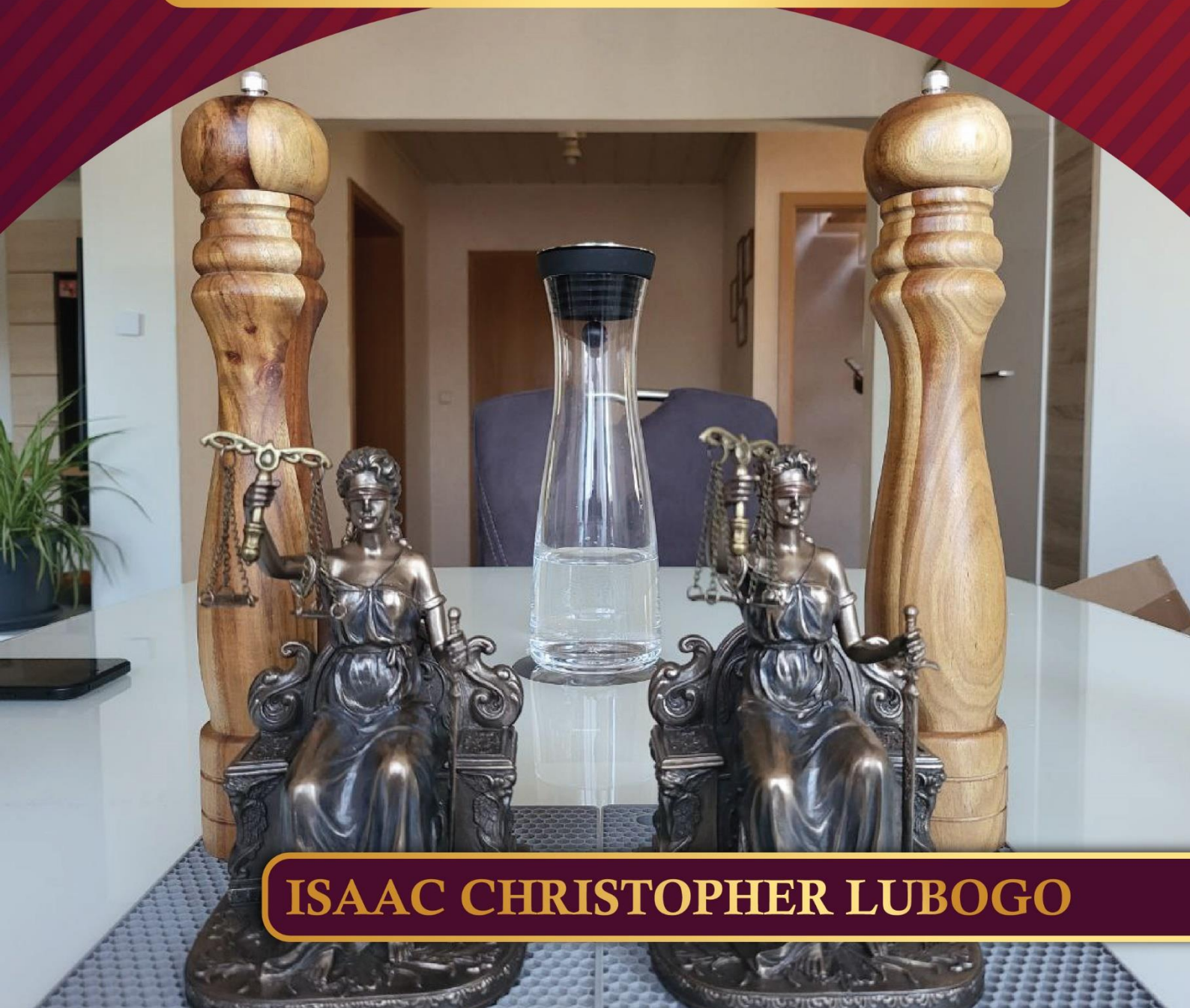
VOLUME: 3

# COMPETITIVE MATRICULATION:

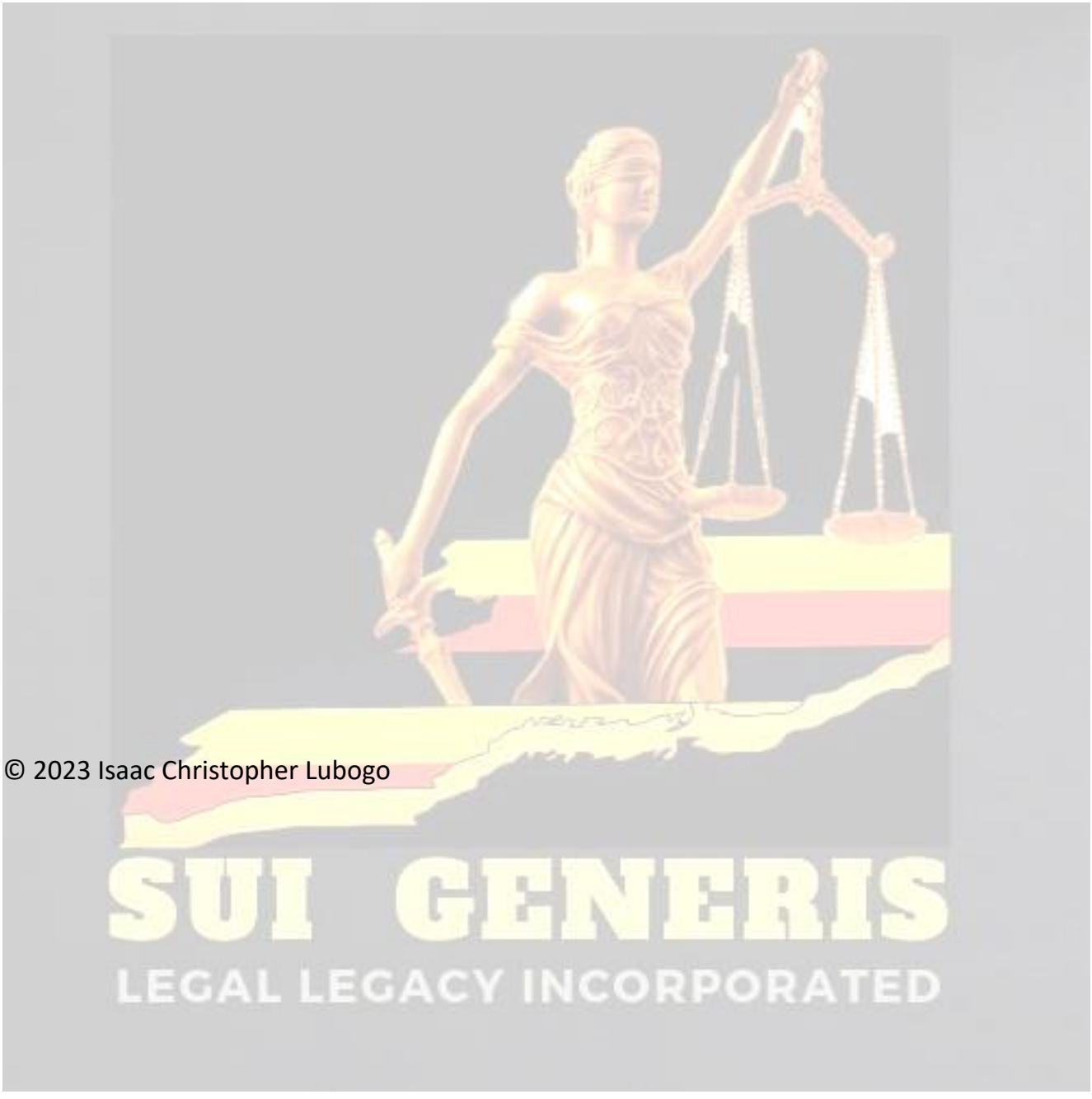
## A GUIDE TO ORAL EXAMS, APTITUDE TESTS, INTERVIEWS AT UNDERGRADUATE, GRADUATE AND POST GRADUATE LAW SCHOOLS.

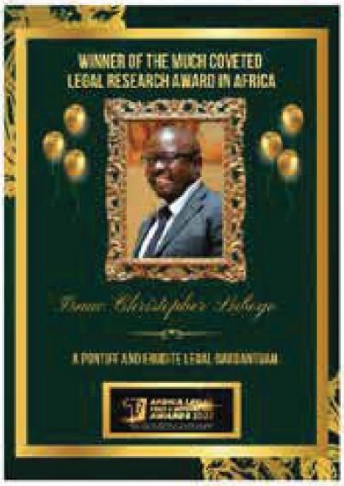
## CRIMINAL LAW AND PRACTICE



ISAAC CHRISTOPHER LUBOGO

# MATRICULATION ORAL EXAMINATION GUIDE FOR CRIMINAL PROCEDURE IN UGANDA

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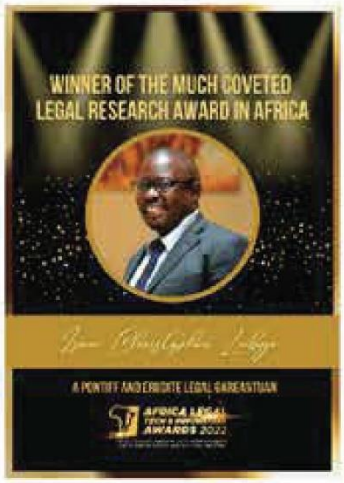
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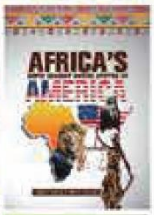
THE LAW OF UGANDA
THE STRIX MYTHOLOGY DEMYSTIFIED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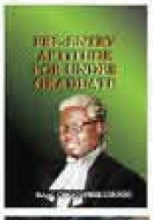
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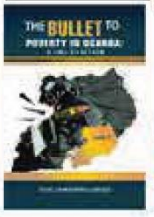
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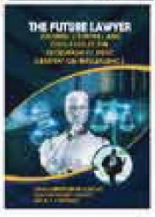
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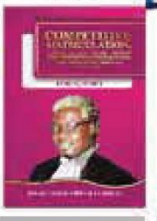
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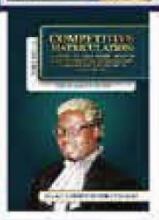
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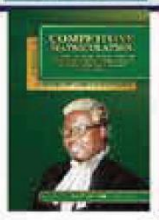
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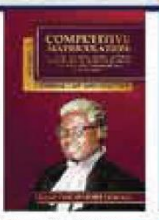
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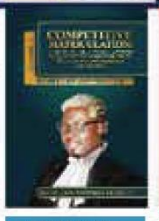
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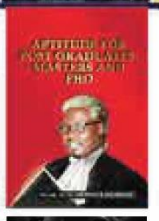
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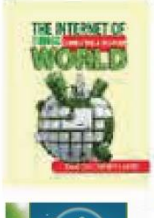
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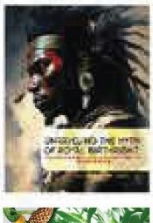
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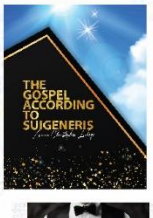
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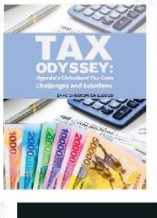
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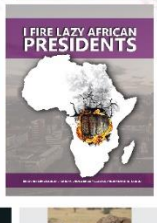
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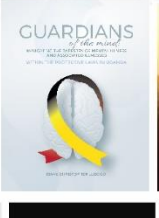
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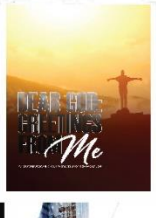
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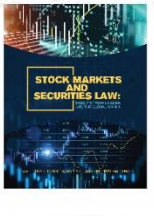
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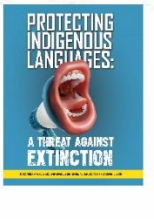
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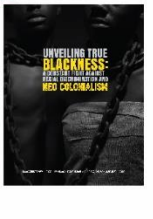
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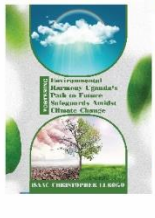

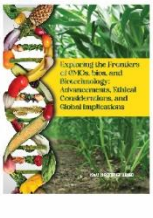


WELCOMING UGANDA:
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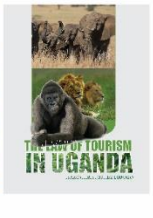
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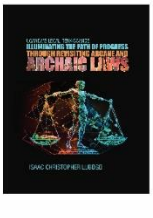
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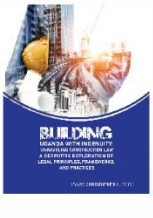
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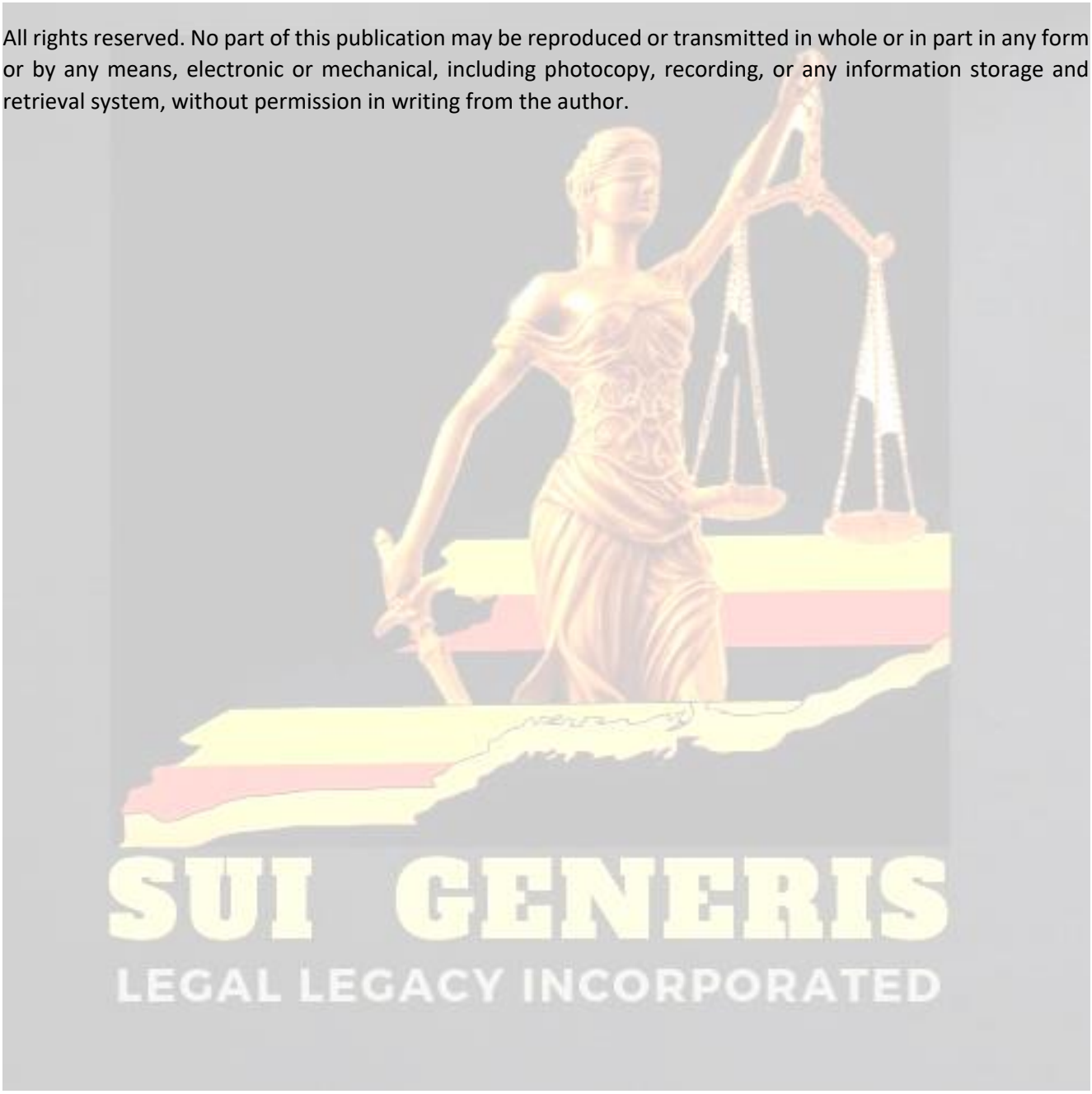
# MATRICULATION ORAL EXAMINATION GUIDE FOR CRIMINAL PROCEDURE IN UGANDA



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Title: Matriculation Oral Examination Guide: Criminal Procedure in Uganda

Book Review

"Matriculation Oral Examination Guide: Criminal Procedure in Uganda"

In the realm of criminal law and procedure, where the intricacies of the legal system intersect with the pursuit of justice, having a comprehensive resource that offers clarity and guidance is of paramount importance. The "Matriculation Oral Examination Guide: Criminal Procedure in Uganda" is a commendable book that effectively addresses this need. It serves as an invaluable tool for law students and aspiring legal professionals seeking to navigate the complexities of criminal procedure law in the Ugandan context.

