The art of writing a judgment: an appraisal of the form and content of a judgment of a trial court under the Cameroon Criminal Procedure Code

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Abstract

A judgment of a trial court in a criminal case in Cameroon is the decision of the Court that disposes of the charge or a committal order and renders the Court *functus officio*. This paves the way for any of the parties to file a notice of appeal to challenge the judgment or, failing that, to cause it to be executed. A judgment is, however, not only the explanation of the position of the Court: it is also a means of proving that due process was respected during a trial. In order to render it regular, a Court decision should contain adequate proof of compliance with the mandatory formalities required by law. This is because failure to mention that these formalities were accomplished leads to the presumption of their violation. The legal instruments regulating the form and contents of a judgment in a criminal case before a trial court in Cameroon are Law No 2005/007 of 27 July 2005 instituting the Criminal Procedure Code, Law No 2006/015 of 29 December 2006 on Judicial Organization, as amended and supplemented by Law No 2011/027 of 14 December 2011, and Law No 2016/7 of 12 July 2016 relating to the Cameroon Penal Code. Translation from French into English is at times faulty, inaccurate and misleading. The absence of the precise form and contents of a judgment under the *Code D'Instruction Criminelle* and the Criminal Procedure Ordinance has been a major setback in writing judgments and, therefore, in the absence of a unique format, recourse has to be made to the good practices of writing judgments. In this regard, the unification of laws and the inception of the Criminal Procedure Code has resolved many problems. This article reveals that a proper judgment has three parts: the introduction or heading, the evaluation of evidence or reason, and the verdict. It recommends that these should be read in open court and should have a suit number at the beginning and end with orders, a reminder to the parties of their right of appeal, an executory formula and signatures. Therefore, any judgment shy of all the parts and contents as analysed in this article will be an absolute nullity.

Keywords: form, contents, judgment, trial court, Criminal Procedure Code

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1. Introduction

Cameroon is a bi-juridical country with two legal systems in operation. There has consequently been a need for the two systems to be unified for the purposes of criminal procedure and, most especially, in written judgments. A judgment is a Court's final action that settles the rights of the parties and disposes of all controversial issues, except for the award of costs and enforcement.[1] A judgment is the expression of the conclusion that a judge has come to after hearing the parties and applying the law to the evidence adduced during the trial. It is also the statement of the inferences that flow from the application of the relevant law to the facts that the judge has found to prove to be required standard. A judgment should be expressed in a simple language that is easily understood by all. It should present the findings of the judge and the justifications for those findings. It should be written in a simple, clear and logical style that persuades the parties, most especially the losing party, to accept that the case has been fairly heard and that the judge has come to a conclusion which is the logical outcome of the evidence adduced, even if the losing party does not agree with the conclusions. This article examines the elements that a good judgment should contain, which are the heading or the introduction, the evaluation of the evidence or the reasons, and the conclusion or verdict, the court order and the executory formula. A good judgment is one that is clear and easily understood by readers: a judgment in itself should therefore not warrant further interpretation and so the language used must be simple, easily communicable and understandable. The simple language used in a judgment reflects clarity of mind: a sound thought, if not couched in easy language, will not have the desired effect.[2] Each of the elements of a judgment listed above is described below.

2. Fundamental issues to be considered in the delivery of judgments

A judgment is a decision of a Court that resolves litigation and determines the rights and liabilities of parties. In doing so, certain basic formalities should be followed where parties can obtain the judgment or the decision of the Court that adjudicated on the matter. Before it is pronounced or delivered in court, a judgment must have been written. It must be delivered within 15 days from the last day of

1 Bryan A Garner *Black's Law Dictionary* 10 ed (Thomson Reuters 2014) 971.

2 K Balram Gupta *The Art and Craft of Writing Judgments* (Chandigarh Judicial Academy 2021) 2, available at https://cja.gov.in/Art%20craft%20of%20writing%20Judgment%20by%20Dr.%20B.%20Gupta.pdf [Accessed 22 January 2024].

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the hearing; it must be typed and numbered; and it must have been deliberated on, done and signed by the judges who heard the matter and also the registrar-in-attendance.

2.1 Judgment must be written before it is delivered

A judge must record their judgment in writing before delivering it. The judgment should bring out the issues for adjudication, the evidence adduced in proof of the judgment, the decision of the Court and the reasons for the decision. A judgment cannot be delivered orally without first having being written. By 'oral judgment' we mean a judgment which has not been reduced to writing before it is delivered. Section 6(4) of the Cameroon Judicial Organization Law requires that all judgments be written before they are delivered. Therefore, it is wrong to deliver an oral judgment or to deliver only the verdict of a judgment when the reasons for the decision have not been reduced to writing before being read in open Court. The reason for this is that once a judge pronounces the verdict and the sentence, where necessary, they become *functus officio* and are no longer competent to introduce any further elements in the file. Any reasoning written after the verdict has been pronounced has no legal value and is accordingly treated as material extraneous to the proceedings. This was the situation in the case of *Yess Djeng Aristide v The People*,[3] where the appellant (the accused) stood trial before the Military Tribunal Buea and was found guilty of the offences charged. The Court delivered the verdict immediately after the close of the hearing and wrote the reasons for the judgment only a few days later. On appeal, the South West Court of Appeal held that a judgment must be reduced to writing before being delivered. Since the full judgment was written after the verdict and the sentence had been pronounced, it was consequently nullified.

Writing a judgment before delivering it helps to avoid the kind of incredible situation that arose before the Supreme Court of Cameroon in *PG Far-North Court of Appeal v Siddi Bouba & others*, a matter adjudicated before the advent of the CPC. The trial of the first respondent before the Far-North Court of Appeal ended with the Court convicting and sentencing him to an imprisonment term lower than the minimum provided for by the Penal Code. This being a matter followed by the chancellery, the Procureur General immediately reported to the Minister of Justice, decrying the fact that the Court had handed down the lenient sentence without invoking mitigating circumstances in the convict's favour. An appeal was therefore filed with the sole ground of appeal being the illegality of the sentence. The subsequently written judgment was at variance with what was pronounced in open court

[3] *per* ML Abomo JSC, Njock Kogla JSC and M Lonchel JSC.

