OBJECTION MY LORD!



CRIMINAL PROCEDURE:
Authoritative insights into criminal law and procedure.

Isaac Christopher Lubogo

Revised and Updated Edition

10:16

CRIMINAL PROCEEDINGS

OBJECTION MY LORD: LEGAL PRACTICE DEMYSTIFIED

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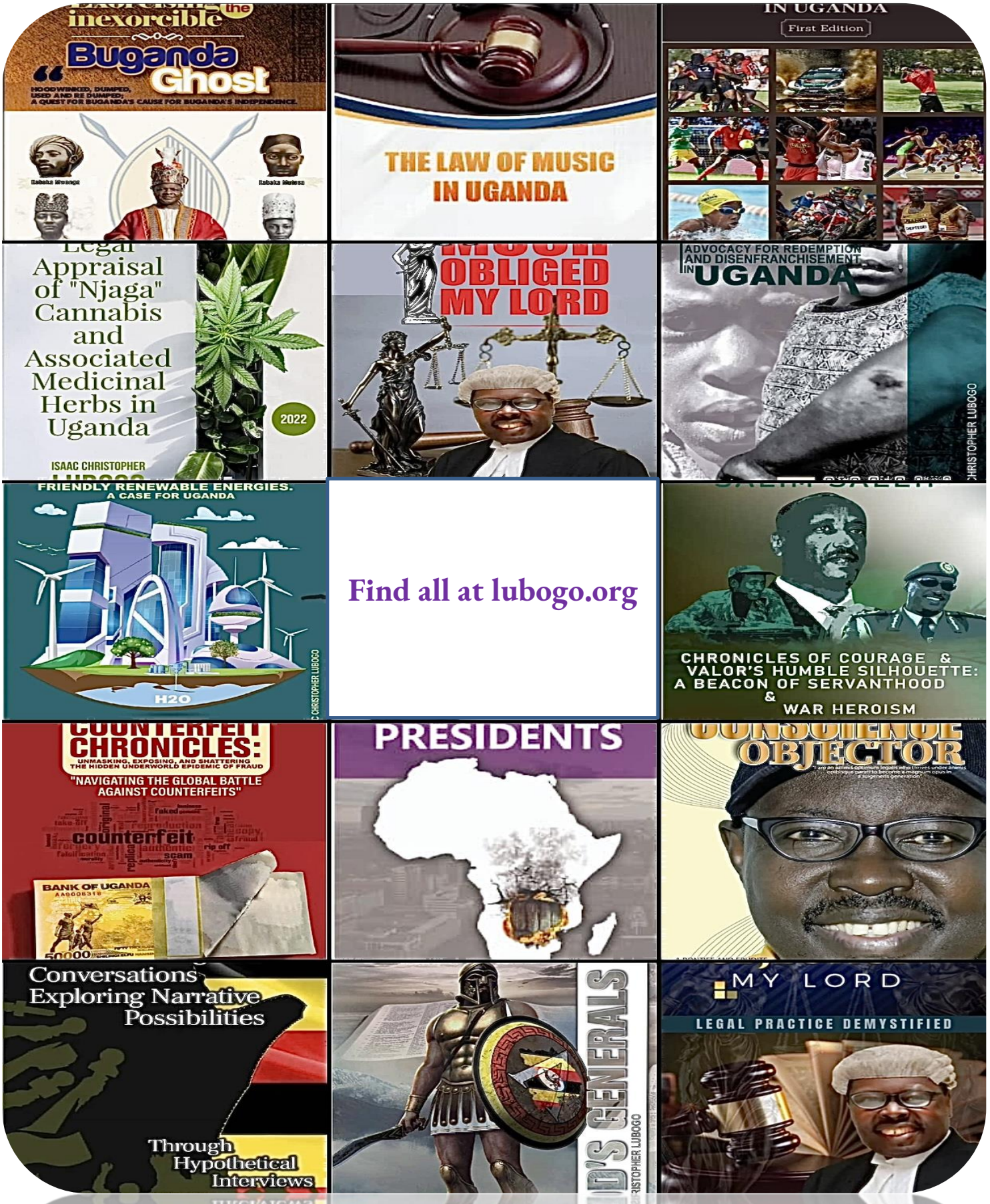

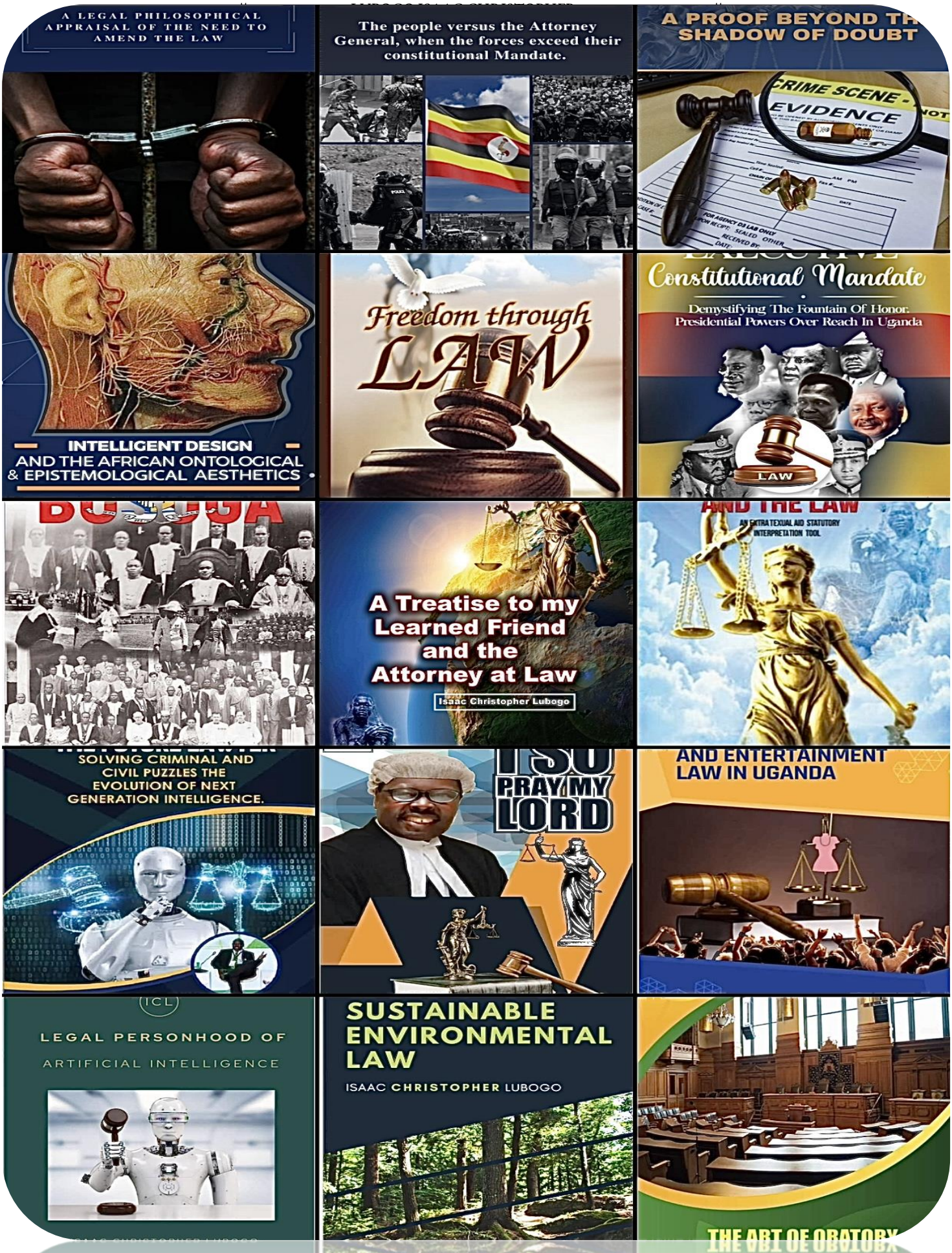
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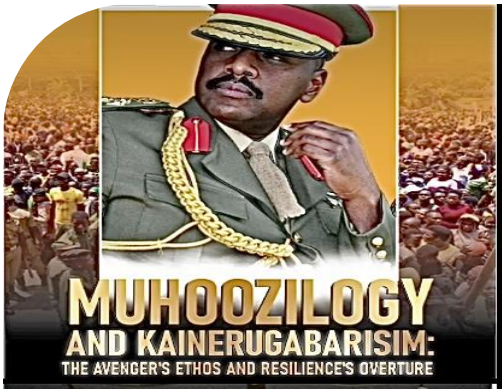
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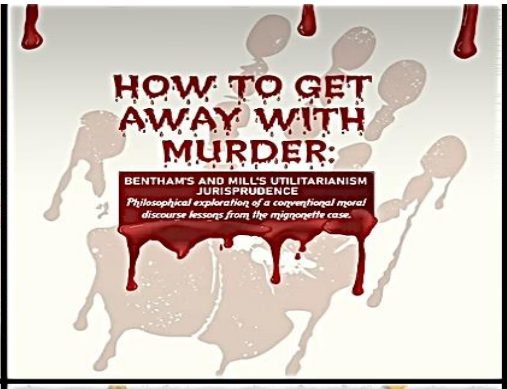
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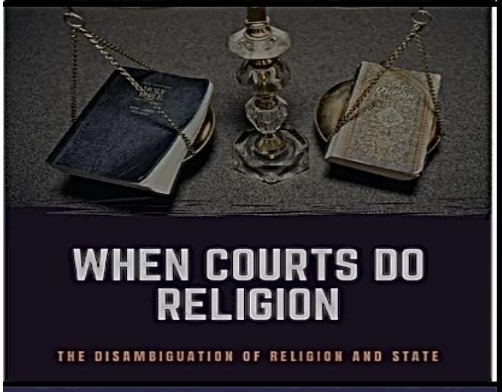
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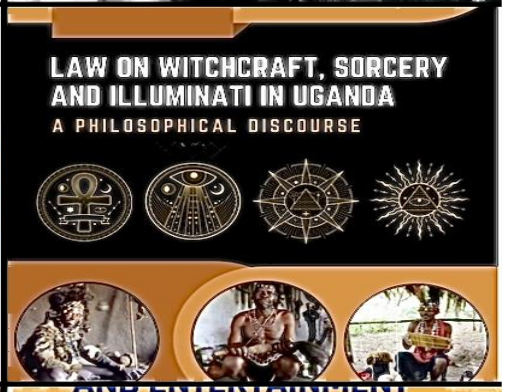
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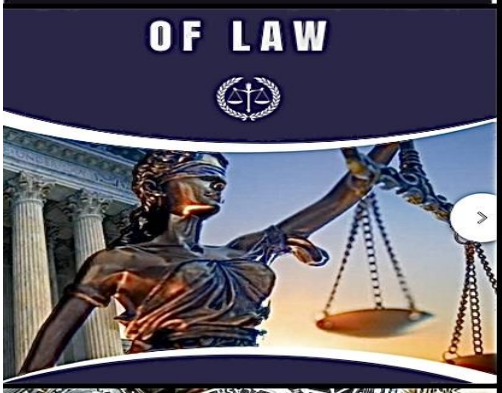
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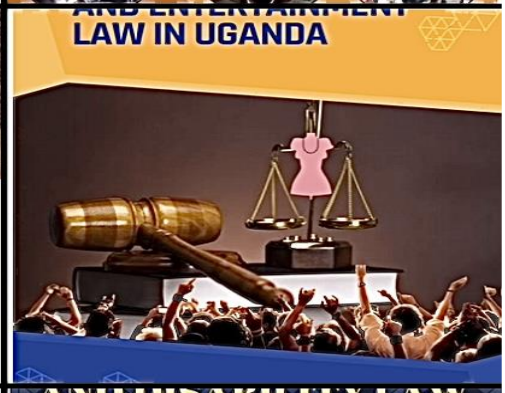
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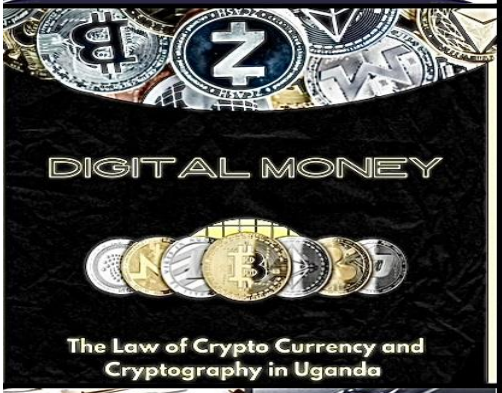
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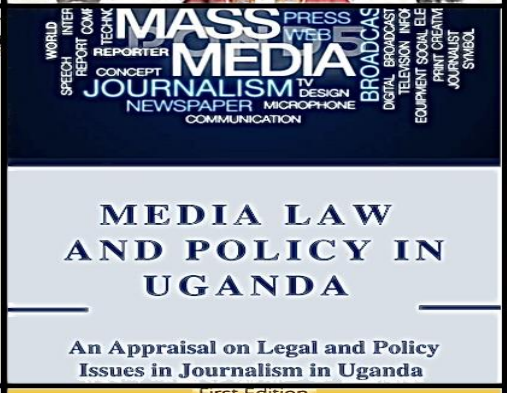
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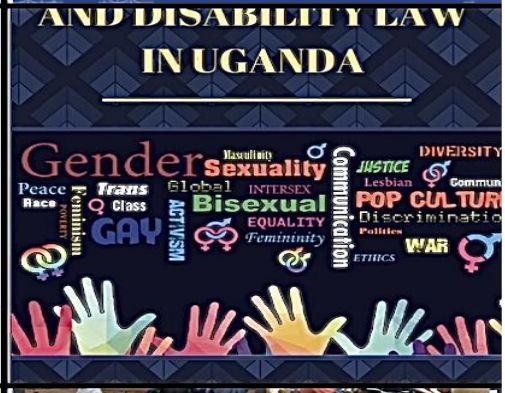
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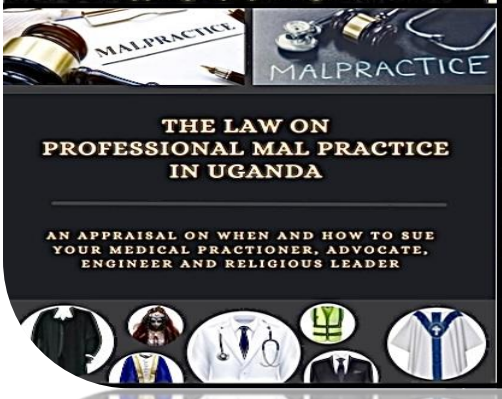
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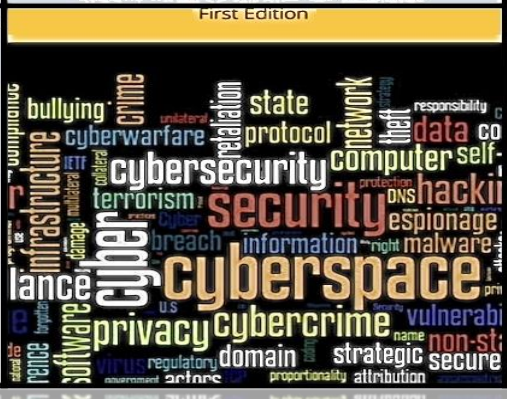
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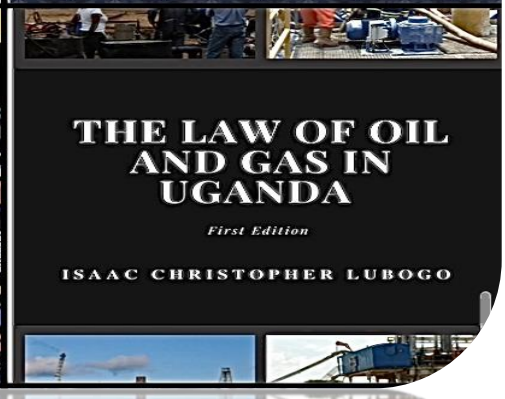
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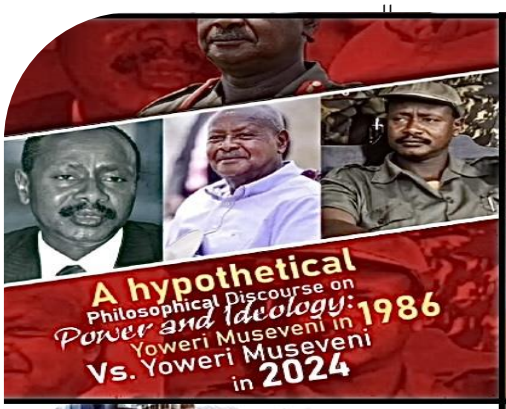
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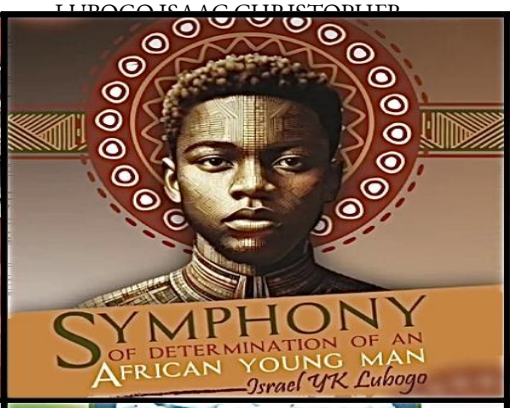
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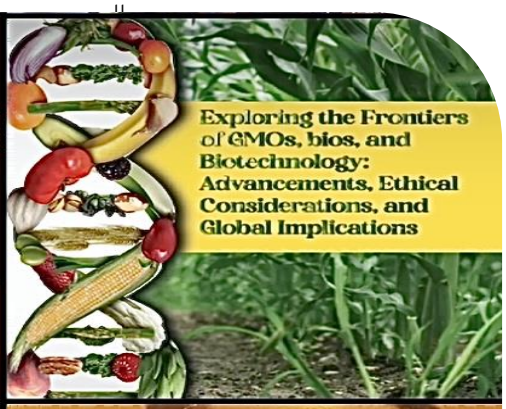
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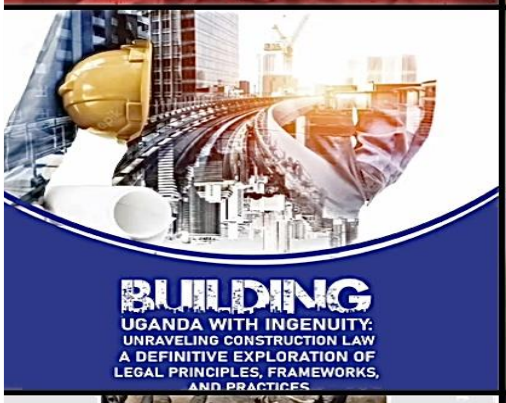
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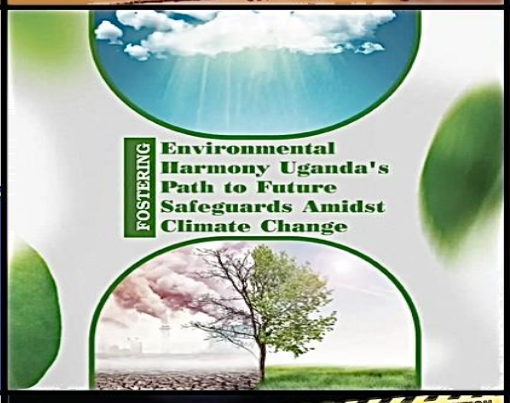
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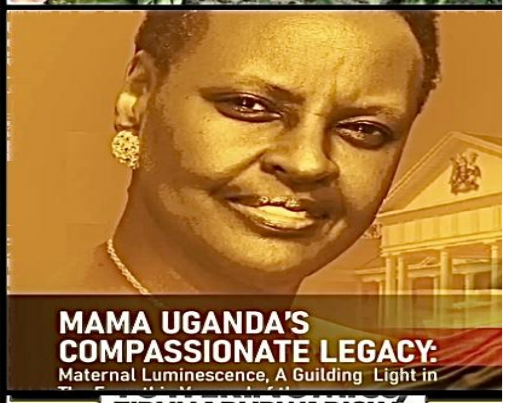
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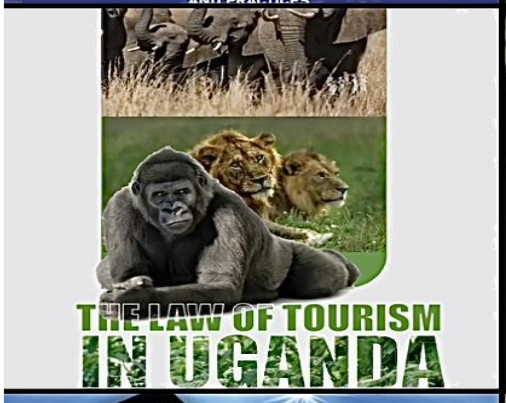
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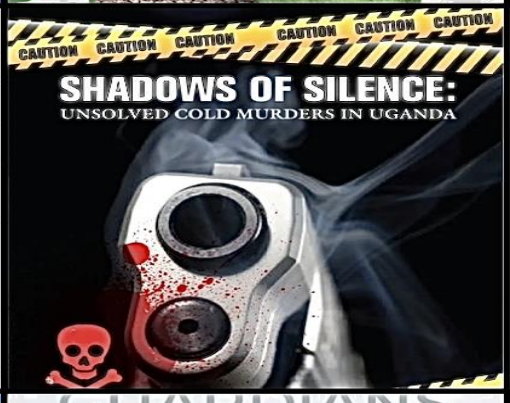
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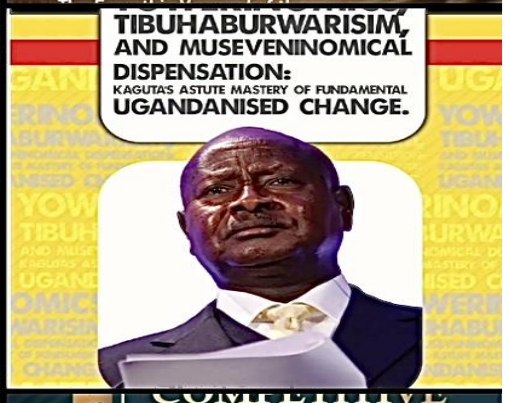
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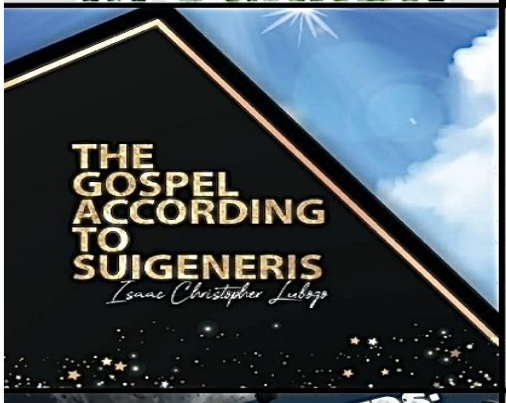
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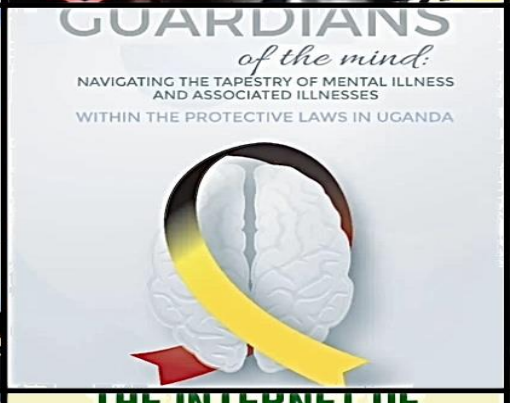
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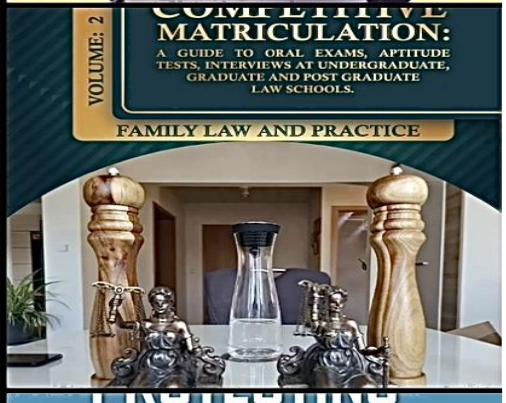
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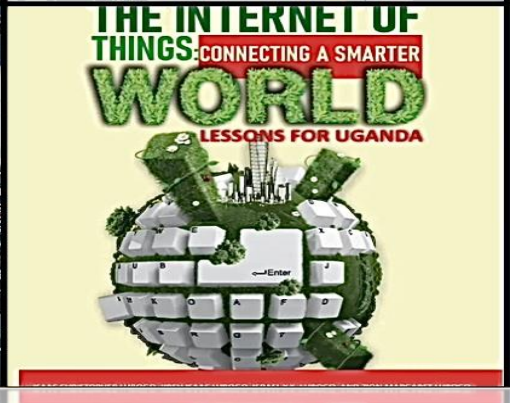
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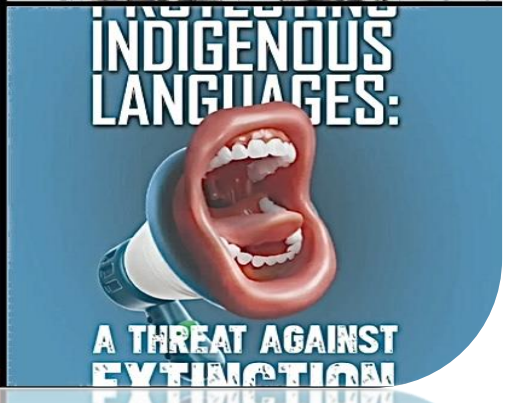
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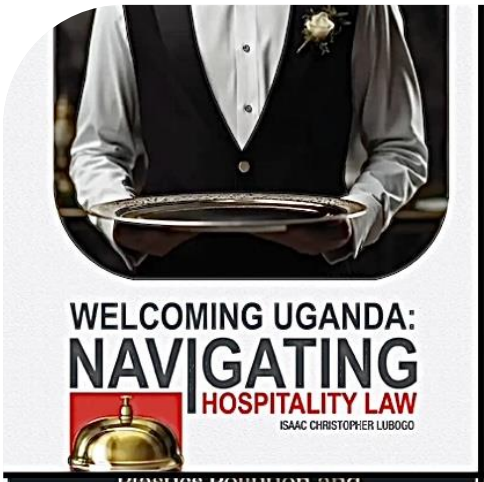
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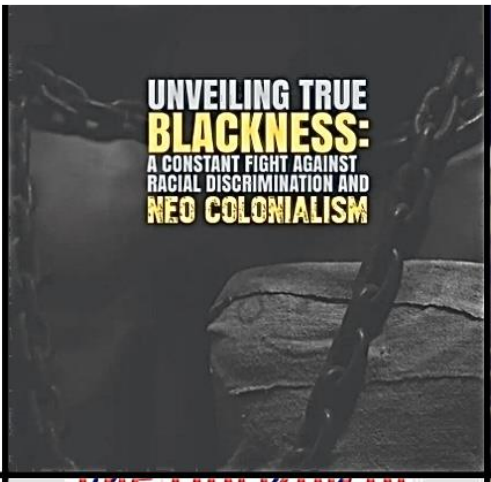
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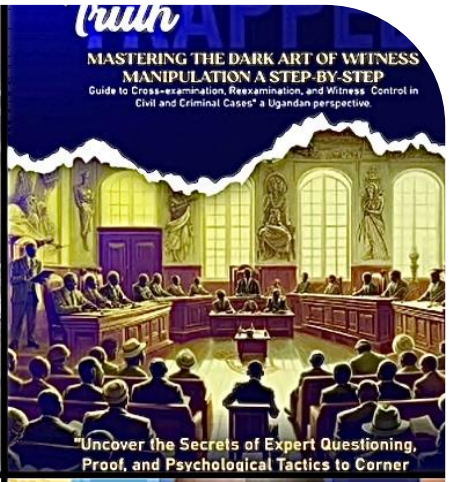
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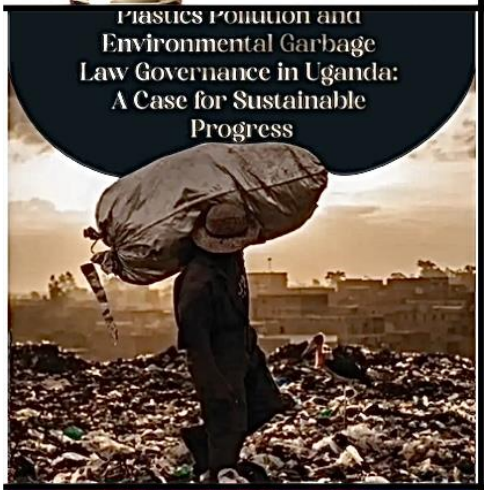
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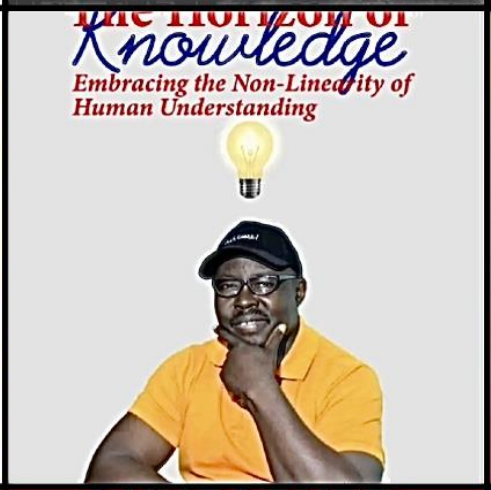
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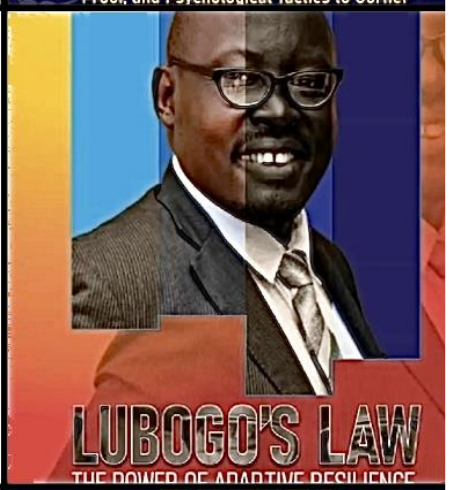
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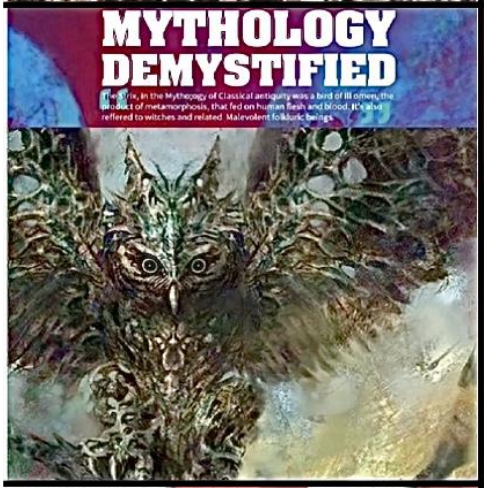
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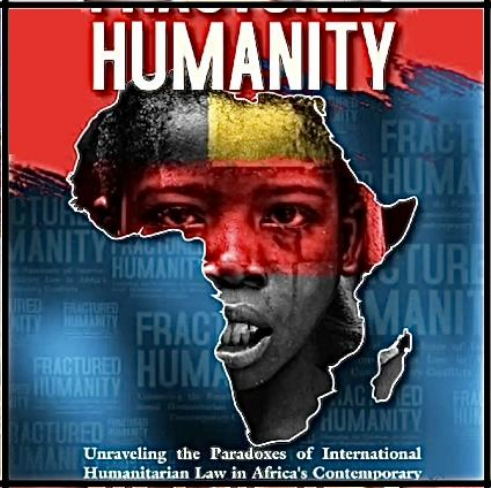
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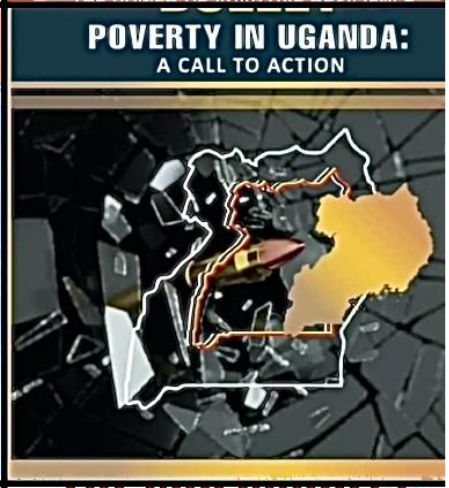
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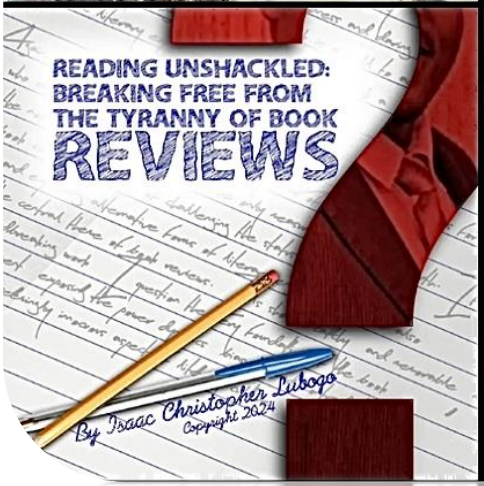
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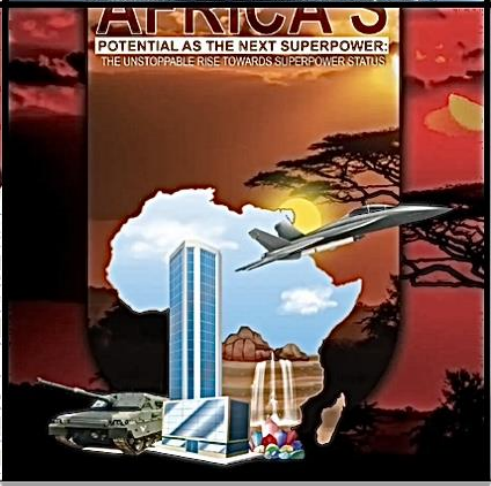
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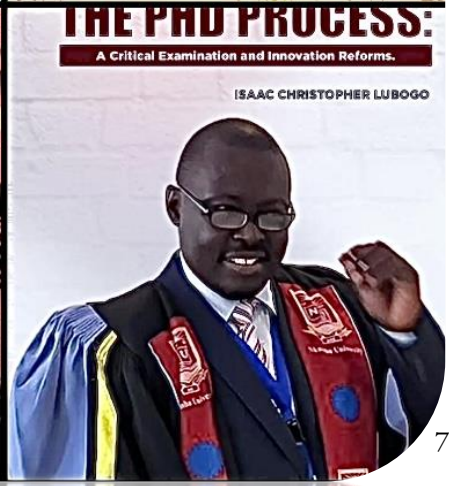
THE PHD PROCESS:
A Critical Examination and Innovation Reforms.
ISAAC CHRISTOPHER LUBOGO

DEDICATION

To The Lord Who Breathes Life And Spirit On Me …

Be My Guide Oh Lord Of The Entire Universe.



"…. Daniel was preferred above the presidents and princes, because an excellent spirit was in him, and the kingthought to set him over the whole realm" _ Daniel Chapter six verse three

Vox Populi, Vox Dei (Latin, 'the voice of the people is the voice of God')

Salus populi suprema lex esto (Latin: "The health (welfare, good, salvation, felicity) of the people should be the supreme law", "Let the good (or safety) of the people be the supreme (or highest) law", or "The welfare of the people shall be the supreme law") is a maxim or principle found in Cicero's De Legibus (book III, part III, sub. VIII).

ACKNOWLEDGEMENT



Great thanks to learned colleagues, **Mulungi Agatha** and **Ahimbisibwe Innocent Benjamin** whose enormous turpitude and stamina have inspired me to abridge this tome into a formidable book. I offer distinctive recognition and thanks to my team of researchers whose tireless effort in gathering and adding up material has contributed to this great manuscript.

Blessings upon you.

REVIEW

"Objection My Lord" by Isaac Christopher Lubogo (Second Edition)

It is with profound admiration that I pen this review for the second edition of *Objection My Lord*, an extraordinary legal tome by the distinguished scholar Isaac Christopher Lubogo. Having made a resounding impact with its inaugural edition, this magnum opus has not only solidified its place in the annals of legal literature but has now ascended to even greater heights in its revised form. Lubogo has meticulously expanded the boundaries of legal discourse, presenting a work that is not merely an analysis but an intellectual journey through the complex architecture of trial advocacy.

The first edition of *Objection My Lord* already heralded the arrival of a formidable legal mind, one whose treatment of objections and courtroom dynamics was incisive and authoritative. However, this second edition exemplifies what can only be described as a tour de force in legal writing. With refined precision, the author delves into the intricacies of evidentiary objections, the art of courtroom persuasion, and the strategies that define masterful advocacy.

Isaac Christopher Lubogo has, with this edition, set an even higher bar for legal scholarship. His mastery of procedural and substantive law is evident as he navigates through both theoretical frameworks and practical applications with unparalleled fluency. His discourse on the law of evidence is especially noteworthy, as it demonstrates a rare combination of academic rigor and pragmatic insight—qualities that are essential for any advocate seeking to excel in litigation.

The author's treatment of objections in this edition goes beyond mere technicalities; it explores the psychological and rhetorical dimensions of legal practice, elevating the subject from a simple procedural necessity to a formidable weapon in the arsenal of courtroom strategy. Lubogo dissects the art of objecting with clinical precision, revealing the subtleties that differentiate the ordinary advocate from the truly exceptional.

Moreover, this edition benefits from a deepened engagement with comparative jurisprudence. Lubogo draws from not only Ugandan and East African legal systems but also traverses global legal landscapes, enriching the text with international perspectives that offer fresh insights and broaden the scope of applicability for both budding and seasoned practitioners.

The author's style is replete with eloquence, yet never at the expense of clarity. His ability to marry dense legal principles with accessible explanations makes this book an invaluable resource for law students, practitioners, and even judges. The second edition is undeniably a magnum opus—an academic feast of legal wisdom served with eloquence, precision, and a deep understanding of the legal craft.

In sum, *Objection My Lord* in its second edition is an indispensable guide for the astute advocate. Isaac Christopher Lubogo has upped the ante, setting an exemplary standard for future legal scholarship. I wholeheartedly commend this work to every member of the legal fraternity, for it will undoubtedly leave an indelible mark on the study and practice of law.

Editors: **Ahimbisibwe Innocent Benjamin**

(Africa Award Winning Lawyer, 2022, Author & Advocate)

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(Advocate)



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SUMMARY



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PERUSAL OF POLICE FILES

A police file is a record of case papers pertaining to a case duly reported to the police and registered.

There are three types of police files; that is;

MINOR COTRAVENTION BOOK (MCB)

This police file is for recording offences of a minor nature; for example failure to pay Tax.

CRIMINAL REPORT BOOK (CRB)

This is a file for offences of a serious nature; it is usually instigated by the Criminal Investigation Department.

TRAFFIC ACCIDENT REPORT (TAR)

This file is for recording facts about an accident especially particulars of persons and vehicles involved. It takes the Police form 57.

LAYOUT OF A POLICE FILE

A police file includes the following salient materials:

A file cover; this includes the following information

The police criminal case number;

The court criminal case number;

The name of complainant or person providing the information;

The names, addresses, particulars, of the accused;

The name of the investigating police station;

Details of the time, date and place at which a person was arrested.

Inside the file cover, the following information is kept

Name of the investigating officer;

Name of magistrate trying the case;

Record of finger prints, information regarding stolen property, table of information with regard to the Criminal Investigative department;

Reports of experts; for instance, medical reports, Government Chemist Reports inter alia.

First information (usually contains the charge sheet.)

When perusal is done:

Perusal refers to the reading of a file to assess it with the sole purpose of directing police on the state of investigation of the case.

Perusal is discussed at length in Criminal Investigation and Prosecutions[1]; but briefly perusal is done in the following situations:

When evidence is collected on a file;

When the investigative officer needs directions

When the decisions need to be made for the offence disclosed.

When there is need to summarize the evidence contained therein.

When the prosecution needs to know the nature of the evidence.

When there is need for consideration of sentencing, upon conviction.

When there is need to prepare for appeals and revisions.

[1] By CJ; Benjamin Odoki; 3rd Edition pg 47-48

ASSESSMENT AND ADVICE ON WEAKNESS OF INVESTIGATIONS

In assessing and advising on investigations, the following should be noted;

1. One should advise on the nature of charges which could be preferred. This means that there ought to be sufficient grounds and evidence to sustain the offences charged against the accused. If the case is a weak one, counsel may seek to withdraw the charges in line with section 121 of the Magistrate Courts Act CAP 19. This should be done with consent of the DPP.

2. Advice also comes in handy when there is an amendment of charges especially where the police has preferred a charged which is misconceived or not supported by evidence on record.

PRACTICE AND PROCEDURE IN GIVING ADVICE.

(1) After the police has finished the investigations, the state attorney or prosecutor looks at the preferred charges. The state attorney then identifies the possible offences, if the evidence is lacking, the State Attorney sends back the file to the police for investigations. When the investigations are complete, at this stage, charges are preferred; then the charge sheet is sanctioned by the State Attorney; and duly signed by the Magistrate.

Criminal summons are then obtained from a Magistrate duly signed and served on the accused.

A prudent lawyer ought to have ARTICLE 28 of the Constitution at the back of his head; thus every one is presumed innocent until proven guilty. Secondly, the principle of legality should be put into the picture; thus no one is bound to be tried except in accordance with the law. Under this issue, one looks at the offences disclosed by the facts on the face of it for example;

Murder contrary to section171 and 170 of the Penal Code Act Cap 128,

Aggravated robbery contrary to section 267(2) of the Penal Code Act Cap 128.

ARRESTS, SEARCHES, RECOVERY, AND DISPOSAL OF EXHIBITS



Benjamin Odoki in his text a guide to criminal procedure in Uganda 3rd edition, LDC 2006, pg.42 defines an arrest as the temporary deprivation of liberty for the purpose of compelling a person to appear in court or other authority to answer to criminal charge or testify against another person.

POWER TO ARREST.

1) judicial officers

A judicial officer may at anytime arrest or direct the arrest in his or her presence within the local limits of his or her, of any person for whose arrest he or she is competent at the time in the circumstances to issue a warrant as per S.20 of CRIMINAL PROCEDURE CODE ACT CAP 122

Where and offence is committed by a magistrate or within his/her local limits of jurisdiction he or she may himself or herself arrest or order any person to arrest the offender he or she may therefore commit the offender to custody or release him or her on bail as per S.19 of CRIMINAL PROCEDURE CODE ACT CAP 122

2) private persons any private person may arrest any person who is in his or her view committed a cognizable offence , or whom he or she reasonably suspects of having committed a felony .S.15(1) of CRIMINAL PROCEDURE CODE ACT CAP 122, S.1(b) CRIMINAL PROCEDURE CODE ACT CAP 122, defines cognizable offence as any offence which on conviction may be punished by a form of imprisonment for one year or more : or which on conviction may be punished by a fine not exceeding five thousand shillings.

Private persons may also effect an arrest where the person arrested is found committing any offence involving injury to property. The owner of the property or his or servants or persons authorized by him or her may arrest the person. S.15(2) of CRIMINAL PROCEDURE CODE ACT CAP 122. In the case of **RERIGIOUS KASULE V MAKERERE UNIVERSITY**. And in the case of **STEVEN OPOROCHA V UGANDA 1991 HCB 9,** soldiers, prison officer's, LDU's and private guards may arrest just like any private person except where such powers are stipulated in a state.

3. Police

A police may without a court order or warrant arrest a person if he or she has reasonable cause to suspect that the person has committed or is about to commit an arrestable offence. S.26 OF THE CRIMINAL PROCEDURE CODE ACT CAP 122

A female person shall only be searched by an authorized woman. S.8 OF THE CRIMINAL PROCEDURE CODE ACT CAP 122

S.18 of the CRIMINAL PROCEDURE CODE ACT CAP 122, requires OCs of police stations to report to the nearest magistrate without a warrant within limits of their respective stations and whether the persons have been granted bond or not.

PREVENTATIVE ARREST

Section 25 of the CRIMINAL PROCEDURE CODE ACT CAP 122, Every police officer receiving information of a design to commit any cognizable offence shall communicate the information to the police officer to whom he or she is subordinate and any other officer whose duty is to prevent or take cognizance of his commission of any such offence.

A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a magistrate and without a warrant the person so designing if it appears to the officer that the commission of the offence cannot otherwise be prevented. S.26 of CRIMINAL PROCEDURE CODE ACT CAP 122

Under S.24 (1) of police act, a police officer who has reasonable cause to believe that the arrest and detention of a person is necessary to prevent that person from inter lia causing physical injury to himself or herself or any other person committing an offence against public decency in a public place among other reasons in the section may arrest or detain that person.

However under S.24 (2) of the police act a person detained under preventive arrest shall be released once the peril risk of loss damage or injury or obstruction has been sufficiently removed on execution of a bond with or without surely where the person is made for him or her to appear at regular intervals before a senior police officer of o required or upon any other reasonable terms and conditions specified by the inspector general in writing.

REMEDY FOR UNLAWFUL DETENTION

A person arrested or any other person on behalf of the person arrested who has reason to believe that any person is being unlawfully detained under preventative arrest may apply to a magistrate to have such person released with or without security under S.24(4) of the police act.

ARREST WITH A WARRANT

Article 23 of the 1995 constitution of Uganda, provides for protection of personal liberty except in circumstances like lawful arrest.

The court may order the arrest of a person by issuing a warrant in writing , signed by the judge or magistrate issuing it bearing the seal of the court stating the offence charged and order the person to whom it is issued to apprehend the person against who it is directed and being him or her before the court. S.56 (2) of magistrates courts act cap 19 and s.6 of the trial on indictments act cap 25.

Section 42 of the magistrates courts act cap 19, The court issues the warrant of arrest in circumstances where it is necessary to secure the appearance of an accused person to answer a charge after the charge has been laid against the person by a public prosecutor or a police officer or been drawn by the judicial officer on the basis of a complaint.

To whom may a warrant be directed

It may be directed to one or more police officers or chiefs named in it or generally to all police officers or chiefs S.58(1) of MAGISTRATES COURTS ACT CAP 19, S.7 of THE TRIAL ON INDICTMENTS ACT CAP 25.

When a warrant is directed to more officers or persons than one, it may be executed by all or by anyone or more of them. S.58 (3) of MAGISTRATES COURTS ACT CAP 19. Any court issuing a warrant may if its immediate execution is necessary and no police officer or chiefs immediately available, direct it to any person and that person shall execute the warrant. S.58(2) of MAGISTRATES COURTS ACT CAP 19

Form contents and duration of warrant of arrest

Section 2 of the criminal procedure code act CAP 122, mode of arrest includes touches and confining unless the suspect submits by word or action.

Section 2 and 3 of the criminal procedure code act, reasonable force is permitted in cases where a person forcibly resists being arrested

S.56 of the MAGISTRATES COURTS ACT CAP 19 provides for the form, contents and duration of a warrant of arrest these are:

S.56 (1) every warrant of arrest of arrest must be under the hand of the magistrate and issuing it and must bear the seal of court.

S.56 (2) every warrant must state shortly the offence with which the person against whom it issued is changed and shall name or otherwise describe that person and it shall name or otherwise describe that person and it shall order the person against whom it is issued and bring him or her before the court issuing the warrant or before some other court having jurisdiction in the case to answer to the charge mentioned in it and to be further dealt with according to law.

S.56 (3) every such warrant remains in force until it is executed or until it is cancelled by the court which issued it.

PROCEDURE FOR GRANTING A WARRANT OF ARREST

Section 5 of the criminal procedure code act, unnecessary restraint is prohibited where the person is not attempting to escape.

a) The prosecution institutes charges with a charge sheet or indictment. under S.42(6) of MAGISTRATES COURTS ACT CAP 19 , where a charge has been drawn up and laid under S.42(1)(b) magistrate shall issue summons or warrant to compel the attendance of the accused person .

b) Apply to have summons issued to compel attendance of the accused. Note that warrant may be issued notwithstanding the act that time appointed in the summons has not lapsed.

c) Upon failures to honour summons, the prosecution applies orally for the warrant of arrest showing that there is justification for a warrant of arrest with the witness or accused person having failed to honor court summons without justifiable reason (S.55 (1) of the MAGISTRATES COURTS ACT CAP 19 warrant shall only be issued when its proved to court by evidence on oath that the summons directed to the person were duty served. S.55(4) of MAGISTRATES COURTS ACT CAP 19

WARRANT OF ARREST

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATE COURT OF LUGAZI AT LUGAZI

WARRANT OF ARREST

To: .....

WHEREAS Kenneth sematiko of gooli village kiyindi parish najja sub county, Buikwe district, stands charged with the offence of doing grievous harm contrary section 202 of the penal code act cap 124.

YOU ARE HEREBY directed to arrest the said keitk sematiko and procedure him /her before me his worship Joel Kaaya, Chief magistrate, lugazi chief magistrate court.