One of the standout features of this guide is its comprehensive coverage of relevant topics. From the initiation of criminal proceedings to arrest, bail, trial, sentencing, and appeals, the book leaves no aspect of criminal procedure in Uganda unexplored. The authors have meticulously delved into the Ugandan legal framework, presenting readers with a comprehensive understanding of the statutes, case law, and legal principles that underlie criminal procedure. This thorough exploration ensures that readers develop a strong foundation in the subject matter, enabling them to handle a wide range of criminal cases competently.

Furthermore, the book excels in its legal analysis. Each topic is accompanied by insightful discussions that delve into the underlying principles and jurisprudence shaping criminal procedure law in Uganda. By examining key cases and legal precedents, the authors provide readers with a contextual understanding of how the law is interpreted and applied in real-life criminal cases. This analysis not only enhances readers' theoretical knowledge but also equips them with the critical thinking skills necessary to navigate complex legal issues and advocate effectively for both defendants and the prosecution within the criminal procedure context.

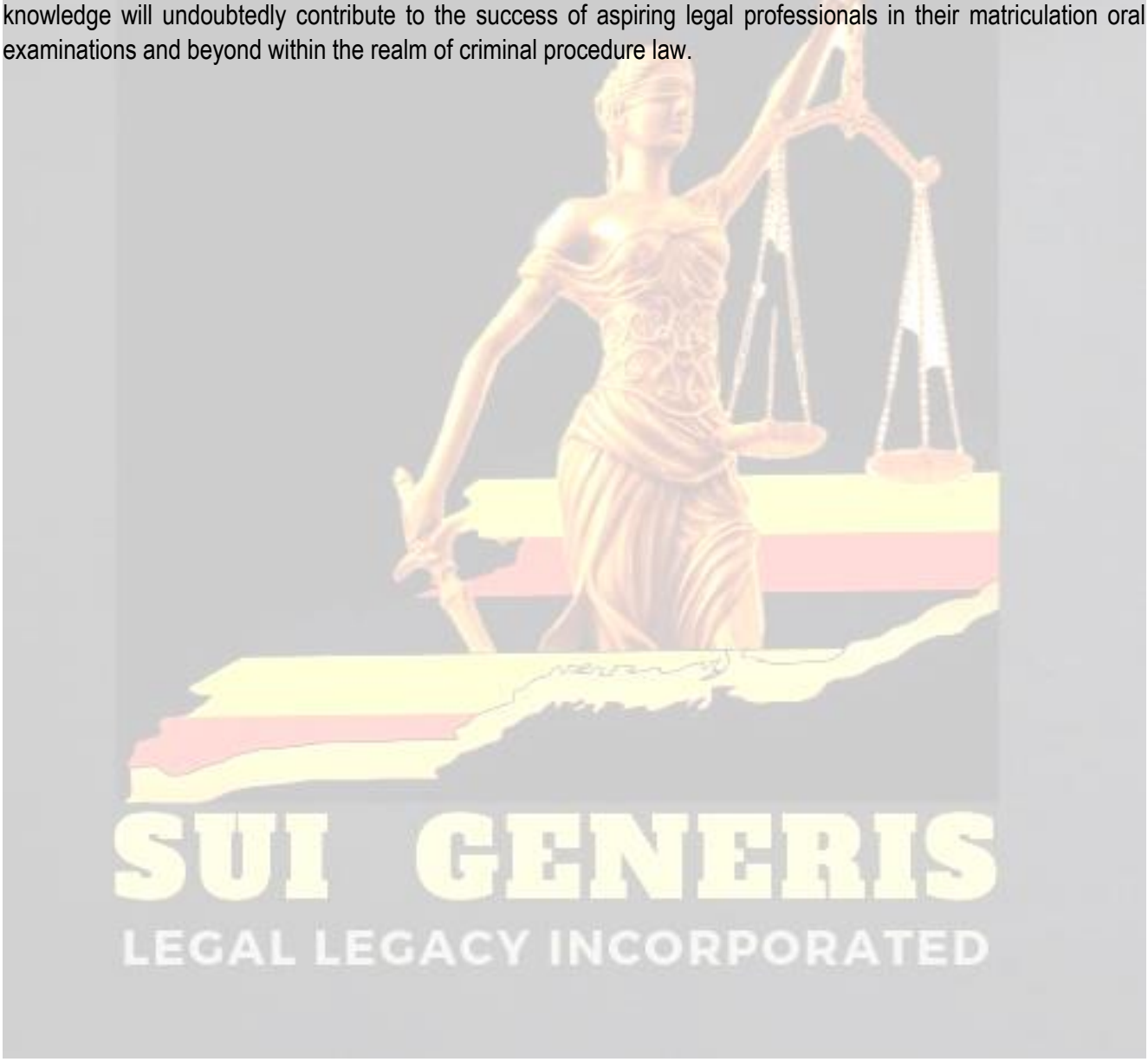
The practical guidance offered in this guide is another notable aspect that sets it apart. In addition to theoretical discussions, the book provides step-by-step explanations of the practical aspects involved in criminal procedure cases. From the investigation and gathering of evidence to the conduct of criminal trials, the rights of the accused, and post-conviction remedies, readers are given invaluable insights into the practicalities of criminal procedure practice. This hands-on approach ensures that readers not only understand the legal principles but also know how to apply them effectively in the real-world legal environment.



A notable strength of the book lies in its inclusion of sample questions and model answers. This feature aids students in their exam preparation, allowing them to become familiar with the types of questions they may encounter in oral examinations related to criminal procedure. By providing well-crafted model answers, the book guides readers in structuring their arguments and articulating their responses effectively. This aspect adds an interactive dimension to the learning process, making the guide a valuable resource for both exam preparation and enhancing overall understanding.

While the book's content is extensive and comprehensive, it is important to note that it is based on the legal framework in Uganda up until 2023. Given the evolving nature of criminal law, readers should supplement their knowledge with updates from reliable sources to ensure they remain current with any recent legislative or judicial developments within criminal procedure in Uganda.

In conclusion, the "Matriculation Oral Examination Guide: Criminal Procedure in Uganda" is an exceptional resource that leaves no aspect of criminal procedure unaddressed. Its comprehensive coverage, insightful legal analysis, practical guidance, and sample questions make it an indispensable tool for anyone seeking to master criminal procedure practice in Uganda. This guide sets a high standard for legal study materials, and its clarity and depth of knowledge will undoubtedly contribute to the success of aspiring legal professionals in their matriculation oral examinations and beyond within the realm of criminal procedure law.



Dedication:

To the LORD God Almighty,

"Blessed be the LORD my Guide,

Who illuminates the path of criminal procedure,

And strengthens my commitment to justice."

- Adapted from Psalm 144:1

"I lift up my eyes to the hills—

where does my help come from?

My help comes from the LORD,

the Maker of heaven and earth,

Who guides me through the complexities of criminal law."

- Adapted from Psalm 121:1-2

With the utmost reverence and gratitude, we dedicate this book, "Matriculation Oral Examination Guide: Criminal Procedure in Uganda," to the LORD God Almighty, the source of wisdom and guidance.

In the pursuit of legal knowledge and understanding within the field of criminal procedure, we acknowledge that it is through Your divine providence that we are empowered to delve into the intricacies of the legal system. We humbly recognize Your sovereignty as the ultimate teacher, illuminating our minds and hearts with clarity and insight.

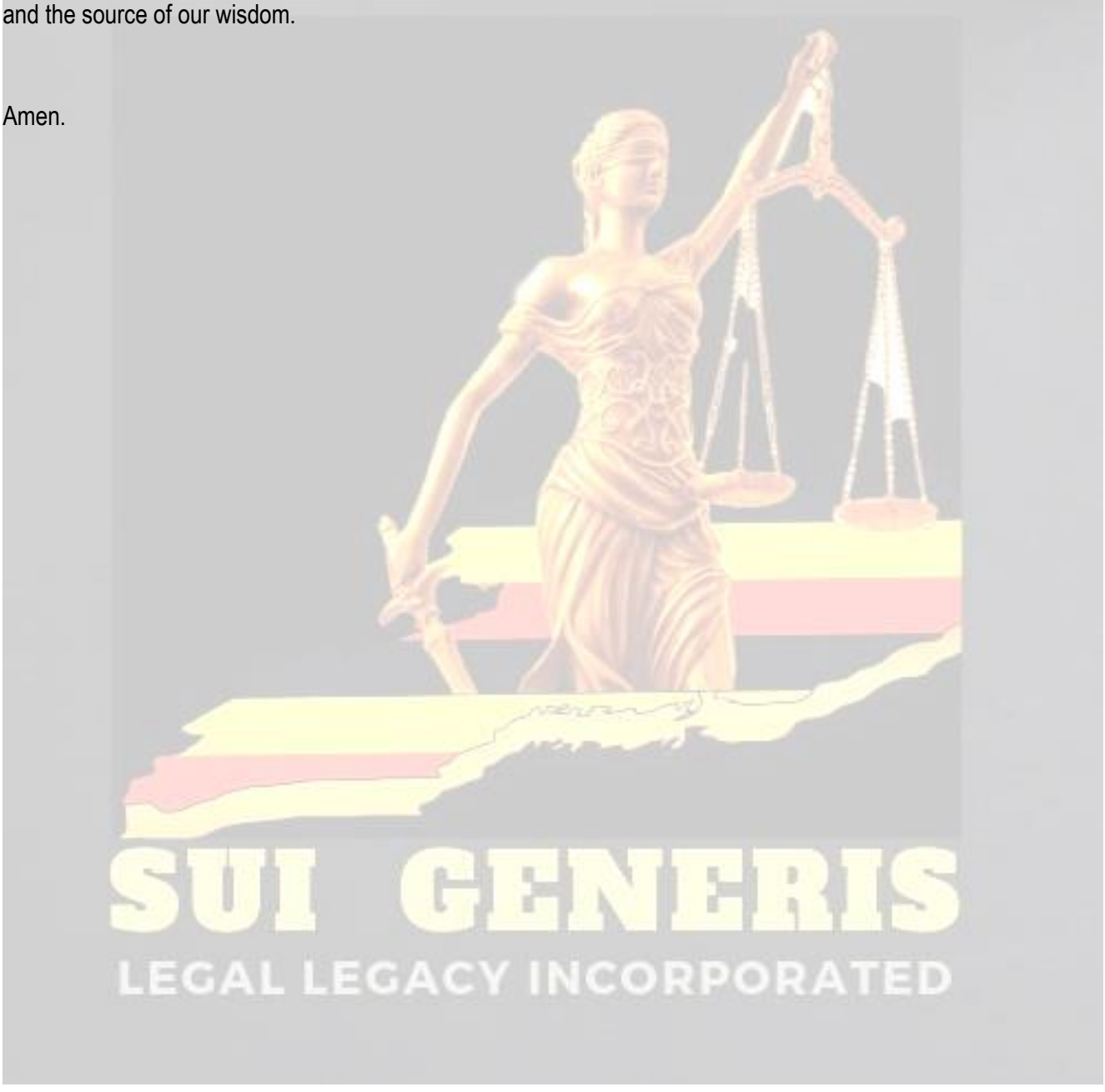
As we embark on this journey to master the principles and practices of criminal procedure law in Uganda, we acknowledge Your role as our Guide, leading us through the challenges and moral dilemmas of the legal system. Just as You have equipped us to navigate the complexities of criminal cases, we trust in Your wisdom and guidance to uphold justice, fairness, and the rights of all individuals within the criminal procedure context.

In times of uncertainty and doubt, we lift our eyes to the hills, acknowledging that our help comes from You alone. As we study arrest, bail, trials, sentencing, and appeals within these pages, we are reminded that our ultimate hope and reliance rest in You, the Maker of heaven and earth. It is Your divine wisdom that guides us, shapes our understanding, and inspires us to seek justice and uphold the principles of fairness in all our legal endeavors.

May this book serve as a testament to Your grace and faithfulness. May it equip and empower aspiring legal professionals and students, enabling them to navigate the world of criminal procedure with integrity, compassion, and dedication to justice. As they prepare for their matriculation oral examinations and embark on their legal journeys in the realm of criminal law, may they continually seek Your wisdom and guidance, knowing that their ultimate purpose is to serve and uphold the principles of justice in accordance with Your will.

With heartfelt gratitude and reverence, we dedicate this book to the LORD God Almighty, our Guide, our Helper, and the source of our wisdom.

Amen.



Introduction:

Welcome to the comprehensive guide for matriculation oral examinations in Criminal Procedure in Uganda. This book has been meticulously crafted to assist law students and aspiring legal professionals in their pursuit of mastering the intricacies of criminal procedure within the Ugandan legal system.

Criminal procedure law plays a fundamental role in the administration of justice and the pursuit of fairness and equity in criminal cases. It governs the rules and procedures that guide criminal investigations, trials, appeals, and the protection of individual rights. Given its significance in upholding the principles of justice and the rights of both the accused and the state, it is crucial for aspiring lawyers to possess a solid foundation in this area of law.

This guide has been designed to provide a structured and comprehensive resource for individuals preparing for their matriculation oral examination in Criminal Procedure in Uganda. It aims to equip readers with a deep understanding of the legal principles, relevant statutes, and practical aspects that govern criminal procedure in the country.

Key Features of this Guide:

1. Comprehensive Coverage: This guide covers all essential topics related to criminal procedure in Uganda, including arrest, bail, investigation, trials, sentencing, appeals, and post-conviction remedies. It explores the relevant legislation, case law, and legal principles to provide a holistic understanding of criminal procedure practice.

2. Legal Analysis: Each topic is accompanied by in-depth legal analysis, offering readers valuable insights into the underlying principles and jurisprudence shaping criminal procedure law in Uganda. By examining significant cases and legal precedents, this guide provides a contextual understanding of how the law is interpreted and applied in practical criminal cases.

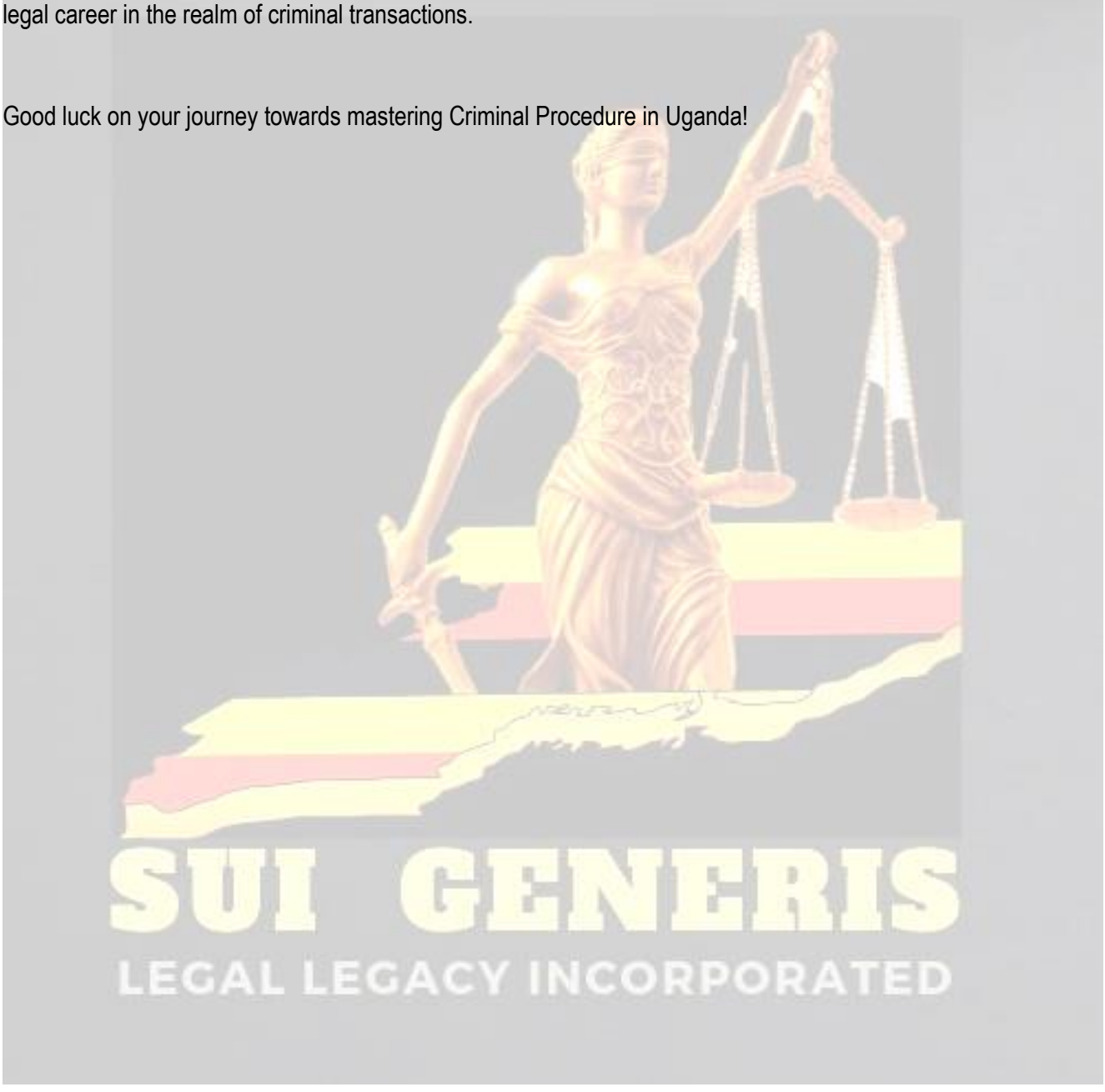
3. Practical Guidance: In addition to theoretical discussions, this guide also offers practical guidance on navigating the procedural aspects of criminal cases. It provides step-by-step explanations of investigation techniques, court procedures, the rights of the accused, sentencing considerations, and post-conviction remedies. This ensures that readers are well-prepared to handle real-world criminal litigation scenarios with confidence.