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and recorded by the registrar-in-attendance in the record book, for the Court subsequently made mention of mitigating circumstances to justify its lenient sentence. This alleged alteration of the judgment rendered the appeal of the Procureur General an exercise in futility and equally implied that he had made a false report to his superior. Worthy of note is the fact that under the law in force at the time (the *Code D'Instruction Criminelle*) in the French-speaking regions, it was permissible to write the reasoning of the judgment after the verdict had been pronounced. Moreover, the record book was handled by the registrar-in-attendance and not by the judge, as it is the case today under Cameroon CPC, which is one of the major innovations brought by the CPC. It was argued by the appellant at the Supreme Court that the subsequent written judgment differed substantially from what was pronounced in open court and by implication the Court of Appeal judges were accused of having altered their judgment. The Supreme Court held that what is recorded in the judgment is considered more authentic than what was written in the record of proceedings by the registrar-in-attendance. It was therefore presumed that the registrar-in-attendance and the legal department had not received or recorded the correct verdict of the Court. The appeal was consequently held to be unfounded and dismissed.

Such an imbroglio should not arise today under the CPC; or, if it arises at all, the outcome will be different owing to the innovations brought by s 6(4) of Law No 2006/015 of 29 of December 2006 on the Judicial Organization. The reasons for the judgment must be written before it is delivered; and as per the provisions of s 381 of the CPC, the record of proceedings must be taken down by the judge and must be presumed to be the authentic record of the trial.

2.2 Judgment must be typed and numbered

To preserve the authenticity of a judgment, it must be typed, numbered and recorded in a special register kept at the registry of the Court that delivered the judgment. This administrative requirement is provided for under ss 405 and 406 of the CPC and it is aimed at facilitating archiving and referencing and also at making easier the tracing of decisions rendered by the Courts.[4]

[4] This requirement of the law is strictly implemented by most jurisdictions, except in some jurisdictions of the English-speaking part of the country, where judgments still have to reference the suit number of the action. Some courts in the North-West Region have, however, started complying with this requirement of the CPC – which is very important in the archiving of decisions. It is recommended that the other Courts in the English-speaking regions should follow suit.

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2.3 Judgment must be deliberated, done and signed by judge(s) who heard the matter and the registrar-in-attendance

According to the CPC, adjudication must be performed by the same judges and assessors who heard the matter or who received the evidence adduced by the parties. Proof is therefore established by the signature(s) on the original copy of the judgment, which, in terms of the provisions of s 405 of the CPC, must be those of the judge(s) and the registrar-in-attendance. No matter how complete and explicit the evidence adduced during a trial may be, a person who was not present during the hearing cannot deliberate on evidence adduced, for it is only a judge who had the opportunity to listen to the arguments raised by the parties, observe the demeanour of parties and witnesses and had the opportunity to observe the physical evidence adduced who can produce a fair judgment.

In the case of *Dame Guening Philomene v The People & Meliphe Theophile*,[5] the record of the proceedings showed that the matter was heard in the Littoral Court of Appeal by a collegiate Bench composed of Nzonteu Jacob JCA, Wannie Bouba JCA and Etienne Sockeng JCA; but the deliberation and judgment were done and signed by Nzonteu Jacob JCA, Wannie Bouba JCA and Mbono Francois Xavier JCA. The Supreme Court of Cameroon accordingly nullified the judgment on the ground that a judge who does not take part in the hearing is barred by s 470(1) of the CPC from taking part in the deliberations and delivering the judgment.

A similar situation arose in the case of *Ippolito Dominique & 1 other v The People & 1 other*,[6] where the judgment was nullified because the panel of judges at the hearing was not identical to the panel that deliberated on and handed down the judgment.

An incongruity of a different nature arose before the North West Court of Appeal in the case of *Ngwa Tangie Grace Ngum v The People & 1 other*.[7] The magistrate whose name was found on the heading of the judgment of the Court of First Instance Bamenda was different from the one who signed the original copy of the judgment, that is, a judge other than the one who had heard the matter. This was found to violate the mandatory provisions of s 405 of the CPC and it is consequently null and void.

In the case where the matter was heard and determined by a collegiate Bench of judges, all of them are obliged to sign the judgment, because failure by one of the collegiate members must render the judgment a nullity. This position was upheld by the Supreme Court

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5 Judgment 70/P of 16 July 2015 (unreported).
6 Judgment 30/P of 15 May 2014 (unreported).
7 Judgment in suit CANWR/MS/6C/2014 of 24 March 2015 (SLR vol 6 108).

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of Cameroon in the case of *Ngonseu Nicholas v The People & Kambou Noe*.[8] In this case, the judgment was signed only by the president of the panel and the registrar-in-attendance. The Court held that the absence of the signature of all the judges of the collegiate Bench implies that they did not take part in the deliberations, which renders the decision arrived at a nullity. In the case where assessors are involved in a trial, they are obliged to take part in the deliberations and are supposed to sign the decision arrived at, because failure must lead to a nullity in the decision. This was the decision arrived at by the Supreme Court in the case of *Mba Christophe & 1 other v The People & Awah Peters & others*;[9] in this case, the president of the collegiate Bench of the Military Court did not deem it necessary to cause the military assessors of the panel to sign the judgment with him; the Supreme Court held that even if the members of the collegiate Bench are not magistrates, they have the same deliberative powers and must sign the ensuing decision. The Court held that signing the judgment alone implies that the president of the collegiate Bench arrived at the decision alone.

