# OBJECTION MY LORD

LEGAL PRACTICE DEMYSTIFIED

FIRST EDITION

ISAAC CHRISTOPHER LUBOGO

# OBJECTION MY LORD

*"Legal Practice Demystified"*

## CRIMINAL LAW AND PRACTICE

**OBJECTION MY LORD: LEGAL PRACTICE DEMYSTIFIED**

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**REVISED FIRST EDITION**

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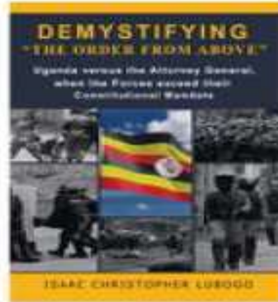

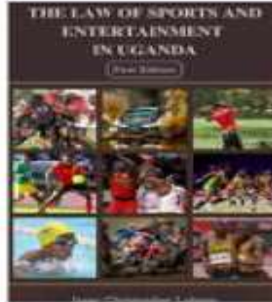

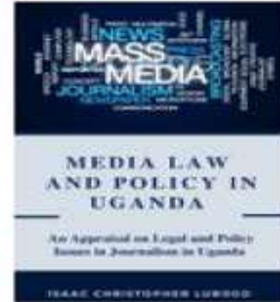

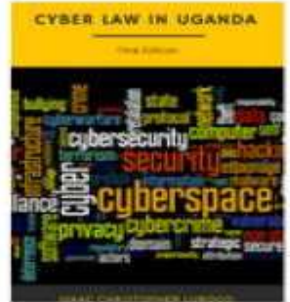


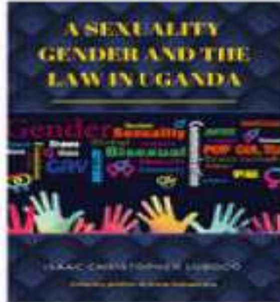

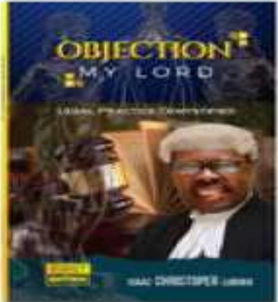

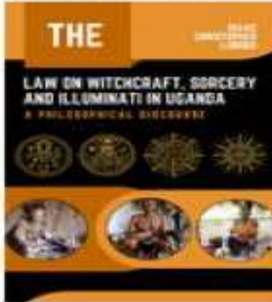

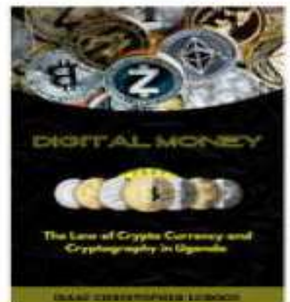


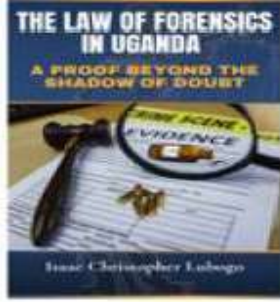

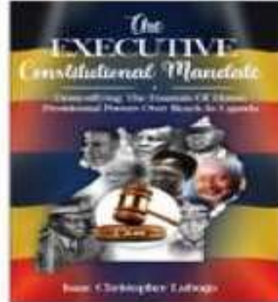

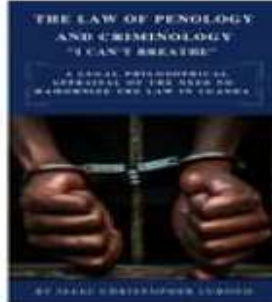

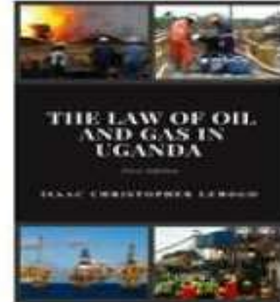

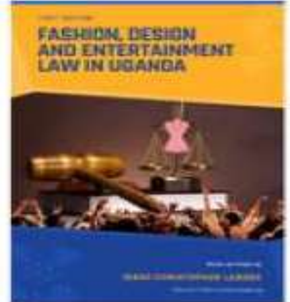


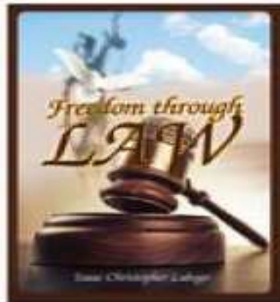

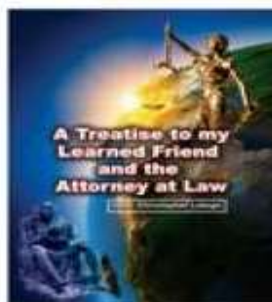

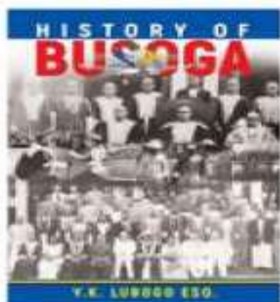

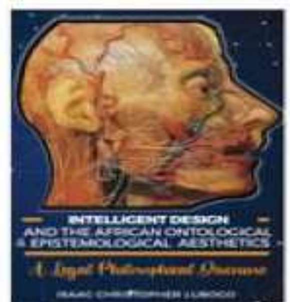


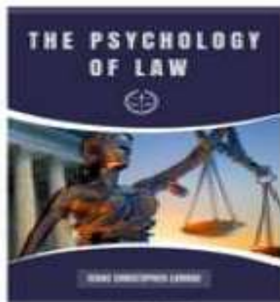

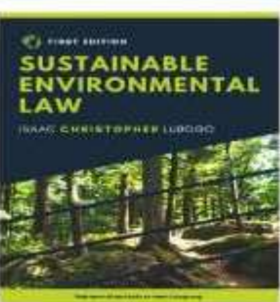

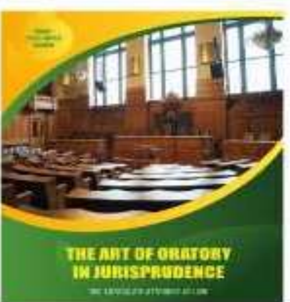

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# DEDICATION

*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 king thought 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).*

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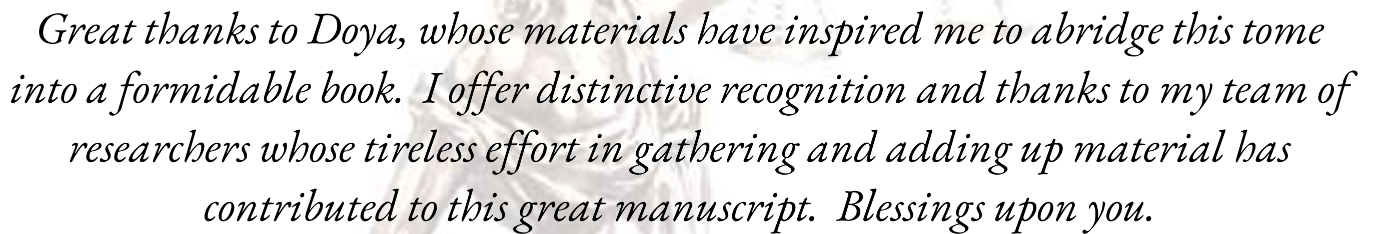
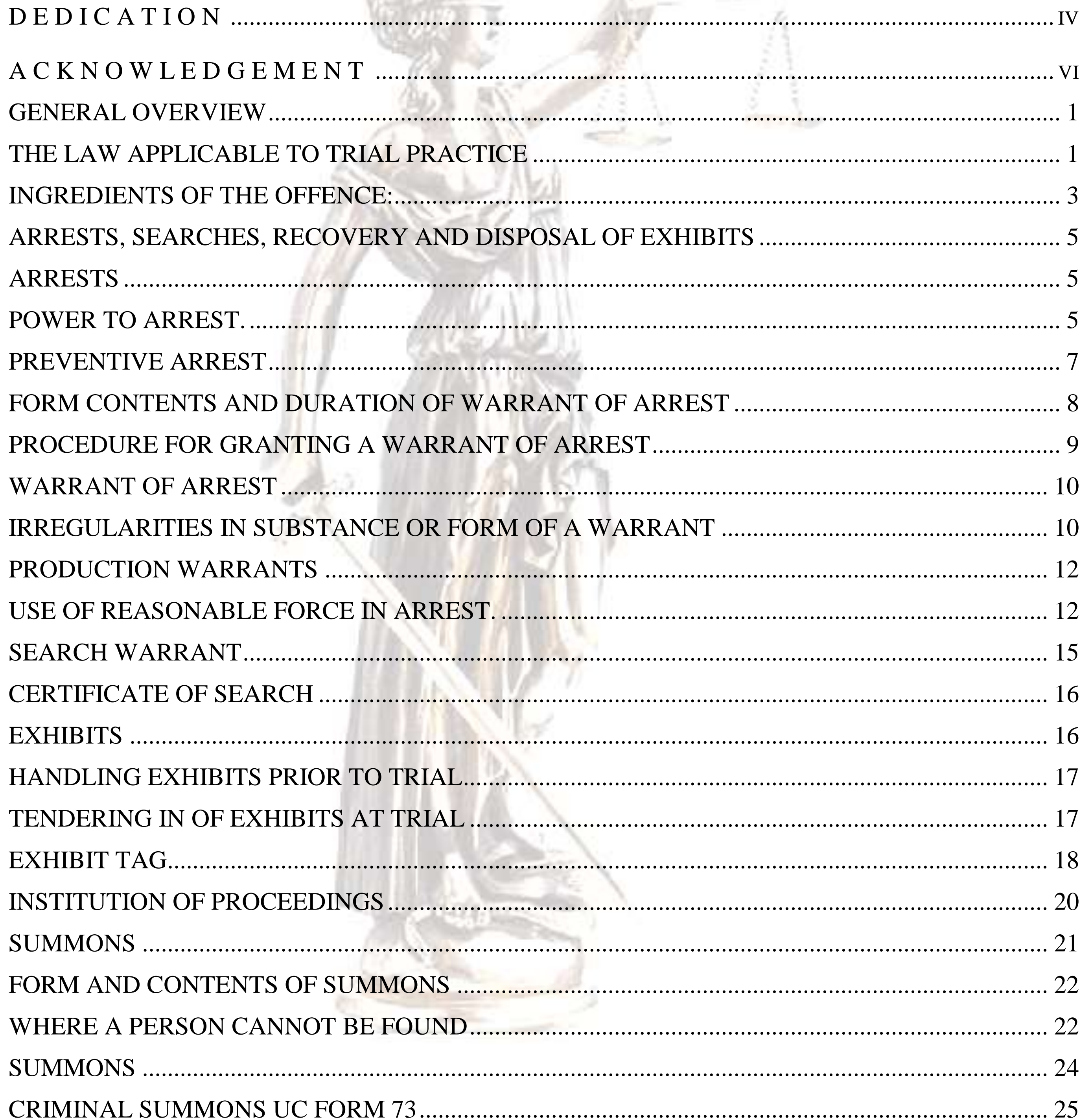


*Great thanks to Doya, whose materials have inspired me to abridge this tome into a formidable book. I offer distinctive recognition and thanks to my team of researchers whose tireless effort in gathering and adding up material has contributed to this great manuscript. Blessings upon you.*

# Contents



D E D I C A T I O N ........ IV

A C K N O W L E D G E M E N T ........ VI

GENERAL OVERVIEW........ 1

THE LAW APPLICABLE TO TRIAL PRACTICE ........ 1

INGREDIENTS OF THE OFFENCE:........ 3

ARRESTS, SEARCHES, RECOVERY AND DISPOSAL OF EXHIBITS ........ 5

ARRESTS ........ 5

POWER TO ARREST. ........ 5

PREVENTIVE ARREST........ 7

FORM CONTENTS AND DURATION OF WARRANT OF ARREST ........ 8

PROCEDURE FOR GRANTING A WARRANT OF ARREST........ 9

WARRANT OF ARREST ........ 10

IRREGULARITIES IN SUBSTANCE OR FORM OF A WARRANT ........ 10

PRODUCTION WARRANTS ........ 12

USE OF REASONABLE FORCE IN ARREST. ........ 12

SEARCH WARRANT........ 15

CERTIFICATE OF SEARCH ........ 16

EXHIBITS ........ 16

HANDLING EXHIBITS PRIOR TO TRIAL........ 17

TENDERING IN OF EXHIBITS AT TRIAL ........ 17

EXHIBIT TAG........ 18

INSTITUTION OF PROCEEDINGS ........ 20

SUMMONS ........ 21

FORM AND CONTENTS OF SUMMONS ........ 22

WHERE A PERSON CANNOT BE FOUND........ 22

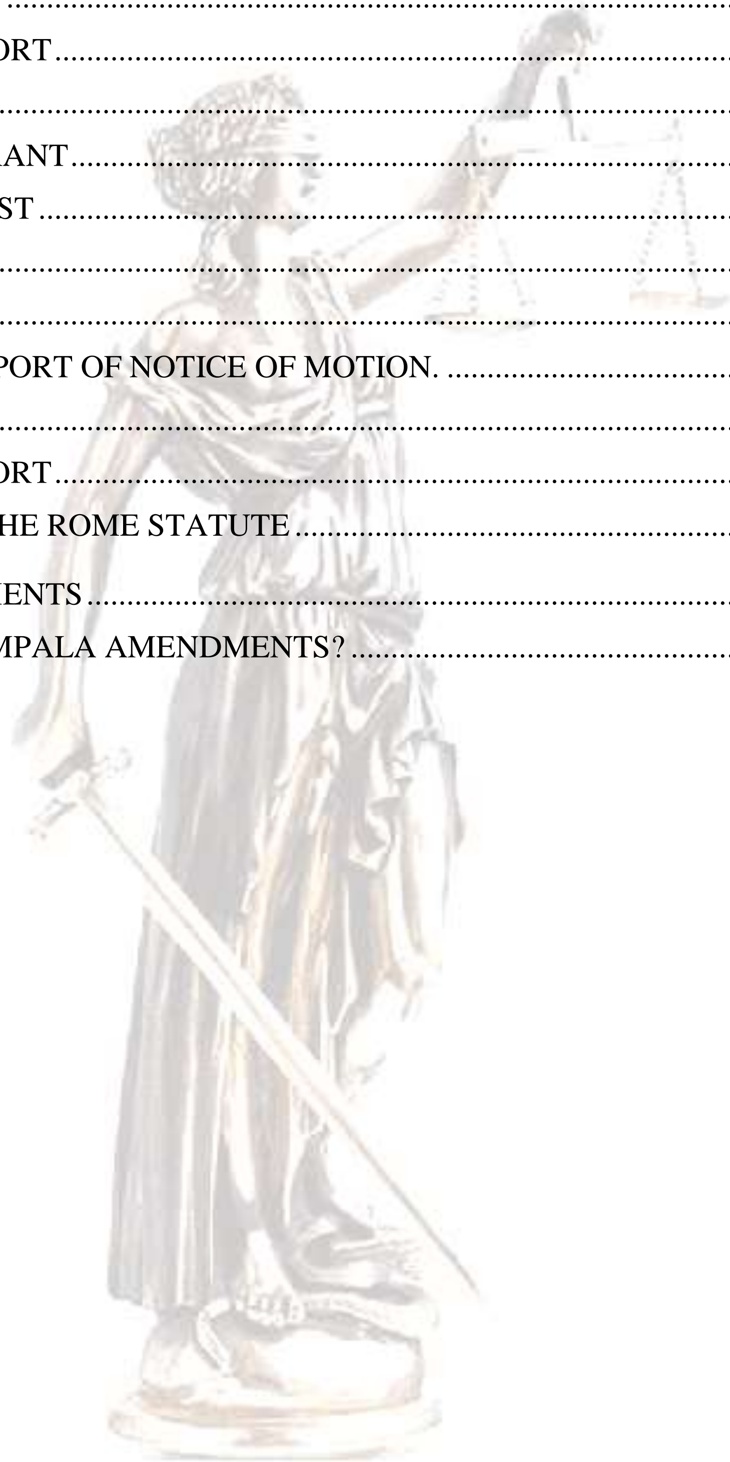
SUMMONS ........ 24

CRIMINAL SUMMONS UC FORM 73 ........ 25

PLEAS ..... 25
BOND. ..... 30
NOTICE OF MOTION ..... 32
AFFIDAVIT IN SUPPORT ..... 34
PRE-TRIAL DISCLOSURE ..... 34
SUPERVISORY POWERS OF THE CHIEF MAGISTRATE ..... 35
PRE-TRIAL PROCEEDINGS ..... 36
ROLE OF ADVOCATE ..... 36
PROCEDURE FOR APPLYING FOR POLICE BOND ..... 36
PROCEDURE FOR APPLYING FOR AN ORDER OF RELEASE. ..... 37
CHARGE SHEET ..... 41
JOINDER OF PERSONS ..... 43
JOINDER OF OFFENCES / COUNTS. ..... 44
ALTERNATIVE CHARGES ..... 44
DUPLICITY OF CHARGES ..... 44
EFFECT OF DEFECTIVE CHARGES ..... 45
AMENDMENT OF CHARGES ..... 45
PROCEDURE UPON AMENDMENT OF CHARGES ..... 45
DRAFTING DOCUMENTS ..... 46
MANDATORY BAIL ..... 50
PROCEDURE FOR APPLICATION FOR BAIL IN THE MAGISTRATE COURTS ..... 50
APPLICATION FOR BAIL IN WRITING IN THE MAGISTRATE COURTS ..... 51
BAIL IN HIGH COURT ..... 51
DRAWING UP A SUMMARY OF THE CASE ..... 52
COMMITAL PROCEEDINGS ..... 53
COMMITTAL FOR SENTENCE ..... 53
RIGHTS OF AN ACCUSED PERSON: ..... 54
TRIAL PRACTICE ..... 58
COMMENCEMENT OF CRIMINAL PROSECUTIONS ..... 58
TRIALS BEFORE THE MAGISTRATE'S COURTS ..... 58
TYPES OF PLEAS ..... 60
PROCEDURE IN TRIALS ..... 70

APPELLATE PRACTICE ..... 73
AN APPEAL AS A CREATURE OF STATUTE AND THE SCOPE OF THE APPEALS. ..... 74
POWER OF THE HIGH COURT TO CALL FOR RECORDS ..... 76
BAIL PENDING REVISION ..... 76
PROCEEDURE FOR REVISION ..... 79
SUMMARY OF PROCEDURE FOR REVISION. ..... 80
FORUM FOR REVISION; ..... 80
PROCEDURE FOR BAIL PENDING REVISION. ..... 81
NOTICE OF MOTION ..... 81
NOTICE OF MOTION. ..... 81
AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION ..... 83
AFFIDAVIT IN SUPPORT ..... 83
DOCUMENTS FOR BAIL PENDING REVISION ..... 84
ISSUE 2 WHAT ARE THE PROCEDURAL STEPS FOR AN APPEAL ..... 86
DUTY OF THE FIRST APPELLATE COURT ..... 88
POWERS OF APPELLATE COURT ON APPEALS FROM CONVICTIONS. ..... 88
APPEALS FROM ORDERS ..... 89
EFFECTS OF A CRIMINAL APPEAL ..... 89
KEY CONSIDERATIONS FOR GROUNDS OF APPEAL. ..... 93
GROUNDS FOR OPPOSING THE APPEAL. ..... 94
BAIL PENDING DETERMINATION OF AN APPEAL ..... 95
DOCUMENTS FOR LODGING AN APPEAL. ..... 96
NOTICE OF MOTION ..... 96
NOTICE OF APPEAL ..... 96
LETTER REQUESTING FOR RECORD OF PROCEEDINGS ..... 97
MEMORANDUM OF APPEAL ..... 98
MEMORANDUM OF APPEAL ..... 98
DOCUMENTS FOR BAIL PENDING APPEAL ..... 99
NOTICE OF MOTION ..... 99
NOTICE OF MOTION ..... 100
AFFIDAVIT IN SUPPORT ..... 101
AFFIDAVIT IN SUPPORT ..... 101

THIRD APPEALS ........ 104
APPEALS FROM THE COURT OF APPEAL. ........ 107
REMEDIES ........ 109
BAIL PENDING APPEAL ........ 109
NOTICE OF MOTION ........ 111
AFFIDAVIT IN SUPPORT OF THE APPLICATION FOR BAIL PENDING APPEAL ........ 113
NOTICE OF APPEAL ........ 115
MEMORANDUM OF APPEAL ........ 117
CHARGE SHEET ........ 119
NOTICE OF MOTION ........ 121
AFFIDAVIT IN SUPPORT ........ 123
CRIMINAL REVISION ........ 125
CIRCUMSTANCES FOR REVISION ........ 128
THE GROUNDS OF REVISION ........ 128
JURISDICTION FOR MAGISTRATE'S COURTS ........ 131
FOR GENERAL OR FURTHER PURPOSES, THE MERIT OF 'ACTING WITHOUT JURISDICTION' IS EXPLAINED HERE UNDER; ........ 131
NOTICE OF MOTION. ........ 135
AFFIDAVIT IN SUPPORT ........ 137
CRIMINAL PROCEEDINGS ........ 140
PRINCIPLE OF LEGALITY ........ 142
CHARGE SHEET. ........ 151
SUBMISSION OF NO CASE TO ANSWER ........ 161
THE INJUSTICE; (CONCERNING JURISDICTION OF COURTS) ........ 165
AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION ........ 174
APPELLANTS' WRITTEN SUBMISSION ........ 176
NOTICE OF APPEAL ........ 183
MEMORANDUM OF APPEAL ........ 186
EVALUATION OF EVIDENCE IN POLICE FILE. ........ 196
CHARGE SHEET ........ 199
CRIMINAL SUMMONS ........ 205
WARRANT OF ARREST ........ 207



SEARCH CERTIFICATE. .......... 213
POLICE BOND .......... 216
NOTICE OF MOTION. .......... 218
AFFIDAVIT IN SUPPORT .......... 220
SUMMONS .......... 222
PRODUCTION WARRANT .......... 223
WARRANT OF ARREST .......... 225
RELEASE ON BOND .......... 226
SEARCH WARRANT .......... 228
AFFIDAVIT IN SURPPORT OF NOTICE OF MOTION. .......... 232
NOTICE OF MOTION .......... 234
AFFIDAVIT IN SUPPORT .......... 236
AMENDMENTS TO THE ROME STATUTE .......... 259
KAMPALA AMENDMENTS .......... 259
WHAT ARE THE KAMPALA AMENDMENTS? .......... 259

# GENERAL OVERVIEW

## THE LAW APPLICABLE TO TRIAL PRACTICE

The law applicable to trial procedure in both the Magistrate Courts and the High Court includes the following (excluding appeals):

- The 1995 Constitution of Uganda
- The Judicature Act Cap 13
- The Magistrate Courts Act Cap 16
- The Trial on Indictments Act Cap 23
- The Criminal Procedure Code Act Cap 116
- The Evidence Act Cap 6
- The Evidence (Statements to Police Officers) Rules SI
- The Penal Code Act Cap 120
- The UPDF Act Cap 307
- Anti-Terrorism (Amendment) Act 2017
- The Pharmacy and Drugs Act Cap 280 (for statutory offences)

- The Food and Drugs Act Cap 278 (for statutory offences)
- The National Drugs Policy and Authority Act Cap 206 (for statutory offences)
- The Police Act Cap 303
- The Firearms Act Cap 299
- The Prevention of Corruption Act Cap121
- Case law
- Common law and Doctrines of Equity

**The major checklists/ issues arising at both the Magistrate Courts and High Court**;

1. Whether the facts disclose any offences?
2. Whether the evidence is sufficient to sustain the charges?
3. Whether the accused can be granted bail?
4. Whether the accused has any defenses?
5. What's the forum, procedure and documents?

**Mode of resolution of the checklist**

Discussion of issue one,

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 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 Section 188 and 189 of the Penal Code Act Cap 120,

Aggravated robbery contrary to section 286(2) of the Penal Code Act Cap 120.

**Discussion of issue two.**

Under this issue, one seeks to concretize on the possible offences disclosed.

# Ingredients of the offence:

First and foremost, one should have a thorough discussion of the ingredients of the offence. For example, if the offence disclosed is murder; a scrutiny of section 188 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 an iron bar which 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, where court held further that in all **UGANDA VS. HARRY MUSUMBA (1992) 1 KALR 83** 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 V YOSEFU. NYABENDA (1972)2 ULR 19** where court held that inculpatory facts should not be incompatible with other facts before court can rely on circumstantial evidence.

## ADMISSIBILITY OF EVIDENCE

This is looked at in line with the Evidence Act Cap 6 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 part 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.

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 V. RICHARD KADIDI & KABAGAMBE (1992-93) HCB 59** 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.

## CORROBORATIVE EVIDENCE

Corroboration is defined in **R. V. BASKERVILLE (1916, 2 K.B., 658),** as where on trial of an accused person, evidence is given in which material particulars 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.

## 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 cap 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 V. R (1969) E.A. 12** that one needs to have an educational background before giving an authoritative opinion on the matter before court; and accordingly, **R V. 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.

The above discussion therefore would help a state attorney to beef up his evidence.

# ARRESTS, SEARCHES, RECOVERY AND DISPOSAL OF EXHIBITS

## ARRESTS

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.

Every individual in Uganda has a constitutional protection as to personal liberty enshrined in the Bill of rights. (Article 23 of the 1995 constitution) Arresting a person therefore means interfering with his personal liberty. Therefore, a person will not be deprived of his liberty save as may be authorized by law

## POWER TO ARREST.

### 1) JUDICIAL OFFICERS

A judicial officer may at any time arrest or direct the arrest in his or her presence within the local limits of his or her jurisdiction, of any person for whose arrest he or she is competent at the time and in the circumstances to issue a warrant.

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. SEE **Section 19 of the Criminal Procedure Code Act Cap 116**

### 2) PRIVATE PERSONS

private persons any private person may arrest any person who is in his or her committee a cognizable offence, or whom he or she reasonably suspects of having committed a felony. **Section15(1) of the Criminal Procedure Code Act Cap 116, Section1(b) Criminal Procedure Code Act,** defines cognizable offence as any offence which on conviction may be punished by a form of imprisonment for one year or more: or

1. Which a conviction may be punished by a five exceeding from 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 under **Section 15 of Criminal Procedure Code Act CAP 116**

**RELIGIOUS KASULE V MAKERERE UNIVERSITY (1975) HCB 391**

The Plaintiff a practicing advocate was stopped at the eastern gate of Makerere University by askaris of the university who foulnd an electric wire in a boot and the driver didn't give a satisfactory explanation. He was assaulted and detained in the security office to speak to the askari. The plaintiff claimed general damages for unlawful arrest, detention and assault.

**Held** That the Makerere askaris are not police officers in the sense of that term as used in the Criminal Procedure Code Act. That the powers to arrest which they can exercise are those spelt out in the Criminal Procedure Code Act which stipulate that a private person may arrest any person who commits a cognizable offence in his presence or whom he reasonably suspects of having committed a felony. Where such person is arrested however, he must be without unnecessary delay be handed over to the police officer or be taken to the nearest police station.

That the plaintiff was wrongly detained and he was entitled to recover damages for wrongful arrest.

In **STEPHEN OPOROCHA V. UGANDA 1991 HCB 9** it was **Held**; that a private person may arrest without a warrant any person who in his view commits a cognizable offence or whom he reasonably suspects of having committed a felony, PW1 arrested the accused on suspicion of theft of engine oil. The arrest of the suspect and his subsequent detention were therefore- lawful because the arrest was effected on a reasonable suspicion of commission of a felony of theft

## 3. POLICE OFFICER

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 arrest-able offence.

A female person shall only be searched by an authorized woman.

**Section 18 Of The Criminal Procedure Code Act**, 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.

**Section 10 of the Criminal Code Act** allows any police officer to arrest, without an order from a magistrate and without a warrant, any person whom suspected upon reasonable grounds of having committed a cognisable offence.

**Section 23 of the Police Act** provides that a police officer may, without a court order and without a 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

# PREVENTIVE ARREST

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. **Section 25 of Criminal Procedure Code Act**.

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.**Section 26 of Criminal Procedure Code Act**

Under **Section 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 alia 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 ay arrest any detain that person.

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

## REMEDY FOR UNLAWFUL DETENTION

A person arrest or any other person on behalf of the person arrested who has reason to believe that any person is being unlawfully detained under preventive arrest may apply to a magistrate to have such person released with or without security under **Section 24(4) of the police Act Cap 303**.

**ARREST WITH A WARRANT**

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 statin 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 the court. **Section 56 (2) of Magistrate Court Act and Section 6 of trial on indictments 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 the judicial officer on the basis of a complaint. **Section 42 of the Magistrate Court Act**

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 **Section 58(1) of Magistrate Court Act Cap 120 as Amended** & **Section 7 of Trial On Indictment Act Cap 23**.

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. **Section 58 (3) of Magistrate Court Act** Any court issuing a warrant may if its immediate execution is necessary and no police officer or chief is immediately available, direct it to any person and that person shall execute the warrant. **Section 58(2) of Magistrate Court Act Cap 120 as Amended.**

## FORM CONTENTS AND DURATION OF WARRANT OF ARREST

**Section 56 of the Magistrate Court Act Cap 120 as Amended,** provides for the form, contents and duration of a warrant of arrest these are:

**FORM**

**Section 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.

**CONTENT**

**Section 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 issue the warrant or before some other court having jurisdiction in the case to answer to the charge maintained in it and to be further dealt with according to the law.

**DURATION**

**Section 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

a) The prosecution institutes charges with a charge sheet or indictment. under **Section 42(6) of Magistrate Court Act**, where a charge has been drawn up and laid under **Section 42(1) (b)**, the 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 not notwithstanding the fact that time appointed in the summons has not yet lapsed.

c) Upon failures to honor 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 (**Section 55 (1) of the Magistrate Court Act** warrant shall only be issued when its proved to court by evidence on oath that the summons directed to the person were duly served. **Section 55(4) of Magistrate Court Act**

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATE COURT AT LUGAZI

## WARRANT OF ARREST

To: All police officers

Whereas KENNETH SEMATIKO of Gooli village Kiyindi parish Najja sub county, Buikwe district, stands charged with the offence of doing grievous harm contrary to section 219 of the penal code act cap 120.

You are hereby directed to arrest the said KEITH SEMATIKO and parade him /her before me his worship Joel Kaaya, Chief magistrate, Lugazi chief magistrate court.

Herein fail not

Dated this 13 day of October 2019

____________________

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 MCA, but if any such variance appears to the court to be such that the accused has been deceived or misled 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. **This is provided for under Sections 58-60, 62 Magistration Court Act and 6-7 Trial on Indictment Act**

In **MWANGI S/O NJOROGE V R (1954)21 EACA 377**, 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 **Section 62 of Magistrate Court Act Cap 120 as Amended**. 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. **Section 60 of Magistrate Court Act Cap 120 as Amended**.

A warrant of arrest may be directed to one or more police officers or chiefs named in it or generally to all police officers or chiefs and any or all of the persons to whom it is directed may execute the warrant. **Section 58 Magistrate Court Act, 7 Trial on Indictment Act**.

**Section 58(2)** further provides that any court issuing such a warrant may, if its immediate execution is necessary and no police officer or chief is immediately available, direct it to any other person, and that person shall execute the warrant. In some situations, the warrant may be directed to a landowner, farmer or manager and such person may execute the warrant. **Section 59 Magistrate Court Act**.

It is important to note that sometimes if the warrant is directed to police officers or chief, he or she is permitted to endorse another police officer or chief's name on the warrant and the latter person can execute the warrant.

**Section 60 Magistrate Court Act**. Also, when a warrant is directed to more officers or persons than one, it may be executed by all or by any one or more of them. **Section 58(3) Magistrate Court Act**.