4. Sample Questions and Model Answers: To aid students in their preparation for oral examinations, this guide includes a comprehensive collection of sample questions and model answers. These examples demonstrate how to effectively analyze legal issues, structure arguments, and articulate responses in an oral examination setting.

5. Updated Legal Framework: This guide takes into account the latest legal developments and amendments in Ugandan criminal procedure law up until 2023, ensuring that readers are equipped with the most current knowledge in this dynamic field.

We believe that this guide will serve as an invaluable resource for law students, legal professionals, and anyone seeking to acquire a profound understanding of criminal procedure in Uganda. By leveraging the content presented in this book, readers will be well-prepared to tackle their matriculation oral examination and embark on a successful legal career in the realm of criminal transactions.

Good luck on your journey towards mastering Criminal Procedure in Uganda!

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- **Discuss and review the following legal issues.**

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 and Common law and Doctrines of Equity.

- **Discuss 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.

Issue two involves assessing whether the evidence presented is sufficient to sustain the charges brought against the accused.

In trial practice, it is essential to evaluate the strength of the evidence and its relevance to the elements of the alleged offenses. This analysis requires a thorough understanding of the applicable laws and legal principles.

To determine the sufficiency of evidence, legal practitioners need to examine the testimonies, documents, exhibits, and any other relevant materials presented during the trial. They must carefully consider whether the evidence establishes each element of the offense beyond a reasonable doubt, as required in criminal cases.

In doing so, lawyers should be familiar with the laws governing the admissibility of evidence. The Evidence Act Cap 6 provides the framework for the admission and exclusion of evidence in Ugandan courts. Understanding the provisions of this Act is crucial to effectively challenge or support the admissibility of evidence during trial proceedings.

Lawyers should also be aware of the rules and procedures set out in the Criminal Procedure Code Act Cap 116. This Act governs the conduct of criminal trials, including the presentation and examination of evidence, cross-examination of witnesses, and the rights of the accused.

Furthermore, a thorough knowledge of case law is vital in assessing the sufficiency of evidence. Past judicial decisions, especially those from higher courts, provide guidance on the interpretation and application of the law in specific situations. Lawyers can use precedents to argue for or against the sufficiency of evidence in a particular case.

Issue two requires careful analysis and a comprehensive understanding of the applicable laws, evidence rules, and relevant precedents. It is crucial to ensure that the evidence presented during the trial is legally admissible and sufficient to support the charges against the accused.

Issue three: Whether the accused can be granted bail?

The issue of bail arises when considering whether the accused should be released from custody pending trial. The determination of whether bail should be granted depends on various factors, including the seriousness of the offense, the likelihood of the accused fleeing, the potential danger posed by the accused to society, and the strength of the evidence against the accused.

The relevant laws to consider in this issue include the Constitution of Uganda, specifically Article 23, which guarantees the right to liberty and fair hearing, and the Criminal Procedure Code Act Cap 116, which provides the legal framework for the grant of bail.

In assessing the grant of bail, the court will consider the circumstances of the case and the specific factors mentioned above. The defense and prosecution may present arguments and evidence to support their respective positions on bail. The court will exercise its discretion in determining whether bail should be granted and may impose certain conditions or restrictions to ensure the accused's appearance in court and the safety of the public.

Issue four: Whether the accused has any defenses?

This issue involves identifying and evaluating any defenses that the accused may raise during the trial. Defenses can vary depending on the nature of the offense and the specific facts of the case. Common defenses include self-defense, alibi, mistake of fact, insanity, and lack of intent.

To address this issue, lawyers should be familiar with the applicable laws and legal principles related to defenses. The Criminal Procedure Code Act Cap 116 and the Penal Code Act Cap 120 provide guidance on various defenses recognized under Ugandan law.

It is essential for lawyers to thoroughly investigate the circumstances surrounding the alleged offense, gather relevant evidence, interview witnesses, and consult with experts if necessary. By identifying and developing strong defenses, lawyers can effectively advocate for their clients and challenge the prosecution's case.

Issue five: What's the forum, procedure, and documents?

This issue pertains to determining the appropriate forum for the trial, understanding the procedural requirements, and identifying the necessary documents for the trial process. The forum will depend on the nature and gravity of the offense. Less serious offenses are typically handled in the Magistrate Courts, while more serious offenses are dealt with in the High Court.

The applicable laws, such as the Judicature Act Cap 13, the Magistrate Courts Act Cap 16, and the Trial on Indictments Act Cap 23, provide guidance on the jurisdiction, procedure, and documentation requirements for trials in both Magistrate Courts and the High Court.

Lawyers should be familiar with the specific court rules, filing deadlines, and necessary forms and documents required at each stage of the trial process. This includes pleadings, witness statements, expert reports, exhibits, and any other relevant documentation that may be crucial to presenting a strong case.

By understanding the forum, procedures, and required documents, lawyers can navigate the trial process effectively and ensure compliance with the legal requirements for a fair and just trial.

In conclusion, trial practice in both Magistrate Courts and the High Court involves addressing various legal issues and considerations. Lawyers must have a comprehensive understanding of the applicable laws, including the Constitution, statutes, case law, and legal principles. By carefully evaluating the issues, presenting strong defenses, and following the procedural requirements, lawyers can effectively advocate for their clients and contribute to the administration of justice.

Issue six: Presentation and examination of witnesses

The presentation and examination of witnesses play a crucial role in trial practice. Lawyers must be well-versed in the rules and procedures governing witness testimony. The Criminal Procedure Code Act Cap 116 and the Evidence Act Cap 6 provide guidance on witness examination, cross-examination, and the admissibility of witness statements and evidence.

Lawyers should prepare their witnesses thoroughly, ensuring they are familiar with the facts of the case and ready to provide clear and credible testimony. They must also be skilled in conducting direct examination to elicit relevant information and effectively cross-examine witnesses presented by the opposing party.

Issue seven: Admissibility of evidence Determining the admissibility of evidence is a critical aspect of trial practice.

Lawyers must be knowledgeable about the rules and principles governing admissibility as outlined in the Evidence Act Cap 6. They should carefully evaluate the relevance, authenticity, and reliability of evidence before presenting it in court.

Lawyers may need to file motions or objections to challenge the admissibility of certain evidence. They must be familiar with the legal grounds for exclusion, such as hearsay, privilege, and improperly obtained evidence.

Issue eight: Examination of expert witnesses

In cases that involve technical or specialized knowledge, expert witnesses may be called upon to provide their professional opinions. Lawyers must understand the rules and procedures for examining expert witnesses, including their qualifications, the basis of their opinions, and the scope of their expertise.

The Evidence Act Cap 6 and case law provide guidance on the admissibility and examination of expert evidence. Lawyers should thoroughly prepare their expert witnesses, ensuring they can effectively communicate complex concepts to the court.

Issue nine: Closing arguments and submissions

At the conclusion of the trial, lawyers present their closing arguments and submissions. This is an opportunity to summarize the evidence, highlight key legal points, and persuade the court to adopt their client's position.

Lawyers must be skilled in oral advocacy, utilizing persuasive techniques and legal reasoning to present their case effectively. They should refer to relevant statutes, case law, and legal principles to support their arguments.

Issue ten: Verdict and sentencing

Following the trial, the court will reach a verdict based on the evidence presented and legal arguments made. If the accused is found guilty, lawyers may be involved in the sentencing phase. They can make submissions on appropriate penalties, considering the circumstances of the case and any mitigating factors.

Lawyers must be familiar with the applicable sentencing guidelines and legal principles to advocate for a fair and just sentence.

In summary, trial practice involves addressing various legal issues, such as witness examination, admissibility of evidence, expert witnesses, closing arguments, and sentencing. Lawyers must have a deep understanding of the relevant laws, rules, and procedures to effectively represent their clients and ensure a fair trial.

Issue eleven: Post-trial remedies and appeals

After the trial and the rendering of a verdict, lawyers need to be familiar with the available post-trial remedies and the process for filing appeals. The Criminal Procedure Code Act Cap 116 outlines the procedures for filing appeals, including the time limits, grounds for appeal, and the appellate courts' jurisdiction.

Lawyers may file motions for various post-trial remedies, such as applications for a new trial, motions to set aside the verdict, or applications for sentence reconsideration. These motions require a solid understanding of the legal principles and case law supporting such remedies.

If the outcome of the trial is unfavorable, lawyers may consider filing an appeal to a higher court. This involves preparing the necessary appellate briefs, identifying errors in the trial proceedings or legal interpretations, and presenting persuasive arguments to convince the appellate court to overturn the lower court's decision.

Issue twelve: Compliance with ethical and professional responsibilities

Throughout the trial process, lawyers must adhere to the ethical and professional standards set forth by the legal profession. This includes maintaining client confidentiality, avoiding conflicts of interest, acting in the best interests of their clients, and upholding the principles of fairness and justice.

Lawyers should also be aware of any specific ethical guidelines or codes of conduct issued by professional bodies or bar associations in Uganda. Compliance with these standards ensures the integrity of the trial process and upholds the trust placed in legal practitioners.

- **DISCUSS THE LEGAL ISSUES INVOLVED IN THE FOLLOWING 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.

- **DISCUSS 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.

- **WHAT IS 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.

- **OUTLINE FORENSIC EVIDENCE AS A TYPE OF 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.



The legal issues involved in the given text include:

1. Ingredients of the Offense: The first issue discussed pertains to understanding the elements or ingredients of the offense, specifically in the context of murder. Lawyers need to carefully analyze the relevant statutes, such as Section 188 of the Penal Code Act Cap 120, to identify and establish each element of the offense. This requires referencing case law to determine how courts have interpreted and applied those elements in previous cases.
2. Admissibility of Evidence: The second issue discussed focuses on the admissibility of evidence in the trial process. Lawyers must be well-versed in the Evidence Act Cap 6, which governs the admissibility and

relevance of evidence. They should be familiar with principles such as the Res Gestae doctrine and Section 5, which allows for the inclusion of facts connected to the main transaction. Additionally, lawyers should consider the need for corroborative evidence to support the charges and the potential use of forensic evidence and expert opinions.

3. Corroborative Evidence: Corroboration refers to independent evidence that tends to support and strengthen the credibility or truthfulness of the prosecution's case. Lawyers should be aware of the need for corroborative evidence, as it can play a significant role in establishing guilt beyond a reasonable doubt. Relying solely on a single witness or a single piece of evidence may weaken the case, and therefore, lawyers should actively seek out and present corroborating evidence where possible.

4. Forensic Evidence: The discussion highlights the importance of forensic evidence in criminal cases. Lawyers should recognize when forensic evidence, such as DNA analysis, ballistics, or fingerprints, may be relevant and useful in establishing the guilt or innocence of the accused. They should advise the court on the need for expert witnesses and scientific reports to present and explain the forensic evidence accurately.

5. Documented Evidence: The issue of documented evidence emphasizes the significance of official documents in the trial process. Lawyers should be knowledgeable about the proper documentation required, such as the Police Form 48, which is a medical report prepared by a District Medical Officer. Understanding the requirements for admitting and presenting documented evidence is crucial for building a strong case.

6. Burden and Standard of Proof: Another important legal issue in trial practice is the burden and standard of proof. Lawyers must understand that the burden of proving the elements of the offense rests on the prosecution. They need to present sufficient evidence to convince the court beyond a reasonable doubt of the accused's guilt. Understanding the standard of proof, which is the high degree of certainty required in criminal cases, is crucial in constructing a persuasive argument and presenting compelling evidence.

7. Presumption of Innocence and Defenses: Lawyers must always keep in mind the presumption of innocence, as enshrined in Article 28 of the Constitution. It is their duty to ensure that their clients are treated as innocent until proven guilty. They should also be well-versed in the available defenses under the law and advise their clients accordingly. This includes exploring possibilities such as self-defense, alibi, insanity, mistake of fact, or consent, depending on the specific circumstances of the case.

8. Cross-Examination and Impeachment: Cross-examination is an essential aspect of trial practice. Lawyers need to effectively cross-examine prosecution witnesses to challenge their credibility, highlight inconsistencies, or elicit information that supports the defense. They should also be prepared to impeach the credibility of witnesses by presenting evidence of prior inconsistent statements, biases, or ulterior motives.



9. Consideration of Case Law: Throughout the trial process, lawyers should rely on relevant case law to support their arguments and interpretations of the law. They should be familiar with precedent-setting cases that establish legal principles and guide the court's decision-making. By referencing and analyzing previous cases, lawyers can strengthen their legal arguments and persuasively present their case to the court.

10. Professional Ethics and Conduct: Lawyers have a professional and ethical duty to conduct themselves with integrity, honesty, and respect for the court and opposing counsel. They should adhere to the rules of professional conduct and ensure they act in the best interests of their clients while upholding the principles of justice. Maintaining confidentiality, avoiding conflicts of interest, and presenting truthful and accurate information are crucial ethical considerations in trial practice.

11. Jury Trials: In jurisdictions where jury trials are applicable, lawyers must be well-versed in the rules and procedures governing jury selection, instructions, and deliberations. They need to understand how to present their case effectively to a jury, including the use of persuasive arguments, visual aids, and witness examination techniques that resonate with the jury. Lawyers should also be skilled at jury voir dire, the process of questioning potential jurors to identify any biases or prejudices that may affect their impartiality.

12. Expert Witnesses: In complex cases, lawyers may need to rely on expert witnesses to provide specialized knowledge or opinions on certain matters. They must understand the rules for qualifying and presenting expert witnesses, as well as effectively communicate the expert's findings or opinions to the court or jury. Lawyers should also be prepared to cross-examine opposing expert witnesses and challenge their credibility or methodology, if necessary.

13. Presentation of Exhibits and Demonstrative Evidence: Lawyers should be proficient in presenting exhibits and demonstrative evidence to support their case. This includes physical evidence, photographs, diagrams, videos, or computer-generated simulations that can help explain complex concepts or recreate the sequence of events. Lawyers must ensure that these exhibits are properly authenticated and adhere to the rules of evidence.

14. Sentencing Considerations: If the accused is convicted, lawyers need to be knowledgeable about the relevant sentencing laws and guidelines. They should present mitigating factors or arguments for a lenient sentence, considering factors such as the defendant's character, remorse, prior criminal record, or any extenuating circumstances. Lawyers may also need to argue for alternative sentencing options, such as probation, community service, or rehabilitation programs.

15. Post-Trial Proceedings: Following the trial, lawyers may be involved in post-trial proceedings, such as motions for a new trial, sentencing appeals, or applications for post-conviction relief. They should understand the applicable procedures, deadlines, and legal grounds for pursuing such remedies, and be prepared to advocate for their client's rights during these proceedings.

16. Continuous Legal Education: To stay updated on evolving legal principles, statutes, and case law, lawyers engaged in trial practice should actively pursue continuous legal education. This involves attending seminars, workshops, or conferences, reading legal journals, and keeping abreast of recent developments in the field of criminal law. Maintaining a current and comprehensive understanding of the law is essential for effective trial advocacy.

- **SUMMARIZE AND DISCUSS ALL THE LEGAL ISSUES FOLLOWING 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.

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. STEPHEN OPOROCHA V. UGANDA [1991] HCB 81, soldiers, prison officer's, LDU's and private guards may arrest just like any private person except where such powers are stipulated in a state.

POLICE OFFICER

Police officer 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.

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.