Herein fail not

Dated this 13 day of October 2024

.....

Magistrate

IRREGULARITIES IN SUBSTANCE OR FORM OF A WARRANT

Any irregularity in the substance or form of a warrant and variance between it and the written complaint or information , or between either and the evidence produced on the part of the prosecution at any inquiry or trial do not affect the validity of any proceedings at or not subsequent to the hearing of the case, S.64 of the MAGISTRATES COURTS ACT CAP 19 ,but if any such variance appears to the court to be such that the accused has been deceived or missed by the variance , the court may at the request of the accused, adjourn the hearing of the case to some future date and in the meantime remand the accused or admit him or her to bail.

Execution of a warrant of arrest

When executing the warrant, the person executing the warrant should inform the person to be arrested of the substance of the warrant. S.9 of THE TRIAL ON INDICTMENTS ACT CAP 25 and S.61 of MAGISTRATES COURTS ACT CAP 19

In ***mwangi s/o njoroge v r***[2], the court held that the omission to inform the person arrested of the charge or crime he or she is suspected of having committed is not a mere irregularity and there is nothing which superseded or abrogates this rule.

A warrant of arrest may be executed at any place in Uganda S.62 of MAGISTRATES COURTS ACT CAP 19. A warrant direct to a particular police officer /chief may be executed by another police officer or chief whose name is endorsed by the officer to whom it was directed. S.60 of MAGISTRATES COURTS ACT CAP 19.

EXECUTION OF A WARRANT OF ARREST OUTSIDE THE LOCAL LIMITS OF THE JURISDICTION OF COURT.

Where the warrant is executed outside the local limits of the jurisdiction and more than 20 miles from the issuing court the arrested person should be taken before the magistrate within the local limits of whose jurisdiction the arrest was made (S.63(1) of MAGISTRATES COURTS ACT CAP 19.

PRODUCTION WARRANTS

A magistrate may issue an order requiring any person confined in prison to be brought before him or her at a time named in the order. The order is issued to the officer in charge (oc) of the prison where the person is confined. S.67 (1) of MAGISTRATES COURTS ACT CAP 19.

Where the order is directed to OC prison beyond the local limits of the jurisdiction of the court issuing the order , the court shall send orders for endorsement to the magistrate within local limits of jurisdiction the order is to be executed S.67(2) of MAGISTRATES COURTS ACT CAP 19. The endorsement shall be sufficient authority to the OC of prison to whom it's directed to execute the order.

[2] **(1954) 21 EACA 377**

USE OF REASONABLE FORCE IN ARREST.

In effecting an arrest the police officer may touch or confirm the body of the person to be arrested, unless the person submits to the custody by word or action. S.2 (2) of CRIMINAL PROCEDURE CODE ACT CAP 122 If the person however forcibly resist arrest, the person effecting the arrest may use all means necessary to effect the arrest, but no grater force than is reasonably necessary should be exercised. S.2 (2) of CRIMINAL PROCEDURE CODE ACT CAP 122

Filling in the course of preventing crime or in arresting offenders is only justifiable where there is an apparent necessity to do so .there is no need to use excessive force, such as disarming fire frames where the suspects are unarmed or are not carrying dangerous weapons in

Pc I smail Kisegerwa V Uganda[3]**,** the court held that where excessive force is use in effecting arrest and death ensures force the killing is either murder or manslaughter

Post arrest process

An arrested person must be brought court as soon as possible but in any case not later than 48 hours after the time of his or her arrest. ARTICLE .23(4) THE 1995 CONSTITUTION OF UGANDA AS AMENDED

Arrest without a warrant.

KANANURA ANDREW AND OCS V UGANDA HMAGISTRATES COURTS ACT CAP 19 NO. 010203 of 2014 (on the powers of police officers to arrest without a warrant)

WILLIAM ABORA V A.G H.C.C.S nc.

[3] ***Crim App No.6 Of 1978*** **(unreported)**



SEARCHES

Benjamin odoki , a guide to criminal procedure in Uganda (3rd end ldu) 2006 pg.52 a search is defined as an inspection made on a person or in a building for the purpose of ascertaining may be discovered on the body of the person or in the building searched.

SEARCH WITHOUT A WARRANT

When a police officer has a reason to believe that material evidence can obtained in connection with an offence for which an arrest has been made or authorized, any police officer may search the dwelling or place of business of the person arrested or the person for whom the warrant of arrest has been issued and my take possession of anything reasonably which may be used as evidence in any criminal proceedings. S.69 of CRIMINAL PROCEDURE CODE ACT CAP 122, S.7 of CRIMINAL PROCEDURE CODE ACT CAP 122, S.27 (1) of the police act.

S.27 (1) of the police act, limits the powers to search without a warrant to a police officer at the routine of sergeant and above and should much as possible conduct the search himself.

Where the officer cannot conduct the search himself and there is no competent person to carry out the search, the officer may after recording in writing his / her reasons for so doing , require any subordinate to him/herself not below the rank of corporal to make the search for him/herself shall shall deliver to that officer an order in writing specifying the place to be searched and so far as possible the thing for which search is to be made and that officer may there upon search for that thing in that place S.27(3) of the police act.

S.27 (5) of the police act requires that the recordings in S.27 (1) and S.27 (3), copies are sent to the nearest magistrate empowered to take cognizance of the offence and to the owner or occupier of the place searched.

Search with a search warrant is a written authority given by court ordering the search of the premises, place or vessel named in the warrant for the purpose on seizing anything there in which is required or material in investigation of an offence .(Benjamin odoki)

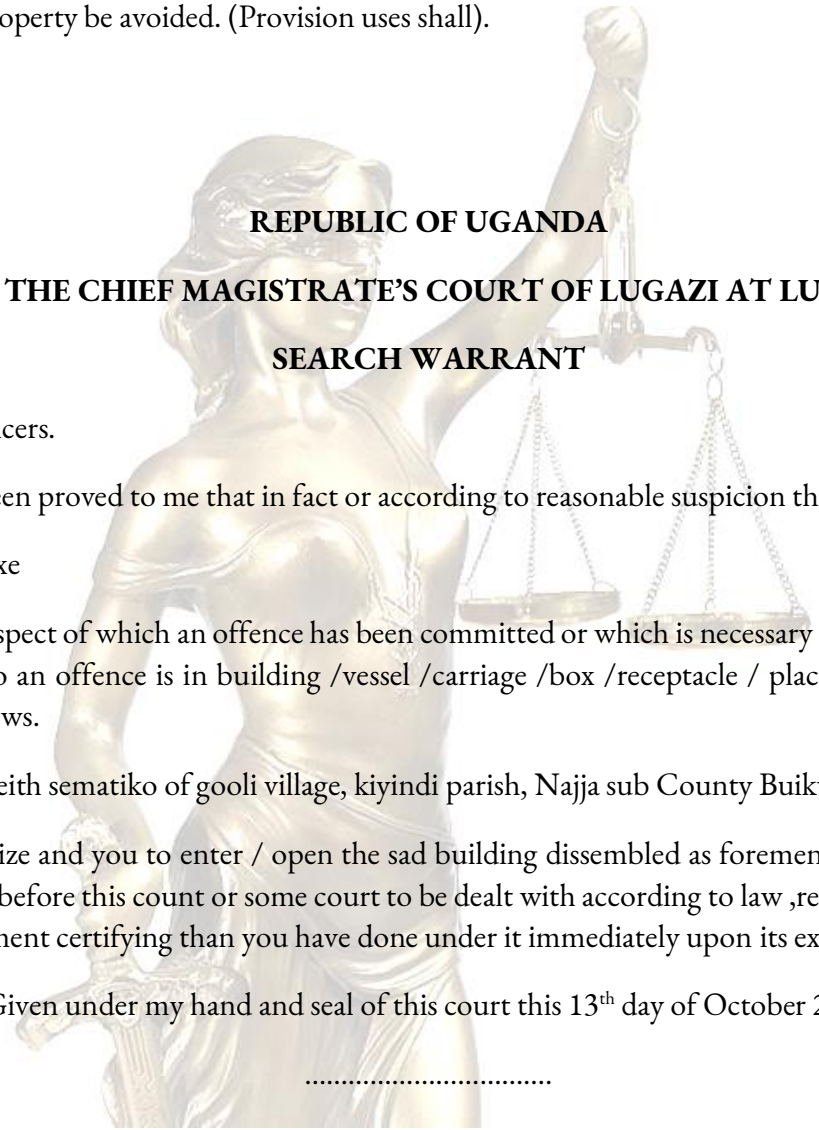
under S.70 of the MAGISTRATES COURTS ACT CAP 19 , where its foamed on oath to a magistrate court in fact or according to reasonable suspicious anything upon by or in respect of an offence has been committed and investigation into any offence is in any building, vessel, camage , box , reacceptance or place , the court may by warrant authorize the person to whom the warrant is directed to search the building ,vessel, camage ,box, receptacle or place (which shall be named or described in the warrant) for any such thing and anything searched is found , to seize it and carry it to be dealt with according to law.

Execution of search warrants

Every search warrant may be issued and executed on a Sunday and shall be executed in between the hours of sunrise and sunset but the court may by warrant ,in its discretion , authorize the police officer or other person to whom it is addressed to addressed to execute it at any hour.

Persons resealing or in charge of places liable for a search but are closed must upon production of search warrant, allow the officer into the premises S.72 of MAGISTRATES COURTS ACT CAP 19.

S.27 (9) of the police act requires that searches are carried out in human way and unnecessary damage or destruction to property be avoided. (Provision uses shall).



REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATE'S COURT OF LUGAZI AT LUGAZI

SEARCH WARRANT

To: all police officers.

Whereas it has been proved to me that in fact or according to reasonable suspicion the following things;

1. An axe

Upon by or in respect of which an offence has been committed or which is necessary to the conduct of an investigation into an offence is in building /vessel /carriage /box /receptacle / place herein named and described as follows.

Home of a one keith sematiko of gooli village, kiyindi parish, Najja sub County Buikwe district.

This is to authorize and you to enter / open the sad building dissembled as forementioned and if found seize and carry it before this count or some court to be dealt with according to law ,returning this warrant with an endorsement certifying than you have done under it immediately upon its execution .

Given under my hand and seal of this court this 13th day of October 2019

.....

Magistrate

CERTIFICATE OF SEARCH

THE REPUBLIC OF UGANDA

CERTIFICATE OF SEARCH

Opolot Gerald rank aip attached to lugazi central police station have conducted a search in the home of Keith sematiko of cooli village, kiyindi parish, najja Sub County, buikwe district.

In connection with the matter under investigation and the following were found and as exhibits only and nothing destroyed.

An axe

Witnessed by

1. Joel lumala , l.c.1 goli village
2.

Read: kazindas cases from court of appeal on searches.

Exhibits

The black's law dictionary defines an exhibit as a document, record, or other tangible object formally introduced as evidence in court.

An exhibit is this something tangible which is formally rendered in court as evidence

Chain of custody

An exhibit must be kept in its original form otherwise it may be rendered useless. The chain of custody must not be interfere with

The chain of custody is a concept is a concept in jurisprudence which applies to the handling of evidence and its integrity. It refers to process of secure custody, control, transfer analysis and disposal of evidence

If there is a break in the chain of evidence regarding the movement of exhibits or other evidence, the exhibit in question will not be advocated I evidence or if admitted, it will carry little weight because one cannot be sure that the exhibit was not interfered with or is not a different one from the one in questions.

UGANDA v GEORGE WILLIAM KADA CRIMINAL APPEAL SC 367/96, exhibits had not been established justice lugayizi held that despite the fact that he may know where most of these items the trial on indictments act cap 25 came from before they reached the police, very little if anything is known concerning who took them to the police and who sealed them before they left the police to go to the fouls laboratory .... Court doesnot even know whether those items were not tampered with at one point or another.

Handling exhibits prior to trial

1. i.o recovers the exhibits from any source
2. i.o then makes and labels the exhibits showing the case file numbers
3. if the exhibit consists of ex , the notes ,coins and their denominations should be marked and their serial numbers recorded.
4. The exhibits are then entered into the police exhibit book and the exhibit receipt given to each entry. The receipts may be used as evidence in court where the exhibit cannot be preserve until trial.
5. Exhibits must be under lock and key by the officer in charge of the exhibit store. This is the officer who is allowed to tender in the exhibit in court.
6. An exhibit slip is attached to the exhibit bearing the details of the exhibit

At trial exhibits should be tendered as follows:

a) The prosecutor while leaching the witness will ask questions pointing to the recovery of any matter relevant to the case

b) If such matter is pointed out , the prosecutor will inquire from the witness with questions pointing to identification of the exhibit before court

c) When the witness identifies the exhibit , the prosecutor prays to the court to have the matter achieved in courts an exhibit of prosecution

d) If there is no objection , the exhibit is admitted and given a number

An exhibit presented to court must be in original form, if it's tampered with, it may lose its evidence the trial on indictments act value. In **UGANDA V KABUYE JULIUS hct –oo-cr-0011-2004**, a hand written note was found in the pocket of the accused at the scene of crime. It was not produced in court as an exhibit. The prosecution attempted to produce in court a typed exhibit which was rejected.

EXHIBIT TAG

Cases. hct -01-cr-sc-0028-2009

UGANDA V MUWONGE

Exhibit:

Exhibit no:

Description of exhibit:

Serial no:

Tender in court as an exhibit on 20/10/2019

Magistrate.

WHERE EXHIBIT IS PERISHABLE

Section 201(1) of the MCA CAP 19, a magistrate can make an order for disposal by way of forfeiture, confiscation or otherwise. The disposal of perishables is demonstrated in the case of TIBENTENDERAMA BAHIGWA AND 4 OTHERS V A.G H.C.C.S NO.56/2007where it was held that fish may be disposed of by sale since it's a perishable good and the money be deposited in court and forfeited to the government in the event of the offender being convicted till such proof is adduced in the matter at hand. It is prudent that photographic evidence of the perishable good kept on record after disposal.

OFFENCES

IDENTIFICATION OF OFFENCES AND THEIR INGREDIENTS

MURDER

a scrutiny of section 171 of the Penal Code which provides for the offence should be made; thus the ingredients according to the section are:

1. *Evidence of death of a person;*
2. *Evidence of malice aforethought;*
3. *Act of an unlawful killing;*
4. *Participation of the accused.*

Each of the ingredients ought to be backed by case law; for instance; in relation to the first ingredient; it is fortified in **Uganda vs Okello (1992-93) HCB 68** where court held that it must be proved that the deceased is dead. In relation to the second ingredient; this is sanctioned in **Olenja vs R (1973) EA 546** where court held that malice aforethought is not necessarily established by proof of intent to commit a felony involving personal violence, but should be contrasted with the fact that the accused carried a n iron bar with is a deadly weapon for all intents and purposes. This was noted with approval in **Uganda vs Kassim Obura and another (1981) HCB 9.**

In relation to the third ingredient, it must be noted that no act of killing is lawful unless sanctioned by the law. This was held in **Uganda vs. Musumba (1992) 1 KALR 83**, where court held further that in all cases of homicide; unless the statute makes it excusable; the killing is presumed unlawful.

In relation to the fourth ingredient, there arise a situation where the accused was not directly linked to the scene of the crime; one use circumstantial evidence which tends to point to the accused as the person who killed the deceased.. this is fortified by **Uganda vs Yosefu [1972] ULR 19** where court held that inculpatory facts should not be incompatible with other facts before court can rely on circumstantial evidence.

Rwabukoma Geoffrey and Others v. Uganda (Criminal Appeal No. 101 of 2017), The Court of Appeal, in determining the appropriate sentences for the appellants involved in a **mob justice killing**, was guided by the Supreme Court's decision in **Kamya Abdullah and 4 Others vs. Uganda (supra)**, where it was held that convicts in cases involving mob justice cannot be placed on the same sentencing plane as other murder convicts. The Court observed that: *"Counsel for the appellants in his submissions stated that many of those who take part in mob justice do so without thinking. They do so because others are doing so. We agree, furthermore, a mob in its perverted sense of justice thinks it is administering justice while at the same time ignoring the importance of affording the suspects the rights to defend themselves in a formal trial. Without downplaying the seriousness of offences committed by a mob by way of enforcing their misguided form of justice, a wrong practice in our communities which admittedly must be discouraged, we cannot ignore the fact that, in terms of sheer criminality, such people cannot be and should not be put on the same plane in sentencing as those who plan their crimes and execute them in cold blood."* Sentencing in cases involving mob justice killings

Consequently, the Court of Appeal, considering the mitigating and aggravating factors and the sentences previously imposed in similar cases, deemed an 18-year sentence appropriate for the appellants involved in mob justice. Noting that the appellants had been on bail throughout the trial and appeal and had spent 4 months and 18 days in custody, the Court decided to deduct this period from the 18 years, sentencing each appellant to 17 years, 7 months, and 12 days' imprisonment from the date of conviction, which was 22nd March 2017.

ADMISSIBILITY OF EVIDENCE

This is looked at in line with THE EVIDENCE ACT CAP 8 because criminal procedure needs a strong backing on the law of evidence.

The principles of *Res Gestae* should not be forgotten; ***section 5*** gives one of these principles; thus where the facts which though not in issue are so connected with the facts in issue as to form of the same transaction are relevant. This is fortified by the *locus classicus* of **R vs Kurji (1940) 7 EACA 58**. A transaction is defined as a group of facts so connected as to be referred to by one single legal name, as a crime.[4]

One ought to look at facts which tend to explain or introduce a fact in issue or facts which rebut an inference under ***section 8*** of the Evidence act. Facts showing identity of the deceased should not be overlooked especially where the identity of the deceased is in issue. The case of **Uganda Vs Kadidi s/o Kabagambe** provides that where the facts show that the room was poorly lit and the accused was under observation for a small time; then identity of the accused was not proper.

1. The principle of legality : there should be no punishment without a legal sanction

[4] Ratanlal and Thakore(1963) pg 16

ARTICLE 28(7) of the constitution provides that no person shall be convicted of an offence whose act did not constitute an offence when he committed it.

ARTICLE 28(12) provides that no person shall be charged with an offence unless that offence is written and punishment for it prescribed by law.

In UGANDA V ONGWALU S/O OSALU, HC.C.R. REV NO.85 OF 1967, the accused was convicted of refusing to sign a summons and fixed 150/= under S.10 of P.C.A. Court held that there was no such offence known in the penal code act. The conviction was quashed and sentence set aside.

S.1 of the penal code act cap .128 defines an offence as an act attempt or omission punishable by law.

2. Principle of minor and cognate offences.

Where a person is charged with an offence and facts are proved which reduce it to minor cognate offence, he or she may be convicted of the minor offence although he or she was no charged with it. S.145 of MAGISTRATES COURTS ACT CAP 19 and S.87 of THE TRIAL ON INDICTMENTS ACT CAP 25.

3. Identify offences the facts disclose bearing in mind the above two principals.

In AKANKWASA DAMIAN V UGANDA, CONST. APP NO.07 OF 2018 AND CONST. APP NO.097 2011, the constitutional court stated that the requirement of ARTICLE.28 (7) as understood is that a person to be charged with a criminal offence under any legislation the facts or omissions allegedly committed. Must have constituted a criminal offence at the time they were committed.

EVALUATION OF EVIDENCE

s.2 of the evidence act defines evidence It is important to evaluate evidence before sanctioning a file to the resident state attorney (DPP) it's because under ARTICLE 28 (3)(a) of the1995 constitution of the republic of Uganda , every person who is charged with a criminal offence is presumed to be innocent until proven guilty or until that person has pleaded guilty and to ascertain if there is any evidence to make out the charge.

Section 103 of the evidence act Cap 8, the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person.

Further in the case of WOOLINGTON V DPP (1935) AC 462 the court that burden of proof in criminal trials perpetually rests on the prosecution and does not shift to the accused person except where there is a specific statutory provision to the country. IN UGANDA V HUSSEIN HASSAN AGADE HC CRIM SESSION CASE NO.1 OF 2010, the court held that each ingredient should be proven by the prosecution

In addition, the standard of proof that the prosecution must satisfy is beyond reasonable doubt . The law would fail to protect the community if it admitted fateful possibilities to deflect the course of justice as per LORD DENNINIG IN MILLER V MINISTER OF PENSIONS (1947)2 ALL ER 372.

IN UGANDA V HUSSEIN HASSAN AGADE H.CCRIMSS. CASE NO. 17 2010, the court held that the standard is met only when upon considering the evidence adduced , there is a high degree of probability that the accused in fact committed the offences.

Having established the above principles, proceed to evaluate the evidence on file relating to each ingredient of the offence charged.

RULES OF EVIDENCE TO CONSIDER

a) Section 58 of the evidence act cap 8, all facts, except the contents of documents, maybe proved by oral evidence

b) Section 59 of the Evidence act, oral evidence must in all cases be direct.

c) Section 60 of the evidence act, proof of contents of documents maybe either by primary or secondary evidence

d) Section 61 of the evidence act, primary evidence means the document itself produced for the inspection of court.

e) Section 62 of the evidence act Secondary evidence means and includes—(a)certified copies given under the provisions hereafter contained;

(b) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with those copies;

(c) copies made from or compared with the original;

(d) counterparts of documents as against the parties who did not execute them;

(e)oral accounts of the contents of a document given by some person who has himself or herself seen it.

GAHIZI LAWRENCE V. UGANDA, CRIMINAL APPEAL NO. 182 OF 2020, Agreement defectiveness, the COA noted that *a retrial will be ordered only when the original trial was illegal or defective; it will not be ordered where the conviction is set aside because of insufficiency of evidence or for the purpose of enabling the prosecution to fill up gaps in its evidence at the first trial; even where a conviction is vitiated by a mistake of the trial court for which the prosecution is not to blame, it does not necessarily follow*

that a retrial should be ordered; each case must depend on its own facts and circumstances and an order for retrial should only be made where the interests of justice require it.

GENERAL PRINCIPLES AND PRACTICAL APPLICATION OF THE LAW OF EVIDENCE

Corroborative Evidence

Corroboration is defined in **R vs Baskerville (1916)2 KB 658**[5], as where on trial of an accused person, evidence is given in which material from an independent source are given which tend to implicate him as one who has committed the offence. Thus one should look out for corroborative evidence so as to have adequate evidence to sustain the charges against an individual.

AYEBARE ERIC V UGANDA, CRIMINAL APPEAL NO. 157 OF 2018, The COA noted that while dying declarations are admissible as evidence against an accused and do not legally require corroboration, courts have consistently required corroboration as a matter of practice due to the inherent weaknesses in this type of evidence.

LUUTU STEPHEN V. UGANDA, CRIMINAL APPEAL NO. 077 OF 2018, The Court of Appeal emphasized that corroboration in criminal cases is a matter of practice rather than a strict legal requirement .

Forensic Evidence

Forensic evidence should be gathered where possible. If it is not evident then one has a duty to advise that reports of experts would be useful in improving on the sufficiency of evidence. Evidence of experts is provided for in section 43 of the Evidence Act [6] which is to the effect that if court is to form an opinion on appoint of ... science, opinions of such persons with expertise are relevant. Case law has enunciated in **Odindo Vs R (1969) EA 12** that one needs to have an educational background before giving an authoritative opinion on the matter before court; and accordingly **R vs Silver Loake (1894) 2 QB** court held that where one is knowledgeable in a particular field as a result of experience, court can rely on his experience to form an opinion.

Documented Evidence

This is line with the rule of evidence which provides that evidence for all intents must be direct. Documented evidence of Medical Practitioners can be used in court. A document in point here is Police Form 48- the Medical Report which must be prepared by a District Medical Officer.

[5] This has subsequently been judicially acknowledged in Uganda through use of common law and doctrines of equity in Courts of Judicature vide section 14 of the Judicature Act

[6] supra



Bona fide claim of right

Under section 7 of the PENAL CODE ACT CAP 128, a person is not criminally responsible in respect of an offence relating to property if the act done or omitted to be done by the person with respect to the property was done in the exercise of an honest claim of right and without intention to defraud.

The accused person must show that he was acting under an honest claim of right for him or her to succeed.

If the accused obtained property under a claim of right, (he/ she) does not possess the intent required for the crime of (theft or robbery). Claim of right for the accused is available if (he/ she) believed in good faith that (he/she) had a right to the specific property or a specific amount of money, and (he/she) openly took it.

In deciding whether the accused believed that (he/she) had a right to the property and whether (he/she) held that belief in good faith, the court should consider all the facts on how the property was obtained along with all the other evidence in the case.

Note that the accused may hold a belief in good faith even if the belief is mistaken or unreasonable. But if the accused was aware of facts that made that belief completely unreasonable, it may be concluded that the belief was not held in good faith.

The claim-of-right defense does not apply if the accused attempted to conceal the taking of the property at the time it occurred or after the taking was discovered.

The defense of claim-of-right does not apply to offset or pay claims against the property owner of an undetermined or disputed amount.

The defense of claim-of-right does not apply if the claim arose from an activity commonly known to be illegal or known by the accused to be illegal.

Mapunda v Republic [1971] 1 EA 413 (CAD)

The Appellant was convicted for stealing elephants tusks the property of the Government of Tanzania. During the trial, the appellant claimed that he obtained a license to hunt and kill the elephant. There was evidence to show that the appellant used the license to claim the tusks from the villagers who had discovered them from the decomposing elephant. He took possession of the tusks and claimed them as his property.

His conviction was confirmed by the court of appeal on grounds that he obtained the license after killing the animals and that the tusks were then the property of the Government of Tanzania.

ACCIDENT

Section 8 (1) of the PCA provides that a person is not criminally liable for an act which occurs by accident. An accident is an event which a reasonable man would not have foreseen as likely or probable. An act is said to be accidental if it is caused without intention.

The defense of accident can only be relied upon where the following occurs;

- The offender had no criminal intent to do harm,
- The offender was not acting negligently, and
- The offender was engaged in lawful conduct at the time of the accident

In **Interfreight Forwarders (U) Ltd v East African Development Bank [1990–1994] 1 EA 117 (SCU) (**though civil case**)** the court emphasized that for one to rely on the defense of accident, the following should be shown;

- That something happened over which the person had no control and the effect of which could not have been avoided by the exercise of care and skill.
- That the risk was not reasonably foreseeable.

Necessity

Glanville Williams defines necessity to mean that the conduct promotes some value higher than the value of literal compliance with the law. Necessity was a defense at common law but there are few cases dealing with necessity probably because they are often not prosecuted.

The English courts stated the principle of necessity as early as 1551 in Reninger v. Fagossa [1551] 1 Plowd 1, 75 Eng. Rep. 1 where;

- A man could break the law to avoid greater inconvenience, or through necessity, or by compulsion.
- To break the law to save a life or put out a fire. The jurors could depart without the permission of the judge in case of emergency.

Modem English cases also recognize the defense. In 1939 the King's Bench held that the necessity of saving a mother's life was a defense to abortion.

Rex v. Bourne [1939] 1 K.B. 686.

Mr. Bourne was charged for unlawfully procuring the abortion of the girl less than 15 years. He was a man of the highest skill and in a great hospital with a record of performing the operations. He performed the operation as an act of charity, without fee or reward, and unquestionably believing that he was doing the right thing and that he was required in the performance of his duty as a member of a profession to the alleviation of human suffering.

The issue was whether the Crown had proved to the satisfaction of court beyond reasonable doubt that the act which Mr. Bourne admittedly did was not done in good faith for the purpose only of preserving the life of the girl.

On a charge of procuring abortion, the Crown had got to prove that the act was not done in good faith for the purpose of preserving the life of the mother.

The defense can only be available where;

- A person is confronted with making a choice.
- A person reasonably believes that some harm is inevitable.
- A person reasonably believes that his act or omission could avert a greater harm.

R v Dudely & Stephens (1884) 14 QBD 273

The prisoners and the deceased were cast away in a storm on the high seas 1600 miles from the Cape of Good Hope. That in this boat they had no supply of water and no supply of food and for three days they had nothing else to subsist upon. The boat was drifting on the ocean, and was probably more than 1000 miles away from land. The and the deceased discussed as to what should be done if no support came, and suggested that someone should be sacrificed to save the rest. The prisoner proposed to cast lots regarding

who should be put to death to save the rest. The deceased was never and there was no drawing of lots. The prisoner killed the deceased and they fed on body and blood of the boy for four days until rescued while still alive though weak. They were tried for murder and argued that if they had not fed upon the body of the deceased they would probably not have survived the famine.

At the time of the act in question there was no sail in sight, nor any reasonable prospect of relief. That under these circumstances there appeared to the prisoners every probability that unless they fed upon the boy, it was likely for them to die of starvation. The jury sought the opinion of court on whether the killing of the deceased by the prisoners felony and murder.

The matter was considered to be heard by the Court consisting of five judges. The real question in the case was whether the killing under the circumstances set was murder.

It was held that the prisoners were guilty of murder in killing the deceased and this obvious necessity was not a defense. It was further observed that the defense of necessity does not extend to an accused who killed another to save his life.

IGNORANCE OF THE LAW

Under section 6 of the PCA states that ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence unless knowledge of the law by the offender is expressly declared to be an element of the offence. This is expressed in the latin maxim ***"ignorantia juris non excusat"*** meaning that ignorance of the law is not a defense.

R v Bailey [1800] 68 ER. 657

The accused was convicted of a crime which Parliament had created while he was on the high seas, and there was no way of finding out that a law had been enacted.

The defendant committed the offence before the end of his voyage. He could not possibly have known about the new statute (bear in mind this is 1800).

The defense was not available to the accused and on appeal the judge only recommended a pardon.

In **Lightfoot (1993) 97 Cr App R 24** the fact that a man does not know what is criminal and what is not cannot save him from conviction if what he does, coupled with the state of his mind, satisfies all the elements of the crime of which he is accused.

Similarly, misunderstanding of the law is not a defense as well. In **Dafasi Magayi and others v Uganda [1965] 1 EA 667 (CAK)** the deceased and two others were arrested on suspicion of stealing foodstuffs belonging to the appellant. The deceased were tied with ropes and made to walk while balancing their stolen goods on their heads. As the deceased were being matched to the Gombolala, the pot of the deceased fell off his head and he was struck by one of the appellant on the head. The deceased fell down and the

appellants started beating him up. In that process one of the appellant Daud incited the crowd saying that; *"Beat them I will face the case".* The beating continued until the deceased and others died. The trial judge convicted them of murder.

It was contended on behalf of some of the appellants that since they went in answer to an alarm and behaved lawfully in assisting the chief to arrest the thieves and convey them to the chief's Headquarters, they had no malice aforethought when in obedience to the chief they beat the deceased to death.

The court was unable to accept this contention and held that although it is the custom in Uganda and elsewhere in East Africa to beat thieves, the appellants cannot shelter behind the invitation or order of the chief. It was not a lawful order which they were bound to obey and they must have known as much. The fact that the chief said that he would "face the case" is itself an indication that he and the appellants knew that what they were doing was wrong.

See the case of **Musa and others v Republic [1970] 1 EA 42 (CAD** in this case the area MP gave a public speech in his constituency where he told his audience that the remedy for cattle theft was raise an alarm whenever such theft occurred, track the thieves and kill them and that the people who killed would be acquitted and no action will be taken against them by the government. As a result, the people searched out and killed various individuals thought to be cattle thieves. Although the appellant argued that the killing was a result of the speech by the MP, the court rejected the same and convicted them of murder holding that the mistaken belief could not be regarded as reasonable nor was it a mistake of fact.

MISTAKE OF FACTS

Under section 9 (1) of the PCA a person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he or she believed to exist.

It means that when the accused committed the unlawful act, he or she was mistaken on certain material facts.

Russell on Crime (11th Edn.) points out that Mistakes can be admitted as a defense in the following ways:

- That the state of things believed would, if true, have justified the act done;
- That the mistake must be reasonable;
- That the mistake relates to fact and not to law.

Waera s/o Madoya and others v R [1962] 1 EA 783 (SCK)

The appellant were employees of a farm. The police attached to Eldoret Police Station arrested a person for stealing a bicycle and on interrogation; he claimed the same to be at the farm. Plain clothed officers

were dispatched to recover the same. When the bicycle was discovered, one of the appellants refused it to be taken away unless he was paid money owed by the person whom the police had arrested. In the process, the appellant made an alarm that there were intruders in the house who came to rob him. The alarm was answered by the other appellants. The police officers were tied up and taken to the nearby police where they were identified as being police officers.

The appellants at the trial argued that after police had discovered the bicycle which they came to recover, and discovering that one of the appellant was owed 12/= by the person earlier arrested by police, the police officers resorted to asking questions relating to the amount of money inside the safe kept by the appellant. This made the appellants suspicious and concluded that the officers were masqueraders.

None of the officers wore any obvious items of police uniform. They never produced any warrant card or search warrant. The trial magistrate held that the police officers were assaulted in executing their duty and it was immaterial whether or not the appellant knew the policemen were indeed policemen.

Rudd Ag CJ, held that; If a policeman is actually acting in the course of his duty and is assaulted or obstructed while so acting, the person who so assaulted or obstructed the policeman cannot escape criminal liability merely on the ground that he did not know that the person he assaulted or obstructed was in fact a policeman and acting in execution of his duty. But if he has reasonable ground for belief and honestly did believe that the person was not a policeman then he is entitled to the benefit to the extent that his honest and reasonable belief if true would have justified his actions.

The onus is on the accused to establish circumstances which are capable of justifying the conclusion that the accused acted under such a reasonable and honest mistake.

R vs. Sultani Maginga (1969) H. C. D 109

The deceased and a woman were lying in the rice field after sexual intercourse. When Sultan was going round to guard the field against wild pigs, he saw the movement of the grass and called out to establish whether it was an animal or a human being. There was no reply prompting him to throw a spear which killed the deceased.

He was held not liable in the circumstances for killing the deceased.

See the case **Leosoni alias Leonsion s/o Matheo v R [1961] 1 EA 364 (CAN)** where court noted that an accused acting under a reasonable mistake of fact, where that mistake if true would entitled him or her to rely on that mistake. But the accused cannot rely on a mistake of law.

It should be noted that the burden of proof in mistake of facts rests on the accused to produce sufficient evidence to satisfy the court that he did a mistake and that his or her actions honest and reasonable.

INSANITY

The definition of insanity is not laid down by statute but has to be gathered from the cases.

Definition:

- Insanity refers to unsoundness of mind or lack of the ability to understand that prevents one from having the mental capacity required by law to enter into a particular relationship, status, or transaction or that releases one from criminal or civil responsibility:
- It is also a disease, defect, or condition of the mind that renders one unable to understand the nature of a criminal act or the fact that it is wrong or to conform one's conduct to the requirements of the law being violated
- It may also be inability to understand and participate in legal proceedings brought against one.

The Mental HEALTH Act Cap 308 deals with people of unsound mind but has not committed any crimes. The Act specifies the roles played by members of the community and the court in dealing with people of unsound mind.

Specifically, section 2 of the Act bestows on any person the duty to report to the Magistrate of any person with unsound mind where the Magistrate as well carries out an inquiry and ounce satisfied, refers the person for treatment in a mental hospital.

What happens to the person of unsound who commits an offence?

Under Part xiii of the Magistrates Courts Act, the procedure in case of the insanity or other incapacity of an accused person is laid down.

Section 117 of the Act states that where any act or omission is charged against any person as an offence, and it is given in evidence on the trial that he or she was insane so as not to be responsible for his or her action at the time when the act was done or omission made, and appears to the court that the accused was insane at the time when the act or made the omission, it's should make a special finding to the effect that the accused is not guilty of the act or omission charged by reason of insanity.

The same procedure is provided for under part vi of the TIA for trials in the High court. Its provided for specifically under sections 45 to 49.

Justice Lameck N. Mukasa in **Criminal Appeal No. 23 Of 2013 Kawooya Ronny v Uganda** points in details the applications of the provisions highlighted above.

Insanity as a defense is provided for under section 11 PCA where a person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he or she is through any disease affecting his or her mind incapable of understanding what he or she is doing or of knowing that he or she ought not to do the act or make the omission;

But a person may be criminally responsible for an act or omission, although his or her mind is affected by disease, if that disease does not in fact produce upon his or her mind one or other of the effects mentioned in this section in reference to that act or omission.

The understanding of the section is in accordance to the **M'Naghten Test**, developed in an 1843 English case where an offender is insane under this test if mental illness prevents him or her from knowing the difference between right and wrong.

M'Naghten's Case (1843) 8 Eng. Rep. 718

The Defendant was charged with the murder of Edward Drummond, secretary to the Prime Minister. The Defendant mistook Drummond for Peel and shot him by mistake. At the time of his arrest, he told police that he came to London to murder the Prime Minister because

"*The Tories in my city follow and persecute me wherever I go, and have destroyed my peace of mind. They do everything in their power to harass and persecute me; in fact they wish to murder me*."

Defense counsel introduced expert and lay witnesses who testified about Defendant's obsession with delusions and that he suffered from acute insanity. The judge gave the jury an instruction regarding his lack of understanding upon commission of the act in question. The jury reached a verdict of not guilty by reason of insanity.

Following the trial, there was a meeting at the House of Lords attended by fifteen judges in order to determine the standards for the insanity defense.

The Issue was. What is the proper instruction for the jury in a case where the insanity defense is used?

Lord Chief Justice Tindal delivered the opinion for the House of Lords and held that Jurors should be instructed that every man is presumed sane and to possess a sufficient degree of reason to be responsible for his crimes. Therefore, in order to establish an insanity defense, it must be clearly proven that at the time of the act, the accused was under such a defect of reason from disease of the mind that he did not know the nature and quality of the act he was committing; or if he did know, he did not know what he was doing was wrong.

The M'Naghten Rule has generally been presented to the court as a standard in determining whether the accused at the time of doing the act knew the difference between right and wrong. This standard should be used in conjunction with observations made of the accused under the relevant circumstances on a case-by-case basis.

M'Naghten Rules for when insanity can be used as a defense:

Disease of the Mind:

It doesn't have to be a 'brain' condition. It could be "any disease which produces a malfunctioning of the mind." But it must be a ‘disease’; the defense can't be used if you just get carried away.

R v Kemp (1957) 1 QB 399

A devoted husband of previous good character made an entirely motiveless and irrational violent attack upon his wife with a hammer. He was charged with causing grievous bodily harm. He suffered from hardenings of the arteries which lead to a congestion of blood in the brain. This caused a temporary lack of consciousness, so that he was not conscious that he picked up the hammer or that he was striking his wife with it. He sought to raise the defence of automatism.

Held: The hardening of the arteries was a “disease of the mind” within the M'Naghten Rules and therefore he could not rely on the defence of automatism.

Devlin J:-

"It does not matter for the purposes of law, whether the defect of reason is due to degeneration of the brain or to some other form of mental derangement. That may be a matter of importance medically, but it is of no importance to the law, which merely has to consider the state of mind in which the accused is, not how he got there."

Defect of reason.

For a finding of insanity, the defendant must suffer from a defect of reason. Mere forgetfulness or absent mindedness is not sufficient. Insanity requires the defect of reason to be caused by a disease of the mind.

In **Clarke [1972] 1 All ER 219 Mrs. Clarke**, a 58 year old woman, absent-mindedly placed a jar of mincemeat, a jar of coffee and some butter into her bag whilst shopping in a supermarket. She had no recollection of placing the items in her bag. Medical evidence was given at her trial which stated that she was suffering from depression and was diabetic. The trial judge ruled that this raised the defence of insanity. At this point Mrs Clarke changed her plea to guilty and then appealed against the judge's finding of insanity.

It was held that short periods of absent-mindedness fell far short of amounting to a defect of reason.

Knowledge of the Nature and Quality of the act:

The defense of insanity covers situations where the defendant doesn't understand what they are physically doing. In this situation the accused must not know that he was doing the act at all, that he was incapable of foreseeing the result, or that he was incapable of appreciating the circumstances. See the case of **George Codere (1917) 12 Cr. App. R 21.**

Knowledge that the act was wrong:

The defense of insanity is available where the defendant can't understand that his act or omission is a criminal act. This phrase is the alternative to knowledge of the nature and quality of the act. It inquires of the accused whether he knew that what he was doing was contrary to law.

R v Windle [1952] 2QB 826

The appellant killed his wife. She was suicidal and he administered an aspirin overdose. Medical evidence supported the view that he was suffering from a mental condition at the time of the crime. On arrest he said to the police;

"I suppose they will hang me for this".

The trial judge refused to allow the defence of insanity to be put before the jury as he had demonstrated that he realised that what he was doing was unlawful.

The appeal was dismissed arguing that the trial judge was correct to refuse the defence of insanity since Wrong, for the purposes of the M'Naghten rules, meant unlawful. It did not matter that he thought his actions were not morally wrong.

Presumption of Sanity

Justice Tindal pointed out that every man is presumed sane. However, sanity is a rebuttable presumption and the burden of proof is on the party rebutting it; the standard of proof is on a balance of probabilities, that is to say that mental incapacity is more likely than unlikely.

Under section 10 of the PCA every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

The initial burden of going forward lies with the accused. The accused is required to raise an insanity defense by presenting evidence which fairly raises a doubt that, at the time of the alleged offense, he or she lacked the capacity either to appreciate the wrongfulness of his or her act or to confirm his/ her act to the requirements of the law.

IRRESISTIBLE IMPULSE

One of the major criticisms of the M'Naughten rule is that it's focus on the ability to know the right from wrong but fails to take into consideration the issue of control. Psychiatrists agree that it is possible to understand that one's behavior is wrong, but still be unable to stop one-self. To address this, some states have modified the M'Naughten test with an "***irresistible impulse***" provision.

Irresistible impulse absolves a defendant who can distinguish right and wrong but is nonetheless unable to stop himself from committing an act he knows to be wrong. (In USA this test is also known as the "*policeman at the elbow*" test: Would the defendant have committed the crime even if there were a policeman standing at his elbow?).

Irresistible impulse, is where an offender is insane if a mental disorder prevents him from resisting the commission of an illegal act that he or she knows, is wrong.

There are a number of other critisms of the rule where the rules are too narrow in that they do not cover lack of control arising out of a mental condition. Psychiatrists lack reliable means of telling whether a person was insane at the time of the offence. They can rely only on what the accused said and did. A shrewd accused might lie. On this basis he might escape punishment for his crimes.

Diminished Responsibility

The doctrine of diminished responsibility originated from the law of Scotland as a judicial creation. The concept that "weakness of mind" can alter the character of a criminal offence was first recognized by Lord Deas in **H.M. Advocate v. Dingwall (1867), 5 Irv. 466**. The accused in that case was charged with murdering his wife after he had consumed a substantial quantity of whiskey. It was established that his mind had been weakened by repeated attacks of delirium tremens and that he had likely suffered from epileptic fits.

In charging the jury, Lord Deas instructed that the defences of insanity and drunkenness were untenable, but that a verdict of culpable homicide (manslaughter) could be returned if weakness of the mind was found.

In Uganda, diminished responsibility is provided for under section 194 of the Penal Code Act which states that if a person is found guilty of the murder or of being a party to the murder and the court is satisfied that he or she was suffering from abnormality of mind, which substantially impaired his or her mental responsibility for his or her acts and omissions in doing or being a party to the murder, the court makes a special finding to the effect that the accused was guilty of murder but with diminished responsibility.

R v Byrne (1960) 2 QB 396

The appellant murdered a young girl staying and mutilated her body. He did so as he was suffering from irresistible impulses which he was unable to control. Medical evidence showed that the killing was under the influence of perverted sexual desire and that he would find it difficult to control his desire.

Court held that "Abnormality of mind".., means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal.

Abnormality of mind appears to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters and the ability to form a rational judgment whether an act is right or wrong, but also the ability to exercise will-power to control physical acts in accordance with that rational judgment.

Note;

The types of mental condition that fall within the doctrine of diminished responsibility are difficult to classify. The case law suggests, however, that where there is clear evidence of mental abnormality, whether

it be psychosis, epilepsy, sub-normality or in some instances neurosis, a plea of diminished responsibility will be accepted.

Other issues to note;

- Diminished responsibility is, therefore, a specific defense that is, it applies only to murder. It is not a complete defence but only a partial one, which reduces murder to manslaughter. In this regard, it is different from insanity which potentially applies to all offences. In respect of other offences, diminished responsibility can be taken into account in the sentencing.
- Furthermore, diminished responsibility applies even though the accused knew the nature and quality of the act and knew that what he was doing was legally wrong.
- Like insanity, however, the burden of proof is on the accused.

INFANTICIDE

Infanticide might be called a 'concealed' partial defense", created by legislation as a specific offence. It is committed when a mother whose balance of mind is disturbed kills her baby when the baby is less than 12 months old. Infanticide is both an offence and a partial defense. A mother may be charged with this offence. Alternatively, she may be charged with murder and plead infanticide as a partial defense to murder. It's usually referred to as "*offence/defense of infanticide*".

In Uganda, it's provided for under Section 196 OF PCA CAP 128 which provides that;

" a woman by any willful act or omission causes the death of her child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for the provisions of this section the offence would have amounted to murder, she commits the felony of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child".

Notable features of infanticide as distinguished from other offences and defenses, in particular, from the defense of diminished responsibility.

- Infanticide operates not only as a defense to a charge of murder, but is also as a separate offence unlike the partial defenses of diminished responsibility and provocation.

- When raised as a defense, the burden of proof is on the prosecution to disprove a claim of infanticide beyond reasonable doubt. In contrast, the defense of diminished responsibility shifts the burden of proof to the accused on the balance of probabilities.
- The offence/defence of infanticide does not require that the act or omission of killing be causally linked to the disturbance of the mother's mind. It is usually a temporal connection. In contrast, diminished responsibility requires that the defendant's "abnormality of mind ... substantially impaired his mental responsibility for his acts or omissions in doing or being a party to the killing."
- The phrase "the balance of her mind was disturbed" is unique to infanticide. It is different to both the test for insanity and the test for diminished responsibility ("abnormality of mind").
- The offence/defence of infanticide is unique in that it is only available to a particular group of persons (biological mothers) who kill a particular victim (their own baby who must be less than 12 months old).

Note: That the offence/defense of infanticide is not wide spread in practice and there is limited case law in this area thus involves very few cases.

INTOXICATION

Intoxication is a defense available to criminal defendants on the basis that, because of the intoxication, the defendant did not understand the nature of his or her actions or know what he or she was doing. The intoxication defense applies in very limited circumstances and typically depends on whether the intoxication was voluntary or involuntary and what level of intent is required by the criminal charge.

It is provided for under section 12 of the PCA where it can only apply as a defense in the following ways;

a. The person did not know that the act or omission was wrong or did not know what he or she was doing.

b. The state of intoxication was caused without the persons consent by the malicious or negligent act of another person.

c. The person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.

d. Mens rea is negatived by drunkenness.

The person seeking to rely on the defense of intoxication has to show that he was incapable of forming the intent as a result of drunkenness. In **R v Moore (1852) 3 C & K 319** where a woman charged with attempted suicide had jumped into a well when "so drunk as not to know what she was about". She was acquitted, since on the facts it was apparent that her drunkenness negatived any intention to kill herself or to do herself any grievous harm.

DPP v Beard [1920] AC 479

The appellant while intoxicated raped a 13 year old girl and put his hand over her mouth to stop her from screaming. She died of suffocation. It was held that Drunkenness was no defence unless it could be established that the accused at the time of committing rape was so drunk that he was incapable of forming the intent to commit it.

See the case of **R v Pordage [1975] Crim LR 575.**

A distinction has to be drawn between being drunk and being intoxicated. A drunken man may commit acts while under the influence of drink or drugs that he would never commit while sober, but he will not be able to raise the defence of intoxication if he is nevertheless, still capable of forming the necessary mens rea for the crime with which he is charged.

Note: The fact that the person does something which he or she would not have done while sober will not itself give rise to the defense of intoxication.

The following factors ought to be considered when determining whether or not the defense of intoxication is available to the accused.

Self-induced/voluntary intoxication

Establishing a defense of self-induced/voluntary intoxication is complex. Under prevailing legal standards, voluntary intoxication is an applicable defense only for certain crimes, and, even in those circumstances, court are far less likely to accept the defense when the accused brought the intoxication upon himself or herself.

According to *DPP v Beard* [1920] AC 479 intoxication can be raised as a defence to crimes of *specific intent*, but not to crimes of *basic intent*.

Black's Law dictionary 8th edition defines specific intent crime to mean the intent to accomplish the precise criminal act that one is later charged with. Courts have defined specific intent as the subjective desire or knowledge that the prohibited result will occur. See the case of *People v. Owens, 131 Mich. App. 76, 345 N.W.2d 904 [1983].* A specific intent crime is one where in theory the mens rea goes beyond the actus reus, in the sense that the defendant has some ulterior purpose in mind.

A basic intent crime is one where the mens rea is intention or recklessness and does not exceed the actus reus. In simple terms this means that the accused does not have to have foreseen any consequence, or harm, beyond that laid down in the definition of the actus reus. Examples include; assault, manslaughter, rape e.t,c.

The case of **DPP v Majewski [1977] AC 142** makes a distinction between specific and basic intent crimes. Basically, specific intent offences which require an intention to bring about a particular consequence and Basic intent offences are offences which require an intention to merely perform an act.

Intoxication, whether self-induced or not, may be taken into consideration when determining whether the accused had the relevant specific intent to bring about the consequence.

