Chapter 3

Justice Hassan Bubacar Jallow’s Contribution to the Development of Law in The Gambia: The Supreme Court Years

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Introduction

This chapter aims to discuss the contributions of Justice Hassan B. Jallow, as one of the pioneer Justices of the first Supreme Court of The Gambia, which was also the country’s first and final appellate court. That court replaced the Judicial Committee of the Privy Council, based in London, England, in 1998.1 It will also analyse the legal and constitutional context in which this court existed. I will argue that despite the best efforts of its outstanding justices, the question remains as to whether that court has fulfilled its broader constitutional mandate despite some initial but notable achievements. I hope that the discussion will enrich ongoing analysis of the past, present and likely challenges that other final, appellate and superior courts may encounter in similar developing jurisdictions. Overall, my goal will be to demonstrate the important contributions of Justice Jallow to this Court in its formative years between 1998 and 2002.

Generally, whether by providence or by default, there may be events in the life of a nation, an individual or indeed a society that are momentous but not necessarily profound. Similarly, there are rare opportunities which may present themselves to a society that may impact more profoundly on present and future generations, based on the convictions of an individual or a group of individuals. These could provide an epoch making opportunity largely from the ideals for which a person stood, and ultimately the legacy which he bequeaths to his calling. It is against this background that I will seek to assess Justice Hassan B. Jallow’s contributions to the development of law, justice and...

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1 Justice Jallow was the only Gambian Justice on this bench, while the rest were two incumbents from the Supreme Court of Nigeria; one retired Justice of the Supreme Court of Ghana, and a Ghanaian Chief Justice of The Gambia, Hon. Justice Felix M. Lartey, who was replaced by a retired Justice of the Supreme Court of Pakistan in 2002.
human rights in The Gambia. I will limit my discussion to “the Supreme Court years” 1998–2002, despite other possible themes. This is because of the significant contributions and leadership that he provided in that new constitutional court. In so doing, my goal is not to minimize his equally worthy contributions to other causes in the service of humanity, including but not limited to legal, governance, social, spiritual and academic pursuits.

On the one hand, given the rare opportunity Justice Jallow had in the legal and judicial evolution of The Gambia, during the First Republic, much hope and exemplary leadership was expected from him and his respectable colleagues who did not enjoy the same familiarity with The Gambia's political and constitutional developments at the time. More significantly, he brought that experience from his stewardship of the reform of Gambian laws at the time to better address new challenges of our Second Republican constitutional experiment.

On the other hand, he did not take undue advantage of this unique position as it were, but, instead he simply provided important legal footprints which resonate with a homegrown jurisprudence that could withstand scrutiny for judicial integrity. Indeed, the normative ideals espoused in his decisions were proven and tested attributes that provided the foundation for a new

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2 Other eminent contributors to this publication have extensively discussed other aspects of Justice Jallow’s life and service to the law and society in various capacities. However, it is crucial to revisit the local stage from which his judicial career began noting in particular, that despite the brevity of that career on the national Bench, he has nevertheless left another important legacy that is worth reviewing.


4 His familiar common law background resonates with that of Judges from the Common law tradition, who were willing to discharge their functions as they saw fit but consistent with the juridical principles suited to the interpretation and enforcement of a Constitution.

5 As Attorney General and Minister of Justice for ten years, we saw robust reforms of Gambian law and much statutory reforms which were designed to accommodate what was ostensibly outdated English Legal principles and laws so as to bring them into consonance with the reality of Gambian society. For example, he pioneered the reforms of The Laws of England Application Act, the Wills Act, the Mohammedan Laws Application Ordinance, as well as the Sale of Goods, Companies and Partnerships laws among others between 1984 and 1994.