- **What are the legal issues involved in the arrests, searches, recovery, and disposal of exhibits?**

Power to Arrest: There are different authorities with the power to arrest individuals. Judicial officers can issue warrants and make arrests within their jurisdiction. Private persons have the authority to arrest individuals who commit or are reasonably suspected of committing a cognizable offense. Police officers can arrest individuals without a warrant if there is reasonable cause to suspect their involvement in an arrestable offense.

1. Preventive Arrest: Police officers can make preventive arrests if they receive information about a design to commit a cognizable offense and believe that the commission of the offense cannot otherwise be prevented. These arrests are made without a warrant or court order. However, the person detained under preventive arrest must be released once the risk of harm or obstruction has been sufficiently removed, subject to specified conditions.
2. Arrest with a Warrant: Courts can issue warrants for the arrest of individuals. These warrants are issued in writing, stating the offense charged and directing the person to apprehend the individual and bring them before the court. Warrants are issued when it is necessary to secure the appearance of an accused person after a charge has been laid.
3. Execution of Warrants: Warrants can be directed to specific police officers or chiefs or generally to all police officers or chiefs. If multiple officers or persons are named in the warrant, it can be executed by any or all of them. In cases where no police officer or chief is immediately available, the warrant can be directed to any person for immediate execution.
4. Unlawful Detention: If a person or someone on their behalf believes that someone is being unlawfully detained under preventive arrest, they can apply to a magistrate to have the person released. This can be done with or without security.
5. Search and Seizure: When making arrests or conducting investigations, police officers may need to conduct searches and seize relevant evidence or exhibits. The legal issues surrounding search and seizure include the requirement for a search warrant, the scope of the search, the admissibility of the evidence, and the handling and disposal of seized exhibits.
6. Disposal of Exhibits: Once exhibits have been seized and used as evidence in court, there are legal procedures for their disposal. This may involve returning the exhibits to the rightful owner, destruction or disposal of certain items, or their retention for further use or investigation.

It is important for law enforcement officers, legal practitioners, and individuals involved in the criminal justice system to be aware of these legal issues to ensure that arrests, searches, recovery, and disposal of exhibits are conducted in accordance with the law and to safeguard the rights of individuals.

Issue two involves assessing whether the evidence presented is sufficient to sustain the charges brought against the accused.

In trial practice, it is essential to evaluate the strength of the evidence and its relevance to the elements of the alleged offenses. This analysis requires a thorough understanding of the applicable laws and legal principles.

To determine the sufficiency of evidence, legal practitioners need to examine the testimonies, documents, exhibits, and any other relevant materials presented during the trial. They must carefully consider whether the evidence establishes each element of the offense beyond a reasonable doubt, as required in criminal cases.

In doing so, lawyers should be familiar with the laws governing the admissibility of evidence. The Evidence Act Cap 6 provides the framework for the admission and exclusion of evidence in Ugandan courts. Understanding the provisions of this Act is crucial to effectively challenge or support the admissibility of evidence during trial proceedings.

Lawyers should also be aware of the rules and procedures set out in the Criminal Procedure Code Act Cap 116. This Act governs the conduct of criminal trials, including the presentation and examination of evidence, cross-examination of witnesses, and the rights of the accused.

Furthermore, a thorough knowledge of case law is vital in assessing the sufficiency of evidence. Past judicial decisions, especially those from higher courts, provide guidance on the interpretation and application of the law in specific situations. Lawyers can use precedents to argue for or against the sufficiency of evidence in a particular case.

Issue three: Whether the accused can be granted bail?

The issue of bail arises when considering whether the accused should be released from custody pending trial. The determination of whether bail should be granted depends on various factors, including the seriousness of the offense, the likelihood of the accused fleeing, the potential danger posed by the accused to society, and the strength of the evidence against the accused.

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Following the trial, the court will reach a verdict based on the evidence presented and legal arguments made. If the accused is found guilty, lawyers may be involved in the sentencing phase. They can make submissions on appropriate penalties, considering the circumstances of the case and any mitigating factors.

Lawyers must be familiar with the applicable sentencing guidelines and legal principles to advocate for a fair and just sentence.

In summary, trial practice involves addressing various legal issues, such as witness examination, admissibility of evidence, expert witnesses, closing arguments, and sentencing. Lawyers must have a deep understanding of the relevant laws, rules, and procedures to effectively represent their clients and ensure a fair trial.

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If the outcome of the trial is unfavorable, lawyers may consider filing an appeal to a higher court. This involves preparing the necessary appellate briefs, identifying errors in the trial proceedings or legal interpretations, and presenting persuasive arguments to convince the appellate court to overturn the lower court's decision.

Issue twelve: Compliance with ethical and professional responsibilities

Throughout the trial process, lawyers must adhere to the ethical and professional standards set forth by the legal profession. This includes maintaining client confidentiality, avoiding conflicts of interest, acting in the best interests of their clients, and upholding the principles of fairness and justice.

Lawyers should also be aware of any specific ethical guidelines or codes of conduct issued by professional bodies or bar associations in Uganda. Compliance with these standards ensures the integrity of the trial process and upholds the trust placed in legal practitioners.

Continuing education and staying updated on recent legal developments are crucial for lawyers to effectively navigate the complex legal landscape and provide competent representation to their clients. Regular engagement in legal research, attending seminars or continuing legal education programs, and staying informed about new legislation or case law developments are valuable practices for lawyers involved in trial practice.

In conclusion, trial practice involves addressing a range of legal issues, including post-trial remedies, appeals, ethical responsibilities, and staying updated on legal developments. Lawyers must be well-versed in the relevant laws, rules, and procedures, and possess strong advocacy and analytical skills to navigate the trial process successfully and ensure the effective representation of their clients.



The legal issues involved in the given text include:

1. Ingredients of the Offense:

The first issue discussed pertains to understanding the elements or ingredients of the offense, specifically in the context of murder. Lawyers need to carefully analyze the relevant statutes, such as Section 188 of the Penal Code Act Cap 120, to identify and establish each element of the offense. This requires referencing case law to determine how courts have interpreted and applied those elements in previous cases.

2. Admissibility of Evidence:

The second issue discussed focuses on the admissibility of evidence in the trial process. Lawyers must be well-versed in the Evidence Act Cap 6, which governs the admissibility and relevance of evidence. They should be familiar with principles such as the Res Gestae doctrine and Section 5, which allows for the inclusion of facts connected to the main transaction. Additionally, lawyers should consider the need for corroborative evidence to support the charges and the potential use of forensic evidence and expert opinions.

3. Corroborative Evidence:

Corroboration refers to independent evidence that tends to support and strengthen the credibility or truthfulness of the prosecution's case. Lawyers should be aware of the need for corroborative evidence, as it can play a significant role in establishing guilt beyond a reasonable doubt. Relying solely on a single witness or a single piece of evidence may weaken the case, and therefore, lawyers should actively seek out and present corroborating evidence where possible.

4. Forensic Evidence:

The discussion highlights the importance of forensic evidence in criminal cases. Lawyers should recognize when forensic evidence, such as DNA analysis, ballistics, or fingerprints, may be relevant and useful in establishing the guilt or innocence of the accused. They should advise the court on the need for expert witnesses and scientific reports to present and explain the forensic evidence accurately.

5. Documented Evidence:

The issue of documented evidence emphasizes the significance of official documents in the trial process. Lawyers should be knowledgeable about the proper documentation required, such as the Police Form 48, which is a medical report prepared by a District Medical Officer. Understanding the requirements for admitting and presenting documented evidence is crucial for building a strong case.

In conclusion, these legal issues, including the elements of the offense, admissibility of evidence, corroborative evidence, forensic evidence, and documented evidence, are critical considerations for lawyers in trial practice. By understanding and addressing these issues effectively, lawyers can present a robust and persuasive case in court.



6. Burden and Standard of Proof:

Another important legal issue in trial practice is the burden and standard of proof. Lawyers must understand that the burden of proving the elements of the offense rests on the prosecution. They need to present sufficient evidence to convince the court beyond a reasonable doubt of the accused's guilt. Understanding the standard of proof, which is the high degree of certainty required in criminal cases, is crucial in constructing a persuasive argument and presenting compelling evidence.

7. Presumption of Innocence and Defenses:

Lawyers must always keep in mind the presumption of innocence, as enshrined in Article 28 of the Constitution. It is their duty to ensure that their clients are treated as innocent until proven guilty. They should also be well-versed

in the available defenses under the law and advise their clients accordingly. This includes exploring possibilities such as self-defense, alibi, insanity, mistake of fact, or consent, depending on the specific circumstances of the case.

8. Cross-Examination and Impeachment:

Cross-examination is an essential aspect of trial practice. Lawyers need to effectively cross-examine prosecution witnesses to challenge their credibility, highlight inconsistencies, or elicit information that supports the defense. They should also be prepared to impeach the credibility of witnesses by presenting evidence of prior inconsistent statements, biases, or ulterior motives.

9. Consideration of Case Law:

Throughout the trial process, lawyers should rely on relevant case law to support their arguments and interpretations of the law. They should be familiar with precedent-setting cases that establish legal principles and guide the court's decision-making. By referencing and analyzing previous cases, lawyers can strengthen their legal arguments and persuasively present their case to the court.

10. Professional Ethics and Conduct:

Lawyers have a professional and ethical duty to conduct themselves with integrity, honesty, and respect for the court and opposing counsel. They should adhere to the rules of professional conduct and ensure they act in the best interests of their clients while upholding the principles of justice. Maintaining confidentiality, avoiding conflicts of interest, and presenting truthful and accurate information are crucial ethical considerations in trial practice.

In conclusion, trial practice involves a range of legal issues, including the burden and standard of proof, presumption of innocence, cross-examination, consideration of case law, and adherence to professional ethics. Lawyers must navigate these issues skillfully to present a compelling case and ensure a fair trial for their clients.

11. Jury Trials:

In jurisdictions where jury trials are applicable, lawyers must be well-versed in the rules and procedures governing jury selection, instructions, and deliberations. They need to understand how to present their case effectively to a jury, including the use of persuasive arguments, visual aids, and witness examination techniques that resonate with the jury. Lawyers should also be skilled at jury voir dire, the process of questioning potential jurors to identify any biases or prejudices that may affect their impartiality.

12. Expert Witnesses:

In complex cases, lawyers may need to rely on expert witnesses to provide specialized knowledge or opinions on certain matters. They must understand the rules for qualifying and presenting expert witnesses, as well as effectively communicate the expert's findings or opinions to the court or jury. Lawyers should also be prepared to cross-examine opposing expert witnesses and challenge their credibility or methodology, if necessary.

13. Presentation of Exhibits and Demonstrative Evidence:

Lawyers should be proficient in presenting exhibits and demonstrative evidence to support their case. This includes physical evidence, photographs, diagrams, videos, or computer-generated simulations that can help explain complex concepts or recreate the sequence of events. Lawyers must ensure that these exhibits are properly authenticated and adhere to the rules of evidence.

14. Sentencing Considerations:

If the accused is convicted, lawyers need to be knowledgeable about the relevant sentencing laws and guidelines. They should present mitigating factors or arguments for a lenient sentence, considering factors such as the defendant's character, remorse, prior criminal record, or any extenuating circumstances. Lawyers may also need to argue for alternative sentencing options, such as probation, community service, or rehabilitation programs.

15. Post-Trial Proceedings:

Following the trial, lawyers may be involved in post-trial proceedings, such as motions for a new trial, sentencing appeals, or applications for post-conviction relief. They should understand the applicable procedures, deadlines, and legal grounds for pursuing such remedies, and be prepared to advocate for their client's rights during these proceedings.

16. Continuous Legal Education:

To stay updated on evolving legal principles, statutes, and case law, lawyers engaged in trial practice should actively pursue continuous legal education. This involves attending seminars, workshops, or conferences, reading legal journals, and keeping abreast of recent developments in the field of criminal law. Maintaining a current and comprehensive understanding of the law is essential for effective trial advocacy.

In conclusion, trial practice encompasses a wide range of legal issues, including jury trials, expert witnesses, exhibits, sentencing considerations, post-trial proceedings, and the need for continuous legal education. By being well-versed in these areas, lawyers can effectively navigate the trial process, present compelling arguments, and advocate for their clients' rights.



The legal issues involved in the arrests, searches, recovery, and disposal of exhibits can be summarized and discussed as follows:

1. Power to Arrest:

There are different authorities with the power to arrest individuals. Judicial officers can issue warrants and make arrests within their jurisdiction. Private persons have the authority to arrest individuals who commit or are reasonably suspected of committing a cognizable offense. Police officers can arrest individuals without a warrant if there is reasonable cause to suspect their involvement in an arrestable offense.

2. Preventive Arrest:

Police officers can make preventive arrests if they receive information about a design to commit a cognizable offense and believe that the commission of the offense cannot otherwise be prevented. These arrests are made without a warrant or court order. However, the person detained under preventive arrest must be released once the risk of harm or obstruction has been sufficiently removed, subject to specified conditions.

3. Arrest with a Warrant:

Courts can issue warrants for the arrest of individuals. These warrants are issued in writing, stating the offense charged and directing the person to apprehend the individual and bring them before the court. Warrants are issued when it is necessary to secure the appearance of an accused person after a charge has been laid.

4. Execution of Warrants:

Warrants can be directed to specific police officers or chiefs or generally to all police officers or chiefs. If multiple officers or persons are named in the warrant, it can be executed by any or all of them. In cases where no police officer or chief is immediately available, the warrant can be directed to any person for immediate execution.

5. Unlawful Detention:

If a person or someone on their behalf believes that someone is being unlawfully detained under preventive arrest, they can apply to a magistrate to have the person released. This can be done with or without security.

6. Search and Seizure:

When making arrests or conducting investigations, police officers may need to conduct searches and seize relevant evidence or exhibits. The legal issues surrounding search and seizure include the requirement for a search warrant, the scope of the search, the admissibility of the evidence, and the handling and disposal of seized exhibits.

7. Disposal of Exhibits:

Once exhibits have been seized and used as evidence in court, there are legal procedures for their disposal. This may involve returning the exhibits to the rightful owner, destruction or disposal of certain items, or their retention for further use or investigation.

It is important for law enforcement officers, legal practitioners, and individuals involved in the criminal justice system to be aware of these legal issues to ensure that arrests, searches, recovery, and disposal of exhibits are conducted in accordance with the law and to safeguard the rights of individuals.

- **DISCUSS THE LEGAL ISSUES INVOLVED IN THE FORM, CONTENTS, AND DURATION OF A WARRANT OF ARREST, AS DESCRIBED IN SECTION 56 OF THE MAGISTRATE COURT ACT CAP 120**

1. Form and Contents of the Warrant of Arrest:

- The warrant must be under the hand of the issuing magistrate and bear the seal of the court (Section 56(1)). This requirement ensures the authenticity and authority of the warrant.

- The warrant must state the offense with which the person is charged and provide a name or description of the person (Section 56(2)). This information is necessary to identify the accused and inform them of the charges against them.

- The warrant must order the person to appear before the court or another court having jurisdiction to answer the charges and be dealt with according to the law (Section 56(2)). This ensures that the accused is brought before the appropriate judicial authority to face the charges.

2. Duration of the Warrant of Arrest:

- The warrant remains in force until it is executed (i.e., the person is arrested) or until it is cancelled by the court that issued it (Section 56(3)). This provision establishes the validity period of the warrant and ensures that it can be enforced until its purpose is fulfilled or revoked by the court.

- **WHAT IS THE PROCEDURE FOR GRANTING A WARRANT OF ARREST?**

The procedure for granting a warrant of arrest involves the following steps:

a) Charges and Summons:

- The prosecution institutes charges against the accused through a charge sheet or indictment (Section 42(6)).

- If the charges are laid under Section 42(1)(b), the magistrate is required to issue summons or a warrant to compel the attendance of the accused person (Section 42(6)).



b) Issuing Summons:

- The prosecution applies to have summons issued to compel the accused person's attendance (Section 42(6)).

- It is important to note that a warrant may be issued even if the time appointed in the summons has not yet lapsed.

c) Failure to Honor Summons and Warrant Application:

- If the accused person fails to honor the summons, the prosecution can apply orally for a warrant of arrest (Section 55(1)).

- The prosecution needs to demonstrate to the court, through evidence given under oath, that the summons was duly served to the person (Section 55(1)).

- The court may issue a warrant of arrest when it is proved that the person failed to honor the summons without a justifiable reason (Section 55(1)).

- Section 55(4) of the Magistrate Court Act likely contains additional provisions related to the issuance of a warrant, but the provided information is incomplete.

Section 55(4) of the Magistrate Court Act may contain additional provisions related to the issuance of a warrant. Unfortunately, the specific content of that section is missing, so it's not possible to provide a detailed analysis of its legal implications.

