

DAVID MARAGA: HAUNTED BY WHO? HAUNTED BY THE GHOST OF COLONIALISM

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Introduction

In his inaugural lecture on, GHOSTS & THE LAW, Prof **J. Oloka-Onyango**, introduces the concept of the ghost, he claims that Uganda has for long been haunted by ghosts and also acknowledges the fact that he, Oloka, has also been haunted by ghosts and that every time he thinks that the ghost is dead and buried, the ghost resurrects each and every time. But Oloka was not the first and the last person to be haunted, in Kenya, the honorable chief justice is seen to be haunted by a ghost, but however unlike others, he is not calling for help. Unlike **Bitek**, who is calling for help, he does so in his ‘song of Lawino’ {1}

The smell of carbolic soap;

Makes me sick;

And the smell of powder;

Provokes the ghosts in my head;

It is then necessary to fetch a goat;

From my mother’s brother;

The sacrifice over;

The ghost-dance drum must sound;

The ghost be laid;

And my peace restored.

The British colonialists left Kenya 50 years ago but their legacies are deeply entrenched in Africans, however the oppressor is gone, the oppressed still wants to maintain the slavery chains, and Africans have rid themselves of many vestiges of British colonial rule. But perplexingly,

there's one symbol that African courts refuse to let go: those wigs and robes. Or is the oppressed afraid of the ghost?

DAVID MARAGA AND THE GHOST

The ghost is haunting our chief justice, after the 2017 august elections and the clear assurance of Raila Odinga that he would be going to the Supreme Court to seek redress, the ghost that chief justice emeritus, Willy Mutunga had buried, resurrected and showed its ugly face again. It came from the Registrar of the Supreme Court. The notice issued by the Registrar of the Supreme Court convening the unusual 7pm pre-trial conference for Mr. Raila Odinga's presidential election petition concluded with a reminder: "Kindly note that all Counsel appearing before the Court shall be fully robed". Now, this is the ghost that is giving our Chief justice sleepless nights, he sees the ghost when he walks during the day and in his dreams.

WHY IS IT A GHOST?

The British gave up their last colonies in Africa half a century ago. Leaving their legacies behind, one of these legacies are their wigs, the wigs and robes are perhaps the most glaring symbol of colonial inheritance at a time when that history is being dredged up in all sorts of ways [2]. These wigs are ludicrously colonial. These ill-fitting, itchy wigs are colonial in nature. We have failed to restructure our own culture. In Malawi, a writer is calling for the bringing down of the robes and wigs because they are a symbol of colonialists.

'They are a symbol of a colonial legacy and our inability to ["restructure our colonial institutions to reflect our culture and needs"](#). Yet, several years after independence, [commonwealth nations continue to cling on to this garb](#) signaling continued psychological and economic attachment to

the Britain. The periwig (or wig) is a colonial tradition inherited together with the British colonial judicial institution.”[3]

It is to be remembered that already the newly independent British American colonies decided to ditch this tradition after their independence because they wanted their judicial system to signal the ideology of their new nation and new judicial system. When the United States became independent from England, Thomas Jefferson and other founders opposed official garments for the judiciary because they saw the wig and robe as symbols of a rejected system. Thus the “aristocracy of the robe was eliminated.”

The wigs serve as a daily reminder of our failure to reform our inherited institutions and truly transform our societies. This includes ensuring social, judicial and economic justice within the legal institutions.

The robe is a connotation of colonialism, it’s a monument that serves a wrong purpose, and it seeks to remind us that it’s back to the colonial days, to the days when the judiciary was characterized of rampant corruption, where justice could only be accorded to the poor. The wigs and robes which are in their entirety a reminder that our new constitution serves no purpose, it is a reminder that our 2010 constitution is not progressive and transformative as appreciated by many. The wigs and robes is a mockery to those who fought for independence, to those who went to the bush to chase away the colonialists and to those who fought for the constitution. The wearing of long red and green robes and horsehair wigs, a throwback to an era of British colonial rule, it is a neo-colonialism attitude.

Is there a reason as to why judges and advocates should continue wearing wigs and robes?

Walter while quoting Thomas Jefferson, he states that the wigs made English judges look “*like mice peeping out of oakum.*” [4]. **Charles Yablon**, a professor at Cardozo School of Law, says that the wigs and robes melded into courtroom tradition for pretty simple reason: “In short, English judges and barristers began wearing wigs and robes because *everybody* in polite society was wearing wigs and robes in those days. They continue to wear them because nobody has ever told them to stop.”[5]. Propagators of the idea that judges should continue wearing wigs and robes, hold the view that it is professional to do so. They are of the view that

Wigs of the day denoted experience through their size and also denoted that those who wore wigs while in a particular official position were different from their normal garb outside of those offices. In court, for example, lawyers represented people who have the God-given right to an impartial, professional lawyer who relied on dealing only with the truth, and a judge who would uphold the truth and the law. In defense or prosecution the impartiality and the demonstration of the office was represented by the look of the lawyers and the judge who covered their person in a robe and upon their head. People saw this as being impartial to the law. Keep in mind, this is the same thinking behind many modern day uniforms. For example, police officers have a specific uniform as do soldiers of various stations, nurses, doctors, even those who play sports. The “uniform” says, “While I am on duty or representing a particular organization, idea or cause, I lay aside my own feelings and agendas and represent that system’ [5]

However the fact is, a mode of dressing and more so, this colonial regalia does not serve such a purpose, a lazy judge cannot be converted into a hardworking judge only on the basis of wearing

a rob. Of what significance is the wearing of robes and wigs to a drunk advocate? A conservative judge will remain to be one even when he is dressed in dresses and the colonial regalia?

