

Kenya School of Law

ADVOCATES TRAINING PROGRAM

2015-16 ACADEMIC YEAR

Trial Advocacy

QUALITIES OF A GOOD TRIAL LAWYER

Samuel Akhwale
Lecturer,
Kenya School of Law

OUTLINE

Qualities in General

Specific Qualities(approximately eleven in number)

How they are applied

QUALITIES IN GENERAL

Are not exhaustive.

Are qualities isolated over the years as those which are desirable.

In many instances they could overlap.

Qualities of a good Trial lawyer-list

Palmer and McQuoid in “Basic Trial Advocacy Skills”

- **Clarity and order of language.**
- **Honesty and integrity.**
- **Judgment.**
- **Objectivity.**
- **Courage.**
- **Alertness.**
- **Tenacity.**
- **Sincerity.**
- **Humanity.**
- **Hard work.**
- **Professionalism.**

1. Clarity and order of language

“Communication is the lifeblood of the Trial lawyer’s profession”-Palmer and Mc Quoid.

“Communication is a dynamic process that involves two or more individuals exchanging messages in order to Share meaning, create understanding and develop relationship”- Majalia Mjomba, PhD

Clarity-contd.

“The biggest problem with communication is the illusion that it has been accomplished” -George Bernard Shaw

Clarity and order of language-skills

- Put questions clearly and logically to witnesses.
- Address court with clarity, in a logical sequence.
- Obscurity and ambiguity can be irritating.
- Remember it's client's case at stake.
- Keep questions and sentences short.
- Speak slowly.

2. Honesty and Integrity

It is on account of:

- 1) Their being officers of the court.
 - 2) The duty they owe to the client.
- Disclose relevant decisions.
 - Do not mislead the court.

Areas to demonstrate honesty and Integrity

What you communicate to the court :

- With regard to identity of self and of client.
- With regard to matter pertaining to client(e.g. why is not in court).
- With regard to documentation that is part of the court process.
- With regard to the court record.
- With regard to the Law.

Consequences of dishonesty

- Loss of goodwill of the court and other parties in the court process.

Can your word be your bond?

- Disciplinary proceedings leading to being struck off the roll.

3. Judgment

Ability to make appropriate tactical decisions when conducting a case.

- Do so in consultation with the client.
- Keep client well briefed on the strategy.
- Give client sufficient information to enable them make an informed decision.
- Be able to think on your feet.

Thinking on your feet

May mean withdrawing an Application or an Appeal .

See John Khaminwa, SC, in *Mombasa Court of Appeal Criminal Appeal No. 116 of 1995 Johana Ndungu v Republic*.

4. Objectivity

“Until the lion has his or her own storyteller, the hunter will always have the best part of the story. (English)”-

Ewe-mina ([Benin](#), [Ghana](#), and [Togo](#)) Proverb

Objectivity-contd.

Ability to consider the case dispassionately and objectively.

1. With a divided bar.

Is easier with a divided bar, where advocates, as opposed to Attorneys, have no personal ties with the client.

Are able to give both client and court an objective opinion unclouded by emotional attachment.

Objectivity-with an undivided bar

- Stand back from the case to analyse its progress as objectively as possible.
- Ethical requirements dictate that an advocate is not to become personally, as distinguished from professionally associated with the client's interest.

5. Courage

“Law is a form of civilized warfare”

“The trial lawyer is the modern representative of the medieval champion”-(Du Cann).

Courage-contd.

- Courage to stand up for the client's interest in spite of the hostility from the public or even the court.

May arise during applications for recusal.

- Courage to conceal personal sensitivities so that do not display emotion to the court or to the witnesses (for example if adverse testimony is made against the client).
- “A good lawyer must be a courageous actor”

6. Alertness

A good trial lawyer is always on the alert.

Alert to:

What witnesses are saying.

- Body language of the witnesses.
- Bench-If is writing, if is bored, irritated.
- Behaviour of the opposing counsel.
- Documents and exhibits in the case.
- Other happenings in the court.

Discussion Point

You have been instructed to attend a press conference by your clients, Planes Land Development Ltd. They have faced bad press of late because it is alleged that a piece of land that was allotted to them in 1995 and to which they have a title deed, was part of the grounds of Tiba Community Hospital. A few weeks ago the community forcefully erected a barbed wire fence round the property to include it within the hospital grounds.

Discuss how you will uphold the quality of courage in the press conference.

7. TENACITY

Means that the Advocate keeps pursuing the matter no matter the opposition from witnesses, bench, or opponents.

Tenacity-contd.

General rule: Never embark on course of action unless
You are ready to justify it.

Be prepared to defend the action until all proper
arguments in favour of it have been exhausted.

Trial lawyer is there to fight, not capitulate”(Du
Cann,59)

Tenacity-Bad case

Do not be tenacious about a bad case as that will work against the client's interests.

Don't support a case that cannot be supported.

8. SINCERITY

You must believe your client's case.

Desire to have your client succeed just as you succeed.

Conscious or subconscious indications to the court that you do not believe in the client's case will lead to court also not believing in it.

Sincerity –Contd.