In that case:

The defendant had been convicted of various counts alleging actual bodily harm, and assaults upon police officers. The offences had occurred after the defendant had consumed large quantities of alcohol and drugs. The trial judge had directed the jury that self-induced intoxication was not available as a defence to these basic intent crimes. The defendant was convicted and appealed unsuccessfully to the Court of Appeal and the House of Lords.

Lord Elwyn-Jones LC concluded that the cases he had considered establish that drunkenness can be a defence where the accused was at the time of the offence so drunk as to be incapable of forming the specific intent necessary for such crimes.

He then said that before and since Beard's case, judges had taken the view that self-induced intoxication however gross and even if it produced a condition akin to automatism, cannot excuse crimes of basic intent. With crimes of basic intent, as his Lordship explained, the "fault" element is supplied by the defendant's recklessness in becoming intoxicated, this recklessness being substituted for the mens rea that the prosecution would otherwise have to prove.

Dutch courage

This refers to a situation where a person deliberately gets himself intoxicated to give himself "Dutch Courage" to commit a crime. Intoxication in this case will not be a defense even to crimes that can only be

committed with a specific intention. The accused is to be "blamed" to the same extent as the person who intentionally commits a crime.

In the case of **Attorney-General for N. Ireland v Gallagher [1963] AC 349 t**he defendant killed his wife and prior to the killing, he bought a knife and a bottle of whisky which he drank to give himself "Dutch Courage". Then he killed her with the knife. The defendant argued that he was so drunk that he did not know what he was doing, or possibly that he was insane at the time of the killing. The House of Lords held that intoxication could not be a defense in either case as the intent had been clearly formed, albeit before the killing took place. Lord Denning stated:

"If a man, whilst sane and sober, forms an intention to kill and makes preparation for it, knowing it is a wrong thing to do, and then gets himself drunk so as to give himself Dutch courage to do the killing, and whilst drunk carries out his intention, he cannot rely on his self-induced drunkenness as a defence to a charge of murder, not even as reducing it to manslaughter. He cannot say that he got himself into such a stupid state that he was incapable of intent to kill. So also when he is a psychopath, he cannot by drinking rely on his self-induced defect of reason as a defence of insanity. The wickedness of his mind before he got drunk is enough to condemn him, coupled with the act which he intended to do and did do."

DRUNKEN MISTAKE

This is a situation where the accused claims that he was mistaken of certain facts or consequences of facts.

In **R v Woods (1982) 74 Cr App R 312 t**he appellant committed rape whilst intoxicated. He sought to rely on the defence of intoxication. It was held that the crime of rape is one of basic intent and therefore defence of intoxication was not open to the appellant.

Griffiths LJ:

"If Parliament had meant to provide in future that a man whose lust was so inflamed by drink that he ravished a woman, should nevertheless be able to pray in aid his drunken state to avoid the consequences we would have expected them to have used the clearest words to express such a surprising result, which we believe would be utterly repugnant to the great majority of people. We are satisfied that Parliament had no such intention."

Same principle was applied in **Jaggard v Dickinson [1981] 1 QB 527** where the appellant had been out drinking for the evening and became stranded with no money or lift home. She went to a friend's house and knocked on the door. There was no answer, so believing her friend would consent in the circumstances, she broke into the house. In fact the house did not belong to her friend. It was held that the rule set out in *DPP v Majewski* that a person cannot rely on a mistake induced by voluntary

intoxication where the crime is one of basic intent does not apply where the defendant is relying on the special defense since it only requires the belief to be genuine.

R v O'Grady [1987] QB 995 Court of Appeal

The appellant was an alcoholic. He had spent the day drinking large quantities of alcohol with two friends. The friends then retired to the appellant's home and went to sleep. The appellant claimed he was woken by one of the friends, McCloskey, hitting him on the head. He said that he picked up some broken glass and started hitting McCloskey in order to defend himself. He said he only recalled hitting him a few times and a fight developed during which McCloskey had the better of him throughout. He said the fight subsided and he cooked them both a chop and went to sleep. In the morning he found McCloskey dead. His death was caused by loss of blood. He had 20 wounds to his face, in addition to injuries to the hands and a fractured rib. There was severe bruising to the head, brain, neck and chest. There was a fracture of the spine caused by the head being forced backwards. There was a fractured rib. The blows to the body had been delivered by both sharp and blunt objects. The trial judge gave the following direction in relation to self-defence. He was convicted for manslaughter and he appealed contending among others that;

1. Whilst the Judge was correct to refer to mistake induced by drink in connection with self-defence, he was wrong to limit the reference to mistake as to the existence of an attack; he should have included the possibility of mistake as to the severity of an attack which was the most likely possibility on the facts.

2. By leaving the matter to the Jury as he did, the Judge in effect divorced the reasonableness of the appellant's reaction from the appellant's state of mind at the time.

3. The Judge failed when giving his further direction to the Jury to remind them that a defendant is never required to Judge to a nicety the amount of force which is necessary and that they should give great weight to the view formed by the appellant at the time, even though that view might have been affected by alcohol.

The appeal was dismissed and the appellant's conviction upheld. It was held that a defendant is not entitled to rely, so far as self-defence is concerned, upon a mistake of fact which has been induced by voluntary intoxication.

Lord Lane CJ:

"There are two competing interests. On the one hand the interest of the defendant who has only acted according to what he believed to be necessary to protect himself, and on the other hand that of the public in general and the victim in particular who, probably through no fault of his own, has been injured or perhaps killed because of the defendant's drunken mistake. Reason recoils from the conclusion that in such circumstances a defendant is entitled to leave the Court without a stain on his character."

Involuntary intoxication

Involuntary intoxication occurs when someone forces drugs or alcohol upon the accused or tricks the accused into consuming them. It may also be involuntary when caused by medication that a doctor has prescribed or administered. An accused may choose to raise the defense in any of the cases enumerated. However, a person who knew he was drinking alcohol could not claim that the resulting intoxication was involuntary because he underestimated the amount of alcohol he was consuming or the effect it would have on him.

In **R v Allen [1988] Crim LR 698** the appellant consumed some homemade wine. This had a much greater effect on him than anticipated. He committed sexual assaults and claimed he was so drunk he did not know what he was doing. He argued that he had not voluntarily placed himself in that condition as the wine was much stronger than he realized.

Held that the intoxication was still voluntary even though he had not realize the strength of it. The crime of sexual assault is one of basic intent and therefore the appellant was unable to rely on his intoxicated state to negative the mens rea.

R v Kingston [1994] 3 WLR 519

Kingston had a business dispute with a couple. They employed Penn to gain some damaging information on Kingston in order to blackmail him. Kingston was homosexual with paedophiliac predilections. Penn invited a 15 year old boy to his room and gave him a soporific drug in his drink. The boy remembers nothing from the time of sitting drinking the drink on Penn's bed until waking the next morning. Penn then invited Kingston to the room and drugged his drink without his knowledge. Penn and Kingston then both engaged in gross sexual acts with the unconscious boy. Penn recorded the events and took photographs. Kingston was charged with indecent assault on a youth. At his trial the judge directed the jury:

"In deciding whether Kingston intended to commit this offence, you must take into account any findings that you may make that he was affected by drugs. If you think that because he was so affected by drugs he did not intend or may not have intended to commit an indecent assault upon [D.C.], then you must acquit him; but if you are sure that despite the effect of any drugs that he might have been slipped - and it is for you to find whether he was drugged or not - this part of the case is proved, because a drugged intent is still an intent. So intention is crucial, intention at the time; and, of course, members of the jury, you will bear in mind there is a distinction between intention at the time and a lack of memory as to what happened after the time. "

The jury convicted him and he appealed to the Court of Appeal where his conviction was quashed.

Lord Taylor CJ:

"However, the purpose of the criminal law is to inhibit, by proscription and by penal sanction, anti-social acts which individuals may otherwise commit. Its unspoken premise is that people may have tendencies and impulses to do those things which are considered sufficiently objectionable to be forbidden. Having paedophiliac inclinations and desires is not proscribed; putting them into practice is. If the sole reason why

the threshold between the two has been crossed is or may have been that the inhibition which the law requires has been removed by the clandestine act of a third party, the purposes of the criminal law are not served by nevertheless holding that the person performing the act is guilty of an offence. A man is not responsible for a condition produced 'by stratagem, or the fraud of another."

The prosecution appealed to the Lords.

Held:

Appeal allowed. There is no principle of English law which allows a defence based on involuntary intoxication where the defendant is found to have the necessary mens rea for the crime. The prosecution had established the defendant had the necessary intent for the crime - a drunken intent is still intent.

SELF-DEFENSE, DEFENSE OF PERSON, PROPERTY, PUBLIC INTEREST

Self-defense

According to section 15 of the PCA, Principles of English law apply when a person raises self-defense. For the person to raise the defense, he must show that he had a bonafide belief or reasonable ground that there was need for reasonable violence which he or she could not prevent except by the use of force.

According to the case of **Yhefusa K. Mamali versus Uganda, Supreme Court Criminal Appeal No.29 of 1989**, it was held:-

“Under English law there is a broad distinction made where questions of self defence arise. In cases of self defence where no violent felony is attempted, a person is entitled to use reasonable force against an assault, and if he is reasonably in apprehension of serious injury provided he does all that he is able in the circumstances, by retreat or otherwise to break off the fight or avoid assault, he may use such force, including deadly forces as is reasonable in the circumstances.”

For the defense of to stand, the accused must meet the following conditions;

a. The accused must establish that he had reasonable ground for fear of violence. In the case of **Uganda versus Sebastian Otti (1994-95) HCB 21**, Okello J as he then was held that to constitute self-defense, there must have been an unlawful attack on the accused who as a result reasonably believed that he was in eminent danger or serious bodily harm and it was necessary for him to use force to repel attack made on him.

b. The person must have acted reasonably **Attorney-General for Nyasaland v Jackson (1957) R & N 443** the accused had been away from his village for two years. He came back when he heard of his brother's death in inexplicable circumstances. He also discovered that his eldest relative, the deceased had not brewed the traditional beer as required by custom following death. The deceased was rude to the accused and she threatened that he (the accused) would not see the sun that day. That threat made the accused brood for some hours and he later reached the conclusion that, it was a case of witchcraft. He then decided that before the sun set he should kill the deceased or he would die as a result of her threat which he honestly believed to be witchcraft. He therefore took a bow and arrow and shot her in the stomach and then struck her four blows on the head with a hoe. She died as a result of the injuries she sustained. In dismissing self-defence, the court said: " to justify a killing in self-defence the belief in the reality of the danger must not only be genuine, it must be reasonable. The test of reasonableness in itself implies an objective test. In considering whether a man's belief is genuine, the belief must obviously be examined subjectively. But to answer the question whether or not a belief is reasonable, the test must equally obviously be an external standard. The test of reasonableness is one that is constantly being invoked in English law. In applying it, the standard is what would appear reasonable to an ordinary man in the street in England".

c. The accused may also prove aspects of provocation. In **Hau S/o Akonaay v R. (1954) 21 E.A.C.A. 276**, the accused quarreled with the deceased. The quarrel was followed by a fight in which the deceased was killed. The accused was armed only with a stick. The Deceased was armed with a stick and a spear. The accused got in the first blow. The Eastern Africa Court of Appeal held that it is immaterial in such cases which party offers the provocation or commits the first assault and that in the case there existed elements both of self-defence and provocation, and that the inference of malice aforethought was rebutted by the circumstances, it mattering little whether the acts be regarded as done in excess of self defence or under the stress of provocation. See the case of **Byabagambi v Uganda criminal Appeal No. 16 of 2002**.

d. The other condition is whether or not the accused had other means of defending himself. For example, if the accused had a chance to move away but the deceased followed him. If the accused didn't retreat, the defense cannot stand.

e. The amount of force used must be proportionate to the force used by the victim. In the case of **Byabagambi v Uganda criminal Appeal No. 16 of 2002** There was a misunderstanding between the appellant and the deceased because of land belonging to the deceased's father and Local Council officials decided the dispute in favour of the deceased. A child of the deceased became ill and he suspected that the child was bewitched by the appellant. The deceased send a message to the appellant "Go and tell him (appellant) that I am coming there to cut all of you."

The deceased followed the threatening message by demanding for a panga. Soon the deceased appeared at the appellant's home and a hot argument ensued between the two. The deceased was cut with and died instantly. During the trial the appellant claimed that he killed the deceased in self-defence. He was convicted for murder. His appeal to the court of appeal was dismissed.

On appeal to the Supreme Court, it was held that although the appellant was entitled to use force to defend both himself and his home and that a successful defense of self-defense in homicide cases would lead to acquittal of an accused. However because of the two injuries inflicted on the deceased as revealed in this case by the post mortem report, the force used by the appellant was excessive but not so excessive as to remove the defence of self-defence from the appellant. The conviction for murder was quashed and substituted manslaughter.

DEFENSE OF PROPERTY

The defense of property is used in criminal context regarding property damage cases. Many jurisdictions permit the use of reasonable force to protect property from theft or damage. Generally, the defendant accepts the elements of the crime but argues that their actions were justified or excused based on this defense.

The privilege to defend property is more limited than the privilege of self-defense because our society values human life more than material possessions. Deadly force is generally never justified for the defense of property. In a few jurisdictions, deadly force is permitted to prevent or stop a felony.

The defense of property permits individuals to use a reasonable amount of force to protect their property. Such property can include personal items or real property and jurisdictions differ on the extent of force permissible in defending distinct categories of property. The justifiable use of force must be reasonable.

Marwa s/o Robi v R [1959] 1 EA 660

The deceased went to the appellant's house, his father in law to reclaim cattle. When the deceased actually attempted to drive away the cattle, he was speared to death by the appellant. The issue before court was whether the appellant killed the deceased in defense of property.

It was held that in driving off the cattle, the deceased was committing a trespass, and the appellant was entitled to use reasonable force to prevent the taking of the cattle. However, the appellant used excessive force than was reasonable and had thereby killed the deceased. The weapon and its method of use leave no doubt that the intent was to kill, and not merely to prevent the removal of the cattle.

"There can be no justification in law for deliberate homicide in these circumstances, and we have no doubt that, subject to the question of provocation, the offence is murder. Although the learned judge referred to the passage in Archbold relating to assaults and an extent to which the use of force in the defence of property is a defence to a charge of assault, and not to the chapter on homicide, we think that he did, in

fact, apply correct principles and that his decision must have been the same had he had regard to the relevant law as stated in the chapter on homicide".

DEFENSE OF OTHERS

The law allows people to use force to protect others they reasonably believe to be in imminent danger. The lawful-defense-of-others doctrine closely relates to the law of self-defense, and can be a complete defense to criminal charges. Except for the identity of the person in danger, the elements of defense of others tend to be the same as those for self-defense.

For example if a person tries to rape a woman, it is the duty of any other person to prevent the act. If in the process the accused dies, the protector can raise the defense of self-defense. For the accused to set up the defense he or she must show that he or she had a reasonable belief, and that he or she used only as much force as a reasonable person would use to stop the threat.

BURDEN OF PROOF IN SELF DEFENSE

In all cases where the evidence discloses a possible defense of self-defense, the onus is on the prosecution to prove that the accused did not act in self-defense. In **Manzi Mengi v R [1964] 1 EA 289** the appellant found cattle on his shamba being tended by two children who claimed that the deceased had told them to bring the cattle there. The appellant drove away the cattle and went to fetch a panga to repair the fence. On his return he found the cattle there again and the children told him that they had brought the cattle back on the deceased's instructions. The appellant again drove away the cattle. While he was repairing the fence the deceased appeared armed with a bow and arrows and after abusing the appellant threatened to kill him. He then fired an arrow at the appellant but missed. The appellant then told the deceased not to kill him and the deceased replied "I am going to kill you". The deceased then crossed the fence and entered the shamba and struck the appellant twice with the bow and tried to stab the appellant with the arrows whereupon the appellant struck the deceased repeatedly with the panga as a result of which the deceased died. When charged with murder the defence of the appellant was that he had acted in self defence to save his life.

The trial judge found that the appellant stood in danger of his life, that if he had not made use of the panga, the deceased would probably have killed him and that the appellant had acted in self defence but had used excessive force. The judge accordingly convicted the appellant of manslaughter.

Held that the onus was on the prosecution to show that the appellant was not acting in self defence; it was for the prosecution to show that there was time before the fatal blow was struck for the appellant to have realized that he was out of danger and desisted; this onus was not discharged.

Effect of the defense

Where self-defense has been established successfully, the accused will be acquitted. The case in point is Manzi Mengi v R [1964] 1 EA 289.

However, where the accused killed in self-defense but used excessive force, he or she will be convicted of manslaughter.

DEFENSE OF COMPULSION

Compulsions refer to the forcible inducement to an act or omit to do something. It also means the act of compelling; the state of being compelled; an uncontrollable inclination to do something; duress. Compulsion can take forms other than physical force. The courts have been indisposed to admit it as a defence for any crime committed through yielding to it.

In Uganda, it is provided for under section 14 of the PCA where a person is not criminally responsible for an offence if the person was compelled to commit an offence due to threat of killing him or causing grievous harm.

For one to rely on the defense of compulsion, the following conditions must exist.

1. Threat must be one of force upon a person.
2. The offence is committed by two or more offenders.
3. The threat must be one to kill or to do grievous bodily harm. A-G v Whelan [1933] IEHC 1 the appellant had been convicted of handling stolen goods. The jury had made a finding of fact that he had acted under threat of death or immediate personal violence. The trial judge held that this finding lead in law to a conviction with the issue of duress being a matter for sentencing.

The appellant appealed contending that the finding of the jury should have resulted in an acquittal. The appeal was allowed and the conviction quashed holding that Duress is a complete defence and not simply a matter of mitigation in sentence.

Murnaghan J:

"It seems to us that threat of immediate death or serious personal violence so great as to overbear the ordinary power of human resistance should be accepted as a justification for acts which would otherwise

be criminal. The application of this general rule must however be subject to certain limitations. The commission of murder is a crime so heinous that murder should not be committed even for the price of life and in such a case the strongest duress would not be any justification. We have not to determine what class of crime other than murder should be placed in the same category. We are, however, satisfied that any such consideration does not apply in the case of receiving. Where the excuse of duress is applicable it must further be clearly shown that the overpowering of the will was operative at time the crime was actually committed, and, if there were reasonable opportunity for the will to reassert itself, no justification can be found in antecedent threats."

4. The threat must continue all the time the offence is being committed.

5. The threat must be so great as to overbear the ordinary powers of human resistance. See the case of R v Graham [1982] 1 WLR 294. **R v Flatt [1996] Crim LR 576** the appellant was a drug addict who became indebted to his supplier. According to the appellant his supplier had told him to look after some drugs otherwise he would shoot his mother, grandmother and girlfriend. He was convicted of possession with intent to supply. He appealed contending that in assessing whether a person of reasonable firmness would have acted as he did, his characteristic of being a drug addict should have been taken into account. The appeal was dismissed and his conviction was upheld holding that Drug addiction was a self-induced condition not a characteristic.

6. The threat must not be to the property of the accused.

7. The accused must have had no opportunity of escaping otherwise he or she voluntarily joined the criminal will render the defense inapplicable. M'nduyo M'kanyoro v R [1962] 1 EA 110. The appellant had taken Mau Mau oath for administering unlawful acts and they had taken the oath for fear of being killed if they did not take it. The appellant had a chance of reporting to police but since he failed, the defense was not available to him.

The offence is not available in the following circumstances;

1. Where crimes committed are that of murder, attempted murder or for an accessory to murder, treason.

2. Where the defendant voluntarily, with knowledge of its nature, joined a violent criminal gang.

3. Where the defendant voluntarily joined a terrorist organization.

4. Where the defendant became indebted to drug dealers.

5. Where the defendant could reasonably have taken evasive action.

COMPULSION BY HUSBAND

Section 17 of the PCA where a woman proves coercion of a husband in committing an offence in his presence other than the offence of murder and treason, she can successfully raise the defense. Points to note;

a. Offence committed in the presence of the husband.

b. The husband coerces the wife to commit the offence.

The Act does not define the word "*presence"* as used in the section and it's not clear whether the threat must be that of physical injury e.g. the Husband uses his wife to enter into a house for the purposes of stealing by threatening to leave her if she does not comply with his wishes. The husband remains outside keeping watch. The wife would seem to have a defense of compulsion by husband.

Note that coercion is defined as any inducement likely to influence any reasonable woman. The test of a reasonable woman must be applied.

Immature age

Under section 14 of the penal Code Cap 106 repealed by Cap 120 a person under the apparent age of seven (7) years was not criminally responsible for the act or omission. Former section 14 PCA was considered in the case of **R v Wamboi Kamau [1965] EA 548** where the accused aged 9 was charged with the murder but acquitted after court satisfying itself of the apparent age of the accused at time when the offence was allegedly committed.

The distinction between sub-section 1 and 2 of the section was that as for accused below 7 seven, the matter need not to be filed in court and sub-section 2 required proof beyond reasonable doubt that the accused below 12 years had the capacity to know or realize that what he or she was doing a wrong act at the time he did it.

It should be noted that section 14 of former Cap 106 of the Penal Code was omitted under Cap 120. However, section 88 of Children Act cap 89 provides for the minimum age of criminal responsibility to be twelve years. The section increased the age of criminal responsibility from 7 to 12 years.

DOUBLE JEOPARDY

It refers to the subjection of an individual to a second trial or punishment for the same offense or crime for which he has already been tried or punished. The defense is provided for under article 28 (9) which provides that a person who shows that he or she has been tried by a competent court for a criminal offence

and convicted or acquitted of that offence shall not again be tried for the offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal. Under article 28 (10) further states that no person shall be tried for a criminal offence if the person shows that he or she has been pardoned in respect of that offence.

The same position is restated in section 18 of the PCA which states that a person shall not be punished twice either under this Code or under any other law for the same offence. What constitutes being punished twice was considered in the case of **Seifu s/o Bakari v R [1960] 1 EA 338** where the appellant was convicted by the High Court of Tanganyika on two counts, first of attempted murder, and of attempting to strike with an arrow with intent to do grievous harm. He was sentenced to six years' imprisonment on the first count and to four years' imprisonment on the second count. The second count, however, was in the nature of an alternative count, both counts being founded upon the same act of the appellant.

It was held that where charges against an accused person are alternative, the proper course, upon conviction of the appellant on one count, is for the court to refrain from entering a verdict or finding on the other count since a person should not be punished twice for the same offence.

Philibert Loizeau & Ors v R 23 EACA 566

The appellant had originally been convicted of murder but on appeal, the trial was held to be a nullity. The appellant and others were subsequently charged with Manslaughter, causing grievous harm and affray. The appellant was convicted of common assault and affray.

The defense of double jeopardy was rejected by the trial judge holding that where the first trial is held to be a nullity, it is incorrect for the accused to argue that he had been acquitted.

Superior orders or Obedience orders

Obedience refers to compliance with an authoritative command. In some circumstances, obedience to orders of the superior may be relevant to negative mensrea. The obedience should relate to obedience of duty. The underlying question is to what extent is the junior officer responsible for unlawful act.

The defense of superior orders was considered in the Nigerian case of **Ededeye v State [1972] 1 NLR 15** where the appellant an active Chief Superintendent of police led a mobile police force, which was under

him on a wide spread assault and looting split in order to recover money stolen from his wife near the market. He was convicted of assault and stealing. On appeal it was argued that the subordinate officers who took part in the raid and who testified against him were accomplices whose evidence required corroboration.

The appeal was rejected on grounds that it was wrong to order to police officer to assault and plunder innocent citizens whom they had a duty to protect.

The order should be done in the scope of the officer's duty and such officer must act as a reasonable man.

Dafasi Magayi and others v Uganda [1965] 1 EA 667

The appellants cannot shelter behind the invitation or order of the chief to kill a thief as is the custom. It was not a lawful order which they were bound to obey and they must have known as much. The fact that the chief said that he would "face the case" is itself an indication that he and the appellants knew that what they were doing was wrong.

DEFENSE OF IMMUNITY

It refers to the condition of being exempt from some liability. Instances of immunity include;

a. Presidential Immunity.

The President of the Republic of Uganda under article 98 (4) of the Constitution cannot be arrested, tried for an alleged offence he or she commits while he or she is President. Under 98 (5) criminal proceedings may be instituted against a person after ceasing to be President.

b. Diplomatic immunity. Section 1 the Diplomatic Privileges Act Cap 201provides for applications of Articles 22, 23, 24 and 27 to 40 of the Vienna Convention, which have the force of law in Uganda. Under article 31 (1) of the convention, a diplomatic agent enjoy immunity from the criminal jurisdiction. The diplomat must have committed the offence in the course of performing his duty. However, when he commits the offence while not in on his duty, he can be declared *persona non grata* (That the body should leave the country). In which case, he or she is given a period in which he or should leave Uganda. The categories of persons protected include; Ambassadors, High Commissioners, Aids of International Organizations, staff of the Embassies and High Commissions. In case of a serious offence, diplomatic immunity can be waived only by the accredited diplomatic agent of his or her country.

c. Judicial Immunity. Under 13 of the PCA a Judicial officers officer is not criminally responsible for anything done or omitted to be done by him or her in the exercise of his or her judicial functions, although the act done is in excess of his or her judicial authority or although he or she is bound to do the act omitted to be done. In **Oddo v Republic [1970] 1 EA 254 discusses** who is a judicial officer. In that case the appellant in this case was charged with wrongful confinement of one Ahmed Mohamed by having him placed in the Primary Court lock-up for 3 days. In his memorandum of appeal the appellant argued that as a Divisional Executive Officer and Justice of the Peace he was entitled to confine Ahmed in the absence of the magistrate.

It was held that a justice of the peace does act as a judicial officer. In others his functions are executive rather than judicial. In this case involving the arrest of an alleged offender without a warrant his functions is executive rather than judicial and accordingly the immunity provided is not available to him.

Defense of Alibi

An alibi is a defense to a crime by demonstration that the defendant was not in the place where an alleged offense took place. Unlike many other defenses that are meant to justify criminal activity, an alibi defense is evidentiary in nature and meant to show that the defendant is actually innocent because he could not have possibly committed the alleged actions.

Accused has the duty of raising the defence but has no duty of proving it. Prosecution bears the duty of destroying the defence by putting the accused at the scene of crime at the time the offence was being committed.

Criminal Appeal No. 1 0f 1997 Bogere Moses & Another V Uganda discuss what constitutes alibi and the duty of prosecutions in proof of the same.



Bond under ARTICLE 23(4) of the 1995 CONSTITUTION OF UGANDA AS AMENDED, a person arrested maybe released after 48 hours pending investigations before a court .SECTION.17(1) of CRIMINAL PROCEDURE CODE ACT CAP 122 confers powers onto the officer in charge of a police station to release a person on bond upon considering the nature of the offence , if it is not a serious offence , he can release the person arrested with or without sureties S.24(2)(b) of the police act requires that a Person released on police bond must appear before a senior officer at the time specified in the bond . s.38 of police act provides that bond is free though a recognizance may take.

Procedure

Make an oral or written application to the officer in charge for release of the suspect.

Attach identification document of the suggested sureties for introductory letters from the l.c.1

Sureties must be two In number adult and of sound mind

Involving the powers of the DPP

Under ARTICLE. 120(5) of the constitution, the DPP is required in the exercise of his or her powers which include supervising investigations by police under ARTICLE. 120 (3)(a) of the constitution , to ensure that the interests of the administration of justice are met and that the legal process is not abused.

Thus a party who feels like the police is violating their rights by holding them beyond the 48 hours in custody. The representative of the person may write to the DPP by formal letter requesting them to intervene and the DPP may intervene under ARTICLE 120(5) .

3) Unconditional release

Notice of motion for unconditional release

THE REPUBLIC OF UGANDA

IN UGANDA CHIEF MAGISTRATE COURT OF LUGAZI AT

LUGAZI

MISCELLANEOUS APPLICATION NO.. OF 2019

(ARISING FROM CRIMINAL CASE NO.2 2019)

OKUDI ROBERT

EJAKAIT JOSEPH .....APPLICANT

VERSUS

1. **ATTORNEY GENERAL**
2. **O/C BULELE POLICE STATION(OMODO NELSON)**
3. **THE DPC BUIKWE (JOEL OMIA ..... RESPONDENTS**

NOTICE OF MOTION

Under ARTICLE 23(4) of the constitution of Uganda 1995, section 25(4)of the police act and rule 3 judicature criminal procedure (application rules s1.no.38-1)

Take notice that this honorable court shall be moved on the 17th day of October 2019 at 9:00 o'clock in after noon o soon as there after as coursed for the applicants can be heard for orders that.

The applicants can be unconditionally released from police custody having exceeded the constitutional mandatory maximum 48 hours in detention without trial.

Costs of this application can be provided for , take further notice that the ground s in support of the application are contained in the affidavits of the 1st applicant attached hereto but briefly are as follows:

That the applicants were arrested and have been in detention for more than 48 hours before being taken to court.

That the continued act of the respondent and its agents of keeping the applicant in custody for more than 48 hours is unconstitutional.

That the applicants are innocent and presumed so under the law until proven guilty.

That it is just and equitable to grant unconditional release to the applicants.

Dated at mbarara this 16th day of October 2019

Counsel for the applicant

Lodged on this 17th day of October 2019

Magistrate

To be served on:

The o/c bulele police station

The dpc buikwe district

Drawn and filed by

SUI GENERIS ,

p.o.box 7117,Kampala

Uganda

Affidavit in support

State:

Charges charged

Date when applicant was incarcerated

Process of arrest and whether they informed of the charges.

Number of bond applications

Administrative step taken (attach letter)

Applicant has been held for more than 48 hours in custody

Continued detention is unconstitutional

ROLE AND POWERS OF THE D.P.P

ROLES OF THE DPP

ARTICLE 120 (1) of the 1995 constitution of Uganda as amended establishes the office of the DPP

The roles/ functions of the DPP are stipulated under ARTICLE 120(3) of the 1995 constitution of Uganda as amended and these include:

To direct the police to investigate any information of a criminal nature and to report to him or her expeditiously.

To institute criminal proceedings against any person or authority in any court with competent jurisdiction other than a court martial.

Take over and continue any criminal proceedings instituted by any other person or authority. S.43(1)(a) of MAGISTRATES COURTS ACT CAP 19

To discontinue any stage before judgment is delivered , any criminal proceedings to which this ARTICLE relates , instituted by himself or any other person or authority except that the DPP shall not discontinue every proceedings commenced by another person or authority except with the consent of the court.

ARTICLE 120(4)(b) requires that the power of discontinuance is exercised exclusively by the DPP themselves .The same is emphasized under s.135 of the trial on indictments act cap 25 and s.121 of the MAGISTRATES COURTS ACT CAP 19.

Basajabalaba v kakande criminal revision no.2of 2013. The court noted that where the DPP had applied to take over the private prosecution and having done so prayed applied to discontinue the proceedings to which court allowed the application then the proper procedure for discontinuance of private prosecution had been followed.

THE FRAMING OF CHARGES,DEFECTS AND AMENDEMENT OF CHARGES.

According to Benjamin Odoki, gande to criminal procedure in Uganda, 3rd edition, LDC 2006 pg 60, a charge/indictment is a written statement containing the accusation against a person alleged to have committed an offence. A charge used in High Court is called an indictment.

Every charge must contain and is sufficient if it contains: S.85 of MAGISTRATES COURTS ACT CAP 19 and S.22 of THE TRIAL ON INDICTMENTS ACT CAP 25

1) A statement of the specific offence or offences with which the accused is charged.

2) Necessary particulars to give reasonable information as t nature of the offence charged

All criminal prosecutions must be commenced with a formal charge. **In R v TAMBUKIZA (1958) E.A 212,** the court held that criminal proceeding commenced without formal charges were defective and a nullity.

Rules for framing charges

These are laid down in S.88 of the MAGISTRATES COURTS ACT CAP 19 and S.25 of THE TRIAL ON INDICTMENTS ACT CAP 25.

a) refer to the acts

The accused must be able to tell from the charge or indictment the precise nature of the charge against him so as to be in a position to prepare his/her defense and evidence in answer to the charges **.(KAYONDO V UGANDA (1992-93) HCB 11**

The charge sheet should be signed by the police officer preforming the charge and magistrate. This should be done before the accused is brought before court to plead to the charge against the accused unless the charge sheet is signed. **UGANDA V BYARUHANGA, (1975) HCB 82**

YAKOBO UMA AND ANOR V R (1963) EA 542. 2 men were charged in the same charge with commiting separate offences, they committed offences in the same village against the same complainant ai in 1962, a2 in 1963 on appeal their conviction was quashed because charge sheet was bad in law the committed different offences on different occasions.

Joinder of persons

S.87 of the MAGISTRATES COURTS ACT CAP 19 and S.24 of THE TRIAL ON INDICTMENTS ACT CAP 25 provide that the following persons may be joined in one charge and may be tried together

a) Persons accused of the same offence committed in the course of the same transaction

b) Persons accused of an offence accused of abetment or of an attempt to commit that offence.

c) Persons accused of more offences than one of the same kind committed by them jointly within a period of 12 months.

d) Persons accused of different offences committed in the course of the same transaction.

In the case of **NATHAN V R (1965) EA 777**, the court held that the test to be applied in order to determine whether different offences have been committed in the course of the same transaction is whether it is involved in the act constituting the offences that from the very beginning of the earliest act the other acts were in contemplation or necessarily arose therefore or formed component particular of one whole transaction

In **R V CLARKSON**, 2 Soldiers entered a room following the noise from a disturbance therein they found some other soldiers raping a woman and remained on the scene to watch what was happening. They were convicted of abetting the rape and successfully appealed on the basis that their mere presence alone could not have been sufficient for liability. It was held that the just should have been directed that there could be a commission if the presence of the defendant at the crime actually encouraged

QUEEN v HARDER, (1956) SCR 489 the respondent in this appeal had been convicted for assisting others to rape the complainant by subduing her. His conviction had ben quashed in the 1st appeal on the ground that he had not carried out the actual rape, but reinstated in the 2nd appeal on the ground that he as an accomplice as he had aided and abetted the rapists in the rape.

In DOWNIE V QUEEN (1889) 15 CAN S.C.R 358 AT 375, court held that at common law , the actor or actual perpetration of the fact and those who are actually or constructively, present at the commission of the offence and abet its commission, are distinguished as being respectively principals in the first degree and principals in the 2nd degree yet, in all felonies in which the punishment of the principles in the second degree is the same the indictment may charge all who are present and abet the fact as principals in the 1st degree. Therefore one who abets rape for example by holding the legs of the victim can be charged well for rape.

JOINDER OF OFFENCES / COUNTS.

Any offences whether felonies or misdemeanors may be i.e charged together in the same facts or founded on the same facts or form are a part of a series of offences of the same or similar character. S.86 (1) of MAGISTRATES COURTS ACT CAP 19 and S.23 of THE TRIAL ON INDICTMENTS ACT CAP 25.

Where more than one offence is charged in a charge, a description of each offence so charged shall be set out in a separate paragraph of charge called a court. S.86 (2) of MAGISTRATES COURTS ACT CAP 19.

The court may at any point during the trial if its of the view that the person accused may be embarrassed in his or her defence by reason of being charged with no charge should be added to a court of murder unless the additional court is founded precisely on the same facts as those of the murder.

YOWANA SEBUZUKIRA V UGANDA (1965) 684, more than one offence in the same charge or that for any other reason is desirable to direct that the person should be tried separately for any one or more offences charged in a charge the court may order a separate trial of any court or courts of the charge S.86(3) of MAGISTRATES COURTS ACT CAP 19.

In R v DALIPH SINGH (1943) 10 EACA 123, court held that even if two offences are different in character , they may be joined on the same facts and there is proximity of time between the commission of the offences.

ALTERNATIVE CHARGES

According to Benjamin Odoki at pg.69, an alternative charge is an additional court land against the accused in the same charge where the prosecutor is not certain which offence the facts of the case will support.

It is the court to decide which of the two courts before the evidence sustains. An accused court cannot be convicted on one of the courts, no finding is made on the other.

DUPLICITY OF CHARGES

A charge is duplex if contains more than one offence in one court such a charge is detective for duplicity in *Rwabinoni and anor v ug.*

EFFECT OF DEFECTIVE CHARGES

The validity of any proceedings instituted shall not be affected by any defeat in the charge on complaint or by the fact that a warrant was issued without any complaint or charge or in the case of warrant without a complaint on oath unless there has been a miscarriage of justice S.42(2) of MAGISTRATES COURTS ACT CAP 19. S.50 of THE TRIAL ON INDICTMENTS ACT CAP 25.

In the case of **UGANDA V MPAYA (1975) HCB 245**, a miscarriage of justice occurs where by reason of mistake, omission or irregularity in the trial, the appellant has lost a chance of acquittal which was fairly open to him.

AMENDMENT OF CHARGES

If it appears to a magistrates court at any stage of a trial at

a) The evidence discloses an offence other than the offence with which the accused is charged

b) The charge is defective in a material part or

c) The accused desires to plead guilty to an offence other than the offence with his/her is charged

Then the court, if it's satisfied that no injustice to the accused will be caused thereby may make an order for alteration of the charge by the way of its amendment or by substitution or addition of a new charge as it thinks necessary to meet the circumstances of the case.

In KISUWA V UGANDA (1980) HCB 93, the magistrate should not allow an amendment to the charge if the same will occasion injustice to the accused.

PROCEDURE UPON AMENDMENT OF CHARGES

The procedure is provided for under S.132 (2) of the MAGISTRATES COURTS ACT CAP 19. It is as follows:

1. Court calls upon the accused person to plead to attend the charge.

2. The accused may demand that the witness for the prosecution or any of them be re-called and be further cross-examined by the accused or his or her advocate , where upon the prosecution shall have the right to re examine any such witness on matters arising out of such further cross examination.

3. The accused shall have the right to give or to call such further evidence on his/her behalf as he or she may wish.

Where an alteration of a charge is made, the court shall , if it is of the opinion that the accused has been prejudiced by the alteration, adjourn the trial for such period as may be reasonably necessary S.132(3) of MAGISTRATES COURTS ACT CAP 19.

In MUSOKE V R (1956-57) ULR IOS, the court held that failure by a magistrate to advise the accused upon amendment of the charge during the trial, that he or she may seek adjournment and that he or she may recall prosecution witness for further cross examination unduly prejudices the accused and amounts to fatal irregularity.

Under S.132 (5) of the MAGISTRATES COURTS ACT CAP 19, the court must inform the accused of his /her right to demand the recall of witness and that she or he may apply to the court for an adjournment.

Under S.132(6) of the MAGISTRATES COURTS ACT CAP 19, where a charge is altered the court may make such order as the payment by the prosecution if any costs incurred owing to the alteration of the charge as it shall think fit.





A summon according to Benjamin odoki at pg.109 is defined as an order of court requiring the person name therein to appear in court on the day and time specified in the summons .

There are two types of summons: criminal summons requiring the accused to appear. Before the court for the trial and witness summons requiring a person to appear before court and give evidence.

Form and contents of summons of criminal summons per S.44 of MAGISTRATES COURTS ACT CAP 19, summons must

a) Be in writing, in duplicate, signed, and sealed by a magistrate or by such other officer as a chief justice may from time to time direct.

b) Be directed to the person summoned requiring him /her to appear at the same time and place named

c) State shortly the offence with which the person service of summons under S.50 of MAGISTRATES COURTS ACT CAP 19, summons may be served at any place in Uganda.

Who to serve either a police officer or an officer of the court issuing it or by a public servant and shall if practicable, be served personally on the person. S.45 (1) of MAGISTRATES COURTS ACT CAP 19

How to serve summons must be much as practicable be served personally on the person summoned by the delivering or tendering him or her the duplicate of the summons. S.45 (1) of MAGISTRATES COURTS ACT CAP 19, a person served must sign a receipt for the summons on the back of the original summons.

WHERE A PERSON CANNOT BE FOUND?

Where after due to deliquesce, the summoned person cannot be found, summons may be served by leaving the duplicate for the person with some adult member of his or her family or with his or her servant residing with him or her or with his or her employer and the person with when the summon is so left shall, if so required by the sowing officer sign a receipt for it on the back of the original summons S.46 magistrate courts act.

WHERE SERVICE CANNOT BE EFFECTED?

The summons shall be affixed duplicate of the summons to some conspicuous part of the hour or homestead in which the person summoned ordinary resides and there upon the summons shall be deemed to have been duly served. S.47 magistrate's courts act.

SERVICE ON COMPANY

Service may be effected by serving it on the secretory, local manager or other principal officer of the corporation or by the registered letter addressed to the company or body corporate in Uganda. In the latter case service shall be deemed to have been effected when the latter would arrive in the ordinary course of post: S.49 of MAGISTRATES COURTS ACT CAP 19.

PROOF OF SERVICE WHEN SERVING OFFICER NOT PRESENT

An affidavit purporting to be made but before a magistrsate that the summons have been served in the original of the summons purporting to be endorsed in the manner here before. Provided by the person to whom it was delivered or tendered or with whom it was left shall be admissible in the evidence and the statements made in the affidavit shall be deemed to be correct unless the contrary is proved.

If the original is not endorsed in the manner here in before provided the affidavit shall be admissible in the evidence if court is satisfied from the statements made in it that service of the summons has been effected in accordance with the foregoing provisions of the law.

The affidavit may be attached to the original of the summons and returned to the court. S.51 of MAGISTRATES COURTS ACT CAP 19

Power to summon material witness at any stage of any trial or other proceedings, court may summon or call any person as a witness or examine any person in attendance though not summoned as a witness.[7]

[7] S.100 of MCA

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATE COURT OF LUGAZI AT LUGAZI CRIMINAL OFFENCE NO..... OF 2019

UGANDA PROSECUTION

VERSES

EJAKAIT JOSEPH (ACCUSED)

You are hereby commanded to attend this court on the 28th day Of October at 8:00am or as soon there after the case can be heard as the witness in the case of ***Uganda V Ejakait Joesph.***

Dated the 17th day of October 2019.

This summon has been issued on the application of the state prosecutor

Magistrate

Criminal summons UC form 73

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATE COURT OF LUGAZI

AT LUGAZI

Criminal offence no ----- of 2019

UGANDA ---------- **(PROSECUTION)**

VERSUS

EJAKAIT JOSEPH ---------- **(ACCUSED)**

To: Keith Ssematiko

Whereas your attendance is necessary to answer a charge of doing grievous bodily harm contrary to section 202 of the penal code act.

You are hereby commanded by the Uganda government to appear in this court on the 17th day of October 019 at 8:0 am or soon thereafter as the case may can be heard.

Dated this 10th day of October 2015 at 10:00am

Magistrate

CRIMINAL JURISDICTION OF MAGISTRATES COURTS

Criminal jurisdiction is the power which the sovereign authority of a state has vested in the court and other tribunals established by law to determine questions which arise out of crimes committed in that state. In other words, criminal jurisdiction is the power vested in courts to hear and determine criminal cases.

Before proceedings commence in any case the question which arises is whether the offence committed is triable within the territorial jurisdiction of Uganda and if so which court has power to hear the case. (for example s.4 of the PCA CAP 128 the jurisdiction of the courts of Uganda extends to every place within Uganda except for cases of treason committed by a Ugandan citizen or person ordinarily resident in Uganda).

There are three aspects of jurisdiction which include

1. Territorial jurisdiction
2. Local jurisdiction
3. power to try cases

TERRITORIAL JURISDICTION

The first question which needs consideration is whether the court has territorial jurisdiction.

S.4 of the penal code act cap 128 lays down the extent of the jurisdiction of the courts of Uganda. The general rule under that section is simply that the jurisdiction of the Ugandan courts is confined to crimes committed within the territory of Uganda. This section however has a few exceptions stipulated under s.23-27 of the penal code. Treason, acts intended to annoy the person of the president, concealment of treason, terrorism, promoting war on chiefs, etc...

It should be noted however that under international law, there is no restriction on the competence of the court to prosecute its own nationals for crimes committed outside its territorial jurisdiction if this right to national jurisdiction is conferred by statute. (National jurisdiction).

Uganda vs Mustapha Atama 1975 HCB 254

In this case, the accused a Kampala business man was charged in the chief magistrate's court with obtaining money by false pretence contrary to section 9 of the PCA cap 106.

The prosecution alleged that the accused while in the Republic of Zaire obtained shs 3360/- from the charge-d' affaires of the Ugandan embassy by falsely pretending that he required the money for the maintenance of eight Ugandan soldiers who were stranded in Zaire while on an official mission.

The question was whether Ugandan Courts had jurisdiction over the matter as the offence had been committed in the Republic of Zaire, though in Uganda's own embassy.

Holding.

Where as the state is competent to prosecute its own nationals for offences committed abroad on the basis of nationality, however exercise of jurisdiction on the basis of nationality is not automatic, but municipal courts must be enabled to do so by legislation.

Section 5 of the PCA confers jurisdiction to the courts of Uganda to try offences that are committed partly within and partly without Uganda. In the absence of law enabling Ugandan courts to try cases committed wholly outside Uganda, the nationality principle will not apply.

LOCAL JURISDICTION

After it has been established that the alleged offense was committed within the territorial boundaries of Uganda, **the next question will be whether the alleged offence was committed within the local limits of the jurisdiction of the court.**

The general rule is that every offence must be tried by a court within the local limits of the jurisdiction where it was committed under s.31 of the MCA cap 19. what does it say?

Section 32 MCA provides that should the accused person be found outside the area in which the offence was committed, the court in whose local limits of jurisdiction he is found will have him brought before it and cause him to be removed in custody to the court having jurisdiction to hear the offence. i.e, the offence is committed in mbale and the fugitive is in masaka, the court in masaka will hand him over to the mbale court which has local jurisdiction over the offence that was committed by the accused.

Where the offence is committed partly within and partly without the local limits of jurisdiction, any court having jurisdiction in either the two places may hear the case. Read out s.37 of the MCA.

For example if property is stolen in Kampala and received in masindi, a case on a charge of theft or receiving stolen property may be tried either in kampala or masindi.

3. Power to try cases.

Even where an offence is committed in Uganda within the territorial boundaries and is committed within the local limits of jurisdiction of a particular magisterial area, the judicial officer handling the case will still have to ask him self the question whether he has powers to try the case, or whether the court he presides over, has jurisdiction to hear the case.

For example; **The Anti Terrorism Act cap 120,** The offence of terrorism and any other offence punishable by more than ten years imprisonment under this act are triable only by the highcourt and bail in respect of those offences may be granted only by the Highcourt.

This means that the highcourt and only the highcourt has powers to try the offence of terrorism under the Anti terrorism Act.

(Constitutional petition no 18 of 2005;- Uganda Law Society vs The A.G and The Republic of Uganda).

There are two grades of magistrates in Uganda according to section 4(2) MCA cap 19

HIERACHY OF MAGISTRATES COURTS

The chief magistrate Highest

The magistrate Grade I,& II.

The powers and jurisdiction of a magistrate are determined by the grade of his or her appointment and the powers and jurisdiction conferred upon that grade by the MCA.

POWERS OF A CHIEF MAGISTRATE.

The original jurisdiction of a chief magistrate's court is governed by section 161 (1) (a) MCA. A chief magistrate may try any offence other than an offence in respect of which the maximum penalty is death. Examples of these are murder, treason, rape, aggravated robbery, etc...

Sentencing powers of a chief magistrate

A chief magistrate may pass any sentence authorised by law under section 162(1) (a) MCA. This means that he can pass a maximum sentence of imprisonment for life and can impose a fine of any amount.

ATTEMPT TO COMMIT RAPE

Appellate jurisdiction.

A chief magistrate hears appeals from decisions of magistrates Grade II This is provided for under section 203 MCA.

MAGISTRATE GRADE I

POWERS OF A MAGISTRATE GRADE I

A magistrate Grade I may try any offence other than an offence in respect of which the maximum penalty is death or imprisonment for life. This is stipulated under section 161 (1) b) MCA. I.E ABDUCTION 126.-7 years.

SENTENCING POWERS OF A MAGISTRATE GRADE I

Under section 162 I) b) MCA, as amended provides that a magistrate grade I may pass a sentence of imprisonment for a period not exceeding ten years or a fine not exceeding Four million, Eight Hundred Thousand Shillings or both.

In the case of Uganda vs Nicholas Okello (1984) HCB 22

The charge in this case was for attempted defilement contrary to section 123 (3) pc cap 106 of which the maximum sentence was 18 years imprisonment. The magistrate grade I tried this offence and sentenced the accused to 18 years imprisonment. He appealed against sentence and conviction. It was held that the magistrate had no powers to try such offence and therefore the trial was a nullity.

Margret Rwakaino vs. **Kakuru Charles & Tumusiime Elias**, **HCT-05- CV-CR-0016-2023,** When jurisdictional issues arise, **the forwarding of a case within the Magistrates Courts system falls within the procedural and supervisory authority of the Chief Magistrate**. Specifically, a trial Magistrate Grade One, upon recognizing a jurisdictional issue, can forward the case to the Chief Magistrate for further management instead of dismissing it outright. The High Court clarified that this action by the trial Magistrate Grade One **does not constitute a "transfer" of the case**, that could only be exercised by the High Court. Rather, it is a procedural forwarding within the same jurisdiction to the Chief Magistrate, who possesses the supervisory authority to manage and oversee cases.

