

JUDICIARY, FIA TO COLLABORATE IN PROMOTING EFFECTIVENESS OF THE ANTI MONEY LAUNDERING LAWS

Following the successful removal of Uganda from the list of high risk jurisdictions with weak Anti Money laundering systems, key players in the sector have embarked on laying strategies for sustainability measures

In this regard, the management of the Financial Intelligence Authority (FIA) which is conscious of the next Mutual Evaluation slated for 2028, has reached out to the Judiciary to discuss mechanisms of improving the effectiveness in the prosecution and adjudication of money laundering/terrorism financing related cases.

Led by the Executive Director, Mr. Samuel Were Wandera, the FIA team comprising mostly of the legal minds, on Tuesday (February 27, 2024) held a meeting with the Principal Judge, Hon. Flavian Zeija at the High Court premises, Kampala to discuss a wide range of issues including capacity building of judicial officers to appreciate the threats posed by the financial crimes and make decisions commensurate with the risk levels.

His Lordship Hon. Zeija acknowledged that Money laundering is a global challenge and had not spared the court system, adding that the judicial can be infiltrated by money laundering perpetrators. He lamented that Uganda's economy being largely cash-based, it is difficult to track money laundering transactions in the financial systems and "I don't ourselves going cashless soon with a credit card used deep in the remote areas". He applauded the FIA management for initiating collaboration with the judiciary to strengthen their respective roles in the value chain.

On his part, the FIA Executive Director, Mr. Samuel Were Wandera said Money laundering is one of the leading concerns the international community is grappling with and requires each country to have in place an effective system with various entities involved in the value chain at strategic and operational level. He stressed that the judiciary has a key role to play being towards the end of the value chain through the rulings/decisions against the perpetrators. Mr. Wandera said the Ministry of Finance, Planning and Economic Development has asked the concerned authorities to ensure Uganda never goes back to the Grey list, which calls for purging of the gaps and inter-agency relationship in implementing an effective system of detecting and preventing the vice.

The FIA boss disclosed that the last National Risk Assessment of Money Laundering and Terrorism Financing (ML/TF) indicated the leading crimes and sources of illicit proceeds as Corruption, Tax evasion, Counterfeiting and Human Trafficking. He argued that while the prosecutors and the judicial officers look at these predicate offenses, they should also pick interest in the money laundering ingredient to be included on the charge sheet.

“It is important to note that before illicit money is laundered, the criminal first commits an offence which in essence generates the illicit funds that are later on laundered with the ultimate objective of disguising the illegal source of the funds. The crime that generated these funds is what is commonly known as the predicate offence. Therefore, it has been observed that, many judicial officers only focus on the predicate offence, which leaves the criminals with the laundered funds at their disposal which is also their motive,” Mr. Wandera observed.

The Executive Director argued that since the ultimate objective of the Anti-Money Laundering Framework is to deny criminals from benefitting from the illicitly gained wealth, focusing on only the predicate offence by the judicial officers defeats this purpose/objective of fighting the vice, yet the Anti – Money Laundering Act, 2013 as amended has even more punitive penalties that may even provide for confiscation of property and forfeiture.

The FIA top leadership on December 11, 2023, had an engagement with the Lady Justice Damalie Lwanga – the Head of the Judicial Training Institute on how the Financial Intelligence Authority could partner with the Institute to explain to the judicial officers on the application of the ML/TF related cases.

In respect of the rampant wildlife crimes, the FIA team told the Principal Judge that much as the Judiciary designated Uganda's pioneering wildlife court in 2017 at Buganda Road, Kampala, available reports indicate that, this court has since convicted more than 600 wildlife traffickers which is a great milestone for the country towards the fight against wildlife trafficking. Despite this great achievement, wildlife related crimes are still on the rise as indicated in the Money Laundering and Terrorism Financing National Risk Assessment report, 2023 which was launched by the Hon. Matia Kasajja, Minister of Finance, Planning and Economic Development in August, 2023.

It should be noted that Uganda adopted an all crimes approach to fighting money laundering. This implies that all crimes that generate illicit funds that are later on laundered are considered predicate offences.

Unfortunately, currently the Wildlife court is not adjudicating money laundering cases in addition to the predicate offence of wildlife trafficking, because; It does not have the jurisdiction to adjudicate money laundering cases; the Police investigators submitting case files to the prosecutors are not including the case of Money laundering on the charge sheet; and The prosecutors are not considering guidance to Police investigators to include the offence of Money Laundering on the charge sheet

In order to ignite the adjudication of money laundering cases in the Wildlife Court, we pray that this same court can be given jurisdiction powers to be able to preside over Money laundering cases.

We believe that once this is done, and coupled with the Anti Money Laundering capacity building of Police Investigators, Prosecutors and Judicial Officers, Uganda shall go a long way in curbing wildlife crimes particularly because, the AMLA, 2013 as amended provides for more punitive penalties that not limited to imprisonment or payment of fines only but provides for confiscation of property and forfeiture of the convict which facilitates denying the criminals to benefit from illicitly gained wealth and therefore ultimately make commission of crimes less attractive.

Regarding Garnishee Court Orders, the FIA ED argued that there are some judicial officers who had issued garnishee orders through the various courts where they reside which is constitutional within their discretion.

However, “we have noticed a trend where criminals hood wink some judicial officers into issuing garnishee orders ex-parte for ulterior motives. Some of such affected clients run to the FIA to seek protection of their funds from being withdrawn from their accounts once Banks inform them of such orders which would be issued by court(s) without their knowledge.

Your Honor, some of the affected clients have successfully appealed against these garnishee orders. It is our prayer that with your indulgence, Judicial Officers are encouraged not to issue Garnishee orders ex-parte.

In concluding, The Principal judge pledged to study and assess the concerns raised including the possibility of regulating Garnishee orders and the issue of parallel financial investigations by the system to cater for the ingredient of money laundering associated with the predicate offenses.

The Principal judge welcomed the proposal of capacity building for the judicial officers during their periodic engagements as has been done by the Uganda Revenue Authority and other specialised entities.

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