Sincerity-runs through the trial

“Logic informs but emotion persuades”

<http://www.theatlantic.com/business/archive/2011/10/how-brands-were-born-a-brief-history-of-modern-marketing/246012/>

Not believing in your client’s CAUSE (not just case) places his service at the disposal of his opponent.

BUT: Lawyers should not lay down their gowns to make their clients’ causes their own.

Example of a cause-Sir. Thomas More

Refused to answer all questions regarding his opinions on the subject that the King was Supreme Head of the Church.

Stood by the precedent that *who (is) silent is seen to consent*)- understood that he could not be convicted as long as he did not explicitly deny that the King was Supreme Head of the Church.

9. Humanity

“Common touch” (Palmer and Mc Quoid)

Communicate easily and politely with people from all walks of life.

Categories:

- ❖ Advantaged v disadvantaged
- ❖ Rich v poor
- ❖ Urban v rural

Humanity-contd.



Pheroze -description

“Nowrojee is one of the very few members of the Asian communities to actively take up the cause of human rights. Many younger Kenyan attorneys cite him as an important mentor in their own legal work on human rights cases. He is generally quiet, but it is an intense quiet that has a Gandi-like quality to it. He even looks a bit like Gandi. And like Mahatma he is an attorney.”

Parties in a Trial are not robots

Have:

- ❖ Likes, dislikes
- ❖ Prejudices
- ❖ Preconceptions

Parties

- ❖ Judges-Trained to disregard prejudices
- ❖ Witnesses-NOT trained to disregard prejudices
- ❖ Fellow counsel-Trained but have a stake in the case

Humanity-attributes

- Understanding
- Courtesy

Benefits:

- ❖ Get answers you need from witness
- ❖ Get audience of the court.
- ❖ Get accommodation of parties to the suit.

10.HARD WORK

“Good trial lawyers are industrious and work very hard”(Palmer and Mc Quoid)

Claw the facts to know what happened in the case.

“What is the story behind the story”?

Areas of hard work

Detail :

- ❖ Dates
- ❖ Names
- ❖ Exhibit numbers
- ❖ Other pertinent aspects of the case

“Brilliant improvisation cannot substitute being conversant with important facts” (Du Cann)

Be conversant but do not necessarily memorise.

What goes into a court process

- ❖ Organising the facts- Witness statements, exhibits.
- ❖ Research on the appropriate and applicable law.
- ❖ Anticipating the opponent's side.
- ❖ Visit to the relevant scene.
- ❖ Obtaining Forensic and other expert reports.
- ❖ Making a study into an area of specialty.
- ❖ Organising the documentation, including numbering, lettering, highlighting.

11. Professionalism

Lawyers should at all times maintain the honour and dignity of the profession.

In public as well as private life.

Abstain from behavior that tends to discredit their profession(*International Code of Ethics Rule 2*)

Professionalism-contd.

Render legal assistance with scrupulous care and diligence including when assigned as counsel for an indigent person.(International Code of Ethics rule 10)

Provisions of the Advocates Act

Chief Justice to be satisfied regarding the qualifications, service and moral fitness of one petitioning to be admitted to the roll of Advocates. **(Sec.15(3))**

One to be appointed as Senior counsel must

Be of irreproachable professional conduct and be one who has rendered exemplary service to the legal and public service in Kenya **(Sec.17(1))**

Advocates Act-contd.

“No advocate shall employ or remunerate any person who is disqualified from practising as an advocate by reason of the fact that his name has been struck off the Roll or is suspended from practising as an advocate”
(Sec. 41)

Constitution and Public Service

CHAPTER 6-LEADERSHIP AND INTEGRITY

Sec.75-Conduct of State Officers.

A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—

- (a) any conflict between personal interests and public or official duties;
- (b) compromising any public or official interest in favour of a personal interest; or
- (c) demeaning the office the officer holds.

Discussion Point

FROM MY INBOX,

***“Hi J,
i need help,i have a lawyer by the name of JJJJ XXXX who
conned me 5.3m kshs last year which was for purchasing an
apartment.***

***He also issued me with bad cheques worth the amount after i
told him i was going to report him to LSK. I am not in the
country and i have been forced to travel five times to Kenya
since June to make a follow up on this case.***

***We have gone to court but my lawyer has been unable to serve
him with summons since he has gone into hiding.I have sent
you all evidences on your mail.***

***I would like you to Expose him on buyer be ware so that other
Kenyans don't fall prey.***

Kindly warn Kenyans.”

Discussion point-contd.

“W: This man has been suspended from practice for a couple of years...”

“So it means any conveyance deal he handled in those years of suspension is null and void. J kindly let the victim know that”

“yes he had an office with his partner near XYZ and were kicked out.

His partner OPQ is also Suspended by the LSK...”

Discussion point-Question

Discuss the aspects of qualities of a good trial lawyer that arise from the above scenario.

The discussion could include what qualities are missing from the lawyers described above, and how in an ideal case, a lawyer with good qualities should have conducted themselves.

Q and A

????????????????????????????????

AAAAAAAAAAAAAAAAAAAAAAAA