Section 9(1) of law 2006/015 on judicial organisation states that a judgment is a judicial act and must bear the names of the magistrate(s) on the Bench who took part in the decision-making and it must therefore be signed by them. Acts whose accomplishment requires the assistance of a registrar must bear the name and signature of the registrar. Worthy of note is that the registrar referred to here is the registrar-in-attendance and not the registrar-in-chief. Where a judgment is signed by any registrar other than the one who took part in the proceedings, the judgment will be null and void. This was the case in *Carriere du Littoral v The People, Ebai Tanyi Victor & AES SONEL*.[10] Where the records of proceedings and the heading of a judgment showed that Mrs Simbo Adama was the registrar who took part in the proceedings but the judgment was signed instead by Registrar-in-Chief Luku Jean Marie, the judgment was nullified. In this matter, the Supreme Court of Cameroon held that considering that it ensues from the above legal provisions (ss 389(2)*(c)* and 405 of the CPC) that the registrar who assists the Court in the hearing of the case is a member of that Court and that their name must be mentioned in the said decision – which must, among other requirements, carry their signature and not that of the registrar-in-chief of the said Court – it was therefore by incorrect application of the above legal texts that the judgment on appeal was signed by somebody other than Simbo Adama, who had sat with the learned judges of the Court of Appeal.[11] Consequently,

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8 Judgment 176/P of 14 July 1988 (RCJCSC part 2 vol 1 181).

9 Judgment 182/P of 14 July 1988 (RCJCSC part 2 vol 1 182).

10 Judgment 31/P of 15 May 2014 (unreported).

11 *Per* Mbakop Saker JSC, PA Takam JSC and T Zibi Nsue JSC.

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the judgment was nullified. It should be noted here that all judgments must be signed by those who took part in the matter and in producing the judgments.

2.4 Delivered within 15 days

Pursuant to the provisions of s 388(1) of the CPC, judgments must be delivered either immediately or within 15 days after the hearing is closed. This provision of the law seeks to put an end to the practice under the *Code D'Instruction Criminelle* and Criminal Procedure Ordinance by which the delivery of judgments remained pending indefinitely or for an unreasonably long period, causing hardship to the parties who have the right to have their disputes decided with celerity. With the advent of the CPC, a judge must inform the parties of the day when the judgment will be delivered. Adjourning a matter for judgment does not bar a judge from reopening the hearing to gather additional evidence before passing judgment. The CPC is silent on the consequences that ensue if a Court fails to deliver its judgment within 15 days, and Appellate Courts have been reticent to nullify judgments based solely on the fact that they were not delivered within 15 days.

3. Content of a heading or the introductory part of a judgment

The CPC mandates a judgment to begin with a heading and for the following information be included in the heading of every judgment:

- the name of the Court;
- the full names of the members of the Court;
- the date on which the judgment is delivered;
- the full name and age of the accused person;
- the full names of the witnesses; and
- the full name and age of the interpreter.[12]

In addition, the following information must be included: the suit number, the title of the case, a statement as to whether the parties, their witnesses and counsel are present, and a statement as to whether the parties are represented, which should specify who appeared for the prosecution, the defence and the civil claimant, if any.

In some cases, nullity was extended to proceedings where the instrument seising the Court was wrongly headed, as it was in the case

[12] See s 389(2) of Law 2005/007 of 27 July 2005 on the Cameroon Criminal Procedure Code.

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of *Nkwanji Chungo Salifu v The People and Nkangamih Idrisu*.[13] In that matter, the nullity invoked was as a result of the incorrect heading of the act of accusation.[14] The act that seised the Court was headed 'Court of First instance Ngoketunjia Judicial Division' instead of the 'Court of First Instance Ndop'. The legal department urged the Court to consider it a *de minimis* arising from inadvertence and that the error should be overlooked. Counsel for the second respondent based his arguments on the *dictum* of Oputa JSC in *Adekeye v Akin-Olubade*,[15] where the North West Court of Appeal went ahead and nullified the judgment because of a wrongly headed Committal Order. In other instances, the South West Court of Appeal in *Sona Hycenth Eben v The People & 1 Other,*[16] where the judgment was headed the 'Court of First Instance Meme Division' instead of 'Court of First Instance Kumba', the learned appeal judges held that where the jurisdiction of a court as a court of first instance covers all the subdivisions of a given administrative division, it does not mean that the court should bear the name of the division. The Court held further that stating the wrong nomenclature of a court in a judgment renders it a nullity. Also, in *Neh Tangie Anna v Tue People of Cameroon and David Shu Mandele*,[17] where the trial magistrate erroneously stated the name of the court as the Court of First Instance Mezam instead of the Court of First Instance Bamenda, the Court of Appeal of the North West Region declared the judgment a nullity. In *Anna Ainbfu (epse) Tanue v The People of Cameroon, Peter Ambe*,[18] the Court of Appeal of the North West Region, conforming with s 389(7) of the CPC, declared null and void the judgment of the trial magistrate which did not mention the age of the accused person contrary to s 389(2)*(f)* and (4) of the CPC. In *Ngeh Peter Tafor v The People of Cameroon and Dohjerimiah Penn*,[19] after reviewing the judgment under appeal in the light of the above terms (considered to be a proper translation or intention of the legislator), the Court of Appeal held that s 389(2) of the CPC was not violated when the part of the judgment known as the 'heading' did not contain the full names of the members of the Court, the full name and age of the accused, the full names of the witnesses and the full name and age of the interpreter but when they were found in other parts of the judgment. However, the judgment of the trial Court was declared a nullity for having been

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13 Judgment in suit CANWR/MS/177C/2016 of 31 October 2017 (unreported).

14 See the decision of the same Court in *Njoh Mbah Walters & 5 Others v The People & 8 Others* (CANWR/6C/2015 of 3 October 2017), where the proceedings were nullified because of an incorrectly headed Committal Order.