It's worth noting that the procedure for granting a warrant of arrest, as outlined above, generally follows the standard process in many jurisdictions. However, it's important to remember that legal procedures can vary from one jurisdiction to another, and specific legislation and case law may impact the interpretation and application of the law.

To gain a comprehensive understanding of the legal issues involved in the form, contents, and duration of a warrant of arrest, as well as the precise procedure for granting such a warrant, it is crucial to refer to the relevant legislation, such as the Magistrate Court Act and any accompanying regulations, as well as consult legal experts or practitioners familiar with the specific jurisdiction in question.

Additionally, legal developments or amendments to the legislation after September 2021, which is my knowledge cutoff, may have occurred. Therefore, it is essential to verify the most up-to-date laws and regulations to ensure accurate and current information.

In addition to the points discussed earlier, it is essential to consider some further legal issues pertaining to the form, contents, and duration of a warrant of arrest:

1. Legality and Compliance:

- The warrant of arrest must be issued by a magistrate who has the legal authority to do so. It is crucial to ensure that the magistrate has the jurisdiction and power to issue the warrant.

- The warrant should comply with the procedural requirements outlined in the relevant legislation. Any deviations from the prescribed form, contents, or procedure could raise questions about the validity of the warrant.

2. Evidence and Justification:

- Before issuing a warrant of arrest, the court must be presented with evidence, given under oath, demonstrating that the summons was duly served to the person. This requirement ensures that there is a legitimate basis for proceeding with an arrest warrant.

- The prosecution must establish that the accused person failed to honor the summons without a justifiable reason. This requirement ensures that the court does not issue a warrant arbitrarily or without sufficient cause.

3. Rights of the Accused:

- The form, contents, and duration of a warrant of arrest should be consistent with the constitutional and legal rights of the accused person. These rights may include the right to be informed of the charges promptly, the right to legal representation, and the right to a fair and impartial hearing.

- It is important to ensure that the warrant provides sufficient information to inform the accused person of the specific offense they are charged with, enabling them to prepare an adequate defense.

4. Execution of the Warrant:

- Once the warrant is issued, law enforcement authorities are responsible for executing the warrant promptly and in accordance with the law. They must ensure that the arrest is carried out lawfully, without any excessive use of force or violation of the rights of the accused.

It is crucial to consult the specific jurisdiction's legislation, case law, and legal experts to fully understand the legal issues involved in the form, contents, and duration of a warrant of arrest, as well as the procedural requirements and potential implications in a particular legal system.

5. Review and Judicial Oversight:

- The issuance of a warrant of arrest is a judicial act that involves a level of discretion. It is essential to ensure that there is proper judicial oversight to prevent the misuse or abuse of this power.

- The accused person or their legal representatives may have the right to challenge the validity of the warrant through legal remedies such as a motion to quash or an application for habeas corpus. This allows for a review of the warrant's legality and compliance with the law.

6. Cancellation or Revocation:

- The court that issued the warrant has the authority to cancel or revoke it under certain circumstances. This may occur if the warrant is no longer necessary, if the charges have been dropped, or if there are other legal grounds for cancellation.

- The duration of the warrant should be clearly defined and understood to prevent the arbitrary or indefinite detention of the accused person.



7. International Considerations:

- If the warrant is issued in relation to an international arrest warrant or extradition proceedings, additional legal considerations may come into play. This may involve compliance with international treaties, mutual legal assistance, and extradition laws, as well as considerations of human rights and due process.

It's important to note that the legal issues involved in the form, contents, and duration of a warrant of arrest can vary significantly depending on the jurisdiction and applicable laws. Therefore, consulting the relevant legislation, case law, and legal experts in the specific jurisdiction is essential for a comprehensive understanding of these issues.

- **What is the 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:

**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.

**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.

**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 legal issues highlighted in the provided text are as follows:

1. Irregularities in Substance or Form of a Warrant:

- Variance between the warrant, written complaint or information, and the prosecution's evidence may not invalidate proceedings, except when the accused has been deceived or misled by the variance (Section 64 of the Magistrate Court Act).

- In such cases, the court may adjourn the hearing, remand the accused, or grant bail.

2. Execution of a Warrant of Arrest:

- The person executing the warrant must inform the person being arrested of the substance of the warrant (Section 9 of the Trial on Indictment Act and Section 6 of the Magistrate Court Act).

- Failure to inform the person arrested of the charge they are suspected of is not a mere irregularity, but a substantive requirement (MWANGI S/O NJOROGE V R).

3. Execution of a Warrant of Arrest outside the Local Limits of Jurisdiction:

- If the warrant is executed more than 20 miles from the issuing court, the arrested person must be taken before the magistrate within the jurisdiction where the arrest was made (Section 63(1) of the Magistrate Court Act).

4. Production Warrants:

- A magistrate may issue an order (production warrant) to bring a confined person before them (Section 67(1) of the Magistrate Court Act).

- If the order is directed to an officer in charge (OC) of a prison beyond the local limits of the issuing court's jurisdiction, endorsement by a magistrate within the jurisdiction of the prison is required (Section 67(2) of the Magistrate Court Act).

5. Use of Reasonable Force in Arrest:

- A police officer may touch or physically restrain a person to effect an arrest, unless the person submits to custody (Section 2(2) of the Criminal Procedure Code Act).

- Excessive force should be avoided, and the force used must be reasonably necessary.

6. Post-Arrest Process:

- An arrested person must be brought before a court within 48 hours of arrest (Article 23(4) of the Constitution).

- There are cases and legal precedents that discuss the powers of police officers to arrest without a warrant.

7. Cases on Powers of Arrest Without a Warrant:

- The case of Kananura Andrew and OCS v. Uganda HMCA No. 010203 of 2014 dealt with the powers of police officers to make arrests without a warrant.

- The case of William Abora v. A.G H.C.C. S Inc. may contain relevant information regarding the post-arrest process, but further details are needed to provide a precise summary.



It's important to note that the summaries provided are based on the limited information given, and without specific details of the cases, it is challenging to provide a comprehensive analysis. It is advisable to refer to the complete judgments, legal texts, and consult legal experts for a thorough understanding of the legal issues and principles involved in these cases.

Remember that laws and legal interpretations may change over time, and it's essential to rely on the most up-to-date legislation and case law when addressing specific legal issues.

- **DISCUSS 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. **Section 9 of Trial on indictment Act and Section 6 of Magistration Court 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**.

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**.

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 **S.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.

The legal issues discussed are as follows:

1. Definition and Purpose of a Search:

- A search is an inspection conducted on a person or in a building to ascertain any discoveries on the person's body or within the searched premises.

2. Search Without a Warrant:

- Police officers, with reasonable belief of obtaining material evidence in connection with an offense, may search the dwelling or place of business of the arrested person or the subject of a warrant of arrest (Section 69 of the Criminal Procedure Code Act, Section 27(1) of the Police Act).

- The power to search without a warrant is generally limited to police officers of the rank of sergeant and above, who should conduct the search themselves whenever possible. In certain cases, a subordinate officer not below the rank of corporal may conduct the search under the written order of the superior officer (Section 27(1) and Section 27(3) of the Police Act).

- The police are required to record their reasons for conducting the search without a warrant and provide copies of these records to the nearest magistrate and the owner/occupier of the searched premises (Section 27(5) of the Police Act).



3. Search with a Search Warrant:

- A search warrant is a written authorization issued by a court allowing the search of specified premises, places, or vessels for the purpose of seizing relevant evidence (Section 70 of the Magistrate Court Act).

- The search warrant is obtained based on facts sworn on oath or reasonable suspicion that evidence related to an offense is present in the building, vessel, carriage, box, receptacle, or place to be searched.

4. Execution of Search Warrants:

- Search warrants can be executed on any day of the week but must be carried out between the hours of sunrise and sunset, unless authorized by the court to execute it at any hour (Section 71 of the Magistrate Court Act).

- Persons residing in or in charge of the premises subject to search, even if closed, are obligated to allow ingress to the officer upon presentation of the search warrant (Section 72 of the Magistrate Court Act).

- Search operations should be conducted by human members, avoiding unnecessary damage or destruction of property (Section 27(9) of the Police Act).

5. Protection against Unlawful Search and Seizure:

- The right to protection against unlawful searches and seizures is a fundamental right. Searches conducted without a warrant or without reasonable grounds may violate an individual's constitutional rights.

- Individuals have the right to challenge the lawfulness of a search and any evidence obtained as a result of an unlawful search may be subject to exclusion in court proceedings.

6. Requirements for Search Warrants:

- To obtain a search warrant, the court requires a sworn statement or reasonable suspicion indicating the presence of evidence related to an offense in the premises to be searched.

- The warrant should specify the place to be searched, describe the items or evidence sought, and be issued by a competent court.

7. Execution of Search Warrants:

- Search warrants must be executed by authorized personnel, typically police officers, who are responsible for carrying out the search.

- The execution of search warrants should adhere to the authorized hours of execution, unless specifically authorized by the court.

- It is important to minimize damage or destruction to property during the search, and the use of reasonable force should be exercised.

8. Reporting and Documentation:

- The police officers conducting the search, whether with or without a warrant, are required to maintain proper records and documentation.

- Copies of search records and reasons for conducting searches without a warrant should be sent to the nearest magistrate empowered to take cognizance of the offense and the owner or occupier of the searched premises.

9. Rights of Individuals Subject to Search:

- Individuals subject to a search have certain rights, including the right to be treated with dignity and respect during the search process.

- The police officers conducting the search should inform the individual of the purpose and nature of the search, and the individual's cooperation is expected unless there are valid reasons to resist the search.

10. Reasonable Grounds and Probable Cause:

- Searches, both with and without a warrant, generally require reasonable grounds or probable cause. This means that there must be sufficient evidence or information to justify the belief that the search will uncover evidence related to a crime.

- The standard of reasonable grounds or probable cause may vary depending on the jurisdiction and the specific circumstances of the case.

11. Scope and Limitations of the Search:

- When conducting a search, the police should adhere to the scope and limitations set out in the warrant or the legal provisions allowing the search.

- The search should be confined to the specified premises, places, or items mentioned in the warrant, unless additional evidence or circumstances justify expanding the scope of the search.

12. Protection of Privacy Rights:

- Searches, especially those conducted without a warrant, may intrude upon an individual's privacy rights.

- Privacy rights are protected under various legal frameworks, including constitutional provisions, human rights laws, and privacy legislation.

- Any infringements upon privacy rights should be justified by legitimate reasons and conducted in a manner that minimizes the intrusion to the extent possible.

13. Legal Remedies:

- Individuals who believe their rights have been violated during a search have legal remedies available to them.

- They may challenge the lawfulness of the search, seek suppression of any evidence obtained unlawfully, or file complaints against the conducting officers for misconduct or violations of rights.

- Legal remedies may include appeals, applications for exclusion of evidence, civil actions for damages, or disciplinary actions against the responsible officers.



14. Jurisdictional Variations:

- It is important to note that laws and procedures related to searches may vary across jurisdictions.

- Each jurisdiction may have its own specific legal requirements, exceptions, and limitations concerning searches, which should be consulted for a comprehensive understanding of the applicable laws.

The legal issues discussed in the provided text regarding exhibits are as follows:

1. Definition and Importance of Exhibits:

- An exhibit refers to a document, record, or tangible object that is formally introduced as evidence in court.
- Exhibits play a crucial role in presenting evidence and establishing facts during legal proceedings.

2. Chain of Custody:

- The chain of custody pertains to the handling, control, and integrity of exhibits or evidence.
- It ensures that exhibits are kept in their original form and that there is no interference or tampering with the evidence.
- A break in the chain of custody can cast doubt on the authenticity or reliability of an exhibit, potentially affecting its admissibility and weight as evidence.

3. Admissibility and Weight of Exhibits:

- Exhibits need to meet certain criteria to be admitted as evidence in court.
- The exhibit should be relevant to the case and properly identified by the witness.
- Any tampering with the exhibit may undermine its evidential value, potentially leading to its rejection by the court.

4. Handling Exhibits Prior to Trial:

- The investigating officer (I.O) is responsible for recovering, marking, labeling, and documenting the exhibits.
- Money exhibits, for example, require specific details such as denominations and serial numbers to be recorded.
- Exhibits are entered into the police exhibit book, and receipt is given for each entry.
- Exhibits must be securely stored under the control of the officer in charge of the exhibit store.

5. Tendering Exhibits at Trial:

- Exhibits are tendered in court during the trial process.
- The prosecutor leads the witness to establish the relevance and identification of the exhibit.
- Once the witness identifies the exhibit, the prosecutor requests the court to admit it as an exhibit of the prosecution.
- If there are no objections, the exhibit is admitted and assigned a number.

6. Originality and Tampering:

- Exhibits presented in court should be in their original form to maintain their evidential value.
- Any tampering or alteration of an exhibit can diminish its reliability and admissibility.
- Courts may reject exhibits that have been tampered with or are not presented in their original form.

7. Preservation and Documentation of Exhibits:

- Exhibits should be properly preserved and documented to maintain their integrity.

- The officer in charge of the exhibit store is responsible for securely storing the exhibits under lock and key.

- An exhibit slip containing details of the exhibit is attached to the exhibit, ensuring accurate identification and documentation.

8. Evidential Value and Relevance:

- Exhibits hold evidential value when they are relevant to the case and can help establish facts.

- The court assesses the probative value of exhibits in determining their admissibility and weight as evidence.

- It is crucial to establish a clear connection between the exhibit and the facts of the case to ensure its admissibility.

9. Judicial Discretion:

- The court has the discretion to admit or reject exhibits based on their admissibility, relevance, and authenticity.

- In cases where exhibits have been tampered with, altered, or are presented in a different form, the court may exercise its discretion to exclude or give little weight to such exhibits.

10. Precedents and Case Law:

- Precedents and case law play a significant role in guiding the admissibility and handling of exhibits.

- Courts often rely on previous judgments and established legal principles when making decisions regarding the admissibility and weight of exhibits.

11. Chain of Custody:

- The chain of custody refers to the documentation and process of maintaining the integrity and continuity of the exhibits.

- If there is a break or inconsistency in the chain of custody, such as insufficient documentation or unaccounted handling of exhibits, it can cast doubt on the authenticity and reliability of the evidence.

- Courts often require a clear and unbroken chain of custody to ensure that exhibits have not been tampered with or substituted.

12. Authentication and Originality:

- Exhibits presented in court should be in their original form to maintain their evidential value.

- If an exhibit is tampered with, altered, or not produced in its original state, it may lose its evidentiary weight.

- Courts may reject exhibits that have been altered or substitute and rely on the principle of authenticity in admitting exhibits as evidence.

13. Compliance with Procedures:

- The handling of exhibits should follow established procedures, including proper marking, labeling, documentation, and storage.

- Failure to comply with these procedures may raise questions about the reliability and authenticity of the exhibits.

14. Admissibility Challenges:

- The admissibility of exhibits can be challenged by the opposing party based on grounds such as lack of relevance, authenticity, or compliance with procedural requirements.

- The court will assess these challenges and make determinations regarding the admissibility of the exhibits based on the applicable legal principles.

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- The admissibility of exhibits can be challenged by the opposing party based on grounds such as lack of relevance, authenticity, or compliance with procedural requirements.

- The court will assess these challenges and make determinations regarding the admissibility of the exhibits based on the applicable legal principles.

It is important to note that the summaries provided are based on the limited information given. For a comprehensive understanding of these legal issues, it is advisable to refer to the complete and up-to-date texts of the relevant laws, regulations, and consult legal experts or practitioners familiar with the specific jurisdiction in question.

- **DISCUSS 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.

- **OUTLINE THE LEGAL ISSUES DISCUSSED IN THE PROVIDED TEXT REGARDING THE INSTITUTION OF PROCEEDINGS IN MAGISTRATE COURTS AND THE ISSUANCE OF SUMMONS ARE AS FOLLOWS**

1. Modes of Instituting Proceedings:

- Criminal proceedings can be initiated by a police officer bringing an arrested person before a magistrate, by the public prosecutor or a police officer laying charges, or by any person who has reason to believe that an offense has been committed.

2. Types and Purpose of Summons:

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

- A summons is an order of the court requiring the person named therein to appear in court at the specified day and time.



3. Form and Contents of Summons:

- A criminal summons must be in writing, in duplicate, signed, and sealed by a magistrate or an authorized officer.

- It should be directed to the person summoned, stating the offense briefly and specifying the time and place of appearance.

4. Service of Summons:

- Summons may be served by a police officer, an officer of the court, or a public servant.

- Ideally, it should be served personally on the summoned person, who must sign a receipt on the back of the original summons.

- If the person cannot be found, the summons may be served by leaving a duplicate with a family member, servant, or employer residing with the summoned person.

- If service is still not possible, the summons may be affixed to a conspicuous part of the person's residence.