Under **Section 62 Magistrate Court Act** a warrant of arrest may be executed at any place in Uganda

**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 (**Section 63(1) of Magistrate Court Act Cap 120 as Amended**.

The procedure on arrest of person outside jurisdiction is provided for under **Section 63**

When a warrant of arrest is executed outside the local limits of the jurisdiction of the court by which it was issued, the person arrested shall, be taken before the magistrate within the local limits of whose jurisdiction the arrest was made, unless the court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the magistrate within the local limits of whose jurisdiction the arrest was made, or unless security is taken under **Section 57 Magistrate Court Act,**

**subsection 2** is to the effect that if the person has not been granted bond or bail, then the magistrate should, direct his or her removal in custody to that court; except that if the person has been arrested for an offence other than murder, treason or rape, and he or she is ready and willing to give bail to the satisfaction of the magistrate, or if a direction has been endorsed under **Section 57** on the warrant and the person is ready and willing to give the security required by that direction, the magistrate shall take such bail or security, as the case may be, and shall forward the bond to the court which issued the warrant.

If there are any irregularities or defects in the warrant, the validity of the proceedings related to the same shall not be affected. This is provided for under **Section 64 Magistrate Court Act** which stipulates that any irregularity or defect in the substance or form of a warrant, and any 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, shall not affect the validity of any proceedings at or subsequent to the hearing of the case; Section 12 Trial on Indictment Act.

## 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. **Section 67 (1) of Magistrate Court Act Cap 120 as Amended**.

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 **Section 67(2) of Magistrate Court Act Cap 120 as Amended**. The endorsement shall be sufficient authority to the OC of prison to whom it's directed to execute the order.

## 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. **Section 2 (2) of Criminal Procedure Code Act**. 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 CPCA**

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

**P.C ISMAIL KISEGERWA & ANOER V UGANDA (CR. APPEAL NO.6 OF 1978) [1978] UGCA 6**, 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) of the constitution 1995**.

**KANANURA ANDREW AND OCS V UGANDA HMCA NO. 010203 of 2014** (on the powers of police officers to arrest without a warrant)

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

## 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. **Section 69 of Criminal Procedure Code Act, S.7 of Criminal Procedure Code Act**, **Section 27 (1) of the police Act 303 as Amended**.

**Section 27 (1) of the police Act Cap 303 as Amended**, 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 and 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 **Section27(3) of the police Act Cap 303 as amend**.

**Section 27 (5) of the police Act of cap 303** requires that the recordings in **Section 27 (1) and Section 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.

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 **Section 70 of the Magistrate Court Act Cap 120 as Amended** , 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 , receptance 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

A search warrant may be directed to one or more police officers or chiefs named therein or generally to all police officers and chiefs. However, where the immediate execution of search warrant is necessary and no police officer or chief is available, the issuing court may order any other person to carry out the search. Where a search warrant is directed to more than one officer or person, it may be executed by all or any one of them. **Section 58 Magistrate Court Act**

A Search warrant directed to a police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed. The position is the same as regards chiefs. **Section 60 Magistrate Court Act**

Every search warrant may be issued and executed on a Sunday and shall be executed in time 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 execute it at any hour **Section 71 of the Magistrate Court Act**.

Persons residing or in charge of places liable for a search but are closed must upon production of search warrant, allow the officer ingress into the premises **Section of 72 of the Magistrate Court Act Cap 120**.

**Section 27 (9) of the police Act Cap 303** as Amend requires that searches are carried out I human member and unnecessary damage or destruction to property be avoided. (Provision uses shall).

OBJECTION MY LORD

**Section 74 Magistrate Court Act** provides that **Sections 56(1) and (3), 58, 60 and 62** shall, so far as may be, apply to all search warrants issued under **section 70**. Therefore, the form, content and duration of a serach warrant is similar to that of an arrest warrant as already discussed

**REPUBLIC OF UGANDA**

**IN THE CHIEF MAGISTRATE'S COURT 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 thing;

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 said building; desembled as aforementioned 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 Gooli 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

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 interfering 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 in 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**, the learned justice held that despite the fact that he may know where most of these items initially 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 laboratory .... Court does not 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 marks and labels the exhibits showing the case file numbers

3. If the exhibit consists of for example money; the notes, coins and their denominations should be marked and their serial members 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 kept 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

## TENDERING IN OF EXHIBITS AT TRIAL

At trial exhibits should be tendered as follows:

a) The prosecutor while leading 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 admitted in court as 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 evidential 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

# Institution of proceedings

## MAGISTRATE COURTS

Criminal proceedings according **Section 42 of Magistrate Court Act Cap 120 as Amended** can be instituted in various ways. These are:

a) By a police officer bringing a person arrested with or without a warrant before 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**.

## SEARCH OF CLOSED PLACES.

Whenever any building or other place liable to be searched is closed, any person residing in or being in charge of such building must, on demand of the officer or person executing the search warrant, and on production of the warrant, allow him free entrance and exit from the building. The person in charge of the building is also required to afford the person searching all reasonable facilities for the search. **Section 72 (1) Magistrate Court Act**. If entrance or exit is not allowed, the person executing the warrant is authorized to break in or break out of the building. **Section 72(2) Magistrate Court Act and Sections 3 and 4 Criminal Procedure Code Act.**

## SEARCHING WOMEN

If any person is found in or near the building to be searched, and is reasonably suspected of concealing on his body any article for which search should be made, such person may also be searched. If the person is a woman, she must be searched by a woman with strict regard to decency. **Section 72(3) Magistrate Court Act** and **Section 8 Criminal Pr ocedure Code Act** which stipulates that Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency. **Similarly, Section 23(2) of the Police Act** stipulates that a female person shall only be searched by an authorised woman.

**DETENTION OF PROPERTY SEIZED.**

When anything is seized and is brought before a court, it may be detained until the conclusion of the case or the investigation. Reasonable care must be taken for its preservation. **Section 73(1) Magistrate Court Act**. If any appeal is made, or if any person is committed for trial, the court must order it to be further detained for the purpose of appeal or the trial. **Section 73(2) Magistrate Court Act**. If no appeal is made, or if no person is committed for trial, the court must direct such thing to be restored to the person from whom it was taken, unless the court sees fit, or... authorized, to dispose of it otherwise. **Section 72(3) Magistrate Court Act.**

**ELIAS AND ORS V PASMORE AND ORS (1934) 2 KB 164**

In order to effect the arrest of Hannington, the defenandts, police officers entered the plaintiff's premises and seized a number of documents and later returned some of them. The rest were used as exhibits in the trial of the plaintiff and although the trial was concluded none of the documents were returned.

It was held that although the original seizure of the documents was unlawful, it was excused as regards documents used on trial, it being the interest of the state that material evidence should be preserved. That the police had a right to search H on his arrest and also to seize any documents in his possession which would form material evidence against him or anybody else on a criminal charge. That any property so taken might be retained by the police until conclusion of proceedings under any such a charge. Order for return of the documents.

# SUMMONS

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

Criminal summons per **Section 44 of Magistrate Court Act Cap 120**, 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 **Section 50 of Magistrate Court Act Cap 120 as Amended**, 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 **Section 45 (1) of Magistrate Court Act Cap 120 Amended**

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. **Section 45 (1) of Magistrate Court Act Cap 120**, 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 diligence, 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 whom the summon is so left shall, if so required by the summoning officer, sign a receipt for it on the back of the original summons – Section **46 magistrate courts Act Cap 120 as Amended**.

### 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. **Section 47 Magistrate's Courts Act**

## SERVICE ON COMPANY

Service may be effected by serving it on the secretary, 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**: Section 49 of Magistrate Court Act Cap 120 as Amended**

## PROOF OF SERVICE WHEN SERVING OFFICER NOT PRESENT

An affidavit purporting to be made before a magistrate 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.

Section 51 of Magistrate Court Act

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.

# SUMMONS

**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 thereafter 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 219 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

# PLEAS

## ARRAIGNMENT

Arraignment is the process by which an accused is informed of the charges that have been preferred against him/her. 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. **(R v. Inn.0 criminal reports 231)**

## THE PROCEDURE FOR RECORDING A PLEA OF GUILTY

These were laid out in **ADAN v. REPUBLIC (1973) EA 445** is that:

a) The charge and all essential ingredients of the offence should be explained 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 change of plea entered and trial should proceed

e) If there is no change of the plea a conviction should be recorded and a statement 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 of previous conviction (autre fois convict) or acquittal (autre fois acquit)

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. **Section 89 of Magistration Court Act Cap 120 as Amended**.

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. **Section 124 (5) of Magistration Court Act Cap 120.**

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 **Artircle 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 **Section 124 (5) of Magistrate Court Act Cap 120**, where a plea of pardon is entered. **IN SMITH PON ACHAK & 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. **Section 124 (3) of Magistrate Court Act Cap 120 as Amended**

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.

## IDENTIFICATION OF OFFENCES

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

**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 196**7, 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.

**Section 2(s) of the penal code act cap .120** defines an offence as an act attempt or omission punishable by law.

Principle of minor and cognate offences.

Where a person is charged with an offence and facts are proved which reduce it to a minor cognate offence, he or she may be convicted of the minor offence although he or she was not charged with it. S.145 of MCA and S.87 of TIA.

2. 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 constitution 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. The acts which the applicant

## EVALUATION OF EVIDENCE

**Section 2 (d) of the evidence Act Cap 6** defines evidence as

It is important to evaluate evidence before sanctioning a file as the president state attorney (DPP) is 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.

Further in the case of **WOOLMINGTON 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 denning in **MILLER V MINISTER OF PENSIONS (1947)2 ALLER 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.

State the types of evidence and their admissibility e.g. direct evidence, **Section 59 of Evidence Act Cap 6**, documentary Evidence, hearsayy evidence is not admissible.

## ROLES OF THE DIRECTOR OF PUBLIC PROSECUTION

**Article 120 (1) of the constitution** establishes the office of the DPP

The roles/ functions of the DPP are stipulated under **Article 120(3) of the constitution** and these include:

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

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

c) Take over and continue any criminal proceedings instituted by any other person or authority. Section 43(1)(a) of **Magistrate Court Act Cap 16 as Amended.**

d) To discontinue any stage before judgement 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 proceeding commenced by another person or authority except with the consent of the court.

**Article 120(4) (b) of the constitution** requires that the power of discontinuance is exercised exclusively by the DPP themselves. The same is emphasized under **Section 135 of the Trial Indictment Act** and **Section 121 of the Magistrate Court Act Cap 16 as Amended.**

**BASAJABALABA V KAKANDE CRIM. REVISION NO.2 OF 2013**. The court noted that where the DPP had applied to take over the private prosecution and having done so, applied to discontinue the proceedings to which court allowed the application then the proper procedure for discontinuance of private prosecution had been followed.

## ROLES OF THE INSPECTOR OF GOVERNMENT

**Article 223(1) of the constitution 1995** 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 1995** include:

- To investigate any act, omission, advice, decision or recommendation by a public officer or any authority to which this article applies, taken, made, given or done in exercise of administrative functions.
- To eliminate and foster the elimination of corruption, abuse of authority and of public office.

**Section 33(1) of Anti-Corruption Act**

## PRE-TRIAL REMEDIES

# 1) BOND.

Under **Article 23(4) of the Constitution 1995** a person arrested maybe released after 48 hours pending investigations before a court. **Section17(1) of the Criminal Procedure Code Act** 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. **Section 24(2)(b) of the police Act Cap 303** requires that a Person released on police bond must appear before a senior officer at the time specified in the bond **Section 38 of police Act 303** provides that bond is free though a recognizance may take.

Procedure

1) Make an oral or written application to the officer in charge for release of the suspect.
2) Attach identification document of the suggested sureties for introductory letters from the l.c.1
3) Sureties must be two in number; adults and of sound mind

## 2. 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 to supervise 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, may have the representative of the person write to the DPP by formal letter requesting them to intervene and the DPP may intervene under **Article 120(5) of the Constitution 1995.**

## 3) 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)**

**1. OKUDI ROBERT**

**EJAKAIT JOSEPH ………………………. APPLICANTS**

**VERSUS**

**1. ATTORNEY GENERAL**

**CBULELE POLICE STATION (OMODO NELSON)**

**3. THE DPC BUIKWE (JOEL OMIAJI) ………………….RESPONDENTS**

# NOTICE OF MOTION

Under Article 23(4) of the constitution of Uganda 1995, S (1) of the Criminal Procedure Code Act, 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 or soon as there after as counsel for the applicants can be heard for orders that.

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

b) Costs of this application can be provided for.

TAKE FURTHER NOTICE that the grounds in support of this application are contained in the affidavit of the 1st applicant attached hereto but briefly are as follows:

OBJECTION MY LORD

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

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

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

iv) 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:

1. The O/C Bulele police station

2. The DPC Buikwe district

Drawn and filed by

SUI GENERIS,

P.O. Box 7117, Kampala

Uganda

## Affidavit in support

State:

1) Charges charged

2) Date when applicant was incarcerated

3) Process of arrest and whether they informed of the charges.

4) Number of bond applications

5) Administrative step taken (attach letter)

6) Applicant has been held for more than 48 hours in custody

7) Continued detention is unconstitutional

## Pre-trial disclosure

Pre-trial disclosure is intended to safe guard against ambush. Pre-trial disclosure is promised 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.

What may be disclosed.

Pre-trial 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 prima facie 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 OF 2012**, the court held that non-disclosure is not fatal the proceedings. Whenever it's 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 **Section 221(1) of the Magistrate Court Act Cap 16** as Amended, a chief magistrate exercises general powers of the supervision over all Magistrates courts within their area of jurisdiction

**S.221(2) of Magistrate Court Act Cap 16 Amended** permits the Chief magistrate 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, decision, judgement or order
- Regularity of any proceedings before that magistrate court

Under **Section 221(3) of Magistrate Court Act Cap 16 as Amended**, 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 **Section 34 of Criminal Procedure Code Act**. The high court may order for a trial. The trial is ordered on condition that it's before another judicial officer. **UGANDA V. KATO KAJUBI; BRIAN ISIKO V UGANDA (CRIMINAL SESSION 148 OF 1992)**

Procedure

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

# PRE-TRIAL PROCEEDINGS

## Role of advocate

The advocate has the following role in pre-trial proceedings:

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.

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 Cap 303 as Amended**provides that no fee is charged for police bond.

## Procedure for applying for Police Bond

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

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

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

- The health of the accused.

The advocate should get two sureties with IDs and security.

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.

## PROCEDURE FOR APPLYING FOR AN ORDER OF RELEASE.

The Advocate prepares an application for an order of release. This is by Notice of Motion supported by an Affidavit (Under **Section 17(1) of the Magistrates Courts Act Cap 16**.

### 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 CONTRAVENTION 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; 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.

## ASSESSMENT AND ADVICE ON WEAKNESS OF INVESTIGATIONS

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

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**. This should be done with consent of the DPP.

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.

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.

OBJECTION MY LORD

UGANDA POLICE

POLICE FROM 53

LUGAZI CENTRAL POLICE STATION

Crb: 689/2019

Date: 14th October 2022

## CHARGE SHEET

Uganda versus:

A1: OGUTTU COLLINS, m/a, aged 25 YRS, Itesot by tribe, Security guard, resident of Gooli village, Kiyindi sub county, Buikwe district.

A2: Osillo Pascal Ben m/a, aged 32 years Itesot by tribe, security guard residence of Gooli village, kiyindi parish Najja Sub County, Buikwe district

A3: Oballa Sillas m/a aged Langi by tribe, managing director AAA(u) ltd, resident of Gooli village, Kiyindi parish Najja sub county Buikwe district.

COUNT 1: STATEMENT OF THE OFFENCE.

Doing grievous harm to another contrary to **section 219 of the Penal Code Act**

PARTICULARS OF THE OFFENCE.

Oguttu Collins, Osillo Pascal Ben and Oballa Sillas who is still at large on the 8th October 2019 at 1700hrs or there about at Oballa Sillas' home in Gooli village, Kiyindi Parish, Najja subcounty, Buikwe district did beat up Ahimbisibwe Benjamin thereby causing him serious injuries to his lips, left knee, left arm, jaw, chess, bam and abdomen.

COUNT 2: STATEMENT OF THE OFFENCE.

Assault Occasioning actual bodily harm contrary to **Section 236 of the Penal Code Act**

PARTICULARS OF THE OFFENCE

Oguttu Collins, Osillo Pasacl Ben and Oballa Sillas who is still at large on 8th October 2009 at1700 hrs or thereabout at Keith Sematiko's home in Gooli village Kkiyindi Parish, Najja sub county, Buikwe district did beat up Ahimbisibwe Benjamin thereby causing him bodily injuries to his lips, left knee, left arm, chest, bam and abdomen

___________________

D/ASP (kikaya didimas)

_________________

Officer Preferring charge

____________

Magistrate

**YAKOBO UMA AND ANOR V R (1963) EA 542**. 2 men were charged in the same charge with committing separate offences, they committed offences in the same village against the same complainant A1, 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

**Section 87 of the Magistrate Court Act Cap 16** as Amended and **Section 24 of Trial Indiction Act Cap 23 as Amended** 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 parts of one whole transaction.

In **R v CLARKSON [1971] 1 WLR 1402**, 2 people 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 justice 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 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. **Section 86 (1) of Magistrates Court Act Cap 16 as Amended** and **Section 23 of Trial Indiction Act Cap 23 as Amended**.

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. **Section 86 (2) of Magistration Court Act Cap 16 as Amended**.

The court may at any point during the trial if it's of the view that the person accused may be embarrassed in his or her defense 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 MCA.

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 count 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 counts before it, the evidence sustains. An accused cannot be convicted on one of the counts, no finding is made on the other.

## DUPLICITY OF CHARGES

A charge is duplex if contains more than one offence in one count. Such a charge is defective 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 **Section 42(2) of Magistrate Court Act** and **Section 50 of Trial Indiction Act.**

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 magistrate's court at any stage of a trial that;

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

b) The charge is defective in a material particular or

c) The accused desires to plead guilty to an offence other than the offence which he/she 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 **Section 132 (2) of the Magistrate Court Act**. It is as follows:

1) Court calls upon the accused person to plead to the amended 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 seek adjournment and thereupon may,

4) Give or 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 MCA.

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 **Section 132 (5) of the Magistrate Court Act**, 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 **Section 132(16) of the Magistrate Court Act**, 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.

# DRAFTING DOCUMENTS

## CHARGES

A charge is defined as a written statement containing an 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 burglary, he or she can be convicted of kindred offences under sections 295,296,278 or 300 of the Penal Code Act.
- If one is charged with obtaining money by false pretense, 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 **UGANDA. 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.

## BAIL IN MAGISTRATES' COURTS

The law applicable to bail in the Magistrates' Courts includes:

The Constitution of the Republic of Uganda 1995

The Magistrate Courts Act Cap 16

The Judicature Act Cap 13

The Judicature (Criminal Procedure) (Applications) Rules SI 13-8

Case law

Common law and doctrines of Equity.

The basic queries/ issues one ought to address court on are;

Whether the accused person has a right to bail?

If so, what formalities should be followed to secure bail?

What are the documents (if any)?

**Discussion**

The Right to apply for bail is enunciated in **Article 23(6)(a) of the Constitution 1995** and the court may grant bail on such conditions as it deems fit. This principle seems to have been modified in **UGANDA VS RT. COL. KIIZA BESIGYE** where Justice Lugayizi held that bail is a constitutional right which ought to be granted to the accused person.

Bail in the magistrates' Courts is provided for in **Section 75 of the Magistrate Courts Act**. The section goes on to set out offences which are bailable in the Magistrates' Courts. Practically, all offences which can be tried by a Magistrate's Court are bailable in the same court. This is a clear indication of the fact that for a Magistrate to grant bail, he ought to have jurisdiction to try the offence.

**Section 76 of the Magistrate's Courts Act** sets out the considerations to be taken into account before an accused person can be granted bail. These include;

- The nature of the Accusation,
- Gravity of the offence,

- Antecedents of the accused, inter alia.

It must be noted that the practice of magistrates' Court in granted bail are shrouded with a lot of discretion. FN Othembi states that court must always exercise its Jurisdiction judiciously and always give the accused a benefit of doubt. Where the bail is refused or granted on unfavorable terms by a Magistrate below the rank of Chief magistrate, an accused person can apply to a chief Magistrate for Review of the order.

## MANDATORY BAIL

This is provided for in Article 23(6) (b) and (c). In respect to offences triable by the High Court and the subordinate courts, the accused person is entitled to statutory bail after a period on remand, before commencement of the trial of 120 days.

In respect to offences triable by only the High Court, the accused person is entitled to statutory bail after a period on remand, before committal to the High Court for a period of 360 days.

## PROCEDURE FOR APPLICATION FOR BAIL IN THE MAGISTRATE COURTS

The Judicature (Criminal Procedure) (Applications) Rules SI 13-8 provides in Rule 3 that applications for bail in the Magistrates' Courts may be made orally or in writing, and if in writing shall be supported by affidavit. Where the application is being made orally, this can be made; instantly before the hearings, & submissions by magistrates or n be after examination in chief /cross/re-examination. Counsel for the accused persons applies to court orally for bail. On the strength of sections 75 and 77 of the Magistrate Courts Act; counsel states the accused;

- Has a place of abode within the jurisdiction of court;
- Will not interfere with witnesses;
- Has substantial sureties;
- Will not jump bail, inter alia

Counsel for the state will then advance reasons to show why bail should not be granted, by response to the Counsel for the Accused's submissions on bail.

At this point, the Magistrate handling the matter will then grant or refuse to grant bail, giving his reasons. It must be noted that it is in rare circumstances that bail is not granted. The accused may be required to deposit money

which he or she stands to forfeit if he defies the conditions granted for bail. It must further be noted that money paid for bail is by law refundable.

In practice, when magistrates make the order, one obtains receipts after payment.

## APPLICATION FOR BAIL IN WRITING IN THE MAGISTRATE COURTS

The Judicature (Criminal Procedure) (Applications) Rules SI 13-8 provides in Rule 3 that applications for bail in the Magistrates' Courts may be made orally or in writing, and if in writing shall be supported by affidavit.

Applications to the Magistrate Courts are by Notice of Motion supported by an affidavit. In the Affidavit, the Accused depones to facts that;

- Has a place of abode within the jurisdiction of court;
- Will not interfere with witnesses;
- Has substantial sureties;
- Will not abscond bail, inter alia

This application is served on the Police as a matter of statutory obligation. This is provided for in **Rule 4(1) of the Judicature (Criminal Procedure) (Applications) Rules SI 13-8**.

## 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 draft a Notice of Motion and Affidavit in support. **Rule 2 of The Judicature (Criminal Procedure) (Applications) Rules SI 13-8** 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 14 of the Trial on Indictments Act** 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.

### JURISDICTION

It must be noted that a court should have statutory authority pecuniary, geographically inter alia to try a case. The power to try a case has to be conferred by statute. Save for the High Court which has inherent and original jurisdiction in all matters, criminal jurisdiction differs from grade of a judge to another.

## 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 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 or Three.

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:

### RIGHT TO LEGAL REPRESENTATION;

This is conversed in **Article 23 (5)(a) of the Constitution 1995**. 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** 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)** 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 Constitution** 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) of the constitution.**
- A right to be informed immediately, in a language that the person understands of the nature of the offence under **Article 28 (3) (b)** of the constitution.
- A right to be given adequate time and facilities for the preparation of his or her defense under **Article 28 (3) (c) of the constitution**.
- 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)** of the constitution.
- 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)** of the constitution.
- A right to be afforded, without payment by that person, the assistance of an interpreter if that person cannot understand the language used at the trial, under **Article 28 (3) (f) of the constitution**.
- 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)** of the constitution.

## 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 informing 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 **Section134(1) of Trial Indictment Act** 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 defense 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 118** to put a criminal under a detention to protect him from public menaces. **Section 2(1) of the Habitual Criminals (Preventive Detention) Act Cap 118** 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:

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.

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).**

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 the magistrate's courts

## PROCEDURE

Trials before the Magistrate's Courts are governed by the Magistrate Courts Act Cap 16. Before a Magistrate handles a matter, as a question of prudence he or she should have jurisdiction to handle the matter.

The first step in the procedure before Magistrate Courts is;

The prosecution introduces its self and the accused appearing before a Magistrate 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**. Upon appreciation of the charges against him, he or she takes plea. 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 Trial on Indictments Act Cap 23** provides that if accused person pleads guilty, the plea shall be entered, and he may be convicted thereon.

## 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.

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 opens the defence's case.

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 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 13**.

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

## TYPES OF PLEAS

### PLEA OF NOT GUILTY

This simply means that the accused does not admit the truth of the charge. If the accused keeps quiet, a plea of not guilty is entered.

### PLEA OF GUILTY

This simply means that the accused does admit the truth of the charge. This plea should be clear and unequivocal. The accused has to plead to the ingredients of the case, one by one.

Court held in THOMAS MUFUMU VS R. [1959] EA 265 that It is very desirable that a trial judge in a plea of guilty [in a murder case], he shall not only satisfy himself that the pleas is an unequivocal plea but should satisfy

himself also that the accused has pleaded to all the elements of murder after being appraised on the fact that murder carries a death sentence, and that he has a right to an advocate.

It must be noted however, that courts are reluctant in enforcing pleas of guilty for capital offences. This was noted with approval in **KANYIKE VS UGANDA Crim. Appeal 34 of 1989**.

## PLEA OF AUTRE FOIS AQUIT

This is conversed in section 89 of the Magistrates Courts Act and section 32 of the Trial on Indictments Act. The elements desired for this plea to stand are:

1. The accused should have been tried by a court of competent jurisdiction;
2. Accused should have been acquitted of the offence;
3. That acquittal should not have been set aside.

Once the magistrate or judge presiding over the case is satisfied, then the accused will be acquitted. This is premised on the principle of Double Jeopardy; thus, one shall not be tried twice for the same offence.

## PLEA OF AUTRE FOIS CONVICT

This is conversed in section 89 of the Magistrates Courts Act and section 32 of the Trial on Indictments Act. The elements desired for this plea to stand are:

1. The accused should have been tried by a court of competent jurisdiction;
2. Accused should have been convicted of the offence;
3. That conviction should not have been set aside.

Once the magistrate or judge presiding over the case is satisfied, then the accused will be discharged.

## PLEA OF PARDON

A plea of pardon is only exercised by the President and is provided for in Article 121(4) of the Constitution 1995.

It must be noted that an accused can be allowed to change his plea any time before conviction. This was fortified by Wambuzi CJ in UGANDA vs MATOVU (1973) HCB 195.

## CHILDREN OF TENDER 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 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 convincing that the child understands the nature of the oath, the magistrates makes a ruling that the child is competent to take oath

## 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) Ea 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** 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**. There have to be proceedings before a magistrate's court.

## PROCEDURE

The Prosecutor on the instructions of the DPP or with consent of the court, may before judgment is pronounced withdraw any person from prosecution.

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.

If the withdrawal is made after the accused has made his defence; then the accused is acquitted.

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 constitutions 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. 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.

## WITNESSES

Witnesses are summoned under section 94 (1) of the Magistrate Courts Act; 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

The procedure is simply filling out Form 53; summons for witnesses to appear.

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 as on e 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., 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.

## TRIALS BEFORE THE HIGH COURT

## ARRAIGNMENT

This is provided for in section 60 of the Trial on Indictments Act Cap 23. 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 oc 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.

## PLEA BARGAINING

This is canvassed by section 64 of the Trial on Indictments Act and this refers to a situation whereby the accused wishes to plead guilty to another offence other than the offence he or she is charged with.

## PROCEDURE

- The advocate for the prosecution signifies his consent to the plea bargaining.
- The Advocate for the Accused seeks leave of court to grant an amendment of the indictment.
- The accused then goes through the process of arraignment.

## 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) 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

The assessors are summoned 7 days before the day fixed for holding particular sessions of the High Court.

The chief Registrar sends a letter to a Magistrate having jurisdiction in which sessions are to be held requesting him summons some persons named on the list as assessors.

The summons should be in writing requiring an assessor's attendance at a time and place specified in the summons. Failure to attend as an assessor leads to payment of a fine of 400= or less!

Section 67 of the Trial on Indictments Act provides that the assessors do take oath to impartially advise court to the best of their knowledge, skill and ability.

Section 68 of the Trial on Indictments Act provides that if an accused person wishes to challenge an assessor, this has to be done before the assessor is worn in. some of the grounds which can be relied on include:

- The partiality; personal cause of the assessor (for example infirmity).
- Character of the assessor rendering him unfit
- Inability to adequately understand the language.

It must be noted that absence on an assessor, with sufficient cause or where it becomes impracticable to enforce his attendance, the trial proceeds with aid of another assessor.

Section 71 of the Trial on Indictments Act provides that after the assessors have been chosen and sworn in; the Advocate for the prosecution open the file and adduce evidence. 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 **Festo Androa Asenua And Anor V Uganda SCCA No.1 Of 1998**, court defined a confession o 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 substantially 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 adduce an untrue confession

### RETRACTION AND REPUDIATION

Retraction of a 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 threats as stated under s.24 of Evidence Act.

Repudiation of a confusion arises where the accused person completely denies having made the confession

In R V. Kengo And Anor (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 ae 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. 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. Upon appreciation of the charges against him, he or she takes plea. 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 23 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. The Judge 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 defense 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 functus 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.

# APPELLATE PRACTICE

## APPEALS IN CRIMINAL MATTERS

The law applicable to this scope of the study is:

- The Constitution of the Republic of Uganda 1995
- The Judicature Act Cap 13
- The Penal Code Act Cap 120
- The Magistrate Courts Act Cap 16
- The Criminal Procedure Code Act Cap 116
- The Evidence Act
- The Trial on Indictments Act Cap 23
- The Judicature (Court of Appeal) Rules Directions SI13-8
- The Judicature (Supreme Court) Rules Directions SI13-10
- Judicature (Criminal Procedure) (Applications) Rules SI 13-8
- Practice Directions 2 of 2005
- Practice Directions 4 of 2005
- The UPDF Act Act 7 of 2005
- The UPDF (Court Martial Appeal Court) Regulations SI 307-7
- Case law
- Common law and Doctrines of Equity

The basic issues which arise out of an appeal/ a checklist for a prudent lawyer include:

- Whether X has a right of appeal?
- Whether the facts disclose any grounds of appeal?
- Whether the grounds can be opposed successfully?

- What other remedies are available to the parties?
- What is the forum, procedure and documents?

The following points should be noted under appeals:

1. An appeal is a creature of statute
2. An appeal has a scope; that is can be on a point of law, point of fact or point of mixed law and fact.
3. An appeal has a time frame.
4. At times an appeal needs a certificate of importance.
5. These are discussed below under distinct heads:

## AN APPEAL AS A CREATURE OF STATUTE AND THE SCOPE OF THE APPEALS.

**Brief facts**;

It is alleged that on the 12/05/2021 while on duty, customs officers in kitgum District intercepted Kamba willy driving truck Reg. UAZ 112C as he was returning from South Sudan.

It was discovered that the truck was loaded with 140 bombers of 10 packets of super match cigarettes each containing 20 sticks.

At plea taking Kamba willy pleaded guilty without being read to the essential ingredients of the offence nor explaining to him the implications of his plea for unequivocal admission.

A plea of guilty was entered and sentence further delivered. He was subsequently sentenced to pay a fine of the cigarettes and in default 2years imprisonment.

**Issues;**

1. What are the most appropriate remedies?
2. What are the merits and demerits of the client's case in the circumstances?
3. What is the procedure, forum and documents needed?

**Law applicable**;

1. The 1995 constitution of Uganda
2. The East African Community Customs Management Act 2004
3. The judicature act cap 13
4. The criminal procedure code Act cap 116
5. The constitution (sentencing Guidelines for courts of judicature) (practice) directions 2013
6. The Magistrates Court Act cap 16 as amended
7. The magistrates court (magisterial areas) instrument2017(SI no. 11of 2017)

**RESOLUTION OF ISSUES**

1. The **most appropriate remedies**

## 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.

(Benjamin Odoki; A guide to criminal procedure in Uganda, 3rd Edition LDC 2006 page 207)

NOTE; there is nothing like review in criminal matters. That only applies in civil.