15 1987 3NWLR 60 at 2014.

16 Judgment in suit CASWR/21CR/2015 of 31 January 2017 (unreported).

17 Judgment in suit CANWR/MS/6C/2014 of 24 March 2015 (SLR vol 6 108).

18 CANWR/MS/62C/2012.

19 CANWR/MS/62C/2012.

based on a defective charge sheet, the title of which stated the 'Court of First Instance Mezam' instead of the 'Court of First Instance Bamenda'. The Court emphasised that the 'parts of the judgment' referred to in s 389(2) of the CPC ought not to be understood to mean a fable of contents for a judgment or a syllabus which states where each item that is enumerated should be found in the judgment.[20] According to the learned appeal judges, that section of the law should be considered as a type of syllabus or headnote in which each part of a judgment is numbered or underlined, indicating the exact place (in the judgment) where the point mentioned in each part must be found. The Court went ahead in the following *dictum* to state comprehensively what a judgment should look like:

> Our understanding of that section of our Procedure Code (s 389) after a close community reading of its two versions (but with a bias on the French version) is that, it has stated the essential components of every good judgment. Here, we understand the intention of the lawmaker to be that: before the magistrate or judge proceeds to evaluate the available evidence and arrive at his findings and conclusion of the law and fact (that is, '*motifs*' in French), there is an introductory part wherein the reader is served or furnished with the name of the convict, the suit number (although this is not even mentioned in the law), the date of judgment and the names of the actors in the case to wit: the names of the presiding judge or judges, the names and age of the interpreter, if any, and the oath taken by him, the names and age(s) of the accused persons, the names of the civil party, the names of all the witnesses in the case and the names of all the Counsel representing the parties.
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> Thereafter, that is, after stating the available evidence, evaluating it and arriving at the findings of facts and law, a good judgment must be seen to have a concluding portion ('*le dispositive*' in French) which contains amongst other things as the case may be, the Court's verdict of Guilty or Not Guilty, the previous convictions (if any) in the case of a conviction, the *allocutus*, the sentence imposed, the actual award made on the civil claim, the cost of proceedings taxed and set out, and the order for their payment, the parties' right of appeal, etc.
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> In our considered view, those are the essential components of a good judgment which from the French version of section 389 of the Criminal Procedure Code, a reader must come across instead of him looking only for a heading, the reasons and verdict as it is incorrectly stated in the English version of the law.[21]

From the foregoing one can infer that what is important is that the required information is found in the judgment, and preferably

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[20] CANWR/MS/62C/2012.

[21] *Per* AN Njie JCA (as then he was).

in the introductory part. There is no need to highlight the various parts through headings, although headings and subheadings are very helpful and ought to reflect a logical sequence. A judgment is going to be considered clear and coherent by looking at whether there is a sequence of headings and whether the sequence starts to explain the whole in a logical order.[22]

Where the abovementioned elements are not reflected in a judgment, it shall be a nullity, as was the case in *Jovel Lienus Mbah Timah v The People*.[23] In that matter, after the accused adduced evidence, a judge of the Court of First Instance Limbe proceeded directly to enter a verdict of guilty without headings in the judgment and without stating the reasons for upholding the verdict. The South West Court of Appeal accordingly nullified the decision of the Court, holding that it did not amount to a judgment because there was no heading and no reasoning. Furthermore, because the judge preceded the decision with the heading 'Ruling', the Court of Appeal held that no judgment had been delivered by the trial Court.

3.1 Date of judgment and name of court that delivered judgment

For a judgment to be valid, it must be delivered by a competent judge or Court, at a time and place appointed by law, and in the form required. And failure to mention the date will also render a judgment a nullity, as was the case in *Noh Sylvester v The People & 2 Others*,[24] where a judge of the Court of First Instance Batibo failed to mention the full date of delivery of the judgment in the heading of the judgment, only the year of delivery having been mentioned. However, the judge had mentioned the full date at the bottom of the judgment, but there was a mistake in the year of that date. In this matter, the North West Court of Appeal refused to nullify the judgment, but indicated that the total absence of a date of delivery could lead to nullity.

The CPC has made it mandatory for an interpreter to be appointed by the judge if the accused speaks a language other than one of the official languages understood by the members of the Court or where it is necessary to interpret a document. Failure to make mention in a judgment of the name and age of the interpreter, as required under s 389(2)(*d*) of the CPC, would cause a judgment to be nullified on appeal, as was the case in *Kogni Madeleine v The People & Fomat Jean*.[25] In that

[22] Lord Burrows *Judgment-writing: A Personal Perspective*. Annual conference of Judges of the Superior Courts in Ireland, 20 May 2021, 2.
[23] Judgment in suit CASWR/37CR/17 of 20 August 2019 (unreported).
[24] Judgment 07/2017 of 24 January 2017 (unreported).
[25] Judgment 121/P of 14 May 1998 (RCJCSC part 2 vol 1 758).

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matter, the Littoral Court of Appeal indicated in its judgment that it had been assisted by an interpreter, but failed to state the interpreter's name and his age. The Supreme Court held that this omission was fatal to the proceedings and accordingly the decision of the Court was quashed.

Where there was no recourse to an interpreter, no mention should be made of an interpreter in the judgment. This was pronounced upon in *Ngoenya Fotabongue Juliana v The People*,[26] where the South West Court of Appeal discountenanced the arguments raised by the appellant that the judgment should be nullified because the trial magistrate had failed to state in its heading that an interpreter was not used. After that, the judgment proper begins with the words:

Republic of Cameroon

In the Name of the People of Cameroon[27]

Judgment

Failure to insert the above caption at the beginning of a judgment renders it null and void. This should be followed by a sentence to the effect that the judgment is delivered in open court,[28] for example, 'This judgment is hereby delivered in open court.'

