payment of the salaries without such Parliamentary approval. The salaries of superior court Justices are therefore quite secure.

The convention has evolved during the 25 years of the Fourth Republic for each President to appoint an article 71 Committee to make recommendations to him on the salary and other payments to be made to Article 71 officeholders, including Justices of the Superior Courts. This, in brief, is the remuneration system that applies in Ghana to judges of the Superior Courts. According to article 126(1) of the 1992 Constitution, the Superior Courts consist of:

- The Supreme Court
- The Court of Appeal
- The High Court and Regional Tribunals.

In addition to the Justices of the Superior Courts, there are judges and magistrates of the lower courts. Lower court judges and magistrates are appointed by the Chief Justice, acting on the advice of the Judicial Council and subject to the approval of the President. (See article 148 of the 1993 Constitution). Lower court judges and magistrates receive salaries, allowances, facilities and privileges and other benefits determined by the President, acting on the advice of the Judicial Council. There tends to be more friction in the determination of the salaries and benefits of lower court judges and magistrates. These salaries and benefits are not charged on the Consolidated Fund and are therefore subject to Parliamentary appropriation. The process of arriving at the determination of remuneration for lower court judges and magistrates includes collective bargaining between the judicial administration and the professional body of judges in Ghana, namely the Association of Magistrates and Judges of Ghana (“AMJG”).

Currently, the lower courts, as established by the Courts Act, 1993 (Act 459) are:

- The District Court (including the Juvenile Court); and
- The Circuit Court.

The District Courts are presided over by District Magistrates, while the Circuit Courts are presided over by Circuit Judges.

In addition to these regular courts which are classified as lower courts, the Courts Act, 1993 regards the Judicial Committees of the National House of Chiefs, the Regional House of Chiefs and every Traditional Council as lower courts. They exercise an exclusive jurisdiction over causes or matters affecting chieftaincy. Accordingly, section 39 the Courts Act, 1993 which establishes the lower courts reads as follows:

“Pursuant to paragraph (b) of clause (1) of article 126 of the Constitution, the following are by this Act established as the lower courts:

- a) *Circuit Courts*
- b) *District Courts*
- c) *Juvenile Courts; and*
- d) *the National House of Chiefs, Regional Houses of Chiefs and every Traditional Council, in respect of the jurisdiction of the House or Council to adjudicate over a cause or matter affecting chieftaincy.”*

Excluding the Judicial Committees of the traditional authorities which exercise a rather specialized jurisdiction and are not administered by the Chief Justice, the hierarchy of judges and magistrates in Ghana is as follows:

- Justice of the Supreme Court
- Justice of the Court of Appeal
- Justice of the High Court
- Circuit Judge
- District Magistrate (who also presides over the Juvenile Courts).

It is the opportunity for promotion up this hierarchy which will be examined next.

PROMOTION POSSIBILITIES

Examples exist of judges who have been promoted up the judicial hierarchy described above after starting from the lowest rung. For instance, the recently retired Chief Justice, Justice Georgina Theodora Wood, began her career as a District Magistrate and served in every position in the judicial hierarchy before being appointed Chief Justice. In England and Wales, it is widely understood that if a lawyer is appointed to a lower court there is no likelihood of his or her promotion to the more senior judicial positions. There is no equivalent understanding in Ghana. Accordingly, in Ghana, the possibility exists for promotion to be used as an instrument for rewarding efficient and independent decisions. There is, however, no evidence that this criterion exists as a conscious element in the existing promotion system. What this writer knows from personal experience is that knowledge of the law and the absence of evidence impugning the probity of an applicant are what are determinative in applications for promotion.

The Judicial Council considers for appointments to senior judicial positions not only judges but also candidates other than serving judges. Accordingly, there is no automaticity in promotions for serving judges. Candidates can be and are sometimes appointed directly from the Bar to the High Court, Court of Appeal and Supreme Court. This competition between members of the Bar and serving judges is good for improving the quality of the pool from which senior judges are recruited. Should reward for efficient and independent decision-making be a criterion for selection in this competition? That is a fertile question for debate for which this Conference provides a forum.

For this writer, what is critical is the provision of in-service training and continuing legal education for Magistrates and Judges. The Judiciary of Ghana has established a Judicial Training Institute. It needs to be better resourced to provide more in-service judicial capacity building.

Bibliography

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