MAGISTRATE GRADE II

POWERS OF A MAGISTRATE GRADE I

The magistrate grade II may try any offence under any written law other than the offences and punishments specified in the first schedule of the MCA. Section 161 (1)c) MCA

The sentencing powers of a magistrate grade II are limited to imprisonment for a period not exceeding three years or a fine not exceeding half a million shillings. S. 162 (1) c) MCA.

In the case of Uganda v c. Kiwanuka [1979] HCB 210.

In this case the magistrate grade II tried the accused of an offence brought under the fire arms act, which was an offence stipulated under the first schedule to the MCA to which a magistrate grade II had no powers to try.

It was held that the conviction of the accused and sentence imposed on him by the magistrate grade II in disregard of the provisions of the first schedule was illegal.

IN UGANDA PRIVATE PROSECUTION BY MALE MABIRIZI KIWANUKA V ANITA AMONG ANNET (C.A NO.3 OF 2024) ,it was held that the high court has held that a complaint to the magistrate under private prosecution doesnot need to be accompanied by sufficient evidence at the time of filing.

Read; Constitutional petition 18 of 2005 ULS vs A.G and republic of Uganda on the issue of jurisdiction.

MODES OF COMMENCEMENT OF CRIMINAL PROSECUTIONS

Institution of proceedings

Magistrate courts

Criminal proceedings according S.42 of MAGISTRATES COURTS ACT CAP 19 can be instituted in various ways. These are:

a) By a police officer bringing a person arrested with or without a warrant but a magistrate upon a charge

b) By the public prosecutor or a police officer laying charge against a person before a magistrate or requesting the issue of a warrant or a summons

c) By any person, other than a public prosecutor or police officer, who has reasons to believe that an offence has been committed.

CHARLES NABIIRE AND 12 ORS V UGANDA. Hct-00cr-cr-cv-0015-of 2012.

PLEAS

ARRAIGNMENT

Arraignment is the process by which an accused is informed of the charges that have been preferred against him/her. pg 139 of bench book

A suspect must be arraigned in court within 48hours from the time of his arrest. ARTICLE 23 (4) of constitution 1995.

PLEAS

Is an accused person's formal response to the criminal charge.

In the case of **UGANDA V KIWALABYE MOHAMMED HC CRIMINAL CASE NO.20 OF 2013,** the court held that an accused person may charge his/her plea at any time before sentencing.

Plea of guilty

Under ARTICLE 28(3) (a) of the constitution of Uganda, a person is presumed innocent until he / she is proven guilty or pleads guilty. An accused person should voluntarily admit a charge without any force or inducement. (rv inn.0 criminal reports 231

PLEA OF PREVIOUS CONVICTION (AUTRE FOIS CONVICT) OR ACQUITTAL (AUTRE FOIS ACQUIT)

S.89 OF THE MAGISTRATES COURTS ACT CAP 19, A person tried and convicted or acquitted shall not be tried of the same offence unless the conviction is acquittal has been reversed or set aside. If the accused enters a plea of the previous conviction or acquittal the court shall try whether that plea is true in fact or not and if the court holds that the facts alleged by the accused do not prove the plea or if not it finds that if it is false in fact, the accused shall be required to plead to the charge. S.124 (5) of MAGISTRATES COURTS ACT CAP 19.

In R V DAUDJI 1948 (15) EACA 89, the test is not whether the facts relied upon are the same at the two trials , but rather whether the acquittal or conviction on the previous charge necessarily involved on acquittal or conviction on the subsequent charge.

Plea of pardon

Under ARTICLE 28(10) of the constitution, no person shall be tried for criminal offence if the person shows that he /she has been pardoned in respect of that offence.

The president under ARTICLE 121(4)(a) of the constitution with the advice of the committee on prerogative of mercy may grant pardon to any person convicted of an offence either free or subject to law conditions.

Court follows the procedure in S.124 (5) of MAGISTRATES COURTS ACT CAP 19, where a plea of pardon is entered. IN SMITH PON ACHAK AND ANOR V UGANDA SC CRIM.APP NO.18 OF 1992, the court held that it was incumbent upon the appellants to prove on the balance of probabilities whether they had been pardoned

PLEA OF GUILTY

If the accused person does not admit the truth of the charge, the court shall record a plea of not guilty and shall proceed to hear the case. S.124 (3) of MAGISTRATES COURTS ACT CAP 19

In KANALUSASI V UGANDA (1988-90), the court held that where a plea of not guilty is recorded whatever the accused has stated cannot be taken against him for the court is not allowed to derogate from the accused plea.

Where an accused chooses to remain silent then a plea of not guilty is entered UGANDA V KIZA

The procedure for recording a plea of guilty as laid out **In *ADAN V REPUBLIC* (1973) EA 445** is that

a) The charge and all essential ingredients of the offence should be expelled to the accused in his language or in a language he understands.

b) The accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded.

c) The prosecution should immediately state the facts and the accused should be given an opportunity to dispense or explain the facts or to add any relevant facts.

d) If the accused does not agree with the facts or raises any question of his guilt his reply must be recorded and charge of plea entered and trial should proceed

e) If there is no charge of the plea a conviction should be recorded and a state of facts relevant to the statement together with the accused reply should be recorded.

In UGANDA V CHARLES OLET (1991) HCB 13, the court held that the conviction to be properly based on the plea of guilty, the plea must be unequivocally to admit all ingredients of the offence charged.

Holding: For a conviction to be properly based on the plea of guilty, the accused must be unequivocally guilty of all ingredients of the offence charged. A summary of facts constituting the offence must be narrated and put on the accused only if these facts disclose the commission of the alleged offence and the accused admits the correctness thereof can a conviction be properly entered.

In ***MATAYO OWORI V UGANDA HC CRIMINALCASE NO.61 OF 2013***, the accused person pleaded facts different from the medical report on the file. The magistrate never called upon the accused to plead to all ingredients of the offence. On the appeal, court found that the plea was equivocal and could not sustain the plea for grievous harm but a lesser offence of assault occasioning actual bodily harm.

PLEA BARGAINING

Plea bargain is the process between an accused person and the prosecution, in which the accused person agree to plead guilty in exchange for an agreement by the prosecutor to drop one or more charge, reduce a charge to a less serious offence, or recommend a particular sentence subject to approval by Court. Plea bargain is governed by the Judicature (Plea Bargain) Rules, 2016 from which the entire procedure is listed to the detail however, below are some of the key procedures of entering a plea bargaining agreement.

Plea bargain may be initiated orally or in writing at any stage of the proceedings before the sentence is pronounced. Where the parties are voluntarily in agreement, a plea bargain agreement shall be executed as prescribed in the schedule to directions in the law and those filed in Court. A plea bargain agreement shall before being signed by the accused, be explained to the accused person by his or her advocate or a justice of the peace in a language that the accused understands and if the accused person has negotiated with the prosecution through an interpreter, the interpreter shall during the negotiation and execution in respect of the content of the agreement.

The prosecution shall before entering into a plea bargain agreement take into consideration the interest of the victim or complainant and shall have due regard to;

1. The nature of and the circumstances relating to the commission of the offence
2. Criminal record of the accused
3. The loss or damage suffered by the victim or complainant as a result of the offence
4. The interest of the community; and
5. Any other relevant information

The prosecution also lays before the court the factual basis contained in the plea agreement and the court shall determine whether there exists a basis for the plea agreement. The accused person shall freely and voluntarily without threats or use of force execute the agreement with full understanding of all matters. Where the court accepts a plea agreement, the same shall become part of the court record and binding on the prosecution and the accused.

The Court may reject a plea agreement where it is satisfied that the agreement may occasion a miscarriage of justice. Where the court rejects a plea agreement;

1. It shall record the reasons for the rejection and inform the parties
2. The agreement shall become void and shall be inadmissible in subsequent trial proceedings or any trial relating to the same facts; and

3. The matter shall be referred for trial

In *Uganda V Waige Swali HC Crim Case No. 21 of 2015* Court rejected the plea bargain sentence entered into by the accused, his counsel, and the state attorney wherein the accused was to be sentenced to fifteen years on the ground that it was harsh, the accused person was of advanced age, and blind meaning that the risk of future offending by the convict was almost non-existent.

To note is the fact that that, either party may at any stage of the proceedings before court passes sentence withdraw a plea agreement.

KUWANGE V UGANDA (CRIMINAL APPEAL 199 OF 2016, the court stated that the scope of its investigation, as a first appellate court in appeals arising from a Plea Bargain Agreement (PBA), is limited to Rule 12(1)(g) of the Judicature (Plea Bargaining) Rules, S.I. 43 of 2016. This rule concerns the legality and severity of the sentence, or whether the judge sentences the accused outside the PBA.

IN THE CASE OF MUSINGUZI V UGANDA (CRIMINAL APPEAL 1998 OF 2016) inferring from Rule 12(1)(g) of the Judicature (Plea Bargain), the court noted that a party whose matter has been resolved by way of a PBA is not disqualified from challenging the severity and legality of the sentence by way of appeal.

The Court of Appeal went ahead to depart from its decision in the Lwere Bosco Vs Uganda, Court of Appeal Criminal Appeal No. 531 of 2016, where it was held that the severity of the sentence as a ground of appeal cannot arise out of plea bargain proceedings. The Court of Appeal noted that the court in the Lwere Case (supra) did not consider Rule 12(1)(g) of the Judicature (Plea Bargain) Rules, which expressly saves the right of the parties to a PBA to challenge the PBA on the specific grounds of legality or severity of sentence or if the judge sentences an accused person outside the PBA. As such, to that extent only, the statement in the Lwere Case (supra) disqualifying a convict from challenging the sentence arising out of a PBA on the ground of severity was made per incuriam without taking into account Rule 12(1)(g) of the Judicature (Plea Bargain) Rules.

THE LAW RELATING TO BAIL

BAIL IN MAGISTRATES COURTS

The definition of bail was given by Justice Okello in the case of ***Lawrence Luzinda v Uganda [1986] HCB 33*** where he stated that "bail is an agreement between the court, and the applicant consisting of a bond with or without a surety for reasonable amount as the circumstances of the case permit conditioned upon the applicant appearing before such a court or a date and time as named in the bond to start his trial".

A recognizance means security entered into before a court with a condition to perform some act required by law and on failure to perform that act, the security is fortified. In practice this can be an amount of

money or property which must be deposited in the bank or property such as a passport or certificate of title for land which will be deposited with the court[8].

A surety is a person who gives security to the court on the basis that the accused will attend his trial on the hearing date fixed by court[9].

Article 20(1) of the 1995 Constitution of the Republic of Uganda, as amended, provides that the fundamental rights and freedoms are inherent and not granted by the state.

The right to apply for bail is a constitutional right given under **Article 23(6)(a)** of the constitution for the accused to apply for bail.

The object of bail is to ensure that the accused person appears to answer the charge against him/her, without being detained in prison on remand pending trial (also stated in the case of **Col. (Rtd) Dr. Kizza Besigye v. Uganda Criminal Application No.83 of 2016)**[10]**.** The effect of bail is therefore to temporarily release the accused person from the custody of the court or police[11].

In the case of ***Tumwirukire Grace v Uganda (Miscellaneous Criminal Application 2019/94),*** Hon. Justice Musa Sekaana held that "the legal essence behind bail is in respect to upholding one's right to personal liberty. This is especially the product of the **presumption of innocence** under **Article 28(3)** of the Constitution of the Republic of Uganda."

A bail applicant must not be deprived of his/her freedom unnecessarily or as merely punishment where they have not been proved guilty by a competent court of law. This principle of protection of personal liberty was further cemented in the case of ***Col (Rtd) Dr. Kizza Besigye v Uganda Criminal Application No.83 of 2016*** wherein ***Hon. Justice Masalu Musene*** was of the holding that

"...court has to consider and balance the rights of the individual, particularly with regard personal liberty..."

And further quoting the famous words of Hon. Justice Ogoola PJ (as he then was) in Criminal Misc. Application No. 228 of 2005 and Criminal Misc. Application No. 229 of 2005 wherein the learned Justice had this to say:

"Liberty is the very essence of freedom and democracy. In our constitutional matrix here in Uganda, liberty looms large. The liberty of one is the liberty of all. The liberty of one must never be curtailed lightly, wantonly or even worse arbitrarily. Article 23, clause 6 of the Constitution grants a person who is deprived of his or her liberty the right to apply to a competent court of law for grant of bail. The Court's from which such a person seeks refuge or solace should be extremely wary of sending such a person away empty

[8] [1986] HCB 33.
[9] Ibid.

handed- except of course for a good cause. Ours are courts of Justice. Ours is the duty and privilege to jealously and courageously guard and defend the rights of all in spite of all."

This was further confirmed by **Hon. Justice Stephen Mubiru** in the case of ***Abindi Ronald and Anor v Uganda Miscellaneous Criminal Application No. 0020 of 2016*** stating that;

"Under Article 28 (3) of the Constitution of the Republic of Uganda, every person is presumed innocent until proved guilty or pleads guilty. Consequently, an accused person should not be kept on remand unnecessarily before trial."

The Court's discretionary powers to grant bail are enshrined under Section 75 (1) of the Magistrates Courts Act Cap.19, which is to the effect that a person who appears or is brought charged with any offences specified in subsection (2) may, at any stage in the proceedings, release the person on bail, on taking from him or her a recognizance consisting of a bond with or without sureties, for such an amount as is reasonable in the circumstances of the case to appear before the court, on such a date and at such a time as is named in the bond.

S. 75 (2) of the Magistrates Courts Act, provides for the offences that are to be excluded from the grant of bail under subsection (1) which are, (a) offences triable only by the high court ...and paragraph (d) an offence under the firearms Act punishable by a sentence of imprisonment of not less than ten years.

Stage when bail may be granted.

Bail may be granted by the court at any stage of proceedings by the court having jurisdiction looking at **Section 75 of the Magistrates Courts Act.**

Application for bail.

In Magistrates Courts, application for bail may be made orally or in writing and if in writing, must be supported by an affidavit.

Notice of an application must be given to police in the Magistrates Court and this notice should give the police sufficient time to permit them to present at the hearing of the application. Notice may be dispensed with in urgent cases by special leave of court and reference is made to Rules 2,3,4 of the Criminal Procedure (Applications) Rules.

Considerations for bail.

Under **Section 77(2) of the Magistrates Courts Act,** when an application for bail is made before a Magistrate, the court is required to consider the following matters in deciding whether bail should be granted or refused.

(a) The nature of the accusation.

This may refer to the nature of evidence which the prosecution has in possession against the accused. This may reveal whether it is a domestically motivated offence, or committed after think or is an offence

affecting the security of the state. It may also indicate whether the evidence is cogent, for instance if there are eye witnesses to the offence amid whether it was committed in broad daylight.

THE GRAVITY OF THE OFFENCE CHARGED AND THE SEVERITY OF THE PUNISHMENT WHICH THE CONVICTION MAY ENTAIL.

The court should consider the gravity or seriousness of the offence, and the severity of the sentence on conviction. If the offence is very grave, bail may be refused since the temptation to jump bail in order to escape punishment is great. Possession of narcotics, purchase and possession of firearms without a valid certificate, selling goods marked with a counterfeit trademark is a misdemeanor is minor offences and as such is bailable.

THE ANTECEDENTS OF THE APPLICANT SO FAR AS THEY ARE KNOWN.

The background and the character of the accused are relevant considerations to be taken into account before granting bail to an accused person and if the accused is a habitual offender/criminal with previous convictions, this suggests that he is likely to commit more offences when released and therefore bail may be refused for this reason.

WHETHER THE APPLICANT IS LIKELY TO INTERFERE WITH ANY PROSECUTION WITNESSES.

If the court is satisfied that the accused is likely to interfere with prosecution witnesses when released on bail, it may refuse bail. It is for the prosecutor to satisfy the court of this ground, and if necessary adduce evidence of prior interference or attempts or threats to do so and the relationship between the accused and the witness may indicate likelihood to interfere with witnesses, for example where they are related, and the investigations are not complete.

Under **section 75 (1) of the Magistrates Courts Act,** the court may release the accused on bail on taking from him/her a recognizance consisting of a bond, with or without sureties, for such an amount as is reasonable in the circumstances of the case, to appear before such a court, on such a date and at such a time as is named in the bond.

Sureties.

A recognizance may be entered into with or without sureties, in minor cases sureties may not be necessary the **court should inquire into the worth and social position of the sureties,** the sureties must have the means to answer for the sum involved and should be persons of some social standing in the community and it is improper for the advocate appearing for the accused to stand surety or trial magistrate[12]. A surety is bound to pay the amount specified in the bond if the accused does not appear to be relieved of his/her responsibilities and this is provided for under **Section 80 of the Magistrates Courts Act.**

[12] Odoki B, 3rd ed., "A Guide to Criminal Procedure in Uganda," p.116.

On such an application being made for discharge of surety, the court is required to issue a warrant of arrest directing that the person appears the court is bound to discharge the surety and call upon the accused to find other sufficient sureties and provided for in **Section 80(3) of the Magistrates Courts Act.**

Under **Section 79 of the Magistrates Courts Act,** if through mistake, fraud or otherwise, insufficient sureties were accepted, or if they afterwards become insufficient, the court has power to order the accused person to find sufficient sureties.

Under **Section 81 of the Magistrates Courts Act,** where a surety dies before the bond is forfeited, his/her estate is discharged from all liability in respect of the bond, but the party who gave the bond may be required to find a new surety.

In the instant case I find that the Applicant has provided substantial sureties in three outstanding sureties especially as they are close kin who have the ability to compel the Applicant to comply. I do not agree with learned Counsel for the state that being relatives and one a teacher will hinder the Applicant's compliance.

To put this in more legal context recourse will be had to the case of ***Mugisha Ronald V Uganda HCT-01-CR-CM-NO-050 of 2018*** where in ***His Lordship Wilson Masalu Musene*** was of the view that; "Since the sureties appear responsible persons who will ensure the accused returns to court to stand trial, and in view of the presumption of innocence under **Article 28 (3)** of the Constitution of the Republic of Uganda, 1995, I find and hold that this is a fit and proper case to grant bail to the Applicant."

In ***Tumwirukire Grace v Uganda (Miscellaneous Criminal Application 2019/94),*** it was stated that "If the courts are simply to act on allegations, fears or suspicions, then the sky would be the limit and one can envisage no occasion when bail would be granted whenever such allegations are made"; ***Panju v Republic [1973] E.A 282.***

In the same spirit of the above arguments and authorities I find that where the sureties are substantial and based on the criminal record and the gravity offence and severity of the sentence relating to the offence with which the accused has been charged.

RECOGNIZANCE

Under **section 75 (1) of the Magistrates Courts Act,** the court may release the accused on bail on taking from him/her a recognizance consisting of a bond, with or without sureties, for such an amount as is reasonable in the circumstances of the case, to appear before such a court, on such a date and at such a time as is named in the bond.

The normal practice is for the court to fix the amount of the recognizance, which must be reasonable, and which may be cash or not cash. The court should have regard to gravity of the case as well as the means of the accused. It is unreasonable to fix a cash amount, which the accused cannot afford so that he is unable to benefit from the grant of bail.

DEPOSIT OF COGNIZANCE

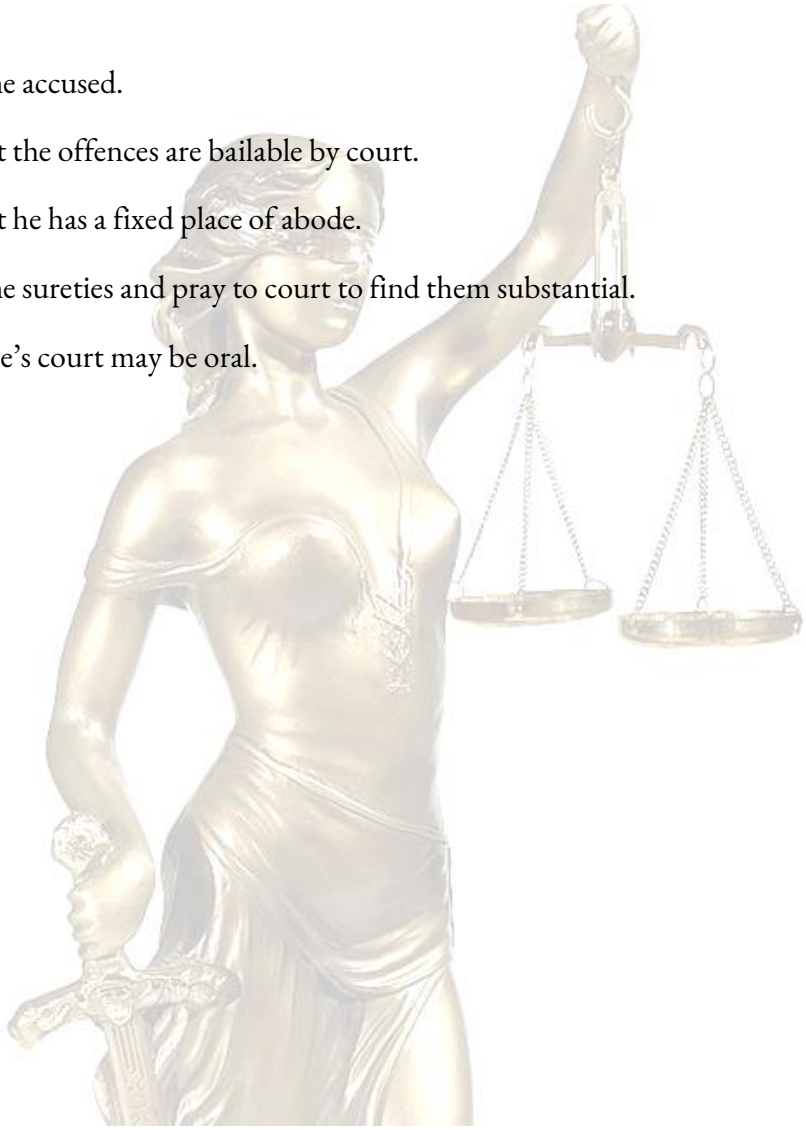
Under **section 78 of the Magistrates Courts Act,** a magistrate's court has power to allow an accused person to deposit a specific article or property or a sum of money fixed by the court, instead of executing a bond.

This provision does not seem to be normally used by courts, but it court be used to a great advantage if adequate arrangements could be made for the safe custody of the articles deposited under this section.

Course of Action

1. Present the accused.
2. Prove that the offences are bailable by court.
3. Prove that he has a fixed place of abode.
4. Present the sureties and pray to court to find them substantial.

Bail in a magistrate's court may be oral.



THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF BUGANDA ROAD AT KAMPALA

CRIMINAL MISCELLANEOUS APPLICATION NO. 01 OF 2020

ARVIND PATEL.....APPLICANT

VERSUS.

UGANDA..... RESPONDENT

NOTICE OF MOTION

(Under Article 23(6) of the Constitution of the Republic of Uganda, 1995, as amended and Section 75 of the Magistrates Courts Act, Cap. 16)

TAKE NOTICE that this Honourable Court shall be moved on the .....day of ....2020 at.... O'clock in the forenoon or soon thereafter as counsel for the Applicant can be heard on an application for orders that;

a) The Applicant be granted bail pending hearing of the criminal case.

b) Any other relief as the court may deem fit to be given.

The grounds on which this application is based are contained in the affidavit of ARVIND HINDU, the applicant's wife which shall be read and relied upon at the hearing but briefly are:

1. The applicant is charged with the offences of possession of Narcotic Drugs Contrary to section 4 of the Narcotic Drugs and Psychotropic Substances Control Act, illegal possession of a firearm contrary to section 4(2) (a) & (b) of the fire Arms Act Cap.320 on the 20th day of October 2020 which are triable and bailable by this honourable court.

2. The applicant is a responsible member of society.

3. The applicant has at all material times been a law abiding member of society and has never been charged and/or convicted of any criminal offence.

4. The applicant is married with a family whereof he is the sole breadwinner

5. The applicant has a fixed place of abode in Rubaga Road Res. Bukoto Flats B2/Block 19 Block 1- D5 located in Kampala district within the jurisdiction of this honourable court.

6. The applicant shall not abscond if released on bail and has substantial sureties to ensure he shall attend court at all material times.

7. It is in the interest of justice that this application is granted.

Dated this.... day of....2020 at Kampala.

.....

M/s Bunuzi & Busharizi Advocates

COUNSEL FOR THE APPLICANT.

Given under my hand and seal of this honourable court this.... day of....2020.

.....

CHIEF MAGISTRATE

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF BUGANDA ROAD AT KAMPALA

CRIMINAL MISCELLANEOUS APPLICATION NO. 01 OF 2020

ARVIND PATEL.....APPLICANT

VERSUS.

UGANDA..... RESPONDENT

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION.

I, **ARVIND HINDU** of **C/o M/s Bunuzi & Busharizi Advocates, Speke Road, P.O. BOX 321, Kampala,** do hereby make oath and state as follows:

1. That I am a female adult Ugandan of sound mind, the Applicant's wife, and I swear this affidavit in that capacity.

2. That the applicant is charged with the offences of possession of Narcotic Drugs contrary to section 4 of the Narcotic Drugs and Psychotropic Substances Control Act, illegal possession of a firearm contrary to section 4(2) (a) & (b) of the fire Arms Act Cap 320 on the 20th day of October 2020 which are triable and bailable by this honourable court.

3. That the applicant is a responsible member of society.

4. That the applicant has at all material times been a law abiding member of society and has never been charged and/or convicted of any criminal offence.

5. That the applicant is married with a family whereof he is the sole breadwinner and a copy of the marriage certificate is hereto attached and marked annexure "A".

6. That the applicant has a fixed place of abode in Kampala district within the jurisdiction of this honourable court and an original introduction letter from the local council one chairperson of Bukoto, Rubaga where the accused resides is hereto attached and marked annexure "B" to prove residence in Rubaga Road Res. Bukoto Flats B2/Block 19 Block 1- D5.

7. That the applicant shall not abscond if released on bail and has substantial sureties to ensure he shall attend court at all material times and these are his father and uncle and wife/applicant and the original identification cards and photocopies of the same are attached and marked annexure "C", "D", and "E".

8. That I shall as well deposit the Applicants Passport into Custody of this Honorable Court to proof that applicant shall not make any movements abroad. ***(Attached is a copy of the valid Passport of the Applicant).***

9. It is in the interest of justice that the applicant is granted bail.

10. That whatever is stated herein above is true and correct to the best of my knowledge and belief.

SWORN at Kampala this.....day of.....2020.

By the said

ARVIND HINDU

.....Arvind Hindu .....

DEPONENT

BEFORE ME

.....

COMMISSIONER FOR OATHS.

Drawn & Filed by:

M/s Bunuzi & Busharizi Advocates,

Speke Road,

P.O. BOX 321,

Kampala,

BAIL IN HIGH COURT

When a case is triable in High Court, The matter has to first be entertained by a Magistrate's Court for mention. The practice is that the Magistrate tells the accused person that he has no jurisdiction to try the matter. The Magistrate then commits the Accused to the high court (when told by the state that the case is ready) or places you on remand. In this instance therefore, an accused person who seeks bail applies to the High Court. You can apply for bail before committal.

Counsel for accused is enjoined to draw the Notice of Motion + Affidavit.

Under section 15 of the trial on indictments act cap 25, This is premised on Rule 2 of The Judicature (Criminal Procedure)(Applications) Rules SI 16-8 which provides that all applications to the High Court in criminal cases shall be in writing, and where evidence is necessary, shall be supported by affidavit.

The notice of the Application is served on the Director of Public Prosecutions, by virtue of rule 4 (1) of the Judicature (Criminal Procedure) (Applications) Rules SI 13-8.

According to Section 16 of The trial on indictments act cap 25 the accused must prove the following;

- That he has substantial sureties (members of society)
- That he is willing to pay an amount as bond should he defy the conditions of the bail if granted

The Accused must show further that :-

- He will not abscond from court
- He will interfere with witnesses

In grant of bail in the High Court, court looks at the nature of accusation, gravity of offence and antecedents of accused inter alia. There are some offences which are non-bailable by Magistrate Court and these include:-

- Terrorism, cattle rustling, offences under fire arms, act punishable by sentence of less than 10 years, abuse of office, rape, embezzlement, causing financial loss, corruption, bribery.

Where bail money is so high and cannot be afforded by the accused person.

a) Apply to the chief ,magistrate for the review of the bail terms. Section 75(3) MCA provides that a magistare can direct an amount of bail to be reduced.

Section 75(4) MCA, provides that a high court can direct a magistrate to reduce the amount of bail.

Section 49(1) of the criminal procedure code act, empowers the magistare to call for or examine the record of proceedings of an inferior court.

In ANDREW MWENDA AND CHARLES ONYANGO OBBO V UGANDA (1997) KALR 25, it was held that bail shouldnot be like a punishment, it ought to be reasonable depending on the circumstances of the accused person.

This application is accompanied by a Notice of Motion under ***Article 23 (6) of the Constitution of the Republic of Uganda***, and ***Rule 2 of the Judicature (criminal Procedure) (Applications rules S.I 16 -8)*** and all applicable laws. It is an application for bail pending trial. Therefore, the procedure is provided for under Rule 3 Judicature (Criminal Procedure) (Applications) Rules S I 13-8; applications for bail shall be by Notice of Motion supported by an affidavit.

BAIL PENDING APPEAL.

Section 40 (2) of the CPCA, The appellate court may, if it sees fit, admit an appellant to bail pending the determination of his or her appeal; but when a magistrate's court refuses to release a person on bail, that person may apply for bail to the appellate court.

bail can be granted to a convicted person at any time pending the determination of his/ her appeal. The High Court, Court of Appeal and Supreme Court have powers to grant bail to an appellant except where he/she is sentenced to death.

It is however a necessary requirement that the accused should file an appeal in a competent court before he/ she can apply for bail pending appeal.

bail pending appeal will be granted after court has taken into regard exceptional

circumstances. These include;

• The likelihood of success of the appeal.

• The likelihood of a delay in hearing the appeal.

• The length of the sentence imposed.

• The complexity of the case.

Section 204 of the MCA CAP 19, An appellant may at any time before the determination of his or her appeal, apply for bail to the appellant court

IN THE CASE OF AYEBAZIBWE V UGANDA (HCT MISC APP 8 OF 2024)[2024] UGHC 976, it was stated by the high court that the conditions for granting bail pending appeal are higher than those for bail pending trial.

• **What are the responsibilities of sureties upon the grant of bail?**

• To sign the bail papers.

• To ensure that the accused honours the bail terms.

• To ensure that the accused returns to court whenever called upon to

do so.

• To inform court whenever there is a variance or unreasonable conduct

on the part of the accused so as to request for a discharge.

NECESSARY DOCUMENTS

Application for review of bail terms.

GG AND CO ADVOCATES,

MAKERERE, KAGUGUBE

KAMPALA-UGANDA

1ST NOVEMBER 2024

THE CHIEF MAGISTRATE

CHIEF MAGISTARTE COURT OF ENTEBBE

P.O BOX 456

Your worship,

RE;APPLICATION FOR REVIEW OF BAIL TERMS

We hereby act for and on behalf of SAKORIDE BOSO(hereinafter referred to as our client) who appeared before Grade 1 magistrate, His worship enjoyments under criminal Ref. No....of 2024 for bail application.

Bail was granted on the following terms;

a) That our client deposit 10 million in cash

b) That our client deposits his passport in court

Our client is found it difficult to comply because he could not afford and prays that this Honorable court reviews the terms as hereunder prayed;

a) That our client deposits an amount not exceeding 2 million Uganda shillings

b) That the court rejects the requirement of depositing a passport in court.

We pray so

.....

ADVOCATE

CC; CLIENT

CC; RESIDENT STATE ATTORNEY (RSA)

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF BUGANDA ROAD AT BUGANDA ROAD

CRIMINAL MISCELLANEOUS APPLICATION NO. 01 OF 2021

(ARISING OUT CRIMINAL CASE NO.367 OF 2020)

ARVIND PATEL.....APPLICANT

VERSUS.

UGANDA..... RESPONDENT

NOTICE OF MOTION

(Under Article 23(6) of the Constitution of the Republic of Uganda, 1995, as amended and Section 75 of the Magistrates Courts Act, Cap. 16)

TAKE NOTICE that this Honorable Court shall be moved on the .....day of ....2020 at.... O'clock in the forenoon and soon thereafter as counsel for the Applicant can be heard on an application for orders that;

a) The bail conditions be reviewed.

b) Any other relief as the court may deem fit to be given.

The grounds on which this application is based are contained in the affidavit of **ARVIND HINDU**, the applicant's wife which shall be read and relied upon at the hearing but briefly are:

TAKE FURTHER notice that this Application is supported by the Affidavit of the Applicant herein which shall be read and relied upon at the hearing but briefly they are that.

1. The applicant is charged with the offences of possession of Narcotic Drugs Contrary to section 4 of the Narcotic Drugs and Psychotropic Substances Control Act, illegal possession of a firearm contrary to section 4(2) (a) & (b) of the fire Arms Act Cap.320 on the 20th day of October 2020.

2.That Applicant has sound and suitable sureties within the Jurisdiction of this Honorable Court who undertake that the Applicant will comply with the conditions of my Bail.

3.That the bail conditions granted were however too harsh that the sureties have all through all efforts failed to raise the same.

4.That the Applicant has a fixed place of abode within the Jurisdiction of this Honorable Court.

5.That it is in the interest of justice that this Application is granted.

Dated this..... Day of....2021 at Kampala.

.....

COUNSEL FOR THE APPLICANT.

Given under my hand and seal of this honorable court this.... day of....2021.

.....

CHIEF MAGISTRATE

Drawn & Filed by:

M/s Bunuzi & Busharizi Advocates,

Speke Road,

P.O. BOX 321,

Kampala,

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF BUGANDA ROAD AT BUGANDA ROAD

CRIMINAL MISCELLANEOUS APPLICATION NO. 01 OF 2021

(CRIMINAL CASE NO 367 OF 2020)

ARVIND PATEL.....APPLICANT

VERSUS.

UGANDA..... RESPONDENT

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION.

I, **ARVIND HINDU** of C/o M/s Bunuzi & Busharizi Advocates, Speke Road, P.O. BOX 321, Kampala, do hereby make oath and state as follows:

1.That I am a female adult Ugandan of sound mind, the Applicant's wife, and I swear this affidavit in that capacity.

2.The applicant is charged with the offence of possession of narcotics which is triable and bailable by this honorable court.

3.That the applicant is a responsible member of society.

4.The applicant has at all material times been a law abiding member of society and has never been charged and/or convicted of any criminal offence.

5.The applicant is married with a family whereof he is the sole breadwinner ***(A copy of the marriage certificate is hereto attached and marked annexure "A").***

6.The applicant has a fixed place of abode in Kampala district within the jurisdiction of this honorable court and an original introduction letter from the local council one chairperson of Bukoto, Rubaga where the accused resides is hereto attached and marked ***annexure "B"*** to prove residence in Rubaga Road Res. Bukoto Flats B2/Block 19 Block 1- D5.

7.The applicant shall not abscond if released on bail and has substantial sureties to ensure he shall attend court at all material times and these are his father and uncle and wife/applicant and the identification cards and photocopies of the same are attached and marked ***annexure "C", "D", and "E".***

8.That the applicants Sureties have on all odds failed to raise the UGX. 50,000,000/= cash bail.

9.That I have been informed by my Lawyers M/s Bunuzi Busharizi &Co. Advocates that this honorable court has powers to review the bail terms and reduce the same.

10.That I shall as well deposit the Applicants Passport into Custody of this Honorable Court to proof that applicant shall not make any movements abroad. ***(Attached is a copy of the valid Passport of the Applicant)***

11.That it is in the interest of justice that the applicant is granted bail.

12.That whatever is stated herein above is true and correct to the best of my knowledge and belief.

SWORN at Kampala this.....day of.....2021.

By the said

ARVIND HINDU

.....Arvind Hindu ...

DEPONENT

BEFORE ME

.....

COMMISSIONER FOR OATHS.

Drawn & Filed by:

M/s Bunuzi & Busharizi Advocates,

Speke Road,

P.O. BOX 321,

Kampala.

DUTIES OF ADVOCATES AT THE INITIAL STAGES

The advocate has the following role in pre trial proceedings:

1. He interviews the suspects, whether in police custody or on remand. He has a duty to go the police station or the place at which the suspects are remanded; whereby he then talks to the officer in charge about the status of the file. He is at this point enjoined to meet the person on remand or in custody for the sake of interviewing him. It must be noted that in the course of the interview, the advocate should first let the accused person give his story and should only interject to fill in gaps or to stop the accused from giving irrelevant information.

2. During the course of the interview; the advocate has a duty to deduce relevant facts which point to possible offences, adequacy of such evidence to sustain the charges, inter alia. The advocate may also help his by applying for police bond under section 24(2) b of the police act. Section 38 of the Police Act provides that no fee is charged for police bond.

Article 23(4) of the 1995 constitution of Uganda, provides that a person arrested or detained for the purpose of bringing him or her before court in execution of an order of the court , shall if not earlier released be brought to court as soon as possible but in any case not later than 48 hours from the time of arrest.

a) Securing police bond

Procedure for applying for Police Bond:

1. The Advocate goes to the station where the suspect is in custody; and identify the investigating officer.

2. He seeks to get more information on the status of the file.

3. The advocate should explain the need for the bond. Some of the reasons one may advance include; the health of the accused.

4. The advocate should get two sureties with IDs and security.

5. **If Police Bond fails;**In case a client has been held in Police Custody for more than 48 hours and the Advocate has failed to get Police Bond; the advocate can go to a Magistrate's Court and apply for an order of release.

b) Complaint to the district police commander; he or she may peruse the file and order the release of the suspect.

c) Petitioning the D.P.P; By way of formal complaint addressed to the DPP. The accused his or her advocate has to demonstrate that there has been a violation of human rights. (Article 23(4) of the

1995 constitution) and assurance that the accused shall report to police when required. The D.P.P may use constitutional discretion to intervene in the matter.

d) Application for unconditional release; the police act provides for an application to the magistrate of the area within 24 hours for the unconditional release of the suspect unless charged.

Procedure for applying for an order of Release.

1. The Advocate prepares an application for an order of release. This is by Notice of Motion supported by an Affidavit (Under sec 17(1) of the Magistrates Courts Act Cap 19.

CONSENTING AND SANCTING TO CHARGES

To consent is to authorize and the law provides that no prosecution shall commence without the consent of the DPP for instance, Sedition, incitement of Violence. There are also other several offences that warrant the consent of the DPP before they can be commenced in prosecution.

The DPP is mandated to consent to charges against the accused persons. The DPP is supposed to ensure that the charges are not duplex and frivolous. He is then supposed to ensure that he appends his signature and send the file for further management. The DPP should also ensure that the charges against the accused are the right charges that can be sustained by evidence to be adduced.

Sanctioning is defined to mean giving official approval or permission for an action. It may also mean an official order for taking action. The DPP is mandated to sanction charges against the accused persons. The DPP has capacity to slap any charges against personsnsuspected of having committed any crime in society. The DPP officially gives approval to the

charges against the accused especially after the police file has been produced to him. The DPP however should ensure that the charges stand merit and not dropped.

STATUTORY OFFENCES THEIR NATURE AND DEFENCES THERETO.

The general rule of criminal law is that a man is not criminally responsible for an act or conduct unless it is proved that he did the act voluntarily and with a blameworthy state of mind. This principle is also frequently stated in the form of a Latin maxim: *actus non facit reum nisi mens sit rea.* The definition of a particular crime, either in statute or under common law, will contain the required *actus reus* and *mens rea* for the offence.

In criminal law, strict liability is liability for which *mens rea* does not have to be proven in relation to one or more elements comprising the actus reus. The liability is said to be strict because the accused will be convicted even though he was genuinely ignorant of one or more factors that made his acts or omissions

criminal. Therefore, the principle of strict liability is an exception to the general rule of criminal law. The accused may be criminally liable although his conduct was not intentional, reckless or negligent.

These laws are applied either in regulatory offences enforcing social behaviour where society is concerned with the prevention of harm, and wishes to maximize the deterrent value of the offence. Examples of strict liability include statutes that regulate sale of food, drinks, possession of restricted drugs and sellers of meat, offences under the Traffic Act, Public health and industrial regulations and environmental offences.

Being in possession of firearm without a valid firearm certificate c/s 4(1) and (2) of the Firearm Act cap 320

Section 1 of the Firearm Act, cap 320 defined "firearm" as *any barreled weapon (other than an imitation firearm) from which any shot, bullet or other missile capable of causing injury can be discharged, adapted for the discharge of any such shot, bullet or other missile, and any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing dangerous to human beings, and includes any component part of any such weapon as aforesaid and any accessory to any such weapon designed or adapted to eliminate or diminish the noise or flash caused by firing any such weapon, but does not include any antique firearm which has been rendered incapable of use as a firearm.* Thus, a Pistol fits within the above definitions of a firearm.

Section 4(1) of the Act provides for Restrictions on Purchasing, and others of firearms or ammunition that; no person shall purchase any firearm unless in respect of each firearm, he or she holds a valid firearm certificate.

Section 4(2) provides that any person who purchases any firearm without holding a valid firearm certificate, or otherwise than as authorized by such a certificate, commits an offence and is liable on conviction to imprisonment not exceeding sixty currency point or both.

In the case of **Mbaine & Others Vs Uganda, Criminal Appeal No. 107/2013**, the appellants were sentenced to five years' imprisonment for unlawful possession of firearms.

Unlawful possession of a fire arm contrary to section 4(1)(2)(a)(a) of the Fire Arm Act

elements;

a) Possession of a firearm

b) Without holding a valid firearm certificate.

ROLES OF THE IGG

ARTICLE 223(1) of the 1995 constitution of Uganda as amended establishes the inspectorate of government which must consist of the inspector general of government and his /her deputies.

The functions of the inspectorate as stipulated under ARTICLE 255(1) of the constitution include:

a) To investigate any act , omission , advice , decision or recommendation by a public officer or any authority to which this ARTICLE applies, taken , mad , given or done in exercise of administrative functions

b) To eliminate and foster the elimination of corruption ,abuse of authority and of public office.

Section 7 of the inspectorate of government act cap 32, provides for the duties and functions of the I.G.G that is **t**he inspector general is charged with the duty of protecting and promoting the protection of human rights and the rule of law in Uganda, and eliminating and fostering the elimination of corruption and abuse of public offices; and without prejudice to the generality of the foregoing, he or she shall perform the following functions—

(a)to inquire into allegations of a violation of human rights committed against any person in Uganda by a person in a public office and, in particular—

(i)the arbitrary deprivation of human life;

(ii)the arbitrary arrest and consequent detention without trial;

(iii)the denial of a fair and public trial before an impartial and independent court of law;

(iv)the subjection of any person to torture, inhuman and degrading treatment; and

(v)the unlawful acquisition, possession, damage or destruction of private property;

(b)to inquire into the methods by which law enforcing agents and the State security agencies execute their functions, and the extent to which the practices and procedures employed in the execution of those functions uphold, encourage or interfere with the rule of law in Uganda;

(c)to take necessary measures for the detection and prevention of corruption in public offices and, in particular—

(i)to examine the practices and procedures of those offices in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedure which, in the opinion of the inspector general, may be conducive to corrupt practices;

(ii)to advise those offices on ways and means of preventing corrupt practices and on methods of work or procedure conducive to the effective performance of their duties and which, in the opinion of the inspector general, would reduce the incidences of corruption;

(iii)to disseminate information on the evil and dangerous effects of corruption on society;

(iv)to enlist and foster public support against corrupt practices; and

(v)to receive and investigate complaints of alleged or suspected corrupt practices and injustices and make recommendations for appropriate action on the complaints;

(d)to investigate the conduct of any public officer which may be connected with or conducive to—

(i)the abuse of his or her office or authority;

(ii)the neglect of his or her official duties;

(iii)economic malpractices by the officer; and

(e)to perform any other functions that the President may prescribe.

PRE TRIAL DISCLOSURE

Pretrial disclosure is intended to safe guard against ambush. pretrial disclosure is premised on ARTICLE 28 (1) and (3)(a)(b)(c)(d) of the constitution which guarantee the right to fair hearing which contains in it the right to a pre trial disclosure of material statements and exhibits.

<u>What may be disclosed?</u>

Pretrial disclosure is not only limited to reasonable information only however disclosure is subject to some limitations which must be established by evidence by the state. The limitations relate to:

a) State secrets

b) Protection of witness from intimidation

c) Protection of the identity of informers from disclosure.

d) Due to the simplicity of the case disclosure is not justified for purpose of a fair trial.

An accused person is thus primafacie entitled to disclosure but the prosecution may by evidence justify denial on any of the above grounds.

It's the trial court that has the discretion on whether the denial has established or not.

When should disclosure happen?

It's on the case per case basis essentially, disclosure should be made before the trial commences depending on the justice of each case.

Effect of non-disclosure.

In Edward Ddumba Muwamu v Uganda ,hct-00-cr-sc-169 of2012 , the court held that non-disclosure is not fatal for the proceedings. Whenever its brought to the attention of court during the trial that there was no disclosure, court can adjourn the matter and order for disclosure.

SUPERVISORY POWERS OF THE CHIEF MAGISTRATE

Under S.220(1) of the MAGISTRATES COURTS ACT CAP 19 , a chief magistrate exercises general powers of the supervision over all magistrates courts within their area of jurisdiction

s.220 (2) of MAGISTRATES COURTS ACT CAP 19 permits the c/m in the exercise of their supervisory powers to call for and examine the record of any proceedings before a magistrate court for purposes of satisfying themselves as to the :

- Correctness
- Legality
- Propriety , sentence, judgement or order
- Regularity of any proceedings before that magistrate court

Under s.220(3) of MAGISTRATES COURTS ACT CAP 19 , upon examination of the proceeds , if they are of the opinion that any ,finding ,sentence, decision , judgement or order is illegal or improper or that any proceedings are irregular , he or she must forward the record with such remarks therein as he or she thinks fit to the high court. Under s.34 of c.p.c.a the high court may order for a trial within a trial is ordered on condition that its before another judicial officer . Uganda v kato kajubi c.a , brian isiko v Uganda.

procedure

- Briefly introduces the matter
- Highlights the errors that were brought to his /her attention through perusal of the file
- Concludes the letter with a prayer that the h/c exercises its powers of revision to rectify the irregularities

Section 220 (4) mca, the chief magistrate has powers to grant bail pending determination of the high court.

In UGANDA V AKAI AND OTHERS (1979) HCB 8, the chief magistrate has no powers of revision over decisions of grade 1 and 2. He can only call for and examine the record of such courts within the local limits of his jurisdiction to satisfy himself to the legality of any findings or order passed.

PRE TRIAL PROCEEDINGS

Role Of Advocate

The advocate has the following role in pre trial proceedings:

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6. The Advocate goes to the station where the suspect is in custody; and identify the investigating officer.

7. He seeks to get more information on the status of the file.

8. The advocate should explain the need for the bond. Some of the reasons one may advance include; the health of the accused.

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10. **If Police Bond fails;**In case a client has been held in Police Custody for more than 48 hours and the Advocate has failed to get Police Bond; the advocate can go to a Magistrate's Court and apply for an order of release.

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CONFESSION

IN THE CASE OF SWAMI V KING EMPEROR (1939) 1 ALL ER 396, A confession generally means the statement by an accused person acknowledging guilt of an alleged crime, Lord Atkin stated that a confession must admit at any rate substantially the facts that constitute the offence.

In UGANDA V MUTAHANZO (1988-1990) HCB 6, it was held that a confession connotes an unequivocal admission of having committed an act which in law amounts to an offence or atleast admits the facts that substantially constitute a crime.

Section 22(1) of the evidence act cap 8 provides that a confession should be made in the immediate presence of; a) police officer at or above the rank of AIP, b) magistrate.

FESTO ANDREA ASENUA AND OTHERS V UGANDA CRIMINAL APPEAL NO.1/98 (SC), the court went ahead and laid down the process of taking a confession which the following;

a) The accused person must feel free at the time when he is asked to make the confession.

b) There should be no security personnel at the time of recording the confession except the authorized officer taking the confession.

c) There must be caution administered; rule 10 evidence (statements to police officers) rules S.I 8-1, PROVIDES THE CAUTION AND STATES THAT "YOU NEED NOT SAY ANYTHING UNLESS YOU WISH BUT WHATEVER YOU SAY WILL BE TAKEN DOWN IN WRITIING AND MAY BE GIVEN IN EVIDENCE.

d) It must be recorded down in the very words used by the accused. You must ascertain the language in which the confession is to be made. Language is important because the confession is taken down verbatim.

e) In the event of translation, both the vernacular and the English version must be kept by the recording officer and later tendered in court as exhibits .

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g) After the statement has been recorded, it should be read back to the accused to confirm that, that is what he stated. (rule 8 of the Evidence(statement to police officers) rules S.I 8-1)

h) After confirmation, the accused shall sign or attach his or her thumb print as a sign of approval on all pages of the wriiten down confession. The person taking down the confession should also sign the date of the confession. The accused should not be cross examined. The I.O must not be involved with taking the confession since he or she might be biased due to various interactions with the public.