3.2 Reasons in a judgment

Giving reasons for a decision is fundamental to the legitimacy and credibility of judicial institutions. This is the *raison d'être* of s 7 of Law 2006/015 on Judicial Organization in Cameroon, which states:

> All judgments shall set out the reasons upon which they are based in fact and in law. Any breach of this provision, shall render the judgment null and void.

Generally, as a duty to the public at large and the parties in particular, Courts are expected to provide reasons for their decisions. This shows that the judge has listened to the contention of each party and equally demonstrates the reasons for one party winning or losing and, to this effect, it constitutes the arguments of the trial court in case of an appeal. The reasons in the judgment must be for all the Court decisions as ordained by s 7 of Law 2006/015 on Judicial Organization, because failure to do so renders a judgment null and void. Even in instances where the accused pleads guilty and their plea is accepted

26 Judgment in suit CASWR/36CR/2013 of 18 October 2016 (unreported).

27 See s 11 of Law 2006/015 of 29 December 2006 on Judicial Organization in Cameroon, as amended and supplemented by Law 2011/027 of 14 December 2011.

28 Section 389(6) of the CPC.

by the Court, the ensuing judgment must set out the reasons for the decision.

The practice observed in some courts in Cameroon by which, after an accused person's plea of guilty is accepted, some judges proceed to sentencing without setting out the reasons is, not proper. In the case of *Schouane Salinzouer Jules & 3 others v The People & 1 other*,[29] some of the accused pleaded guilty to the charge of aggravated misappropriation and forgery, the judge of the Lom and Djerem High Court, Bertoua, proceeded directly to pronounce the verdict and the sentence without delivering the reasons for the decision. The Supreme Court held that by sentencing the accused persons without setting out the reasons for the decision, the Court breached the provisions of s 389(3) of the CPC and s 7 of the Cameroon Law on Judicial Organization, thereby leading to a nullity in the decision of the judge.[30]

The reasons must demonstrate to the litigant or reader why the Court adjudicated the way it did. It should be expressed in a language that communicates accurately and plainly why the Court arrived at a given decision. It must be written in a simple, clear and logical style[31] that persuades the immediate parties to accept that the matter was fairly heard and that the Court has adjudicated in a manner it was entitled to, even if the party who lost does not agree with the conclusions.

In writing the reasons, it is not enough simply to copy and paste the statements or testimonies of the witnesses and then to proceed to adopt one version of the story and discard the other. The judge must analyse the evidence, determine what is and what is not important in the context of the case, make sense out of incoherent submissions, highlight the salient points, summarise the relevant issues, and present all of it in a manner that is easily understood by a broad audience. This part of the judgment should, therefore, have clearly identifiable segments arranged in a logical sequence. By breaking up the reasoning into several distinct parts, the judge will be able more easily to draft each segment and will be unlikely to leave out any vital issue that may cause the judgment to be nullified. The reasoning should begin with the points for determination, followed by a summary of the evidence adduced by each party during the trial, evaluating it and arriving at findings of facts and law.

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29 Judgment 18/P of 17 April 2014 (unreported).

30 The entire proceedings were equally nullified because the Court adopted the procedure pursuant to a plea of guilty regardless of the fact that some accused persons pleaded not guilty and others were tried in default.

31 Gupta (n 2) 2.

(a) Issues for determination

The reasons must relate to the criminal action and, where applicable, to the civil claim; and these are also known as the issues for determination – the points of discord between the parties. The issues for determination in a criminal trial are found in the allegation found in the charge or in a civil claim before the Court. It is therefore normal that the charge be stated *in extenso* or paraphrased in the opening lines of the reasons for the judgment, followed by the plea of the accused to the said charge. The substance of the civil claim, if there is any, should equally be mentioned, because it is the basis of the civil issue for determination. In the case where an accused pleads not guilty to the charge, the issue for determination is whether they committed the alleged offence. Where there are several counts, the issue for determination must be brought out for each count as well as arguments put forth by each of the parties in the trial.

(b) Evaluation of the evidence adduced at trial

Apart from requiring that the reasons (facts and the law) for a judgment be given, s 389(6) of the CPC and the Law on Judicial Organization do not provide for the format or details of what they really entail, so the magistrate or judge has some discretion as to style here. It may be advisable to begin this part of the judgment with a summary of the charge(s) or, if need be, a quotation of the full charge or counts (as the case may be), followed by an explanation of how the accused person came to court, and was identified, arraigned and pleaded, as some magistrates require.

Even though not required by any instrument, it may be necessary at this stage to state the elements of the particular offence: the material element and the mental element. These must be established by the prosecution in order to prove their case beyond doubt on the charge or on each count. This will guide the Court in stating the case of each of the parties: the prosecution, the defence and the civil claimant.

(i) Case for the prosecution

Having taken note of what the prosecution must establish from the elements of the offence, the magistrate or judge should summarise the case for the prosecution, that is, the facts and the evidence adduced through the testimonies of prosecution witnesses, exhibits and any visits to the *locus in quo*, if there was one. This summary should be written in a concise and coherent manner so that the parties can see that the writer has a proper mastery of the case and so that they can also read and understand the judgment. It is necessary to summarise what each witness said that is relevant to the case and to mention every exhibit and what transpired at the *locus in quo*, if any. It may

not be necessary to recount or copy all the testimonies as they appear in the record book, or even to state the examination-in-chief, cross-examination and re-examination, let alone any objections and rulings. This is why a judgment is different from a record of proceedings.

At the end of the case for the prosecution, mention should be made of the submission of the prosecution; the magistrate and/or judge should state the ruling on a *prima facie* case that was passed and whether it was explained to the accused person and what option was exercised.