A critic of the colonial regalia, Walter, aptly puts it that;

The argument that robes and wigs make the public respect courts is not cogent! Respect for a judge is earned by the quality of reasoning by the judicial officer and the integrity of their conduct. If a judge is a formalist thinker no number of wigs will bring respect, and earn the judge admiration. If a judge is concerned about respect and international acclaim, the route to earn that is clear: unquestionable integrity and independence, solid path breaking judicial decisions, and compassionate and humane – empathetic concern for litigants and members of the public [6]

The wearing of wigs does not enhance our jurisprudence or improve the thinking capacity of our judges. In a book chapter titled “The Cult of the Robe,” Judge Frank highlighted the robes’ negative consequences and arguments against wearing them:

- Robes hide their wearer, and can affect a false dignity and nourish pomposity, while shielding judges from rational inquiry.
- Robes convey uniformity in the law in a way that he does not believe exists; if laws were uniform, he argues, judges would not write dissenting opinions.
- Robes have adverse effects on justice, by intimidating unaccustomed citizens and inexperienced lawyers.

He concluded that the robe was an outdated remnant of ceremonial government and should be discarded, thereby humanizing judges [7]

The robes are a form of “intimidation and fear that often characterize our courtrooms”. And as **Makau** puts it;

The idea is to scare the living daylight out of the peasants and workers – the majority of litigants who appear before Kenyan courts. Add a raised dais where the judges sit – looking down on, and dominating, litigants – and you wonder what justice has got to do with it [8]

Regarding judicial attire and access to justice, Dr. Willy Mutunga, the Chief justice emeritus, says, “While I have not found materials that squarely address whether there is, in fact, a relationship between judicial attire and access to justice, my research leads me to believe that overly formal attire has an inverse relationship with access to justice. From the early days of secular courts, authorities were concerned not with providing access to justice for the benefit of their citizens, but with reinforcing support for their own power. Robes and other formalwear were borrowed from clergymen to create the perception of a dignified reign, or from nobles to display their reign’s wealth and power.’ And concludes by noting that *In the Kenyan case judicial attire and address has been a colonial and neo-colonial imposition [9]*

Conclusion

The wearing of wigs and robes which are colonial relics serve no meaning purpose. It is a ghost that needs to be buried once again, it is a ghost that should be discarded at all cost even if it calls for the performance of the African cultural rights and the words of **Rianna Oelofsen**, are important here, he states that

To claim that the colonial project stops having an impact on the newly decolonized country and its citizens, is to misunderstand how deeply the colonial project affected these countries and their citizens. In order to overcome the legacy of colonialism, it is necessary to also decolonize the

intellectual landscape of the country in question, and, ultimately, decolonize the mind of the formerly colonized [10]

It is high time we help our chief justice escape the ghost , whereas Fanon, in his book, *Black skin, white masks* “is meant to liberate the black man from the arsenal of complexes that germinated in the colonial situation”[11] it is time to liberate Maraga from the colonial regalia. Wigs are supposed to confer dignity, but I think that they make the wearers resemble sheep [12]

1. Okot p’Bitek, Song of Lawino

2. [Kevin Sieff](#) ‘It’s been 50 years since Britain left. Why are so many African judges still wearing wigs? Last accessed 18/11/2017 , <https://www.washingtonpost.com/world/africa/its->

been-50-years-since-britain-left-why-are-so-many-african-judges-still-wearing-wigs/2017/09/14/6dc03b50-7ea6-40f8-9481

3. **Bring down the African big wigs** <https://www.theguardian.com/world/2012/oct/03/malawi-uganda>

4. Walter Khobe, Chief Justice David Maraga Embraces Colonial Relic and Symbol of Judicial Impunity, also available on <https://www.theplatform.co.ke/?p=163>

5. Dr. C. Matthew McMahon Wigged Out, Why did the Puritan's Wear Wigs?

<http://www.apuritansmind.com/puritan-worship/wigged-out-why-did-the-puritans-wear-wigs-by-dr-c-matthew-mcmahon/>

6. Walter Khobe, supra ft 4

7. Jerome Frank, Courts on trial: myth and reality in American justice

8. Makau Mutual, Judges and lawyers donning wigs, robes are out of place

Please see <https://www.standardmedia.co.ke/article/2001239955/judges-and-lawyers-donning-wigs-robes-are-out-of-place>

9. Dressing and addressing the Kenyan judiciary: reflecting on the history and politics of judicial attire and address; Dr. Willy Mutunga, Buffalo Human Rights Law Review

10. **Rianna Oelofsen**, DECOLONISATION OF THE AFRICAN MIND AND INTELLECTUAL LANDSCAPE

11. Fanon, F. 2008 [1952]. *Black skin, white masks*, translated by R. Philcox. At pg. 14

12. *Laura Hoyano, Wigs, Skeletons, Bibs, Bands, and Bundles: An Albertan Barrister Deciphers the English Court of Appeal (Criminal Division) ALBERTA LAW REVIEW (2014) 52:1, see also <https://www.albertalawreview.com/index.php/ALR/issue/view/2>*