

Towards a Holistic Performance Management System for the Lower Courts in Nigeria: The J4A Model in Kaduna State - By Danladi Plang & Tolu Abari

Introduction

The J4A programme (a UK DFID funded justice reform programme) has been implementing a programme of support for selected pilot courts in 3 states- Kaduna, Enugu and Jigawa. The purpose of the support is to improve efficiency and quality of service delivery in the courts such as to become bench marks for replication in other lower courts/states.

The pilot courts are:

- 5 Magistrates courts each in Kaduna and Enugu states;
- 4 Sharia Courts each in Jigawa and Kaduna States; and
- 4 Customary Courts each in Enugu and Kaduna States.

As a pro-poor programme, the J4A programme is focused on the lower courts that the “common folk” - the unemployed, artisans, blue-collar or casual workers, bus drivers, domestic servants, etc, - prefer to use when they need to access the formal justice system. These lower courts handle issues that are of relevance to poor people. They are said to handle over 70% of cases in formal justice system¹. Yet the quality of justice at the lower courts level is widely acknowledged to be weakest. Here most often court officials often do not see their work as a service but a “favour” to users.

Attempts have been made to increase efficiency and quality of service of the courts, but this has largely focussed on the higher courts² – which are better resourced. There is a greater need at the lower courts level where a majority of people go to in search of justice, yet receive no acceptable level of service

¹ In the 2012/2013 legal year for instance in Kaduna state, the a total of 48,657 cases were handled by the courts; of which the High Court; Sharia Court of Appeal and the Customary Court of Appeal handled a total of 3,396 cases (in both appellate and original jurisdiction); while the lower courts: Magistrates; Sharia and Customary courts handled a total of 45,261 representing about 93% of the total cases handled by the judiciary in that year. We may gloss over the type/monetary value of these cases. But to the person involved, it may be a matter of life and death

² Often called the Superior Courts (Supreme Court; Court of Appeal; High Courts; Sharia Court of Appeal; Customary Court of Appeal; National Industrial Court); while the lower courts are called inferior courts, an appellation that has most likely contributed to how those in authority value and respond to their needs

delivery. With a hold on the majority customer base of the formal justice system, improving the efficiency and quality of service delivery in the lower courts is one way to increasing the confidence of the majority of Nigerians in the justice system.

To achieve this, one of J4As core area of focus in the work with the lower courts is implementing measures to improve oversight, supervision and performance of the courts by relevant judicial departments. This is in addition to actions to:

- Improve time it takes to dispose of cases; and
- Improve the treatment of court users by court personnel- staff and judges (Magistrates; Alkalis; and Judges).

Improving Oversight and Performance Evaluation in the Lower Courts

What Exists

As in most public institutions, in Nigeria, the existing monitoring and evaluation systems in the lower courts if they do exist are not the basis of any rewards for good performance nor serve as a guide to develop/implement measures towards improving performance. Most recently, in Kwara state, the media reported the brewing industrial action by the Magistrates Association of Nigeria (MAN) because some persons were promoted as Magistrates by the States Judicial Service Commission in a manner the MAN described as “unmerited and surreptitious”³.

J4A initial assessment of the pilot courts confirmed that there are no strong internal systems of oversight and monitoring mechanisms in the lower courts. Oversight procedures in place are, at best, tenuous. Where inspections exist they are largely ad-hoc, with no laid down policies and protocols.

The same is applicable to performance evaluation of court personnel and judges. There are no dependable means and procedures for evaluating the quality of work performed by these groups, although there are Annual

³ Kwara News online July 3; and Vanguard Newspaper of July 3, 2014

Performance Reporting (APER) forms administered in some states to court staff which they are required to complete annually. These forms (APER) are those designed and applied generally in the civil service with no distinct provision of the judiciary with its specialised needs. The APER form focuses largely on measuring generic behavioural competencies rather than clear, on-the-job performance indicators. The forms are completed and returned as a matter of routine at the end of the year; and with no mechanisms to get feedback from Judges and their staff.

In addition, in some jurisdictions, Judges also return statistics of cases in their dockets quarterly, and in forms prepared for that purpose. But there is little else required of them to indicate in those forms. There is usually no feedback to the judges of the lower courts who submit this information, underscoring that the reports serve mostly to provide statistical data which, though is an important need, is not, by itself sufficient to stimulate improved levels of performance or address gaps in capacity or service delivery patterns.

The judicial system needs to aspire to excellence at all times. The performance evaluation system should not only provide a basis for rewards and sanctions but more importantly of helping to develop performance improvement plans for employees.

Development of the Kaduna State Performance Management System for the Lower Courts

Having thus identified the need to review the system, the process of developing a new Performance Management Framework for the Kaduna State Judiciary was an all inclusive one which involved those to be evaluated as well as those to carry out the evaluation.