(ii) Case for the defence

The same matters which have been discussed concerning the case for the prosecution are applicable here. The case for a civil claimant, if there was one, a summary of the facts, the evidence and the amount of the damages claimed, and also how they were substantiated, should be stated.

Submissions of counsel: The Court is required to respond to the submissions of each counsel on each count.[32] In effect, this means that the Court should apply its mind not only to the submissions but expressly state whether it upholds or rejects them, and give its reasons for doing so.[33]

Reasons proper: A good judgment is one which is readable and which covers all the aspects and reasons raised. The parties must without doubt know the reasons for winning or losing a case.[34] In terms of the Law on Judicial Organization, all judgments must set out the reasons upon which they are based in fact and in law.[35] Any breach of this provision must render a judgment void. Section 389(3) of the CPC simply requires that the reasons for a judgment should include both the facts and the law on which it is based.[36] This is the core of a judgment. It is here that the magistrate or the judge must show proof of a proper mastery of the elements of the offence (both the *actus reus* and the *mens rea*), the facts of the case and the applicable law. In *Tekah Vincent Teboh v The People Cameroon,*[37] the Court of Appeal of the South West Region, in conformity with s 389(7) of the CPC, declared null and void the judgment of the trial magistrate which did not conform to the above sections of the law. The magistrate failed to do so by not

32 See s 389(3) of Law 2005/007 of 27 July 2005 on the Cameroon CPC.
33 See also s 361 of Law 2005/007 of 27 July 2005 on the Cameroon CPC in the case where the accused person pleads guilty.
34 Garner op cit (n 1).
35 Section 7 of Law 2006/015 of 29 December 2006 on Judicial Organization in Cameroon.
36 Section 389(3) of Law 2005/007 of 27 July 2005 on the Cameroon CPC.
37 CASWR/02CR/2016 SLR 12 (2022) 39–46.

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setting out the reasons for the judicial decisions. A judgment should raise burning issues so as to carry out real or complete justice.

Findings of facts: It is here where the magistrate or the judge, mindful of the material and mental elements of the particular offence and the case of each of the parties, states the relevant material facts that establish or challenge the charge before the Court. If there were conflicting facts or versions of a story, the magistrate or judge should state which one(s) was (or were) preferred. It is noteworthy that the relevant facts should concern both the material and the mental elements of the offence(s).

Findings of law: It is in this part of the judgment that the magistrate or the judge displays a proper mastery of the applicable law and applies it to the facts of the case. Here, the law applicable is not only criminal law; it spans across all legal disciplines, including private law, public law, private international law, public international law, administrative law, comparative law, human rights, equity and jurisprudence. Therefore, such legal concepts as intention, consent, marriage, successor ownership, conversion, sale and trespass, where relevant, come into play.

If the trial magistrate or judge has preferred a certain version of the facts, the reasons for their doing so, based in law, should be stated. It is also in this part of the judgment where the magistrate or the judge considers the submissions or the legal arguments of the parties or may *suo moto* raise relevant legal issues and determine them.

Although corroboration is not generally necessary, if there was corroboration, it should be stated in a judgment. Similarly, if there was facilitation, conspiracy or attempted possession, destruction, deprivation, murder or false pretences, it should be stated. It must also be determined whether the accused person had *mens rea* or intention.

If there were any objections which were raised during the hearing of the case that the Court had not ruled on, then this is the proper place to do so. It is here that the evidence and the law are evaluated to determine whether the prosecution proved their case beyond reasonable doubt and the civil claimant where applicable has established the civil claim on a balance of probability. All this enables the Court to proceed to the next part of the judgment.

Under the Cameroon CPC, issues regarding relevance are not dealt with when evidence is being adduced or tendered; this is the moment where the judge is called upon to filter the evidence and exhibits before them, discarding the irrelevant and pointing out the relevant evidence. After that, the judge should proceed to apply the law to the relevant evidence in order to arrive at a reasonable decision. The judge must, in a logical and coherent manner, establish a correlation between the facts upheld and the law. The judge must decide whether the facts of

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the case, when viewed in the context of the applicable section of the criminal law, would lead to the judgment they are about to pronounce.

The Court must reach a decision on all the points for determination and answer all the contentions of the parties. For each count the Court must say whether the allegations against the accused have been proven or whether the prosecution has failed to prove the allegations within the standards required by the law. It is not proper for the Court to analyse the various counts jointly, because each offence has specific ingredients to be established; or, even for like offences, the circumstances surrounding them may not be identical. The trial judge should justify their findings with sufficient reasons to show that they are not arbitrary and capricious. For instance, the judge may justify their findings by referring to the objects and documents admitted in evidence, consistencies or inconsistencies in testimonial evidence, conformity to or deviation from normal human behaviour and an awareness of the motives for telling the truth or for concealing it. In other words, the judge should reveal exactly the path they followed in reaching a conclusion.

The absence of justification for the findings of the Court has led to the quashing of many decisions on appeal. It does not suffice that the judge should state the evidence adduced by either side and uphold one version of the story without demonstrating why they believe that version and without giving rational and logical arguments to sustain their position. In *Ndadem Decimus & 4 others v The People & 1 other*,[38] the appellants were convicted by the Court of First Instance Menji for destruction and assault occasioning simple harm. In quashing the decision, the South West Court of Appeal had this to say with respect to the reasons stated by the trial Court:

> In the instant case, the learned trial magistrate after giving a synopsis of the evidence of the prosecution and defence and submissions of Counsel on all the sides immediately jumped to conclusion. The reasons for coming to the conclusion are not given, the judgment is not motivated as required by s 7 of Law 2006/015 of 29 December 2006.

The absence of justification for the decision of the Court was even more glaring in the case of *Tekah Vincent Teboh v The People*,[39] where the appellant was convicted by the Ndian High Court to a 30-year imprisonment term for committing an alleged indecency to a minor. The South West Court of Appeal quashed the judgment and advanced the following reasons for doing so:

38 Judgment in suit CASWP/07C/2008 of 15 May 2012 (unreported). The appeal against this decision was dismissed by the Supreme Court in Judgment 28/P of 18 June 2015 (unreported).