It is not worthy that the accused may retract his or her confession at trial and once this happens, a trail within a trail is held to ascertain the authenticity of the confession. In FESTO ANDREA ASENWA AND OTHERS V UGANDA CRIMINAL APP. NO.1/98, the trial court tested the statements in a trail within a trial and found that they were made voluntarily, and that because they were detailed in content and corroborated by the circumstantial evidence, they were in.

CANINE EVIDENCE

Uganda versus Muheirwe and Anor HCT-05-CR-CN-0011 of 2012, the following principles to guide trial courts with regard to admissibility and reliance on dog evidence.

2. The evidence must be treated with utmost care (caution) by court and given the fullest sort of explanation by the prosecution.

3. There must be material before the court establishing the experience and qualifications of the dog handler.

4. The reputation, skill and training of the tracker dog [is] require[d] to be proved before the court (of course by the handler/ trainer who is familiar with the characteristics of the dog).

5. The circumstances relating to the actual trailing must be demonstrated. Preservation of the scene is crucial. And the trail must not have become stale.

6. The human handler must not try to explore the inner workings of the animals mind in relation to the conduct of the trailing. This reservation apart, he is free to describe the behaviour of the dog

and give an expert opinion as to the inferences which might properly be drawn from a particular action by the dog.

7. The court should direct its attention to the conclusion which it is minded to reach on the basis of the tracker evidence and the perils in too quickly coming to that conclusion from material not subject to the truth-eliciting process of cross-examination.

8. It should be borne in the mind of the trial judge that according to the circumstances otherwise deposed to in evidence, the canine evidence might be at the forefront of the prosecution case or a lesser link in the chain of evidence."

OTHER OFFENCES

a) Possession of narcotic drugs.

Contrary to section 4(1)(2)(a) and (3) narcotic drugs and psychotropic substances (control) act cap 37

Section 2 of the narcotic drugs and psychotropic substances control act, defines narcotic drugs and psychotropic substance as drugs or substances specified in the 2nd and 3rd schedule to the act.

Essential ingredients of the offence of possession of narcotic drugs.

a) Possession of any narcotic drugs or psychotropic substance

Section 4(1) narcotic drugs and psychotropic substances control act, criminalizes the possession of narcotic drugs and psychotropic substances.

Section 4 (2)(a) narcotic drugs and psychotropic substances control act provides for the punishment of possessing narcotic drugs not being less than 10 years imprisonment but not exceeding 15 and in case of psychotropic substance not less than 5 years but not exceeding 15 years.

Section 4(4) narcotic drugs and psychotropic substances control act, provides for the possession of a parcel, package or container containing a narcotic drug is criminal and attracts a minimum fine of 120 currency points or imprisonment for a minimum of 1 year and maximum of 5 years or both.

b) Absence of authority

Section 4(3) of the narcotic drugs and psychotropic substances control act, exempts authorized personnel from liability.

UGANDA V LUTOTI AND 2 OTHERS H.C.C.A NO.20/2011, court held that a person shall be liable if found without authority under the law for supplying distributing or holding restricted or classified drugs.

STRICT LIABILITY OFFENCES.

The general rule under criminal law is that an offence consists of actus reus and mensrea that is guilty act and the blame worthy state of mind. However for strict liability offences, he act alone is sufficient to constitute the required offence.

In the same vein, possession of narcotic drugs and trafficking of narcotic drugs are strict liability offences and hence proving the element of mensrea is irrelevant

These laws are applied either in regulatory offences enforcing social behaviour where society is concerned with the prevention of harm, and wishes to maximize the deterrent value of the offence. Examples of strict liability include statutes that regulate sale of food, drinks, possession of restricted drugs and sellers of meat, offences under the Traffic Act, Public health and industrial regulations and environmental offences.

In THE GAMMON (HONG KONG) LTD V ATTORNEY GENERAL OF HONG KONG (1985) 2 ALL ER 503, the court laid down the rationale for imposing strict liability;

a) Presumption that mensrea is a requirement for criminal offence

b) Presumption is strong where the offence is truly criminal

c) Presumption applies to statutory offences and this can be displaced by a statute

d) Presumption is displaced where there is an issue of social concern or public safety.

e) Presumption stands until it is shown that strict liability will promote the purpose of the statute by encouraging vigilance.

DEFENCE STRATEGY TO FREE SUSPECT FROM PRISON.

a) Visit your client and conduct a brief interview

b) Pursue and obtain a production warrant; apply to the magistrate by way of ordinary letter and the same should be copied to the RSA

The production order is served on the RSA and the officer in charge of prison where the client is held. It must be signed and sealed by the court.

c) Apply for bail pending trial; Article 28(3) (a) of the 1995 constitution of Uganda guarantees the right to apply for bail before the courts of law.

FLORENCE BYABAZAIRE V UGANDA HCMA 284/2006, the grant of bail is not automatic and its upon the discretion of the court.

d) Disclosure of prosecution evidence

Article 28(3)(c of the 1995 constitution of Uganda, advocates for the grant of adequate time and facilities for the accused to prepare his or her defence in order to prevent trial by ambush.

In SOEN YEON KONG KIM AND NAOTHER V ATTORNEY GENRERAL CONSTITUTIONAL REFERENCE NO.6 OF 2007, it was held that in summary Article 28(1),(3),(a)(c)(d) and (g) of the constitution in their plain, natural and practical meaning, primafacie entitle an accused person in a magistrates court to disclosure of;

a) Copies of statements made to the police by the would be witnesses for the prosecution

b) Copies of documentary exhibits which the prosecution is to produce at the trial.

c) The disclosure is subject to limitations to be established through evidence by the prosecution.

DRAFTING DOCUMENTS

CHARGES

A charge is defined as a written statement containing as accusation against a person alleged to have committed an offence. In the High Court, this is referred to as an indictment. A charge sheet contains a statement and particulars of an offence. This is provided for in sections 85 and 88 of the Magistrates Courts Act.

GENERAL RULES REGARDING CHARGE SHEETS

A charge sheet commences with the statement of offence. The statement of offence describes the offence in ordinary language avoiding use of technical terms. This was upheld in the case of **COSMA VS R (1955) 22 EACA 450.**

After the statement are the particulars of the offence. The particulars should be set out in ordinary language in which technical terms are avoided. It must be noted that where a charge contains more than one count, the counts should be numbered consecutively.

Court held in **R V. TAMBUKIZA** 1958 EA 212; that the final charge is the essence in criminal procedure and the failure of the Magistrate to draw up and sign a final charge was a defect which rendered the trial a nullity. Failure to draft formal C/S renders the trial a nullity. Thus the charge sheet must be signed. Court held further in **UGANDA VS OCILAJE S/O ERAGU [1977] HCB 9** where Allen J held that a charge sheet submitted by the Police Officer is neither proper nor complete if it is unsigned by a Police Officer.

Defects In Charge Sheets

A charge sheet is defective and may be bad in law if the defect cannot be cured by correction or otherwise. Below are some of the defects which can be evident in a charge sheet.

DUPLICITY

A charge sheet is bad for duplicity if it has more than one offence in one count; or if two accused persons are charged in one charge sheet yet the offences are different and do not warrant a joinder of persons.

UNNECESSARY CHARGES

This is conversed by section 146 of the Magistrates Courts Act. The most common example of this is charging an individual with an attempt to commit an offence. It is proper to charge the person with the offence such that where this is not proved; one can be convicted of attempting to commit that offence.

ACCESSORY AFTER FACT

Another example is charging one as an accessory after fact; conversed in section 147 of the Magistrates Courts Act. it is an unnecessary charge.

MINOR AND COGNATE OFFENCE

Another example is charging an individual with a minor and cognate offence; this is provided for in section 147 of the Magistrates Courts Act. Court outlawed this in **FUNO VS UGANDA (1967) EA 363.**

SUBSTITUTED CONVICTIONS

Another unnecessary charge is use of substituted convictions; thus where court finds one guilty of an offence different from the one he was charged with. These types of offences are covered in sections 149 - 157 of the Magistrates Courts Act; they include:

- If one is charged with manslaughter, he or she can be convicted of traffic offences under sections 2,3,4 of the Traffic and Road Safety Act.

- If one is charged with rape, he or she can be convicted under sections 128,129,132 and 149 of the Penal Code Act.

- If one is charged with defilement, he or she can be convicted under sections 128,132 of the Penal Code Act.

- If one is charged with obtaining money by false pretense's, he or she can be convicted of offences such as receiving stolen property or retaining stolen property, stealing.

It must be noted that charges can be amended if the amendment will not cause injustice to the accused person. This discretion is conferred on the Magistrate.

Court held in **UGANDA V. ELATU** Crim Rev 71/72 that "it is not every obvious irregularity and defect in a charge sheet that makes it bad in law and thus render the proceedings a nullity. The test is what the effect of the defect in the charge on the trial and conviction of the accused and whether there has been in fact failure of justice.

A wrong section or law was discussed in **UG. V. BORESPAYAO MPANYA (1975) HCB 245,** where the accused charged and convicted under the forest rules instead of the Forest Act, on revision, **Saied J** held that the charge disclosed no offence. However, the charge was not a nullity or bad merely because the rules were cited instead of the Act but would simply be defective or imperfect because a bad charge would be disclosing no offence known to law but as long as the particulars leave no doubt of the offences the accused is charged with, the charge would not be bad in law but defective.

JOINDER OF COUNTS

This is provided for in section 86(1) of the Magistrates Courts Act and section 22(1) of The trial on indictments act cap 25 and the general rule is that any offence may be charged in the same count if the offences are of the same facts or are particularly of series of offences of the same or similar character. This is fortified by **ZABASSAJJA VS UGANDA (1968) EA 384.**

Another cardinal rule regarding joinder of counts is that no count is to be joined with a count of murder or manslaughter; except where the additional count is based precisely on the same facts as the more serious charge. This principle is fortified in **YOWAN SEBUZUKIRA V R (1965) EA 684**

Thirdly, where more than one offence is charged in a charge a description of each offence ought to be set out in a different paragraph. This is provided for in section 86(2) of the Magistrate Courts Act and section 21(2) of The trial on indictments act cap 25.

JOINDER OF PERSONS

Joinder of persons is provided for in section 87 of the Magistrates Courts Act and section 22 of The trial on indictments act cap 25. Below is a discussion of the rules relating to joinder of persons.

Where persons are accused of the same offence committed in the course of the same transaction; under sections 87 (a) of the Magistrates Courts Act and S.22 (a) of The trial on indictments act cap 25.

Secondly, where persons accused of an offence and persons accused of assisting or attempting to commit such offence; under sections 87 (b) of the Magistrates Courts Act and S.22 (b) of The trial on indictments act cap 25.

Thirdly, persons accused of more offences than one of the same kind that is to say; offences punishable with the same amount of punishment under the same section of the Penal Code or any other written law committed by them jointly within a period of twelve months; under sections 87 (c) of the Magistrates Courts Act and S.22 (c) of The trial on indictments act cap 25.

Fourthly, persons accused of different offences committed in the course of the same of the transaction; under sections 87 (d) of the Magistrates Courts Act and 22 (d) of The trial on indictments act cap 25.

Fifthly, persons accused of any offence which refers to offences of stealing, robbery, burglary and false pretense; may be charged with persons accused of receiving or retaining such property stolen or robbed; under sections 87 (e) of the Magistrates Courts Act and 22 (e) of The trial on indictments act cap 25.

Lastly, persons accused of any offence relating to counterfeit coins under cap XXXVI of the Penal and persons accused of any other offence under that cap relating to the same coin or of abatement or attempting to commit any such offence; under sections 87 (f) of the Magistrates Courts Act and 22 (f) of the The trial on indictments act cap 25.

1

SUBMISSION OF NO CASE TO ANSWER IN REGARD TO THE OFFENCE OF EMBEZZLEMENT AND CAUSING FINANCIAL LOSS.

Article **28(3) of** the Constitution of the Republic of Uganda 1995, provides for the right of an accused person to be presumed innocent until proved guilty or until he/she pleads guilty.

Therefore at the commencement of the trial of an accused person, the Court has a duty to administer Plea taking by an accused person as provided for under **s126** of the Magistrate's Court Act Cap 19, in order to ascertain whether the accused person pleads guilty or not guilty to the charges laid against him or her.

S.131 (1) provides that at the commencement of the trial, both the prosecution and the accused (defence) have a right to address court on their respective cases.

The prosecution opens its case and leads evidence by examining its Witnesses-in - Chief whom the accused or his Advocate has a right to cross examine and the prosecution re-examines.

In Criminal cases, the burden of proving the guilty of the accused is on the prosecution and the standard of proof is beyond reasonable doubt as was held in the case of **Woolmington Vs D.P.P (1935) AC.**

The burden of proving the guilt of an accused person shifts only in a few exceptional cases as was held in the case of **Uganda Vs Teddy Seezi Cheeye, High Court Criminal case N0.1254 of 2008**

At the close of the prosecution's case, the court allows the prosecution to submit on establishment of a prima-facie case and the Defence to submit on a no case to answer.

A PRIMAFACIE case was defined in the case of:

Bhatt Vs R (1957) EA 332 as one on which a reasonable tribunal would convict if no explanation is offered by the Defence.

In **Francis Xavier Kayemba Vs Uganda [1983] HCB 330**, Court state that a prima-facie case is not made out if at the close of the prosecution case, the case is one which on full consideration might possibly be thought sufficient to sustain a conviction.

Therefore a failure by the prosecution to make a prima-facie case out of their evidence may lead to decide that there is no case to answer by the accused person upon a submission by the defense to that effect. 2

In the case of Fred **Sabahashi Vs Uganda**, Criminal Appeal **No.23 of 19993(SC)**, the Supreme Court held that,

"A submission that there is no case to answer may properly be made and upheld;

i i. When there has been no evidence to prove an essential element in the alleged offence.

i ii. When the evidence adduced by the prosecution has been so discredited as a result of cross-examination of a witness or so manifestly unreliable that no reasonable tribunal could safely convict on it.

SUBMISSION OF NO CASE TO ANSWER

YOUR WORSHIP, in the instant case**,** the accused person stands charged with the offence of **EMBEZZLEMENT** contrary to **S.19** of the **Anti-corruption Act 116** and **FRAUDULENT FALSE ACCOUNTING** Contrary to **S.23** of the aforementioned Act.

Your Honor, the burden of proving the ingredients of the alleged offences against an accused lies on the prosecution as was held in the Case of **Woolmington Vs DPP [1935] A.C** and the accused has no duty whatsoever to prove his or her innocence.

YOUR WORSHIP, the offence of embezzlement is provided for under S.19 of the Anti-Corruption Act 116.

The essential ingredients of the offence are;

a) Being an employee

b) Stealing a chattel, money or valuable security

c) Being the property of his employer

d) Received or taken into possession on account of his or her employer.

e) To which he or she has access by virtue of his office.

YOUR WORSHIP, prosecution led evidence of **5** witnesses who included **Capt. Tony Mawanda**, **Ms. Candiru Lucy**, **Mrs. Mawanda Sarah**, **Mr. Basoga Micah** and **D/AIP. Santos Mugenyi** who in their evidence only state that money was withdrawn from ***Salvation needs Network Uganda Ltd's*** *Bank Account at* ***Barclays Bank***, without any of them directly pinning the accused person. 3

In his testimony before this honorable Court, the Executive Director **CAPT. TONY MAWANDA** stated that the monies lost were amounting to about **Ugx. 360,000,000/=** which is not the same figure as indicated by the Auditors from **MAZARS**.

In the evidence of **Chandiru Lucy,** she alleged that two Members of Staff i.e. **Monica Kaka** and **Allan Kumbuga** were the first to identify financial anomalies in their Accounts system, but it is inconceivable that their evidence is not anywhere on Courts' record.

She also alleged that the Bank Manager had discovered that the Bank Statement in the Complainants' custody for the month of September, 2019 was not the right one but false and that the Bank Manager had run them a correct copy, which copy is missing on evidence and the Manager was never called upon to court to testify against the alleged false Bank Statement. Court was not shown or told the source of the alleged false Bank Statements.

We submit that this is a contradiction which does not enable the prosecution make out a prima-facie case against the accused person **Oketa Wilbrod.**

Tony Mawanda further stated that there are **"Five Signatories"** of the Organizations Bank Accounts and that their Policy allows any **"Three"** of them to Sign and withdraw money.

This evidence contradicts the one given to Court by **Candiru Lucy** the Accounts Assistant, who stated that the NGO has 10 operational accounts, eight being at Barclays Bank and two at Stanbic Bank and that the NGO has **"Six Signatories"**. No Handwriting Expert's Report was produced to show who the author of the alleged forged cheques and the accused person cannot be held responsible.

My Lord the above testimony of Tony Mawanda the executive Director creates questions in the mind of any prudent Trial Magistrate as to who of the Five or the three signatories withdrew the money, if any, from the Bank. Therefore such failure to prove the stealing of the money by the accused makes the prosecution fail to make out a prima-facie.

The evidence of the Auditor **BASOGA MICAH**, is to the effect that, in the course of their assignment, they asked Management to provide them with supporting documents for the transactions amounting to **Ugx. 311,183,868.32/=** which they were not provided with. If indeed these documents had been provided to the Auditors, a true picture of accountability would have been reflected and perhaps not to the stated alarming figure against the accused person. And there is no "**Audit Report"** that was produced in court in evidence. 4

YOUR WORSHIP, from the evidence of all the prosecution witnesses, none of them pinned the accused person as regards theft of funds aforementioned and or having made false accountabilities to his employers.

Therefore failure by the Auditors to make out a clear report as to the affairs of the organization, contradicting amounts allegedly stolen and contradicting number of signatories by the witnesses, clearly indicates that no Prima-Facie case is made out by the prosecution against the accused for the offences charged.

YOUR WORSHIP, Per the case of **Bhatt Vs R [1957] E.A 332,** the East African Court of Appeal held that ***"a Prima-Facie could not be established by a mere scintilla of evidence or by any amount of worthless, discredited Prosecution evidence***".

Also in the Ugandan case of **Uganda Vs Mulwo Aramanthan Criminal Case No. 103 of 2008** court further clarified on proof of a prima facie case as ***"A Prima-Facie case does not mean a case proved beyond any reasonable doubt since at this stage, Court has not heard the evidence for the Defence".*** It is therefore our humble submission **YOUR WORSHIP,** that the evidence adduced by the prosecution is too weak to warrant an accused person to be put to their defense. In other words, the Prosecution has not established a Prima-Facie case against the accused person on any of the charges in the Charge Sheet.

WE SO PRAY



DRAWING UP A SUMMARY OF THE CASE

A summary of the case is conversed in the context of section 168 of the Magistrate Courts Act. It accompanies an Indictment and does give the "summary" to the case before the High Court. It is written in ordinary and plain language. It contains material particulars which the state attorney or the DPP proposes to adduce at the trial. It is signed by the State Attorney.

The reasons advanced for a summary of evidence are; first and fore most to enable the accused person to know the case against him and also enable him prepare a defense.

The summary of evidence enables the prosecution prepares for the case and it also gives the trial judge an opportunity to acquaint himself with some of the problems likely to arise in the course of the trial.

COMMITAL PROCEEDINGS

Section 1 of The trial on indictments act cap 25 provides that the High Court shall have jurisdiction to try any offence under any written law and may pass any sentence authorized by law. It must be noted however that no criminal case shall be brought before the High Court unless the accused person has been committed for trial to the Magistrate Courts Act.

Committal proceedings are provided for in section 168 of the Magistrates Courts Act. These proceedings are a consequence of a fact that a magistrate does not have the jurisdiction to try a case before him. The accused person thus appears before him for mention but does not take plea. The following should be noted in committal proceedings:

- A person should be charged with an offence in the Magistrate's court, triable by the High Court.
- The DPP or the State Attorney files an indictment with a summary of the case in the Magistrates Court.
- The Magistrate is given a copy of the Indictment and summary of the case.

- The Magistrate reads out the indictment and summary of the case and explain to the accused the nature of the accusation against him in the language he or she understands.
- The magistrate then commits the accused for trial to the High Court and transmits copies of the indictment and summary of the case to the registrar of the High Court.

- The accused person is then remanded by the magistrate pending his or her trial.

It must be noted that the effect of the committal is that if the accused was on bail, it lapses with the committal.

COMMITTAL FOR SENTENCE

Another form of committal is evident in section 164 of the Magistrate Courts Act, which is committal for sentence.

In such a scenario, the court should be presided over by a Magistrate Grade One, Two.

Secondly, the accused should have been convicted and the magistrate forms an opinion that the accused deserves a greater punishment;

Thirdly, that such punishment should be out of his sentencing jurisdiction under section 162 of the Magistrate Courts Act.

Fourthly, the Magistrate commits such person to the Chief Magistrate's Court. If the Chief Magistrate considers that the conviction is improper, he forwards the record to the High Court and postpones passing of the sentence pending the decision of the High Court. The Chief Magistrate is at his discretion empowered to release the offender on bail or remand him pending the decision.

It must be noted that under section 166 of the Magistrates Court's Act, the magistrate has no jurisdiction to try any offence; he can remand the accused person in custody to appear before a superior court.

Court held in **Uganda vs Yonasani Lule Monthly Bulletin 17 of 1969** that a committing Magistrate should only commit an accused person to the High Court if there is a reasonably arguable prima facie case and should not dig into the merits of the case viz the weight of the evidence. Usually if the matter does not disclose a reasonably material prima facie case; then the Magistrate is at discretion to deny committal of the accused person to the High Court.

RIGHTS OF AN ACCUSED PERSON

a) **Right to legal representation;**

This is conversed in ARTICLE 23(5)(a)of the Constitution 1995 as amended. It is also a cardinal rule of natural justice that a person so accused should be given a right to be heard to give his side of the story.

Court held in **OGOLLA V. R** (1973) EA 227;that the right to legal representation is not absolute, however, in cases where the accused does not have legal representation; it's the duty of the trial magistrate to ensure that the Charge sheet is in order. This position has however been changed on the apogee of the Constitution of 1995.

Right to access a next of kin;

This is conversed in ARTICLE 23 (5) (a) of the Constitution 1995; the next of kin is supposed to be informed as practically immediately as possible of the restriction.

Right to a personal doctor;

This is conversed in ARTICLE 23 (5) (b) and (c) of the Constitution 1995 as amended and includes the right to access to medical treatment, including at the request and at the cost of that person, access to a private medical treatment.

Right to bail

This is conversed in ARTICLE 23 (6) a of the Constitution, section 75 and 77 of the Magistrate Courts Act Cap 13;

Right to a fair and impartial hearing;

ARTICLE 28(1) of the 1995 Constitution of Uganda as amended provides that any person charged with an offence shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

Other rights include the following;

- A right to presumption of innocence until proven guilty or that person pleads guilty; under ARTICLE 28 (3) (a) THE 1995 CONSTITUTION OF UGANDA AS AMENDED

- A right to be informed immediately, in a language that the person understand of the nature of the offence under ARTICLE 28 (3) (b) THE 1995 CONSTITUTION OF UGANDA AS AMENDED
- A right to be given adequate time and facilities for the preparation of his or her defence under ARTICLE 28 (3) (c) THE 1995 CONSTITUTION OF UGANDA AS AMENDED
- A right to be permitted to appear before the court in person or at that person's expense, by a lawyer of his or her choice under ARTICLE 28 (3) (d) THE 1995 CONSTITUTION OF UGANDA AS AMENDED
- A right to legal representation at the expense of the state, in case the accused person is charged with an offence which carries a sentence of death or imprisonment for life; under ARTICLE 28 (3) (e) THE 1995 CONSTITUTION OF UGANDA AS AMENDED
- A right to be afforded, without payment by that person, the assistance of an interpreter if that person can not understand the language used at the trial, under ARTICLE 28 (3) (f) THE 1995 CONSTITUTION OF UGANDA AS AMENDED
- A right to be afforded facilities to examine witnesses and to obtain the attendance of other witnesses before the court, under ARTICLE 28 (3) (g) THE 1995 CONSTITUTION OF UGANDA AS AMENDED
- Grounds for withdraw / nolle prosequi

There were laid down in the case of ***Sezi Musoke And Anor*** Uganda criminal appeal no. 39 of 1974, and these are :

1) insufficient evidence
2) lack of compliance by witness either they have relocated or cannot be found to which the i.o must prepare an affidavit of service and the same be attached to the letter. Since there are phone numbers try calling the witness
3) no prima facie case: Nolle prosequi is usually entered in any of the above situations.

Steps

1. The RSA has to write to an opinion or legal memo powers to grant a nolle prosequi. This letter should be inform of defence and opinion to allow the DPP determine whether to involve their powers or not
2. The DPP will sign the nolle prosequi.
3. The nolle prosequi is presented before the presiding judge or magistrate.
4. The judge shall then enter the nolle prosequi and have the accused set free
5. Where accused is not in court , the registrar shall cause the notice in writing of the nolle prosequi to be served to the keeper of the prison .(s.134(2) of T.I.A)

Effects of nolle prosequi

Pursuant to S.134(1) of T.I.A nolle prosequi is not a bar to subsequent proceedings against the accused on account of the same facts . The case can be reinstated however this must be before the defence case was made. If the nolle prosequi is entered after the defence has made its case, the nolle serves as an acquittal and as such the case cannot be reinstated.

PREVENTIVE DETENTION

A Magistrate is empowered under section 2 of the Habitual Criminals (Preventive Detention) Act Cap 125 to put a criminal under a detention to protect him from public menaces. Section 2(1) of the Habitual Criminals (Preventive Detention) Act Cap 125 provides some yardsticks thus;

- The criminal should be less than 30 years.
- The criminal should have been convicted of an offence punishable by imprisonment of 2 years or more.
- The criminal should have been convicted on at least three occasions since attaining 16 years.

It must be noted that exercise of this power by a magistrate is evident in section 163 of the Magistrate Courts Act.

TRIAL PRACTICE

COMMENCEMENT OF CRIMINAL PROSECUTIONS

This is conversed by section in section 42 of the Magistrate Courts Act. Commencement is either through public prosecutions or private prosecutions. Broadly, institution of criminal prosecutions is done in three ways as decided below:

a) By a police officer bringing a person arrested with or without a warrant before a Magistrate upon a charge, under section 42(1)(a) of the Magistrate Courts Act.

b) By a public prosecutor or a police officer laying a charge against a person before a magistrate and requesting issue of a warrant or summons under section 42(1) (b).

c) Under section 42(1) (b), commencement of proceedings may be instituted by an individual other than a public prosecutor or a police officer by making a complaint under sub section (3) before a magistrate who has jurisdiction to try or to inquire into the commission of the offence or within the local limits of whose jurisdiction the accused person is alleged to reside or be. It must be noted that every complaint may be made orally or in writing but every complaint made orally shall be deduced into writing by the Magistrate and when so reduced into writing shall be signed by the complainant. Court held in **UGANDA. V. PHILLIP ULEGO**: **Criminal Review 306/66,** Court held in context that no Private person has a right to appear before court to prosecute; however, he or she should lodge a complaint on oath accompanied with a charge sheet not on PF 53 but on the headed paper of his or her advocate's firm.

TRIALS BEFORE MAGISTRATES COURTS

Procedure

Trials before the Magistrate's Courts are governed by the Magistrate Courts Act Cap 19. Before a Magistrate handles a matter, as a question of prudence he or she should have jurisdiction to handle the matter.[13]

The first step in the procedure before Magistrate Courts is;

a) The prosecution introduces its self and the accused appearing before a Magistrate will be in the dock wherefrom, the charges are read to him.

b) The accused is asked whether he understands the charges; if he does not an interpreter will be availed to him to enable him understand the charges in a language he or she understands. This is premised on the right of the accused to understand the charges levied against him or her vide ARTICLE 28 (3) (b) of the Constitution 1995. Upon appreciation of the charges against him, he or she takes plea.[14] A plea is defined as an answer to a charge or an indictment. The accused can plead guilty, not guilty, *autre fois aquit, autre fois convict,* or *pardon.* It must be noted that if it is a plea of guilty, it must be clear and unequivocal. Court held in **UGANDA VS LAKOT (1986) HCB** that a plea is equivocal where an accused person tries to explain; and in such a situation, a plea of not guilty must be entered. Section 15 of the The trial on indictments act cap 25 provides that if accused person pleads guilty, the plea shall be entered, and he may be convicted thereon.

c) Where a plea of guilty is entered, the court shall convict on that plea. Where a plea of not guilty is entered; Counsel for the state conducts an examination in chief; thereafter, counsel for the accused shall then cross examine the said witnesses. After this point; counsel for the accused is supposed to submit on a no case to answer; or failure to establish a prima facie case by the state[15]. The magistrate is then enjoined to make a ruling on a no case to answer. If he or she rules that there is no case to answer, the accused is acquitted; if he or she rules that there is a case to answer, then the counsel for the accused begins the defence of the accused.

It was further held in **UGANDA VS. ALFRED ATEYO (1970) HCB 4,** where Manyindo J. gave circumstances under which a no case to answer can be raised and held that where there is **insufficient evidence to establish a case and prosecution is no manifestly un reliable,** the accused can be

[13] Cf Jurisdiction as discussed above.
[14] Read ahead on the types of pleas.
[15] Read on – checklist on submissions on failure to establish a prima facie case or no case to answer below

acquitted. This is restricted in ARTICLE 28 (2) of the constitution which presumes innocence until the contrary is proved.

PROCEDURE AFTER PROOF OF A PRIMA-FACIE CASE

- The Counsel for the accused conducts an examination in chief of the accused and thereafter, counsel for the state cross examines the accused and his or her witnesses.

- After the examination of the witnesses, then submissions by the parties to case are made. Either Party can begin; it must be noted that the party who begins has a right of reply; under section 130 of the Magistrate Courts Act Cap 19.

- The Magistrate is then enjoined to pass judgment; the judgment can be simultaneous or on notice. The accused will either be acquitted or convicted. If the accused is acquitted, the court becomes *functus officio.* Where the accused is convicted, then the accused awaits sentence.

- Before sentence is passed, an *alloctus* is conducted, where the accused is given chance to mitigate the sentence. Some of the reasons taken in mitigation include the following;

- The accused is a first offender;
- The accused has a family, and he or she is the bread winner;
- The accused is repentant and
- The accused is of poor health; *inter alia*

CHILDREN OF TENDER YEARS

Section 104(3) of the childrens act, in any proceedings before the high court in which a child is involved, the high court shall have due regard to the child's age and to the provisions of the law relating to the procedure of trials involving children.

In the case of KIBAGENY ARAP V REPUBLIC (1959) E.A 92, a child of tender years is defined to mean any child of an age or apparent age of 14 years.

Where in the course of the trial; it is brought to the attention of court that evidence about to be adduced is from a child of tender years, court has to conduct a *voire dire* to ascertain whether the child understands the nature of the oath, before court can rely on such evidence.

A *voire dire* is conversed in section 117 of the Evidence Act cap 8 and the procedure for conducting it is as follows:

It was elucidated in **KATO SULA VS UGANDA S.C.CRIM APP. 25 OF 2000** as follows:

- It should be conducted in chambers and not in open court.
- The trial Judge/Magistrate asks the child on matters of religion, and consequences of lying.
- When he or she is convinced that the child understands the nature of the oath, the evidence will be taken on oath.

Section 40 (3) of the trial on indictments act cap 26, Where in any proceedings any child of tender years called as a witness does not, in the opinion of the court, understand the nature of an oath, his or her evidence may be received, though not given upon oath, if, in the opinion of the court, he or she is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; but where evidence admitted by virtue of this subsection is given on behalf of the prosecution, the accused shall not be liable to be convicted unless the evidence is corroborated by some other material evidence in support thereof implicating him or her.

In RV BASKERVILL (1916) 2 KB 658, corroboration must be independent testimony which affects the accused by connecting or tending to cnnect the accused to the crime.

Uganda v Byamukama (Criminal Session Case 151 of 2023) The Court noted that the accused, a **16-year-old** , had his constitutional rights violated by being held on remand in a facility with adult prisoners, emphasizing the need for Magistrates to require prosecutors to present the police **Form 24** to ensure appropriate custody for children.

DUTIES OF THE COURT

PROSECUTION AND DEFENCE IN TRIAL PROCEDURE

A) Court:

After proof of a prima facie case; court is enjoined to

- Tell the accused of his right to give or not to give evidence;
- Inform the accused of the right to defend himself;
- Discretionary and judiciously grant bail if the accused has not got it and has applied for it at this stage.
- Commit the accused to the High Court in case the case is not triable by the subordinate courts.

B) Defence/ Accused's counsel:

Counsel for the accused has the following duties in trial practice;

- To cross examine the witnesses of the prosecution to close gaps of proof of the case against his or her client.
- To lead the accused and his or her witnesses through an examination in chief and re- examination.
- To make a submission of no case to answer; for his or her client.
- To make submissions in favour of his or her client at the closure of the case.
- To pray to court to mitigate the sentence in case the accused has been convicted.

C) Prosecution/ State counsel:

Counsel for the state has the following duties in trial practice;

- To cross examine the witnesses of the accused to close gaps of proof of the case against the state.
- To lead the state witnesses through an examination in chief and re- examination.
- To make a submission of a case to answer; for the state
- To make submissions in favour of the state at the closure of the case, showing that the accused is guilty as charged.

In preparation of a submission of no case to answer; the following guideline may come in handy:

- One ought to address court about the cardinal principle laid down in the **Constitution of the Republic of Uganda 1995 (**in ARTICLE 28(3) (a) that every person charged with a criminal offence is presumed innocent until proven guilty.

- Give the brief facts leading to the purported charges/ indictments and discuss the ingredients viz evaluation of the evidence at hand.

- The case of **RAMANIAL TRAMBAKLAH BHATT V. R (1951)** E.A 332, defines a prima facie case in these terms: "a prima facie case can't be one, which merely might possible be thought sufficient to sustain a conviction. A new scintilla of evidence could not suffice, nor could any amount of discredited evidence. A prima facie case must mean one who a reasonable tribunal properly during its mind to the law and evidence could convict if no explanation is offered by the defence.

Court held further in **UGANDA VS. ALFRED ATEYO (1970) HCB 4** where **Manyindo J** gave circumstances under which a no case to answer can be raised and held that where there is **insufficient evidence to establish a case and prosecution is manifestly unreliable,** the accused can be acquitted. This is premised on ARTICLE 28 (2) of the constitution which presumes innocence until the contrary is proved.

- Logically it would be counsel for the Accused's submission that the state has failed to prove a prima facie case and that it is a practice of Honourable Court to make ruling of a no case to answer where justice beckons. This is fortified by **Mungona Vs R MB 3 of 59,** where the court made a ruling of no case to answer where the prosecution had failed to substantiate its case. It would then be Counsel's humble prayer to the court, as a fountain of justice to make a ruling of a no case to answer.

ADJOURNMENTS

Adjournments are covered in section 122 of the Magistrate Courts Act CAP 19 and an adjournment is possible before or during the hearing of a particular case.

Procedure

- The procedure is informal. It can be done orally or by letter.

- The application is made in open court. It must be noted that counsel for the applicant should show sufficient cause why the application should be granted.

- Upon adjournment; court is enjoined to appoint a time and place for resumption of the proceedings.
- The accused person may be remanded or released upon cognizance of sureties. It must be noted that the adjournment should not take more than 30 days.

WITHDRAWAL OF CASES

Withdrawal of cases is governed by section 121 of the Magistrate courts Act CAP 19. There have to be proceedings before a magistrate's court.

Procedure

a) The Prosecutor on the instructions of the DPP or with consent of the court may before judgment is pronounced withdraw any person from prosecution.

b) It must be noted that if the withdrawal is before the accused has made his or her defence, then the accused is discharged but this does not act as a bar to subsequent proceedings.

c) If the withdrawal is made after the accused has made his defence; then the accused is acquitted.

d) The document used to achieve this objective is the ***nolle prosequi*** which is only made by the DPP; copied to the Resident State Attorney and the Regional CID Officer.

NB: concerning withdrawing of charges, court held in **SELI MUSOKE & ANOR VS. UGANDA** EACA Cr. App. No. 39 of 1974 as follows;

i) The DPP has specific power under the constitution to **discontinue** any criminal proceedings at any stage before conviction is given and that it follows that if this power is exercised at any time before conviction the court has no alternative but to discharge or acquit the accused as the case might be.

ii) That the above power could be exercised by the **DPP or an officer authorized** by him acting under his general or special instructions.

iii) That the time that constitution of DPP has to take is ***not prescribed and in practice courts*** always act on the word of the prosecuting counsel or public prosecutions.

The DPP **has unfettered discretion to withdraw or discontinue** a case. A withdrawal by DPP does not act as a bar to re-institution of a criminal case.

DISMISSAL OF CASES

- Dismissal of cases is covered under section 119 of the Magistrate Courts Act cap 19. Where a complainant does not appear for a hearing, in a case where a Magistrate Court has jurisdiction to determine;
- secondly the accused appears in obedience to the summons served, and thirdly the prosecutor has notice of the time and place appointed for hearing; the charges are dismissed; unless for some reason; court thinks it proper to adjourn the hearing of the case till some other day.
- Dismissal is also covered under section 123(1) of the Magistrate Courts Act thus; if at a time and place at which hearing or further hearing shall be adjourned and the complainant does not appear; court may dismiss the charge with or without costs as it deems fit.

IDENTIFICATION PARADE

dentity of a thing or person is an expression of opinion that that thing or person resembles another thing or person so much so that it is likely to be the same thing or person. It is a comparison that looks for resemblances.

In criminal law, the identity of an accused must be established and that person has to be shown to be the one who committed the particular offence. Therefore, there has to be a process through which the accused is connected to the crime and this process is referred to as identification.

Likewise in civil cases, identity is important. Any person who wishes to institute a case against another must clearly describe the identity of that other person and where the person is found.

The process of identification in criminal law usually seeks to ensure the following:

The person identifying must have seen or observed the person being identified.

The identifying person must have had a settled impression in his/her mind at the relevant time i.e. he or she must not have been in panic.

The mental picture a person has at the time of identification must be the same as that he or she had when he or she first saw the accused. It must not be tainted by other factors or opinions of third parties.

The time taken in identifying the accused person is important. If for example it is a short period such as a few seconds, it may not be enough for a person to notice.

Consideration must also be given to those opportunities allowing for proper identification. This is generally referred to as the conditions and circumstances ideal for identification such as time taken, amount of light, distance between the identifier and the accused person and whether the suspect was known to the identifier before or is a complete stranger.

An accused person may be identified in court, at an identification parade or through previous conduct.

Identification parade

Identification parades are normally conducted by the police during investigations in an attempt to identify the accused or suspect with the offence for which he or she is charged or suspected. The purpose of the parade is to find out from the witness who claims to have seen the accused or suspect at the scene of the crime whether he can identify the accused or suspect as the person he or she saw previously at the scene of the crime or actually committing the offence. The witness must have seen the suspect previously, lest the parade will be of no evidential value. In addition, the witness should not have seen the suspect subsequent to his or her arrest, as his or her identification at the parade may be said to be based on his or her having seen the suspect after arrest and not at the time the crime was committed.

In order to ensure that identification parades are conducted fairly, the High Court of Uganda has approved certain rules for conducting identification parades.

See: Sentale v Uganda (1968) EA 365

R v Mwango (1936) 3 EACA 29

Simon Musoke v R (1958) EA 715

The police officer conducting the parade is required to ensure the following:

1. That the accused person is always informed that he may have an advocate or friend present when the parade takes place;

2. That the officer in charge of the case, although he may be present, does not carry out the identification;

3. That the witness does not see the accused before the parade;

4. That the accused is placed among at least eight persons as far as possible, of similar age, height, general appearance and class of life as himself or herself;

5. That the accused is allowed to take any position he or she wishes after each identifying witness has left if he so desires;

6. Care should be exercised that the witnesses are not allowed to communicate with each other after they have been to the parade;

7. Exclude every person who has no business there;

8. Make a careful note after each witness leaves the parade, recording whether the witness identifies, or other circumstances;

9. If the witness desires to see the accused walk, hear him speak, see him with his hat on or off, see that this is done. As a precautionary measure, it is being suggested the whole parade be asked to do this.

10. See that the witness touches the person he or she identifies.

11. At the preparation of the parade or during the parade ask the accused if he or she is satisfied that the parade is being conducted in a fair manner and make a note of his or her reply.

12. In introducing the witness, tell him or her that he or she will see a group of people who may or may not contain the suspected person. Do not say "Pick out somebody" or influence him or her in any way whatsoever.

13. Act with scrupulous fairness, otherwise the value of the identification as evidence will depreciate considerably.

The following extract is from the case of Kurong Stanley v Uganda (Court of Appeal Civil Appeal No. 314 of 2003) [2008] UGCA 11

"We now turn to the merits of the appeal. We find it convenient to begin with the evidence of the identification parade. The learned trial judge considered the evidence at length and came to the conclusion that the parade was conducted in accordance with the rules laid down in Republic vs Mwanga s/o Manaa (1936) EACA 29. It is this conclusion that was challenged by the appellants' counsel at the trial of the appeal. We begin with his submission that the appellant was never informed of his right to request that a lawyer be present at the parade and that this omission was fatal to the whole parade. Counsel relied on the case of Ssesanga Stephen vs Uganda Civil Appeal No.85 of 2000 (CA) in which this Court held that the right of the accused to be informed that he could have his lawyer present was mandatory and failure to inform him would be fatal to the parade. In the instant case, the appellant was asked whether he had an

advocate whom he wished to attend and he answered in the negative. In our view, the fact that the appellant was asked whether he had lawyer should have alerted him to the possibility that he could have a lawyer present if he wished to have one present. He could have asked there and then whether, if he had one, he would be allowed to attend. Instead, he simply answered that he had no lawyer and never complained thereafter about the absence of one at the identification parade. We think that this case is distinguishable from the Ssesanga case where the appellant was never alerted to the possibility that he could require that an advocate or a friend attends the parade./

The second objection to the parade is that witnesses at the parade were shown the appellant before the exercise was conducted. We have read the evidence of PW7, the officer who carried out the parade, and the appellant's own evidence on the matter. We do not find any evidence to support that claim. The learned trial judge can be forgiven for rejecting the appellant's evidence on the matter because, on the whole, she found that he was an ***"inveterate liar".*** *As the trial judge who had the opportunity to see all the witnesses, including the appellant, in the witness box, she was entitled to make that finding.*

The third objection was that at the parade, the appellant was lined up with people of dissimilar appearance in size and height which made it easy to be identified.

The rules in ***Mwanga case (supra)*** *require that the accused should be placed as far as possible with persons of similar age, general appearance and class of life of himself or herself. According to PW7 Ojok Bona who conducted the parade, most of the volunteers who participated in the parade were* ***"almost of same size"*** *with the suspect. We also note that most of the volunteers were aged between 18 and 31 years except one who was aged 37 which was also the age of the appellant. It is not always an easy matter to assemble eight volunteers of similar age, height and size, but all effort should be made towards that direction so that the suspect does not stand out as manifestly distinct from all other participants. We accept the evidence of the police officer (PW7) that he lined up eight people of similar appearances of the appellant save that only one of them was of his age. However, since the witnesses did not know the age of the appellant, this could not have occasioned a miscarriage of justice or prejudice the judgment of the witnesses. Moreover, this was not one of the reasons that the appellant advanced against the fairness of the whole exercise when he was asked whether he was satisfied with the conduct of the parade. We hold that the irregularity on age differential is minor and did not prejudice the fairness of the whole exercise.*

Finally, counsel challenged the fairness of the conduct of the parade on the ground that it was suggested to the witnesses that the man whom they saw in Gulu at the scene of crime was definitely one of the nine men paraded. According to DW7, he was instructing the identifying witness to walk along the parade and to touch the person he/she saw in Gulu if he/she recognised one. Four witnesses were told the same thing and they picked out the appellant. The appellant himself agrees that this was the procedure used. Counsel for the appellant did not tell us the words PW7 used that suggested that the suspect would be in the parade. We do not agree that the instructions PW 7 gave the witnesses suggested what counsel for the appellant is complaining of. All he said was that if you recognise among these people the man you saw in Gulu, then touch

him. The use of the word IF clearly left the possibility that the suspect may be there and you don't recognise him or he may not be there at all. This objection to the fairness of the parade is unfounded and we reject it.

On the whole, we find that there were a few minor irregularities in the exercise but on the whole they did not prejudice the fairness of the identification parade. Both PW7 (the police witness) and the appellant himself agree that four witnesses picked out the appellant from the line. We agree with the trial court that there was no credible evidence that three Gulu lodge witnesses who picked the appellant from the line were shown the appellant before the exercise began. It is unfortunate that two of them did not testify in court but the appellant himself testified that they picked him out of the parade of eight volunteers. We hold that the identification parade was conducted properly and fairly."

CONDITIONS NECESSARY FOR A PROPER IDENTIFICATION

The leading authority is the case of:
Abudala Nabulere & 2 Others v Uganda, Court of Appeal Cr. App. No. 12 of 1981; [1979] HCB 77

Held: The court observed the following:
"Where the case against the accused depends wholly or substantially on the correctness of one or more identifications of the accused, which the defence disputes, the judge should warn himself and the assessors of the special need for caution before convicting the accused in reliance on the correct identification or identifications. The reason for the special caution is that there is a possibility that a mistaken witness can be a convincing one, that even a number of such witnesses can all be mistaken. The judge should then examine closely the circumstances the identification came to be made, particularly the length of time, the distance, the light, the familiarity of the witness with the accused. All these factors go to the quality of the identification evidence. If the quality is good the danger of mistaken identity is reduced, but the poorer the quality the greater the danger." **Abdallah bin Wendo & Another v R 20 EACA166**

Facts: The appellants were convicted of murder of a plantation watchman on a very dark night.

Held: The trial judge convicted the appellants feeling it safe to accept evidence of one man M as to their identity.

IDENTIFICATION BY A SINGLE WITNESS

See: *Areet Sam v Uganda Supreme Court Criminal Appeal 20/2005*
Amooti Immaculate v Uganda High Court Criminal Appeal 27 of 2007

Under s. 133 of the Evidence Act, no particular number of witnesses is required to prove any fact. Accordingly, even a single witness can be called to prove a fact. However, because of the dangers associated with such testimony, the courts have set out certain rules in this regard.

Uganda v George Wilson Simbwa Sct. Cr. App No. 37 of 1995

Facts: The respondent was tried and acquitted of murder. The DPP appealed against the acquittal arguing that the appeal involves a point of law of public importance. It was alleged that one night while the deceased and his son guarded their banana plantation against thieves who used to steal their bananas, the respondent, armed with a spear and a panga went to the plantation to steal. The deceased's son saw him and the deceased went forward to confront him but was speared by the respondent. The son raised an alarm which many villagers answered. When they arrived at the scene the deceased was still alive and told them that he had been stabbed by the respondent. The respondent lived on the same village as the deceased and was well-known to the deceased's family. The trial judge found the conditions in the banana plantation unfavourable for easy identification. That it was in a valley, no evidence was given to show that the two cell torch held by the deceased's son gave out light of sufficient intensity, no evidence was led to show how the clusters in the plantation were spaced , *interalia*.

Held: (Supreme Court): The law regarding identification by a single witness is now well settled and quoted a number of cases,

"Briefly, the law is that although identification of an accused person can be proved by the testimony of a single witness this does not lessen the need for testing it with the greatest care especially when the conditions favouring correct identification are difficult. Circumstances to take into account include the presence and nature of light, whether the accused person is known to the witness before the incident or not, the length of time and the opportunity the witness had to see the accused and the distance between them. Where conditions are unfavourable for correct identification, what is needed is other evidence pointing to guilt from which it can be reasonably concluded that the evidence of identification can safely be accepted as free from

possibility of error. The true test is not whether the evidence of such a witness is reliable. A witness may be truthful and his evidence apparently reliable and yet there is still a risk of an honest mistake particularly in identification. The true test is...whether the evidence can be accepted as free from the possibility of error."

The Supreme Court further observed that the deceased's son was carrying a torch containing two dry battery cells (two weeks old), had flashed the torch at the respondent who was only six metres away from the witness, the witness had known him for seven years and lived in the same village and was even able to describe the clothes the accused was wearing which evidence was unchallenged. That although the trial judge had properly directed himself on the law applicable to evidence of identification by single witness but misapplied the law thereby reaching a wrong conclusion. The evidence of identification was also corroborated by the dying declaration which ruled out any mistaken identity.

KWEZI SIMON & MALWA MWITA V UGANDA, CRIMINAL APPEAL NO. 250 OF 2010, The Court of Appeal elaborated on the law concerning single identifying witnesses by referencing **Abudala Nabulere & 2 others v. Uganda (C.A. Criminal Appeal No. 09 of 1978)** in which court explained that, according to **section 132** of the Evidence Act, **multiple witnesses are unnecessary to prove a fact; the critical element is the quality of the identification**. If the quality of identification is weak, additional witnesses will not lessen the danger of mistaken identity. Therefore, in cases predominantly based on identification, the judge must warn themselves and the

assessors to be cautious, as even a credible witness may still be mistaken. The court

must carefully evaluate the circumstances surrounding the identification, including

factors such as the duration of observation, distance, lighting conditions, and familiarity with the accused. When the identification is of high quality, such as from

prolonged observation or recognition under satisfactory conditions, it may suffice for

conviction without corroboration, as long as the court provides a cautionary warning. Imposing a more stringent rule, like requiring corroboration in every case of identification, could obstruct justice and law enforcement.

