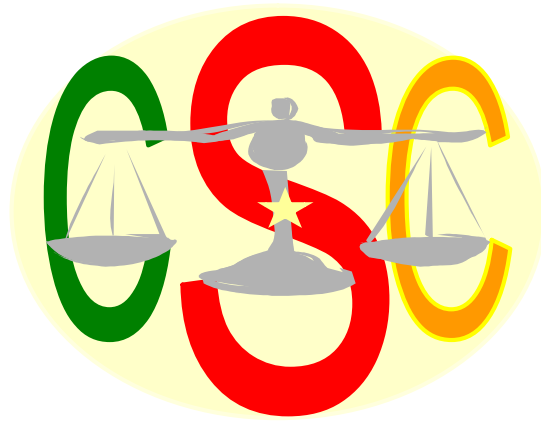


SUPREME COURT OF CAMEROON



ADDRESS OF THE CHIEF JUSTICE OF THE SUPREME COURT OF CAMEROON

2025 SOLEMN RE-OPENING COURT SESSION

*Presided over by Justice FONKWE Joseph FONGANG, President of
the Judicial Bench, sitting in for the Chief Justice unavoidably absent*

21st February 2025

**ADDRESS BY THE CHIEF JUSTICE OF THE SUPREME
COURT ON THE OCCASION OF THE FORMAL OPENING
OF THE SUPREME COURT**

YEAR 2025

The Honorable President of the Senate,

The Honorable Speaker of the National Assembly,

The President of the Economic and Social Council,

The Honorable Prime Minister, Head of Government,

The President of the Constitutional Counsel,

**The Minister Delegate, Representative of the Minister of State
Minister of Justice, keeper of the Seals,**

Your Excellencies, Ladies and Gentlemen, Ministers,

**Your Excellencies, Ladies and Gentlemen, Ministers delegates
and Secretaries of State,**

**Ambassadors and Representatives of International
Organisations,**

The Supreme Court rejoices at your distinguished presence here today
and expresses its immense gratitude for your renewed honour.

The Mayor of the Yaounde City Council,

Dear Judicial and Legal Officers,

The President of the Bar Association,

The President of the National Association of Bailiffs,

The President of the National Council of Notaries Public,

The Secretary General of the Supreme Court,

Distinguished Registrars-in-Chief,

Dear Lawyers,

Ladies and Gentlemen in your respective grades and titles,

Members of the Supreme Court, through my modest voice, appreciate your presence at the 2025 Solemn re-opening Session of the Supreme Court, despite your very busy schedules. You are warmly welcome.

This year, the Lord Chief Justice of the Supreme Court is unavoidably absent. Section 6(1) of the organic law of the Supreme Court stipulates:

"In case of unavailability, the Chief Justice shall be replaced by the most senior Bench President in the highest scale".

I therefore have the honour to preside over this solemn session.

Pursuant to the provisions of section 33 of Law No. 2006/016 of 29 December 2006 to lay down the organisation and functioning of the Supreme Court, the solemn reopening of the Judicial Year holds this day, 21st February 2025, in the ceremonial hall of the Supreme Court.

Following the relevant submissions of the Learned Procureur General, I would like, in turn, to address a matter that often gives rise to controversy, so pervasive is it in our daily practice, a subject whose outlines appear blurred to litigants and even to legal practitioners, such as Judicial and Legal Officers, Lawyers, Notaries and Bailiffs, to name but a few.

The theme for our collective consideration is ***"Formalism in the Judicial System"***.

An old-age adage, prevalent in human communities, states that ***"all form and no substance makes your story a waste of time"***

Victor Hugo, the great French literary author, asserted:

"Form is substance which rises to the surface"

In general terms, formalism can be defined as the practice or doctrine of strict adherence to prescribed or external forms.

When applied to law, it is conceived as a system that conditions the validity of acts upon the strict observance of the forms that govern their issuance.

The rules pertaining to form, which constitute procedural law, are distinct from those of substantive law.

Whereas substantive law defines punishable and wrongful conduct, the nature of agreements and the sanctions attached to their breach, procedural law, conversely, concerns the procedure, understood as the implementation of legal action, the jurisdiction of courts, forms of appeal, time limits and prescription.

In English law, a similar distinction exists between what is conventionally termed "**substantive law**," that is, "**the law which governs the original rights and obligations of individuals**" and "**adjectival law**", or "**procedural law**", or "**rules of court**", defined as "**a set of rules that govern how legal procedures and practices are carried out**".

Reference is made to English law, to the Common Law, due to the bijural legal tradition prevalent in Cameroon.

This bijural legal heritage, a blend Romano-Germanic and Anglo-Saxon traditions, stems from the dual occupation of our country, then a German colony, occupied in 1916 by French and British troops.

This occupation led to the partition of the country into two entities administered by France and Great Britain, initially under a mandate conferred upon them by the League of Nations, and later under the aegis of a trusteeship entrusted to them by the United Nations Organisation, until Cameroon's accession to international sovereignty.

Form, as preliminarily indicated, holds paramount importance at all levels. Any failure to comply with the requirements of form is sanctioned by relative or absolute nullity, depending on whether a substantial formality has been violated.

Nullity, therefore, is the sanction that affects a procedural act drawn up or notified in disregard of the conditions of validity imposed by law, the consequence of which is its retroactive annihilation, as if it had never existed.