39 Judgment in suit CASWR/02CR/2016 of 31 October 2017 (unreported).

> In fact, the judgment in issue is made up of five typed pages. Of these, three and a half pages are devoted to the narration of the facts of the case as presented by the parties during the trial; one and a quarter pages are devoted to the verdict and the sentence, and only a quarter page made up of eight lines is devoted to the analysis or motivation leading to the verdict. And even the eight lines in which no provision of the law was mentioned, do not contain any analysis as such, as they are made up of conclusions by the trial judge based on the facts narrated by the parties, meaning that there was no analysis at all, either of the facts or the law by the trial judge before arriving at the verdict. Hear the court in those eight lines after the repeat narration of the facts of the case as presented by the parties:
>
>> These are the facts from the evidence. it is a fact that the accused took PW1 to Kumba and to Muambong on a frolic of his own special desire, and it is a fact the he slept with PW1 in the same Hotel room and which led to sexual intercourse with PW1, notwithstanding her consent and age, a girl of 13 years-old; and took advantage of the naivety of both his girlfriend and her daughter to commit such an abominable heinous crime of having sex with mother and daughter, on the frivolous pretext of going to conduct tests on PW1.

The above is the analysis leading to the verdict on a serious offence, a felony under s 346(3) of the Penal Code, leading to a sentence of 30 years' imprisonment. There was therefore no analysis of the facts as presented by the prosecution and defence to prove beyond reasonable doubt that the appellant had committed the alleged offence; and no analysis of any law which the facts reveal that the appellant violated.

3.3 Conclusion of judgment

This part of the judgment comprises the verdict, criminal records, mitigating or aggravating circumstances, sentence, court orders (costs, damages, accessory penalties), and a reminder to the parties of the right to appeal, signatures and the executory formula. Each of these elements is now described.

(a) Verdict

The verdict is the most important part of the judgment. The magistrate or the judge should state the name of the court, indicate that it was sitting in open court and whether it was a full hearing or a hearing in default. For example:

> The Court of First Instance Bangem sitting publicly in its original criminal jurisdiction and after a full hearing in default holds as follows:

> Count 1. Under s 318(1)*(a)* of the Penal Code, finds the accused person guilty or not guilty (as the case may be) of theft and he is accordingly either convicted or discharged.
>
> Count 2. Under s 316(1) of the Penal Code, finds the accused guilty or not guilty of destruction and he is accordingly either convicted or discharged.

(b) Criminal records

If the accused person is convicted, the magistrate or the judge must enquire about the criminal antecedent of the convict from the legal department and mention should be made in the record book that the convict is a first offender if there are no previous convictions. But if there is any previous conviction, reference should be made to that judgment and that offence entered into the record book.

(c) Mitigating circumstances (allocutus)

Before sentencing, the Court must enquire from the defence if there are any mitigating circumstances. Where the convict has Counsel representing them, this is easy; otherwise the magistrate or the judge should ensure that the registrar-in-attendance explains, in a manner that this convict will understand, what this means. After this, the defence's statement is recorded in the record book. Both mitigating and aggravating circumstances should be stated in the judgment.

(d) Sentence

The sentence is pronounced for each count or offence for which the accused person is convicted, as follows:

> The convict shall pay a fine of 5 000 000 Frs CFA or be committed to five years' imprisonment in default of such fine.[40]

Considering that the convict was remanded for a period of one year, that period shall be deducted from the above declaration of imprisonment.[41] The period of remand served by an accused person sentenced only to a fine shall be deducted from the duration of imprisonment in the case of default. Although this can be done by the President at the time they sign the imprisonment warrant, it is better to do so in the judgment to avoid any oversight or omissions.

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40 The fine should precede the term of imprisonment and not vice versa. See s 564(1) of Law 2005/007 of 27 July 2005 on the CPC.

41 Section 563(1).

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(d) Court orders

Court orders will generally concern accessory penalties, costs and damages. Where the sentence is suspended, consecutive or concurrent, it should be stated and the reasons given.

(i) Accessory penalties

Where applicable, the accessory penalties provided for by s 33 of the CPC – forfeitures, confiscation and a ban on occupation – should be stated in the judgment.

(ii) Costs

The magistrate or the judge is obliged to tax and set out costs in a judgment by means of an order as to the amount of the costs of the proceedings and who should bear them.[42] If the accused person is convicted, then they will bear the costs of the action;[43] if the Court acquits some of the co-accused persons, it must in its reasoned rulings determine the amount of costs to be paid by those who are convicted. An accused person who is acquitted must not be required to pay costs;[44] such costs are paid instead by the Public Treasury if the prosecution was initiated by the legal department.[45]

The costs are borne by the civil party where prosecution was initiated by that party. But the Court may, for reasons stated in the judgment, exempt a civil party who acted in good faith from the payment of all or part of the costs.[46] In *Anna Ambifu epouse Tanne v The People Cameroon, Peter Ambe*[47] the Court of Appeal of the North West Region, in conformity with s 389(7) of the CPC, declared null and void the judgment of the trial magistrate, which did not tax and which also set out in the judgment contrary to s 389(4) as read with s 401(1) of the CPC.

(iii) Damages

When a person has applied for damages as a civil party, mention of this fact must be made in the judgment.[48]

42 Sections 389(4) and 400(1).
43 Section 391(1)–(2).
44 Section 400.
45 Section 400(2).
46 Section 400(3) and (4) of Law 2005/007 of 27 July 2005 on the CPC.
47 CANWR/MS/62C/2011.
48 Sections 385(5) and 391(1) of Law 2005/007 of 27 July 2005 on the CPC.