WITNESSES

- Witnesses are summoned under section 94 (1) of the magistrate Courts Act cap 19; if it is made to appear in evidence that material evidence can be given or is in such a person's possession.

- It must be noted that where a witness; without sufficient excuse does not attend unless compelled to do so; the Magistrate shall issue a warrant compelling such person to appear.

The following ingredients (per the section) should be evident:

- There should be no sufficient cause or excuse
- The witness should disobey a summons
- There should be proof of service of summons within a reasonable time before the case commences.

Then on satisfaction of the above, a warrant shall be issued by the Magistrate compelling the witness to appear.

Procedure

1. The procedure is simply filling out Form 53; summons for witnesses to appear.

2. It must be noted that when the witness fails to show up, a warrant of arrest is filled out and served on any police officer to produce such person before a magistrate to give information in Court.

Section 95 of the Magistrate Courts Act provided that if a witness furnishes security by recognizance to the satisfaction of court of his appearance in court, court shall order that he or she to be released from custody.

REFRACTORY WITNESS

A refractory witness is provided for in section 102 of the Magistrate Courts Act cap 19 as one who without giving sufficient excuse for refusal or neglect;

a) Refuses to be sworn;

b) Having been sworn in, refuses to give answers;

c) Refuses or neglects to produce any document or thing in his possession which he or she is required to produce;

d) Refuses to sign his or her disposition

PROCEDURE IN DEALING WITH A REFRACTORY WITNESS

- Apply to court orally, stating that the witness is refractory and should be committed to prison unless the witness consents to what is required of him to do. Court may at its discretion adjourn the case for a period not exceeding ten days. Under section 104 of the Magistrate Courts Act cap 19.It must be noted that a Magistrate has power to take evidence of witnesses in absence of the accused if;
- The accused has absconded with no immediate prospect of buying him.
- The Magistrates' court should be competent jurisdiction.

Ssegirinya Fulugensio vs. Uganda, Criminal Appeal No. 0549 of 2016 (Arising from Masaka Criminal Session Case No. 096 of 2013), The Court of Appeal emphasized that under **Section 133** of the Evidence Act, which is to the effect that no particular number of witnesses shall in any case be required for the proof of any fact. It confirmed that it is not about the number of witnesses lined up but rather the quality of evidence available that matters. It also clarified that it is the responsibility of the sentencing judge, not the prison authorities, to deduct the time spent on remand and issue a clear and lawful sentence, ensuring no ambiguity in its execution.

TRIALS BEFORE THE HIGH COURT

ARRAIGNMENT

This is provided for in section 60 of The trial on indictments act cap 25.It must be noted that the accused person has to be tried before the High Court and it consists of three steps;

- The accused is placed at the bar, unfettered;
- The indictment is read to him by the Chief Registrar or any other officer of court; this can be interpreted if the need arises.
- The accused is required to plead instantly to the indictment; the plea can be guilty, not guilty, *autre fois acquit,* and *autres fois convict*.

ASSESSORS' ROLE AND OPINION DURING TRIAL.

It is a cardinal rule under section 3(1) of the Trial of Indictments Act that all trials before the High Court shall be with aid of assessors and the number shall be two or more as court deems fit.

For one to serve as an assessor, some considerations evident in the Assessors Rules (in the schedule to The trial on indictments act cap 25) have to be put into consideration;

- One should be between 21-60 years.
- One should be able to understand the language of court (English);
- One should be able to follow the proceedings of court.
- One should be a lay person of integrity and good reputation.

Some persons are exempt from serving as assessors and these include the following; under Rule 2 of the Assessor Rules.

- Priests and ministers of respective religions;
- Medical professionals like dentists and pharmacists in active service;
- Legal practitioners in active service;
- Members of the armed forces on full pay;

- Members of the Police Forces of the prison services;

Persons exempted from entering appearance personally in court; or under any law in force;

- Persons disabled by mental or bodily infirmity.
- Persons exempted from serving as assessors by statutory instrument.

PROCEDURE

- Section 82(1) of the trial on indictments act, at the end of evidence for both defence and the prosecution, the judge is required to sum up the law and evidence.
- Section 82(3) of the trial on indictment act opinions of assessors are not binding and the judge shall state reasons for departing from their opinions
- In GODFREY TINKAMALIRWA AND ANOTHER V UGANDA (1988-90) HCB 2, the judge must sum up the law and evidence in the case correctly and impartially leaving the assessors free to form their opinion independently. The summing up must not leave room for a reasonable man to think that the judge did favour one side unfairly at the expense of the other.
- Court further noted matters which the judge should direct the assessors on and they include ;

a) Contradictions and inconsistencies of the evidence

b) The weight given to certain pieces of evidence e.g accomplice, hostile witness

c) The need for corroboration in case of unsworn evidence of a child of tender years

d) When the court may base on a conviction on identification by single witness.

e) When court may rely on circumstantial evidence

f) On which party the burden of proof lies as well as the standard of proof required.

STEPS;

A) Address the assessors while giving them a brief background of the case as well as the ingredients of the offence.

B) Inform the assessors of the burden of prrof in criminal matters. That the accused should not be convicted on the weakness of his or her evidence but rather on the strength of the prosecutions case.

C) Invite the assessors to come up with their opinion about the case which they will give orally in court.

D) After the assessors stating their opinion, the case is adjourned to allow the judge determine the case aginst the accused and write a judgement taking into consideration on their opinions thought not binding

E) Where the judge departs from the opinions of the assessors, the reasons have to be stated in the judgement.

- . Case law provided in **ABDUL KOMAKETCH VS UGANDA [1992-93] HCB21**, where court held that assessors should be sown in and failure to do so invalidate the trial.

CONFESSIONS AND EXTRA JUDICIAL STATEMENTS

The evidence act does not define what a confession is ,however the supreme court in f**ESTO ANDROA ASENUA AND ANOR V UGANDA SCCA NO.1 OF 1998,** court defined a confession to mean an unequivocal admission of having committed an act which in law amounts to a crime . The confession must either admit in terms the offence or at any rate substantiate all the facts which constitute the offence.

- The confession must be made before an officer of a rank not below AIP, while an extra judicial statement is made before a magistrate.

ADMISSIBILITY

- Under s.24 of the evidence act, a confession obtained through violence, force or threat, inducement promise calculated in the opinion of the court to cause an untrue confession.

RETRACTION AND REPUDIATION

Retraction of an confession arises where the accused person admits to having made the confession but he/herself states that it was as a result of duress,violence,inducement or threat as stated under s.24 of the evidence act cap 8.

Repudiation of a confession arises where the accused person completely denies having made the confession

In R V KENGO AND ANOTHER (1930) 10 EACA 123 ,the accused made a statement before a magistrate and confessed to the murder but during the trial he made on unsworn statement in which he denied the previous statement. The court stated that the general rule regarding repudiated and retracted confession is that the confessions are admissible in evidence provided the court is satisfied that the confession was made voluntarily.

PROCEDURE IN TRIALS

Procedure

Trials before the High Court are governed by The trial on indictments act cap 25. The High Court is enjoined with overall criminal and civil jurisdiction in all matters under the judicature Act.

The procedure is similar to that in the Magistrates Courts, save for a few differences. The procedure before the High Courts is as follows;

- The prosecution introduces its self and the accused appearing before a Judge will be in the dock wherefrom, the charges are read to him.
- The accused is asked whether he understands the charges; if he does not an interpreter will be availed to him to enable him understand the charges in a language he or she understands. This is premised on the right of the accused to understand the charges levied against him or her vide ARTICLE 28 (3) (b) of the Constitution 1995 as amended. Upon appreciation of the charges against him, he or she takes plea.[16] A plea is defined as an answer to a charge or an indictment. The accused can plead guilty, not guilty, *autre fois aquit, autre fois convict,* or *pardon.* It must be noted that if it is a plea of guilty, it must be clear and unequivocal. This is called arraignment
- Court held in **UGANDA VS LAKOT (supra)** that a plea is equivocal where an accused person tries to explain; and in such a situation, a plea of not guilty must be entered. Section 15 of The trial on indictments act cap 25, provides that if accused person pleads guilty, the plea shall be entered, and he may be convicted thereon. The assessors are then sworn in; (assessors have been discussed above).
- Where a plea of guilty is entered, the court shall convict on that plea. Where a plea of not guilty is entered; Counsel for the state conducts an examination in chief; thereafter, counsel for the accused shall then cross examine the said witnesses.
- After this point; counsel for the accused is supposed to submit on a no case to answer; or failure to establish a prima facie case by the state[17]. The Judge is then enjoined to make a ruling on a no

[16] Read ahead on the types of plea.

[17] Read on – checklist on submissions on failure to establish a prima facie case or no case to answer below

case to answer. If he or she rules that there is no case to answer, the accused is acquitted; if he or she rules that there is a case to answer, then the counsel for the accused begins the defence of the accused.

PROCEDURE AFTER PROOF OF A PRIMA-FACIE CASE

- The Counsel for the accused conducts an examination in chief of the accused and thereafter, counsel for the state cross examines the accused and his or her witnesses.

After the examination of the witnesses, the Judge sums up the evidence for the assessors to give their opinion regarding the case before court. Court held in **BYAMUGISHA Vs UGANDA [1987] HCB 4** that in summing up, the trial judge is required to sum up the law and the evidence given and give guidance to the assessors. Court held further in **JACKSON ZITA VS UGANDA S.C.CRIM. APPEAL 19/1995** that summing up is a must; however failure to do so does not necessarily lead to quashing of the conviction. What should be noted is whether failure to sum up properly has caused a miscarriage of justice.

Court was of the view in **TWINOMUHEZI VS UGANDA S.C.CRIM. APP. 40 OF 1995** that the trial judge is enjoined to sum up the evidence and law to assessors. He must do so correctly and impartially; the summing up must not leave room for a reasonable man to think that the judge favours one side at the expense of another. It must be noted when an assessor has been absent during the continuation of the trial, he can not return to resume his seat and continue with the trial. If he is allowed to participate the trial will be null and void.

After summing up, then submissions by the parties to case are made. Either party can begin; it must be noted that the party who begins has a right of reply.

After this point, the assessors give their opinion on the matter before the court.

After this, the Judge is then enjoined to pass judgment; the judgment can be simultaneous or on notice. The accused will either be acquitted or convicted. If the accused is acquitted, the court becomes *functus officio.* Where the accused is convicted, then the case is adjourned and the accused awaits sentence. The Magistrate becomes *funtus officio* upon passing of the sentence. This was upheld in **UGANDA VS. NDONDO AND TWO OTHERS [1985] HCB 3**, where Allen J held that the court becomes *funtus officio* after the sentencing.

Before sentence is passed, an *alloctus* is conducted, where the accused is given chance to mitigate the sentence. Some of the reasons taken in mitigation include the following;

- The accused is a first offender;
- The accused has a family, and he or she is the bread winner;
- The accused is repentant ;
- The accused is of poor health;
- Seek indulgence of court for a deterrent sentence;
- The case is not of gross character; *inter alia*

Before pronouncing the sentence, the trial judge/ Magistrate should put into consideration the following factors as held in **UGANDA VS YANG HCB 25**:

The age of the accused;

Antecedents of the accused;

Effect of the sentence on the accused;

Whether the accused is a first offender;

Gravity of the offence;

Health of either party;

Legality of the sentence passed to be passed;

Period the accused has spent on demand;

Pre-sentence report by probation officers

Prevalence of crime;

Precious convictions

Special status;

Type of plea taken;

Whether the accused is repentant;

Another principle which has to be followed in sentencing is noted in **AMOS BINUGE AND OTHERS VS UGANDA [1992-93] HCB 17** where court held that where an accused is convicted on more than one count; each count should carry its own sentence and penalty.

REVISION

Revision is a judicial process where the high court examines and corrects the mistakes of the lower court which appear on the face of record in a criminal trial

Section 50(5) of the CPCA ;Revision is a remedy to a party only after the final judgement of the court has been pronounced. It cannot be applied for against an interlocutory or preliminary decision of the court. Revision is an available where an appeal has filed but later withdrawn.

Section 17(4) of the judicature act, the high court exercises general powers of supervision over magistrate courts.

GROUNDS OF REVISION

A) The high court may call for and examine the record of any such criminal proceedings before any magistrate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of the magistrate court.

In UGANDA V MBOIZI H/C CRIMINAL REVISON NO.002/2012, any order by a magistrate's court without jurisdiction is illegal, null and void abinitio.

Bail pending revision.

Section 50(6), the high court may pending the final determination of the case release any convicted person on bail ; but if the convicted person on bail is ultimately sentenced to imprisonment, the time he or she has spent on bail shall be excluded in computing the period for which he or she is sentenced.

PROCEDURE FOR REVISION

Section 50(5) of the CPCA Any person aggrieved by any finding, sentence or order made or imposed by a magistrate's court may petition the High Court to exercise its powers of revision under this section; but no such petition shall be entertained where the petitioner could have appealed against the finding, sentence or order and has not appealed

SECTION 50 (8) OF THE CPCA; Where an application is made by the Director of Public Prosecutions under subsection (1) to make an order to the prejudice of an accused person, the application shall be lodged with the registrar within thirty days of the imposition of the sentence unless, for good cause shown, the High Court extends the time

IN SHABAHURIA MATIA V UGANDA H/C CRIMINAL REVISION CAUSE NO.5/1999, the court has power to make orders for revision to prevent abuse of court process.

Section 50 (2) No order under this section shall be made unless the Director of Public Prosecutions has had an opportunity of being heard, and no order shall be made to the prejudice of an accused person unless he or she has had an opportunity of being heard either personally or by an advocate in his or her own defence

Section 50 (1) of the CPCA; n the case of any proceedings in a magistrate's court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, when it appears that in those proceedings an error material to the merits of any case or involving a miscarriage of justice has occurred, the High Court may—(a)in the case of a conviction, exercise any of the powers conferred on it as a court of appeal (b)in the case of any other order, other than an order of acquittal, alter or reverse the order.

SUMMARY OF PROCEDURE FOR REVISION

A) Write a letter requesting for the certified record of proceedings

B) Apply for revision by NOM AND AFFIDAVIT

C) Pay the requisite fee

D) Effect service on the opposite party within reasonable time

E) Application shall be set down for hearing and determination

F) Revision order issued.

APPEALS

APPEALS IN CRIMINAL LAW PRACTICE

The law applicable to this scope of the study is:

The possible basic issues which arise out of an appeal:

1. Whether Agatha has a right of appeal?

2. Whether the facts disclose any Merits/grounds of appeal?

3. Whether the grounds can be opposed successfully by the respondent?

4. What other remedies are available to the parties?

5. What is the forum, procedure and documents?

The following points should be noted under appeals:

a) An appeal has a scope; that is can be on a point of law, point of fact or point of mixed law and fact.

1. **WHETHER THERE IS A RIGHT OF APPEAL.** ➢□Appeal is a creature of statute. It is a system that enables the higher court to correct mistakes of lower courts which have caused a miscarriage of justice.

ALINYO AND ANOR V R (1974) EA 554 it was held that there is no automatic right of appeal neither is their inherent appellate jurisdiction.

The right to appeal is a creature of statute. And only lies against a final order of the court determining the case. ***CHARLES HARRY TWAGIRA V UGANDA CR APP. NO.3/2003,*** there is no right of appeal against interlocutory/interim orders of the court made during the hearing of the case.

Section 203(1) magistrates court act cap19, any person convicted on a trial by a court presided over by a chief magistrate or magistrate grade1 has a right to appeal to the high court.

Subsection 2 is to the effect that the scope of appeal is limited to matters of law and fact or mixed law and fact.

➢□***Section 203(6) of the magistrate's court act*** is to the effect that the DPP has a right of appeal.

2. WHAT ARE THE PROCEDURAL STEPS FOR AN APPEAL?

FILING A NOTICE OF APPEAL

✓□***Section 28(1) of the criminal procedure code act cap 122,*** every appeal must be commenced by a notice in writing which shall be signed by the appellant/ advocate and must be lodged with the registrar within 14 days from the date of judgement/order from which the appeal is preferred.

✓□***Subsection 2*** is to the effect that the appellate court may for good cause shown, extend the period within which to file a notice of appeal.

LETTER REQUESTING FOR CERTIFIED RECORD OF PROCEEDINDS.

✓□The notice of appeal is lodged together with a letter requesting for recordings of proceedings and the copy of the judgement is supplied free of charge.

✓□***Article 28(6) of the 1995 constitution***, a person tried for any criminal offence or any person authorized by him/her shall after the judgement be entitled to a copy of the proceedings upon payment of a fee prescribed by law.

✓□It is the duty of the court to prepare a record of proceedings and the judgement and avail the same to the appellant.

✓□***Section 29 of the criminal procedure code act*** the appellant should pay a prescribed fee for filing the notice of appeal at the time of lodging the notice.

FILE THE RECORD OF APPEAL.

It should contain the following documents;

1. Memorandum of Appeal

2. Record of proceedings

3. The judgement

4. The order

5. The notice of appeal.

6. In case of the third appeals, a certificate from the high court or court of appeal

➢□A memorandum of appeal is a statement by the appellant outlining the grounds upon which the appeal is based.

➢□It must set out concisely and under distinct heads numbered consecutively, without argument or narrative the grounds of objection to the decision appealed against specifying in case of first appeal, the point of law which are alleged to have been wrongly decided.

➢□***RIANO &ANOR V R (1960) EA 960*** court held that general grounds of appeal cannot be raised in the memorandum of appeal.

➢□***Section 28(3) of the criminal procedure code act cap 122,*** the memorandum of appeal must be filed within14 days of receipt of the record of proceedings and judgement, however this time can be extended if the appellant shows good cause of the extension.

➢□***Section 31(1) of the same act,*** the application to extend the time for filing the memorandum of appeal must be in writing and must be supported by an affidavit specifying the grounds for the application.

PAYMENTY OF REQUISITE FEES

✓□Rule 2 Judicature (court Fees, Fines and Deposit) Rules SI 16-3 upon payment, a receipt in the prescribed form shall be given to the person by whom payment is made.

✓□Rule 4 every document to be endorsed upon payment of the prescribed fee.

SERVICE OF DOCUMENTS.

✓□The memorandum of appeal must be served on the respondent. Affidavit of service to be filed as proof of service.

HEARING.

✓□***Section 33(1) Of the criminal procedure code act cap 122,*** a hearing notice to the parties shall be issued to the parties indicating the time and place at which the appeal will be heard.

✓□Subsection 2 is to the effect that at the hearing the appellate court shall hear the appellant and the respondent or their advocates.

✓□Both parties are expected to make arguments or submissions for or against the decision of the court is concerned.

✓The onus of proof is on the appellant who must satisfy court that there exists some good and strong ground apparent on the record for interfering with the finding of the lower court.

✓***Section 37 of the criminal procedure code act cap122***, an appellant who is in custody is entitled to be present at the hearing of the appeal.

✓***Section 38 of the criminal procedure code act cap122*** after the hearing the judgement is the delivered in open court.

DUTY OF THE FIRST APPELLATE COURT

✓***KIFAMUNTE HENRY V UGANDA SCCA 10/1997***, The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge.

✓The appellate court must then makeup its own mind not disregarding the judgement appealed from but carefully neighing and considering it.

✓When the question arises as to which witness should be delivered rather than another and that question turns on manner and that demeanor, the appellate court must be guided by the impressions made on the judge who saw the witnesses.

✓Where a trial court has erred, the appellate court will interfere where the error has occasioned a miscarriage of justice.

POWERS OF APPELLATE COURT ON APPEALS FROM CONVICTIONS.

➢Allow the appeal and set aside the judgement on the grounds that; its unreasonable/ cannot be supported having regard to the evidence, wrong decision on a question of law if it caused a miscarriage of justice and any other ground if the court is satisfied that there has been a miscarriage of justice.

➢Reverse the finding and sentence and acquit or discharge the appellant or order him or her to be retried by a court of competent jurisdiction.

➢Alter the finding and find the appellant guilty of another offence maintaining the sentence or reduce or increase the sentence.

➢Alter the nature of the sentence with or without reduction or increase in the sentence and with or without altering the findings ***(Section 34(2) criminal procedure code act cap122).***

➢On appeal from an acquittal or dismissal, an appellate court may enter such decision or judgement on the matter as may be authorized by law and makes any necessary orders. ***(Section 35 of the criminal procedure code act)***

➢The appellate court is given is given power, on any appeal against any order other than a conviction, acquittal or dismissal to alter or reverse any such orders. ***(Section 36 of the criminal procedure code act cap122).***

APPEALS FROM ORDERS

✓***Section 127 of the magistrate's court act cap19*** an acquittal as a result of a finding of no case to answer.

✓***Section 22(5) magistrates court act cap19*** an order for giving security for good behavior.

✓***Section 25(5) magistrates court act cap19*** an order for forfeiture of bond in relation thereto.

✓***Section 84 of the magistrate's court act order*** for forfeiture of recognition made under section83 of the same act

✓***Section 195(4) magistrates court act*** an order for award of costs of over 10000/=

✓***Section 200(5) magistrates court act,*** orders relating to return of stolen property.

SCOPE OF 1ST APPEAL FROM A MAGISTRATE'S COURT.

✓***Section 203(2) of the magistrate's court act*** an appeal by a convict:

✓Matters of law matters involving the interpretation and application of legal texts and principles.

✓Matters of fact matters involving specific facts events about which there is bearing on future case.

KEY CONSIDERATIONS FOR GROUNDS OF APPEAL.

SOURCES OF GROUNDS OF APPEAL

✓Misdirection and non-direction on matters of law and fact

PROCEDURAL ERRORS

✓Acting without or excess of jurisdiction

✓Improper exercise of discretion when imposing sentence or imposing an illegal sentence.

GROUNDS FOR OPPOSING THE APPEAL

✓□Trial magistrate properly evaluated the evidence.

✓□Ingredients proved to the required standards ***(Section101) of the Evidence Act***

✓□Frivolous appeal ***(Sec195(1))(c) &(d) of the Magistrate court Act***

✓□There was no miscarriage of justice

A case of Festo Androa Asenua and another v Uganda SCCA No.1 of 1999 errors, omissions, irregularities or misdirection that do not occasion a miscarriage of justice will be ignored on appeal.

Jackson Kamya Wavamuno v Uganda SCCA No. 16 of 2000 an appellant court has discretion to reject any point raised on a appeal which could have been raised earlier in the proceedings.

✓□Errors inconsequential. ***Sec139 of the Trial Indictment Act and Sec 34 of the Criminal Procedure Act.***

✓□Only substantive grounds are to be raised on appeal.

APPEALS FROM THE HIGH COURT TO THE COURT OF APPEAL.

✓□***Article 134(2) of the 1995 constitution of the republic of Uganda*** provides that an appeal shall lay to the court of appeal from such decisions of the high court.

✓□Summarily under ***section 10 of the judicature Act*** an appeal shall lay to the court of appeal from decisions of the high court. The same is affirmed in ***section 132(1) of the trial on indictment Act and section 45(1) of the Criminal Procedure Code Act.***

✓□***In Kifamunte Henry v Uganda SCCA No. 10 of 1997*** it was held that the duty of the second appellant court is to determine if the first appellant court reevaluated the evidence on record and properly considered the judgment of the high court. It should not reevaluate the evidence on record like a first appellant court ***(Bogere Moses v Uganda criminal appeal No. 1 of 1997).***

✓□***Rule 32 of judicature (court of appeal rules) directions SI 16-10 (general powers from court of appeal;***

I. Confirm, reverse or vary the decision of the high court or order a new trial or make incidental orders**.**

II. Power to appraise influences of the fact drawn by the high court but shall have no discretion to hear additional evidence.

PROCEDURE FOR APPEAL.

1. Notice of appeal to be lodged with the registrar within 14 days after the decision 6 copies ***(Section 28(1) criminal procedure Code Act).***

2. Upon receipt the notice is forwarded to the court of appeal ***(Rule 63 court of appeal rules).***

3. The appellant's requisitions for the record of proceedings and the registrar of the high court shall prepare the record of appeal. ***(Rule 64 court of appeal rules).***

4. The record of appeal is then served on to the other party ***(Rule 65 court of appeal rules).***

5. The memorandum of appeal is then lodged in the court after 14 days of service of record of appeal ***(Rule 66 of court of appeal rules).***

6. The parties will be given the notice of the hearing ***(Rule 72 of the court of appeal rules).***

PROCEDURE FOR APPEAL FROM THE HIGH COURT TO THE COURT APPEAL (LAW APPLICABLE).

LAWS TO THE PROCEDURE:

1. ***Lodging of notice to appeal within 14 days: The Criminal Procedure Code ACT CAP Sec 28. Notice of appeal.*** (1) Every appeal shall be commenced by a notice in writing which shall be signed by the appellant or an advocate on his or her behalf, and shall be lodged with the registrar within fourteen days of the date of judgment or order from which the appeal is preferred.

2. ***The Judicature Court of Appeal Rules S.I 16-10 Rule 60. Notice of appeal in noncapital cases***. (1) In the case of an offence where the death sentence has not been passed, or which does not attract the death sentence, the accused may give notice informally at the time the decision is given that the accused person desires to appeal against the conviction and sentence, or only the sentence, or by notice in writing which shall be lodged in six copies with the registrar within fourteen days after the date of the decision.

3. ***The Judicature Court of Appeal Rules S.I 16-10 Rule 59. Notice of appeal in capital cases.*** (1) In the case of an offence punishable by a sentence of death (a) where the court has passed or confirmed the sentence of death, unless the convict objects, the convict shall be taken to have given notice of appeal to the Supreme Court as from the date that sentence was passed; and the presiding judge of the court shall note on the record that notice has been given, and the registrar shall register the date that the notice of appeal has been given, and the notice shall institute the appeal; and (b) the registrar shall draw up a notice of appeal in conjunction with the advocate who defended the appellant.

4. ***The Judicature Court of Appeal Rules S.I 16-10 Rule 61. Notice of appeal from acquittals.*** (1) Apart from the third appeal to the court being final, whenever the court acquits or confirms the acquittal of an accused person, the Director of Public Prosecutions, as empowered by the Judicature Act, may give notice of appeal as provided by ***Rule 60(1) and (2) of these Rules.***

5. ***Upon receipt the Notice is forwarded to the Court of Appeal: The Judicature Court of Appeal Rules S.I 16-10 Rule 63. Transmission of notices of appeal.*** On receipt of notice of appeal, the registrar of the High Court shall immediately send a copy of the notice to the registrar and one to the respondent named in it. The appellant requisitions for the record of the proceedings:

6. ***The Judicature Court of Appeal Rules S.I 16-10 Rule 64. Preparation of record of appeal.*** (1) As soon as practicable after a notice of appeal has been lodged, the registrar of the High Court shall prepare the record of appeal. The record is then served on the other party:

7. ***The Judicature Court of Appeal Rules S.I 16-10 Rule 65. Service and transmission of record of appeal, exhibits, etc.*** (1) As soon as the record of appeal has been prepared, the registrar of the High Court shall cause a copy to be served on the appellant and a copy on the respondent and shall send four copies to the registrar. The memorandum of appeal is then lodged in the court after 15 days of service of the record of appeal:

8. ***The Judicature Court of Appeal Rules S.I 16-10 Rule 66. Memorandum of appeal.*** (1) In this Part of these Rules, every appellant shall, within fourteen days after service on him or her of the record of appeal, lodge a memorandum of appeal in nine copies with the registrar, or the deputy registrar at the place where the appeal is to be held by the court, if the Chief Justice orders circuits by the court under ***Article 135(3)(b) of the Constitution.*** The parties will then be given a notice of the hearing:

9. ***The Judicature Court of Appeal Rules S.I 16-10 Rule 72. Notice of hearing.*** (1) The registrar shall cause notice to be given to the appellant and to the respondent of the time and place at which an appeal will be heard.

DOCUMENTS FOR APPEAL.

1. Notice of appeal ***(Rule 60(3) of the court of appeal rules).***

2. Memorandum of appeal ***(Rule 66 (4) of the court of appeal rules).***

3. Record of appeal. (***The Judicature Court of Appeal Rules S.I 16-10 Rule 64).***

TIME FRAMES FOR LODGING APPEALS.

✓□The general rule is evident in ***section 28 of the Criminal Procedure Code Act***; thus, an appeal is commenced by a notice of appeal lodged with the Registrar of the Court in which the decision was passed.

✓□***Section 31 of the Criminal Procedure Code Act*** provides that one can apply to the High Court for extension of time, if he or she wishes to file the appeal out of time.

IN THE COURT OF APPEAL

✓□***Rule 59 of the court of appeal rules*** provides that in capital cases, notice of appeal is presumed to have been given at the time of passing the judgment.

✓□In addition, ***Rule 59(3)*** provides that there is no need for a application for leave of court to appeal or for a certificate of general importance. This is premised on the constitutional provision that states that a sentence passed whereby a person is sentenced to death shall not be executed until confirmed by the highest appellate court of the land.

✓□***Rule 60 of the Court of appeal rules*** provides that in non-capital cases, notice may be given informally at the time of passing the decision against which one intends to appeal.

✓□***Rule 61 of the court of appeal rules*** provides that in case of acquittals, the DPP is enjoined to give notice of appeal.

IN THE SUPREME COURT

✓□***Rule 56 of the Supreme Court rules*** provides that in capital cases, notice of appeal is presumed to have been given at the time of passing the judgment.

✓□***In addition, Rule 57 of the Supreme Court rules*** provides that in non-capital cases, notice may be given informally at the time of passing the decision against which one intends to appeal.

✓□***Rule 58 of the Supreme Court rules*** provides that in case of acquittals, the DPP is enjoined to give notice of appeal.

PROCEDURE OF FOR APPLICATION FOR EXTENSION OF TIME:

- • ***The Criminal Procedure Code ACT CAP 122 Sec 31. Application for extension of time; abandonment of appeal.*** (1) An application to extend the time for lodging a notice of appeal or grounds of appeal under section 28(1) or (3) shall be made in writing to the registrar of the appellate court and shall be supported by an affidavit specifying the grounds for the application.

- • Application is by notice of motion supported by an affidavit to the court where one seeks to appeal.

• • This is governed by rule 5 of the court of appeal rules in case one is appealing to the court of appeal and rule 5 of the Supreme Court rules in case one is appealing to the Supreme Court.

• • ***CASE: Andrew Kimani vs. Uganda (1992-1993) HCB 1 (delay must not be caused by the convict)***

• • ***CASE: Jason Samwiri vs. R (1972) E.A 317 (the fact that the appeal is likely to succeed is not a sufficient ground to extend time)***

DPP'S RIGHT OF APPEAL.

✓□***S.5 (1) of the Judicature Act;*** provides that the DPP may appeal as of right to the Supreme Court.

✓□***S.5 of Judicature Act*** states further that in criminal matters in sentencing of death the DPP may appeal to the Supreme Court.

LIMITATIONS ON THE RIGHT TO APPEAL:

1. An appeal cannot exist where the convict pleaded guilty albeit he may appeal against the sentence:

The Magistrates Court ACT CAP 19: Sec 203. Criminal appeals. (3) No appeal shall be allowed in the case of any person who has pleaded guilty and has been convicted on that plea by a magistrate's court except as to the legality of the plea or to the extent or legality of the sentence. ***CASE: Joseph Kasoro vs. Uganda Criminal Appeal No. 324 of 1972.***

2. There cannot be an appeal in the case of a petty case:

The Magistrate Court's ACT CAP 19 Sec 143. Procedure in trial of petty cases. (1) Notwithstanding anything contained in this Act, a magistrate to whom this section applies may, with the consent of the person conducting the prosecution, try an offence in the manner provided by this section. (8) No appeal shall lie against any finding, sentence or other order in a case tried under this section.

3. There cannot be an appeal against a one-month sentence or fine not exceeding 100 UGX:

The Magistrates Court ACT CAP 19: Sec 203. Criminal appeals. (4) No appeal shall be allowed in a case where a court presided over by a chief magistrate or a magistrate grade I, have passed a sentence of imprisonment not exceeding one month only, or a fine not exceeding one hundred shillings only.

4. There cannot be an appeal against a decision not to award costs:

The Magistrates Court ACT CAP 19 Sec 195. Award of costs. (4) An appeal shall lie to the High Court against any award of costs of over ten thousand shillings by a magistrate's court, but no appeal shall lie against an order of the High Court either awarding or refusing to award costs.nor shall any appeal lie to the High Court against an order of a magistrate's court refusing to award costs.

Wasaija Alex versus **Uganda, Criminal Appeal No. 487 of 2017**. Appeal from the judgment and sentence of High Court of Uganda at Hoima before **Justice Rugadya Atwoki** in **Criminal Session Case No. 0137 of 2012, The appellate court holds discretion to alter a sentence if there is evidence of a failure of justice due to errors or omissions in the trial proceedings. However, it will not interfere with the trial court's decision unless there is a clear indication of a miscarriage of justice.**





BRIEF FACTS

The Refugee Desk Officer-Arua (John Musisi) prepared three requisitions and sent them by email to the to the Permanent Secretary Office of the Prime Minister, Kampala through Candiru Lucy who printed them out and signed on his behalf for the release of a total of UGX.498,886,000 [Four hundred ninety eight million eight hundred eighty six thousand shillings only]. The requisitions were for emergency funds for settlement of Congolese and Sudanese refugees, OPM Arua. The funds were received on Account Number 9030008274281 held in the names of the Refugee Desk Officer-Arua with Stanbic Bank, Arua Branch, it was the account provided by the Desk Officer-Arua to enable the office (OPM) to transfer Government of Uganda funds to the Refugee Desk Office. The signatories to the account are John Musisi and Moses Anguzu and money was deposited on 4th June 2018. However, the accountabilities submitted by John Musisi and Moses Anguzu from Arua Regional Office dated 25th August 2018 for UGX.498,886,000 had a lot of discrepancies in the items vis a vis the costs involved. For instance, the cost of poles and Laborers appeared inflated and water was under another project but it featured in these accountabilities.

ISSUES

(a) What offences are disclosed by the facts.?

(b) Whether the evidence on the police file supports the offences identified?

(c) What document(s) are necessary for court action?

(d) What is the next course of action for the investigator where evidence is insufficient?

(e) What practical steps should be undertaken by a Chief magistrate for injustice caused by Magistrate grade 1?

LAW APPLICABLE

1. The 1995 Constitution of the Republic of Uganda AS AMMENDED

2. THE ANTI-CORRUPTION ACT CAP 116,

3. Inspectorate of Government Act

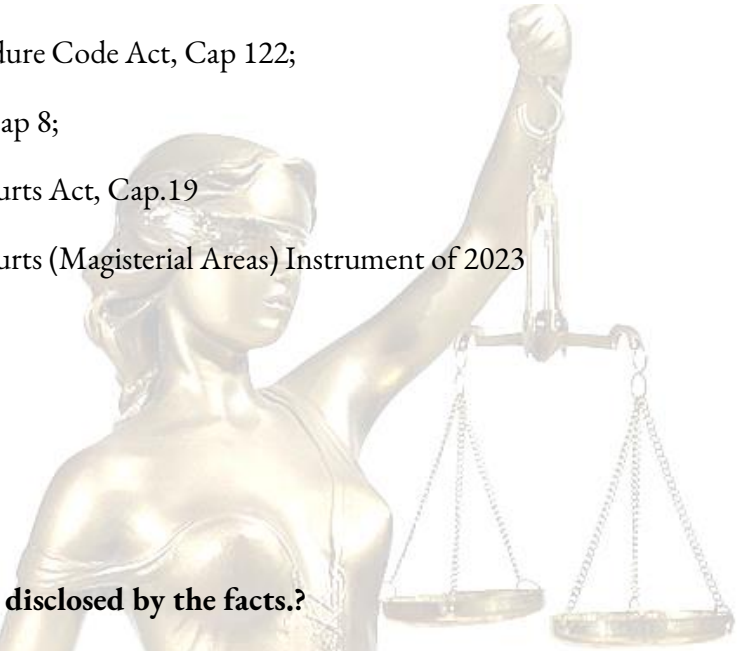
4. The Criminal Procedure Code Act, Cap 122;

5. The Evidence Act, Cap 8;

6. The Magistrates' Courts Act, Cap.19

7. The Magistrates' Courts (Magisterial Areas) Instrument of 2023

Case law.



RESOLUTION

(a) What offences are disclosed by the facts.?

The Inspectorate of Government was initially established by the Inspector General of Government statute 1998.However, with the promulgation of the 1995 constitution ,the Inspectorate is now entrenched there in under chapter 13,which prescribes its mandate ,functions and powers and other relevant , matters . The Inspectorate of Government is an independent institution charged with the responsibility of eliminating corruption as laid down by ARTICLE 225[1]b of the 1995 Constitution of Uganda. Other powers enshrined in the constitution and Inspectorate of Government Act include to investigate or cause investigation, arrest or cause arrest, prosecute or cause prosecution, make orders and give directions during investigations. ARTICLE 230 of the Constitution provides for special powers of the Inspectorate of Government and states that; The Inspectorate of Government shall have powers to investigate, cause investigation, arrest, cause arrest, prosecute or cause prosecution in respect of cases involving corruption, abuse of authority or of public office. These powers are reechoed in the Inspectorate of Government Act particularly S. 8 which provides for the functions of the Inspectorate of Government.

THE ANTI-CORRUPTION ACT CAP 116gives the Inspector General of Government power to prosecute persons committing offences under this Act.

Principle of legality.

The principle of legality requires that no person should be punished except in accordance with the law (nulla poena sine lege)

Section 1 of the Penal Code Act defines an offence as an act, attempt or omission punishable by law.

As a matter of law, all offences should be provided for under written law. This is espoused in ARTICLE 28(7) and 28(8) of the 1995 constitution of the Republic of Uganda. ARTICLE 28(7) of the Constitution of the Republic of Uganda 1995 as amended provides that no person shall be charged or convicted of an offence which is founded on an act or omission that did not at the time it took place constitute an offence. Furthermore, ARTICLE 28(12) of the constitution of Uganda 1995 as amended provides that except for contempt of court , no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law.

.An offence has two major components namely the actus reus and the mens rea, that is the act or omission and the malicious intent respectively.

The offences disclosed by the facts given include; Abuse of Office

Section 11(1) of the Anti-Corruption Act provides;

"A person who being employed in a public body or a company in which government has shares, does or directs to be done an arbitrary act prejudicial to the interest of his or her employer or of any other person, in abuse of the authority of his or her office, commits an offence and is liable on conviction to a term of imprisonment not exceeding seven (7) years or nine (9) fine not exceeding one hundred and sixty eight currency points or both.".

Section 1 of THE ANTI-CORRUPTION ACT CAP 116 provides a boarder definition of public body" to include:

□ the Government, any department, services or undertaking of the Government;

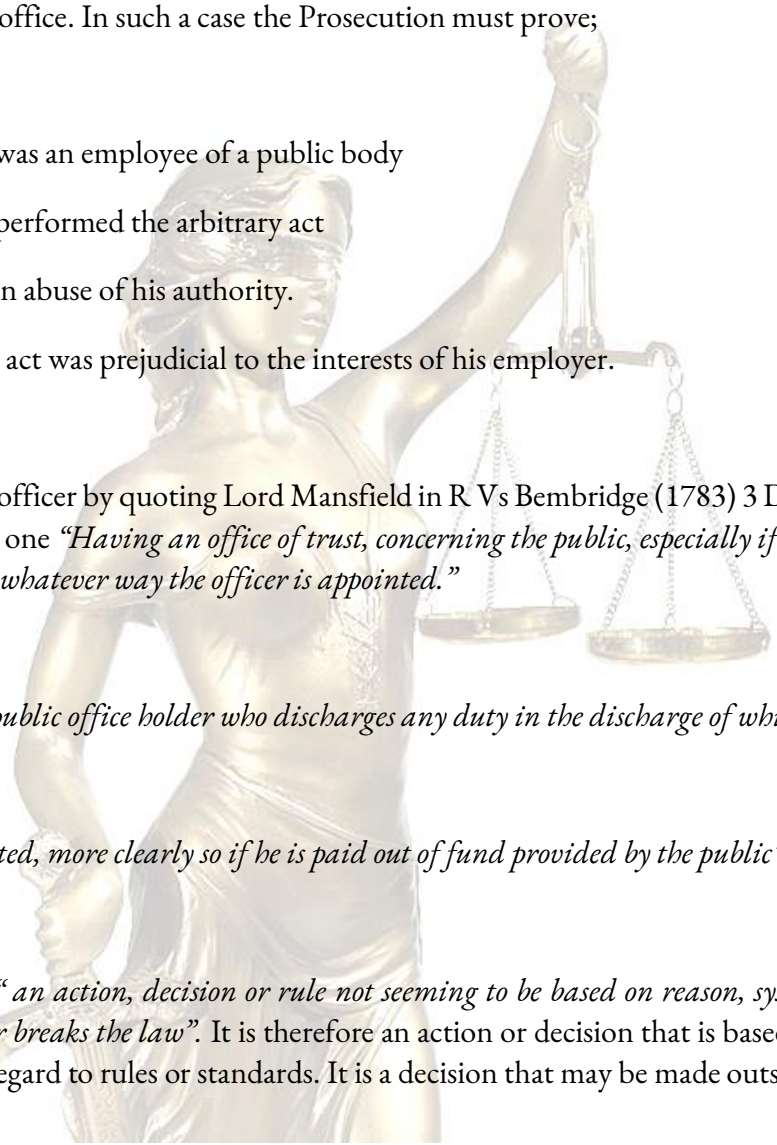
□ any corporation, committee, board, commission or similar body whether corporate or incorporate established by an Act of Parliament for the purposes of any written law relating to the public health or public undertakings of public utility, education or for promotion of sports, literature, science, ARTs or

any other purpose for the benefit of the public or any section of the public to administer funds or property belonging to or granted by the Government.

In **Uganda v Godfrey Kazinda HCT- 00- SC- 0138- 2012**, Justice David K. Wangutusi held that;

Abuse of Office is committed when the office holder acts (or fails to act in a way that constitutes a breach of the duties of that office. In such a case the Prosecution must prove;

1. That the accused was an employee of a public body
2. That the accused performed the arbitrary act
3. That this act was in abuse of his authority.
4. That the arbitrary act was prejudicial to the interests of his employer.



He defined a public officer by quoting Lord Mansfield in R Vs Bembridge (1783) 3 Dong K.B 32 referred to a public officer as one *"Having an office of trust, concerning the public, especially if attended with profit by whomever and in whatever way the officer is appointed."*

He is therefore; "A *public office holder who discharges any duty in the discharge of which*

the public are interested, more clearly so if he is paid out of fund provided by the public"

An arbitrary act is, *" an action, decision or rule not seeming to be based on reason, system, or plan and at times seems unfair or breaks the law".* It is therefore an action or decision that is based on personal will or discretion without regard to rules or standards. It is a decision that may be made outside the existing law.

The arbitrary act or omission must be done willfully. Willful in this case is; "*Deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or not".*

He found that committing forgery is a breach of law which is arbitrary.

An act is said to be prejudicial if it contrary to the established procedures and is also against the interest of the public body. In IGNATIUS *BARUNGI V UGANDA (1988-1990) HCB 68*, the court held that an essential ingredient for the offence of abuse of office was that the acts complained of should be prejudicial to the rights of another and further that the right was an interest recognized and protected by law in respect of which he has a duty and disregard of which was wrong. Abuse of authority is acting beyond ones powers. However, this is usually difficult too because most organizations do not have operational manuals although in some cases it can be proved by established procedure.

In UGANDA V ATUGONZA, CRIM. CASE 37 OF 2010 Francis Atugonza was charged with Abuse of Office, contrary to section 11(1) of the Anti Corruption Act. *Court* considered that the burden is on the prosecution to prove the charge against the accused person beyond reasonable doubt. Court held that accused held a public office in the according of section 11(1) of THE ANTI-CORRUPTION ACT CAP 116 but acted as an individual but not in his official capacity and did not abuse of Office or act arbitrary. Therefore it is important to prove that the accused acted in an official capacity.

Embezzlement

S.19 of THE ANTI-CORRUPTION ACT CAP 116provides that a person who being-

(a) an employee, a servant or an officer of the Government or a public body;

(b) a director, an officer or an employee of accompany or a corporation;

(c) a clerk or servant employed by any person, association or religious or other organization;

(d) a member of an association or a religious organization or other organization, steals a chattel, money or valuable security-

(i) being the property of his or her employer, association, company, corporation, person or religious organization or other organization

(ii) received or taken into possession by him or her for or an account of his or her employer, association company, corporation, person or religious organization or other organization;or

(iii) to which he or she has access by virtue of his or her office;

commits an offence and is liable on conviction to a term of imprisonment not exceeding fourteen years or a fine not exceeding three hundred and thirty six currency points or both.

The ingredients of the offence of embezzlement with regard to government employment were spelt out in the case of **ABAHIKYE MOSES V UGANDA HIGH COURT APPEAL NO 0010 OF 2009** to be the following:

(a) That the accused is employed by the government;

(b) That he stole employer's property i.e. money or any other chattel capable of being stolen;

(c) That the property came into his possession by virtue of his employment.

The offence attracts a sentence of imprisonment for not less than three years and not more than fourteen years.

DIVERSION OF PUBLIC RESOURCES

Under section 6 of THE ANTI-CORRUPTION ACT CAP 116 is an offence where a person converts, transfers or disposes of public funds for purposes unrelated to that for which the resources were intended for his or her own benefit or a third party commits an offence.

Section 26(1) a person convicted under section 6 is liable to a term of imprisonment not exceeding ten years or a fine not exceeding two hundred and forty currency points or both.

The ingredients for diversion were stated in the case of as **Uganda v Lwamafa and 2 others Criminal Session Case 9 of 2015;**

a. That the accused converted, transferred or disposed of public funds.

b. That the purpose was unrelated to that for which the resources were intended.

Causing Financial Loss C/S 20 THE ANTI-CORRUPTION ACT CAP 116

Under section 20 it is an offence for any worker who does anything knowing or having reasons to believe that it will cause financial loss to his/her employer commits an offence.

It was also held in the case of ***UGANDA VERSUS B.S OKELLO, OCIRA GEORGE AND OKOT JALON*** **HIGH COURT APPEAL NO 008 OF 2009.** by Hon. Justice Paul Mugamba that Causing Financial Loss is an offence committed when any person employed by a public body, in the performance of his duties does any act or omits to do any act knowing or having reason to believe that such act or omission will cause financial loss to the public body.

In **Uganda v Abraham Byandala and Ors SESSION CASE 12 OF 2015**

The prosecution is required to prove the following elements.

(a) That the accused are employees of government. (This has been admitted.)

(b) That in the performance of their duties, the accused did an act or omission knowing or having reason to believe that it will cause financial loss to employer.

(c) That actual loss occurred.

The term "loss" was defined in the case OF *KASSIM MPANGA VERSUS UGANDA* SUPREME COURT CRIMINAL APPEAL NO. 30 OF 1994 to mean inter alia a detriment or disadvantage resulting from deprivation. Put differently, to suffer loss is to cease to possess something, to be deprived of with something of one's possession. It was further held that "loss" is generic and relative term. It signifies the act of losing or the thing lost; it is not a word of limited, hard and fast meaning, and has been held to be synonymous with or equivalent to "damage", "damages", :deprivation", "detriment", "injury" and "privation. That a thing may properly be said to be lost after a reasonable time has lapsed to allow diligent, search and of recovery and such diligent search has been made and has been fruitless.

False Accounting by a Public Official

Under section 22 it is an offence for any person taking care of public money or property but knowingly gives a wrong statement of that money or property.

In **Uganda v Lwamafa and Ors supra** it was held that the prosecution is required to prove that the accused are public officers charged with receipt, custody or management of public revenue who knowingly furnished false statement or return of money entrusted to them.

CORRUPTION

S. 2 of ACA provides that a person commits the offence of corruption if he or she does any of the following acts;

(c) the diversion or use by a public official, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party of any movable or immovable property, monies or securities belonging to the State, to an independent agency, or to an individual, which that official has received by virtue of his or her position for purposes of administration, custody or for other reasons

(h) any act or omission in the discharge of his or her duties by a public official for the purpose of illicitly obtaining benefits for himself or herself or for a third party.

(b) Whether the evidence on the police file supports the offences identified,?

Burden of Proof.

Under S. 101 of the Evidence Act the burden of proof is on who alleges. In criminal cases, the burden of proof is always on the prosecution. **WOOLMINGTON V DPP.**IN **UGANDA V TEDDY SSEZI CHEEYE** HIGH COURT CRIMINAL CASE NO. 1254 OF 2008.

Held; It is a cardinal principle of English Criminal Law, that the burden of proving the guilt of an accused person lies squarely on the prosecution and does not, with a few exceptions with which I am not concerned here, shift to the accused person. That burden is only discharged on proof beyond any reasonable doubt.