The New PMS and How it Operates

The new Performance Management System is first and foremost built on the four cardinal pillars of effective Performance Management, namely:

- Performance Contracting/Goals Setting;
- Coaching/Monitoring for Performance;

- Performance Evaluation; and
- Reward & Consequence Management.

Each of these four is crucial to achieving effective Performance Management and it would be impossible to say performance is being effectively managed when any of them is missing.

We shall therefore be looking at each of them in some depth, beginning with Performance Contracting/Goals Setting.

Performance Contracting/Goals Setting

It is impossible to evaluate individual or organisational performance objectively without there being pre-agreed performance goals.

Effective performance management, therefore, begins with the process of setting forth clear and measurable performance goals at organisational, departmental and then individual levels.

It is pertinent to note that individual performance contracting should begin with organisational goals setting. In other words, to ensure that the whole organisation is galvanised towards the same direction, the leadership of the Judiciary has to set clear performance goals for the whole institution which would then be cascaded to the different departments and, subsequently, individuals; and this was what we attempted to do in Kaduna.

The goals which the Kaduna Courts set for themselves are within 5 themes relevant to and within the context of the functions of the judiciary and user expectations. The 5 themes are:

- Competence and effectiveness
- Accessibility
- Timeliness
- Equity
- Respect and responsiveness.

These themes are applicable for measuring performance of staff as well.

In measuring performance of judicial personnel along these themes, data can be obtained from monthly/quarterly returns of cases handled; court user satisfaction surveys; and court processes, depending on the theme/indicator.

For instance, performance of a Judge on competence and timeliness can be measured through the quarterly returns while accessibility; and respect and responsiveness through would be determined surveys.

Coaching and Monitoring for Performance

After clear, specific and measurable goals have been set, subordinates should be effectively performance-managed by their supervisors through coaching for performance; and they must also conduct for themselves, monitoring for performance.

The purpose of Performance Management is to enhance performance. It is thus very important that supervisors manage the performance of their subordinates in a manner that enables those subordinates to consistently demonstrate optimum performance.

This does not absolve the individual of responsibility as he or she would also be monitoring him- or herself vis-à-vis the goals set. Between the supervisor and the subordinate, therefore, the intent is that there must be a constant focus on the performance goals set for the performance period in focus, hence the need to coach and monitor throughout that period.

Again, this principle was clearly communicated in numerous workshops conducted at virtually all the levels of the Kaduna State Judiciary, from the Judicial Service Commission to Chief Registrars and the Deputies/Assistants; and from the Judges and their Station Registrars to Court Clerks and even Bailiffs.

Performance Evaluation

Performance Evaluation – or Performance Appraisal as it is sometimes called – is the part of the cycle that many are used to, and that many proceed prematurely to without the required foundational pillars.

When goals have been clearly set in a manner which is specific, observable & measurable and after feedback has been given & sought during the

performance cycle, the periodic evaluation of each individual's performance would now be done vis-à-vis goals set.

Again, we have to state here that there is no how that any system can appraise performance effectively and objectively without the process of effective performance contracting/goals setting preceding it, a process during which specific, observable and measurable indicators would have been agreed between the supervisor and subordinate, like was facilitated in Kaduna State.

In the same vein, performance evaluation as a form of periodic feedback is only effective if there had been continual, on-going feedback from supervisors to subordinates through an enabling "Coaching for Performance".

Reward & Consequence Management

Because human beings are basically rational, they would, largely, behave in a manner which is consistent with how they are rewarded or sanctioned, depending on which is appropriate.

An effective performance management cycle would therefore have to be concluded by differentiating and rewarding consistently superior performance; and simultaneously dis-incentivising consistently poor performance.

Rewards and consequences do not necessarily have to be financial; they can very well begin with 'raising & praising' and 'naming & shaming'. They may also include quarterly and annual recognition awards to star performers.

It is, however, critical that certain things are done to clearly reward desirable performance/behaviours and discourage undesirable performance/behaviours. It must also be evident to the system that these things are linked to performance.

This was the message we took to the leadership and people of the Kaduna State Judiciary, and they did not find it unacceptable and we found that there are ample provisions in the relevant public service rules within which such decisions are to be anchored.

The system also provides opportunity to assist staff improve performance by identifying capacity building measures during the coaching and review to assist staff with identified weaknesses.

The Leadership Factor in Implementing the New Performance Management System

One major factor lies at the heart of the new PMS: Leadership that breeds Accountability.

The process of envisioning a desired organisational or departmental future and translating it into individual performance goals speaks unequivocally to effective leadership. More court managers must therefore become court leaders and they must understand that the Judiciary can no longer be managed only on the basis of routine.