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(iv) Order as to restitution

The Court may, of its own motion or at the request of any party, order the restitution of any exhibits or articles seized.[49]

(v) Orders in case of an acquittal

If the Court finds that the facts alleged against the accused person constitute a felony, it must, if it is a court of first instance, decline jurisdiction and must order the case file to be forwarded to the legal department. And if the accused person was detained, the detention shall continue until otherwise decided.[50] Where the facts of the case do not constitute an offence, the Court must acquit the accused person and declare itself incompetent to proceed with the civil claim.[51] The Court must also acquit the accused where the facts have not been proved or where, even though proved, they do not implicate the accused.

When the Court pronounces a sentence of loss of liberty, it shall immediately issue an imprisonment warrant or a warrant of arrest against a convict.[52] Even though this is not required by law, it is diligent to state it in a court order in the judgment in question.

Where an accused person was detained but was finally acquitted or their imprisonment or fine is finally suspended, they must immediately be set free, unless their detention is for some other reason. The same applies where, even though convicted and sentenced, the term of imprisonment of the convict is equal to or less than the period of remand.[53] In these cases, even though not required by law, it will be diligent to order their release by issuing a release order to be executed forthwith. It is left to the State Counsel and the Superintendent of Prisons to verify whether there are any other reasons for detaining the person concerned before setting them free.

(vi) Notification of right of appeal

After passing judgment, the presiding magistrate or judge is obliged to inform the parties of their right to lodge an appeal within the required time limit, which is as follows: ten days as from the day following the day on which judgment is passed, where there was a full hearing, and ten days after notification of a judgment in default.

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49 Section 402.
50 Section 394(1)–(2).
51 Section 395(1)–(2).
52 Section 397(1).
53 Section 396(1)*(a)–(b)*.

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In *Neh Tangle Anna v The People of Cameroon & David Shu Mandele*,[54] where the trial magistrate erroneously stated the name of the court as the Court of First Instance Mezam instead of the Court of First Instance Bamenda and also failed to remind the parties of their right to go on appeal contrary to ss 389(2)*(b)*, 389(4) and 399 of the CPC, the Court of Appeal of the North West Region declared the judgment a nullity.

(vii) Signatures

The judgment in the record book should be followed by the signatures of the magistrate(s) or judge(s) who delivered it and also of the registrar-in-attendance; and the date on which it was delivered must be stated.

(viii) Executory formula

The executory formula is this:

> Wherefore, the President of the Republic commands and enjoins all bailiffs and process servers to enforce all this judgment in order etc, the Procureur General and the State Counsel to lend them support and all commanders and officers of the Armed Forces and Police Forces to lend them assistance when so required by the law.[55]

This should be added after the judgment has been typed and proofread. After that, the magistrates or judges who wrote it and the registrar-in-chief or the registrar-in-attendance should sign it.

In *Anna Ambifu epouse Tanue v The People of Cameroon, Peter Ambe*[56] the Court of Appeal of the North West Region, in conformity with s 389(7) of the CPC, declared null and void the judgment of the trial magistrate. This was because the judgment did not mention the age of the accused person, contrary to s 389(2)(*f*) and (4) of the CPC, and also because the fact that the costs were not taxed was not set out in the judgment, contrary to s 389(4) as read with s 401(1) of the CPC.

In *Ngeh Peter Tafor v The People of Cameroon, Dohferimiah Penn*,[57] the Court of Appeal, after reviewing the judgment under appeal in the light of the above terms considered to be a proper translation or interpretation of the legislation, held that s 389(2) of the CPC had not been violated. However, the judgment of the trial court was declared a nullity for having been based on a defective charge sheet whose title mentioned the Court of First Instance Mezam instead of the Court of First Instance Bamenda.

54 CANWR/MS/32C/2012.

55 Section 11 of Law 2006/015 of 29 December 2006 on Judicial Organization, as amended and supplemented by Law 2011/027 of 14 December 2011.

56 CANWR/MS/62C/2011.

57 CANWR/MS/62C/2011.

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The Court held that the essential components of every good judgment are what the law-maker intended to identify. These are: the introductory part, which includes the suit number, even though it is not mentioned in the law; an evaluation of the evidence (both facts and the law), and the conclusion (concluding portion).

In *Neh Tangie Anna v The People of Cameroon & David Shu Mandele*[58] the trial magistrate erroneously stated the name of the court as the Court of First Instance Mezam instead of the Court of First Instance Bamenda and also failed to remind the parties of their right to take the matter on appeal, contrary to ss 389(2)*(b)*, 389(4) and 399 of the CPC. The Court of Appeal of the North West Region accordingly declared the judgment a nullity. The Court also pointed out that there is a problem of translation in the CPC with respect to s 389(1) of the CPC: the words '*qualities*', '*les motifs*' and the '*Disposif*' in the French version of the Code cannot be properly translated as 'heading', 'reasons' and 'verdict'.

In *Ngeh Peter Tafor v The People of Cameroon, Doh Jeremiah Penn*[59] the Court of Appeal of the North West Region held that s 389 of the CPC is one of the legal cases, whereas one of our national languages does not seem to be clear, or rather appears to be ambiguous. In this instance, the courts are bound to have recourse to the other language so as to understand the real intention of the law-maker and consequently give the correct meaning of the law. The English version of s 389 of the CPC suffers from a translation defect which is likely to lead to some confusion in the minds of some legal practitioners, including magistrates. The problem seems to be the result of a simple translation from French to English which is manifestly faulty, inaccurate and misleading. The Court held that the essential components of every good judgment are what the law-maker wanted to identify, and they are: the introductory part, which includes the suit number, although it is not mentioned in the law; an evaluation of the evidence (both facts and the law), and a conclusion (concluding portion).

58 CANWR/MS/32C/2012.
59 CANWR/MS/62C/2012.

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