5. Service on Companies or Corporations:

- Service of summons on a company or body corporate can be done by serving it on the secretary, local manager, or principal officer or by sending a registered letter to the company's address in Uganda.

6. Proof of Service:

- An affidavit made before a magistrate, stating that the summons has been served, along with the original summons endorsed with the recipient's signature, is admissible as evidence.

- If the original is not properly endorsed, the court may accept the affidavit as evidence if satisfied that service has been carried out according to the law.

7. Power to Summon Witnesses:

- The court has the power to summon or call any person as a witness or examine any person in attendance, even if they were not initially summoned as a witness.

- **DISCUSS 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**.

- **DISCUSS 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.

Based on the information provided, the following legal issues can be identified in relation to the summons:

1. Form and Contents of Summons: The summons must adhere to specific requirements, including being in writing, in duplicate, signed, and sealed by a magistrate or an authorized officer. It must also clearly state the offense and specify the time and place for the appearance. Failure to comply with these requirements could raise issues regarding the validity of the summons.

2. Personal Service: Ideally, the summons should be served personally on the person being summoned. However, if it is not practicable to serve the summons personally, it can be served on a police officer, an officer of the court, or a public servant. If the person cannot be found, alternative methods of service, such as leaving the summons with a family member, servant, or employer, may be employed. The use of these alternative methods should be exercised with due diligence to ensure proper service.

3. Service on a Company: When serving a summons on a company or body corporate, it can be served on the secretary, local manager, or another principal officer of the corporation. Alternatively, service can be made by registered letter addressed to the company in Uganda. Service by post is considered effective when the letter would arrive in the ordinary course of post.

4. Proof of Service: A person who serves the summons must ensure that the person being summoned signs a receipt on the back of the original summons. If the serving officer is not present, an affidavit made before a magistrate can be provided as proof of service. The affidavit should state that the summons was delivered, tendered, or left with the person to whom it was addressed. If the original summons is not properly endorsed, the court may consider the affidavit as evidence if it satisfies the requirements of the law.

5. Power to Summon Material Witness: The court has the authority to summon or call any person as a witness or examine any person in attendance, even if they have not been previously summoned as a witness. This provision grants the court flexibility in summoning witnesses when necessary during the trial or other proceedings.

6. Compliance with Legal Requirements: The summons must comply with all the legal requirements set forth by the relevant legislation. Failure to adhere to these requirements, such as using the proper form, following the correct procedures for service, or providing accurate information about the offense, may lead to challenges regarding the validity of the summons.

7. Jurisdictional Issues: The summons must be issued by a court with the appropriate jurisdiction over the case. If the summons is issued by a court that lacks jurisdiction, it may be considered invalid, and any subsequent proceedings based on that summons could be called into question.

8. Adequate Notice: The summons must provide the person being summoned with adequate notice of the court appearance. Sufficient time should be given between the service of the summons and the scheduled court date to allow the person to prepare and make necessary arrangements. Failing to provide reasonable notice may impede the person's ability to exercise their rights and defend themselves effectively.

9. Constitutional Rights: The issuance and service of a summons must respect the constitutional rights of the individual being summoned. This includes the right to due process, the right to be informed of the charges, the right to legal representation, and the right against self-incrimination. Any violation of these rights during the summons process may result in legal challenges to the validity of the summons.

10. Appropriate Use of Summons: The summons should be used for the purposes authorized by law, such as summoning an accused person to stand trial or summoning a witness to provide testimony. Improper or abusive use of summons, such as using it to harass or intimidate individuals without proper legal grounds, may lead to legal consequences and challenges to the summons itself.

It's important to note that the specific legal issues and requirements related to summons can vary depending on the jurisdiction and the specific laws governing court procedures. It is advisable to consult the relevant legislation and seek legal advice to understand the specific legal issues and requirements applicable to a particular summons.



- **WHAT ARE THE LEGAL ISSUES INVOLVED IN THE PLEAS?**

1. Arraignment: The accused must be arraigned in court within 48 hours of arrest, as stated in Article 23(4) of the Constitution of Uganda.

2. Plea of Guilty: The accused person's voluntary admission of guilt, which should be made without force or inducement, as per Article 28(3)(a) of the constitution. The procedure for recording a plea of guilty includes explaining the charge and its essential ingredients to the accused, recording the accused's own words, allowing the accused to dispense or explain the facts, and recording the accused's reply or change of plea.

3. Plea of Previous Conviction or Acquittal: If an accused person pleads a previous conviction or acquittal, the court must determine the truthfulness of the plea. A person cannot be tried for the same offense unless the conviction or acquittal has been reversed or set aside.

4. Plea of Pardon: Under Article 28(10) of the constitution, a person who has been pardoned for a criminal offense cannot be tried for that offense. The court follows specific procedures when a plea of pardon is entered.

5. Identification of Offenses: Offenses must be legally sanctioned, and a person cannot be convicted of an act that did not constitute an offense at the time of its commission, as stated in Article 28(7) of the constitution. The principle of minor and cognate offenses allows for conviction of a lesser offense if the facts prove it, even if the accused was not charged with it.

6. Evaluation of Evidence: Evidence must be evaluated to determine if it proves the charge beyond a reasonable doubt. The burden of proof lies with the prosecution, and the standard of proof is high. Various types of evidence, such as direct evidence and documentary evidence, have their admissibility criteria.

7. Roles of the Director of Public Prosecution (DPP): The DPP has responsibilities, including directing police investigations, instituting or taking over criminal proceedings, and discontinuing proceedings, with some limitations and requirements for consent.

8. Roles of the Inspector of Government: The Inspectorate of Government investigates acts of corruption, abuse of authority, and public office. They have the authority to investigate and report on administrative functions of public officers.



9. Pre-Trial Remedies: Bond can be granted to release a person arrested, and the officer in charge of a police station has the power to release a person on bond, considering the nature of the offense.

3) Unconditional Release: If a party believes that their rights are being violated by being held in custody beyond the 48 hours without any valid reason, they may request the intervention of the Director of Public Prosecution (DPP). The DPP, under Article 120(5) of the Constitution, has the power to supervise investigations by the police and ensure that the administration of justice is upheld and the legal process is not abused. A formal letter can be written to the DPP, requesting their intervention in the matter.

It's important to note that the information provided is based on general legal principles and may vary depending on the specific laws and regulations of your jurisdiction. Legal advice from a qualified professional should be sought for precise guidance tailored to your situation.

- **DISCUSS 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 1967**, the accused was convicted of refusing to sign a summons and fixed 150/= under S.10 of P.C.A. Court held that there was no such offence known in the penal code act. The conviction was quashed and sentence set aside.

**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. 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 GENERAL 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**

- **OUTLINE THE NECESSARY 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 I.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**

Summary of Legal Issues:

1) Charges charged: The affidavit states the charges brought against the applicant.

2) Date of incarceration: It mentions the date when the applicant was detained.

3) Process of arrest and awareness of charges: The affidavit discusses whether the applicant was informed of the charges during the arrest.

4) Number of bond applications: It indicates the number of bond applications made by the applicant.

5) Administrative step taken: The affidavit refers to an attached letter describing an administrative step taken in the case.

6) Detention beyond 48 hours: The affidavit claims that the applicant has been held in custody for more than 48 hours.

7) Unconstitutional detention: The affidavit argues that the continued detention of the applicant is unconstitutional.



Regarding Pre-Trial Disclosure:

8) Right to fair hearing: The affidavit mentions that pre-trial disclosure is guaranteed by Article 28 of the constitution, which protects the right to a fair hearing.

9) Scope of disclosure: It explains the limitations on disclosure, such as state secrets, protection of witnesses, protection of informers' identities, and simplicity of the case.

10) Entitlement to disclosure: The affidavit asserts that an accused person is generally entitled to disclosure, unless the prosecution can justify denial based on the mentioned limitations.

11) Timing of disclosure: It states that disclosure should occur before the trial begins, depending on the justice of each case.

12) Effect of non-disclosure: The affidavit cites a court case where non-disclosure was not considered fatal to the proceedings, as the court can adjourn and order disclosure if brought to their attention during the trial.

Regarding Supervisory Powers of the Chief Magistrate:

13) Powers of supervision: The affidavit explains that the Chief Magistrate has general supervisory powers over all Magistrates' courts within their jurisdiction.

14) Examination of proceedings: It outlines the Chief Magistrate's authority to examine the record of any proceedings, ensuring correctness, legality, propriety, and regularity.

15) Forwarding records to the High Court: The affidavit states that if the Chief Magistrate finds any illegality, impropriety, or irregularity, they must forward the record to the High Court with their remarks.

16) Trial ordered by the High Court: The High Court may order a trial if irregularities are identified, with the condition that it is conducted before another judicial officer.

17) Procedure for requesting revision: The affidavit provides a brief outline of the procedure for the Chief Magistrate to request revision by introducing the matter, highlighting errors, and concluding with a prayer for the High Court to rectify the irregularities.

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

The pre-trial proceedings described in the provided information involve several legal issues. Here is a summary and discussion of those legal issues:

1. Role of Advocate: The advocate (defense attorney) plays a crucial role in pre-trial proceedings. They have the duty to interview suspects and gather relevant information. The advocate must ensure that the accused person's rights are protected during the interview and assist in applying for police bond if necessary. This raises the issue of ensuring fair representation and protection of the accused's rights.

2. Procedure for Applying for Police Bond: If the advocate fails to secure police bond for a client held in police custody for more than 48 hours, they can apply for an order of release from a Magistrate's Court. This highlights the issue of timely access to justice and the right to liberty, as prolonged detention without charge or trial may be considered unconstitutional.

3. Perusal of Police Files: The police maintain different types of files, such as the Minor Contravention Book (MCB), Criminal Report Book (CRB), and Traffic Accident Report (TAR). These files contain essential information related to the case, including charges, investigations, expert reports, and other relevant documents. The issue here is the importance of accurate and complete record-keeping by the police to ensure transparency and facilitate fair trial proceedings.

4. Assessment and Advice on Weakness of Investigations: Defense counsel plays a crucial role in assessing the strength of the investigations conducted by the police. They provide advice on the nature of charges that can be preferred based on the available evidence. If the case is weak or lacks sufficient evidence, the defense counsel may seek to withdraw the charges. This raises the issue of ensuring that charges are supported by sufficient evidence and that weak cases do not proceed to trial.

5. Practice and Procedure in Giving Advice: After the police complete their investigations and prefer charges, the state attorney or prosecutor reviews the charges to ensure they are supported by evidence. If evidence is lacking, the file may be sent back to the police for further investigations. This highlights the importance of proper review and assessment of charges before they are sanctioned, ensuring that the prosecution is based on credible evidence.

6. Criminal Summons: Once the charges are preferred and the charge sheet is sanctioned by the State Attorney, criminal summons are obtained from a Magistrate. These summons are then served on the accused, informing them of the charges and requiring their appearance in court. The legal issue here pertains to the proper issuance and service of criminal summons to ensure that the accused is properly notified of the charges against them and has the opportunity to defend themselves in court.

Overall, these pre-trial proceedings raise important legal issues related to fair representation, timely access to justice, the right to liberty, accurate record-keeping, evidence-based prosecution, and proper notification of charges. Adhering to legal procedures and safeguarding the rights of the accused is essential to ensure a fair and just criminal justice system.

- **SUMMARISE 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.

Summary of Legal Issues in Yakobo Uma and Anor v R (1963) EA 542:

1. Joinder of Persons: The legal issue arises when two individuals are charged in the same charge with committing separate offenses. The court must determine whether the offenses were committed in the course of the same transaction or if there is a sufficient connection to join the individuals in one charge and try them together. The test is whether the acts constituting the offenses were in contemplation from the beginning or formed part of one whole transaction.

2. Joinder of Offenses/Counts: The legal issue concerns the joinder of multiple offenses in the same charge. Offenses, whether felonies or misdemeanors, may be charged together if they are based on the same facts or form part of a series of offenses of the same or similar character. The court must ensure that the accused will not be prejudiced in their defense by being charged with multiple offenses.

3. Alternative Charges: An alternative charge is an additional count against the accused in the same charge when the prosecutor is uncertain which offense the facts of the case will support. The court will decide which count the evidence sustains, and the accused cannot be convicted on one count if no finding is made on the other.

4. Duplicity of Charges: A charge is considered duplex if it contains more than one offense in one count. Such a charge is defective for duplicity. The legal issue here is the need for a charge to specify a single offense per count to avoid duplicity.

5. Effect of Defective Charges: The validity of proceedings is generally not affected by defects in the charge, complaint, or warrant unless there has been a miscarriage of justice. A miscarriage of justice occurs when the accused has lost a fair chance of acquittal due to a mistake, omission, or irregularity in the trial.

6. Amendment of Charges: The legal issue involves the procedure for amending charges during a trial. If it becomes apparent that the charge is defective, discloses a different offense, or the accused wishes to plead guilty to a different offense, the court may order the alteration of the charge through amendment or substitution. The court should consider whether the accused will be prejudiced by the amendment and may allow the accused to recall witnesses or provide further evidence.

These legal issues highlight the importance of properly formulating charges, ensuring fairness to the accused, and maintaining the integrity of the trial process.

7. Procedure upon Amendment of Charges: When a charge is amended during a trial, specific procedures must be followed. The court calls upon the accused to plead to the amended charge. The accused has the right to demand the recall of prosecution witnesses for further cross-examination. If needed, the accused can seek an adjournment and present further evidence. If the court determines that the accused has been prejudiced by the amendment, the trial may be adjourned for a reasonable period.

8. Prejudice and Injustice: Throughout the legal issues discussed, the concept of prejudice and injustice to the accused is crucial. The court must assess whether the accused's rights to a fair trial are compromised by the joinder of persons or offenses, the amendment of charges, or any defects in the proceedings. The court should strive to prevent any unfair treatment that could result in an injustice to the accused.



Based on the information provided, the legal issues discussed in the case of Yakobo Uma and Anor v R (1963) EA 542 can be summarized as follows:

1. Joinder of Persons: The case involved two individuals who were charged together in the same charge for committing separate offenses. The legal issue here revolves around whether it is permissible to join persons accused of different offenses but committed in the same village against the same complainant.

2. Joinder of Offenses/Counts: The case raises the question of whether multiple offenses, whether felonies or misdemeanors, can be charged together in the same charge if they are based on the same facts or form part of a series of offenses of the same or similar character.

3. Alternative Charges: The concept of alternative charges is introduced, where the prosecutor includes an additional count against the accused in the same charge when uncertain which offense the facts of the case will support. The court is then tasked with deciding which of the counts the evidence sustains.

4. Duplicity of Charges: The issue of duplicity arises when a charge contains more than one offense in one count. Such charges are considered defective for duplicity, and it is necessary to ensure that charges are properly framed and specific to each offense.

5. Effect of Defective Charges: The case highlights the principle that the validity of proceedings should not be affected by any defects in the charge, unless there has been a miscarriage of justice. It emphasizes that a miscarriage of justice occurs when the accused has lost a chance of acquittal due to a mistake, omission, or irregularity in the trial.

6. Amendment of Charges: The case raises the issue of amending charges during the trial if it appears that the evidence discloses a different offense, the charge is defective, or the accused wishes to plead guilty to a different offense. The court has the power to order alterations or substitutions of charges, taking into account the accused's right to seek adjournment and present further evidence.

7. Procedural Requirements upon Amendment of Charges: The case highlights the procedural requirements that must be followed when amending charges during the trial. The court is required to call upon the accused to plead to the amended charge. The accused has the right to demand the re-call of prosecution witnesses for further cross-examination. Additionally, the accused has the right to seek adjournment and present further evidence on their behalf if necessary.

8. Prejudice and Adjournment: The court is obligated to adjourn the trial if it is of the opinion that the accused has been prejudiced by the alteration of the charge. This ensures that the accused has sufficient time to prepare a defense and address any changes in the charges brought against them.

9. Informing the Accused: The court is required to inform the accused of their rights when charges are altered, including the right to demand the re-call of witnesses and the right to apply for an adjournment. Failure to provide such information may be considered a fatal irregularity that prejudices the accused.

10. Costs and Orders: The court has the discretion to make orders regarding the payment of costs incurred due to the alteration of the charges. This ensures that any necessary expenses are addressed appropriately.

11. Effect of Defective Charges: The case emphasizes that the validity of proceedings should not be affected by defects in the charge or complaint, unless there has been a miscarriage of justice. This means that minor defects or omissions in the charge or complaint may not invalidate the entire proceedings unless they have resulted in unfairness or prejudice to the accused.

12. Alternative Charges: The case acknowledges the use of alternative charges when the prosecutor is uncertain about which offense the facts of the case support. The court ultimately decides which count the evidence sustains, and the accused cannot be convicted on one count while the other count remains undecided.