## CIRCUMSTANCES FOR REVISION

Revision is a remedy to a party only after the final judgement of the court has been pronounced. I

It cannot be applied for against an interlocutory or preliminary decision of the court. **MUSOKE V UGANDA H/CCRIM REV NO 81/1963**

Revision is an available remedy to parties where there is no statutory right of appeal as per **section 50(5) criminal procedure code Act**

**(Republic V Dunn (1965) EA 567)**

It is also available where an appeal has filed but later withdrawn **(UGANDA V POLASI KASUMBA (1970) EA567)**

# POWER OF THE HIGH COURT TO CALL FOR RECORDS

**Article 139(1)** of the constitution

**Section 17(4)** judicature Act cap 13, the High Court exercises general powers of supervision over magistrate Courts.

### THE GROUNDS OF REVISION

The High Court may call and examine the records of any such criminal proceedings before any magistrate's 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 Magistrates court. (**Section 48 Criminal procedure code Act cap 116)**

**Uganda V Mboizi H/C criminal Revision No. 002/2012(unreported**), any order by a magistrate's court without jurisdiction is illegal, null and void abinitio.

**Vasio noda V Uganda, criminal revision No. 68/1991 (unreported**), before a revisional order is made, the court should be satisfied that the order made by the lower court was erroneous in law or caused a miscarriage of justice.

### POWER OF THE MAGISTRATES COURT TO CALL FOR RECORDS.

**Section 49(1) criminal procedure code Act cap 116,** the magistrates have power to call for records of inferior courts and to report to the High court.

**BASAJABALABA V KAKANDE** H/C CRIMINAL REVISION NO. 02/2013 (UNREPORTED) revisional orders should not be made in vain.

# BAIL PENDING REVISION

**Section 50(6) criminal procedure code Act**, the High Court may be pending the final determination of the case release any convicted person on bail, but if the convicted person is ultimately sentenced to imprisonment, the time he/she has spent on bail shall be excluded in computing the period for which he/she is sentenced.

**ISSUE 2 What are the merits and demerits of the client's case in the circumstances?**

## FAILURE TO FOLLOW DUE PROCEDURE IN PLEA TAKING

Kamba willy wasn't explained to all the essential ingredients of the offence and neither was count 1 of the alleged offence (ie the charge)

**The procedure for recording of a plea of guilty is laid down under section 124 of the magistrate's court act cap 16 and in the case of Adan v Republic (1973) EA 445 as follows;**

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

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

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

iv) If the accused doesn't agree with the facts or raises any question of his guilt, his reply must be recorded and change of plea entered.

v) If there is no change of plea a conviction should be recorded and a statement of the facts relevant to the sentence together with the accused's reply should be recorded.

**UGANDA V OLET (1991) HCB13,** for a conviction to be properly based on a plea of guilty, the plea must unequivocally admit all the ingredients of the offence charged.

Court further noted that a summary of the facts constituting the offence must also be narrated and put to the accused. Only if these facts disclosed the commission of the alleged offence and the accused admits the correctness thereof can a conviction be properly entered.

## ACTING WITHOUT OR IN EXCESS OF JURISDICTION.

**Section 225(1) of the East African Community Customs Management** Act 2004, a person charged with an offence under this Act maybe proceeded against, tried and punished, in any place in which he/she may have been in custody for that offence as if the offence had been committed in such place, and the offence shall for all purposes incidental to, or consequential upon, the prosecution, trial, or punishment, thereof be deemed to have been committed in that place.

**Section 220(1) of the same** act is to the effect that a prosecution for the offence under the act may be heard and determined before a subordinate court and it shall have jurisdiction to impose any fine/sentence of imprisonment on a person convicted of the offence.

For purposes of the workshop, Kamba Willy can be tried anywhere without the issue of jurisdiction arising by virtue of section 225(1) and section 220(1) of the East African Community Customs management act 2004.

## JURISDICTION FOR MAGISTRATES' COURTS

**Section 4** of the Magistrates court act cap 16, the criminal jurisdiction of magistrate's courts extends to all areas within the boundaries of Uganda.

**Section 34** of the magistrate's court Act cap16, magistrates' courts are enjoined to inquire and try such offence which was committed within the local limits of jurisdiction of that court.

For general or further purposes, the merit of 'acting without jurisdiction' is explained here under;

**Section 32** of the same act is to the effect that where a person accused escapes or is removed from the area where the offence was committed and is found within another area, the magistrates court within whose jurisdiction the person is found shall cause him/her to be brought before it and shall , unless authorized to proceed , send the person in the custody to the court having jurisdiction of the offence committed or require the person to give security for his or surrender to that court there to answer the charge and to be dealt with according to the law.

**Section 39** of the Magistrates court act cap 16, whenever any doubt arises as to the court by which any offence should be tried, any court entertaining that doubt may in its discretion, report the circumstances to the High court and the High Court shall decide by which court the offence shall be tried.

## GRADE 1

**Section 161(1)(b)** of the magistrate's court Act cap 16, original jurisdiction to try any offence other than that which is punishable by death/life imprisonment.

**Section 162(1)(b**) of the Magistrates court act cap 16, a grade1 magistrate may pass any sentence as long as the term of imprisonment doesn't exceed 10years or the fine does not exceed 1000,000/=

**UGANDA V OLOYA RICHARD H/C CRIM CONFIRMATION NO.1/2004,** where a magistrate Grade 1 court passes a sentence of imprisonment for 2years or over or preventive detention under the Habitual Criminals (Preventive Detention) Act, the sentence shall be subject to the confirmation by the High Court. The High Court is guided by the procedure of revision in confirming the sentence.

## CHIEF MAGISTRATES

**Section 161(1)(**a) magistrates court act cap 16, a chief magistrate may try any offence other than an offence in respect of which the maximum penalty is death.

**Section 162(1)(a) of** the same act is to the effect that chief magistrate may pass any sentence authorized by law.

**DEMERITS**

The power of the High Court would extend to enhancement of the sentence to a lighter one considering that the accused is a first-time offender, remorseful and the breadwinner.

**2nd schedule, The constitution (sentencing Guideline for courts of Judicature)(practice Directions) 2013, enlists the factors to take into account when considering sentencing;**

-Antecedents of the offender/habitual offender or first offender.

-Remorsefulness of the offender

-Social status, family status and background.

**UGANDA V YANG (1994) HCB 25**, court laid down factors to consider in imposing a sentence include the following;

-the antecedents of the accused

-the gravity of the offence

-the period spent on remand

-that the accused did not waste court's time

-that the accused is remorseful.

3**.) ISSUE 3 What is the procedure, forum and documents needed?**

# PROCEEDURE FOR REVISION

**Section 50(5)** of the criminal procedure code act cap 116, any person aggrieved by any finding, sentence or order made may petition the High court to exercise its powers of discretion but such will not be entertained if the petitioner could have appealed but has not.

**Section 50(8)** of the criminal procedure code Act cap116, the Director of public prosecutions may also apply to the High court for revision about miscarriage of justice and the application should be made within 3odays of imposition of the sentence unless time is extended by the High Court.

**SHABAHURIA MATIA V UGANDA H/C CRIM.REV. CAUSE NO.5/1999** (unreported), the court has power to make orders for revision to prevent abuse of court process.

**MICHAEL S/O MESHAKA V R (1962) EA** 81,

The court should inquire if an appeal has been filed or is to be filed by the applicant before it exercises its revisionary powers or else the party may lose the right of appeal.

-**section 50(2)** criminal procedure code act cap 116, no order of revision should be made unless the adverse party has had an opportunity to be heard.

-**section 50(1) criminal** procedure code act cap 116, upon forwarding the record to the High court for revision, the High Court may;

i) enhance the sentence

ii) in the case of any other order other than an order of acquitted, alter or reverse the order.

**UGANDA V POLASI KASUMBA (1979) EA 567**,

The High court has power to enhance a sentence, having regard to the gravity of the offence, that is inadequate as long as this does not result into a miscarriage of justice.

**KIWALA V UGANDA (1967) EA 758**, upon exercising its power, the court becomes fanctus officio and the revision is final unless an appeal in lodged to the appellate court.

**Section 50(4) criminal procedure code act cap 116**, power of the High Court to convert an acquittal into a conviction if convicted of another offence whether charged or not.

## SUMMARY OF PROCEDURE FOR REVISION.

i) Write a letter requesting for the certified record of proceedings.

ii) Apply for revision by the notice of motion together with the affidavit

iii) Pay the requisite fees.

iv) Effect service on the opposite party within reasonable time. Section 50(2) criminal procedure code act cap116

v) Application shall be set down for hearing and determination-Hearing notice.

vi) Revision order issued/ denied.

# FORUM FOR REVISION;

The High court of Uganda (section 50(1) criminal procedure code Act cap 116)

# PROCEDURE FOR BAIL PENDING REVISION.

**Section 50(6) criminal procedure code act cap116**, power of court to release convicted person on bail pending revision.

i) Apply for bail pending revision by way of Notice of Motion supported with an affidavit

ii) Pay the requisite fees.

iii) Serve the opposite party

iv) Application set down for hearing and determination

v) Application granted or denied

**FORUM FOR BAIL PENDING REVISION.**

The High Court of Uganda as per Section 50(6) of the Criminal Procedure Code Act cap 116.

**DOCUMENTS FOR REVISION**

# NOTICE OF MOTION

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

CRIMINAL REVISION NO......... OF 2021

(Arising from Buganda Road chief magistrate's court Anti- Corruption Case No.28 of 2021)

SUIGENERIS 1 ..................................... APPLICANT

VERSUS

UGANDA..........................................RESPONDENT

# NOTICE OF MOTION.

(**Under Rule 2 The Judicature (criminal procedure) (Applications) Rules and Sections 34, 48 and 50 of the Criminal Procedure Code Act Cap 116)**

TAKE NOTICE that the Honorable Court shall be moved on the day of....................at...............0'clock in the fore/afternoon or soon thereafter as the applicant may be heard on an application for revision of criminal case No.28/2021 and for orders;

a) That the finding and sentence in criminal case no.28/2021 be reversed.

b) That the convict be tried by a court of competent jurisdiction

TAKE FURTHER NOTICE that the grounds of this application are briefly set out in that affidavit of KAMBA WILLY, the applicant which shall be read and relied upon at the hearing but briefly are that;

a) That the applicant was convicted on his own plea of guilty without sufficient facts disclosing the ingredients of the offence charged. This was an irregularity.

b) That the sentence of a fine of one Hundred Fifty-three million, six Thousand Nine Hundred Uganda shillings was illegal since it was beyond the sentencing powers of a magistrate Grade 1.

c) That the sentence of a fine of one hundred Fifty-three million sixty thousand nine hundred Uganda shillings and in default of two-year imprisonment term was not proper considering the gravity of offence committed.

Dated at Kampala this.......... day of ...............2021

..................................................

COUNSEL FOR THE APPLICANT

Given under my hand and seal of the Court this.... day of..............2021

...............................................

REGISTRAR, HIGH COURT

DRAWN & FILED BY;

SUIGENERIS &Co ADVOCATES

P.O.BOX 4053

KAMPALA, UGANDA

# AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

CRIMINAL REVISION NO......... OF 2021

(ARISING FROM BUGANDA ROAD CHIEF MAGISTRATE'S COURT ANTI- CORRUPTION CASE NO.28 OF 2021)

SUIGENERIS1........................................................ APPLICANT

VERSUS

UGANDA..........................................................RESPONDENT

# AFFIDAVIT IN SUPPORT

I, SUIGENERIS 1 of C/O SUIGENERIS & Co ADVOCATES P.O>BOX 7117 Kampala Uganda do solemnly make oath and state as follows;

1. That I am a male adult Ugandan of sound mind the applicant in this matter
2. That I was charged with the offence of ..................... and convicted on my own plea of guilty on the .......... day of ......................2021 and currently at Kitalya prison.
3. That the brief facts presented to the prosecution did not sufficiently disclose the ingredients of the offence with which the accused was charged.
4. That it was an irregularity for the learned trial magistrate to convict the applicant on the above-mentioned facts. (a copy of the certified record of proceedings is hereto attached and marked annexture 'A')
5. That the learned trial magistrate Grade1 imposed a fine of 6 million on the applicant which did not fall within his jurisdiction and therefore it was illegal.
6. That the sentence of 6 million shillings or in default, two years imprisonment was not proper considering the gravity and circumstances of the case.
7. That I have been verily advised by my lawyer firm G4 & co advocates whose advice I believe to be true that this is a proper case for the court to exercise its discretionary and revisionary powers considering the irregularity, illegality and inappropriateness of the sentence.

8. That I have also been verily advised by my lawyers firm G4& co advocates whose advice I believe to be true that the irregularity, impropriety of the sentence and irregularity in the proceedings cannot be cured and court ought to reverse the finding and sentence of the lower court & orders a retrial of the accused.

9. That whatever I have stated herein above is true and correct to the best of my knowledge and belief except statements whose source I have disclosed.

SWORN at Kitalya Prison this.........day of......... 2021

BY THE SUIGENERIS

...........................................

DEPONENT

BEFORE ME

....................................

JUSTICE OF PEACE

DRAWN & FILED BY;

SUIGENERIS &Co ADVOCATES

P.O.BOX 4053

KAMPALA, UGANDA

# DOCUMENTS FOR BAIL PENDING REVISION

1. NOTICE OF MOTION already drafted subject to the enabling law and facts

2. Affidavit in support already drafted subject to facts and grounds

**EXAMPLE**

**Law applicable**

1. The 1995 constitution of the Republic of Uganda
2. The penal code act cap 120
3. The evidence act cap 6
4. The magistrates court act cap 16
5. The criminal procedure code act cap 116
6. The judicature (court of Appeal) Rules si 13-10
7. The judicature (Criminal procedure) (applications) Rules Si 13-8
8. Case law

**RESOLUTION**

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 there 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 204(1) magistrates court act cap16**, 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 204(5) of the magistrate's** court act is to the effect that the Dpp has a right of appeal.

# ISSUE 2 WHAT ARE THE PROCEDURAL STEPS FOR AN APPEAL

### FILING A NOTICE OF APPEAL

**Section 28(1) o**f the criminal procedure code act cap 116, 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.

A notice of appeal is lodged with the registrar of the appellate court

### 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.

**Section29** 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.

i) FILE THE RECORD OF APPEAL it should contain the following documents;

a) Memorandum of Appeal

b) Record of proceedings

c) The judgement

d) The order

e) The notice of appeal

f) In case of the third appeals, a certificate from the high court or court of appeal

A memorandum of appeal is a petition or 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 116, the memorandum of appeal must be filed within 14days 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

ii) PAYMENTY OF REQUISITE FEES.

**Rule 2 Judicature (court** Fees, Fines and Deposit) Rules SI 13-3 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.

iii) The memorandum of appeal must be served on the respondent. Affidavit of service to be filed as proof of service.

iv) HEARING

**Section 33(1) 0f** the criminal procedure code act cap 116, 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 bound by the record of proceedings and judgement of the trial court.

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 cap116, 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 cap116 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.

i) 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.

ii) 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.

iii) Alter the finding and find the appellant guilty of another offence maintaining the sentence or reduce or increase the sentence.

iv) 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 cap116).

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 cap116).**

# APPEALS FROM ORDERS

a) Section 127 of the magistrate's court act cap16 an acquittal as a result of a finding of no case to answer
b) Section 22(5) magistrates court act cap16 an order for giving security for good behavior.
c) Section 25(5) magistrates court act cap16 an order for forfeiture of bond in relation thereto.
d) Section 84 of the magistrate's court act order for forfeiture of recognition made under section83 of the same act
e) Section 195(4) magistrates court act an order for award of costs of over 10000/=
f) Section 201(5) magistrates court act, orders relating to return of stolen property.

# EFFECTS OF A CRIMINAL APPEAL

a) Section 73(2) magistrates court act property seized may be detained pending the appeal.
b) Section 94(2) magistrates court act exhibits may be retained until disposal of the appeal.
c) Section 199(2) magistrates court act cap 16 sentence of a fine is suspended until disposal of appeal
d) Section 201(4) magistrates court act cap 16 stolen property may not be restored until disposal of the appeal.
e) Section 201(6) orders for restitution of certain property maybe suspended.

## SCOPE OF 1ST APPEAL FROM A MAGISTRATE'S COURT

**Section 201(2)** of the magistrate's court act an appeal by a convict

a) Matters of law matters involving the interpretation and application of legal texts and principles
b) Matters of fact matters involving specific facts events about which there is bearing on future case.

## GROUNDS OF APPEAL

As you discuss the grounds of appeal highlight the duty of the 1st appellate court and the scope of appeal

i) That the learned trial magistrate erred in law and in fact when he convicted the appellant on insufficient circumstantial evidence.

**SIMON MUSOKE V UGANDA 1958 EA 715 the** court quoted that in a case depending exclusively on circumstantial evidence the judge must find before deciding upon conviction that the exculpatory facts were incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt.

ii) That the learned trial magistrate erred in law and in fact when he failed to evaluate the evidence in totality thereby occasioning a miscarriage of justice

**IGNATIUS BARUNGI V UGANDA 1988-90 HCB 68 TABORO** j held that in evaluating the evidence the court was legally bound to evaluate the evidence as a whole for the state and the defense together.

iii) That the learned trial magistrate erred in law when he wrongly rejected the appellant's alibi thereby coming to a wrong conclusion which occasioned a miscarriage of justice.

**KYALIMPA EDWARD V UGANDA SCCA 10/95 IT** was held that when an accused person puts forward an alibi in answer to the charge he doesn't assume any burden of proving that alibi. If an alibi raises a reasonable doubt as to the guilty of the accused, it is sufficient to secure an acquittal.

iv) The trail magistrate erred in law when he heavily relied on the uncorroborated evidence of an accomplice.

**DAVIES V DPP 1954 EA 378** an accomplice is a person associated with another whether as a principle or as an accessary in the commission of the crime.

**Section 134 of the evidence act cap6** an accomplice is competent to give evidence against the accused, however that evidence has to be corroborated.

v) That the trial magistrate erred in law when he convicted the appellant on the uncorroborated evidence of a child of tender years and without a voire dire

**Section 117 evidence act cap6** any person is competent to testify unless he/she is prevented from understanding questions put to him or incapable of giving rational answers.

Court must ascertain a child of tender years giving evidence whether he/she understands the nature of an oath and whether the child understands the duty of telling the truth. The court record must clearly show that a viore dire was conducted **UGANDA V OLOYA 1977 HCB**

vi) The learned trial magistrate erred in and in fact on assessment of the evidence on record and interpretation of the law regarding identification when he concluded that the appellant was properly identified.

**BOGERE MOSES & ANOR V UGANDA SCCA 1 OF 97**

The court to satisfy itself from evidence whether conditions under which identification is claimed to have been made were or not difficult and warn itself of the possibility of mistaken identity.

**ABUDAL NABULERE &2 OTHERS V UGANDA CRIMINAL APPEAL NO 9. 1978**, there is always the possibility that a witness though honest maybe mistaken.

- The courts have evolved rules of practice to minimize the danger that innocent people may be wrongly convicted and the include;

a) Testimony of a single witness must be tested with greatest care

b) The need for caution

c) Other evidence pointing to guilty

- The court further noted that the judge should warn himself and assessors of the special need for caution before convicting the accused in reliance on the correctness of the identification.
- The reason for the special caution is that there is a possibility that a mistaken witness can be a convincing one and that even a number of such witnesses can all be mistaken.
- Circumstances to be examined by the court regarding identification include;

The length of time the accused was under observation

Distance

The light

The familiarity of the witness with the accused.

- If the quality of identification is good the danger of mistaken identity is reduced but the poorer the quality the greater the danger
- For proof of anything no popularity of witnesses is necessary.

vii) That the learned trial magistrate erred in law and fact in relying on the evidence of a dying declaration without corroboration

For a dying declaration to be admissible, it must satisfy the following,

- Proof of death of the matter of the statement
- Statement must be complete
- It must be a free expression of the deceased and should be corroborated

**JUSUNGA V R 1954 21 EACA 331** it was held that there must be corroboration of a dying declaration as a matter of judicial practice.

viii) That the learned trial magistrate erred in law and fact in relying on a confession that was involuntarily taken.

**Section 24 of the Evidence Act cap** 6 confessions obtained through use of force violence threats or promises to cause untrue confessions are inadmissible.

**UGANDA V EGARU S/O EDILU 1998HCB59** a confession extracted from an accused person by torture can hardly be said to be voluntary.

ix) That the learned trial magistrate erred in law and fact in relying on a confession that was repudiated/retracted.

**TUWAMOI V UGANDA (1967) EA 84**: that it is a well-established rule of prudence that it is dangerous to act upon a retracted confession unless it is corroborated in material particulars or unless the court is certified about its truth.

**KASULE V UGANDA (1992-1993) HCB 38l** the supreme court stated that the trial with in a trial should be held to establish the truth about the confession.

x) That the learned trial magistrate misdirected himself on the doctrine of common intention hence occasioning a miscourage of justice. Section 20 Penal Code Act. CAP 120 (common intensions of offenders)

**UGANDA V SEBAGANDA (1977) HCB7** where there is common intension it is immaterial who inflicts the fatal injury to the deceased as long as the injury is inflicted when the parties is carrying out a common purpose and that in such a case one is responsible for the acts of the other.

xi) That the learned trial magistrate erred in law and fact when he held that the burden of proof in criminal matters lays on the defense. **Article 28 (3) (a) of the 1995 constitution** of Uganda provides for the presumption of innocence of an accused person until proven guilty or pleads guilty.

Section 101 of the Evidence Act CAP 6 burden of prove lays on the prosecution.

**WOOLMINGTON V DPP (1935) AC462** and **SSEKITOLEKO V UGANDA (1967) EA** the burden to prove criminal offences beyond reasonable doubt lays on the prosecution. The accused has no duty to prove his innocence except in cases of evidential burden in strict liability offences and where the accused pleads insanity.

xii) That the learned trial magistrate erred in law and fact when he passed an excessive sentence without considering the period the appellant had been on remand.

Article 28(8) of the 1995 Constitution, in convicting and sentencing an accused person to a term of imprisonment courts are obledged to take into account the period that the accused had been on remand.

Kato Abasi v Uganda criminal appeal No 631(2000) courts while passing sentences have to take in to account every period spent in lawful custody in reference of the offence.

xiii) That the learned trial magistrate erred in law when he did not take into account mitigating factors in sentencing.

In the case of Uganda v Yang (1994) HCB25 court laid down some of the factors to be considered in imposing sentence.

- Antecedents of the accused
- Gravity of the offence
- Period spent on remand
- Remorsefulness of the accused
- Accused not wasting courts time

Section 133 (2) of the Magistrates Court Act CAP 16 before passing sentence court is obliged to inquire into the character or antecedents of the accused.

Uganda v Bamisajjo and another it is important that before sentences is passed, the accused person is asked to say whatever he wishes to say in mitigation of sentence.

# KEY CONSIDERATIONS FOR GROUNDS OF APPEAL.

## SOURCES OF GROUNDS OF APPEAL

- Misdirection and non-direction on matters of law and fact
- Incorrect interpretation of the law
- Incorrect application of principals of law

- Overlooking material facts
- Findings not supported by evidence
- Decisions made per in curium

**PROCEDURAL ERRORS**

- Acting without or excess of jurisdiction
- Proceedings on a fatally defective charge
- Omitting essential steps in the trial process
- Manifested bias in the trial process
- Improper exercise of discretion interlocutory matters
- Improper exercise of discretion when imposing sentence or imposing an illegal sentence
- Ineffective legal representation
- Failure to properly evaluate the evidence
- Contradictions and inconsistences

## GROUNDS FOR OPPOSING THE APPEAL.

- Trial magistrate properly evaluated the evidence
- Ingredients proved to the required standards (Sec 101) of the Evidence Act
- Frivolous appeal (Sec195(1))(c) &(d) of the Magistrate court Act
- There was no miscourage 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 miscourage of justice will be ignored on appeal.

- Points that could have been raised on trial

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

## Bail pending determination of an appeal

Application for bail pending appeal is made under section 132(4) of the Trial on Indictment Act CAP 23 and rule 6(2)(a) and 43 of judicature (court of appeal rules) directions SI13-10

Section 147 of the Criminal Procedure Code Act: a judge of the High court may in his or her discretion grant bail pending the hearing of the appeal.

Rule 3 of the Judicature (criminal procedure) (applications) rules SI13-8 applications for bail in writing shall be supported by affidavit.

Notice of motion and affidavit in support.

Arvind Patol v Uganda criminal application No.1 of 2003Justice Oder Opined that considerations which should generally apply to an application to bail pending appeal are as follows;

- The character of the applicant
- Whether he or she is a first offender or not
- Whether the offence involved personal violence
- The appeal is not frivolous and has reasonable possibility of success
- The possibility of substantial delay in the determination of the appeal
- Whether the applicant has complied with bail conditions granted after the applicant's conviction and during the pendency of the appeal if any.

Justice Oder further stated that it is not necessary that all these conditions should be present in every case. A combination of two or more criteria may be sufficient. Each case must be considered on its own facts and circumstances.

David Chandi Jamwa v Uganda miscellaneous application No. 9 of 2018 Justice Arachi Amoto stated that it cannot be over emphasized that bail pending appeal is not a right but it is granted at the discretion of court which should be exercised judiciacily and each case must be determined on its merit and circumstances.

Further in considering application for bail pending appeal the only means by which court can assess the possibility of success of the appeal is by perusing the relevant recode of proceedings the judgenet of court from which the appeal has emanated and the memorandum of the appeal in question.

The burden lays on the applicant to cirtisfy court that the application warrants the grant of bail pending appeal and that if granted bail the applicant will not abscond.

## DOCUMENTS FOR LODGING AN APPEAL.

# NOTICE OF MOTION

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CRIMINAL APPEAL NO. ...... OF 20212**

UGANDA.......................................PROSECUTION

VERSUS

SUIGENERIS2...............................ACCUSED

# NOTICE OF APPEAL

**(UNDER A.134(1) &(2) 1995 CONSTITUTION, S.28(1) CRIMINAL PROCEDURE CODEACT, S.10 JUDICATURE ACT)**

TAKE NOTICE that SUIGENERIS 2 being dissatisfied with the judgement of the hounarable justice LL good given at the High Court of Uganda at Kampala on the 3rd day of September 2021 by which was convicted of aggravated robbery centrally to section 285&286 (2) of the penal Code Act and sentenced to 35 years intends to appeal against the conviction and sentence.

The address of service for the intended appellant is C/O SUIGENERIS & Co. Advocates P.O. Box 4053 Kampala Uganda. Dated at Kampala this .......... day of September 2021.

.....................................

Counsel for the appellant

To be served on

The hounorable justices of the court of appeal

OBJECTION MY LORD

Copies to be served upon;

Director of public prosecution

Plot1 Pilkington road

Works house Kampala

LODGED in the High Court Criminal Division Registry at Kampala on this .............day of ............2021

....................................

REGISTRAR

Drawn and filed by

M/S SUIGENERIS &Co. Advocates

p.o.box 4053

kampala-Uganda

## LETTER REQUESTING FOR RECORD OF PROCEEDINGS

SUIGENERIS & Co. Advocates

p.o.box 4053

Kampala Uganda

8th September 2021

The Registrar

High Court of Uganda

Kampala

Your worship

Re: **criminal Case No. 900/2012 Uganda versus SUIGENERIS2**

The above matter wherein we represent the accused/appellant refers.

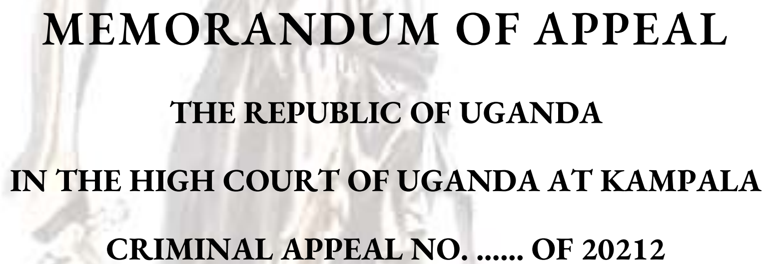
The accused/appellant being dissatisfied with the conviction and sentence given by Justice LL Good in the above matter delivered on the ................ day of ...............2021 intends to appeal against the sentence and conviction.

The purpose hereof is to request for a typed and certified copy of the record of proceedings and judgement in the above matter to enable him file a memorandum of appeal.

Much obliged,

.........................

Counsel for appellant.



# MEMORANDUM OF APPEAL

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CRIMINAL APPEAL NO. ...... OF 20212**

SUIGENERIS 2.......................................APPELLANT

VERSUS

UGANDA....................................RESPONDENT

# MEMORANDUM OF APPEAL

The appellant, SUIGENERIS 2 being dissatisfied with the decision of the high court of Uganda at Kampala presided over by Honourable Justice LL Good delivered on 3rd September 2021 vide criminal case No. 900 of 2012, appeals to the court of appeal against the above-mentioned decision by which the appellant was convicted of aggravated robbery centrally to section285&286(2) of the Penal Code Act and subsequently sentenced to 35 years' imprisonment on the following grounds;

i) That the learned trial judge erred in law and facts when he failed to adquently evaluate the evidence on identification adduced at the trial hence reaching a wrong decision.

ii) The learned trial judge erred in law and facts when he imposed a manifestly harsh and excessive sentence of 35 years' imprisonment

iii) The learned trial judge erred in law and facts when he ignored the appellant defense of alibi and therefore arriving at a wrong decision

iv) The learned trial judge erred in law when he convicted the accused on evidence that had contradictions and inconsistences thereby occasioning mis-courage of justice.

WHEREFORE, it is proposed to seek this hounarable court for orders that;

a) The appeal is allowed

b) The conviction is quashed and sentence set aside

c) The accused be set free

Dated at Kampala this .......... day of ................ 2021

......................

Counsel for Appellant

LODGED in the registry at Kampala this ...... day of......... 2021

...........................

Registrar

DRAWN and filed by

M/S SUIGENERIS & Co. Advocates

p.o.box 4053

kampala-Uganda

# DOCUMENTS FOR BAIL PENDING APPEAL

## NOTICE OF MOTION

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CRIMINAL APPEAL NO. ...... OF 20212**

SUIGENERIS 2......................................APPELLANT

VERSUS

UGANDA...........................................RESPONDENT

# NOTICE OF MOTION

(Brought under section 132(4) TIA cap 23 and Rule 6(2)(a) & section 43 Judicature (Court of Appeal Rules) Directions SI13-10)

TAKE NOTICE that this Honorable Court shall be moved on the 14th day of September 2021 at 11 am or soon thereafter as the applicant can be heard pn an application for orders that;

a) The applicant be granted bail pending appeal before this honorable court

b) Any other order that this court may deem fit in the circumstances

TAKE FURTHER NOTICE that the grounds in support of the application are contained in the affidavit in support deponed by the applicant but briefly it states that;

1.) The applicant is a first time offender

2.) The applicant has lodged an appeal vide criminal appeal no. .... Of 2021 which has a high probability of success.

3.) That the applicant had previously been release on bail and complied accordingly.

4.) It is within the discretion of this honourable court to grant this application

5.) That it is just and fair that the applicant be granted bail pending appeal.

Dated at Kampala this 14th day of September 2021

......................

COUNSEL FOR APPLICANT

OBJECTION MY LORD

LODGED in this Registry of this Honourable court this 14th day of September 2021

................................