Irregularities of procedure, arising from non-compliance with the formalities required by law for the establishment of a procedural act, may result in the total or partial nullification of said instrument.

To illustrate my point, I would gladly provide some examples concerning decisions or acts made by judges or other officers in the course of judicial proceedings.

With respect to judgments, pursuant to Article 38 of the Civil and Commercial Procedure Code,

"Judgments shall be drawn up in minutes. They shall state their delivery in open court and shall specify the date on which they were delivered. They shall record the names of the Presiding Magistrates and the Registrar".

Article 39, amplifies this prescription and specifies that ***"Judgments shall further delineate the names, professions, and residence of the parties, the introductory document seizing the court, submissions, reasons and the verdict. They shall indicate whether the parties appeared in person or were represented, or whether the matter was adjudicated upon filed submissions."***

The imperative tone inferred from the drafting of these provisions conveys that the prescriptions contained therein are of a substantive nature. Non-compliance therewith is likely to lead to the nullity of decisions that deviate therefrom.

The Court of Appeal is similarly bound by this formalism, pursuant to Article 214 of the aforementioned code, which stipulates:

" The rules applicable to courts of first instance shall, mutatis mutandis, be observed before the Court of Appeal".

Judicial Police Officers are likewise enjoined to adhere to the formalism enshrined in the Criminal Procedure Code. A Police Officer conducting a search must be vested with a search warrant, with the exception only in cases of flagrant crimes or offences.

This measure must be executed in the presence of the owner of the premises, the holder of the goods or his representative, in the presence of two witnesses chosen from the neighbourhood, provided the police

officer shall first be searched if the owner of the premises so requires, before undertaking such a task.

The other compulsory details of the record drawn up are the date and time of the start of the proceedings, the surnames, first names and capacity of the investigating officer, Position of the investigator.

It must also be signed by the parties indicated above and contain the surnames, first names, position, filiation, date and place of birth and residence of the signatories.

Article 100 of the Criminal Procedure Code punishes with nullity any search or seizure reports that contravene these formal requirements

In this same spirit, any search conducted at the accused person's home by the examining magistrate must, under the terms of Article 179 of the Criminal Procedure Code, on pain of nullity, be conducted under the same conditions imposed on the judicial police officer.

With regard to real property transactions, the new article 8 of order no. 74-1 of 06/7/1974 establishing the land tenure system requires that deeds constituting, transferring or extinguishing rights in rem in immovable property must be drawn up in notarial form, under penalty of nullity.

Thus, the intervention of a notary public is formally required. Bailiff's deeds are also subject to the formalities set out in current legislation.

Under article 6 of the Civil and Commercial Procedure Code, a writ of summons must contain the dates, month and year, and the name, profession and address of the plaintiff. In addition it shall contain the following”:

- The name, address and registration number of the Bailiff or Enforcement Agent, the name and address of the defendant and details of the person to whom a copy of the writ will be left.
- A statement of the claim and a summary of the pleas in law.
- Indication of the Court that is to hear the claim, and the date and time of the hearing.

The omission of such essential information is sanctioned by the nullity of the writ.

However, it is worth noting once again that formalism is somewhat attenuated in civil matters, as article 602 of the Civil and Commercial Procedure Code provides that « ***except in cases where laws and decrees provide otherwise, the nullity of writs or procedural documents is optional for the judge, who may always accept or reject them.*** »

This acceptance refers to nullities that do not cause any prejudice, that is, nullities that do not cause any prejudice to the opposing party.

Lawyers' memoranda of submissions before the Supreme Court, and in particular before the Administrative Division, must also comply with the

provisions of article 92 of amended law 2006/016 of 29/12/2006 establishing the organisation and functioning of the Supreme Court.

Thus, the memorandum of submissions should be stamped and contain the surname, forenames, profession and address of the appellant, a statement of the facts on which the appeal is based, the grounds of appeal and a list of the documents attached.

Failure to comply with these requirements invalidates the memorandum of submissions, which may be declared inadmissible and the appeal dismissed.

Lastly, appeals are also subject to the rigours of formalism, with the laws providing for the manner in which they may be exercised in terms of form and time limits.

For instance, under article 42 of the above-mentioned law n° 2006/016, an appeal to the Supreme Court is lodged in judicial matters by a declaration at the Registry of the court from where the decision emanates, except in criminal matters.

Article 43 states that, in addition to the appellant and his or her lawyer, any other person claiming to act on behalf of the appellant must hold a duly authenticated special Power of attorney,

The Supreme Court, in its case law, has further refined the concept of a declaration, specifying that it must be oral, and that the declarant

must appear in person before the court clerk so that all the notifications required by law can be made.

The Supreme Court, which is the court of the law and whose mission is to control and unify the interpretation of the law to ensure that it is interpreted in the same way by all the courts, is particularly vigilant in ensuring that formalities are scrupulously observed.

It does not hesitate to penalise any failure to comply with this requirement, when it is likely to undermine the substance of the decision or act in question.

Although legal cases are not often won on the basis of form, they are lost at this level because substance is nothing without form. And the substance can only be accessed through the filter of form.

In conclusion, the form protects the rights of all parties and even those of the State, and the respect of the later contributes to a proper administration of Justice, which is a guarantee of social peace in the country.

Thank you for your kind attention!!!