13. Duplicity of Charges: A charge is considered "duplex" if it contains more than one offense in a single count. Such charges are considered defective for duplicity. In the case of Rwabinoni and Anor v. Uganda, it was recognized that duplex charges are improper and should be avoided.

14. Procedure upon Amendment of Charges: When an amendment to the charge is made, the court follows a specific procedure outlined in Section 132(2) of the Magistrate Court Act. This procedure includes calling upon the accused to plead to the amended charge, allowing the accused to demand the recall of prosecution witnesses for further cross-examination, granting the accused the right to seek an adjournment, and allowing the accused to present further evidence on their behalf if desired.

15. Prejudice and Adjournment: If the court determines that the accused has been prejudiced by the alteration of the charge, it may adjourn the trial for a reasonable period of time. This allows the accused to adequately prepare and address the changes in the charge. The right to an adjournment is essential to ensure a fair trial and protect the interests of the accused.

16. Costs of Alteration: According to Section 132(6) of the Magistrate Court Act, the court has the discretion to order the prosecution to pay any costs incurred as a result of the alteration of the charge. This provision allows for the allocation of costs when the accused has suffered prejudice or inconvenience due to the amendment.

- **In 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. WHATS YOUR VIEW?**

**Joinder of persons**

**Section 87 of the Magistrate Court Act Cap 16** as Amended and **Section 24 of Trial Indictment 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 Indictment 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 Magistrate 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 on Indictments 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** , 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.

Summary of Legal Issues in Drafting Documents:

1. Charges: A charge is a written accusation against a person alleged to have committed an offense. It must be properly drafted and signed. Failure to draw up and sign a final charge renders the trial a nullity.

2. General Rules Regarding Charge Sheets: The statement of offense should describe the offense in ordinary language without technical terms. The particulars of the offense should also be set out in ordinary language. If there are multiple counts, they should be numbered consecutively.

3. Defects in Charge Sheets: A charge sheet may be defective and bad in law due to various issues.

- Duplicity: A charge sheet is bad for duplicity if it combines multiple offenses in one count or charges multiple accused persons with different offenses that don't warrant joinder.

- Unnecessary Charges: Charging someone with an attempt to commit an offense instead of charging them with the offense itself is an example of an unnecessary charge.

- Accessory After Fact: Charging someone as an accessory after the fact when it is not necessary is another defect in a charge sheet.

- Minor and Cognate Offense: Charging an individual with a minor and cognate offense is deemed improper and was outlawed by the court.

- Substituted Convictions: Using substituted convictions, where the accused is found guilty of a different offense from the one they were charged with, can be considered an unnecessary charge.



4. Amendment of Charges: Charges can be amended if the amendment does not cause injustice to the accused person. The discretion to amend charges is conferred on the magistrate.

5. Effect of Defects in Charge Sheets: Not every defect in a charge sheet renders it bad in law or nullifies the proceedings. The test is whether the defect affected the trial and conviction of the accused and resulted in a failure of justice.

6. Wrong Section or Law: Citing the wrong section or law in a charge sheet may make it defective or imperfect but not necessarily bad in law. As long as the particulars of the offense are clear, the charge would not be considered bad in law.

In the case of Uganda v. Borespayao Mpanya (1975) HCB 245, an accused was charged and convicted under the forest rules instead of the Forest Act. On revision, the court held that the charge disclosed no offense under the Forest Act. However, the charge was not considered a nullity or bad simply because the wrong rules were cited instead of the Act. It was deemed defective or imperfect because a bad charge would not disclose any offense known to law. As long as the particulars of the offenses the accused was charged with were clear, the charge would not be considered bad in law but rather defective.

In addition to the previous points, it's worth highlighting the importance of clarity and accuracy in the drafting of charge sheets. A well-drafted charge sheet should clearly and specifically outline the offense(s) alleged against the accused, providing sufficient details and particulars to enable the accused to understand the nature and scope of the charges brought against them. This ensures that the accused can adequately prepare their defense and prevents any ambiguity or confusion during the trial.

Furthermore, the charge sheet should strictly adhere to the relevant legal provisions and requirements. Failure to do so may lead to potential legal challenges and may even result in the charge sheet being deemed defective or invalid. It is crucial for legal practitioners involved in drafting charge sheets to have a thorough understanding of the applicable laws, procedural rules, and any relevant case precedents to ensure compliance and accuracy.

In some jurisdictions, there may be specific forms or templates provided for the drafting of charge sheets, which should be followed meticulously. These forms often outline the necessary sections and elements that must be included, such as the identification of the accused, the offense(s) charged, the relevant statutory provisions, and any supporting evidence or particulars.

Overall, the careful drafting of charge sheets is fundamental to the fair administration of justice. It ensures that the accused's rights are protected, provides clarity and transparency in the legal process, and facilitates an effective and efficient trial. Legal professionals involved in drafting such documents should exercise diligence, attention to detail, and a comprehensive understanding of the applicable legal principles to minimize any potential legal issues and uphold the integrity of the criminal justice system.

Presumption of Innocence: It is essential to uphold the principle of "presumption of innocence" in the drafting of charge sheets. This means that the language used should reflect that the accused is presumed innocent until proven guilty. Avoiding prejudicial language or any assumptions of guilt in the charge sheet helps maintain the fairness of the proceedings.

Completeness and Specificity: Charge sheets should be complete and specific, providing all necessary details regarding the offense(s) charged. This includes clearly identifying the time, date, and location of the alleged offense, as well as any other relevant circumstances. Vague or ambiguous charges may lead to challenges and hinder the accused's ability to prepare a defense.

Accurate Legal Citations: It is crucial to accurately cite the relevant statutory provisions and laws in the charge sheet. Mistakes or inaccuracies in legal citations can impact the validity of the charges and potentially lead to their dismissal. Careful attention should be paid to ensure that the correct laws and sections are referenced.

Language and Clarity: Charge sheets should be drafted using clear and concise language that is easily understandable to the accused, legal professionals, and the court. Technical jargon or complex legal terms should be avoided where possible, ensuring that the charges are presented in ordinary language that can be comprehended by all parties involved.

Adherence to Procedural Rules: The drafting of charge sheets should comply with the applicable procedural rules and requirements set forth by the relevant jurisdiction. This includes timelines for filing charges, service of the charge sheet to the accused, and any specific formatting or documentation requirements. Failure to adhere to procedural rules may result in challenges to the validity of the charges.

Regular Review and Revision: Charge sheets should be subject to regular review and revision to correct any errors, address any legal developments, or incorporate new evidence. It is crucial to maintain the accuracy and integrity of the charge sheet throughout the legal process.

By considering these additional points, legal professionals can ensure that charge sheets are well-drafted, legally sound, and fair to all parties involved, thereby promoting the effective administration of justice.

- **OUTLINE SALIENT FEATURES TAKEN INTO CONSIDERATION WHILST 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.

- **WHAT LEGAL ISSUES ARE INVOLVED IN THE CONTEXT OF BAIL IN MAGISTRATES' COURTS.**

1. Right to Bail: The accused person has a constitutional right to apply for bail, as stated in Article 23(6)(a) of the Constitution of the Republic of Uganda 1995. The court may grant bail on conditions it deems appropriate.

2. Statutory Provisions: Bail in Magistrates' Courts is governed by Section 75 of the Magistrates Courts Act Cap 16. It sets out offenses that are bailable in these courts, indicating that the Magistrate must have jurisdiction to try the offense in order to grant bail.

3. Considerations for Granting Bail: Section 76 of the Magistrates Courts Act outlines the factors to be considered before granting bail, including the nature of the accusation, gravity of the offense, and antecedents of the accused. Magistrates have discretionary power in granting bail.

4. Mandatory Bail: Article 23(6)(b) and (c) of the Constitution provides for mandatory bail in certain cases. For offenses triable by the High Court and subordinate courts, the accused person is entitled to statutory bail after a specific period on remand.

5. Bail Application Procedure: The Judicature (Criminal Procedure) (Applications) Rules SI 13-8 govern the procedure for bail applications in Magistrates' Courts. Applications can be made orally or in writing, supported by an affidavit. The application is served on the police as a statutory obligation.

6. Bail in High Court: When a case is triable in the High Court, the accused person applies for bail to the High Court. The application is made in writing, supported by an affidavit. The notice of the application is served on the Director of Public Prosecutions.

7. Jurisdiction: Courts must have the statutory authority to try a case. The High Court has inherent and original jurisdiction, while the jurisdiction of lower courts varies based on the grade of the judge.

8. Summary of the Case: A summary of the case, as provided in Section 168 of the Magistrates Courts Act, accompanies an indictment and is presented before the High Court. It helps the accused understand the case against them and prepare a defense.

9. Committal Proceedings: Committal proceedings, as stated in Section 168 of the Magistrates Courts Act, occur when a magistrate does not have jurisdiction to try a case and commits the accused for trial to the High Court. The accused is remanded pending trial.

10. Committal for Sentence: Section 164 of the Magistrates Courts Act allows for committal for sentence. A Magistrate Grade One, Two, or Three may commit the accused to the Chief Magistrate's Court if they deserve a greater punishment than the magistrate's sentencing jurisdiction.

11. Review of Bail Orders: If bail is refused or granted on unfavorable terms by a Magistrate below the rank of Chief Magistrate, the accused person has the right to apply for a review of the order. This allows the Chief Magistrate to reconsider the decision.

12. Non-Bailable Offenses: Certain offenses, such as terrorism, cattle rustling, firearms offenses, and offenses punishable by a sentence of less than 10 years, are non-bailable in Magistrates' Courts.

13. Burden of Proof: In bail applications in the High Court, the accused person must prove that they have substantial sureties and are willing to pay a bond if they violate the conditions of bail. They must also show that they will not abscond from court or interfere with witnesses.

14. Discretionary Power of the Court: Magistrates have discretionary power when granting or refusing bail. They consider factors such as the nature of the accusation, gravity of the offense, and antecedents of the accused. Bail is generally granted unless exceptional circumstances exist.

15. Bail Conditions: When bail is granted, the accused person may be required to deposit money or provide a bond as a guarantee. Failure to comply with the conditions of bail may result in forfeiture of the deposited money.

16. Refundability of Bail Money: Money paid for bail is refundable by law. Accused persons receive receipts after making the payment.

17. Prima Facie Case for Committal: In committal proceedings, the magistrate's role is to determine if there is a reasonably arguable prima facie case, not to delve into the merits or weight of the evidence. If the case does not disclose a material prima facie case, the magistrate may deny committal to the High Court.

18. Appeal and Review: Parties dissatisfied with bail decisions can pursue appellate or review processes within the legal framework to challenge or seek a reconsideration of the decision.

- **WHAT PRINCIPLES AND REGULATIONS ARE APPLICABLE IN UGANDA FOR A COMPREHENSIVE UNDERSTANDING OF THE BAIL PROCESS IN MAGISTRATES' COURTS.**

1. Constitutionality of Bail Provisions: The constitutionality of the bail provisions outlined in the relevant laws, such as the Constitution of the Republic of Uganda 1995, may be subject to interpretation and scrutiny. Legal arguments may arise regarding the compatibility of these provisions with constitutional rights and principles.

2. Interpretation of Statutory Provisions: The interpretation of bail provisions in the Magistrate Courts Act, the Judicature Act, and other relevant statutes may be a point of contention. Courts may need to consider the legislative intent behind these provisions and their application in specific cases.

3. Judicial Precedent: Case law plays a crucial role in shaping the interpretation and application of bail laws. Courts may rely on previous judicial decisions and legal principles established through precedents to guide their determination of bail applications.



4. Judicial Discretion: The exercise of judicial discretion by magistrates in granting or refusing bail is a significant aspect of the bail process. Courts must strike a balance between protecting the rights of the accused and ensuring the safety and interests of the public and victims of crimes.

5. Human Rights Considerations: Bail decisions must be made in compliance with human rights standards and principles, including the presumption of innocence, the right to liberty, and the right to a fair trial. Courts should assess whether the denial or imposition of bail conditions violates these fundamental rights.

6. Procedural Fairness: The adherence to procedural fairness in bail applications is crucial. Accused persons have the right to be heard, present evidence, and challenge the prosecution's submissions. Compliance with procedural rules and safeguards is essential to maintain the integrity of the bail process.

7. Access to Legal Representation: The availability and adequacy of legal representation for accused persons during bail hearings are important factors. Adequate legal representation ensures that the accused's rights and interests are effectively presented and safeguarded during the bail proceedings.

8. Transparency and Accountability: The transparency and accountability of the bail process are vital to maintain public confidence in the justice system. Courts should provide clear and reasoned decisions, articulating the factors considered and the rationale behind granting or refusing bail.

9. Impact of Bail Conditions: Bail conditions imposed on the accused must be reasonable, proportionate, and necessary to achieve the objectives of ensuring their appearance in court and protecting public safety. Excessive or unjustified bail conditions may infringe on the rights of the accused.

10. Review and Appeal Mechanisms: The availability of review and appeal mechanisms allows parties to challenge bail decisions if they believe errors were made or if there are substantial grounds for reconsideration. These mechanisms provide a means to correct potential miscarriages of justice.

It is important to note that the legal issues involved in bail proceedings can vary depending on the specific facts and circumstances of each case. Consulting with a legal professional familiar with Ugandan law will provide the most accurate and up-to-date guidance in navigating the bail process in Magistrates' Courts.

**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)?

- **GIVE A BIRIEF DISCUSSION ON BAIL**

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.

**Committal 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.



Summary of Legal Issues:

1. Summary of Evidence: The case requires a summary of the evidence as per Section 168 of the Magistrate Courts Act. It serves to inform the accused of the case against them and enables them to prepare a defense.

2. Committal Proceedings: The accused is committed for trial to the High Court as per Section 1 of the Trial on Indictments Act. The magistrate reads out the indictment and summary of the case, commits the accused to the High Court, and remands them pending trial.

3. Committal for Sentence: Section 164 of the Magistrate Courts Act allows for committal for sentence. The accused must have been convicted, and the magistrate believes a greater punishment is warranted, which is beyond their sentencing jurisdiction. The accused is committed to the Chief Magistrate's Court for sentencing.

4. Rights of an Accused Person: Various rights are conferred upon the accused, including the right to legal representation, access to a next of kin, access to a personal doctor, and the right to bail. They are also entitled to a fair and impartial hearing.

5. Grounds for Withdrawal/Nolle Prosequi: The grounds for withdrawal or nolle prosequi include insufficient evidence, non-compliant witnesses, and lack of a prima facie case. The nolle prosequi can be entered if any of these situations arise, resulting in the accused being set free.

6. Effects of Nolle Prosequi: Nolle prosequi does not bar subsequent proceedings against the accused unless the defense case has been made. If entered after the defense presents its case, it serves as an acquittal, and the case cannot be reinstated.

7. Preventive Detention: Under the Habitual Criminals (Preventive Detention) Act, a magistrate can detain a criminal to protect society. Specific criteria, such as age and multiple convictions, must be met for preventive detention to be exercised.

8. Jurisdiction of Magistrate Courts: It is important to note that magistrates do not have jurisdiction to try certain cases. Section 166 of the Magistrates Courts Act states that magistrates can only remand the accused person in custody to appear before a superior court for trial if the offense falls outside their jurisdiction.

9. Right to Presumption of Innocence: According to Article 28(3)(a) of the Constitution, every accused person has the right to be presumed innocent until proven guilty or until they plead guilty. This presumption places the burden of proof on the prosecution to establish guilt beyond a reasonable doubt.

10. Right to be Informed of the Nature of the Offense: Article 28(3)(b) of the Constitution guarantees the right of the accused person to be immediately informed, in a language they understand, of the nature of the offense they are charged with. This ensures that the accused is aware of the specific allegations against them.

11. Right to Adequate Time and Facilities for Defense Preparation: Article 28(3)(c) of the Constitution ensures the accused person's right to be given sufficient time and facilities to prepare their defense. This includes access to legal resources, relevant documents, and the ability to consult with legal counsel.

12. Right to Legal Representation: Article 28(3)(d) of the Constitution guarantees the right of the accused person to appear before the court in person or, at their expense, be represented by a lawyer of their choice. In cases where

the offense carries a potential sentence of death or life imprisonment, the state must provide legal representation at its expense.

13. Right to Assistance of an Interpreter: Article 28(3)(f) of the Constitution ensures that an accused person who does not understand the language used in court is entitled to the assistance of an interpreter. This guarantees their ability to comprehend and participate effectively in the proceedings.

14. Right to Examine Witnesses and Obtain Attendance of Other Witnesses: Article 28(3)(g) of the Constitution grants the accused person the right to examine witnesses presented against them and to have the ability to call witnesses in their defense. This ensures a fair and balanced presentation of evidence.

15. Grounds for Preventive Detention: Under Section 2 of the Habitual Criminals (Preventive Detention) Act, a magistrate can order preventive detention of a criminal who meets certain criteria, such as being under 30 years old, having multiple convictions since the age of 16, and being convicted of offenses punishable by imprisonment of two years or more.