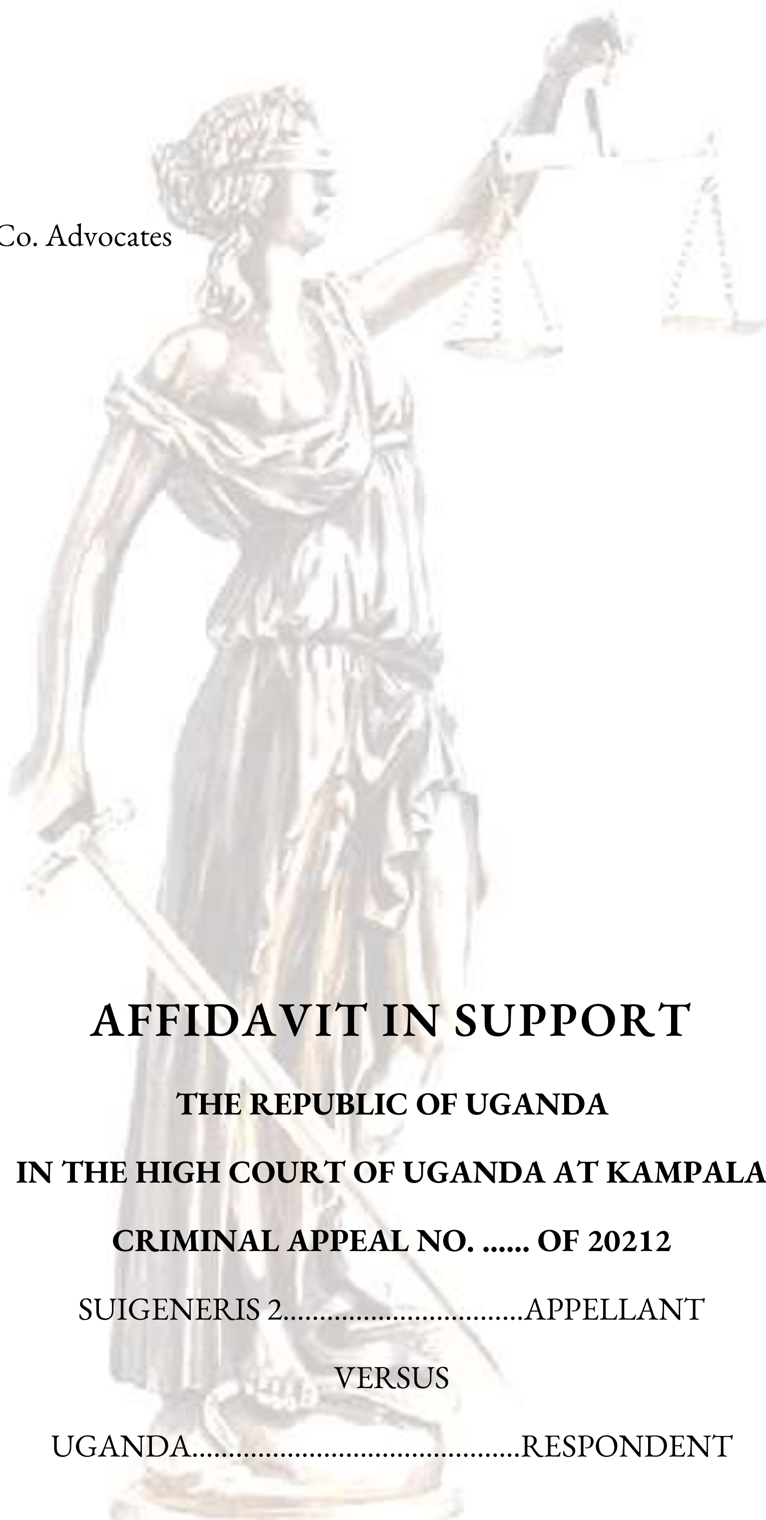
Registrar

DRAWN and filed by

M/S SUIGENERIS & Co. Advocates

p.o.box 4053

kampala-Uganda



# AFFIDAVIT IN SUPPORT

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CRIMINAL APPEAL NO. ...... OF 20212**

SUIGENERIS 2.................................APPELLANT

VERSUS

UGANDA.............................................RESPONDENT

AFFIDAVIT IN SUPPORT

I SUIGENERIS2 c/o SUIGENERIS& co Advocates p.o.box 4053 Kampala Uganda, do hereby take oath and swear as follows;

1.) That I am an adult male Ugandan of sound mind the applicant herein and in which capacity I depone this affidavit.

2.) That I was convicted of and sentenced to 35years imprisonment, a fine of 17 million and police supervision for 3 years upon release for aggravated robbery contrary to sections 285 and 256(2) of the Penal Code Act Cap 120 Annexed hereto is copy of the charge sheet and judgment marked a & b respectively.

3.) That I have been informed by my lawyers whose information I verily believe to be true that the offences which I was charged are bailed.

4.) That I am a first time offender and I have no previous record of criminal activity or conviction (Annexed hereto is a certificate of good conduct marked c)

5.) That the appeal filled by my lawyers is neither frivolous nor vexatious and has a high probability of success (annexed hereto the memorandum of appeal and conviction order marked d&e respectively)

6.) That I have been informed by my lawyers that there is likely to be a substantial delay in the determination of the appeal.

7.) That I am the soul bread winner of my family of two wives and six children and my continued custody will deter me from providing for their basic needs.

8.) That I have a fixed place of abode (annexed is an introduction letter from the LC Marked f)

9.) That I will be present as and when required by court and the sureties are indeed incredible (annexed are their IDs, employment IDs and letters of the introduction from the LCs marked g, h, I respectively.

10.) That it is unfair that this application be granted pending the determination and hearing of my appeal.

11.) That I am informed by my lawyers that this court has discretion to grant this application.

12.) That whatever I have stated herein is true to the best of my knowledge and belief save for paragraph 3, 6 & 11 whose source have been disclosed.

Sworn at Kampala by the said deponent this ….day of …. 2021.

……………….

Deponent

BEFORE ME

OBJECTION MY LORD

……………………

Justice of Peace

DRAWN and filed by

M/S SUIGENERIS & Co. Advocates

## 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 the case of Kifamunte Henry v Uganda SCCA No. 10 of 1997it 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 13-10 (general powers from court of appeal;

a) Confirm, reverse or vary the decision of the high court or order anew trial or make incidental orders

b) 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).

### DOCUMENTS FOR APPEAL.

a) Notice of appeal (rule 60(3) of the court of appeal rules)

b) Memorandum of appeal (rule 66 (4) of the court of appeal rules)

## THIRD APPEALS

## CERTIFICATE OF GENERAL IMPORTANCE

This is covered in both the Judicature (Court of Appeal) Rules Directions and the Judicature (Supreme Court) Rules Directions, depending in what court an individual is applying to:

## IN CASE IT IS THE COURT OF APPEAL;

**Rule 39 (1)(a) of the Judicature (Court of Appeal) Rules Directions** (herein after referred to as the court of appeal rules) provides that an application is made to the High Court where the Applicant prays for a Certificate general importance.

**Rule 2 of the Court of Appeal Rules** provides that applications to the High Court should be by Notice of Motion supported by an affidavit.

Rule 4 places a mandate on the Applicant (usually the convict) to give Notice to the Police. This is fortified by **Namuddu Vs Uganda SCCA 3 0f 1999**, which lays down the considerations for the certificate of general importance. Court in this case stated that the supreme court is not boud by the restrictions placed on the court of appeal when that court is considering an application for a certificate where it is satisfied that:

(a) The matter raises a question of great public importance, or

(b) The matter raises a question or question of law of general importance.

Court further stated that; in deciding whether or not to grant leave we are not restricted to questions of law like the court of appeal. We have power to consider other matters.

In Kenya's supreme court decision; in Hermanus Phillipus v. Giovanni, court stated the principled governing what considerations guides court in finding what amounts to great public importance. The same were cited with approval in Damian Akankwasa v. Uganda; these principles were expounded in the Irish case if Glancare Teorada v. A.N Board Pleanala (2006) IEHC 250 thus;

(i) for a case to be certified as one involving a matter of general public importance, the intending appellant must satisfy the Court that the issue to be canvassed on appeal is one the determination of which transcends the circumstances of the particular case, and has a significant bearing on the public interest;

(ii) where the matter in respect of which certification is sought raises a point of law, the intending appellant must demonstrate that such a point is a substantial one, the determination of which will have a significant bearing on the public interest;

(iii) such question or questions of law must have arisen in the Court or Courts below, and must have been the subject of judicial determination;

(iv) where the application for certification has been occasioned by a state of uncertainty in the law, arising from contradictory precedents, the Supreme Court may either resolve the uncertainty, as it may determine, or refer the matter to the Court of Appeal for its determination;

(v) mere apprehension of miscarriage of justice, a matter most apt for resolution in the lower superior courts, is not a proper basis for granting certification for an appeal to the Supreme Court; the matter to be certified for a final appeal in the Supreme Court, must still fall within the terms of Article 163 (4)(b) of the Constitution;

(vi) the intending applicant has an obligation to identify and concisely set out the specific elements of "general public importance" which he or she attributes to the matter for which certification is sought;

(vii) determinations of fact in contests between parties are not, by themselves, a basis for granting certification for an appeal before the Supreme Court.

In Damian Akankwasa v. Uganda, the applicant was convicted and sentenced by the Chief Magistrate to a term of two years' imprisonment on a count of abuse of office C/S 11 of the Anti Corruption Act, 2009. He appealed to the High court then to the Court of Appeal but still was unsuccessful. He applied for a certificate of general importance from the Court of appeal for leave to appeal to the supreme court but was rejected. He applied to the supreme court for the same.

**Section 5(5) of the Judicature Act cap 13 provides that;**

"Where the appeal emanates from a judgment of the chief magistrate or a magistrate grade I in the exercise of his or her original jurisdiction, and either the accused person or the Director of Public Prosecutions has appealed to the High Court and the Court of Appeal, the accused or the Director of Public Prosecutions may lodge a third appeal to the Supreme Court, with the certificate of the Court of Appeal that the matter raises a question of law of great public or general importance or if the Supreme Court, in its overall duty to see that justice is done, considers that the appeal should be heard, except that in such a third appeal by the Director of Public Prosecutions, the Supreme Court shall only give a declaratory judgment."

In case it is the Supreme Court; Rule 38(1) (a) of the Judicature (Supreme Court) Rules Directions (herein after referred to as the supreme court rules) provides that where an appeal lies if the court of appeal certifies that a question or questions of public importance arise, applications to the court of appeal shall be made informally at the time the decision of the Court of Appeal is given against which the intended appeal is to be taken. Rule 38(1) (b) provides that where the court of appeal declines to grant a certificate referred to in para (a), then an application may be lodged in the Court within fourteen days after the refusal to grant the certificate by the Court of Appeal.

# Appeals from the Court of Appeal.

**Article 132(2) of the Constitution** provides that a right of appeal from the court of appeal shall lie in the Supreme Court. This is further fortified by section 5(1) of the Judicature Act Cap 13.

Scope of appeals to Supreme Court:

If it is a conviction from the High Court, or court of appeal, the scope of the appeal in the Supreme Court is limited to matters of law, or mixed law and fact, per section 5(1) (a) of the Judicature Act.

If it is an acquittal from the High Court; and a subsequent conviction in the Court of Appeal, the scope of appeal in the Supreme Court is limited to matters of law, fact or mixed law and fact, section 5(1) (b) of the Judicature Act.

If there is a conviction in the High Court; followed by an acquittal in the court of appeal, the DPP's appeal in the supreme court is limited on matters of law or mixed law and fact for a declaratory judgment, section 5(1) (c) of the Judicature Act.

If there is an acquittal in the High Court, followed by a subsequent acquittal in the Court of Appeal, the DPP's appeal to the supreme court is limited to matters of law of General importance, section 5(1) (d) of the Judicature Act.

It must be noted that appeals in criminal matters arise from final orders for examples convictions, acquittals, special findings, ruling on no case to answer. This principle is fortified in Charles Twagira vs Uganda SC Crim. Application 3 of 2003 before Tsekoko JSC.

## GROUNDS OF APPEAL

In ascertaining the grounds of appeal, one should consider the following:

- The conduct of the trial,
- The sufficiency of evidence to sustain the charges; with regard to ingredients of the offence committed.
- The errors of fact and of law by the trial judge or magistrate

- The legality of the sentence
- Misdirection's and non-directions the trial magistrate or trial judge relied on.
- Admission of evidence (with particular regard to inadmissibility and irrelevance)
- Reliance on fanciful theories by the trial judge or trial magistrate.
- Material irregularities
- Evaluation of evidence on record. This is fortified by the case of Kifamunte Vs Uganda SCCA 10 of 1997, which noted the case of Pandya vs R (1957) EA 336 with approval and court held the appellate court has a duty to evaluate the evidence while the second appellate court has a duty to re- evaluate the evidence on record.

## 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.

## IF IT'S 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.

## IF IT'S 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:

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.

### 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.

# REMEDIES
## BAIL PENDING APPEAL

The basic remedy under appeals is bail pending appeal. If the appeal is to the high court, this is conversed in section 40 of the Criminal Procedure Act Cap 116 and section 132(4) of the Trial on Indictments Act Cap 23. it must be noted that bail pending appeal can only be granted except where the appellant has been sentenced to death.

Case law in **MERALI VS REPUBLIC (1972) EA 48** and **ARVIND PATEL VS UGANDA SCCA 1 OF 2003** provides that one has to prove exception circumstances to be granted bail pending appeal. Some of the exceptional circumstances stated in **MERALI VS REPUBLIC (1972) EA 48** include the following:

### CHARACTER OF THE APPELLANT;

- Possibility of substantial delay in the hearing of the appeal;
- The appeal is not frivolous or vexatious;

- The offence for which the appellant was convicted of is not violent.

## PROCEDURE FOR APPLICATION FOR BAIL PENDING APPEAL

## APPEALS UNDER THE UPDF ACT

Section 227(1) of the UPDF Act provides for a right of appeal from a unit disciplinary committee or a court martial to the court martial court on;

- Legality of the findings
- Legality of the whole or part of the sentence
- Severity or leniency of the sentence.

It must be noted that under section 229(2) of the Act that the appeal is commenced by lodging a notice of appeal with the Registrar of the Unit Disciplinary Committee or the Court Martial within such period after delivery of the decision. Section 229(4) provides that the notice of appeal is followed by a memorandum of appeal.

Where one is seeking bail pending appeal, section 231 provides that bail pending appeal will only be given in exceptional circumstances except where a person has been sentenced to death or a maximum of 5 years imprisonment; this is further re echoed in rule 8 of the UPDF (Court Martial Appeal Court) Regulations SI 307-7.

## PROCEDURE OF APPEAL

Regulation 6(1) of the UPDF (Court Martial Appeal Court) Regulations SI 307-7 (hereinafter referred to as the Regulations) provides that the appeal in form of the notice of appeal is followed with a memorandum of appeal.

Regulation 6(2) provides that the notice of appeal is lodged within 30 days from the date of delivery of judgment by the court martial court.

Rule 6(3) provides that the memorandum of appeal shall be lodged within 30 days from the date of receipt of the copy of judgment of the court martial.

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT GULU**

**CRIMINAL MISCELLANEOUS APPLICATION OF 2020**

**Arising from criminal appeal no. ....02....... of 2020**

**AHIMBISIBWE INNOCENT ..........................................APPLICANT**

**VERSUS**

**UGANDA ..................................................................RESPONDENT**

## NOTICE OF MOTION

(Under article 23(6)) of the constitution of the republic of Uganda, s.14 and 15 of the trial on indictment Act, s.40 (2) of the criminal procedure code Act and Rule 2 of the judicature (criminal procedure) (application rules)

Take notice that this honorable court shall be moved on the 17th day of june 2020 at 11am o'clock in the forenoon or soon thereafter as counsel for the applicant can be heard on the application for orders that:

The applicant be granted bail pending the leaving and determination of his criminal appeal No. 02 of 2020

Take further notice that this application is supported by the affidavit of the applicant here in shall be read and relied upon at the hearing but briefly they are

1. The applicant was charged and convicted with the offence of manslaughter c/s 187 of the penal code Act.
2. That it is the Applicant's constitutional right to apply for bail
3. That exceptional circumstances exist to justify the release of the applicant on bail
4. That the applicant has a fixed place of abode within the jurisdiction of this honorable court
5. The applicant has sound and suitable securities within the jurisdiction of this honorable court who under take that the applicant will comply with the conditions of my bail
6. That it is in the interest of justice that this application is granted

Dated at Gulu on this ............... day of ...........................2020

___________________________

COUNSEL FOR THE APPLICANT

LODGED in the court Registry on this ..................... day of .......................2020

ASSISTANT REGISTRAR

Drawn & filed by

SUI GENERIS & CO. ADVOCATES

P.O.BOX 7117, KAMPALA

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT GULU**

**CRIMINAL MISCELLANEOUS APPLICATION NO............**

**OF 2020**

**(Arising from criminal appeal No.02 of 2020)**

**AHIMBISIBWE INNOCENT .................................... APPLICANT**

**VERSUS**

**UGANDA .................................................................. RESPONDENT**

## AFFIDAVIT IN SUPPORT OF THE APPLICATION FOR BAIL PENDING APPEAL

I, AHIMBISIBWE INNOCENT of C/O SUI GENERIS & CO ADVOCATES, P.O.BOX 7117, KAMPALA, a resident of Gulu municipality, Gulu District, do solemly swear and state as follows;

1. That I am a male adult Ugandan of sound mind, the convict and appellant in Criminal Appeal No of 2020 and therefore depone this affidavit in that capacity

2. That I was convicted for the offense of manslaughter e/s 187 of the penal code Act by her worship Cynthia Musisi on the 15/6/2020

3. That I was aggrieved by the conviction and sentence of her worship and thus lodged an appeal against the same in this honorable Court (a copy of the notice of Appeal and memorandum of Appeal are hereby attached and manned Annexure “A” and “b” respectively)

4. That my appeal has a high likely hood of success (attached and marked annexure “c” is the record of the trial court)

5. That I suffer from acute asthma which requires constant medical attention and a clear and dusty free environment which cannot be achieved in the prison facilities. (attached here to and marked annexure “D” is a medical report from the medical director Murison bay hospital)

6. That I have a fixed place of abode within this court’s jurisdiction. (attached here to and marked annexure “E” is a water payment slip for my home and marked annexure “F” is an introduction letter from my area L.C.1 Chairperson)

7. That I was released on bail by the trial court and I complied with all the bail terms as set by the trial court

8. That I have three substantial securities who are conversant with their duties as securities having been sureties to my bail application at the trial court (attached here to and marked annexures “G”, “H”, and “I” are introductory letters from their respective L.C.1 chairpersons and marked annexures “J”, “K” and “L” are copies of their national identity cards)

9. That I am ready to comply with the bail term as set out by this honorable court.

10. That it is just and equitable that this honorable court grants this application

11. That I swear this affidavit in support of the application for bail pending appeal.

12. That whatever I have stated above is time to the best of my knowledge and belief

Sworn by the Said;

AHIMBISIBWE INNOCENT at GULU on this .......22nd ....... day of JUNE ..........2020

..........................................................

DESPONENT

BEFORE ME

.........................................................

JUSTICE OF THE PEACE

Drawn & filed by

SUI GENERIS & CO. ADVOCATES

P.O.BOX 7117, KAMPALA

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CRIMINAL APPEAL NO.14 OF 2020**

**(Arising from chief magistrate court of Kampala at Buganda Road. Criminal case No.33 of 2020)**

**MUHOOZI INNOCENT........................................................ APPELLANT**

**VERSUS**

**UGANDA ......................................................................RESPONDENT**

# NOTICE OF APPEAL

Take notice that the above-named appellant, being dissatisfied with the decision and judgement of HON LADY JUSTICE KYALIGONZA WINNIE, HIGH COURT CRIMINAL APPEAL NO.14 OF 2020 AT KAMPALA, on the 28th day of August, 2020 where he was convicted and sentenced to three (3) years and eight (8) months for committing the offences of cyber harassment contrary to s.24 (1)(2),

(a) and offensive communication contrary to s.25 of the computer misuse Act, 2011

The appeal is against conviction and sentence

The appellant desires to be present during the hearing of the appeal

Dated at Kampala this 9th day of September, 2020

...................................................................................

M/S SUI GENERIS & CO ADVOCATES

COUNSEL FOR THE APPELLANT

LODGED in the registry on this ............. day of ................2020

..........................................................................

DEPUTY REGISTRAR

To: The Registrar High Court of Uganda at Kampala

Copies to be served upon

1. director of republic prosecution
2. the registrar of the court of appeal

Drawn & filed by

M/s SUI GENERIS & CO Advocates

P.O.BOX 7117

Kampala

Memorandum of Appeal:

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**(arising from High Court Criminal Appeal No. 14 of 2020)**

**(Arising out of Buganda Road Criminal Appeal No.33 of 2020)**

**MUHOOZI INNOCENT.................................................................APPELLANT**

**VERSUS**

**UGANDA ..................................................................... RESPONDENT**

## MEMORANDUM OF APPEAL

The appellant being dissatisfied with the decision of HON LADY JUSTICE KYALIGONZA WINNIE IN HIGH COURT CRIMINAL APPEAL NO.14 OF 2020 AT KAMPLA dated 28th August, 2020 in which the high court in its appellate jurisdiction upheld the decision of the trial court where the appellant was convicted and sentenced to three (3) years and eight (8) months for committing the offences of cyber harassment contrary to s.24 (1),(2), (a) and offensive communication contrary to s.25 of computer misuse Act 2011, appeals to the court of appeal on grounds that

1. The learned appellate judge erred in law when she allowed the decision of the trial court promised on a wrong plea of guilt made by the appellant

2. The learned trial judge erred in law when she discharges the Appellant and later convicted and sentenced him

WHEREFORE, it is proposed that this Honorable Court order that:

1. The Appeal be allowed

2. Conviction of the Appellant be quashed

DATED this 9th day of September, 2020

.......................................................

M/S SUI GENERIS & CO ADVOCATES

COUNSEL FOR THE APPELLANT

LODGED in the Registry at Kampala ................ Day of ...................2020

………………………………………………………………

DEPUTY REGISTRAR

Drawn and filed by:

M/s SUI GENERIS & CO Advocates

# CHARGE SHEET

## THE REPUBLIC OF UGANDA

## IN THE HIGH COURT OF UGANDA AT MASINDI CRIMINAL CASE NO __ (Given A Number After It Is Transmitted To HC)

## COURT CASE NO:

## POLICE CASE NO. CRB/1130/2014

## DPP CASE NO.

At the session of the high court holden at______________on the_____________day of_____2015.

The court is informed by the DPP that Mungooma Yuda alias Ateenyi is charged with the following offence

STATEMENT OF OFFENCE

Murder contrary to section 188 and 189 of the penal code Act Cap 120

PARTICULARS OF OFFENCE

Mungooma Yuda alias Ateenyi on the 10th day of August, 2014 at Kyamhuga village, kakumito sub county in Kibaale District with malice aforethought shot Muhindo Adyeeri causing injuries that resulted into his death.

________________

RSA KIBAALE

FOR DPP

TO: MUNGOOMA YUDA ALIAS ATEENYI

Take notice that you will be tried on the above incident on the _______ day of _________2015, at _________ at __________o'clock in the forenoon or soon thereafter.

__________________

DEPUTY REGISTRAR

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT**

**MASINDI MISC APPLICATION NO. OF 2015**

**(ARISING FROM CRIMINAL CASE NO. OF 2015)**

**MUNGOOMA YUDA ALIAS ATEENYI ........................................APPLICANT**

**VERSUS**

**UGANDA ............................................................................... RESPONDENT**

## NOTICE OF MOTION

(Brought under article 23 (c) (a), 25 (3) (a) of 1995 constitution of Uganda.S.14 and 15 of T/A CAP 23)

TAKE NOTICE. That this Honourable court will be moved on the 27th day of January 2013 at 9:00o'clock in the forenoon or soon therefore after so that application for orders that,

The accused person be granted bail pending his trial on terms and conditions this Honourable court deems fit.

TAKE FURTHER NOTICE that the grounds for this application shall be stated in the affidant of the applicant but briefly these are;

1. That it is the applicant's constitutional right to apply for and be released on bail.

2. That the applicant has sound and substantial sureties ready to stand for him and will abide by the conditions this honourable court may set.

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

Dated this 19th day of January 2015

_____________

Counsel for Applicant

Given under my hand and seal of this Honourable court this 20th day of January 2015

___________

Registrar

Draw and filed by

SUI GENERIS and co. Advocates

Kampala

OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT

MASINDI MISC APPLICATION NO. OF 2015

(ARISING FROM CRIMINAL CASE NO. OF 2015)

AHIMBISIBWE RUBAGANO ------------------------------------------ APPLICANT

VERSUS

UGANDA -------------------------------------------------------- RESPONDENT

# AFFIDAVIT IN SUPPORT

I, Ahimbisibwe Rubagano of C/o M/S Sui Generis and Co. Advocates, P.O.BOX 7117, Kampala do here by take oath and swear as follows;

1. That I am a male adult Ugandan of sound mind, the applicant herein and I swear this affidarit in that capacity.

2. That I was arrested and charged with the offences of murder and aggravated robbery

3. That I have been remanded at kabarole government prison since 19th /august /2014 when I was arrested

4. That I have been reliably informed by my advocate Mr. Rumanyika Fred of Sui Generis and co. Advocates which information I verily believers to be true by this Honourable Court.

5. That it is my constitutional right to apply for bail.

6. That have sound and substantial sureties within the jurisdiction of this honorable court who will undertake that I comply with the conditions of bad imposed upon me by this honourable court

7. That I am a first-time offender

8. That I have a fixed place of abode at kyaruhage ................ of a letter of residence is attached hereto and marked annexure B

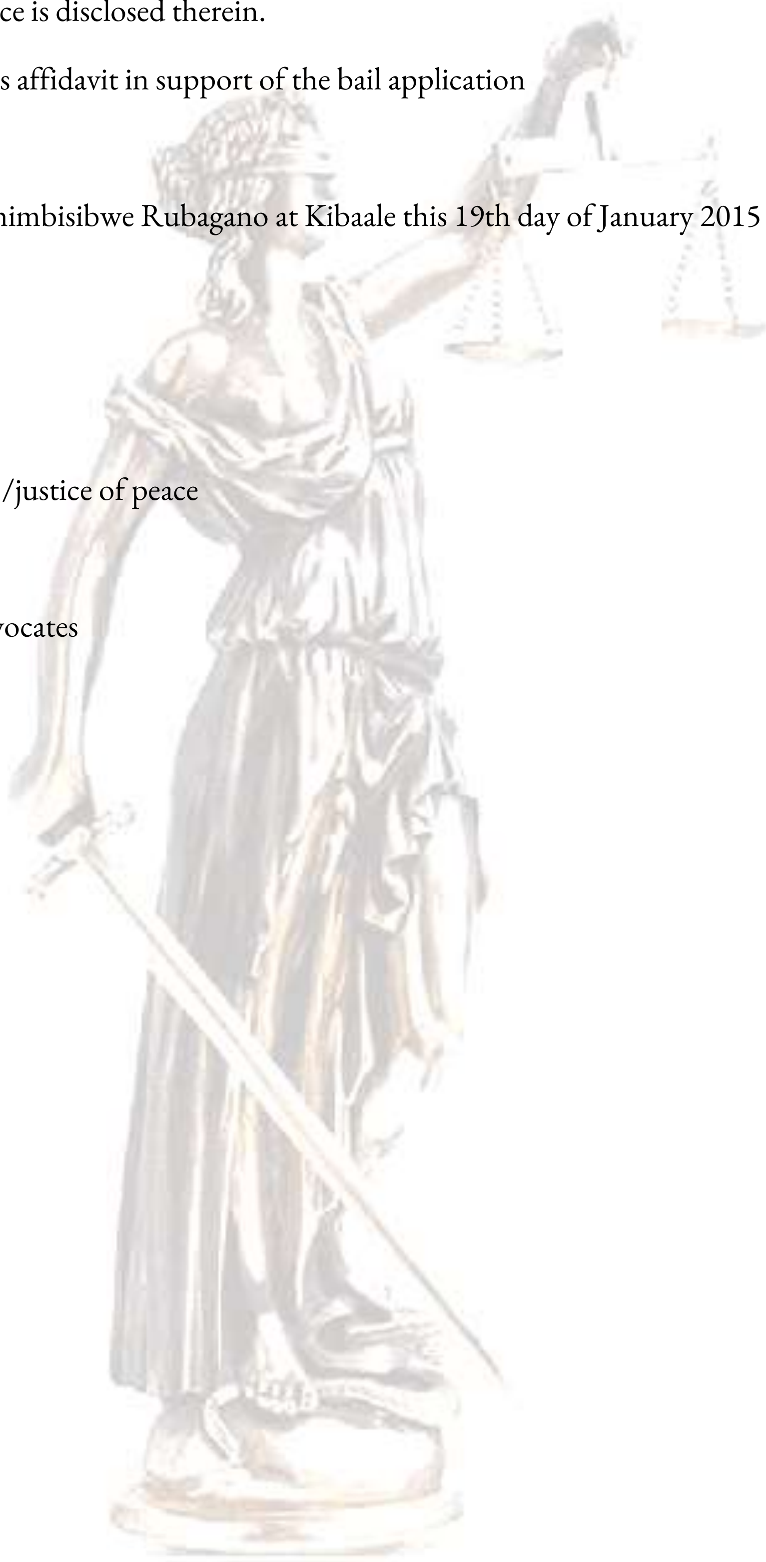
9. That I will not abscond if released on bill.

10. That I will not interfere with the investigations or evidence of the prosecution

11. That it is in the interest of justice that this application is granted.

12. That what is stated herein above is true and correct to the best of my knowledge and belief save for paragraph 4 whose source is disclosed therein.

13. That I swear this affidavit in support of the bail application



SWORN by the said Ahimbisibwe Rubagano at Kibaale this 19th day of January 2015

__________

Deponent

Before me

Commissioner for oath /justice of peace

Draw and filed by

Sui Generis and co. Advocates

P.O. Box 7117,

Kampala

# Criminal revision

The Criminal Revision applications are premised **under Sections 48 and 50 of the Criminal Procedure Code Act Cap 116** and Section 17 of the Judicature Act Cap 13. **Section 48** of the Criminal Procedure Act, provides for the Power of courts to call for records. It states that, 'The High Court may call for and examine the record of any criminal proceedings before any magistrate's 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's court.'

**Section 48 of Criminal Procedure Act**, vests the High Court with powers to call for the records of the magistrates' court. Then the power of the High Court to consider an application for Criminal revision is premised under Section 50 of the Criminal Procedure Act Cap 116. **Section 50** which provides for the Power of High Court on revision states that: -

1) In 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 by sections 34 and 41 and may enhance the sentence;

(b) in the case of any other order, other than an order of acquittal, alter or reverse the order.

From the above provisions, it's clear that Criminal Revision is exercisable only when it appears that in the proceedings in the Magistrate's Court contain, an error material to the merits of any case or involving a miscarriage of justice has occurred. The High Court is then empowered to enter a Revisional Order, in case of a conviction, or in case of any other order other than an order of acquittal.

The question then is: What order does the law refer to in **Section 50 (1)** (b) of the Criminal Procedure Code Act, as 'any other order.'? In the case of **UGANDA VS DALAL [1970] 1 EA 355 (HCU)**, Justice Mukasa Ag J (as he then was) at page 357 stated explicitly that, "It is obvious, as Jones, J., remarked in Cr. Rev. 81/63, **GERESOMU MUSOKE V. UGANDA** (unreported), on reading ss. 339 to 341 of the Criminal Procedure Code only a final order can be the subject of a revisional order of this court. At the moment no such order is on the lower court's record. If this were not the case all sorts of magistrates' rulings would be finding their way to this court and I can well imagine a clever accused who likes to avoid a prosecution to conviction delaying such prosecution by making a series of objections, on which a trial magistrate would be compelled to rule and thereafter appeal to this court time and again. I agree entirely with Mr. Korde that these proceedings now before this court are misconceived. The trial in the Court below should continue and in the event of the prosecution's being dissatisfied with the final decision of that court, this present ground could form part of the grounds of appeal. This petition is therefore incompetent. It follows then that it is unnecessary for me to go into the merits."

This position was adopted by Justice Michael Elubu in the case of Barasa Bernard Odiemo and another vs Uganda Criminal Revision No. 1 of 2017, at page 4, parag 5, 6 & 7 where the trial Judge further said that 'It is therefore clear that in the instant case as well, the applicant had no locus to bring this application, against the trial magistrate's order rejecting his preliminary objection, as that order was interlocutory in nature.' For those reasons, the application for Revision was dismissed.

