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## Best – and worst – Kenya’s courts have it all

By Carmel Rickard

KENYA’S courts find themselves in a unique position: they have a starring role on the list of both the world’s best – and the world’s worst – judgments. The awards are made every year by Women’s Link Worldwide, and acknowledge the role that a court’s decisions may make to improving gender equality or to making it worse. A case from Kenya is shortlisted for the 2018 Golden Gavel award because it makes life better for women. Winners of that award will be announced at the end of October 2018. On the other hand, an outright winner of last year’s Golden Bludgeon award for negatively affecting women’s rights, was another case from Kenya’s courts.

Nomination for best case in 2018:

[J O O \(also known as J M\) v Attorney General & 6 others \[2018\] eKLR \[1\]](#)

Winner of worst case in 2017:

[Martin Charo v Republic \[2016\] eKLR \[2\]](#)

The 2018 award process is still open. Add nominations here:

[Gender Justice Uncovered Awards \[3\]](#)

THE organization, Womens Link WorldWide, makes annual “Gender Justice Awards” to recognize the crucial role of courts in promoting or hindered equality of women.

It says that “comments made by judges and the courts have a strong influence on the sense of justice and the daily life of all people in countries across the world, whatever their political system or religious traditions and beliefs”.

Womens Link WorldWide also sees the courts “as an instrument in which civil society initiates a dialogue with judicial authorities regarding how rights should be interpreted, what their impact is on people’s day-to-day life and the ways in which they delimit legislative and executive activity.”

The 2017 Golden Gavel award winners (for stories that help gender justice) include two from Africa. One was a high court case from Tanzania. It dealt with the minimum marriage age and found that the law on the marriage age for girls violated the constitution’s equality provisions. The other is a case from Uganda on hospital negligence. Dealing with a baby that disappeared, the court recognized the agony of the parents involved in such a situation.

Winners of the Golden Bludgeon, judgments that set back the struggle for gender justice, included a case from Kenya in which the court said a 13-year old girl could not have been raped since she acted like an adult and must have “wanted sex”. Another winner was a case from Italy where the court ruled, effectively, that because a woman had not screamed, she had not been raped. A Spanish court decision also featured as a winner of the dubious award after it found that a man who murdered his former partner by stabbing her 30 times had not done so with “wanton cruelty”.

Over the years, a number of decisions by the African courts, both good and bad in terms of their impact on gender equality, have been listed in the Women’s Link WorldWide awards. Among these, a member of Jifa’s Faculty, Judge Key Dingake, featured for his 2012 judgment in the case of [Mmusi v Ramantele](#) [4]. This was a decision in the high court, Botswana, that abolished a traditional property law and ruled that women had the same right to inherit as men.

The organization points out that its gender justice awards recognize court decisions that had a positive or negative impact on gender equality, but stress that they “should not be considered a comment” on the judges themselves who wrote the decisions.

Among the distinguished members of the 2018 jury for this year’s award is Kenya’s former Chief Justice Willy Mutunga.

- Would you like to nominate a court decision, good or bad, for the 2018 Golden Gavel or the Golden Bludgeon award? The closing date for this year’s awards is 31 October 2018. Put forward your favourites here: <https://www.womenslinkworldwide.org/en/awards> [3]

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#### Links

[1] <http://kenyalaw.org/caselaw/cases/view/150953/>

[2] <http://kenyalaw.org/caselaw/cases/view/121219/>

[3] <https://www.womenslinkworldwide.org/en/awards>

[4] <https://africanlii.org/sites/default/files/Mmusi%20v%20Ramantele.pdf>

[5] <https://africanlii.org/newsletter/jifa>