STANDARD OF PROOF

Speaking of the degree of proof required in Criminal Law

LORD DENNING in MILLER U. MINISTER OF PENSIONS [1947] 2 ALL E.R .323 said: *"---------- that degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond doubt does not mean beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful probabilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote probability in his favor w h ich can be dism issed wi th th e sen tence "of cou rse it i s poss ibl e bu t n ot in th e least probabl e" th e case is pr oved be yon d reason able doubt bu t n oth in g sh ort of th at w il l su ffice ."*

In ***Uganda v Abraham Byandala*** supra it was held that the Prosecution is required to prove all the essential elements of the offence against each of the accused persons beyond reasonable doubt. *Beyond reasonable* doubt means that the evidence adduced must carry a reasonable degree of probability of the accused's guilt leaving only a remote possibility in his favour.

Abuse of office.

In evaluation of the facts, **Mr.John Musis** was a refugee desk officer under the Office of the Prime Minister Arua whereas **Mr.Moses Anguzu** was a Finance Officer under the Office of the Prime Minister Arua. The office of the Prime Minister is a Government Ministry through which the Prime Minister of Uganda provides leadership of the Ministers under the Executive arm of Government. Therefore the two accused persons are employees of the government thus satisfying the first ingredient of the offence which is that the accused was an employee of a public body.

The two accused persons were the signatories to the account held in the names of the Refugee Desk Office in Arua under the OPM to transfer Government of Uganda funds to the refugee Desk Office.UGX 498,886,000(Uganda Shillings Four Hundred Ninety Eight Million Eight Hundred Eighty Six Thousand) was sent to this account and withdrawn by the two signatories.

This money was not utilized for its purposes as the accused arbitral acts and decisions portray that, the suppliers for poles worth UGX 216,000,000 was never paid to the suppliers as was accounted for by the two accused persons. The items of hot meals preparation worth UGX 197,886,000/= and demarcation in Koboko worth UGX 85,000,000/= were never done by OPM Arua as was accounted for by the two accused persons but rather they were carried out by UNHCR Mr. Moses Anguzu admitted that for hot meal preparation, inflated receipts were got from purported service providers J Lutux Enterprises Ltd to reflect the accountability of the aforementioned amount of UGX 197,886,000/= This qualifies the other elements of the offence that the accused was an employee of a public body, that the accused performed the arbitrary act, that this act was in abuse of his authority and that the arbitrary act was prejudicial to the interests of his employer gross misuse of office since Investigations found that false accountability was made for the entire sum of UGX.498,886,000 which prejudiced the Office of the Prime Minister.

Embezzlement

According to the facts Mr.John Musis was a refugee desk officer under the Office of the Prime Minister Arua whereas Mr.Moses Anguzu was a Finance Officer under the Office of the Prime Minister Arua. The office of the Prime Minister is a Government Ministry through which the Prime Minister of Uganda provides leadership of the Ministers under the Executive arm of Government. Therefore the two accused persons are employees of the government thus satisfying the first ingredient of the offence.

The two accused persons were the signatories to the account held in the names of the Refugee Desk Office in Arua under the OPM to transfer Government of Uganda funds to the refugee Desk Office.UGX

498,886,000(Uganda Shillings Four Hundred Ninety Eight Million Eight Hundred Eighty Six Thousand) was sent to this account and withdrawn by the two signatories.

This money was not utilized for its purposes, the suppliers for poles worth UGX 216,000,000 was never paid to the suppliers as was accounted for by the two accused persons. The items of hot meals preparation worth UGX 197,886,000/= and demarcation in Koboko worth UGX

85,000,000/= were never done by OPM Arua as was accounted for by the two accused persons but rather they were carried out by UNHCR Mr. Moses Anguzu admitted that for hot meal preparation, inflated receipts were got from purported service providers J Lutux Enterprises Ltd to reflect the accountability of the aforementioned amount of UGX 197,886,000/=

The above acts by the two accused persons amount to stealing of the employer's money thus satisfying the second element of the offence.

Finally this money came into possession of the two accused persons by virtue of their employment. According to the interview of Mr. Kyambade Joseph the Principal Accountant OPM the two accused persons were the signatories to the account held in the names of the Refugee Desk Office in Arua under the OPM to transfer Government of Uganda funds to the refugee Desk Office of UGX 498,886,000(Uganda Shillings Four Hundred Ninety Eight Million Eight Hundred Eighty Six Thousand). The procedure was that an officer will generate a requisition for funds to the Accounting Officer/Permanent Secretary. The Permanent Secretary will consider the requisition and if satisfied she will approve the requisition and send it to the Principal Accountant to process. The Principal Accountant will look at the requisition and consider its appropriateness in terms of fund availability in the budget and other checks like arithmetic and charge lines. The payment will then be processed to the Refugee Desk Office Account for eventual payment to the final beneficiaries/payees.

This shows that this money came into the accused's possession by virtue of their employment.

Therefore the two accused persons embezzled the funds.

DIVERSION OF PUBLIC RESOURCES

According to the facts the two accused persons were in touch of the account at the refugee Desk in Arua however they didn't utilize it for its purpose. They did not pay the casual Laborers the actual amount they were supposed to be paid a day that is 50,000/= rather they were paid

10,000/= per day. The suppliers for poles worth UGX 216,000,000 were never paid to the suppliers as was accounted for by the two accused persons. The items of hot meals preparation worth UGX 197,886,000/= and demarcation in Koboko worth UGX 85,000,000/= were never done by OPM Arua as was accounted for by the two accused persons but rather they were carried out by UNHCR. The money qualified as public funds and the two accused persons did not utilize the money for the intended purposes.

Causing Financial Loss C/S 20 THE ANTI-CORRUPTION ACT CAP 116

Employees of government; this element has already been established that the accused were employees of government in the OPM.

Doing an act knowing that it will cause financial loss; the evidence shows that there was improper accountability of the money sent to the accused. They render false accounts and stole some of the money. This means they knew that government will lose that money. Actual loss; since the money sent to the accused could not be properly accounted for and the accused stole the money that means that indeed actual loss occurred.

False accounting by public officer.

Public officer; the accused were public officers in the office of the Prime Minister as they acted in interest of the public. Charged with receipt or management of public revenue; all the evidence including statements from the accused show that they received money from the OPM and they were the only signatories of that money hence satisfying this ingredient.

Knowingly furnished false statement or return of money entrusted to them; the evidence shows that the accused misappropriated the money and rendered false accountability of the money entrusted to them for refugee activities.

Corruption

The facts show that money for water was included in the accountability report yet it was under a

different project by UNHCR. This means that therefore the money was diverted for purposes other than those intended. The accused furnished false return of money which means they used it for illicitly obtaining benefits for themselves.

c. What document(s) are necessary for court action



CHARGE SHEET

UGANDA VERSUS

THE REPUBLIC OF UGANDA

STATION; INSPECTORATE OF GOVERNMENT REF; KLA/19/11/2018
DATE; 19th November 2018

CHARGE

A1. MUSISI JOHN M/A, 53 years, Muganda by tribe, Refugee Desk Officer, DepARTICLEICLEment of Refugees, Arua, OPM, Office of the Prime Minister, Arua Regional Office 0720645912, residence unknown.

A2. ANGUZU MOSES M/A, 46 years, Finance Officer, Department of Refugees, Arua, Office of the Prime Minister, Arua Regional Office 0790443765, residence unknown.

COUNT 1 STATEMENT OF OFFENCE

Abuse of Office contrary to S. 11(1) of the Anti Corruption Act, 116.

PARTICULARS OF OFFENCE

Musisi John and Anguzu Moses, between May to July, 2018, while being employed by the Department of Refugees under the Office of the Prime Minister (OPM), Arua, abused the authority of your office by accounting for items that were under a different project which is prejudicial to the interests of the OPM.

COUNT 2 STATEMENT OF OFFENCE

Embezzlement contrary to S.19 of the Anti Corruption Act CAP 116.

PARTICULARS OF OFFENCE

Musisi John and Anguzu Moses, between May to July , 2018, being servants of the Department of Refugees, stole money to the tune of Ug. Shs. 498,886,000, to which you had access by virtue of your offices.

COUNT 3 STATEMENT OF OFFENCE

False Accounting contrary to S.22 of the Anti Corruption Act, cap 116.

PARTICULARS OF OFFENCE

Musisi John and Anguzu Moses, between May and July, 2018, being servants of the Department of Refugees knowingly furnished false statements or return of money Ug. Shs. 498,886,000 entrusted to them.

COUNT 4 STATEMENT OF OFFENCE

Causing Financial Loss contrary to S.20 of the Anti Corruption Act, cap 116

PARTICLEICLEICULARS OF OFFENCE

Musisi John and Anguzu Moses, between May and July, 2018, being persons employed under the Office of the Prime Minister, in performance of their duties, performed acts knowing that they would cause financial loss to the Government.

COUNT 5 STATEMENT OF OFFENCE

Diversion of Public Resources contrary to S.6 of the Anti Corruption Act, cap 116.

PARTICLEICLEICULARS OF OFFENCE

Musisi John and Anguzu Moses, between May and July, 2018, converted public funds being intended for demarcation of plots in the refugee camp, for purposes unrelated to that which they were intended for their own benefit.

COUNT 6 STATEMENT OF OFFENCE

Corruption contrary to S.2 of THE ANTI-CORRUPTION ACT CAP 116

PARTICLEICLEICULARS OF OFFENCE

Musisi John and Anguzu Moses, being public officials, diverted, for purposes unrelated to that which it was intended, money belonging to the state, which they received by virtue of their offices for purposes of administration

Dated at Kampala this 19th day of November 2018

....

Officer preferring the charge

MAGISTRATE

I consent to the above charges

.....

Inspector General of Government

(d) What is the next course of action for the investigator where evidence is insufficient?

Task 1 (c); The advice to the investigator will lie in gathering more evidence to establish and prove the other offence ingredients not established to the required standard of beyond reasonable doubt from evaluation of the same. This is so because the consequence of failure to prove all the ingredients in any offence count results into an acquittal.

The law provides for powers of the investigator.

S. 33 ACA provides for **Special investigation powers of the Inspector General of**

Government and Director of Public Prosecutions.

It states; (1) Notwithstanding anything in any other law except the Constitution, the Inspector

General of Government, or the Director of Public Prosecutions, if satisfied that there is a reasonable ground for suspecting that an offence under this Act has been committed by a person, may, by order authorise a police officer of or above the rank of Assistant Superintendent or an inspectorate officer named in the order or a special investigator named in the order to investigate any bank account, share account or purchase account of that person and that authority shall be sufficient warrant for the production of the accounts and documents, as may be required for scrutiny by the officer authorised in the order.

Under S. 34; **Court to restrict disposal of assets or bank accounts of accused, etc.**

(1) A court may, upon application by the Director of Public Prosecutions or Inspector General of Government issue an order placing restrictions as they appear to the court to be reasonable, on the operation of any bank account of the accused person or a person suspected of having committed an offence or any person associated with such an offence or on the disposal of any property of the accused person, the suspected person or a person associated with the offence or the suspected person for the purpose of ensuring the payment of compensation to any victim of the offence or otherwise for the purpose of preventing the dissipation of any monies or other property derived from or related to an offence under this Act.

S. 36 provides for **Powers of the Inspector General of Government and the Director of**

Public Prosecutions, to order inspection of documents.

(1) The Inspector General of Government or the Director of Public Prosecutions, may, if satisfied

that any evidence of the commission of an offence under this Act by a person employed by a public body is likely to be found in any document relating to that person, his or her spouse or child or to a person reasonably believed by the Inspector General of Government or Director of Public Prosecutions to be a trustee or agent for that person, by order, authorise any police officer of or above the rank of Assistant Superintendent of Police or an inspectorate officer named in the order or any special investigator named in the order to inspect the document.

(2) A police officer, an inspectorate officer or special investigator authorised under subsection (1) may, at a reasonable time, enter the place specified in the order and inspect the document referred to in subsection (1) kept in that place and may take copies of the documents.

Under S. 41 **41. Director of Public Prosecutions and Inspector General of Government's**

powers to obtain information.

(1) In the course of an investigation or proceedings into or relating to an offence by any person

employed by any public body under this Act, the Director of Public Prosecutions or the Inspector

General of Government may, notwithstanding anything in any other written law to the contrary, by written notice— (a) require that person to furnish a sworn statement in writing enumerating all movable or immovable property belonging to or possessed by the person and by the spouse, sons and daughters of the person, and specifying the date on which each of the properties enumerated was acquired whether by way of purchase, gift, bequest, inheritance or otherwise;

Under S. **50. Appointment of special investigators.**

(1) Where the Inspector General of Government or the Director of Public Prosecutions considers it necessary for the purposes of an investigation under this Act, he or she may appoint any person who in his or her opinion possesses the necessary skill or experience to be a special investigator.

The facts show discrepancies in evidence which is central to the case. For example; The report of the handwriting expert is not included;

The employment contract of Musisi is not attached

Bank statements showing depositing and withdrawal of the amount are not attached.

There is no report indicating how much money was actually stolen by the accused since some of the activities were indeed carried out though process of items were inflated.

The evidence of payment of various service providers and casual laborers is not attached

A search was conducted with a search warrant but on the file the said search warrant is not attached nor is the search certificate showing the documents recovered.

The three documents recovered after the search are also not included.

Therefore my advise to the investigator is to use the powers granted by the law as stated above to ensure all relevant information is on the police file.

The following course of action can be taken.

1) A Direction that the accused persons furnish sworn statements in writing enumerating all their movable or immovable property in their names or in the names of their Spouses, sons, daughters and specifying the dates on which of each of the properties was acquired whether by purchase, gift or inheritance.

2) Investigations into the accused persons Bank Accounts, statements and copies therefrom.

3) A report of a handwriting expert on the denied signatures of PW2 MADIRA SALIM who asserts to have been paid a total of 50,000/= and not the accused persons accounted

250,000/=. There is also need to investigate and procure a report on the written name of PW1 OJWANG JUDE which has a corresponding payment of 50,000/= per day yet he asserts to have received a daily amount of 10,000/=. This is portray the above witnesses as credible and it will also corroborate their story as being truthful and safe for Court to act upon.

4) An estimate report of the number and cost of the cut forest trees of PW3 AKENA ROLAND and ANDAMA PIUS who assert to have sold a total of 440 tree poles instead of the reported 18,000 poles and received 1,480,000/= but not the alleged amount of

144,000,000/= by the accused persons.

5) There is also need for a video coverage record from DFCU BANK to prove that ANGUZU MOSES was banking and withdrawing money from his corrupt dealings with J-LUTEX ENTERPRISES LIMITED

In DFCU ACOUNT NO.0145077852700 in the names of J-LUTEX ENTERPRISES LIMITED. this will help corroborate PW3 story LOKETO JOEL.

6) There is also need for procuring a copy of notice of the registered office of J-LUTEX ENTERPRISES LIMITED from the company registry to corroborate PW3 story LOKETO JOEL which is to the effect that the Company has no office in Ndeeba-Kampala and that his company didn't issue the false invoice and receipts which were tendered to the accused persons head office for accountability.

7) There is also need for copies of the Memorandum and ARTICLE of Association of J-LUTEX ENTERPRISES LIMITED who deny ever dealing in Vehicle spares, batteries, Vehicle accessories etc. This is to dissociate his company from the payments that were received by the accused persons in regard to the above supplies.

8) Obtaining Copies of UNHCR Payment receipt of water supplies to eagle logistics solutions

limited to discredit the accused persons' false receipts of 97,736,000/= for the same, UNHCR Payment receipts of meals preparations, demarcation costs and this is to rebut the accused persons false receipt of 197,886,000/= and 85,000,000/= which were falsely for payments made by UNHCR.

9) Lastly a hand writing expert report on the water receiving sheet since PW5 KILAMA ORIS denies writing dates, numbers of trips on the same but acknowledges signing the sheet. This is to corroborate his story before Court and portray him as truthful in every aspect.

10) Appointing an auditor to ascertain how much money was stolen.

(e) As defence counsel, assume that the prosecution has closed its case after leading evidence of the two witnesses in (d) above, proceed and make a submission of a no case to answer.

No case to answer;

According to S.126 of the MAGISTRATES COURTS ACT CAP 19 when an accused person pleads not guilty or refuses to answer, a plea of not guilty is entered and court proceeds to hear the prosecution's case. According to S.131 (1) of MAGISTRATES COURTS ACT CAP 19, the prosecution and the accused shall be entitled to address court at the commencement of their respective cases. The prosecution opens its case and leads evidence by examining its witness/s in chief, whom the accused or his advocate has a right to cross examine.

The prosecution may re-examine its witness for purposes of explaining any facts or ambiguity that may arise from the cross examination.

At the closure of the prosecution's case, the court allows the prosecution to submit on establishment of a prima facie case and the defense also is required to submit on a no case to answer.

A prima facie case has been defined in the case of **Bhatt V R (1957) EA 332**, as one on which a reasonable tribunal properly directing its mind to the law and evidence would convict if no explanation is offered by the defense.

In **Francis Xavier Kayemba V Uganda [1983] HCB 330**, it was stated that a prima facie case does not mean proof beyond reasonable doubt. It was further stated that a prima facie case is not made out if at the close of the prosecution case, the case is only one which on full consideration might possibly be thought sufficient to sustain a conviction.

In **Francis Xavier Kayemba V Uganda [1983] HCB 330**, court stated that a submission of no case to answer may be upheld when;

a) There has been no evidence to prove an alleged essential element of the offence

b) The evidence adduced by the prosecution has been discredited as a result of cross examination

c) The prosecution evidence is so manifestly unreliable that no reasonable tribunal could safely convict on it.

In **Uganda V Swaibu Ssebale [1998] HCB 36**, it was held that where there is no evidence to sustain a charge, there is no case for the accused to answer, and that the essential ingredients of the offence should be proved if a prima facie case is to be established against the accused.

Under S.127 MAGISTRATES COURTS ACT CAP 19, if at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defense, the court shall dismiss the case and forthwith acquit him or her.

Uganda v Kato Kajubi HCT-O6-CRSCO16/2OO9;The accused was indicted for the murder of 12 yr old child. Prosecution adduced evidence of a man and his wife who claimed to have carried out the murder on behalf of the accused and giving him certain body part of the deceased.

held

The judge entered a no case to answer by disbelieving the evidence adduced by the prosecution.

A submission of no case to answer can be upheld either where there is no evidence to prove an essential element in the alleged offence, or the prosecution evidence has been so discredited in cross- examination or is so manifestly unreliable that no reasonable tribunal can safely convict thereon.

In this case court found the evidence by the prosecution witness so manifestly unreliable that no reasonable court can safely convict on their evidence. It considered the witnesses as accomplices and their evidence in court contradicted their statements to police.(PW3) had been shown to have deliberately lied to court in narrating to court the circumstances of the actual murder of Joseph Kasirye, the deceased. *It is the law that if the principal prosecution witnesses have been shown to be most unreliable then a submission of No case to answer may succeed.*

The court thus found that there were major contradictions in the evidence given by the prosecution witnesses on matters which go to the very root of the case. It had been shown that the principal witnesses intended to tell and actually told court deliberate lies about the actual killing of Kasirye Joseph. In law court is entitled to reject the evidence of those witnesses. Court held that the prosecution evidence was so manifestly unreliable that no reasonable tribunal could safely convict the accused on it if no explanation is offered by him. A case of no to answer was entered for kato Kajubi and he was acquitted.

On appeal, **CRIMINAL APPEAL NO. 39 OF 2010**

The court of appeal considered the concept of a prima facie case

One of the most famous ones is **Fred Sabahashi vs Uganda, Criminal Appeal No.23 of 1993 (SC).** This decision was cited to the trial judge in this instant case. The supreme Court stated:

"In the Practice Note (1962) ALL ER 448, Lord Parker stated

'*A submission that there is no case to answer may properly be made and upheld; (a) when there has been no evidence to prove an essenthe trial on indictments act cap 25 element in the alleged offence; (b) when the evidence adduced by the prosecution has been so discredited as a result of cross examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it."*

Lord Parker continued and gave the test of a prima facie case:

'If however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether

the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer.'

A definition of a prima facie case was given by Sir Newhan Worley D, in Ramalal T. Bhatt vR (1957) E.A 332 ABR 335, as follows:

'It may not be easy to define what is meant by a prima facie case, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence.'"

Lord Paker concluded thus – "*It is clear from the above two authorities that the test of a prima facie case is objective and that a prima facie case is made out if a reasonable tribunal might convict on the evidence so far adduced. Although the court is not required at this stage to decide whether the evi*[18]*dence is worth of credit or whether if believed is weighty enough to prove the case conclusively, a mere scintilla of evidence can never be enough nor any amount of worthless discredited evidence. But it must be emphasised that a prima facie case does not mean a case proved beyond reasonable doubt;*

Court of Appeal **held**

A submission of no case can only be properly made and upheld, (a) When there has been no evidence to prove an essential element in the alleged offence. (b) When the evidence adduced by the prosecution has been so badly discredited as a result of cross-examination or is manifestly unreliable that no reasonable tribunal could safely convict on it.

Court found that the prosecution witnesses were not accomplices and that their evidence was corroborated. This means that the evidence of PW3 and PW4 was neither discredited nor was it worthless.

Ramanlal Trambaklal Bhatt v R [1957] 1 EA 332

Held –

That it may not be easy to define what is meant by a "*prima facie* case*," but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence*

[18] **Wilbiro v R. (1960) E.A. 184."**

(i) the onus is on the prosecution to prove its case beyond reasonable doubt and a prima

facie case is not made out if, at the close of the prosecution, the case is merely one "which on full consideration might possibly be thought sufficient to sustain a conviction."

(ii) the question whether there is a case to answer cannot depend only on whether there is "some evidence irrespective of its credibility or weight, sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough; nor can any amount of worthless discredited evidence."

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF ARUA

CRIMINAL CASE NO. .....OF 2018

UGANDA .....PROSECUTOR

VERSUS

1. MUSISI JOHN

2. ANGUZU MOSES ..... ACCUSED

SUBMISSION OF NO CASE TO ANSWER

YOUR WORSHIP, the accused person stands charged with the offences of **CAUSING FINANCIAL LOSS, CORRUPTION, FRAUDULENT FALSE ACCOUNTING, ABUSE OF OFFICE, EMBEZZLEMENT AND DIVERSION OF PUBLIC RESOURCES** contrary to sections **20,2&4,23,11,19** and **6** respectively of the **Anti-Corruption Act 116.**

YOUR WORSHIP, the state always has the burden to prove all the ingredients of the above offences disclosed beyond reasonable doubt as stated in **WOOLMINGTON V DPP [1955] AC**462 and **MILLER V MINISTER OF PENSIONS...,** the accused has no duty to prove their innocence.

YOUR HONOUR, the offence of causing financial loss is provided for under **S.20** of the **Anti-Corruption Act cap 116**. The essential ingredients of the offence are;

a) That the accused is employed

b) While in performance of his or her duties, does or omits to do an act

c) Knowing or with reason to believe that that act will cause financial loss to the employer d) That act or omission actually causes loss.

To prove these ingredients, the state led evidence of two witnesses that is Madira Salim [peasant farmer] and Kilama Oris [Compound cleaner at Rhino Camp Refugee Settlement, Arua District]

The 1st prosecution witness only testified that he was being paid 10,000/= per day for five days totaling to 50,000/=. However, the receipts he signed show that he was paid 50,000/= per day for five days totaling to 250,000/=. He disputes the signature on the receipts but he did not provide this honorable court with any evidence to prove that he did not sign on the receipts.

The 2nd witness testified that he was assigned as acting registration assistant at rhino camp by the

2nd accused. While acting in the same capacity, he was directed and forced by the 2nd accused to sign empty water receiving sheets. He further states that the handwriting of the dates and number of trips on the water receiving sheets is not his. However, court should take note that, the prosecution while leading the 2nd witness did not prove to this court that the handwriting on the water receiving sheets is not his. It could be proper if he provided court with any document bearing his signature and handwriting to disprove the signature on the receipt. Your worship, in absence of this, the signatures and handwriting on the water receiving sheets are actually of the

2nd witness.

YOUR WORSHIP, the prosecution has failed to establish a prima facie case of causing financial loss against the accused persons as no evidence was led to show the accused persons caused financial loss to the employers and therefore no case to answer.

YOUR WORSHIP, the other count against the accused persons is embezzlement contrary to S.19 of THE ANTI-CORRUPTION ACT CAP 116. The ingredients of the offence are;

a) Being an employee

b) Stealing a chattel, money or valuable security

c) Being the property of his or her employer

d) Received or taken into possession on account of his or her employer

e) To which he or she has access by virtue of his office

The two prosecution witnesses did not provide this court with any evidence nor did they mention that the accused persons stole money that was meant for water supply. Your worship, the prosecution has failed to establish a prima facie case of embezzlement against the accused persons as no evidence was led to show that the accused persons embezzled money of their employers and therefore no case to answer.

YOUR HONOUR, the accused persons were also charged with the offence of abuse of office contrary to **S. 11** of Anti-Corruption Act cap 116. The ingredients of the offence are;

a) That the person was employed in a public body or company in which the government has shares

b) Does or directs to be done

c) An arbitrary act prejudicial to his or her employer

d) In abuse of authority of his or her office

As submitted earlier, the prosecution miserably failed to show this court how PW2, Kilama Oris, was directed or forced by the 2nd accused person to sign the water receiving sheets. Prosecution should have provided a written directive from the 2nd accused to the prosecution witness. Your worship, the prosecution has failed to establish a prima facie case of abuse of office against the accused persons as no evidence was led to show that the accused persons did or directed the witness to sign the water receiving receipts and therefore no case to answer.

The accused persons were also charged with the offence of **Fraudulent False Accounting Contrary** to **S.23 OF** the Anti-Corruption Act, cap 116. The ingredients of this offence are;

a) Being employed

b) Makes or is privy to making, any false entry in any book, document or account

c) That the book, document or account is for the employer.

It's the defense's submission that the prosecution has also totally failed to establish a prima facie case of fraudulent false accounting against the accused persons. The document [water receiving sheets] that is alleged to have been falsely made by the accused persons does not bear the signature of any of the accused persons by that of the prosecution witness. Whereas the witness alleges that he was directed and forced by the accused person to sign the document, he did not prove to this court that actually such a directive exists. He also denies the signature and handwriting on the documents but no evidence was led to prove the same. In absence of any explanation, the accused persons remain innocent and as no prima facie case is established against the accused persons. In absence of the same, the prosecution has not established a case to answer against the accused persons.

YOUR HONOUR, it is our humble submission that the evidence adduced by the prosecution is too weak to require the accused persons to be put to their defense. In other words, the prosecution has not established a prima facie case against the accused persons on any of the offences they are charged with. As per the case of Bhatt V R [supra]. The evidence cannot afford a conviction in the absence of the accused persons' explanation.

IN CONCLUSION YOUR WORSHIP, we pray that this honorable court be pleased to acquit the accused persons on a no case to answer in accordance with S.127 of the MAGISTRATES COURTS ACT CAP 19.

We so pray

.....

M/s C1 & Co. Advocates

Cc: Prosecution

DRAWN & FILED BY;

SUI GENERIS & CO.ADVOCATES P.O.BOX 7117,

KAMPALA.

f) Assume that you are the Chief Magistrate of the Anti-Corruption Court and in the Course of your routine duties you have come across a court file involving the accused person herein. Upon perusal, you discover that the accused person appeared before Grade 1 Magistrate at your station on 15th/11/2018. He pleaded guilty to the charges disclosed herein and was sentenced to 12years imprisonment. What practical step would you take to address the injustice occasioned to the convict?

The Injustice;

Section 161 of the MAGISTRATES COURTS ACT CAP 19 provides that a Magistrate Grade 1 may try any offence other than one whose maximum penalty is death or life imprisonment. The Sentencing powers of the Magistrate Grade 1 is provided for under Section 162(1)(b).He/she cannot imprison someone for a period

not exceeding 10 years.

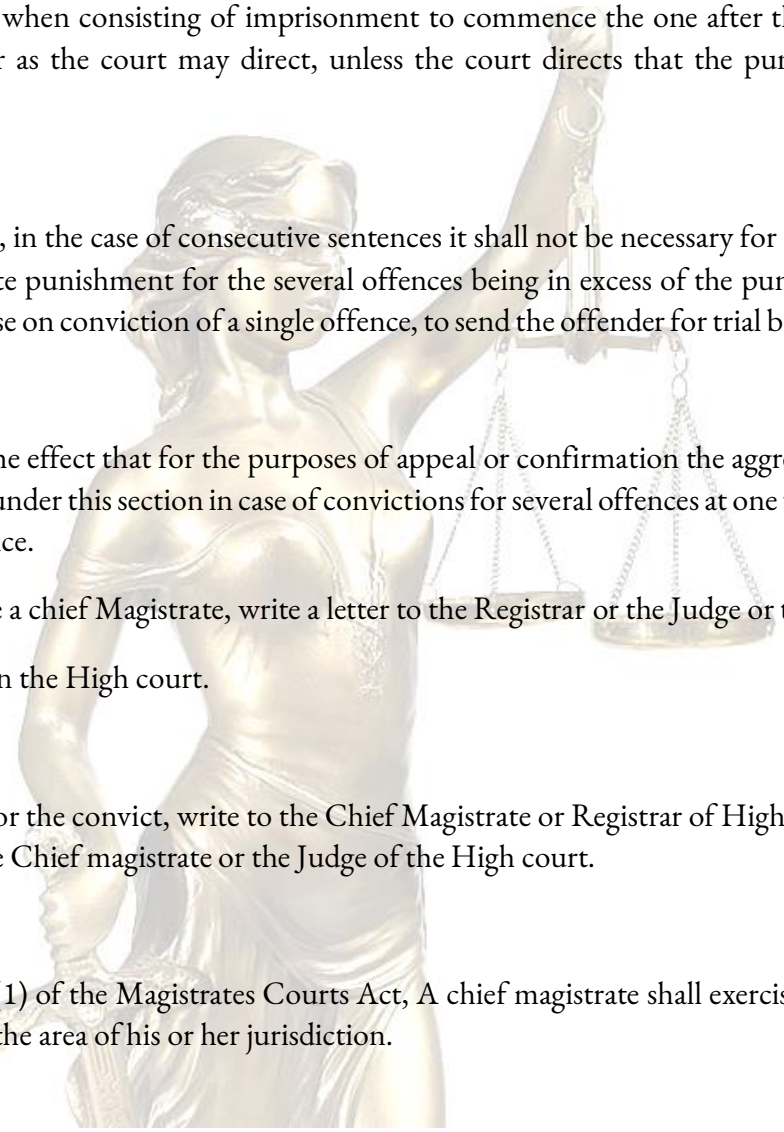
On the other hand, the Magistrate Grade 2 under Section 161(1) (c) has the jurisdiction to try any offence and enforce any provisions of any law other than the offences provided for under the first schedule of the MAGISTRATES COURTS ACT CAP 19. There sentencing powers are stated in Section 162(1) (c), cannot imprison someone for a period exceeding 3 years and if a fine, not exceeding the amount of 500,000/= or both.

However it is trite to note that there can be a combination of sentences Under Section 172 of the Magistrates Courts Act thus a magistrate's court may pass any lawful sentence combining any of the sentences which it is authorised by law to pass.

Section 173 provides sentences requiring confirmation; where any sentence to which this section applies is imposed by a magistrate's court (other than by a magistrate's court presided over by a chief magistrate), the sentence shall be subject to confirmation by the High Court. This section applies to a sentence of

imprisonment for two years or over or preventive e detention under the Habitual Criminals (Preventive Detention) Act. Section 174 provides for release on bail pending confirmation.

Section 175 provides for sentences in cases of conviction of several offences at one trial. Thus when a person is convicted at one trial of two or more distinct offences, the court may sentence him or her, for those offences, to the several punishments prescribed for them which the court is competent to impose, those punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that the punishments shall run concurrently.



Under subsection 2, in the case of consecutive sentences it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the offender for trial before a higher court.

Subsection 3 is to the effect that for the purposes of appeal or confirmation the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

Therefore if you are a chief Magistrate, write a letter to the Registrar or the Judge or the Head of

Criminal Division in the High court.

If you are counsel for the convict, write to the Chief Magistrate or Registrar of High court for the file to be placed before the Chief magistrate or the Judge of the High court.

Under Section 221(1) of the Magistrates Courts Act, A chief magistrate shall exercise general powers of supervision within the area of his or her jurisdiction.

Section 221(2) MAGISTRATES COURTS ACT CAP 19; a chief magistrate may call for and examine the record of any proceedings before a magistrate's court inferior to that court which he is empowered to hold and situate within the local limits of his or her jurisdiction. This is done for purposes of satisfying himself or herself as to the correctness; legality or propriety of any finding, sentence, decision, judgment or order recorded or passed and as to the regularity of any proceedings of that magistrate's court.

Under Section 221(3) MAGISTRATES COURTS ACT CAP 19; if the chief Magistrate is of the opinion that there is any illegality or impropriety or irregularity, he/she shall forward the record with remarks therein as he/she thinks fit to the High Court.

Section 221(4) gives the Chief Magistrate the powers to release any person serving a sentence of imprisonment as a result of those proceedings on bail pending determination of the High court if he/she is of the opinion that it is in the interests of justice to do so.

In **Uganda Vs. Akai and Others (1979) HCB 8**; The Chief Magistrate has no powers of revision over decisions of the Grade Magistrate 1 and 2. He can only call for and examine the record of such courts within the local limits of his jurisdiction to satisfy himself to the legality of any finding or order passed.

THE CHIEF MAGISTRATES COURT

OF THE ANTI-CORRUPTION COURT

P.O BOX 4536

KAMPALA

20/11/2018.

TO; **THE JUDGE/ THE REGISTRAR (HEAD OF CRIMINAL DIVISION)**
HIGH COURT OF UGANDA
CRIMINAL DIVISION

Your Lordship/Your Worship,

RE: **CRIMINAL CASE NO 74 OF 2018 VIDE UGANDA VERUS MUSISI JOHN AND ANOR.**

Reference is made to the above case wherein the convict was tried by the Magistrates Court

Grade 1 at Arua Court on the offences;

1. Abuse of Office contrary to Section 11 THE ANTI-CORRUPTION ACT CAP 116

2. Fraudulent Accounting contrary to Section 21 THE ANTI-CORRUPTION ACT CAP 116

3. Embezzlement contrary to Section 19 THE ANTI-CORRUPTION ACT CAP 116

4. Corruption contrary to Section 2 THE ANTI-CORRUPTION ACT CAP 116

5. Diversion of Public Resources contrary to The Anti-Corruption Act, 2009. Wherein he concluded and sentenced the accused person to 12 years of imprisonment.



However, upon perusal of the court file on the court record, I found that the subsequent sentence was irregular and illegal since the Magistrate Grade 1 has no sentencing powers of a period exceeding 10 years pursuant to Section 162(1) (b) of the Magistrate Courts Act, Cap 19.

I therefore pray that this Honorable court exercises its revisionary power to rectify this irregularity. The record is hereby attached.



Yours faithfully

..... Chief Magistrate, Arua.

WORKSHOP ONE

BRIEF FACTS

A one Rutaro Felix the director of "Savvy Saucy &Spicy Trading Company" reported a case of theft of around 1200kg of dried vanilla from the same factory valued at three billion shillings.

Complainant reported that the theft of the vanilla happened between April 2018 up to 24/09/2018 but it was much discovered on the 26/09/2018 after when the CCTV Cameras at the factory captured/photographed one Philemon who was in the store of vanilla stealing having connived with one of the security guards who was on duty at night called Kapale Bruno. The two suspects were arrested. On the 26/09/2018, they were interviewed by police. Bitaama Philemon confessed that on the 26/09/2018 he went at night and entered into the store intending to steal vanilla but he was discovered by Kapale Bruno who was on duty (on night guard) and then he took off before he could steal. Kapale Bruno also denied stealing the vanilla. He further confessed that on the 24/09/2018,

one Moze the former worker of the vanilla company found him at Nansana with a sack of vanilla weighing about 8 kgs, that he escorted him up to Namungona where then Moze also known as Tugume Moses proceeded to sell the same vanilla and on 25/09/2018, Moze Alias Tugume Moses gave him a share of 6,000,000/= (Six million shillings cash) as his share.

However, the video footage captured by CCTV Cameras erected at the factory were played and it showed one Philemon in the store with a sack, he took it to the extreme corner of the factory and then he carried vanilla and packed it then he jumped through the factory window structure/store. The CCTV footage also shows one Kapale Bruno the security guard who was on duty standing in the vanilla store a few meters from where Philemon was but no action was taken to him. Kapale Bruno who was armed with a gun claimed he corked it but it refused to fire/release a bullet.

ISSUES;Whether the facts disclose and support any possible offences?

Whether the evidence is sufficient to support the offences identified above? What necessary court documents should be drafted?

Which areas require further investigations?

What options are available to police in ensuring that the suspect who is still at large are equally charged?

What is the proper procedure for police to follow to recover and preserve 200kgs of vanilla locked up in a suspects house?

What steps would defense counsel take to secure a suspect's freedom?

LAW APPLICABLE.

1. The Constitution of the Republic of Uganda, 1995;

2. The Penal Code Act, Cap 128

3. The Police Act, Cap

4. The Criminal Procedure Code Act, Cap 122 ;

The Evidence Act, Cap 8;

6. The Magistrates' Courts Act, Cap 19;

1. The Magistrates' Courts (Magisterial Areas) instrument, 2023
2. The Judicature (Criminal Procedure) (Applications) Rules; S.I. 13-8.

9. Case law.

Task A

Identify the possible offence(s) disclosed by the facts and evaluate the evidence on the police file in support of the charges.

Section 1 of the Penal Code Act defines an offence as an act, attempt or omission punishable by law. As a matter of law, all offences should be provided for under written law. This is espoused in ARTICLE 28(7) and 28(8) of the 1995 constitution of the Republic of Uganda.

ARTICLE 28(7) of the Constitution of the Republic of Uganda 1995 as amended provides that no person shall be charged or convicted of an offence which is founded on an act or omission that did not at the time it took place constitute an offence. Furthermore, ARTICLE 28(12) of the constitution of Uganda 1995 provides that any offence must be written.

.An offence has two major components namely the actus reus and the mens rea, that is the act or omission and the malicious intent respectively.

1. Theft

The definition of theft is contained in Section 237 of the Penal Code Act Cap 128 which provides that a person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof anything capable of being stolen, is said to steal that thing. From the above definition, the major ingredients of the offence of theft are as follows;

i. Fraudulent intent. The particulars of what may be considered as amounting to fraudulent intent are contained in S. 237(2) of the act.

ii. Claim of Right; Under S.7 of the Penal Code Act, a person is not criminally responsible in respect of an offence relating to property if the act done or omitted to be done by the person with respect to property was done in the exercise of an honest claim of right and without intention to defraud. For the offence of theft to stand, it must be proved that the offender had no claim of right in respect of the property.

iii. Taking; This refers to the act of carrying away or any removal of anything from the place which it occupied. It is taking if the defendant moves the thing at all.

iv. Things capable of being stolen; S.236 provides for the things which are capable of being stolen. The gist of this section is that for something to qualify as being capable of being stolen, it must be either movable or capable of being made movable.

v. Conversion; Conversion is dealing with goods in a manner inconsistent with the rights of the true owner provided that it is also established that there is an intention on the particular of the accused in so doing to deny the owner's rights or to assert a right which is inconsistent with the owner's right.

2. Conspiracy to commit a felony

Conspiracy is provided for in Ss. 363 of the Penal Code Act, Conspiracy can be defined as the agreement between two or more persons to effect any unlawful purpose. The crime is complete if there is any such agreement.

This was emphasized by Simon in the case **Crofter Handwoven Harris Tweed Co. Ltd. V. Vutch [1942] AC 432 at 439.** He stated that conspiracy when regarded as a crime is the agreement of two or more persons to effect any unlawful purpose. The crime is complete if there is such agreement.

The elements of the offence of conspiracy can be broken down as follows;

i. Agreement between at least two persons.

ii. Which if carried out in accordance with the particular' intentions.

iii. Necessarily amounts to the commission of the offence.

There are different categories of parties to conspiracies; there are those who enter into the conspiracy before the objective is achieved, those who enter after the formation of the conspiracy and those who enter into the conspiracy after the offence has been committed.

3. Breaking into building and committing felony

Under S. 278 of the Penal Code CAP 128; Any person who—

(a) breaks and enters a schoolhouse, shop, warehouse, store, office or counting house or a building which is adjacent to a dwelling house and occupied with it but is no part of it, or any building used as a place of worship, and commits a felony in it; or

(b) having committed a felony in a schoolhouse, shop, warehouse, store, office or counting house or in any such other building as mentioned in paragraph (a), breaks out of the building,commits a felony and is liable to imprisonment for seven years.

Elements.

(a) Breaking and entering

(b) Committing a felony;

S.1 of the PCA defines a felony as an offence which is declared by law to be a felony or, if not declared to be a misdemeanor, is punishable, without proof of previous conviction, with death or with imprisonment for three years or more.

4. Criminal trespass

Under S.282 of the PCA CAP 128, any person who enters into or upon property in the possession of another with intent to commit an offence or having lawfully entered upon such property remains there with intent to commit an offence commits the misdemeanor termed criminal trespass and is liable to imprisonment for one year.

Evaluation of evidence in Police File.

1. Theft

On the Police File, there are a number of statements form different individuals and a common thread of reference is made to the existence of certain CCTV footage which is said to show Bitaama Philemon entering into the warehouse where the dried vanilla is stored, taking some of it and leaving with it. This evidence seems to satisfy all the necessary elements of theft. Firstly, there must be fraudulent intent which under S.237(2)(a) includes the intent to permanently deprive the general or special owner of the thing of it and indeed Philemon's actions imply that he had such intent. Further, Philemon had no claim of right and the dried vanilla, being movable, qualifies as a thing capable of being stolen. Therefore it can be concluded that there is enough evidence to support the charge of theft.

2. Conspiracy

On the File, there is evidence from the statement of various Akampulira Ezra who viewed the CCTV footage that Kapale Bruno was standing a few metres away from Philemon as he carried out the theft of the vanilla but that the former did nothing to stop the latter form taking the vanilla despite him being the guard on duty and having in his possession a gun. Bruno's act of deliberating neglecting to take action to stop Philemon, and considering that it was his duty and responsibility to guard the vanilla, implies that there was an understanding of some sort between the two of them which would serve to satisfy the element of agreement between atleast two persons which is crucial in proving conspiracy. Further, because they seem to have agreed to carry out an unlawful act, this can considered as evidence to support the charge of Conspiracy.

3. Breaking into building and committing felony

In the statement of Bibuuza Aisha, she states that during the time of the incident, she was asleep in one of the houses in the factory premises. Then Bruno- security guard called her to where he was and told her that un known person entered a vanilla store and when he (Bruno) tried to shoot him the gun failed to release the bullet. Further according to the statement of Ezra the investigating officer, the CCTV footage showed a one Philemon in the store with a sack, he took it to the extreme corner of the factory and then he carried

vanilla and packed it then he jumped through the factory window structure/store. This evidence credibly supports the charge of breaking into a building and committing a felony. The suspects entered into a vanilla store and Philemon jumped through the window with a sack of vanilla. Therefore there was breaking and entering and committing a felony that is stealing vanilla.

4. Criminal Trespass

From the evidence on the file, Philemon entered upon the factory premises with intent to steal vanilla and this fulfills the required ingredients of the offence of Criminal trespass and therefore there is evidence to support the charge.

b. Draft the necessary court document(s) envisaged in (a) above

The necessary document is a charge sheet.

A charge is a formal written accusation of an offence drawn up either by a police officer or a magistrate and signed by a magistrate to be used in a magistrate's court as a basis for trial or preliminary proceedings. Where the charge is filed in the high court, it is called an indictment. A charge sheet is for the magistrate's court as an indictment is for the high court.

A trial without a charge is a nullity because the accused person would not know the case he is facing. Sir Udo Udoma stated in the case of **Judagi & Ors v West Nile district Administration** that the failure to frame a charge was a fundamental mistake and therefore the trial was declared

a nullity.

CHARGE SHEET

CHARGE

POLICE FORM 53

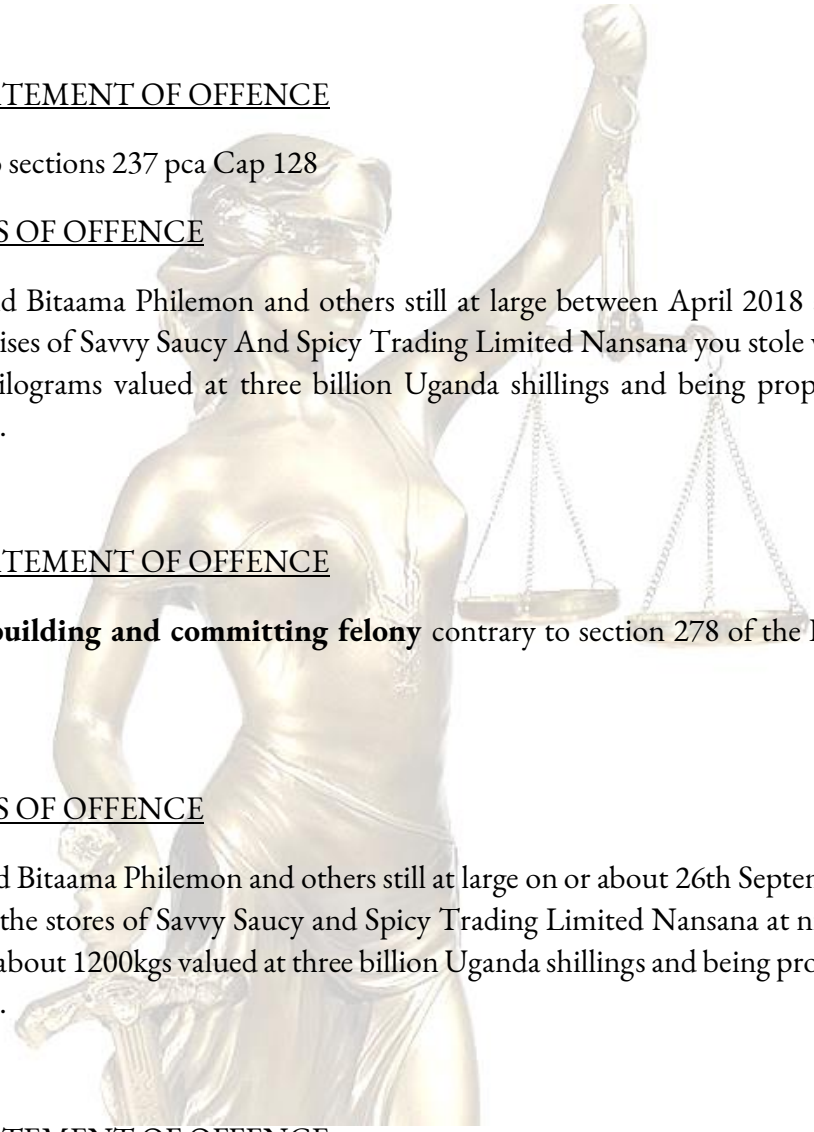
POLICE STATION: NANSANA DATE: 15TH OCTOBER 2018

POLICE CRB .....OF 2018

UGANDA VERSUS A1.KAPALE BRUNO

Male Ugandan aged about 29 years security guard of G4 Security Group resident of ***Kamwufu Zone, Nansana, Wakiso District***

A 2. BITAAMA PHILMON



COUNT 1: STATEMENT OF OFFENCE

Theft contrary to sections 237 pca Cap 128

PARTICULARS OF OFFENCE

Kapale Bruno and Bitaama Philemon and others still at large between April 2018 and 26th September 2018 in the premises of Savvy Saucy And Spicy Trading Limited Nansana you stole vanilla amounting to or about 1200 kilograms valued at three billion Uganda shillings and being property of Savvy Saucy Trading Limited .

COUNT 2: STATEMENT OF OFFENCE

Breaking into building and committing felony contrary to section 278 of the Penal Code Act Cap 128

PARTICULARS OF OFFENCE

Kapale Bruno and Bitaama Philemon and others still at large on or about 26th September 2018 you broke and entered into the stores of Savvy Saucy and Spicy Trading Limited Nansana at night and stole vanilla amounting to or about 1200kgs valued at three billion Uganda shillings and being property of Savvy Saucy Trading Limited .

COUNT 3: STATEMENT OF OFFENCE

Conspiracy to commit a felony contrary to section 363 of The Penal Code Act Cap 128

PARTICULARS OF OFFENCE

Kapale Bruno and Bitaama Philemon and others still at large on or about the 26th of September

2018 you conspired to commit a felony in the stores and premises of Savvy Saucy Trading

Limited Nansana

COUNT 4: STATEMENT OF OFFENCE

Criminal Trespass contrary to Section 282 of the Penal Code Act Cap 128. PARTICULARS OF OFFENCE

Kapale Bruno and Bitaama Philemon and others still at large on or about 26th of September 2018

you entered into a vanilla store being the Property of Savvy Saucy Trading Limited with intent to steal the vanilla therein.

Dated this 15th day of October 2018

.....

Officer preferring charge.

.....

CHIEF MAGISTRATE.

C) Identify the areas, if any, which require further investigation(s) The electronic evidence;

Electronic evidence has been defined in **Amongin Jane Frances Akili V Lucy Akello HC CV Election Petition No. 1 of 2014** as any probative information stored or transmitted in digital form that a party at a trial or proceeding may use.