Similarly, in the case of **UGANDA VS OKUMU REAGAN & OTHERS CRIMINAL REVISION NO. 0003 OF 2018 AT PAGE 4**, paragraph 1, Justice Stephen Mubiru in part stated that: '... the revisional powers are not ordinarily exercisable in relation to interlocutory orders but to final orders. ... Merely because a Magistrate's Court has taken a wrong view of law or misapprehended the evidence on the record cannot by itself justify the interference or revision unless it has also resulted in grave injustice. ....'

Clearly interlocutory orders are neither subject to appeal in the pendency of a trial, nor subject to Revision by the High Court. It's therefore clear that, the Order of Court referred to under **SECTION 50 (1) (B) OF THE CRIMINAL PROCEDURE CODE ACT** is a final order of the lower Court. It's the only one that can be subject of a Revisional Order. It follows therefore, that applications for revising Interlocutory orders will not and should not be entertained by the High Court.

In the case of Charles Harry Twagira vs Uganda – Criminal Application No. 3 of 2003, the applicant therein sought a Revisional Order under **Section 48 and 50 (1) (b) Criminal Procedure Code Act**, but the same was dismissed by Bamwine J (as he then was) (in page 2) to wit that there is nothing irregular about the procedure adopted by the trial magistrate so far as anything prejudicial to the petitioner on the face of the record to warrant a Revisional Order'. The matter went upto the Supreme Court. Wherein Justice Tsekooko (in Page 5) stated that: 'In my view this provision is in line with the provisions of **Section 216 of Magistrate Court Act**. The Statute does not define the word "Judgment". The above quoted S.6 (5) refers to a judgment of a Chief Magistrate. **Article 257 (1) of the Constitution** interprets the word "judgment". It interprets it this way- "Judgment" includes a decision, an order or decree of a Court. In my view, this interpretation means a final decision of a court, but not a discretionary order or ruling in an interlocutory matter such as a finding that there is a prima facie case as the Chief Magistrate did.' He further stated that, 'The decision of Bamwine, J, and of the Court of Appeal are interlocutory decisions and not final decisions.'

From the above case, it's clear that a Judgment, is the final order of Court envisaged under **Section 50 (1) (b) of the Criminal Procedure Code Act.** A Judgement is defined to mean, the Final order of the court, in a criminal case; the conviction and sentence or acquittal constitute the judgment. And a Final Order is an order that substantially ends the lawsuit between the parties, resolves the merits of the case, and leaves nothing to be done but enforcement.

Clearly, not all decisions given in the course of the proceedings in court are judgments or final orders. The last nail, in guiding what amounts to a final order of court or judgment, is premised in the case of Firstrand Bank Limited t/a First **National Bank vs Makaleng (034/16 [2016] ZASCA 169, page 8 para 2**. It was stated that a "judgment or [final] order" is a decision which, as a general principle, has three attributes, first, the decision must be final in effect and not susceptible of alteration by the Court of first instance; second, it must be definitive of the rights of the parties; and, third, it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings.

It is thus my understanding that a final order in a criminal litigation, is the appealable order. The fact that a decision may cause a party an inconvenience or place him at a disadvantage in the criminal litigation which nothing but an appeal can cure, does not make such a decision susceptible to criminal Revision.

In the case of **Okiror James vs Uganda Criminal Revision Cause No. 003 of 2010 page 5, 6,** whilst citing the case of **Charles Harry Twagira vs Uganda – Criminal Application No. 3 of 2003**, the Hon. Justice Godfrey Namundi stated that 'the right to a fair trial, should not be stretched to mean giving a right to an accused person to challenge each and every point of objection as this would unduly undermine procedures and effective trials and would open gates to abuse of the process of Court and the due administration of justice. Further, the decision of the trial Court does not call for Revision as it is not a final Judgment or decision within the provisions of the Magistrate's Court Act.

**Section 17 (2) of the Judicature Act** states that 'With regard to its own procedures and those of the magistrates' courts, the High Court shall exercise its inherent power

a) To prevent abuse of process of the court by curtailing delays, in trials and delivery of judgment including the power to limit and discontinue delayed prosecutions

b) To make orders for expeditious trials, and

c) To ensure that substantive justice shall be administered without undue regard to technicalities

The rational of Section 17 (2) Judicature Act is to prevent abuse of Court process, facilitate expeditious trials, curtail delays in delivery of judgment and ensure that substantive Justice is administered. The hallmark of Section 17 (2) of the Judicature Act is that Litigation must come to finality. Subjecting interlocutory orders to revision achieves just the opposite.

Thus, a criminal revision application brought against the interlocutory orders is preposterously clouded with illegality, irregularity, and impropriety. It is incompetent, premature, incurable in law, and utterly misconceived. It is a material error, involving a miscarriage of justice. It's only aimed to delay, frustrate or injuct the delivery of substantive justice, and is not deserving of a Revisional Order.

## CIRCUMSTANCES FOR REVISION

Revision is a remedy to a party only after the final judgement of the court has been pronounced. I

It cannot be applied for against an interlocutory or preliminary decision of the court. (**Musoke V Uganda H/Ccrim Rev no 81/1963**)

Revision is an available remedy to parties where there is no statutory right of appeal as per section 50(5) criminal procedure code Act. (**Republic V Dunn (1965) EA 567)**

It is also available where an appeal has filed but later withdrawn (**Uganda V Polasi Kasumba (1970) EA567**)

Power of the High Court to call for records is visible under **Article 139(1) of the constitution**

**section 17(4) judicature act cap 13**, the High Court exercises general powers of supervision over magistrate Courts.

## THE GROUNDS OF REVISION

The High Court may call and examine the records of any such criminal proceedings before any magistrate's 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 Magistrates court. (Section 48 Criminal procedure code Act cap 116)

**Uganda V Mboizi H/C criminal Revision No. 002/2012(unreported**), any order by a Magistrate's Court without jurisdiction is illegal, null and void abinitio.

**VASIO NODA V UGANDA, CRIMINAL REVISION NO. 68/1991 (UNREPORTED**), before a revisional order is made, the court should be satisfied that the order made by the lower court was erroneous in law or caused a miscarriage of justice.

POWER OF THE MAGISTRATE'S COURT TO CALL FOR RECORDS.

Section 49(1) criminal procedure code Act cap 116, the magistrates have power to call for records of inferior courts and to report to the High court.

**Basajjabalaba V Kakande H/C criminal revision No. 02/2013 (unreported**) revisional orders should not be made in vain.

**Bail Pending Revision**

Section 50(6) criminal procedure code Act, the High Court may be pending the final determination of the case release any convicted person on bail, but if the convicted person is ultimately sentenced to imprisonment, the time he/she has spent on bail shall be excluded in computing the period for which he/she is sentenced.

**Scenario**

Summarized facts

It is alleged that on the 12/05/2021 while on duty, customs officers in kitgum District intercepted Kamba willy driving truck Reg. UAZ 112C as he was returning from South Sudan.

It was discovered that the truck was loaded with 140 bombers of 10 packets of super match cigarettes each containing 20 sticks. At plea taking Kamba willy pleaded guilty without being read to the essential ingredients of the offence nor explaining to him the implications of his plea for unequivocal admission. A plea of guilty was entered and sentence further delivered. He was subsequently sentenced to pay a fine of the cigarettes and in default 2years imprisonment.

**Approach**

Legal Issues;

1. What are the most appropriate remedies?
2. What are the merits and demerits of the client's case in the circumstances?
3. What is the procedure, forum and documents needed?

**Law applicable;**

1. The 1995 constitution of Uganda
2. The East African Community Customs Management Act 2004
3. The judicature act cap 13
4. The criminal procedure code Act cap 116

5. The constitution (sentencing Guidelines for courts of judicature) (practice) directions 2013
6. The Magistrates Court Act cap 16 as amended
7. The magistrates court (magisterial areas) instrument2017(SI no. 11of 2017)

NB: the most appropriate remedies are Revision and possibly bail pending revision

What are the merits and demerits of the client's case in the circumstances?

a) Failure to follow due procedure in plea taking

Kamba willy wasn't explained to all the essential ingredients of the offence and neither was count 1 of the alleged offence (ie the charge)

The procedure for recording of a plea of guilty is laid down under section 124 of the Magistrate's Court Act cap 16 and in the case of Adan v Republic (1973) EA 445 as follows;

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

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

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

iv) If the accused doesn't agree with the facts or raises any question of his guilt, his reply must be recorded and change of plea entered.

v) If there is no change of plea a conviction should be recorded and a statement of the facts relevant to the sentence together with the accused's reply should be recorded.

**Uganda V Olet (1991) HCB13**, for a conviction to be properly based on a plea of guilty, the plea must unequivocally admit all the ingredients of the offence charged.

Court further noted that a summary of the facts constituting the offence must also be narrated and put to the accused. Only if these facts disclosed the commission of the alleged offence and the accused admits the correctness thereof can a conviction be properly entered.

b) Acting without or in excess of jurisdiction.

**Section 225(1) of the East African Community Customs Management Act 2004**, a person charged with an offence under this Act maybe proceeded against, tried and punished, in any place in which he/she may have

been in custody for that offence as if the offence had been committed in such place, and the offence shall for all purposes incidental to, or consequential upon, the prosecution, trial, or punishment, thereof be deemed to have been committed in that place.

Section 220(1) of the same act is to the effect that a prosecution for the offence under the act may be heard and determined before a subordinate court and it shall have jurisdiction to impose any fine/sentence of imprisonment on a person convicted of the offence.

For purposes of the workshop, Kamba Willy can be tried anywhere without the issue of jurisdiction arising by virtue of section 225(1) and section 220(1) of the East African Community Customs management act 2004.

## Jurisdiction for magistrate's courts

**Section 4 of the Magistrates court act cap 16**, the criminal jurisdiction of Magistrates courts extends to all areas within the boundaries of Uganda.

**Section 34 of the Magistrates Court Act cap16**, Magistrates courts are enjoined to inquire and try such offence which was committed within the local limits of jurisdiction of that court.

## For general or further purposes, the merit of 'acting without jurisdiction' is explained here under;

**Section 32 of the same Act** is to the effect that where a person accused escapes or is removed from the area where the offence was committed and is found within another area, the magistrates court within whose jurisdiction the person is found shall cause him/her to be brought before it and shall , unless authorized to proceed , send the person in the custody to the court having jurisdiction of the offence committed or require the person to give security for his or surrender to that court there to answer the charge and to be dealt with according to the law.

**Section 39 of the Magistrates court Act cap 16,** whenever any doubt arises as to the court by which any offence should be tried, any court entertaining that doubt may in its discretion, report the circumstances to the High court and the High Court shall decide by which court the offence shall be tried.

## MAGISTRATES GRADE 1

Section 161(1)(b) of the Magistrate court Act cap 16, original jurisdiction to try any offence other than that which is punishable by death/life imprisonment.

Section 162(1)(b) of the Magistrates court act cap 16, a grade1 magistrate may pass any sentence as long as the term of imprisonment doesn't exceed 10years or the fine does not exceed 1000,000/=

**Uganda V Oloya Richard H/C crim confirmation No.1/2004**, where a magistrate Grade 1 court passes a sentence of imprisonment for 2years or over or preventive detention under the Habitual Criminals (Preventive Detention) Act, the sentence shall be subject to the confirmation by the High Court. The High Court is guided by the procedure of revision in confirming the sentence.

## CHIEF MAGISTRATES

**Section 161(1)(a) magistrates court act cap 16,** a chief magistrate may try any offence other than an offence in respect of which the maximum penalty is death.

**Section 162(1)(a) of the same Act** is to the effect that chief magistrate may pass any sentence authorized by law.

## DEMERITS OF THE CASE

The power of the High Court would extend to enhancement of the sentence to a lighter one considering that the accused is a first-time offender, remorseful and the breadwinner.

2nd schedule, the constitution (sentencing Guideline for courts of Judicature) (practice Directions) 2013, enlists the factors to take into account when considering sentencing;

- -Antecedents of the offender/habitual offender or first offender.
- -Remorsefulness of the offender
- -Social status, family status and background. **Uganda V Yang (1994) HCB 25,** court laid down factors to consider in imposing a sentence include the following;
- -the antecedents of the accused
- -the gravity of the offence
- -the period spent on remand
- -that the accused did not waste court's time
- -that the accused is remorseful.

What is the procedure, forum and documents needed?

## PROCEDURE FOR REVISION

**Section 50(5) of the criminal procedure code act cap 116**, any person aggrieved by any finding, sentence or order made may petition the High court to exercise its powers of discretion but such will not be entertained if the petitioner could have appealed but has not.

**Section 50(8) of the criminal procedure code Act cap116**, the Director of public prosecutions may also apply to the High court for revision about miscarriage of justice and the application should be made within 3odays of imposition of the sentence unless time is extended by the High Court.

**Shabahuria matia v Uganda H/C crim.Rev. cause No.5/1999 (unreported),** the court has power to make orders for revision to prevent abuse of court process.

**Michael s/o Meshaka V R (1962) EA 81,**

The court should inquire if an appeal has been filed or is to be filed by the applicant before it exercises its revisionary powers or else the party may lose the right of appeal.

**-section 50(2) criminal procedure code act cap 116,** no order of revision should be made unless the adverse party has had an opportunity to be heard.

-**section 50(1) criminal procedure code act cap 116**, upon forwarding the record to the High court for revision, the High Court may;

i) enhance the sentence

ii) in the case of any other order other than an order of acquitted, alter or reverse the order.

**Uganda V Polasi Kasumba (1979) EA 567**,

The High court has power to enhance a sentence, having regard to the gravity of the offence, that is inadequate as long as this does not result into a miscarriage of justice.

**Kiwala V Uganda (1967) EA 758**, upon exercising its power, the court becomes fanctus officio and the revision is final unless an appeal in lodged to the appellate court.

**Section 50(4) criminal procedure code act cap 116**, power of the High Court to convert an acquittal into a conviction if convicted of another offence whether charged or not.

Summary of procedure for revision.

i) Write a letter requesting for the certified record of proceedings.
ii) Apply for revision by the notice of motion together with the affidavit

iii) Pay the requisite fees.
iv) Effect service on the opposite party within reasonable time. Section 50(2) criminal procedure code act cap116
v) Application shall be set down for hearing and determination-Hearing notice.
vi) Revision order issued/ denied.

## FORUM FOR REVISION;

The High court of Uganda (section 50(1) criminal procedure code Act cap 116)

## PROCEDURE FOR BAIL PENDING REVISION.

Section 50(6) criminal procedure code act cap116, power of court to release convicted person on bail pending revision.

i) Apply for bail pending revision by way of Notice of Motion supported with an affidavit
ii) Pay the requisite fees.
iii) Serve the opposite party
iv) Application set down for hearing and determination
v) Application granted or denied

## FORUM FOR BAIL PENDING REVISION.

The High Court of Uganda as per Section 50(6) of the Criminal Procedure Code Act cap 11

**NOTICE OF MOTION**

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

**CRIMINAL REVISION NO......... OF 2021**

**(Arising from Buganda Road chief magistrate's court Anti- Corruption Case No.28 of 2021)**

**SUIGENERIS 1 .................................... APPLICANT**

**VERSUS**

**UGANDA.........................................RESPONDENT**

## NOTICE OF MOTION.

(Under Rule 2 The Judicature (criminal procedure) (Applications) Rules and Sections 34, 48 and 50 of the Criminal Procedure Code Act Cap 116)

TAKE NOTICE that the Honorable Court shall be moved on the day of....................at................0'clock in the fore/afternoon or soon thereafter as the applicant may be heard on an application for revision of criminal case No.28/2021 and for orders;

a) That the finding and sentence in criminal case no.28/2021 be reversed.

b) That the convict be tried by a court of competent jurisdiction

TAKE FURTHER NOTICE that the grounds of this application are briefly set out in that affidavit of KAMBA WILLY, the applicant which shall be read and relied upon at the hearing but briefly are that;

a) That the applicant was convicted on his own plea of guilty without sufficient facts disclosing the ingredients of the offence charged. This was an irregularity.

b) That the sentence of a fine of one Hundred Fifty-three million, six Thousand Nine Hundred Uganda shillings was illegal since it was beyond the sentencing powers of a magistrate Grade 1.

c) That the sentence of a fine of one hundred Fifty-three million sixty thousand nine hundred Uganda shillings and in default of two-year imprisonment term was not proper considering the gravity of offence committed.

Dated at Kampala this.......... day of ................2021

..................................................

COUNSEL FOR THE APPLICANT

Given under my hand and seal of the Court this.... day of..............2021

................................................

REGISTRAR, HIGH COURT

DRAWN & FILED BY;

SUIGENERIS &Co ADVOCATES

P.O.BOX 4053

KAMPALA, UGANDA

**AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION**

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

**CRIMINAL REVISION NO......... OF 2021**

**(ARISING FROM BUGANDA ROAD CHIEF MAGISTRATE'S COURT ANTI-CORRUPTION CASE NO.28 OF 2021)**

**SUIGENERIS1....................................................... APPLICANT**

**VERSUS**

**UGANDA.........................................................RESPONDENT**

## AFFIDAVIT IN SUPPORT

I, SUIGENERIS 1 of C/O SUIGENERIS & Co ADVOCATES P.O>BOX 7117 Kampala Uganda do solemnly make oath and state as follows;

1. That I am a male adult Ugandan of sound mind the applicant in this matter

2. That I was charged with the offence of ..................... and convicted on my own plea of guilty on the .......... day of ......................2021 and currently at Kitalya prison.

3. That the brief facts presented to the prosecution did not sufficiently disclose the ingredients of the offence with which the accused was charged.

4. That it was an irregularity for the learned trial magistrate to convict the applicant on the above-mentioned facts. (a copy of the certified record of proceedings is hereto attached and marked annexture 'A')

5. That the learned trial magistrate Grade1 imposed a fine of 6 million on the applicant which did not fall within his jurisdiction and therefore it was illegal.

6. That the sentence of 6 million shillings or in default, two years imprisonment was not proper considering the gravity and circumstances of the case.

7. That I have been verily advised by my lawyer firm G4 & co advocates whose advice I believe to be true that this is a proper case for the court to exercise its discretionary and revisionary powers considering the irregularity, illegality and inappropriateness of the sentence.

8. That I have also been verily advised by my lawyers firm G4& co advocates whose advice I believe to be true that the irregularity, impropriety of the sentence and irregularity in the proceedings cannot be cured and court ought to reverse the finding and sentence of the lower court & orders a retrial of the accused.

9. That whatever I have stated herein above is true and correct to the best of my knowledge and belief except statements whose source I have disclosed.

SWORN at Kitalya Prison this.........day of......... 2021

BY THE SUIGENERIS

..........................................

DEPONENT

BEFORE ME

...................................

JUSTICE OF PEACE

DRAWN & FILED BY;

SUIGENERIS &Co ADVOCATES

P.O.BOX 4053

KAMPALA, UGANDA

**DOCUMENTS FOR BAIL PENDING REVISION**

1. NOTICE OF MOTION already drafted subject to the enabling law and facts

2. Affidavit in support already drafted subject to facts and grounds

# CRIMINAL PROCEEDINGS

**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 Constitution of the Republic of Uganda

2. The Anti Corruption Act, No. 6 of 2009,

3. Inspectorate of Government Act

4. The Criminal Procedure Code Act, Cap 116;

5. The Evidence Act, Cap 6;

6. The Magistrates' Courts Act, Cap.16 as amended by Act 7 of 2007;

7. The Magistrates' Courts (Magisterial Areas) Instrument of 2017

8. 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 Section 8 which provides for the functions of the Inspectorate of Government.

The Anti-Corruption Act 2009 gives 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 2 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 2009 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;

a. That the accused was an employee of a public body
b. That the accused performed the arbitrary act
c. That this act was in abuse of his authority.
d. 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 one's 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** 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

Section 19 of the Anti-Corruption Act provides 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 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 ACA 2009

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 V. UGANDA SC CRIM. 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 or part 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

Section 2 of Anti Corruption Act 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 Section 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 which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved be yon d reason able doubt but nothing short of that will suffice."

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 favor.

## 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 ACA 2009

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.

## THE REPUBLIC OF UGANDA

## STATION; INSPECTORATE OF GOVERNMENT

## REF; KLA/19/11/2018

## DATE; 19th November 2018

## CHARGE

## UGANDA VERSUS;

A1. MUSISI JOHN M/A, 53 years, Muganda by tribe, Refugee Desk Officer, Department 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, 2009.

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, 2009.

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, 2009.

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, 2009.

PARTICULARS 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, 2009.

PARTICULARS 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, 2009.

PARTICULARS 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

OBJECTION MY LORD

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.

Section 33 Anti Corruption Act 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.

**Section 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, authorize 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 authorized 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 Section 50. Appointment of special investigators.**

OBJECTION MY LORD

(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 advice 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 portraying 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 MCA Cap 16, 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 MCA Cap 16, 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 Section 127 Magistrate Court Act Cap 16, 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. In **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 parts 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 SABAHA SHI 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 essential 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 V R (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 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

(i) the onus is on the prosecution to prove its case beyond reasonable doubt and a primafacie 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 2009.

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 2009. 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 2009. 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

OBJECTION MY LORD

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 2009. 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, 2009. 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 MCA, Cap 16.

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; (CONCERNING JURISDICTION OF COURTS)

**Section 161 of the Magistrate Court Act** 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 **Magistrate Court Act**. 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 authorized 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 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) Magistrate Court Act**; 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) Magistrate Court Act**; 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.

OBJECTION MY LORD

THE CHIEF MAGISTRATES COURT

OF THE ANTI-CORRUPTION COURT

P.O BOX 4536

KAMPALA

20/11/2022.

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 of The Anti-Corruption Act, 2009.

2. Fraudulent Accounting contrary to Section 21 of The Anti-Corruption Act, 2009.

3. Embezzlement contrary to Section 19 of The Anti-Corruption Act, 2009.

4. Corruption contrary to Section 2 of The Anti-Corruption Act, 2009.

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 16.

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.

## EXAMPLE

BRIEF FACTS

On the 17th of August, 2021, Kakande John Bosco alias Big Boss, Kalungi James alias Cowboy, Musitwa Ahamad alias Fixer and Kabagambe Ivan alias Kyakabale were charged with the offence of aggravated robbery contrary to sections 285 and 286(2) of the Penal Code. They all pleaded not guilty and their trial commenced in the High Court. The state presented three witnesses. In their defence, whereas Kakande(A1) and Kabagambe(A4) chose to keep quiet, Kalungi(A2) gave an unsworn statement denying the offence whereas Musitwa(A3) on his part, gave sworn evidence and denied the offence besides raising an alibi. Court however ruled against summoning A3's brother has his witness. The accused persons were on the 5th August, 2022 convicted and sentenced to a custodial term of 25 years' imprisonment.

ISSUES

1. What are the preliminary steps to be taken to achieve the desired remedy in the circumstances?
2. What are the requisite documents to achieve the desired remedy?
3. Whether the convict's case has any merit.
4. What are the necessary requisite documents in the circumstances?
5. Whether there is any possible course of action if A1 lost interest in further legal redress
6. Whether there would any redress if A2 who had separately filed a separate memorandum 3 days after the decision of High Court of appeal died 4 days ago
7. Whether there would any redress if A3 who is interested in pursuing further legal redress had diligently filed a notice of motion and memorandum of appeal had one general ground of appeal only
8. Whether A4 can appeal to have the sentence reduced?
9. Whether there are any grounds to oppose the preliminary remedy and substantive remedy.

LAW APPLICABLE

The Constitution of the Republic of Uganda, 1995 (As amended)

Criminal Procedure Code Act (Cap 116)

Judicature Act (Cap 13)

The Judicature (Court of Appeal Rules) Directions.

The Trial on Indictments Act (Cap 23)

## CASE LAW

RESOLUTION

ISSUE 1: WHAT ARE THE PRELIMINARY STEPS TO BE TAKEN TO ACHIEVE THE DESIRED REMEDY IN THE CIRCUMSTANCES?

Desired remedy

Section 10 of the Judicature Act states that an appeal shall lie to the Court of Appeal from decisions of the High Court prescribed by the Constitution, this Act or any other law. Section 132(1) of the Trial on Indictments Act states that an accused person may appeal to the Court of Appeal from a conviction and sentence by the High Court in the exercise of its original jurisdiction, as of right on a matter of law, fact or mixed law and fact.

Section 28(1) of the Criminal Procedure Code Act provides that 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.

In the instant facts, the judgment was passed by Justice Nelson Opapa on the 5th August, 2022. The 14 days in which the convict had a right of appeal lapsed on the 19th day of August 2022. Lodging an appeal out of time would offend the provisions of Section 28(1) of the CPC Act.

Next Course of Action

The preliminary step to achieving the remedy of an appeal is to make an application for an extension of time to file a notice of appeal. Section 28(6) of the Criminal Procedure Code Act provides that the appellate court may, for good cause shown, extend the periods mentioned in subsection (1) or (3). Section 31(1) of the CPC Act provides that 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.

Rule 5 of The Judicature (Court of Appeal Rules) Directions states that the court may, for sufficient reason, extend the time limited by these Rules or by any decision of the court or of the High Court for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to the time as extended

OBJECTION MY LORD

The expression 'sufficient reason' is not defined anywhere in the Rules of this Court. In the case of Rosette Kizito v Administrator General and others, Supreme Court Civil Application, No. 9 of 1986, reported in Kampala Law Reports, Volume 5 of 1993 at page it was held that 'Sufficient reason must relate to the inability or failure to take the particular step in time'.

In the instant facts, the convicts were initially represented by Counsel Winnie Kasoma, defence counsel on State Brief. The failure to file the notice of appeal within 14 days to was due to lack of legal representation as they could not afford advocate expenses and were represented on state brief during the trial and equally on appeal. This is in line with **Article 28(3)(e) of the Constitution** that states that every person who is charged with a criminal offence shall in the case of any offence which carries a sentence of death or imprisonment for life, be entitled to legal representation at the expense of the State. The appellant cannot be blamed for failure to adhere to procedural technicality in absence of legal counsel and this is a proper case for invocation of **Article 126(2)(e) of the Constitution** that substantive justice shall be administered without undue regard to technicalities.

ISSUE 2: WHAT ARE THE REQUISITE DOCUMENTS TO ACHIEVE THE DESIRED REMEDY?

Rule 43(1) of the Judicature (Court of Appeal Rules) Directions states that subject to sub rule (3) of this rule and to any other rule allowing informal application, all applications to the court shall be by motion, which shall state the grounds of the application.

Rule 44(1) of the Judicature (Court of Appeal Rules) Directions provides that every formal application to the court shall be supported by one or more affidavits of the applicant or of some other person or persons having knowledge of the facts.

The necessary documents are thus Notice of Motion and supporting affidavit.

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**MISCELLANEOUS CRIMINAL APPLICATION NO.......OF 2022**

**KAKANDE JOHN BOSCO a.k.a. BIG BOSS**

**KALUNGI JAMES a.k.a. COWBOY**

**MUSITWA AHAMAD a.k.a. FIXER**

**KABAGAMBE IVAN a.k.a. KYAKABALE...........................................APPLICANT**

**VERSUS**

**UGANDA.......................................................................RESPONDENT**

**NOTICE OF MOTION**

(Under Section 28(6) and 31(1) of the Criminal Procedure Code Act, Rules 2(2), 5, 43 and 44 of the Judicature (Court of Appeal Rules) Directions S.I 13-10, Section 33 of the Judicature Act Cap 13)

TAKE NOTICE that this Honorable Court will, on the ________day of _______2022 at ________O'clock in the fore/afternoon or so soon thereafter as Counsel for the Applicants shall be heard on the Application for orders that;

a) An order to grant leave to the Applicant to file an appeal out of time against the Judgment of Hon Justice Nelson Opapa in High Court Criminal Case No. 223 of 2021 delivered on 5th August 2022 in which the applicants were convicted on the charges of aggravated robbery and each sentenced to 25 years' imprisonment.

b) To make any other order that the Court may deem fit to grant in the interest of Justice.

TAKE FURTHER NOTICE that this Application is supported by the affidavit of MUSITWA AHAMAD, one of the applicants herein, which affidavit shall be read and relied upon at the hearing but briefly the grounds are that: -

1. That the applicants were tried and convicted on the indictment of aggravated robbery in High Court Criminal Case No. 223 of 2021 and sentenced to 25 years' imprisonment on the 5th of August 2022.

2. That the time within which to file a notice of appeal has since lapsed, and this application seeks leave within which to file a notice of appeal.

OBJECTION MY LORD

3. The Applicants' failure to file the appeal within the required period was due to lack of legal representation as they could not afford advocate expenses and were represented on state brief during the trial as well as in the intended appeal.

4. That upon going through the copy of proceedings and judgement of the High Court, we were advised by our counsel, which advice I verily believe to be true, that the judgment of Justice Nelson Opapa on the 5th August, 2022 raises substantial questions of law which the honourable court has to determine.

5. That the application has been brought in a timely manner without undue delay.

6. That it is in the interest of justice that this application be granted, than denying the victim in the criminal case justice on mere technicalities where the intended appeal raises substantial questions of law to be determined.

DATED at Kampala this 28th day of August 2022.

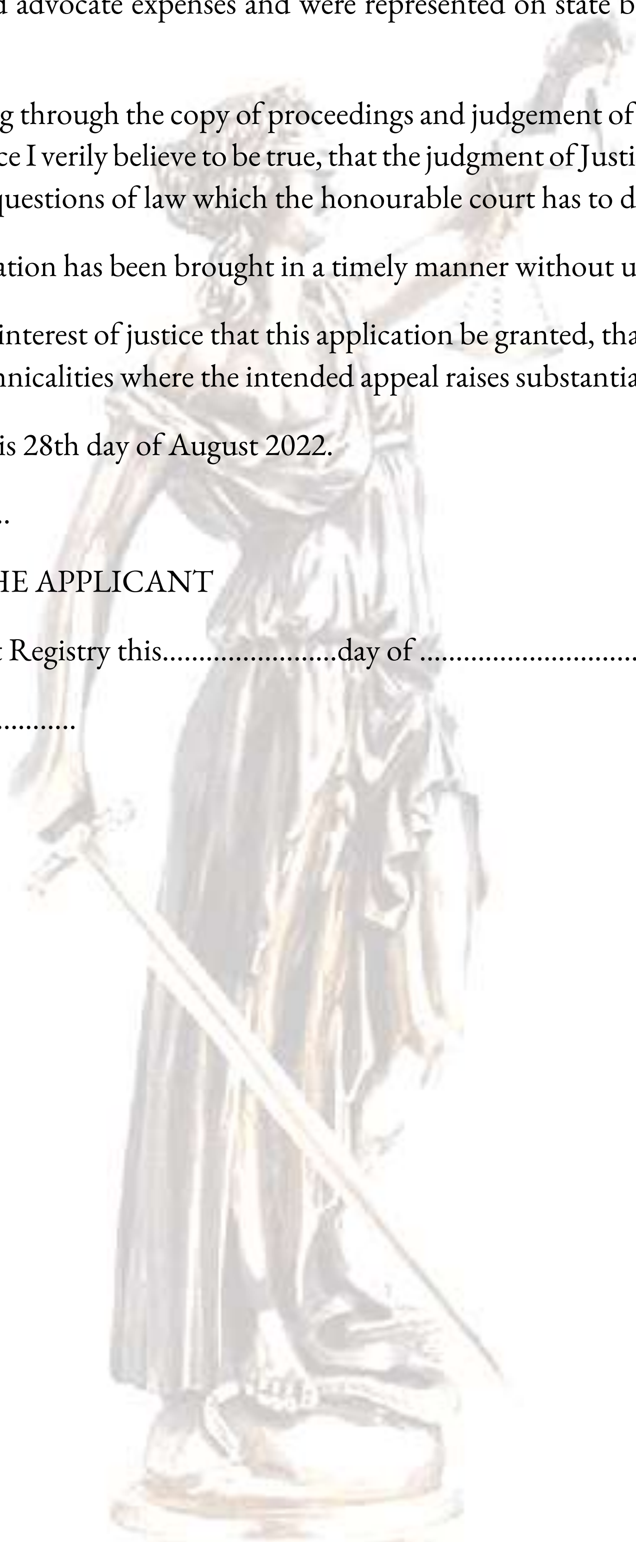
……………………………….