Similarly, leaders build teams. Court managers who have communicated clear performance goals to their teams must follow through with them during the performance period by providing continuous feedback targeted at developing and challenging their people; and this, again, is leadership.

Furthermore, it takes leadership that is effective because it is courageous to differentiate performance by appraising objectively and then rewarding and sanctioning, as appropriate, thus sending an unambiguous message to the system that Performance matters.

As we designed and progressed in the implementation of the new Performance Management Framework for the Kaduna State Judiciary, concerns came up, as expected, that only effective leadership could address and we took the opportunity to emphasise the inescapable need to deliberately nurture and reward effective leadership within the Judiciary.

The Accountability Factor

Effective Performance Management is about holding people accountable for performance and like we said, leadership – the strong and effective type that is worthy of the name - breeds accountability.

Leaders must support their teams and do their best to enable them to perform during the performance period but when their time comes to appraise, and even before then, Court and Administrative leaders must also exhibit what is needed to hold their teams accountable for whatever level of performance the team members choose to demonstrate.

Regardless of what the Policy states on paper, this is where the rubber will meet the road; whether or not people are held accountable within the Judiciary and how well people are held accountable would eventually determine whether the entire Nigerian Judiciary is respected or how respected it would be.

Performance Themes and the Need for Their Plurality

One of the capabilities the leadership of an institution requires to manage system-wide performance is the ability to determine key performance themes around which specific, observable and measurable Performance Indicators would be developed for departments and individuals within that system.

These themes must capture the major aspects of wholesome performance as success in one area would never compensate for failure in other areas. It is therefore not sufficient to measure, for instance, timeliness of case dispositions without attempting to capture the quality of judgments through the relevant performance metrics.

This is highly critical because Performance Management is a tool that ought to be used to shape appropriate behaviours and direct the energies of the organisation towards pre-determined performance destinations. It is therefore both ineffective and inefficient to have an organisation going in too many or too few directions, or an altogether undefined direction.

An effective Performance Management process thus requires Institutional Leadership to first of all determine where they want to entire system to be headed, and this must be articulated in clear and concise easy-to-follow terms through themes and overall strategic goals.

The Themes and Goals would then be cascaded across the different organisational levels and translated into the relevant Performance Indicators for the various job-roles.

Strategic Planning for Performance Management

While Performance Themes can be constant, from time to time, the overall leadership of the Nigerian Judiciary should set itself apart to determine its major strategic goals which would then be cascaded downwards to ensure

strategic alignment. It is generally agreed that a Strategic Plan should cover a period that ranges from three – five years.

We know attempts have been made within the last decade or two by donors and multilateral organisations to help the Judiciary carry out Strategic Planning and this is indeed commendable. We, however, believe that for that process to be more effective, it has got to be more inclusive.

Indeed, the challenge of Implementation must be addressed *ab initio* from the point of Planning. Ownership must be engendered through Involvement; and those who are to implement the goals set must be involved in the setting of those goals at the appropriate level and to the extent possible.

Training for Strategic Planning and Effective Leadership

Court Managers and Judicial Administrators may not have developed the skills required to carry out effective Strategic Planning over the years because the process has been left undone for long, but there is no other way to bridge this Skill gap than getting them to begin; and doing it *for* them would never be as effective as doing it *with* them.

As part of the process of enhancing the leadership capabilities of the people within the system and the system at large, we suggested that intense skills-developing workshops where capabilities like Strategic Planning can be developed. This is because it cannot be assumed that people know how to lead just because they have stayed for long in leadership positions.

Truly, many have the potential to lead for performance and create implementable Strategic Plans at their different levels. However, because the kind of leadership demand that an effective and holistic Performance Management System places on them has not been made for while, they may still need to be enabled in this and other directions.

The Angle of the Directorate of Administration & Personnel

In doing all of this, meanwhile, it is important that the Directorate of Administration of Personnel, which is the Human Resources Management arm of Public Service Institutions in Nigeria, is not just carried along but actually strengthened to step in after we have gone.

This was the deliberate approach that we strategically adopted in all the work we did with the Kaduna State Judiciary.

Rather than developing all the tools and templates completely, we developed them substantially but still left enough part of the work to stimulate their ownership through their involvement.

This approach is tedious in the short run, but outside of it, there would be zero sustainability in the long run.

It is also the means by which knowledge can be translated into skills because of the kind of learning that only comes by doing.

Conclusion

As can be seen from the foregoing, the task of implementing a holistic and effective Performance Management Framework in the Judiciary is a multi-dimensional one which calls for certain fundamentals like effective leadership development; strategic planning; and coaching for performance.

There is, however, no other way to do it if it is to be done enduringly, and the gains are very much commensurate with what it takes.

The Kaduna State example has been a lesson in this possibility; a lesson we hope to see replicated in the rest of the nation's Judiciary.