Section 5 of the **Electronic Transactions Act cap 99** provides that information shall not be denied legal effect, validity or enforcement solely on the ground that it is wholly or partially in the form of data message.

Courts always require the ascertainment of its relevance, authenticity, whether or not it is here say and whether or not it is original for electronic evidence to be admitted.

In order to admit electronic evidence, the proponent of the evidence must lay the proper foundation. In **Amongin Jane FancesAkili V Luc Akello HC CV Election Petition No. 1 of 2014**, it was held that the proper foundation should show court the following;

- Reliability of the equipment used.
- The manner in which the basic data was initially entered.
- The measures taken to ensure the accuracy of data as entered.
- The method of storing the data and precautions taken to prevent loss or alteration.
- The reliability of the computer program used to process the data.
- The methods taken to verify the accuracy of the program,
- Checking the software used to preserve digital evidence in its original form and to authenticate it for admissibility.
- The competence of the person who accessed the original data and his or her ability to give evidence explaining the relevance and implications of electronic transactions.

The facts show that the main evidence being relied upon is a CCTV camera footage which is electronic evidence. Therefore, the investigating officer should ensure that an investigation to determine whether the electronic evidence is reliable. It is not shown whether the video footage was extracted.

It is vital to ascertain the authenticity of the electronic evidence as above, through more and further investigations.

The Gun;

Kapale Bruno, in his statement said that his A. K 47 failed to release the bullet. There is need to investigate further on whether or not indeed the A. K 47 was faulty. It is also not shown whether the said gun was recovered and exhibited.

This will establish whether he tried to stop the thief or not thus establishing whether he was a party to the commission of the offence.

The telephone records.

In Aisha Bibuuza's statement, she stated that on the day of the event, while she was still talking to Bruno, somebody called him. Secondly, Philemon called thereafter asking her for a job. It is important to ascertain whether or not these calls were made. This would help establish Bruno's participation in the commission of the offence.

The Police would need a court order to extract the call records that happened that day and inspect them.

Time:

The complainant, in his statement indicated that the theft occurred around 04:00 because he got a telephone call around the same time. The general manager indicated that she woke up at around

04:32 which means she could not have called the complainant until after then.

The offences are alleged to have been committed on 26th September but the investigating officer

Ezra notes the date as 16/09/2018. It is not clear whether this was a slip of the pen.

It is therefore necessary to investigate further into the exact crucial times to establish the correct timeline.

(d) Advise the police on the options available in ensuring that the suspect who is still at large is equally charged.

The available option is **arrest**.

According to the **Uganda Criminal Justice Bench Book at page 42 quoting Odoki's Criminal Procedure in Uganda** an arrest is the temporary deprivation of liberty for the purpose of compelling a person to appear in court to answer a criminal charge or testify against another person.

Arrest can be with a warrant or without a warrant. Arrest with a warrant involves the court ordering the arrest of a person by issuing a warrant in writing, signed by the judge or magistrate issuing it, bearing the seal of the court, stating the offence charged and order the person to whom it is issued to apprehend the person against whom it is directed and bring him or her before court.

According to **Section 55 of the Magistrates Courts Act**, a warrant of arrest is usually granted after the accused has disobeyed the summons i.e. if the person does not appear before court at the appointed time. The warrant will only be issued upon court receiving evidence on oath confirming that the summons were duly served and this can be by appearance of the process server before the court or him/her swearing an affidavit **Section 55 (4) of the Magistrates Courts Act.**

The court issues the warrant of arrest in circumstances where it is necessary to secure the appearance of an accused person to answer a charge after the charge has been laid against the person by a public prosecutor or a police officer or been drawn by a judicial officer on the basis of a complaint **(S. 42 of the MAGISTRATES COURTS ACT CAP 19).**

The facts indicate that the person who is at large is **Machomoto Deus.** The said arrest warrant should be obtained from the Nabweru Chief Magistrates Court to effect his arrest so that he can equally be charged.

However, he can equally be arrested without the said warrant where the police has a reasonable cause to believe a warrant of arrest has been issued as provided for under **Section 10(h) of the Criminal Procedure Code Act Cap 122.**

Documents.

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF WAKISO AT WAKISO CRIMINAL OFFENCE NO 001 OF 2018

UGANDA .....PROSECUTION

VERSUS

XYZ..... ACCUSED.

TO; XYZ

CRIMINAL SUMMONS

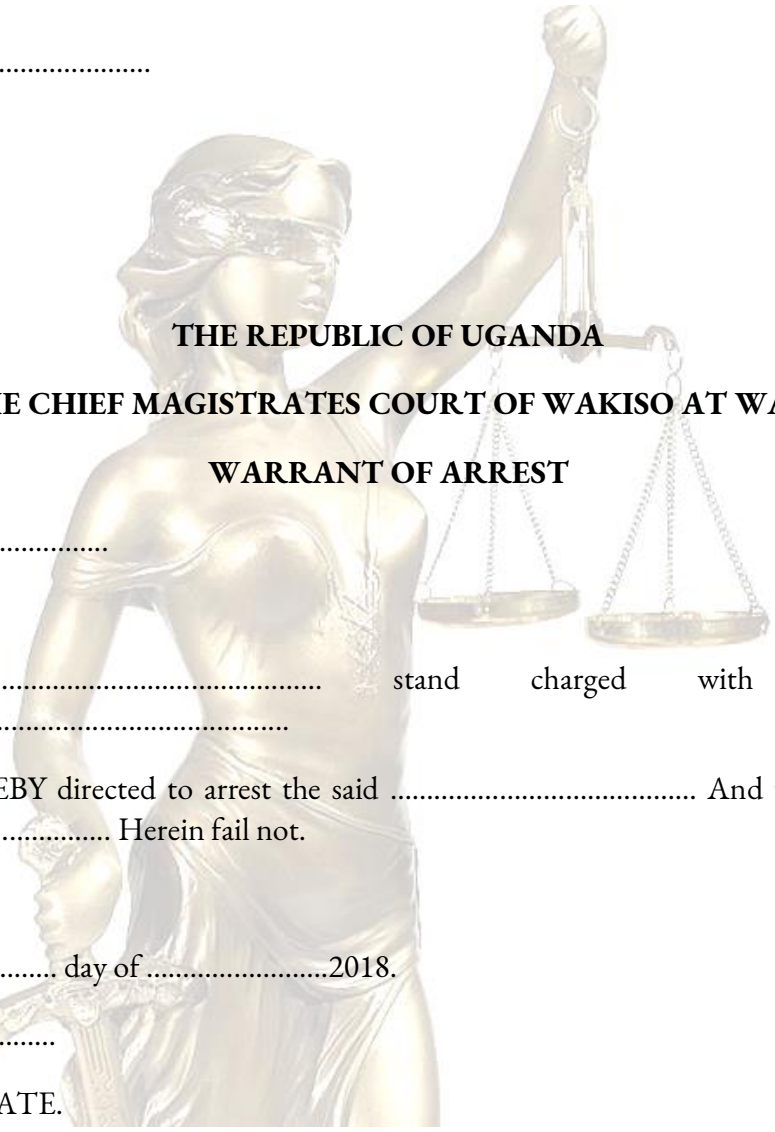
WHEREAS yours attendance is necessary to answer to a charge of .....

YOU ARE HEREBY COMMANDED by the Uganda Government to appear in this court on the ..... day of ..... 2018 at ..... am/pm or soon thereafter as the case can be heard.

Dated this .....day of .....2018 at .....am/pm.

.....

MAGISTRATE



THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF WAKISO AT WAKISO

WARRANT OF ARREST

TO; .....

WHEREAS ..... stand charged with the offence of.....

YOUR ARE HEREBY directed to arrest the said ..... And to produce him/her before me ..... Herein fail not.

Dated this ..... day of .....2018.

.....

CHIEF MAGISTRATE.

4. (e)Assume the investigating officer is informed that 200 kilograms of dry vanilla are locked up in the suspects house in Natete , advise the police on the proper procedure to follow to recover and preserve it for future court action.

A search may be defined as an inspection made on a person or in a building for the purpose of ascertaining whether anything useful in criminal investigation may be discovered on the body of the person or in building searched.

It's mainly carried out for the purpose of collecting evidence and exhibits which may be used in a criminal trial .It can be carried out in any place.

Normally searches are carried out on authority of search warrants issued by court but police officers are empowered to search without warrant in certain cases. A search warrant is a written authority given by a court ordering the search of the premises, place

,vessel named in the warrant for the purpose of seizing anything there in which is required or material in the investigations of an offence.

Section 74 of the **Magistrate Courts Act** states that a search warrant must be signed by the magistrate issuing it ,and must bear the seal of the court.

Section 56(3) of the **Magistrate Courts Act** provides that a search warrant shall remain in force until it is executed or until it is cancelled by court which issued it.

Section 70 of the **Magistrate Courts Act** grants power to the court to issue a search warrant.

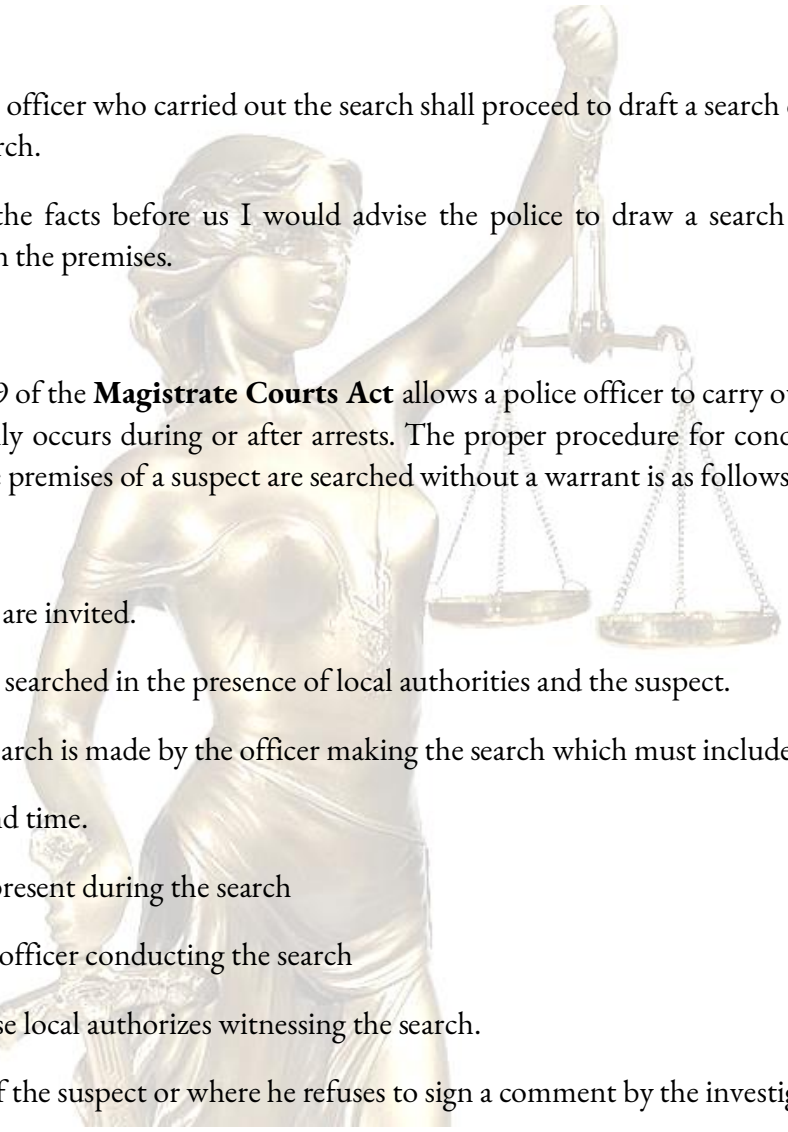
Section 58 of the **Magistrate Courts Act** provides that a search warrant may be directed to one or more police officers or chiefs named there in.

Section 50 of the **Magistrate Courts Act** is to the effect that a search warrant can be executed out by any officer

Section 71 of the **Magistrate Courts Act** is to the effect that a search warrant may be issued and executed on Sunday .It must be executed between the time of sunrise and sun set or any other hour stated by court.

Section 72(2) of the **Magistrate Courts Act** grants the officer executing out a search warrant power to enter into such premises and carry out the search without interruption.

However an officer can carry out a search without a search warrant. **Section 69** of the a **Magistrate Courts Act** provides that in instances where an officer has an honest belief that material evidence can be obtained in connection with offence for which an arrest has been authorized.



After the search the officer who carried out the search shall proceed to draft a search certificate indicating the result of the search.

In comparison to the facts before us I would advise the police to draw a search warrant granting it permission to search the premises.

However Section 69 of the **Magistrate Courts Act** allows a police officer to carry out a search without a warrant. This usually occurs during or after arrests. The proper procedure for conducting a search bt a police officer where premises of a suspect are searched without a warrant is as follows;

a) Local authorities are invited.

b) The premises are searched in the presence of local authorities and the suspect.

c) A certificate of search is made by the officer making the search which must include;

i. The place, date and time.

ii. Names of those present during the search

iii. Signature of the officer conducting the search

iv. Signature of those local authorizes witnessing the search.

v. Signature of the suspect or where he refuses to sign a comment by the investigating officer.

Section 73(1) of the **Magistrate Courts Act** provides for the seizure of any property brought before it until the conclusion of the case or investigation. At this point it's referred to as an exhibit.

The items obtained from the search maybe entered in the Police Exhibit Book and an exhibit slip issued and kept in the case file.

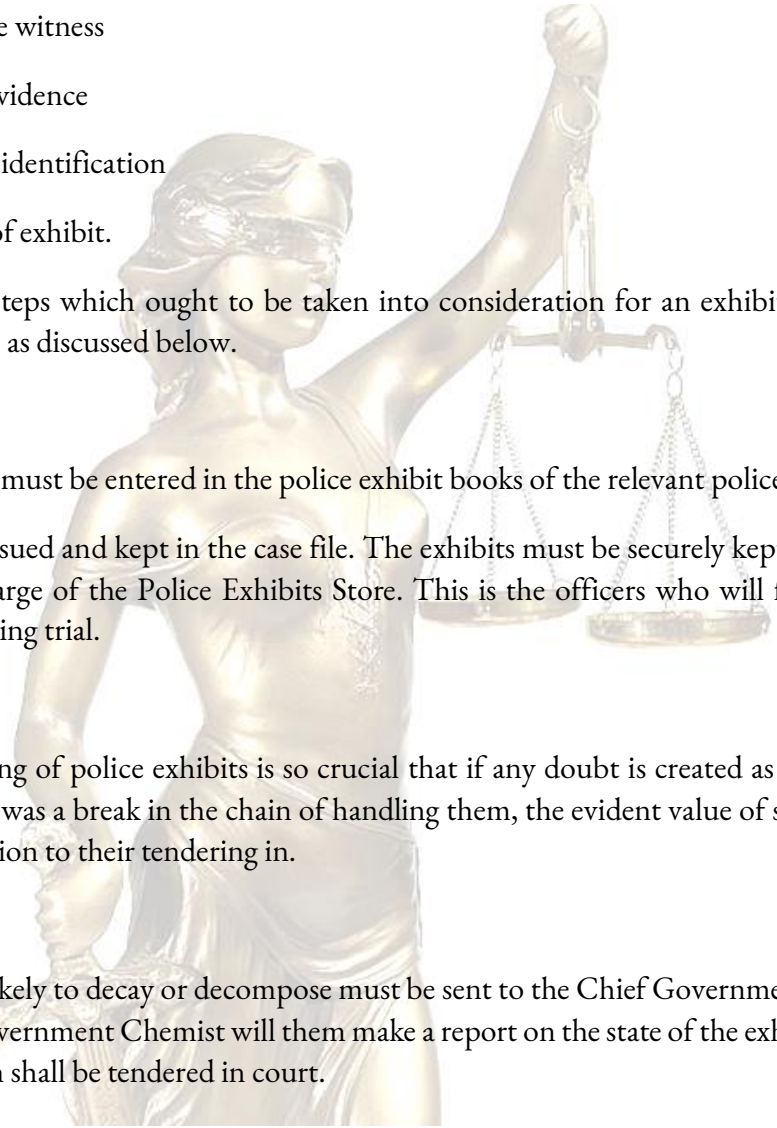
The black's law dictionary defines an exhibit to be a document, record or tangible object

formally introduced as evidence in court. The original copy should be looked for.

Facts involved in establishing a foundation for tendering an exhibit are.

- Competence of the witness
- Relevancy of the evidence
- Authentication or identification
- Trust worthiness of exhibit.

However there are steps which ought to be taken into consideration for an exhibit to be kept safe for further investigation as discussed below.



All exhibits in a case must be entered in the police exhibit books of the relevant police station

and an exhibit slip issued and kept in the case file. The exhibits must be securely kept under lock and key by the officer in charge of the Police Exhibits Store. This is the officers who will finally handover the exhibits in court during trial.

The chain of handling of police exhibits is so crucial that if any doubt is created as to the source of the exhibit or that there was a break in the chain of handling them, the evident value of such exhibits may be challenged by objection to their tendering in.

Exhibits which are likely to decay or decompose must be sent to the Chief Government Chemists as soon as possible. Such Government Chemist will them make a report on the state of the exhibit and accompany it with photos which shall be tendered in court.

Documents

THE REPUBLIC OF UGANDA UC FORM 109

SEARCH WARRANT

IN THE CHIEF MAGISTRATES COURT OF WAKISO AT WAKISO

TO: AKAMPULIRA EZRA.

WHERE AS it has been proved to me that in fact or according to reasonable suspicion the following things / thing;

.....

Upon by or in respect of which an offence has been committed OR which is / are necessary to the conduct of an investigation into an offence is /are in the Building/ vessel , Carriage, Box,

Receptacle, place herein named and described as follows:

.....

.....

.....

This is to authorize and require you to enter /open the said Building, Carriage, Vessel, Box, Receptacle, Place, described as aforesaid and if found to seize and carry it/them before this court or some court to be dealt with according to Law, returning this warrant with an endorsement

certifying that you have done under it immediately upon it's execution.

Given under my hand and seal of this court this.....day of.....20.....

.....

CHIEF MAGISTRATE.

Search Certificate.

REF;..... Date:.....

SEARCH CERTIFICATE.

I ..... HAVE CONDUCTED A SEARCH IN THE ..... ON THE ..... AT .....

IN THE PRESENCE OF;

1) .....

2) .....

3) .....

ITEMS RECOVERED INCLUDE;

i. .....

ii. .....

iii. .....

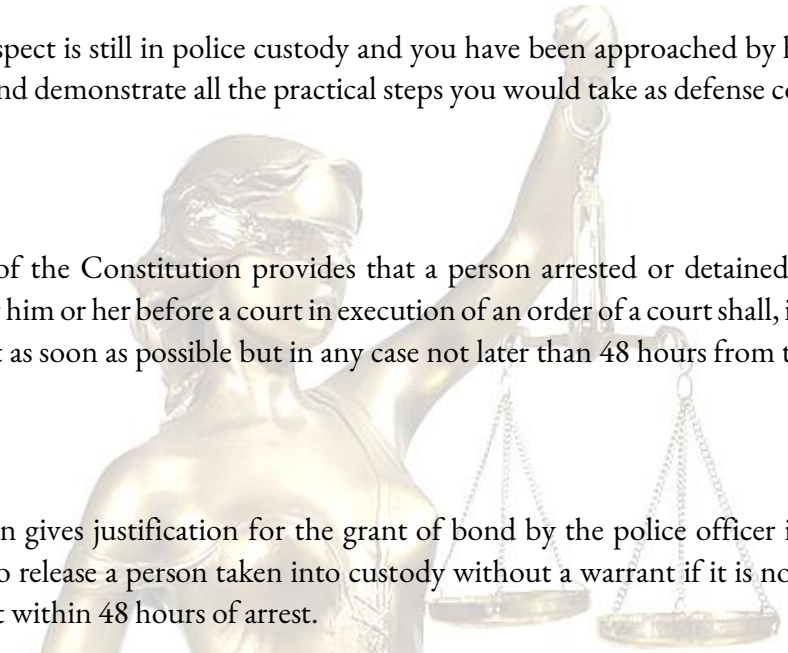
WITNESSED BY;

1) .....

2) .....

SIGANATURE: ..... RANK: .....

f) Assuming the suspect is still in police custody and you have been approached by his wife to secure his freedom, Identity and demonstrate all the practical steps you would take as defense counsel to achieve the desired goal?



ARTICLE 23(4) of the Constitution provides that a person arrested or detained or detained for the purpose of bringing him or her before a court in execution of an order of a court shall, if not earlier released, be brought to court as soon as possible but in any case not later than 48 hours from the time of his or her arrest.

The above provision gives justification for the grant of bond by the police officer in charge of a police station has power to release a person taken into custody without a warrant if it is not practicable to take that person to court within 48 hours of arrest.

Bond simply means the release of a person who has been arrested with or without a warrant upon payment of a specified amount if provided for in the warrant with the understanding that he/she will appear before the court or police officer at a specified time. Bond can be granted where a person has been arrested with or without a warrant.

Under **section 17(1) of the Criminal Procedure Code Act**, a police officer in charge of a police station may release a person detained without a warrant upon executing a bond for a reasonable amount to appear before a magistrate's court at a time and place specified in the bond if it is impracticable to bring the person before a magistrate's court within 24 hours, provided that it is an offence other than murder, treason or rape or the offence does not appear to the officer to be

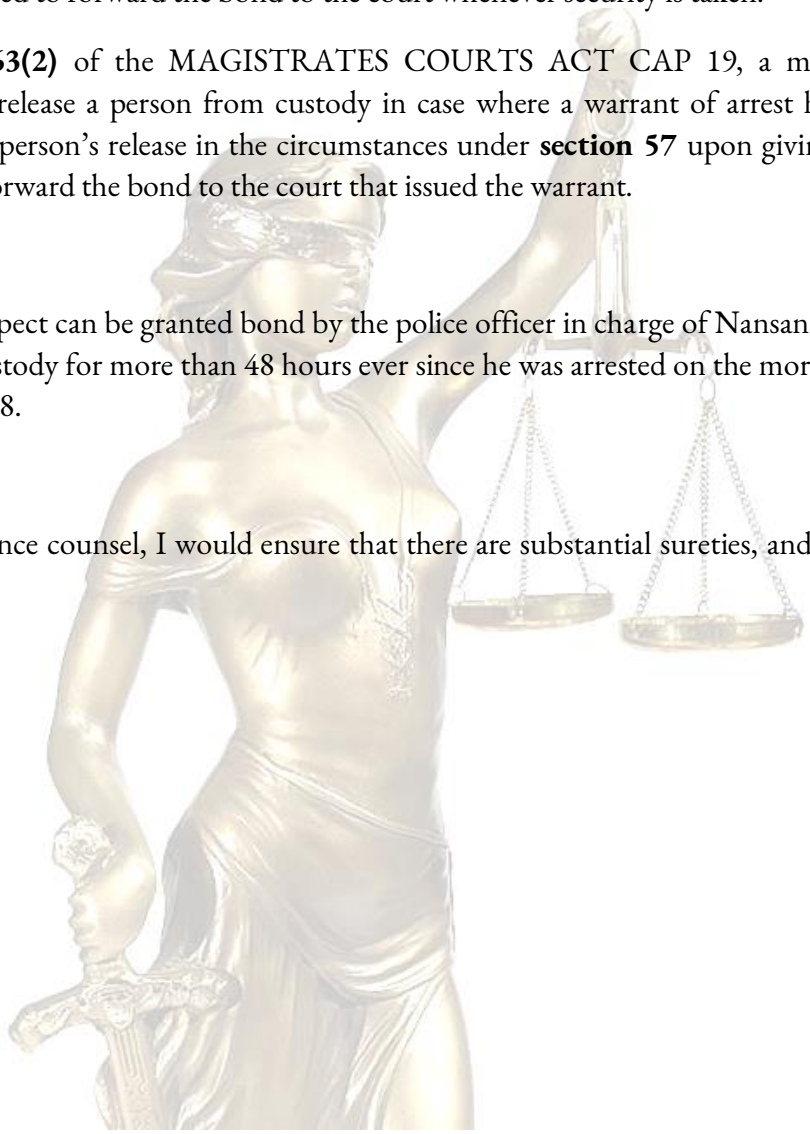
of a serious nature.

Section 38(1) of the Police Act requires no fee or duty to be charged by a police officer on a bond in a criminal case or on a recognizance for personal appearance or otherwise issued or taken by a police officer.

On the other hand, under **section 57(1) and (2) of the MAGISTRATES COURTS ACT CAP 19,** a magistrate may permit the release on bond of a person whose name is stated in the warrant of arrest if such a person executes a bond with sufficient sureties for his/her attendance before the court and upon the person giving security for his release. A surety has a duty to ensure that the accused person adheres to the bond conditions.

However **section 57(3)** of the MAGISTRATES COURTS ACT CAP 19 requires the officer to whom the warrant is issued to forward the bond to the court whenever security is taken.

Under **section 63(2)** of the MAGISTRATES COURTS ACT CAP 19, a magistrate in another jurisdiction may release a person from custody in case where a warrant of arrest had an endorsement authorizing such person's release in the circumstances under **section 57** upon giving security and such magistrate shall forward the bond to the court that issued the warrant.



Therefore the suspect can be granted bond by the police officer in charge of Nansana police station since he has been in custody for more than 48 hours ever since he was arrested on the morning of the 26th day of September 2018.

Therefore as defence counsel, I would ensure that there are substantial sureties, and thereafter apply for bond.

POLICE BOND

UGANDA POLICE RELEASE ON BOND

(Sec 17 of Crim Procedure Code Act) FORM 18

I **Kapale Bruno** being charged with the offence of **theft** Vide SD Ref and after required to appear before the OC **Nansana Police Station** do hereby bind myself to appear at the **Chief Magistrates Court-Nabweru**

At **10:00pm** on the **20th day of October 2018** and I shall continue to attend further to answer the said charge until Otherwise directed by the Court.

Dated this ..... day of .....20..... Signed.....

I **Nalonda Crispus Ceasor** Hereby DECLARE myself surety for the above named person(s)

about the offence of **theft**,

That he / she shall attend as above stated and in any case of any default, I bind myself to be

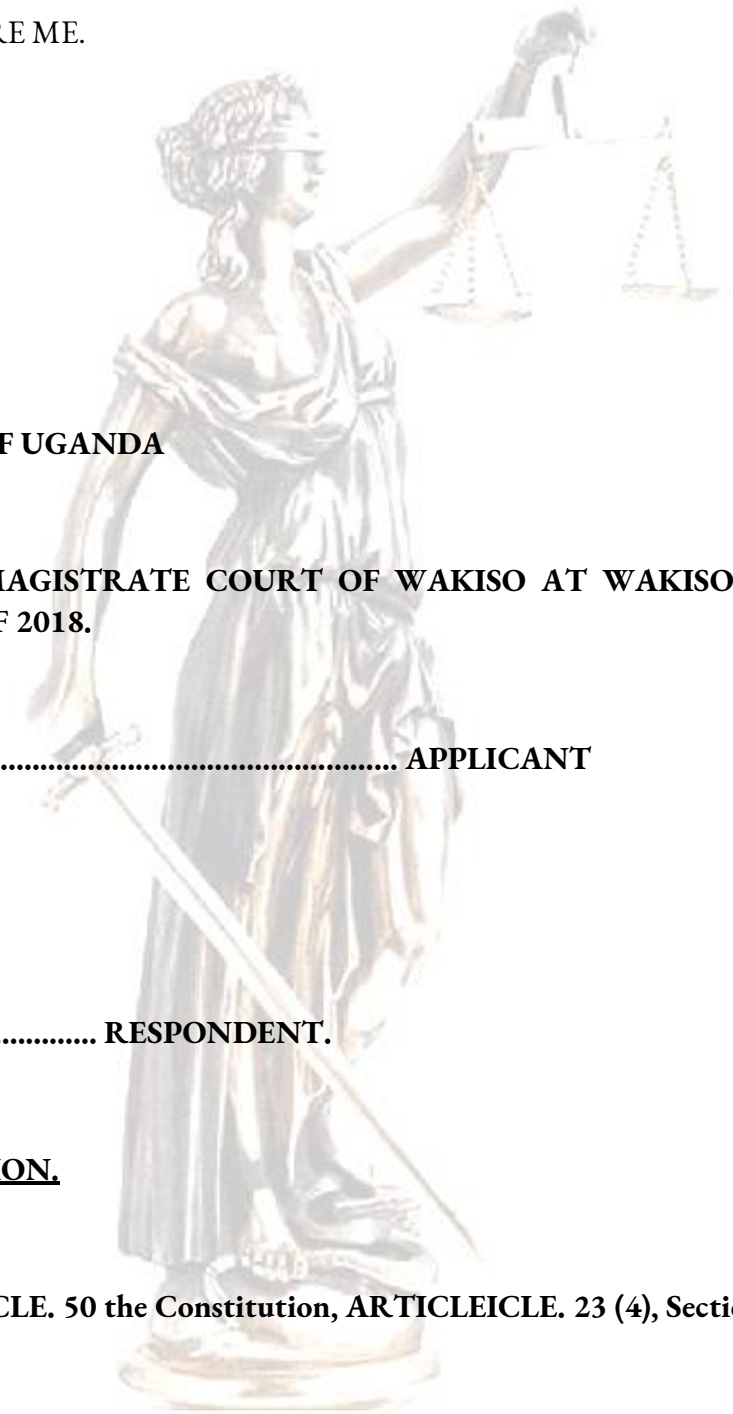
Responsible for accessory after fact.

Dated this ..... day .....20.....

Signature.....

.....

EXECUTED BEFORE ME.



THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATE COURT OF WAKISO AT WAKISO CRIMINAL MISC. CAUSE NO. 001 OF 2018.

BRUNO KAPALE ..... APPLICANT

VS

UGANDA ..... RESPONDENT.

NOTICE OF MOTION.

(Under ARTICLEICLE. 50 the Constitution, ARTICLEICLE. 23 (4), Section 25 (3) Police Act)

TAKE NOTICE That this honorable court shall be moved on the ..... day of 2018

.....at .....am/pm or soon thereafter as counsel for the applicant shall be heard on the following orders.

a) That the applicant be released from custody unconditionally.

b) That this honorable court makes such orders as is deemed just for enhancement of justice.

TAKE FURTHER NOTICE That this application is brought by way of Notice of Motion supported by an affidavit of Miss Wandy Kaitesi, wife to the applicant stating the grounds which shall be relied upon at the hearing but briefly include:

a) That the applicant was arrested on the 26th day of September 2018 at Nansana and has been held in police custody up to date.

b) That the applicant has since been denied police Bond and not charged with any offence in any court of law.

c) That the applicant's fundamental rights have been violated.

d) That is just and equitable that this court grants an unconditional release of the applicant.

Dated at Kampala this ..... day of ..... 2018.

..... **SUI GENERIS ADVOCATES. Counsel for the Applicant.**

Given under my hand and seal of this honorable court this ..... day of ..... 2018.

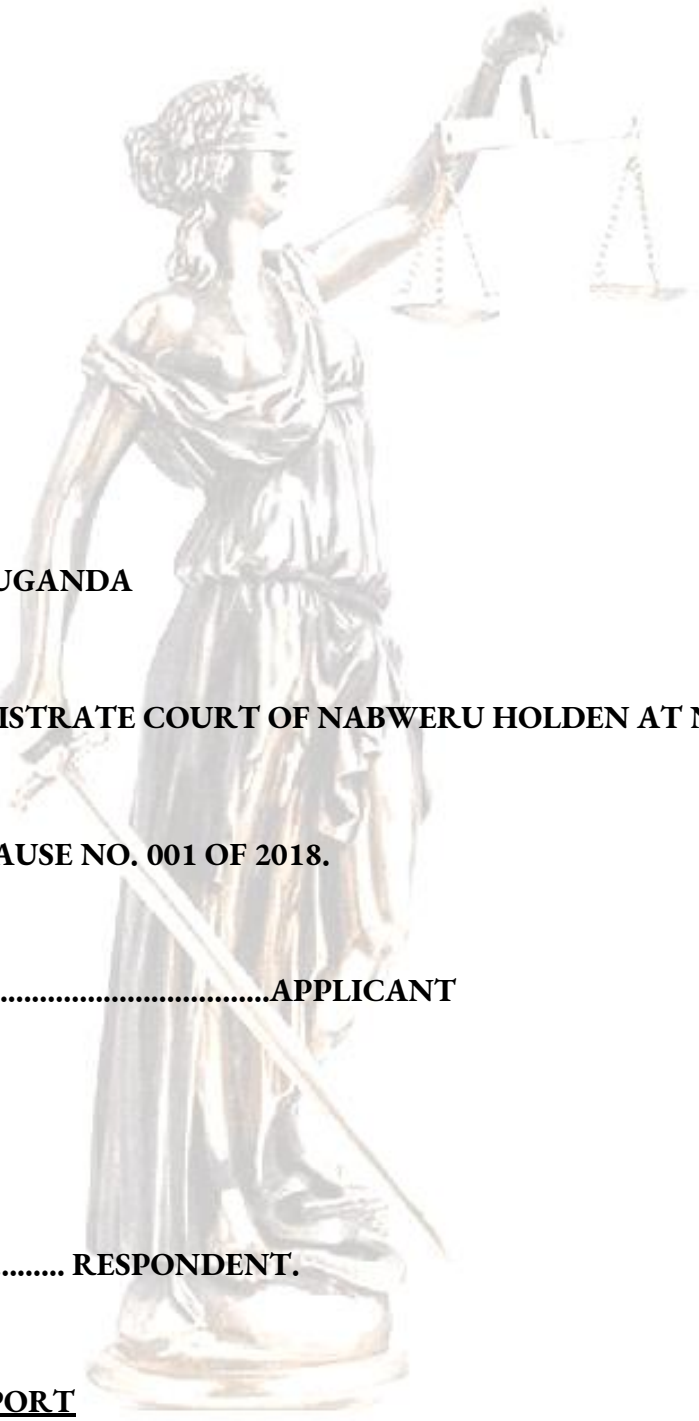
.....

CHIEF MAGISTRATE.

Drawn And Filed By;

Sui Generis Advocates

P.O Box 7117 Kampala



THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATE COURT OF NABWERU HOLDEN AT NABWERU.

CRIMINAL MISC. CAUSE NO. 001 OF 2018.

BRUNO KAPALE .....APPLICANT

VS

UGANDA ..... RESPONDENT.

<u>AFFIDAVIT IN SUPPORT</u>

I **Kaitesi Wendy of c/o SUI GENERIS Co. Advocates** do solemnly swear and that as follows:

1) That I am a female adult Ugandan of sound mind and a spouse to the applicant I which capacity I swear this affidavit.

2) That my husband was arrested by policemen from Nansana on the 26th day of September

2018.

3) That the applicant has since been held in police custody without being charged

4) That I have been informed by my lawyers who I believe to be true to the best of my knowledge that the applicant's fundamental rights have been violated.

5) That it is just and equitable that the applicant be released unconditionally.

6) That whatever I have stated herein is true to the best of my knowledge and belief.

Sworn at Kampala this ..... day of .....2018 by the said Kaitesi Wendy.

.....

DEPONENT

BEFORE ME:

....

COMMISSIONER FOR OATHS



Drawn And Filed By;

Sui Generis Advocates

P.O Box 7117 Kampala

DOCUMENTS

THE REPUBLIC OF UGANDA

CRIMINAL SUMMONS

COURT CASE NO: .....

DPP CASENO: .....

POLICE CASE NO: .....

TO:

.....

WHEREAS your attendance is necessary to answer to a charge of

.....

.....

You are hereby commanded by the Government to appear in this court on the ..... Day

of ..... 20.. at ..... Or soon thereafter as the case

can be heard.

Herein fail not.

Dated this..... day of ..... 20.. at .....

This summons has been issued on the application of the PROSECUTION.

.....

MAGISTRATE.

THE REPUBLIC OF UGANDA FORM 109

PRODUCTION WARRANT

IN THE ..... COURT OF.....

AT.....

RE: CRIMINAL CASE NO..... OF 20.....

UGANDA

VERSUS

.....

.....

TO:

THE SUPRITENDENT OF PRISONS

.....

.....

You are hereby directed to produce the above mentioned ..... Before the

.....Court of ..... On the

.....of.....20 at .....

Dated the..... Day of..... 20.....

.....

MAGISTARTE/ REGISTRAR

THE REPUBLIC OF UGANDA FORM 75

WARRANT OF ARREST

IN THE .....COURT OF .....

AT .....

TO:

.....

.....

WHEREAS..... of .....

stands charged with the offence of

.....

.....

You are hereby directed to arrest the said..... And produce him / her before me.....

Herein fail not.

Dated this..... day of..... 20....

.....

MARGISTRATE/REGISTRAR

UGANDA POLICE FORM 18

RELEASE ON BOND

(Sec 17 of Crim Procedure Code Act)

i..... being charged with the offence of .....

Vide SD Ref and after required to appear before the OC.....

do hereby bind myself to appear at .....

At.....on the ..... day of

..... 20... and I shall continue to attend further to answer the said charge until otherwise directed by the Court.

Dated this ..... day of .....20.....

Signed.....

i.....

.....

Hereby DECLARE myself surety for the above named person(s) about the offence of

.....

That he / she shall attend as above stated and in any case of any default, I bind myself to be responsible accessory after fact.

Dated this ..... day .....20.....

Signature.....

.....

EXECUTED BEFORE ME

THE REPUBLIC OF UGANDA UC FORM 109

SEARCH WARRANT

IN THE ..... COURT OF .....

AT .....

TO:

.....

.....

WHERE AS it has been proved to me that in fact or according to reasonable suspicion the following things / thing

.....

.....

.....

Upon by or in respect of which an offence has been committed OR which is / are necessary to the conduct of an investigation into an offence is /are in the Building/ vessel , Carriage, Box, Receptacle, place herein named and described as follows:

.....

.....

.....

This is to authorise and require you to enter /open the said Building, Carriage, Vessel, Box, Receptacle, Place, described as aforesaid and if found to seize and carry it/them before this court or some court to be dealt with according to Law, returning this warrant with an endorsement certifying that you have done under it immediately upon it's execution.

Given under my hand and seal of this court this.....day of.....20.....

.....

MAGISTRATE

THE REPUBLIC OF UGANDA

IN THE ..... COURT OF .....

AT.....

CRIMINAL MISC APPLICATION NO.....OF.....

(ARISING FROM CRIMINAL CASE NO.....OF .....)

..... APPLICANT/ACCUSED

VS

UGANDA RESPONDENT/ PROSECUTOR

NOTICE OF MOTION

(Under Article 23(6) of the Constitution of the Republic of Uganda, Section 14, 15, of the Trial on indictment Act Cap)

TAKE NOTICE that this Court shall be moved on the ..... day of ..... At 9.00 o'clock in the fore noon or soon thereafter as the Applicant will be heard on an Application that or orders that.

1. That the Applicant be released on bail pending the hearing of criminal case No.....of .....

Take further notice that this Application is supported by the Affidavit of the Applicant herein which

shall be read and relied upon at the hearing but briefly they are that.

1. The Applicant was arrested and charged with the offence of ..... Contrary to section ..... of the ..... on the ..... day of ..... 20.....

2. That it is the Applicant constitutional right to apply for bail

3. That Applicant has sound and suitable sureties within the Jurisdiction of this Honorable Court who undertake that the Applicant will comply with the conditions of my Bail.

4. That the Applicant has a fixed place of abode within the Jurisdiction of this Honorable Court.

5. That exceptional circumstances exist to justify the release of the Applicant on bail

6. That it is in the interest of justice that this Application is granted.

Dated at ..... this ..... day of ..... 20...

.....

APPLICANT

Lodged in the Court Registry this..... day of ..... 20...

.....

ASSISTANT REGISTRAR.

THE REPUBLIC OF UGANDA

IN THE.....COURT OF .....

AT.....

Criminal MISC APPN NO ..... OF 20....

(Arising from Criminal case No..... of 20.....)

..... APPLICANT/ ACCUSED

VS

UGANDA RESPONDENT/ PROSECUTOR

AFFIDAVIT IN SURPPORT OF NOTICE OF MOTION.

I ..... of .....

do solemnly swear / affirm and state as follows.

1. That I am a male/ female adult Ugandan of sound mind and of the above particulars an accused in Criminal case No..... of 20.. and therefore having the capacity to swear this Affidavit.

2. That I was arrested on the ..... Day of ..... 20... and charged with the of offence of Murder, Aggravated Robbery, Rape, Aggravated Defilement, Defilement contrary to section 188 and 189, 285, of the penal Code Act.

3. That I am 70 years old and a soul bread winner of my family.

4. That I am resident of ..... and therefore have a fixed place of abode within the jurisdiction of this Honorable Court.(see attached letters of introduction from the LC 1 Chairman.).

5. That I have produced substantial sureties with good repute who undertake that I will fulfill the terms of my bail if granted and also ensure that I attend court regularly when required by this Honorable Court.

6. That following the long period spent in detention without trial, I believe that my rights to a fair and expeditious trial have been violated.

7. That I am innocent until proven guilty.

8. That I suffer from..... and have not been able to obtain proper medication and treatment from while in detention.(Attached are medical forms and reports from a certified prisons medical staff)

9. That I undertake to abide by the terms and condition imposed by this honorable court and I ensure that I will attend court whenever required by this Honorable Court.

10. That whatever I have stated herein is true and correct to the best of my knowledge and belief and whatever is from without the source disclosed herein.

Sworn At ..... This..... date of..... 20..

By the said.

....

Deponent

BEFORE ME

.....

JUSTICE OF PEACE.

DRAWN AND FILED BY

THE APPLICANT.

THE REPUBLIC OF UGANDA

IN THE ..... COURT OF..... AT

.....

MISC. APPN. NO. _____OF 20

[ARISING FROM CRIMINAL CASE NO. OF 20...]

..... APPLICANT

VERSUS

ATTORNEY GENERAL .....RESPONDENT

NOTICE OF MOTION

(Under Article 23 of the Constitution of the Republic of Uganda)

TAKE NOTICE that this Honorable Court will, on the _____day of _____20.. at _____O'clock in the fore/afternoon or so soon thereafter as Counsel for the Applicant can be heard, be moved on the grounds set out herein; to Order that.

1. An order doth issue against the Respondent and his agents to unconditionally release the applicant from police custody.

TAKE FURTHER NOTICE that the grounds upon which this application is based are contained in the Affidavit of..... but briefly they are that:-

1. The Applicant was arrested on the ..... day of ..... 20... for allegedly .....

2. The Applicant has been detained at ..... Police Station to date and has never been arraigned before the Court to be charged with any offence.

3. The Applicant's constitutional right to personal liberty is being violated.

4. In the interests of justice, the application ought to be allowed.

DATED at Kampala this _____day of _____20...

_____

THE APPLICANT

Lodged in the Court Registry this _____day of _____20..

_____

DEPUTY REGISTRAR/ MARGITRATE

DRAWN & FILED BY:

THE REPUBLIC OF UGANDA

IN THE ..... COURT OF..... .....

HOLDEN AT.....

CRIMINAL APPLICATION NO. _____ OF 20..

[Arising from Criminal Case No. _____ of 20..]

:: APPLICANT

VERSUS

ATTORNEY GENERAL :: RESPONDENT

AFFIDAVIT IN SUPPORT

I, ..., of ....., Uganda do hereby

solemnly make oath and swear/ affirm as follows:

1. THAT I am an adult male/ female Ugandan of sound mind and the Applicant in this application and I now depone this affidavit in such capacity.

2. THAT on ....., the ..... day of ..... 20.., I was arrested for allegedly .....

3. THAT I have been detained at ..... Police Station to date way beyond the mandatory 48 hours as required by the law.

4. THAT I have not been brought before a competent court to be charged.

5. THAT as a result of the continued detention, my constitutional right to personal liberty is being violated.

6. THAT it would be in the interest of justice if this application is allowed.

7. THAT I now swear this affidavit in support of the application to be unconditionally released and produced in court.

8. THAT what is stated herein above is true and correct to the best of my knowledge and belief.

SWORN by the ----------

Said ..... DEPONENT

At ..... this ____ day of _____ 20..

BEFORE ME:

_____

A COMMISSIONER FOR OATHS

DRAWN & FILED BY:

The APPLICANT

THE REPUBLIC OF UGANDA

IN THE..... COURT OF.....

HOLDEN AT .....

CRIMINAL APPN NO .....OF .....

(Arising From Criminal Appeal NO..... of 20...)

..... :: APPLICANT/ APPELANT

VS

UGANDA :: RESPONDENT/ PROSECUTOR

NOTICE OF MOTION

(Under Article 23 (6), Section 40, 47 of the Criminal Procedure Code Act Cap116, Section 132(4) of the penal Code Act Cap 120)

Take Notice that this Honourable Court shall be moved on the..... day of ..... 20.. or soon thereafter as the Applicant will be heard on an Application for orders that.

1. That the Applicant be granted bails pending the hearing of his Bail filed in the High Court / court of Appeal vide Criminal Appeal No..... of 20..

Take further notice that this Application is supported by the Affidavit of..... the Applicant herein which shall be read and relied on at the hearing but briefly they are as follows.

1. That there is a possibility of substantial delay with the Appeal
2. That the Appeal has a reasonable ground of success.
3. That the Applicant is a first time offender.
4. That the offence the Appellant was convicted of did not involve personal violence.
5. That it is in the interest of justice that this application is granted.

Dated at ..... this ..... day of .....20..

.....

APPLICANT

Lodged in the Court Registry this ..... Day of ..... 20..

.....

ASSISTANT REGISTRAR

THE REPUBLIC OF UGANDA

IN THE ..... COURT OF .....

HOLDEN AT.....

CRIMINAL APPN NO..... OF .....20..

(ARISING FROM CRIMINAL APPEAL NO..... OF 20...)

..... :: APPLICANT/ APPELLANT

VS

UGANDA :: RESPONDENT.

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION:

I..... of ..... do solemnly make oath and swear/ affirm

that that:

1. I am male / female Adult Ugandan of sound min the Applicant/ Convict herein and

therefore having capacity to depone to this Affidavit.

2. That I was charged and convicted to ..... Years in prison for the offence of

..... contrary to section..... of the penal code Act.

3. That prior to my conviction I was granted bail by the High/Magistrate court and I dully

abided by the terms of the bail and also dully attended court on dates I was scheduled to

attend**.(see attached copies of Bail forms for ease of reference)**

4. That I have never been convicted of any other offence and I am a first time offender.

5. That I have appealed against the decision of the lower court and there I a possibility of success in the Appeal **(attached is a copy of Memorandum of Appeal and records of the lower court proceedings).**

6. That there is a likely hood that the appeal will take a long time to be disposed of by this Honorable Court.

7. That I have substantial sureties within the Jurisdiction of this Honorable court who will undertake that I attend court whenever required.

8. That whatever I have stated herein is true and correct to the best of my knowledge and belief and whatever is from without the source is disclosed.

Sworn at..... on the

.....day of..... 20..

By the said

....

Deponent

BEFORE ME

.....

JUSTICE OF PEACE

Drawn and filed by:

THE APPLICANT

THE REPUBLIC OF UGANDA

WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT

IN THE..... COURT OF.....

HOLDEN AT.....

TO:

THE SUPERINTENDENT OF THE PRISON.....

WHEREAS on the ..... Of .....20.. The 1st 2nd prisoner in the

case No..... of the calendar of 20... was convicted before me

.....

Of the offence of ..... under section ..... and was

sentenced to .....

THIS IS TO AUTHORISE AND REQUIRE YOU, the said Superintendent, to receive the

said..... into your custody in the said prison together with this

warrant, and there carry the aforesaid sentence into execution according to the law.

Given under my hand and seal of this court, this.....day of 20..

.....

JUDGE/ MAGISTRATE.

THE REPUBLIC OF UGANDA

IN THE..... COURT OF.....

HOLDEN AT.....

CRIMINAL APPEAL NO ..... OF 20..

UGANDA ..... PROSECUTOR

VERSUS

ACCUSED

NOTICE OF APPEAL

TAKE NOTICE that the Convict/ intended Appellant , being dissatisfied with the judgment of the

Hon. ..... given at .....on the ..... day

of ..... 20.., intends to appeal to the High Court / Court of Appeal of Uganda against the

whole of the said judgment / conviction/ Sentence.

The address of service for the intended Appellant is

.....

It is intended to serve copies of this Notice on:

(a) The Registrar, High Court / Court of Appeal of Uganda at Kampala.

(b) The Resident State Attorney

Dated at ..... this _____ day of _____ 20...

_____

APPELLANT.

LODGED in the High Court Registry at Kampala this _____day of _____ 20.

_____

REGISTRAR



END



AUTHOR'S NOTE

Isaac Christopher Lubogo, the esteemed author, remarks: "This revised edition reflects my unwavering commitment to advancing Ugandan jurisprudence and supporting the legal community."

A NEW BENCHMARK IN LEGAL EXCELLENCE

With the revised edition of "Objection, My Lord!", Isaac Christopher Lubogo has once again raised the bar, delivering another tour de force that surpasses the original's groundbreaking impact. This masterpiece solidifies its position as the go-to resource for Uganda's legal fraternity, providing unparalleled depth, clarity, and expertise.



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