ADVOCATE FOR THE APPLICANT

LODGED in the Court Registry this……………………day of …………………………2022.

…………………………………………

REGISTRAR.



**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**MISCELLANEOUS CRIMINAL APPLICATION NO.......OF 2022**

**KAKANDE JOHN BOSCO a.k.a. BIG BOSS**

**KALUNGI JAMES a.k.a. COWBOY**

**MUSITWA AHAMAD a.k.a. FIXER**

**KABAGAMBE IVAN a.k.a. KYAKABALE............................................APPLICANT**

**VERSUS**

**UGANDA.........................................................................RESPONDENT**

## AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

I, Musitwa Ahamad of M/S SUI GENERIS Plot 3 Lira Road, do solemnly swear and state as follows.

1. That I am a male adult Ugandan of sound mind and one of the convicts in Criminal Case No. 223 of 2021 therefore swear this affidavit in that capacity.

2. That on the 5th August 2022, the applicants were convicted on the charge of aggravated robbery in Criminal Case No. 223 of 2021 and sentenced to 25 years' imprisonment.

3. That the time within which to file a notice of appeal has since lapsed, and this application seeks leave within which to file a notice of appeal.

4. The Applicants' failure to file the appeal within the required period was due to lack of legal representation as they could not afford advocate expenses and were represented on state brief during the trial and on the intended appeal.

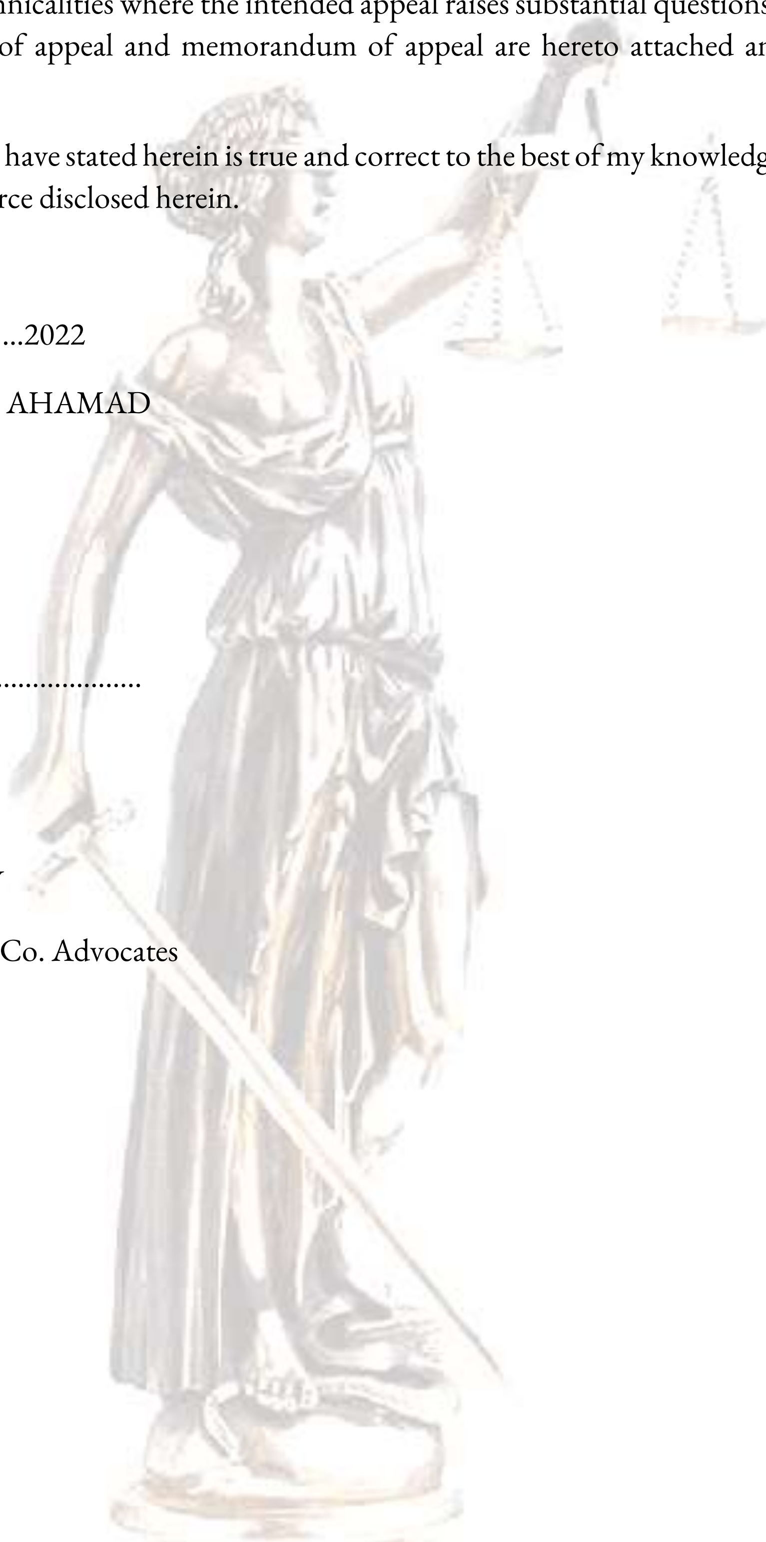
5. That upon going through the copy of the record of proceedings and judgement of the High Court, we were advised by our counsel that the judgment of Justice Nelson Opapa on the 5th August, 2022 raises substantial questions of law which the honourable court has to determine. (A copy of the record of proceedings and judgment are attached and marked "A" and "B" respectively)

6. That the application has been brought in a timely manner without undue delay.

OBJECTION MY LORD

7. That it is in the interest of justice that this application be granted, than denying the victim in the criminal case justice on mere technicalities where the intended appeal raises substantial questions of law to be determined. (A copy of the notice of appeal and memorandum of appeal are hereto attached and marked "C" and "D" respectively.)

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 disclosed herein.



SWORN at Kampala

This............ day of............2022

By the said MUSITWA AHAMAD

..................................

DEPONENT

BEFORE ME

............................................................

JUSTICE OF PEACE.

DRAWN & FILED BY

M/S SUI GENERIS & Co. Advocates

Plot 3 Lira Road.

TASK B

What are the merits of the substantive option identified in (a) above?

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA**

**CRIMINAL APPEAL NO. 22 OF 2022**

**(Appeal from the decision of the Honourable Justice Nelson Opapa given at Kampala in Criminal Case HCT-00-CR-SC-0255-2022)**

**A1-KAKANDE JOHN BOSCO a.k.a BIG BOSS**

**A2-KALUNGI JAMES a.k.a COWBOY**

**A3-MUSITWA AHAMAD a.k.a FIXER**

**A4-KABAGAMBE IVAN a.k.a KYAKABALE:::::::::::::::::::::::::::::::::::: APPELLANTS**

**VERSUS**

**UGANDA:::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::RESPONDENT**

## APPELLANTS' WRITTEN SUBMISSION

This is an appeal against the decision of Honourable Justice Nelson Opapa given at Kampala, delivered on the 5th of August 2022 at the High Court of Uganda at Kampala whereby the appellants were convicted on the charge of Aggravated Robbery contrary Sections 285 and 286(2) of the Penal Code Act, Cap.120 and sentenced to 25 years imprisonment.

The appeal is against both sentence and conviction. The grounds of the appeal are that;

- The learned trial judge erred in law and fact when he failed to adequately evaluate the evidence adduced at trial thus reaching an erroneous decision.
- The learned trial judge erred both in law and fact when she held that the appellants formed a common intention with one another to rob the complainant, Mukisa Simon.
- That the learned trial judge erred in law and fact when he relied on weak and unsatisfactory evidence to convict the 3rd Appellant which led to a miscarriage of justice.

OBJECTION MY LORD

- The learned trial judge erred in law when he sentenced the appellants to 25 years, a sentence which was unduly harsh and excessive.
- The learned trial judge erred in law when he sentenced the appellants to 25 years without deducting the period spent on pre-trial remand.

BRIEF FACTS.

The appellants were indicted with the offence of Aggravated Robbery contrary to Sections 285 and 286(2) of the Penal Code Act, convicted after a full trial and sentenced to 30 years imprisonment.

The prosecution's case was that on 17/04/2021 the victim; a one MUKISA SIMON was at around 10:00 p.m in the company of a one JANE KAGGWA returning from watching a premier league match at a local video hall when they were suddenly attacked by a gang of thugs. The attackers were armed with metallic bars (mitayimbwa) which they threatened to use against the victims. The assailants stole items which one SMART mobile phone (Nokia) X110, valued at Ug. Shs. 750,000/=, a designer leather jacket valued at Ug shs. 600,000/= and a wallet containing Kshs. 10,000/=, Ug shs. 155,000/=.

The victims were able to identify the accused assisted by the lights from the car headlamps of the motor vehicles which were passing by. Shortly after the attack, the victims reported to the area LC Chairman who referred them to Busega Police Post. The accused persons were arrested by the police at around 5:30am from their place of residence in the some LC area. All the stolen items from the victims were recovered from the accused's premises and exhibited. Later the accused were medically examined and found to be of sound mind whereof they were charged accordingly.

In their defence, A1 and A4 chose to remain silent, A2 gave an unsworn statement denying the offence whereas A3 gave sworn evidence and denied the offence besides raising an alibi.

RESOLUTION

This Honourable Court as a first appellate court has a duty to re-appraise the evidence and to make its own inferences in all issues of law and fact. This is provided under Rule 30(1) of the Rules of this court and in the case of Kifamunte Henry v Uganda SCCA No. 10/1997.

GROUND ONE AND THREE.

The learned trial judge erred in law and fact when he failed to adequately evaluate the evidence adduced at trial thus reaching an erroneous decision.

The prosecution is required to prove each ingredient of the offence beyond reasonable doubt.

My Lords, there was no evidence linking the accused persons to the commission of the offence in question.

PW1, the single identifying witness told court that on 17/04/2021 at around 10:00 PM, that he while walking home was attacked by the accused persons and within a spell of 3 minutes lost his properties as cited above. He further informed court that he was able to identify his assailants by way of voice identification coupled with the lights being flashed by passing motor vehicles [See Page 20 of the Record]

From PW1's evidence, he recognised the voice of the attackers when they told him to hand over whatever valuables they had. This is at Page 8 of the Record. This could not have been sufficient to recognise the voice of the attacker. One sentence cannot be sufficient for one to recognise the voice of someone especially in conditions of fear in which PW1 was. He was scared and frightened by the attackers and could not in any circumstance have been able to recognise the appellants.

PW1 never used to talk to the appellants. [See Page 8 of the record]. He told court that he only saw them around the village. Therefore, there is no evidence of a close connection between the two that would have made such recognition possible. Even though PW1 knew the voice of the appellants, PW1 could not identify the voices of the attackers because only a sentence was mentioned. Moreover, it was 6 of them, how could he have identified any of the appellants assuming that they all said the said sentence at the same time?

In the case of Budebo Kato v Uganda CA No.94/2009, this court stated that "On the issue of identification, we are guided by the decision in the case of Moses Kasana v Uganda CA No.12 of 1981 (1992-93) where the Supreme Court underscored the need for supportive evidence where the conditions favoring correct identification are difficult. It stated thus;

"Where the conditions favoring correct identification are difficult, there is need to look for other evidence whether direct or circumstantial which goes to support the correctness of identification and to make the trial court sure that there is no mistaken identification."

The court went on to uphold a conviction based on identification by voice in the Budebo Kasto case (supra), but the facts in that case are distinguishable from this case. In the Budebo Kasto case, the appellant spoke to the two witnesses for some reasonable time, the appellant ordered the witnesses to stop along the road where the attackers waylaid them, ordered them to lie down and later told them to get up and go away. In this case, the appellants talked to the witnesses at length as opposed to the instant case where only one sentence was exchanged amongst the persons.

The second limb of evidence linking the accused to the commission of the offence was the discovery of the stolen items in the appellants' house. This too was not sufficient to prove that the accused participated in the commission of the offence.

It is clear that the house from which the items were recovered is shared by a group of young men. [See Page 14 of the Record]. The house is shared by 6 men. Only 4 were on trial. It is thus clear that the items could have belonged to any of the six young men. The doctrine of recent possession does not apply in this case because it cannot be said for sure that any of the appellants was found in possession of the stolen item.

Moreover, the Supreme Court in Inzongoza William v Uganda SCCA No. 6/1998 held that if evidence is fronted that an accused was found in possession of recently stolen goods, the accused must offer some credible explanation of how he came into their possession. Again, reference is made to Page 14 of the Record, Appellant 3 for instance raised an alibi and further told court that he shared a room with several people and could not account for the existence of the stolen item in their shared room. This explanation is available to all the appellants and yet the prosecution and the court did not make mention of the possibility that the items could have belonged to any of the 6 people that shared the room.

In the circumstance, we submit that the evidence on record does not prove beyond reasonable doubt that the appellants participated in the commission of the offence of aggravated robbery.

GROUND FOUR.

The learned trial judge erred in law when he sentenced the appellants to 25 years, a sentence which was unduly harsh and excessive.

This court held in Abaasa Johnson & Anor v Uganda, CACA No.33 of 2010 that it is a well settled position in law that this court will only interfere with a sentence imposed by a trial court in a situation where the sentence is either illegal or founded upon a wrong principle of law.

It will equally interfere with sentence where the trial court has not considered a material factor in the case or has imposed a sentence that is harshly and manifestly excessive in the circumstance.

We submit that the sentence of 25 years imprisonment imposed by the trial judge was excessive and manifestly harsh in the circumstances. The appellants were first time offenders, both under the age of 27 years with a chance of reforming. The trial judge only castigated the appellants. We invite my Lords to consider the omission of these material factors and set aside the sentence.

In the case of Owinji William v Uganda, Criminal Appeal No.106 of 2013, this court faulted the trial judge for omitting to consider the youthful age of the appellant who was 37 years old as a mitigating factor. The court went on to substitute the sentence of 45 years imprisonment with a sentence of 17 years imprisonment.

In Abaasa Johnson v Uganda (supra), this court following the Supreme Court decision in Mbunya Godfrey v Uganda SCCA No.4/2011, further held that “We are alive to the fact that no two crimes are identical. However, we should try as much as possible to have consistency in sentencing."

In the case of Muchunguzi Benson v Uganda, Criminal Appeal No.08 of 2008, this court confirmed a sentence of 15 years’ imprisonment where the accuseds were convicted of aggravated robbery after full trial after finding it appropriate.

In the case of Pte Kusemererwa v Uganda, Criminal Appeal No.83 of 2010, this court substituted a sentence of 20 years’ imprisonment with that of 13 and 12 years imprisonment for the two appellants respectively. The accused had used a gun to rob 2,000,000 which was never recovered.

We propose that a sentence of 10 years would be fair in the circumstances of the case.

GROUND FIVE

The learned trial judge erred in law when he sentenced the appellants to 25 years without deducting the period spent on pre-trial remand.

My Lords, it is a principal of law that this court will not interfere with a sentence given by a competent court. However, there are exceptions to this general rule. For example, as explained in the well-known legal maxim, “Ex turpi causâ non oritur action”, a court of law cannot sanction what is illegal. (See: Kisugu Quarries vs. The Administrator General SCCA No.10 of 1998).

The instant case warrants a departure from the general rule since it deals with a constitutional imperative, the issue at hand being in the nature of a fundamental right of the convicts as guaranteed by the Constitution. [See Article 2 of the Constitution]

In Kyalimpa Edward vs. Uganda; Supreme Court Criminal Appeal No.10 of 1995, the principles upon which an appellate court should interfere with a sentence were considered. The Supreme Court referred to R vs. Haviland (1983) 5 Cr. App. R(s) 109 and held that:

An appropriate sentence is a matter for the discretion of the sentencing judge. Each case presents its own facts upon which a judge exercises his discretion. It is the practice that as an appellate court, this court will not normally interfere with the discretion of the sentencing judge unless the sentence is illegal or unless court is satisfied that the sentence imposed by the trial judge was manifestly so excessive as to amount to an injustice.

We are also fortified by another decision of the Supreme Court, Kamya Johnson Wavamuno vs. Uganda Criminal Appeal No.16 of 2000 in which it was stated:

It is well settled that the Court of Appeal will not interfere with the exercise of discretion unless there has been a failure to exercise discretion, or failure to take into account a material consideration, or an error in principle was made. It is not sufficient that the members of the Court would have exercised their discretion differently.

The record of both the trial court reveals that in arriving at the sentence of 25 years, neither court took the period spent on remand by the appellant into consideration. [See Page 23 of the Record]

And yet Article 23 (8) of the Constitution provides:

Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he or she spends in lawful custody in respect of the offence before the completion of his or her trial shall be taken into account in imposing the term of imprisonment. (Emphasis mine)

A sentence arrived at without taking into consideration the period spent on remand is illegal for failure to comply with a mandatory constitutional provision.

This position has is now settled by the Supreme Court in Rwabugande v Uganda (Criminal Appeal 25 of 2014). Here, the SC held that the taking into account of the period spent on remand by a court is necessarily arithmetical. This is because the period is known with certainty and precision; consideration of the remand period should therefore necessarily mean reducing or subtracting that period from the final sentence. That period spent in lawful custody prior to the trial must be specifically credited to an accused.

Court also emphasized that a sentence couched in general terms that court has taken into account the time the accused has spent on remand is ambiguous. In such circumstances, it cannot be unequivocally ascertained that the court accounted for the remand period in arriving at the final sentence. Article 23 (8) of the Constitution (supra) makes it mandatory and not discretional that a sentencing judicial officer accounts for the remand period. As such, the remand period cannot be placed on the same scale with other factors developed under common law such as age of the convict; fact that the convict is a first time offender; remorsefulness of the convict and others which are discretional mitigating factors which a court can lump together. Furthermore, unlike it is with the remand period, the effect of the said other factors on the court's determination of sentence cannot be quantified with precision. [Also, Guideline 15 of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013.

Therefore, based on the evidence on record, we submit that sentence arrived at by the trial judge without taking into consideration the period spent on remand is illegal for failure to comply with a mandatory constitutional provision.

We therefore pray that this Honourable Court allows the appeal and quashes the conviction of the appellant. In the alternative quashes the sentence and substitutes it with an appropriate one.

We so pray.

…………………………

COUNSEL FOR THE APPELLANTS.

Drawn and filed by:

M/S SUI GENERIS & Co. Advocates,

P.O Box 123,

Kampala.

ISSUE FOUR: What are the necessary requisite documents in the circumstances?

1. Notice of Appeal

Section 28(1) of the Criminal Procedure Act states that 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.

Rule 60(3) of the Judicature Court of Appeal Regulations Rules S.I 13-10 states that A notice of appeal shall be substantially in the Form B I the First Schedule to these Rules and shall be signed by or on behalf of the appellant.

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL UGANDA AT KAMPALA**

**CRIMINAL APPEAL No....... OF 2022**

**A1 KAKANDE JOHN BOSCO a.k.a Bigboss**

**A2 KARUNGI JAMES a.k.a Cowboy**

**A3 MUSITWA AHAMAD a.k.a Fixer**

**A4 KABAGAMBE IVAN a.k.a Kyakabale.................................. APPELLANT**

**VERSUS**

**UGANDA ......................................................................... RESPONDENT**

## NOTICE OF APPEAL

(Under Section 28 Criminal Procedure Code Act and Rule 60(3) of the Judicature (Court of Appeal Rules) Directions SI-13-10))

TAKE NOTICE that KAKANDE JOHN BOSCO a.k.a BIG BOSS and three(3) others, being aggrieved and dissatisfied with the decision and Judgment of HON J. NELSON OPAPA delivered in the High Court Criminal Appeal No.0255 of 2022 at Kampala on the 5th day of August, 2022 where the were convicted and sentenced to 25 years for committing the offences of Aggravated Robbery contrary to S.285 & 286(2) of the Penal Code Act Cap 120, intends to appeal to the Court of Appeal at Kampala against the conviction and sentence.

The address of service of the appellant shall be;

M/S FIRM F 7 & CO ADVOCATES

P.O BOX 7117,

KAMPALA

DATED at Kampala this 29th day of August 2022.

............kunihira nathan............

M/S SUI GENERIS & Co Advocates

COUNSEL FOR THE APPELLANT

To: The Honourable Justices of the Court of Appeal.

Lodged in the Court of Appeal Registry at Kampala on this................ day of................2022.

..................................

DEPUTY REGISTRAR

OBJECTION MY LORD

TO: The Registrar High Court of Uganda at Kampala

COPIES TO BE SERVED SERVED UPON:

1. Director of Public Prosecutions

2. The Registrar High Court (Criminal Division) at Kampala

Drawn & Filed By,

M/S SUI GENERIS & Co Advocates

P. O. BOX 7117

KAMPALA

2. Memorandum of Appeal.

Rule 66(1) of the Judicature Court of Appeal Regulations Rules S.I 13-10 states that 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 135(3) (b) of the Constitution.

Rule 66 (4) of the Judicature Court of Appeal Regulations Rules S.I 13-10 provides for A memorandum of appeal shall be substantially in Form C in the First Schedule to these Rules, and shall be signed by or on behalf of the appellant.

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL UGANDA AT KAMPALA**

**CRIMINAL APPEAL No....... OF 2022**

**A1 KAKANDE JOHN BOSCO a.k.a Bigboss**

**A2 KARUNGI JAMES a.k.a Cowboy**

**A3 MUSITWA AHAMAD a.k.a Fixer**

**A4 KABAGAMBE IVAN a.k.a Kyakabale................................................................. APPELLANT**

**VERSUS**

**UGANDA ...................................................................... RESPONDENT**

## MEMORANDUM OF APPEAL

(Arising from decision, conviction, and sentence of the High Court at Kampala before J NELSON OPAPA dated 5th day of August 2022 in Criminal Session No. 0255 of 2022) KAKANDE JOHN BOSCO a.k.a BIG BOSS and three (3) Others, the above-named appellants, being aggrieved and dissatisfied with the above decision and Judgment of J. NELSON OPAPA where the were convicted and sentenced to 25 years for committing the offences of Aggravated Robbery contrary to S.285 & 286(2) of the Penal Code Act Cap 120, appeals to the court of appeal of Uganda at Kampala against the whole judgment/decision on the following grounds;

1. The learned Trial Judge erred in law when he failed to adequately evaluate the evidence adduced at the trial and hence reached an erroneous decision.

2. The learned Trial Judge erred in law when he convicted the appellant on the uncorroborated evidence of a single witness to identify the accused.

3. The learned trial judge erred in law when he denied A3 to produce his defense witness.

WHEREFORE, the appellants prays that; -

1. The appeal be allowed

2. Conviction of the Appellants is quashed.

3. The sentence is set aside and the appellants set free.

OBJECTION MY LORD

DATED this 29th day of August, 2022.

............kunihiranathan............

M/S SUI GENERIS & CO. Advocates

COUNSEL FOR THE APPELLANTS

LODGED in the Registry at Kampala this 29th day of August, 2022.

..................................

DEPUTY REGISTRAR

COPIES TO BE SERVED UPON:

Director of Public Prosecutions

Drawn & Filed By

M/S SUI GENERIS & CO. Advocates

P. O. BOX 7117

KAMPALA

TASK C

ISSUE FIVE: Whether there is any possible course of action if A1 lost interest in further legal redress

Section 132(1)(a) of the Trial on Indictment Act cap 23, provides that an accused person may appeal to the Court of Appeal from a conviction and sentence by the High Court in the exercise of its original jurisdiction, as of right on a matter of law, fact or mixed law and fact. This grants A1 a right to appeal which he may choose to exercise or not to.

In Uganda vs Hon. Ssemwogerere & 2 Ors [1985] HCB 4, it was held that no party has a right of appeal unless it is clearly provided fir by statute.

Thus, if A1 does not invoke the right to appeal, then he appears to have accepted the conviction and sentence has to serve his term in prison.

However, in the event that he had filed a notice of appeal and memorandum of appeal and is no longer interested in further legal redress, then withdraw of the appeal under Rule 70 of the Judicature (Court of Appeal Rules) Directions is invoked.

Rule 70(1) of the Judicature (Court of Appeal Rules) Directions provides that, an appeal may be withdrawn at any time before hearing by notice in writing to the registrar signed by the appellant, and upon the notice being given, the appeal shall be taken to have been dismissed. Rule 70(2) of the aforementioned Rules provides that when an appeal is withdrawn, the registrar shall immediately notify the respondent and the registrar of the High Court. In an Indian case of Venkatrayan vs State Criminal Appeal No 55 of 2014, the High Court of Judicature held that whenever a party has perused the file and wishes to withdraw the appeal, court should not obstruct the appellant to withdraw.

ISSUE SIX: Whether there would any redress if A2 who had separately filed a separate memorandum 3 days after the decision of High Court of appeal died 4 days ago

Rule 60(1) of the Judicature (Court of Appeal Rules) Directions, is to the effect that when the death sentence has not been passed or where a crime does not attract a 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 14 days after the date of the decision. Additionally Rule 66(1) of the aforementioned Rules, is to the effect that, an appellant within 14 days after receipt of the record of appeal shall lodge a memorandum of appeal.... from the facts it is thus clear that A2's appeal was already before court.

However, he passed on before prosecution, this appeal. Rule 71 of the Judicature (Court of Appeal Rules) Directions, provides that; an appeal, other than an appeal against a sentence of a fine or an order for costs,

compensation or forfeiture, shall abate on the death of the appellant or where the appellant is the state, on the death of the respondent.

In Ainomugisha vs Uganda Criminal Appeal No 19 of 2015 [2017] UGSC 12, Elifazi Rukazana, Jonas Ainomugisha, Elisama Rubondo, Lopeyok Pascal and Rose Kekimuri were indicted for murder. At the commencement of trial in the High Court, Elifazi Rukazana had died in prison and the case against hi had abated. Lopeyok and Rose were acquitted on a no case to answer and Ainomugish and Rubondo were acquitted when court held that the prosecution had not proved their participation in the murder of Tibarabihire John. The DPP appealed against the acquittal of Ainomugisha and Rubondo. At the time the appeal was heard Rubondo had died and court excluded him since the case against him had abated, and the appeal proceeded against Ainomugisha who was now convicted for murder. He appealed against the conviction in the Supreme Court, and the Supreme Court quashed his conviction. The eye-catching principle apparent is that all the persons that had died, their cases abated.

ISSUE SEVEN: Whether there would any redress if A3 who is interested in pursuing further legal redress had diligently filed a notice of motion and memorandum of appeal had one general ground of appeal only

Rule 67(1) of the Judicature (Court of Appeal Rules) Directions, provides that, the appellant may at any time, with the leave of the court, lodge a supplementary memorandum of appeal. Rule 67(2) of the aforementioned Rules, provides that an advocate who has been assigned by the Deputy Chief Justice or the Presiding judge to represent an appellant may, within fourteen days after the date when he or she is notified of his or her assignment, and without leave of court, lodge a memorandum of appeal on behalf of the appellant as supplementary to or in substitution for any memorandum which the appellant may have lodged.

Therefore, a supplementary memorandum can be lodged to include other grounds of appeal.

ISSUE EIGHT: Whether A4 can appeal to have the sentence reduced?

Section 132(1)(b) of the Trial on Indictments Act Cap 23, provides that subject to this section; an accused person may, with leave of the Court of Appeal, appeal to the Court of Appeal against the sentence alone imposed by the High Court, other than a sentence fixed by law.

Since A4 wishes to appeal against the sentence only, has to first apply to the Court of Appeal seeking leave to appeal against the sentence only. The application can be made by Notice of Motion supported by an affidavit as portrayed under Rule 43(1) of the Judicature (Court of Appeal Rules) Directions. However, the application can also be made informally as provided under Rule 43(3)(a) of the aforementioned Rules.

In Anguipi Isaac alias Zako vs Uganda Criminal Appeal 281 of 2016 [2021] UGCA 14, the appellant was indicted of murder, convicted and sentenced to 26 years and 9 months in prison. He desired to appeal against the sentence, counsel for the appellant on the date for hearing the appeal prayed to court for leave to appeal against the sentence

relying on section 132(1)(b) of the Trial on Indictments Act and Rule 43(3)(a) of the Judicature (Court of Appeal Rules) Directions and Court granted him the leave.

TASK D

ISSUE NINE: Whether there are any grounds to oppose the preliminary remedy and substantive remedy.

According to Rule 60 (1) of the Judicature (Court of Appeal) Rules SI 13-10 a notice of appeal must be lodged with the Registrar within 14 days after the decision.

Although the court has the inherent powers to make such orders as may be necessary for attaining the ends of justice under Rule 2(2), under Rule 5 of these Rules the court can only extend the time set under these Rules for sufficient reason.

And its upon the applicant to prove that there exists sufficient reason to justify extension of time within which to file an appeal before leave can be granted by court. This was restated in Waida Okuku Stephen v Uganda Criminal Application No. 299 of 2014.

Sufficient reason must relate to inability of the applicant to file his appeal within the prescribed time according to William Odoi Nyandusi v Jackson Oyuko Kasendi CA Civil Application No. 0032 of 2018 and the extension of time is a matter of the courts discretion and not automatic.

The applicant has failed to prove sufficient reason and therefore pray that the application be denied and dismissed with costs.

ANTICIPATED GROUNDS FOR OPPOSSING THE ARGUMENTS IN PART B

The learned trial judge properly evaluated the evidence on record and came to a correct finding that the ingredients of the offence of aggravated robbery were proved beyond reasonable time. The judge properly considered the principles of law on alibi and weighed both the evidence of the prosecution and that of the defense before rejecting the defence of alibi as was stated in Bogere Moses and Another v Uganda SCCA No.1 of 1997.

The learned trial judge also correctly applied the principles of law on a single identifying witness as was stated in Abdallah Nabulere and 2 Others v Uganda CACA No.09 of 1978. The evidence of a single identifying witness does not as a matter of law require corroboration if the witness is a truthful one and there was proper identification of the accused as was the case when the victim was able to identify the accused persons on their voice as a person

familiar to them and the light from the passing vehicles was sufficient to enable the victim confirm the identity of the appellants within the 3 minutes of the incident.

Sentencing is a matter of judicial discretion and an appellant court can only interfere with the sentence where the same is illegal, or founded on wrong principles or it manifestly harsh and excessive in the circumstances as was stated by the Supreme Court in Kyalimpa Edward v Uganda SCCA No. 10 of 1995. The sentence of 25 years imposed on the appellant is not illegal and neither is it manifestly harsh and excessive as it is within the sentencing range as per Guideline 30,31 and Part III of the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions 2013. The maximum Punishment for the offence of aggravated robbery under section 286 (2) of the Penal Code Act Cap 120 is death, but the trial judge did exercise his discretion and the same was not imposed on the appellants. The period of 1 year and 4 months spent on remand can be deducted from the trial judge's sentence as required by article 23 (8) of the constitution as was held in Rwabugande Moses V Uganda SCCA No. 25 of 2014. The same should be deducted but the appellants conviction should be upheld and the same should continue serving their sentence.

Conclusively therefore the Honorable court should uphold the appellants conviction and dismiss the appeal.

**EXAMPLE**

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;**

1. Whether the facts disclose and support any possible offences?

2. Whether the evidence is sufficient to support the offences identified above? What necessary court documents should be drafted?

3. Which areas require further investigations?

4. What options are available to police in ensuring that the suspect who is still at large are equally charged?

5. What is the proper procedure for police to follow to recover and preserve 200kgs of vanilla locked up in a suspect's house?

6. 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 120
3. The Police Act, Cap 303 as amended by Act 16 of 2006;
4. The Criminal Procedure Code Act, Cap 116;
5. The Evidence Act, Cap 6;
6. The Magistrates' Courts Act, Cap 16 as amended by Act 7 of 2007;
7. The Magistrates' Courts (Magisterial Areas) instrument, 2007; S.1 No.45 of 2017
8. 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 2 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 254(1) and 261 of the Penal Code Act Cap 120 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. 254(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.253 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 part 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. 390of 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 parties' 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. 297 of the Penal Code 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;

**Section 2 of the Penal Code Act** 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 **Section 302 of the Penal Code Act**, 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.254(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 254 and 261 of the Penal Code Act Cap 120

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 297(1) and section 295(2) of the Penal Code Act Cap 120

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 390 of The Penal Code Act Cap 120

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

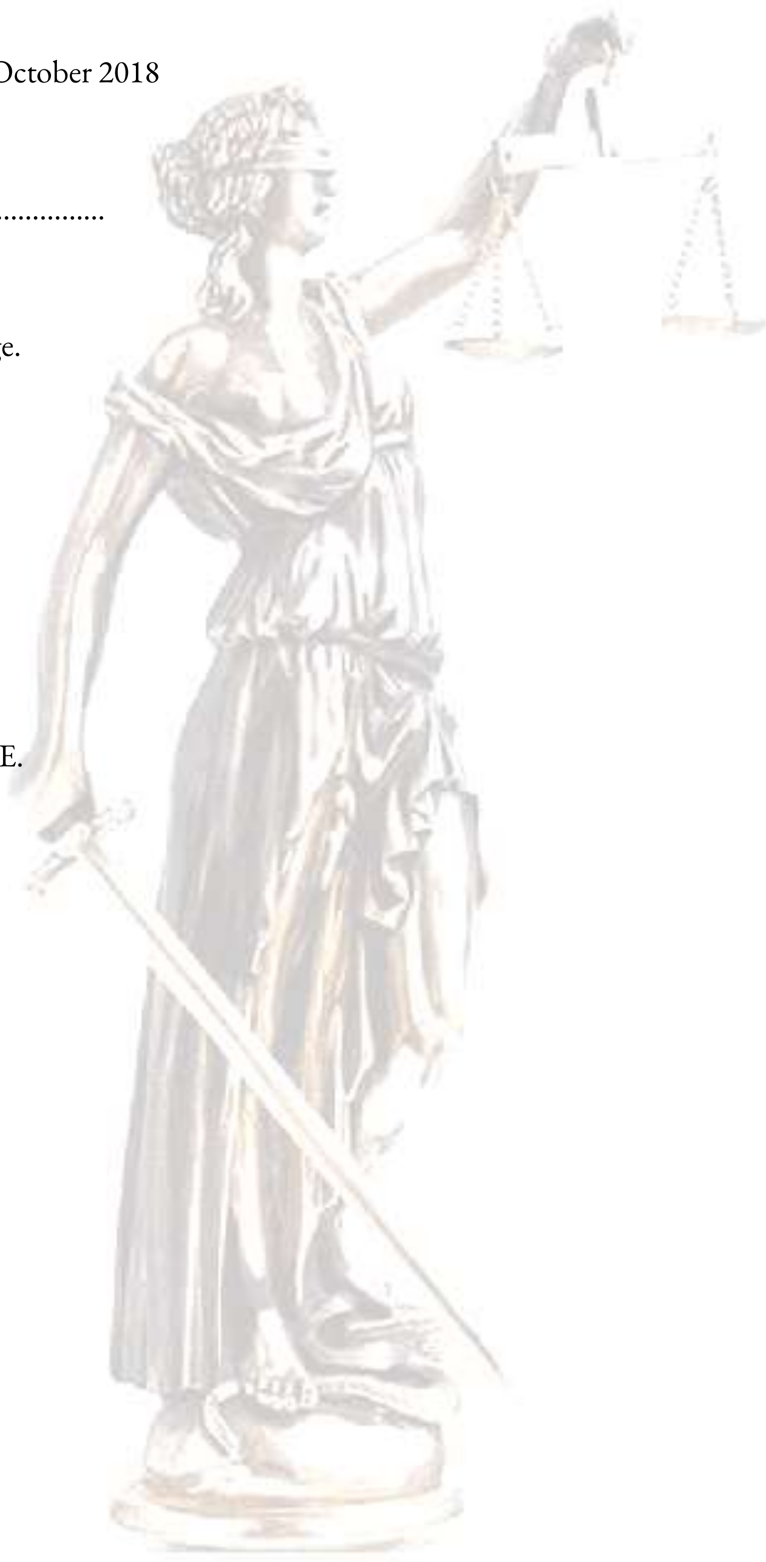
COUNT 4: STATEMENT OF OFFENCE

Criminal Trespass contrary to Section 302 of the Penal Code Act Cap 120. 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 2011** provides that information shall not be denied legal effect, validity or enforcement solely on the ground that it is wholly or partly 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 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 Magistrate Court Act).

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 have 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 116.**

**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.

# CRIMINAL SUMMONS

TO: XYZ

WHEREAS your 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.

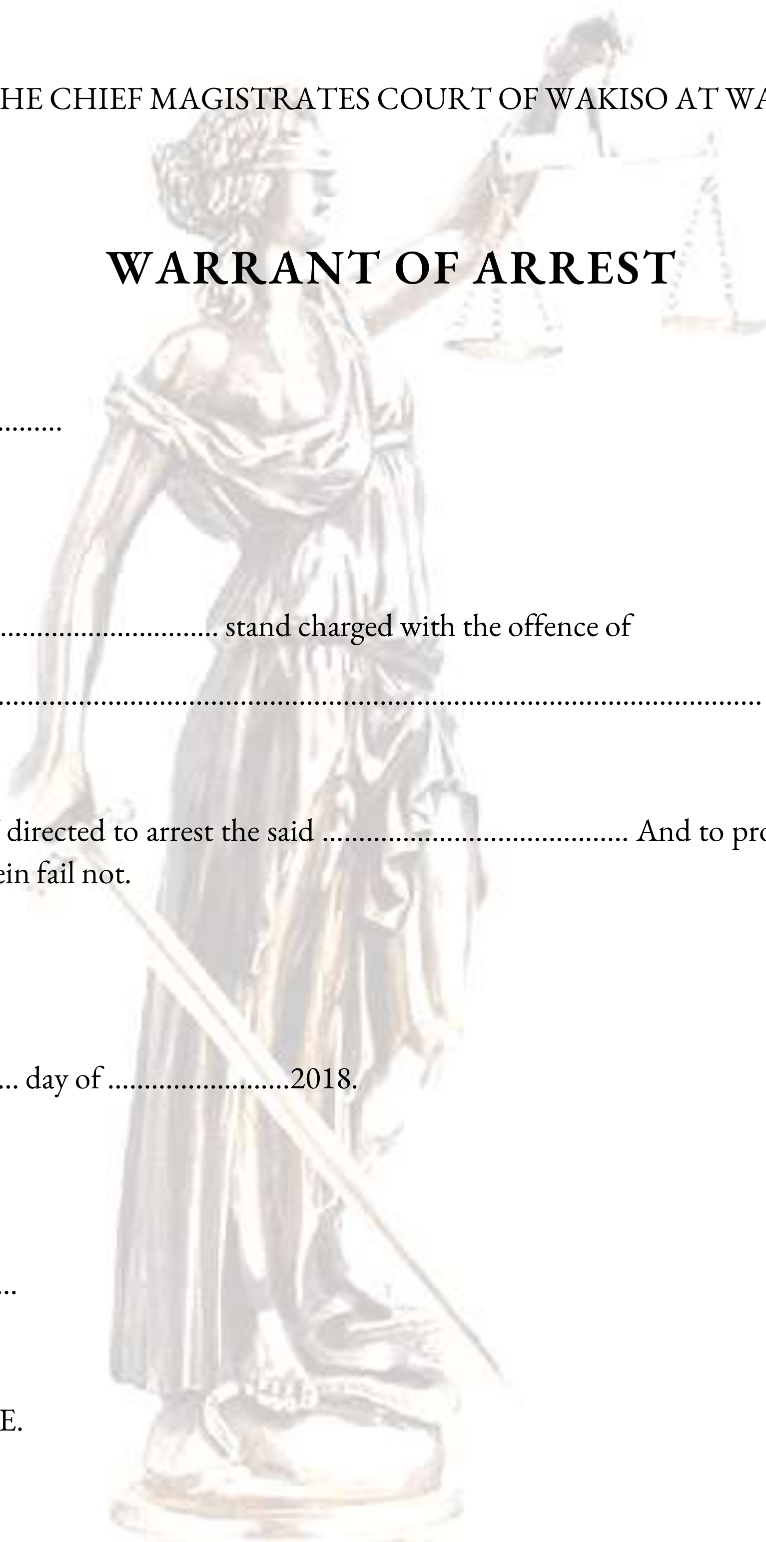
Dated this ........................day of ..............2018 at ...............am/pm.

............................................................

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 therein.

**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 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 objectformally 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.

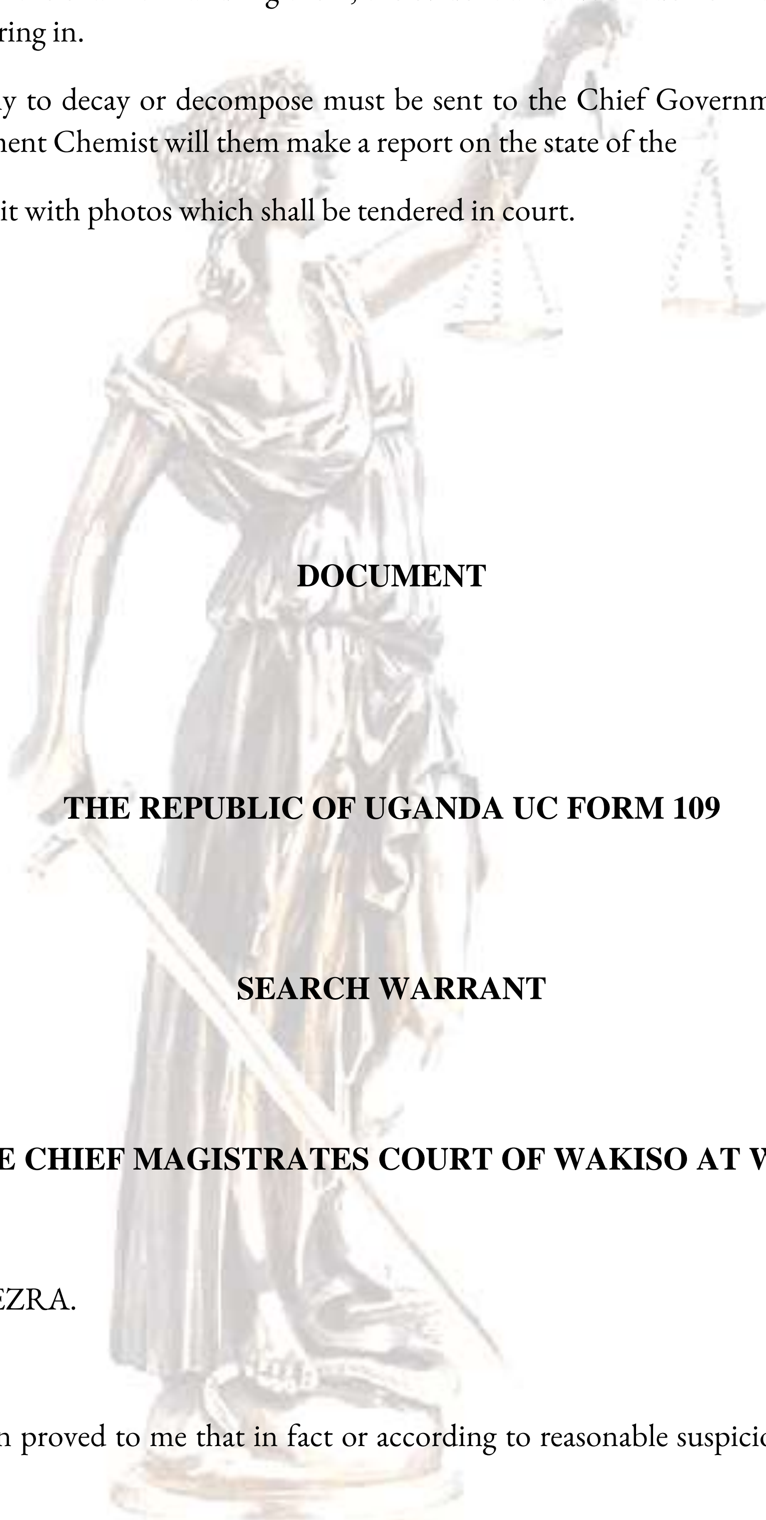
All exhibits in a case must be entered in the police exhibit books of the relevant police station

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 evidential 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.



**DOCUMENT**

**THE REPUBLIC OF UGANDA UC FORM 109**

**SEARCH WARRANT**

**IN THE CHIEF MAGISTRATES COURT OF WAKISO AT WAKSIP**

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 its execution.

Given under my hand and seal of this court this................ day of..................20.........

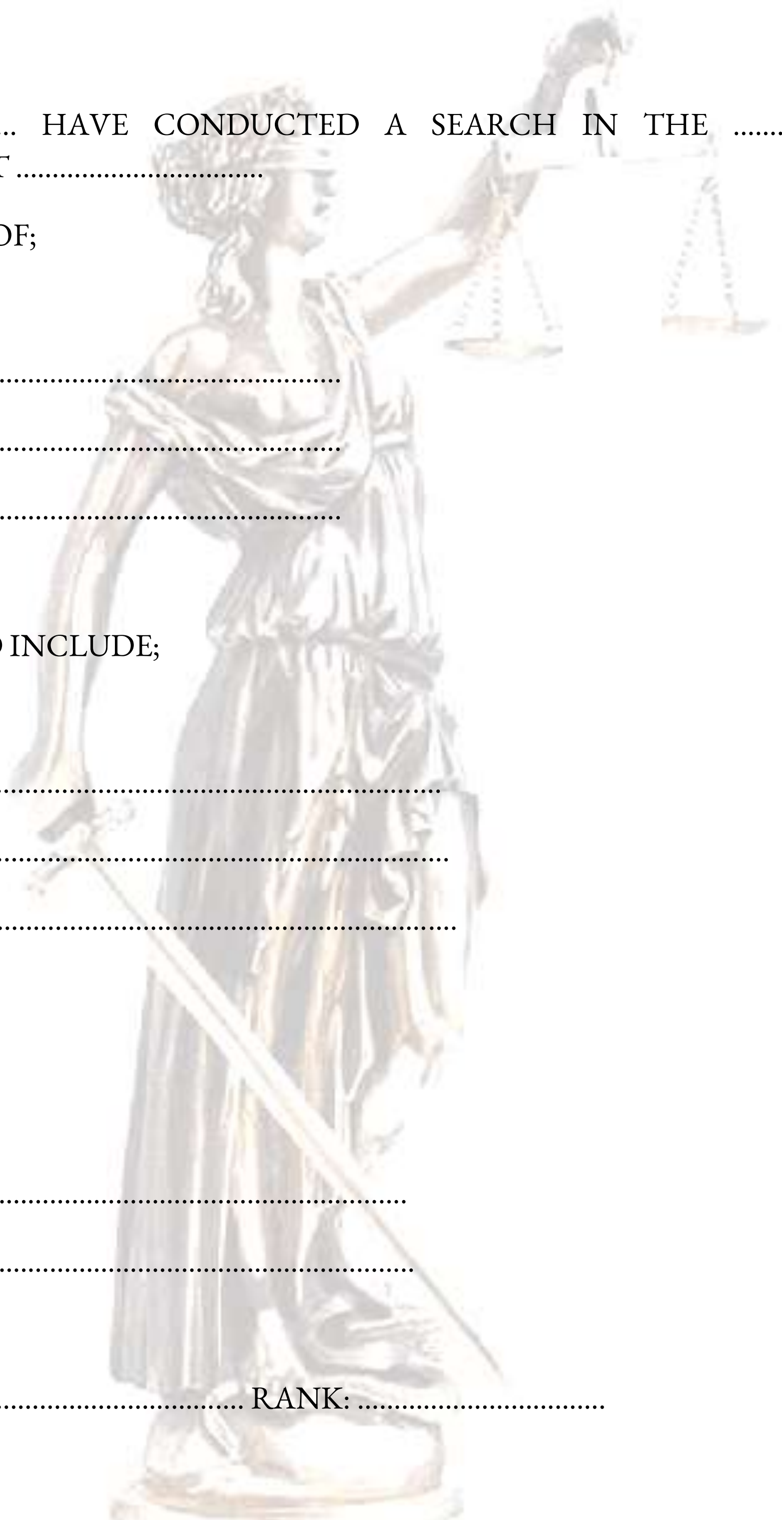
...................................

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 Magistrate Court Act**, 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 Magistrate Court Act** 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 Magustrate Court Act** 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 Art. 50 the Constitution, Art. 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.

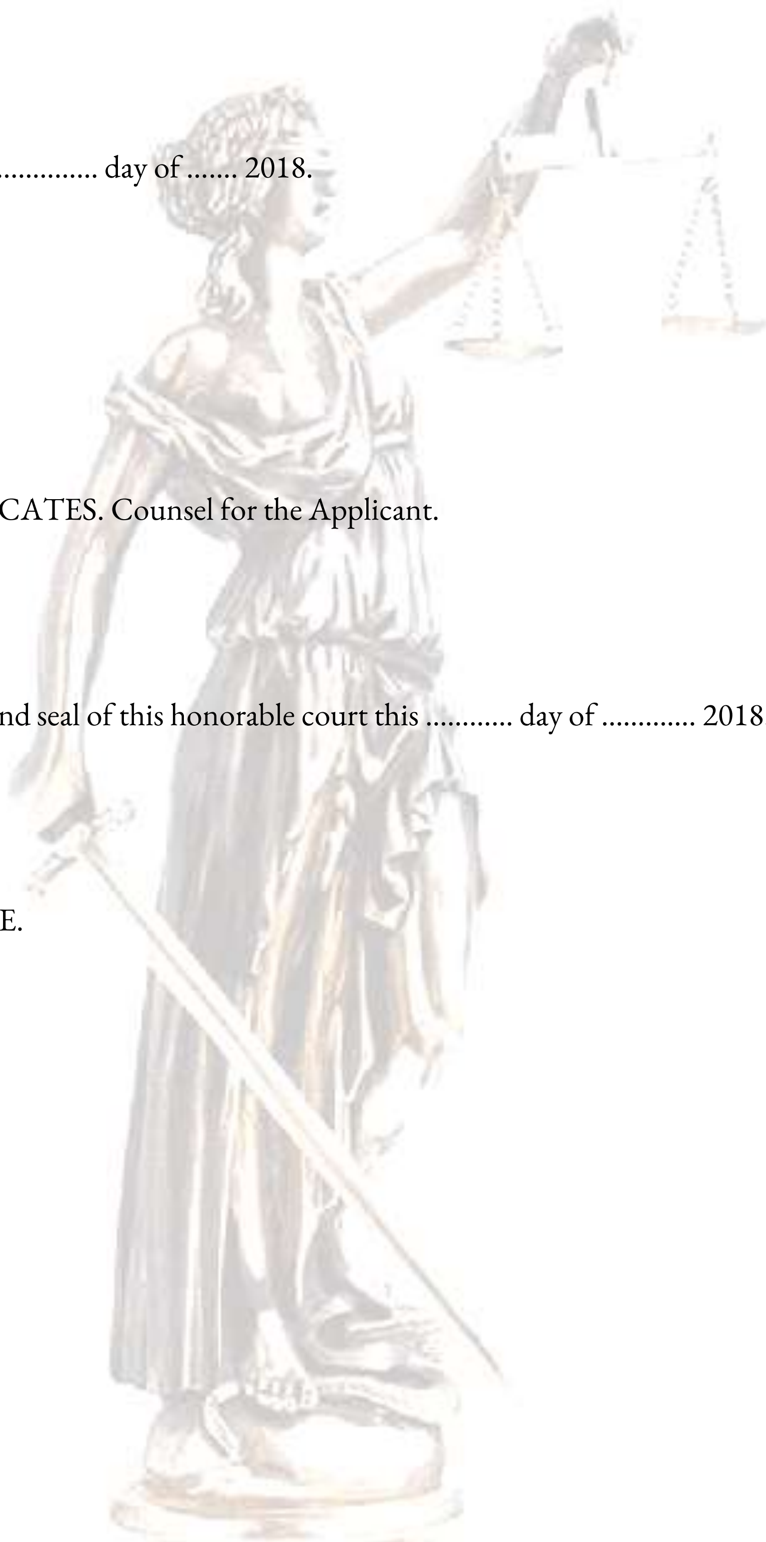
TAKE FURTHER NOTICE That this application is brought by way of Notice of Motion supported by an affidavit of Miss Wandy Kaitesi, wife to the applicant stating the grounds which shall be relied upon at the hearing but briefly include:

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.**

# AFFIDAVIT IN SUPPORT

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

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 ……………………

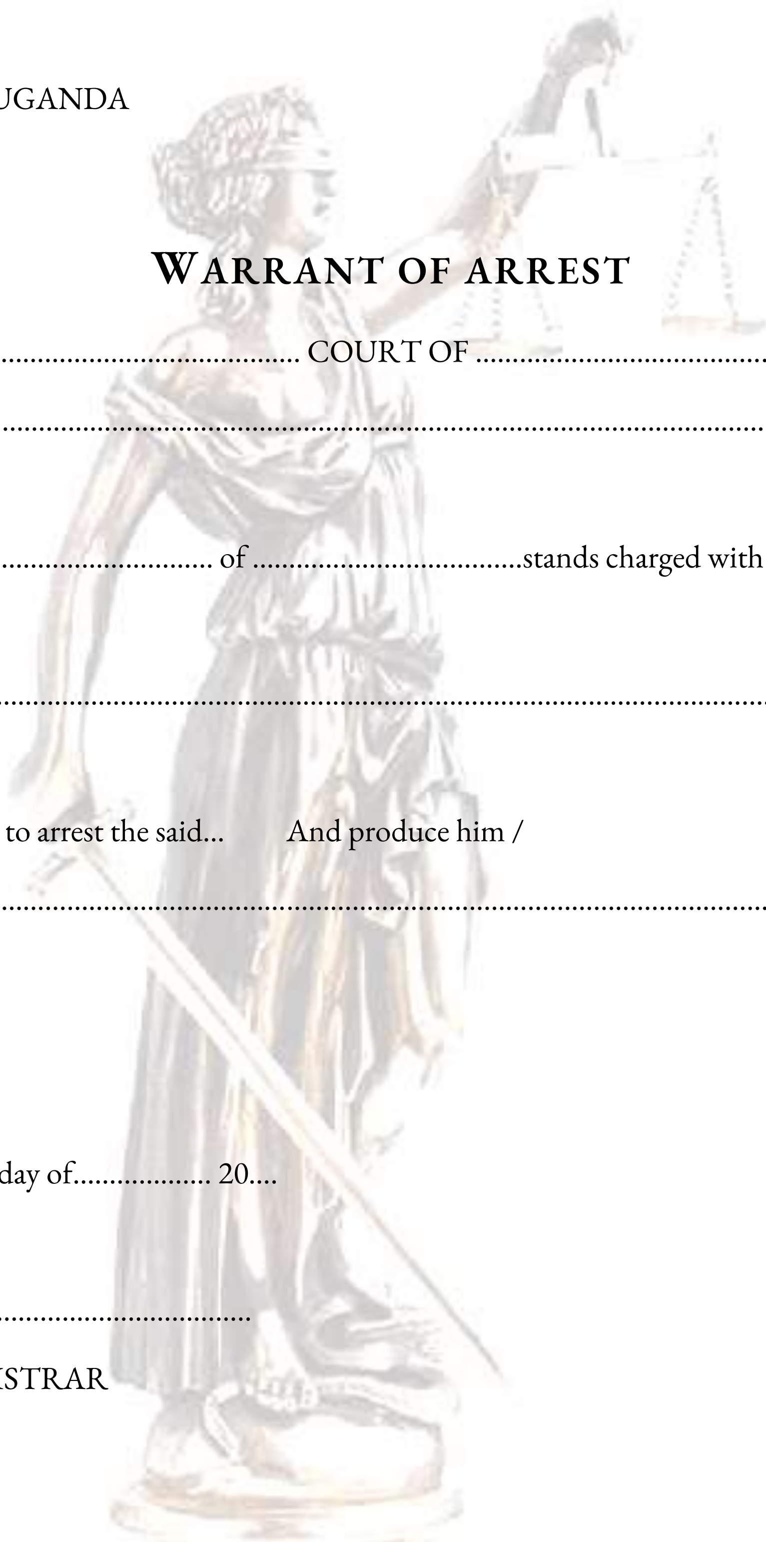
Dated the……………… Day of……………………… 20…………

…………………………………… MAGISTARTE/ REGISTRAR

TO:

THE REPUBLIC OF UGANDA

FORM 75



# WARRANT OF ARREST

IN THE ............................................................... COURT OF ..............................................................

AT ..........................................................................................................................................................

WHEREAS............................................... of ...................................stands charged with the offence of

..................................................................................................................................................................

You are hereby directed to arrest the said... And produce him /

here before me.............................................................................................................................................

Herein fail not.

Dated this..................... day of................... 20....

.......................................................................

MAGISTRATE/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 its 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 )

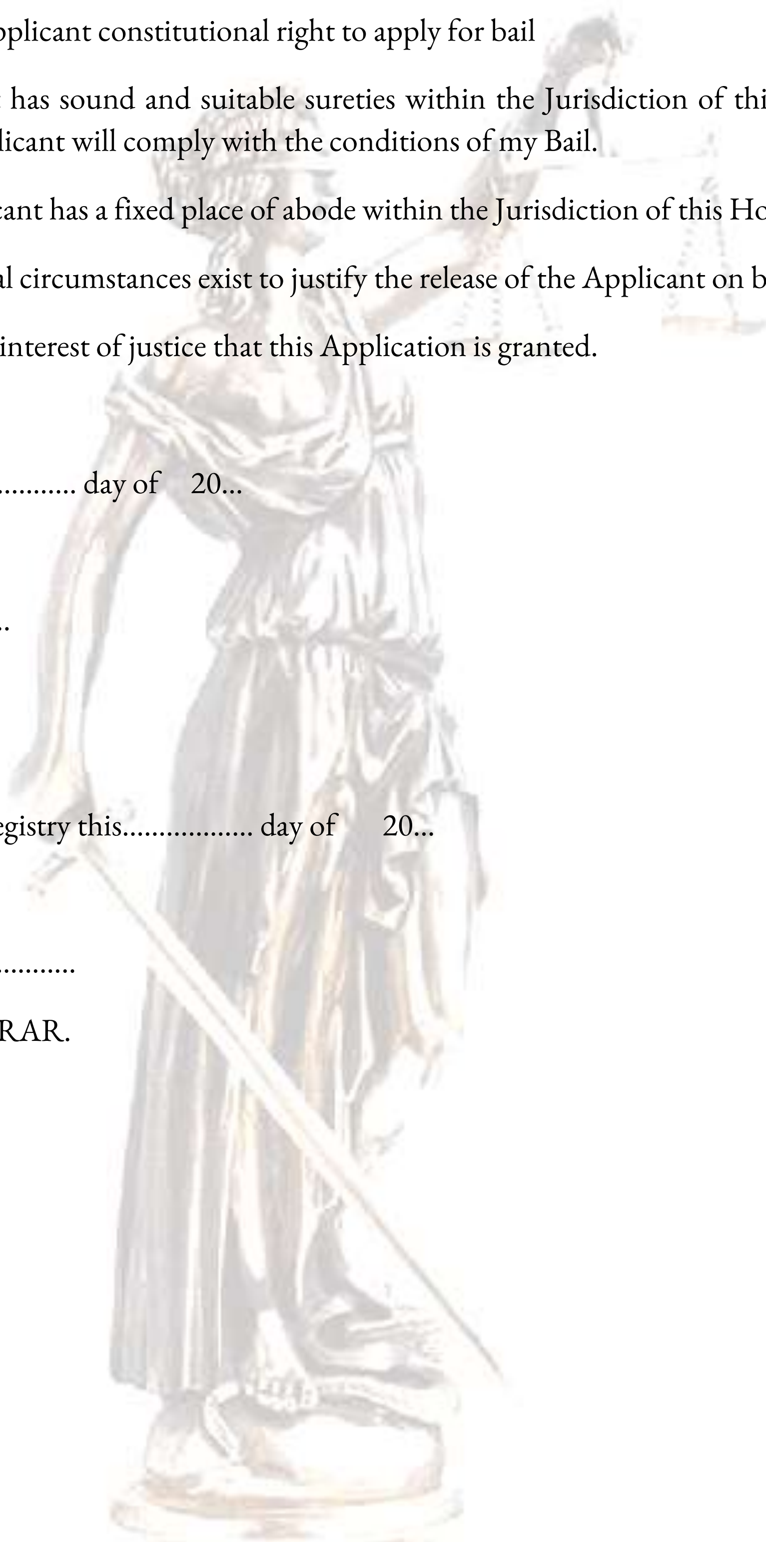
TAKE NOTICE that this Court shall be moved on the ……………… day of At

9.01 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… )**

**RUBAGANO BENJAMIN ……………………………………… 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.

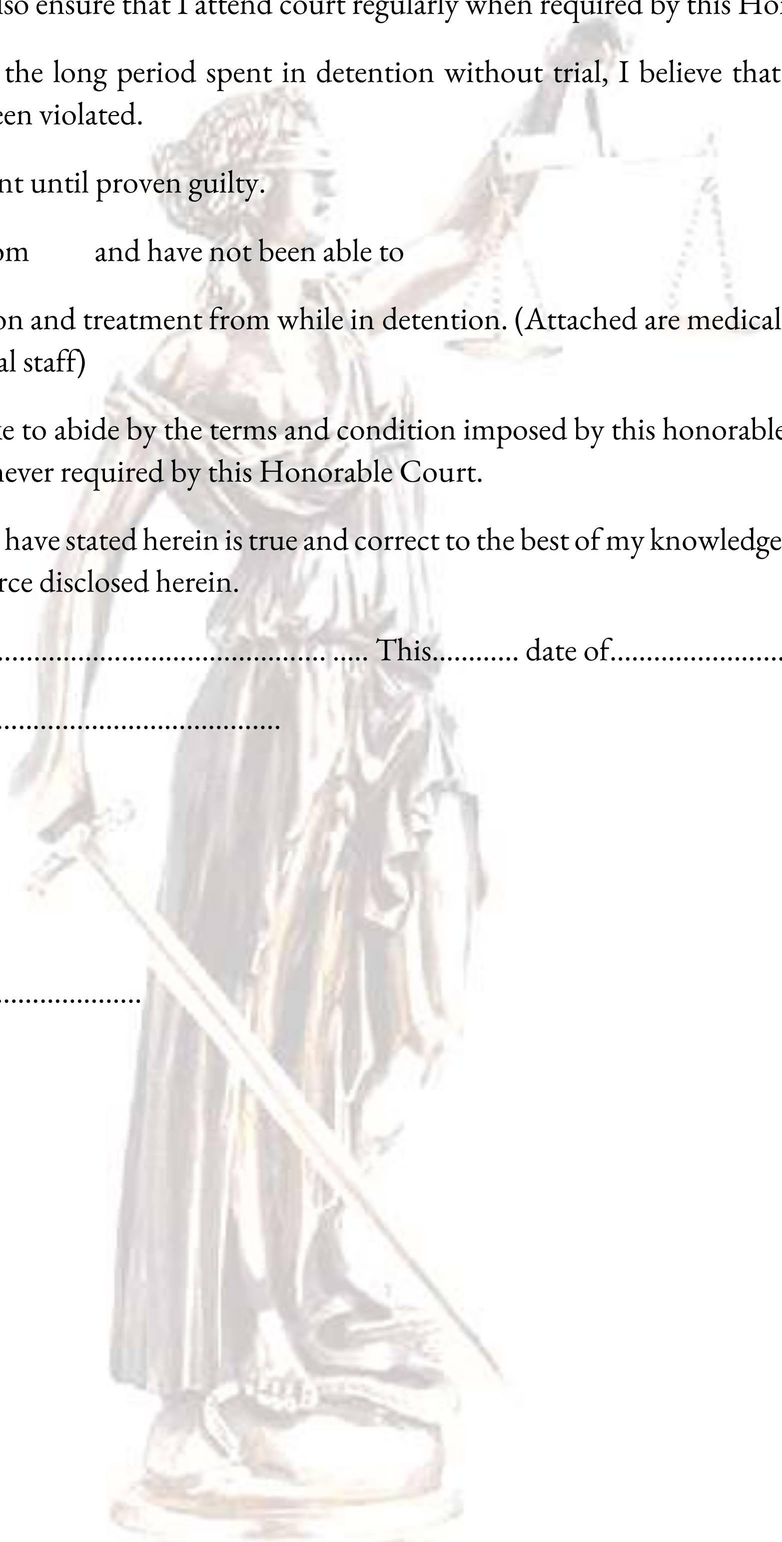
2. That I was arrested on the .......... Day of 20... and charged with the

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 Cour

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. hat 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 prison 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 REPUBLIC OF UGANDA**

**IN THE …… COURT OF AT …………**

**MISC. APPN. NO. OF 20 [ARISING FROM CRIMINAL CASE NO. OF 20…]**

**AHIMBISIBWE RUBAGANO ……………………………………. 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...]**

**AHIMBISIBWE RUBAGANO :::::::::::::::::::::::::::::::::::::::::::::::::: 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:

COMMISSIONER FOR OATHS

**CRIMINAL LAW 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.

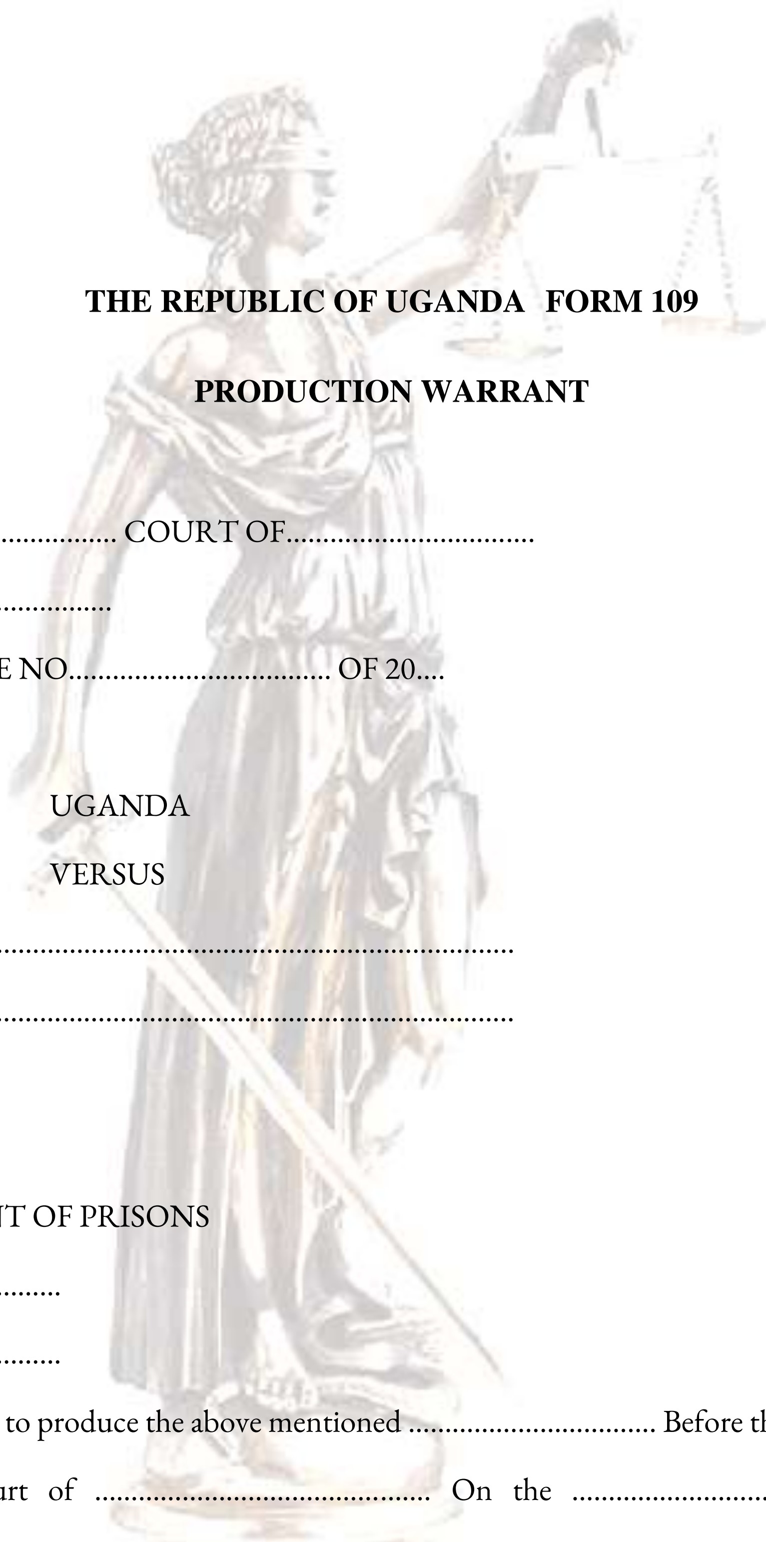
Dated this................ day of ........................... 20.. at .......................................

This summons has been issued on the application of the PROSECUTION.

OBJECTION MY LORD

..................................................

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

...............................................

...............................................

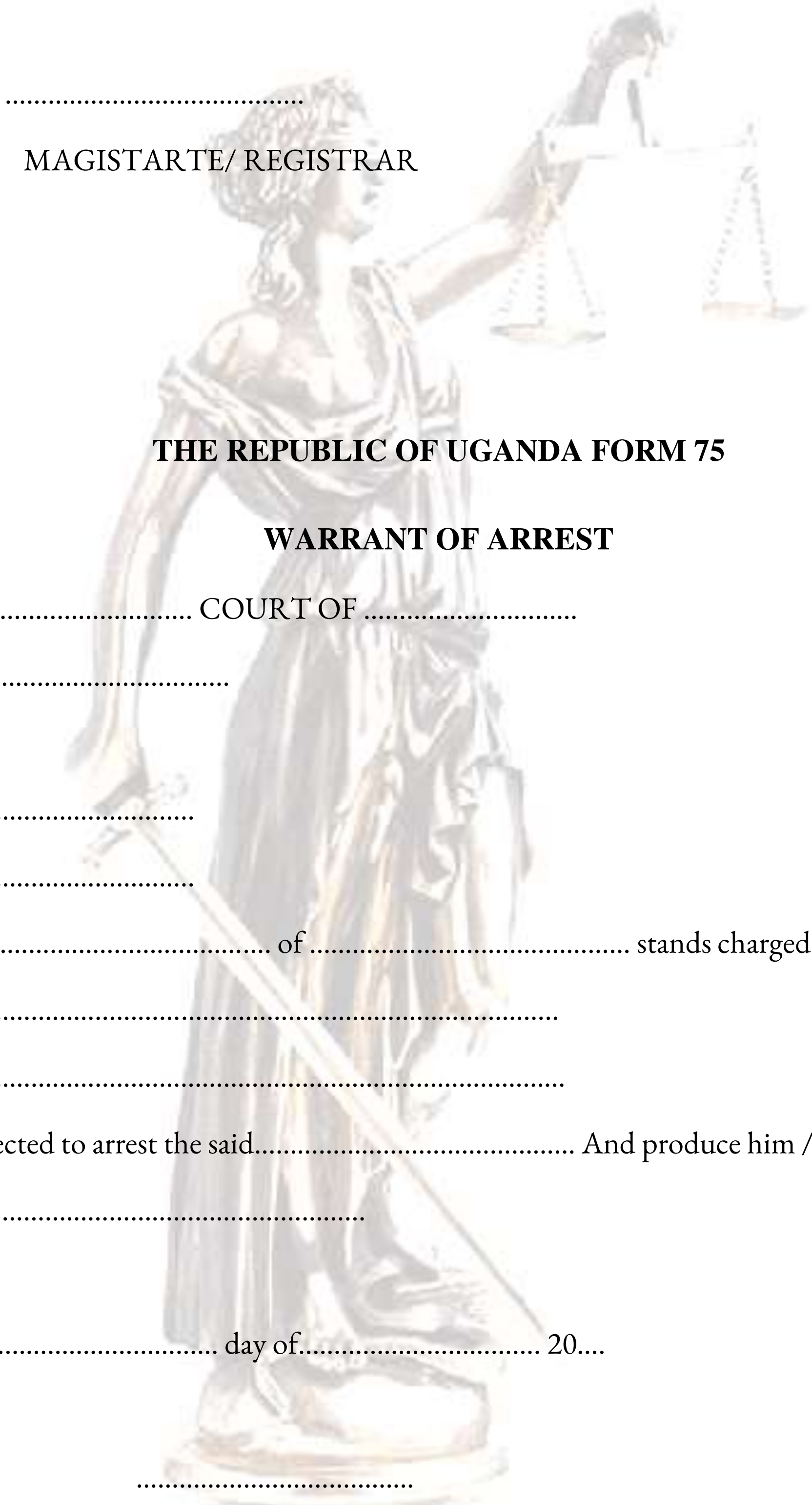
You are hereby directed to produce the above mentioned .................................. Before the

.................................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............................................

.....................................................................

ISAAC CHRISTOPHER LUBOGO

EXECUTED BEFORE ME

**THE REPUBLIC OF UGANDA UC FORM 109**

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:

…………………………………………………………………………………………

…………………………………………………………………………………………

…………………………………………………………………………………………

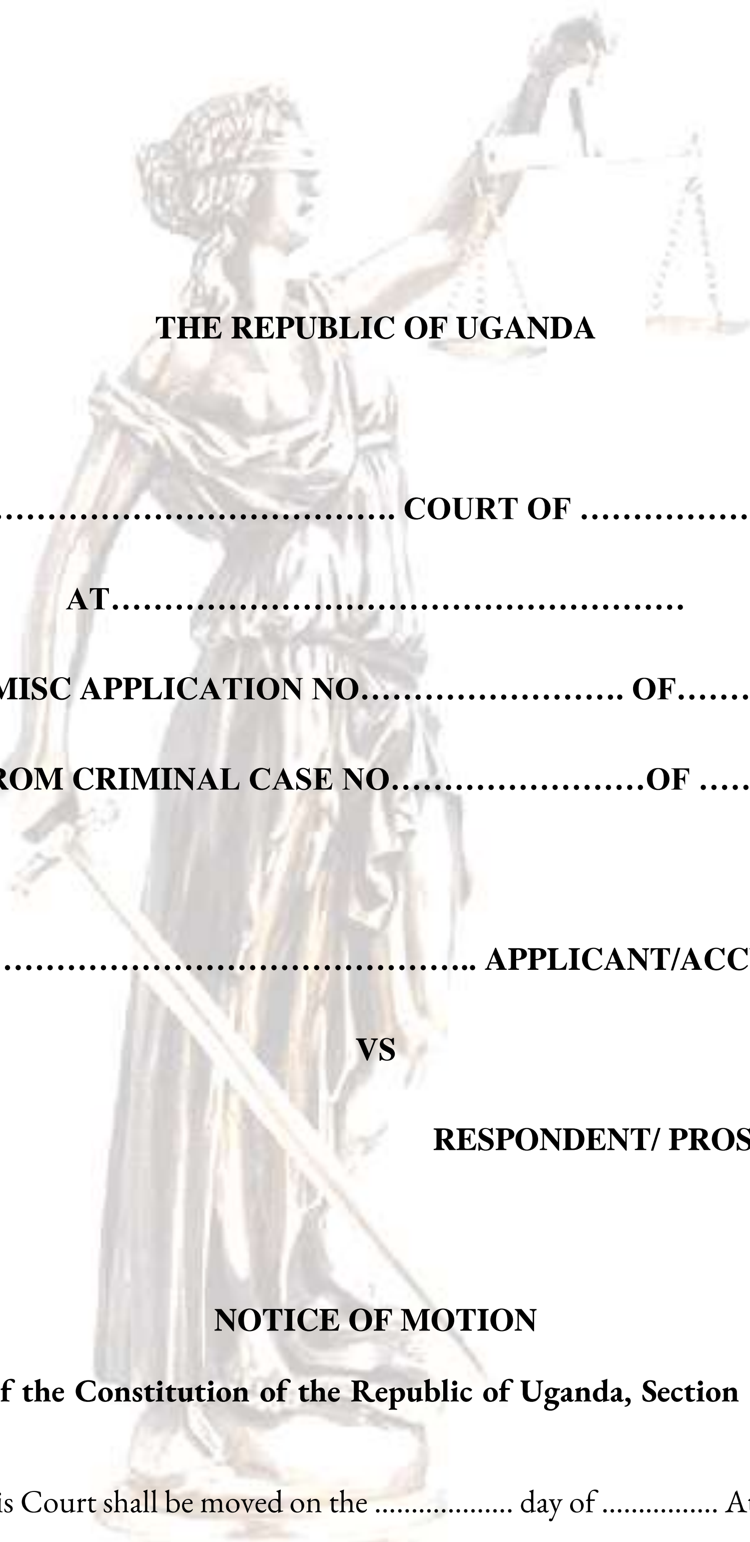
This is to authorise and require you to enter /open the said Building, Carriage, Vessel, Box, Receptacle, Place, described as aforesaid and if found to seize and carry it/them before this court or some court to be dealt with according to Law, returning this warrant with an endorsement certifying that you have done under it immediately upon it's execution.

OBJECTION MY LORD

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**

**<u>AFFIDAVIT IN SURPPORT OF NOTICE OF MOTION.</u>**

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 prison 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.

OBJECTION MY LORD

............................ ..................................

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...

___________________________________

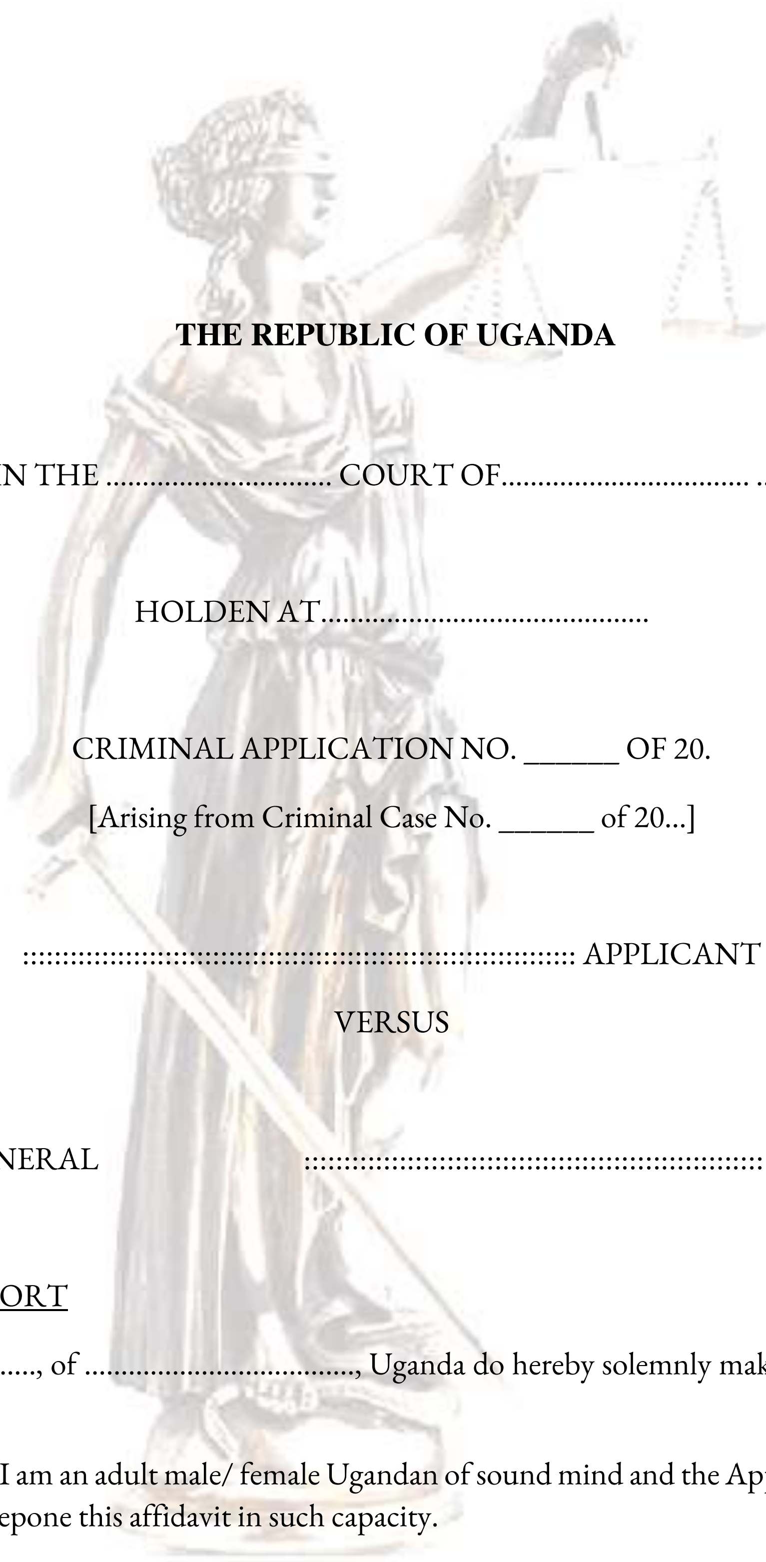
**THE APPLICANT**

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:

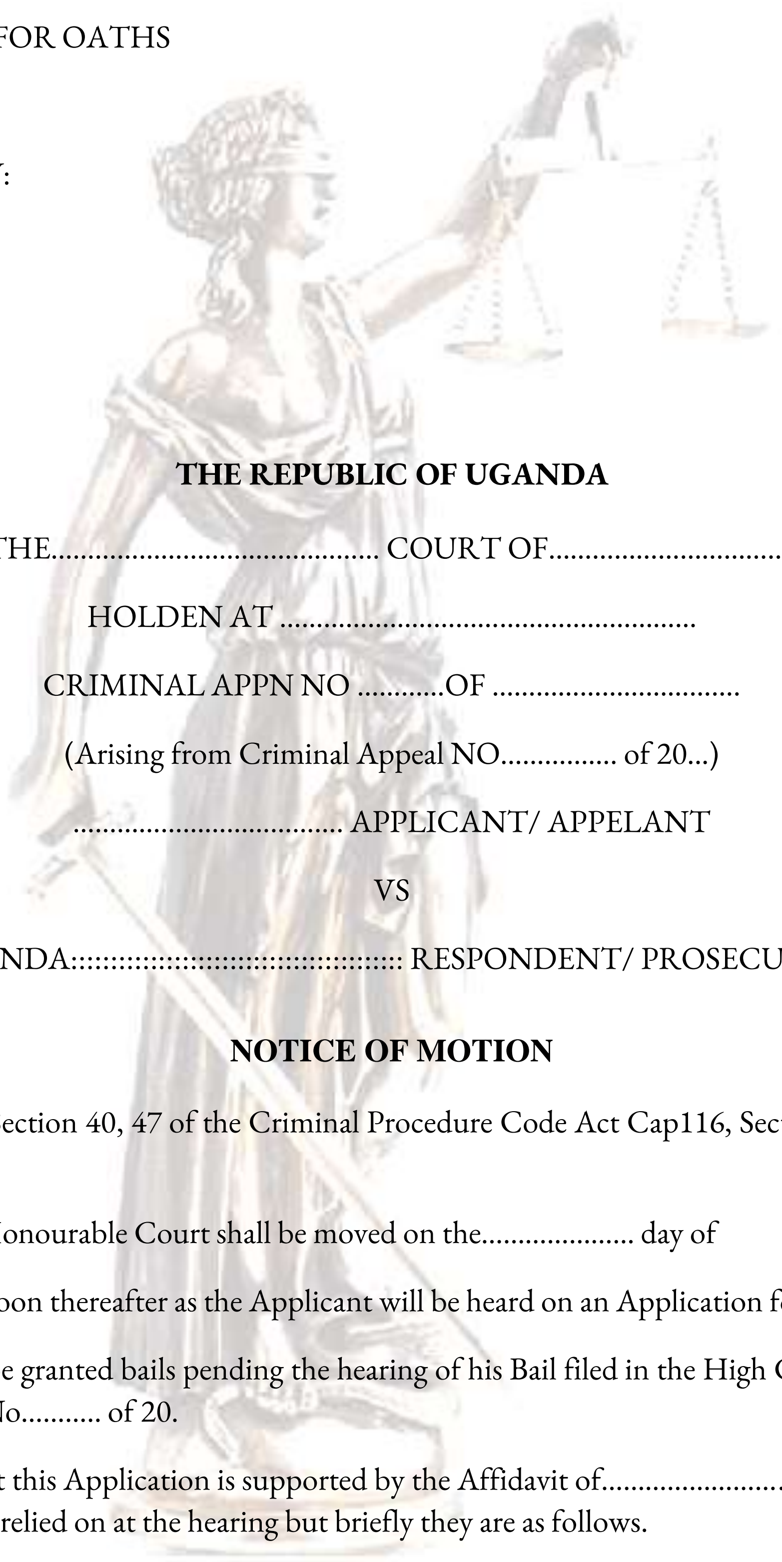
ISAAC CHRISTOPHER LUBOGO

________________________________________

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)

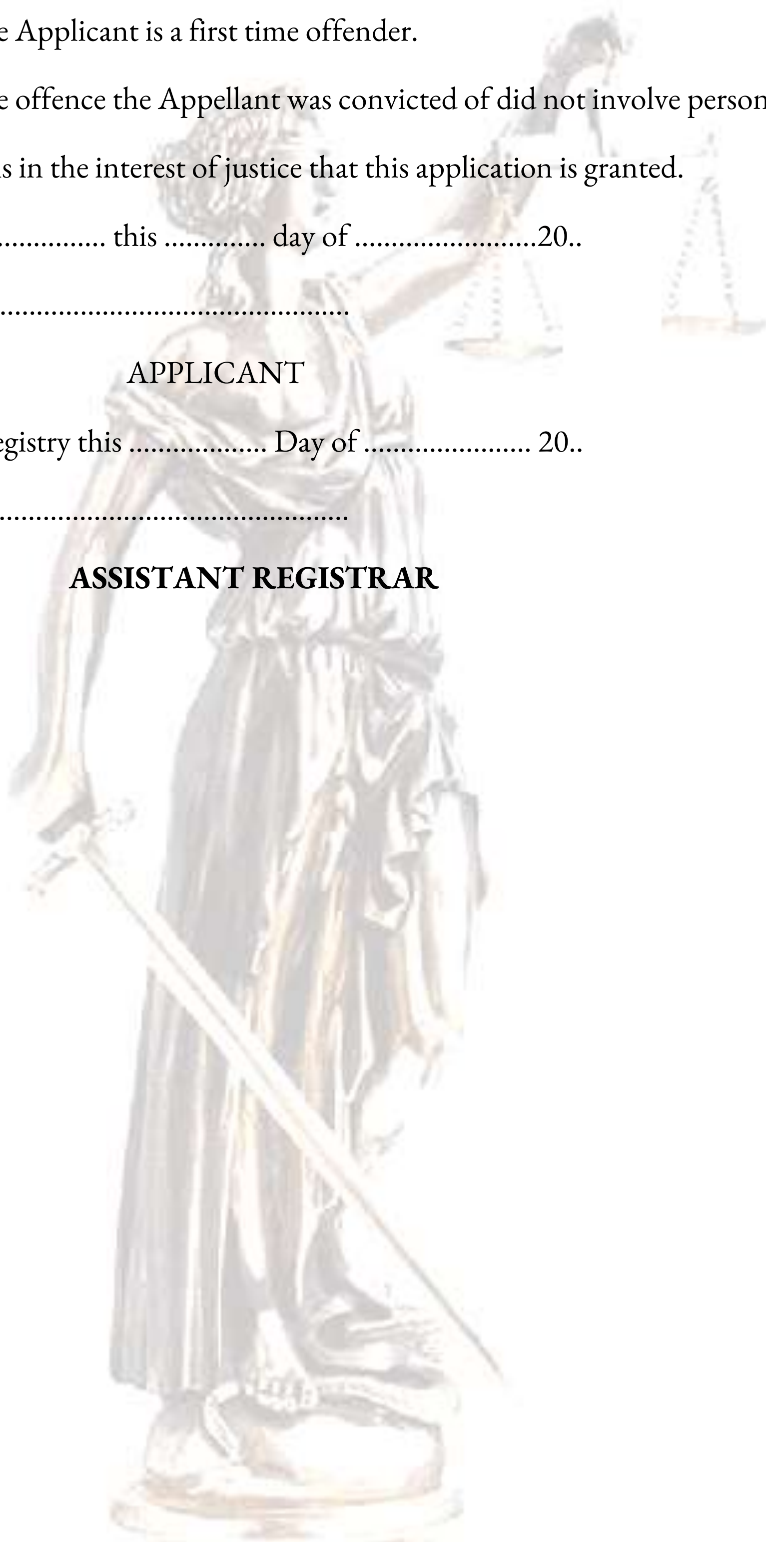
Take Notice that this Honourable Court shall be moved on the..................... day of

......................... 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**

# AMENDMENTS TO THE ROME STATUTE

## KAMPALA AMENDMENTS

### What are the Kampala Amendments?

States Parties to the Rome Statute met from 31 May 2010 until 11 June 2010 in Kampala, Uganda, for the 1st Review of the Rome Statute of the ICC, mandated to be convened 9 years after the entry into force of the Statute.

The Review Conference adopted, by consensus, 2 resolutions that amended the crimes under the jurisdiction of the Court:

- Resolution 5, which amended Article 8 of the Rome Statute on war crimes.
- Resolution 6, which followed the instructions in Article 5(2) of the Rome Statute to provide a definition and a procedure for the jurisdiction of the Court over the crime of aggression.

Both amendments have been adopted in the Statute. However, the amendments may enter into force for each ratifying State one year after the deposit of the instrument of ratification (Article 121(5) of the Rome Statute).

To date, **40** and **41 States** have ratified the Kampala Amendments to the Rome Statute on war crimes and on the crime of aggression, respectively.

The designated date for activation of the ICC jurisdiction on aggression coincided with the 20th anniversary of the adoption of the Rome Statute, on 17 July 2018.

**Jurisdiction of the ICC over the crime of aggression**

The Kampala Amendments to the Rome Statute on the crime of aggression encompass a more restricted jurisdictional regime, according to which the ICC has:

*Automatic jurisdiction* when the alleged crimes are committed:

1. Within the territory of a State Party (**territorial jurisdiction**) and
2. By nationals of a State Party (**active personality jurisdiction**),
3. Unless any of the States involved previously declared that it does not accept the ICC jurisdiction by lodging a declaration with the Registrar **(opt-out)** (Art. 15bis 4 Rome Statute)

And *ad-hoc jurisdiction* when:

1. A situation is referred by the United Nations Security Council (Art. 15 ter Rome Statute), regardless of the location or the criminal conduct and nationality of the alleged perpetrator.

No jurisdiction over States not Parties:
With the only exception in case of a referral by the UN Security Council, the ICC may not exercise jurisdiction regarding States not Parties to the Rome Statute, i.e. whenever a crime of aggression is committed by a national of a State not Party or on its territory. This clause is to be interpreted as a departure from Art. 12(3) which allows States not Parties to accept the ad-hoc jurisdiction of the Court.

**Why are the Kampala Amendments important?**

The decision of States to bring back to unity the corpus juris of International Criminal Law and call for universal ratification of the amendments will give effect to the principle "Never again" for aggressive wars and protect the victims of armed conflicts who are not protected by the norms on genocide, crimes against humanity, and war crimes as enshrined in the Rome Statute.

**Achievements**

PGA facilitated parliamentary involvement in the **Kampala Review Conference** through sample parliamentary questions, which were in fact used around the world, including by the European Parliament. Moreover, PGA organized several high-level events and strategic meetings to strengthen the framework of the prohibition of the illegal use of force under the UN Charter, including:

- On 19 October 2016, PGA members in the Dominican Republic meet with the Minister of Foreign Affairs to discuss the Ratification of the Kampala Amendments.
- 7th CAP-ICC on 11 December 2012 in Rome, Italy: 200 members of Parliament from 50 countries from all regions of the world adopted the Rome Plan of Action through which they resolved to ensure the ratification of the Kampala Amendments by their countries and to achieve 30 ratifications before 2016. This goal was achieved in 2016 by the ratifications of Palestine and/or The Netherlands.

PGA also contributed to the ratification of the Kampala Amendments in **7 countries**:

- Bolivia December 2020.
- Ecuador on 23 April 2019.
- Paraguay on 12 December 2018.
- Honduras on 19 April 2017.
- Argentina on 3 November 2016.
- Chile and the Netherlands on 23 September 2016.

**Amendments To the Rome Statute Adopted After Kampala 2010**

**Which are the amendments to the Rome Statute adopted after Kampala 2010?**

After the Review Conference of the Rome Statute in Kampala, Uganda, in 2010, additional amendments to the Rome Statute of the ICC have been adopted, including:

- Amendment to Article 124 (2015): The amendment deleted Article 124 from the Rome Statute, a transitional provision allowing a State, upon becoming Party to the Statute, to declare that it does not accept the jurisdiction of the Court over war crimes committed in its territory or by its nationals for a period of seven years.
- Amendment to Article 8 [biological weapons] (2017): The amendment inserted an article defining as a war crime the use of weapons which use microbial or other biological agents, or toxins, whatever their origin or method of production.
- Amendment to Article 8 [blinding laser weapons] (2017): The amendment inserted an article defining as a war crime the use of weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices.
- Amendment to Article 8 [non-detectable fragments] (2017): The amendment inserted an article defining as a war crime the use of weapons whose primary effect is to injure by fragments which in the human body escape detection by X-rays.
- Amendment to Article 8 [starvation as a war crime in NIAC] (2019): The amendment inserted an article defining as a war crime Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies during a non-international armed conflict.

**Why are these amendments to the Rome Statute important?**

All these amendments extend the mandate of the ICC over war crimes not originally conceived in the Rome Statute of the ICC adopted in 1998, allegedly committed either by nationals or in the territory of a State Party to the ICC.

- The amendment to Article 124 of the Rome Statute will enter into force for all States Parties once 78 of them have ratified it and deposited the instrument of ratification. As of 2020, this threshold has not been met.
- All other amendments to Article 8 will enter into force for those States Parties that have ratified them and deposited the instrument of ratification, one year after doing so.

## ABOUT THE BOOK

**"Objection My Lord"** is a phrase often used in court. This book covers all the nitty-gritty for one to practice law in the best and legal way possible within limits of good conduct and professionalism. Charles Dickens in "The Old Curiosity Shop" has spoken this of lawyers, "If there were no bad people, there would be no good lawyers." I have already listed how the good lawyers conduct themselves in my former book, "Professional Malpractice in Uganda;" this book will thence equip the reader with the practical tools of the legal profession, making them grasp these basic skills in addition to mastering legal professionalism.

This is a package to my Learned Friends, to know the must know and learn to practice within the legal limits and more so, discover the legal exceptions and present such in a legal manner; to distinguish precedents tactically and persuade intellectually where no such exist. It is a summary of legal principles requisite for one to properly establish their case before court. This book is a one stop masterpiece for a reader to grasp the other more practical duties of a lawyer apart from litigation and drawing deeds. By training consistency yet with honest dealings, this book navigates along the professional to the moral and most practical situations encountered by a lawyer while furnishing one with the gist and nothing less. It is a training for every "officer of court" to make use of their greatest tool "the tongue" to not only persuade but also assist court and the state in ensuring justice.

Be blessed to find all you seek and be gifted a package, so much more than you expect in this book.

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