16. Grounds for Withdrawal/Nolle Prosequi: The case of Sezi Musoke and Anor Uganda Criminal Appeal No. 39 of 1974 established grounds for the withdrawal or nolle prosequi. These grounds include insufficient evidence, non-compliance by witnesses (relocation or unavailability), and the absence of a prima facie case. Nolle prosequi can be entered in any of these situations, leading to the discontinuation of the case.

17. Procedure for Withdrawal/Nolle Prosequi: The Director of Public Prosecutions (DPP) has the power to grant a nolle prosequi. The process involves the DPP writing an opinion or legal memo indicating the intention to withdraw the case. Once the nolle prosequi is signed by the DPP, it is presented before the presiding judge or magistrate. The judge then enters the nolle prosequi, resulting in the accused person's release. If the accused is not present in court, a notice of the nolle prosequi is served to the prison authorities.

18. Effects of Nolle Prosequi: Pursuant to Section 134(1) of the Trial Indictment Act, a nolle prosequi does not bar subsequent proceedings against the accused based on the same facts. However, if the nolle prosequi is entered after the defense has presented its case, it acts as an acquittal, preventing the reinstatement of the case.



19. Preventive Detention: Under Section 2 of the Habitual Criminals (Preventive Detention) Act Cap 118, a magistrate is granted the power to detain a criminal for preventive purposes to safeguard the public. The criteria for preventive detention are outlined as follows:

- The criminal should be below the age of 30.
- The criminal should have been convicted of an offense punishable by a prison term of 2 years or more.
- The criminal should have been convicted on at least three occasions since reaching the age of 16.

20. Right to Legal Representation: Article 23(5)(a) of the Constitution of 1995 guarantees the right to legal representation for an accused person. While this right is not absolute, in cases where the accused does not have legal representation, it is the duty of the trial magistrate to ensure that the charge sheet is in order. However, it is important to note that this position has been modified with the enactment of the Constitution of 1995.

21. Right to Access Next of Kin: Article 23(5)(a) of the Constitution of 1995 also confers the right to access a next of kin. The accused person is to be informed of this right as soon as practically possible upon their restriction.

22. Right to Personal Doctor: Article 23(5)(b) and (c) of the Constitution of 1995 grants the right to a personal doctor, including access to medical treatment at the request and cost of the accused person, and access to private medical treatment.

23. Right to Bail: Article 23(6) of the Constitution, along with Section 75 and 77 of the Magistrate Courts Act Cap 13, guarantees the right to bail for an accused person, subject to certain conditions and exceptions.

24. Right to a Fair and Impartial Hearing: Article 28(1) of the Constitution ensures that any person charged with an offense is entitled to a fair, speedy, and public hearing before an independent and impartial court or tribunal established by law.

25. Other Rights: Additional rights of an accused person include:

- Presumption of innocence until proven guilty or until the person pleads guilty (Article 28(3)(a) of the Constitution).
- Right to be informed immediately, in a language they understand, of the nature of the offense (Article 28(3)(b) of the Constitution).
- Right to adequate time and facilities for the preparation of their defense (Article 28(3)(c) of the Constitution).
- Right to appear before the court in person or with the assistance of a lawyer of their choice (Article 28(3)(d) of the Constitution).
- Right to legal representation at the expense of the state for offenses carrying a sentence of death or life imprisonment (Article 28(3)(e) of the Constitution).
- Right to the assistance of an interpreter if the accused person cannot understand the language used at the trial (Article 28(3)(f) of the Constitution).
- Right to examine witnesses and obtain the attendance of other witnesses before the court (Article 28(3)(g) of the Constitution).

These additional points highlight the rights of an accused person, including the right to legal representation, access to next of kin, personal doctor, bail, a fair and impartial hearing, and various other rights safeguarded by the Constitution.

26. Grounds for Withdrawal/Nolle Prosequi: The grounds for withdrawal or nolle prosequi were established in the case of Sezi Musoke and Anor Uganda Criminal Appeal No. 39 of 1974. These grounds include:

- Insufficient evidence: When there is a lack of evidence to support the case against the accused.

- Non-compliance by witnesses: If the witnesses have relocated or cannot be found, the investigating officer must prepare an affidavit of service and attach it to the letter requesting withdrawal. In cases where witness contact information is available, attempts should be made to contact them.

- No prima facie case: When the evidence presented does not establish a prima facie case against the accused.

The process for withdrawal or nolle prosequi is as follows:

1. The Resident State Attorney (RSA) writes an opinion or legal memo to exercise the power to grant a nolle prosequi. The letter should inform the defense and present the RSA's opinion on whether to exercise their powers.

2. The Director of Public Prosecutions (DPP) signs the nolle prosequi.

3. The nolle prosequi is presented before the presiding judge or magistrate.

4. The judge enters the nolle prosequi, resulting in the accused person being set free.

5. If the accused person is not present in court, the registrar ensures that written notice of the nolle prosequi is served to the prison keeper (as per Section 134(2) of the Trial Indictment Act).

The effects of nolle prosequi are outlined in Section 134(1) of the Trial Indictment Act. It states that nolle prosequi is not a bar to subsequent proceedings against the accused based on the same facts. However, if the nolle prosequi is entered after the defense has presented its case, it serves as an acquittal, and the case cannot be reinstated.

27. Committal for Sentence: Section 164 of the Magistrate Courts Act provides for committal for sentence. In such cases, a court presided over by a Magistrate Grade One, Two, or Three can commit an accused person for sentencing. The conditions for committal for sentence are:



- The accused person must have been convicted.

- The magistrate must form an opinion that the accused deserves a greater punishment.

- The punishment should exceed the magistrate's sentencing jurisdiction as specified in Section 162 of the Magistrate Courts Act.

- The Magistrate commits the person to the Chief Magistrate's Court. If the Chief Magistrate considers the conviction improper, the record is forwarded to the High Court, and the passing of the sentence is postponed pending the decision of the High Court. The Chief Magistrate may release the offender on bail or remand them pending the decision.

It is important to note that under Section 166 of the Magistrate Courts Act, a magistrate does not have jurisdiction to try any offense. They can only remand the accused person in custody to appear before a superior court.

These additional points cover the grounds for withdrawal or nolle prosequi, as well as the process involved. It also addresses the concept of committal for sentence and the limitations of a magistrate's jurisdiction in trying offenses.

28. Preventive Detention: Section 2 of the Habitual Criminals (Preventive Detention) Act, Cap 118 empowers a magistrate to detain a criminal for preventive purposes to protect the public from potential harm. The criteria for preventive detention under Section 2(1) of the Act are as follows:

- The criminal must be under 30 years of age.

- The criminal must have been convicted of an offense punishable by imprisonment of two years or more.

- The criminal must have been convicted on at least three occasions since reaching the age of 16.

The authority to exercise this power by a magistrate is evident in Section 163 of the Magistrate Courts Act.

29. Rights of an Accused Person:

- Right to Legal Representation: Article 23(5)(a) of the Constitution of Uganda guarantees the right to legal representation. While this right is not absolute, it is essential for ensuring a fair trial. The duty of the trial magistrate is to ensure that the charge sheet is in order when the accused does not have legal representation.

- Right to Access a Next of Kin: Article 23(5)(a) of the Constitution states that the next of kin should be informed as soon as practically possible about the arrest or detention of the accused.

- Right to a Personal Doctor: Article 23(5)(b) and (c) of the Constitution grants the right to access medical treatment, including the option to request and pay for private medical treatment.

- Right to Bail: Article 23(6) of the Constitution, along with Section 75 and 77 of the Magistrate Courts Act, provides for the right to bail, subject to certain conditions.

- Right to a Fair and Impartial Hearing: Article 28(1) of the Constitution guarantees the right to a fair, speedy, and public hearing before an independent and impartial court or tribunal established by law.



Other rights of an accused person include:

- Right to presumption of innocence until proven guilty or until the person pleads guilty (Article 28(3)(a) of the Constitution).

- Right to be informed immediately, in a language the person understands, of the nature of the offense (Article 28(3)(b) of the Constitution).

- Right to be given adequate time and facilities for the preparation of the defense (Article 28(3)(c) of the Constitution).

- Right to appear before the court in person or by a lawyer of their choice, at their own expense (Article 28(3)(d) of the Constitution).

- Right to legal representation at the expense of the state for offenses carrying a sentence of death or life imprisonment (Article 28(3)(e) of the Constitution).

- Right to an interpreter if the person cannot understand the language used at the trial (Article 28(3)(f) of the Constitution).

- Right to examine witnesses and obtain the attendance of other witnesses before the court (Article 28(3)(g) of the Constitution).

These rights are crucial safeguards to ensure a fair and just legal process for individuals accused of crimes.

**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.

Committal 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)

- **GIVE THE 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.

- **DISCUSS the various legal issues related to trial practice and the commencement of criminal prosecutions. Here is a summary of the key points:**



1. Commencement of Criminal Prosecutions:

- Criminal prosecutions can be initiated through public prosecutions or private prosecutions.

- Three ways to commence proceedings: (a) Bringing an arrested person before a magistrate, (b) Laying charges before a magistrate, and (c) Making a complaint before a magistrate.

2. Trials before the Magistrate's Courts:

- The procedure is governed by the Magistrate Courts Act.

- The prosecution introduces itself and reads the charges to the accused.

- The accused is asked if they understand the charges and then enters a plea.

- If a plea of not guilty is entered, the prosecution presents its evidence, followed by cross-examination by the defense.

- The defense may submit a "no case to answer" if the prosecution fails to establish a prima facie case.

- If a prima facie case is established, the defense presents its case.

- After examination of witnesses, both parties make submissions, and the magistrate passes judgment.

3. Types of Pleas:

- Not Guilty: The accused denies the truth of the charges.

- Guilty: The accused admits the truth of the charges.

- Autre Fois Acquit: The accused has been acquitted of the offense before.

- Autre Fois Convict: The accused has been convicted of the offense before.

- Pardon: A plea exercised by the President.

4. Procedure After Proof of a Prima Facie Case:

- The defense presents its evidence, followed by cross-examination by the prosecution.

- Submissions are made by both parties, and the magistrate delivers a judgment.

- The accused is either acquitted or convicted, and if convicted, awaits sentencing.

5. Duties of the Court, Defense, and Prosecution:

- The court informs the accused of their rights and may grant bail if necessary.

- The defense cross-examines prosecution witnesses, presents the defense case, and makes submissions.

- The prosecution cross-examines defense witnesses, makes submissions, and argues the case against the accused.



6. Adjournments:

- Adjournments can be granted before or during the hearing.

- The application for adjournment is made in open court, and sufficient cause must be shown.

- The accused may be remanded or released on bail during the adjournment period.

7. Withdrawal of Cases:

- The prosecutor, with the consent of the court or on the instructions of the Director of Public Prosecutions (DPP), may withdraw a person from prosecution.

- If withdrawal happens before the accused presents their defense, the accused is discharged, but subsequent proceedings are still possible.

- If withdrawal occurs after the accused presents their defense, the accused is acquitted.

8. Dismissal of Cases:

- If the complainant does not appear for a hearing, and the accused appears in obedience to the summons, the charges may be dismissed unless the court decides to adjourn the hearing.

These are the main legal issues covered in the text regarding trial practice and the commencement of criminal prosecutions.

- **DISCUSS SENTENCING**

Once a verdict of guilty is reached, the court proceeds to sentencing. The following are some key points regarding sentencing:

1. Discretion of the Court: The court has discretion in determining the appropriate sentence based on the circumstances of the case and the applicable laws.

2. Mitigating Factors: The accused or their counsel may present mitigating factors to the court during the allocutus (plea for mercy) stage, such as being a first-time offender, having family responsibilities, showing remorse, or having poor health. These factors may influence the court's decision in determining the sentence.

3. Sentencing Options: The court has various sentencing options, including fines, imprisonment, community service, probation, or a combination of these. The specific sentence depends on the nature and severity of the offense, as well as any applicable sentencing guidelines or laws.

4. Minimum and Maximum Penalties: Some offenses have minimum or maximum penalties prescribed by law. The court must consider these limits when determining the appropriate sentence.

5. Pre-sentence Reports: In some cases, the court may request a pre-sentence report, prepared by a probation officer or other relevant authority, which provides information about the offender's background, character, and circumstances. This report helps the court make an informed sentencing decision.

6. Aggravating Factors: The court may also consider aggravating factors, such as the presence of violence, use of weapons, premeditation, or previous criminal record, which can lead to a more severe sentence.

7. Sentencing Principles: In sentencing, the court typically considers the purposes of sentencing, such as deterrence, rehabilitation, retribution, and protection of society. The court aims to strike a balance between these objectives and the specific circumstances of the case.

- **OUTLINE APPEALS**

If either the prosecution or the defense is dissatisfied with the judgment or sentence, they may have the right to appeal the decision to a higher court. The following points relate to the appeals process:

1. Notice of Appeal: The party seeking to appeal must file a notice of appeal within the specified time frame, usually within a certain number of days after the judgment or sentence.

2. Grounds for Appeal: The appellant must establish valid grounds for the appeal, such as errors in law, procedural irregularities, or substantial miscarriage of justice during the trial.

3. Appellate Court's Review: The appellate court reviews the trial proceedings, including the evidence, legal arguments, and application of the law, to determine whether errors occurred that warrant a reversal or modification of the original decision.

4. Possible Outcomes: The appellate court may affirm the lower court's decision, reverse it, modify the sentence, or order a retrial.

5. Higher Court Jurisdiction: The specific higher court to which the appeal is made depends on the jurisdiction and the nature of the case. In some legal systems, there may be multiple levels of appeals courts.
6. Discretionary Appeals: In certain cases, an appeal may require permission from the higher court, as not all decisions are automatically appealable. The appellant must demonstrate that the case involves a significant question of law or that there are exceptional circumstances warranting the court's review.
7. Appellate Briefs and Oral Arguments: During the appeals process, the appellant and the appellee submit written appellate briefs presenting their legal arguments and supporting authorities. They may also have the opportunity to present oral arguments before the appellate court to further elucidate their positions.
8. Stays and Bail Pending Appeal: In some cases, a party seeking an appeal may request a stay of the lower court's judgment or sentence, which temporarily suspends its enforcement. Additionally, an appellant may seek bail or other conditions of release while the appeal is pending.
9. Finality of the Decision: Once the appellate court renders its decision, it generally becomes the final judgment in the case, subject to further review only in exceptional circumstances, such as a review by a higher court of last resort.

10. Post-Appeal Options: Depending on the outcome of the appeal, further legal options may be available to the parties. This may include seeking further review from a higher court, pursuing alternative dispute resolution methods, or exploring possibilities for post-conviction relief, such as habeas corpus petitions or applications for sentence reductions

- **WHAT ENTAILS 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



- **WHAT ARE THE 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

- **WHAT ARE THE DUTIES OF THE COURT?**

**Prosecution and defense 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.

Summary and Discussion of Legal Issues:

1. Arraignment: The arraignment process before the High Court involves three steps: the accused being presented at the bar, the indictment being read to them, and the accused pleading to the indictment. The available pleas include guilty, not guilty, autre fois acquit (previously acquitted), and autres fois convict (previously convicted). This process is governed by Section 60 of the Trial on Indictments Act.

2. Plea Bargaining: Section 64 of the Trial on Indictments Act allows for plea bargaining, where the accused expresses a desire to plead guilty to a different offense than the one they are charged with. The process involves the prosecution's consent to the plea bargaining, a request for an amendment of the indictment by the defense, and the subsequent arraignment of the accused.

3. Assessors' Role and Opinion during Trial: According to Section 3(1) of the Trial of Indictments Act, all trials before the High Court must be conducted with the aid of assessors. Assessors are laypersons who assist the court by providing their opinions on matters of fact. Considerations for selecting assessors include age, language understanding, ability to follow court proceedings, and integrity. Certain individuals, such as priests, medical professionals, and legal practitioners in active service, are exempt from serving as assessors.

4. Procedure for Summoning Assessors: Assessors are summoned at least seven days before the scheduled sessions of the High Court. The Chief Registrar sends a letter to a Magistrate with jurisdiction, requesting the summoning of assessors. Failure to attend as an assessor may result in a fine. Assessors are required to take an oath to impartially advise the court. If an accused person wishes to challenge an assessor, they must do so before the assessor is sworn in, citing grounds such as partiality or inability to understand the language.

5. Confessions and Extra Judicial Statements: A confession is an unequivocal admission of having committed a criminal act, while an extra judicial statement is made before a magistrate. The admissibility of confessions is regulated by Section 24 of the Evidence Act. Confessions obtained through violence, force, threat, or inducement that would lead to an untrue confession are not admissible.

6. Retraction and Repudiation of Confessions: Retraction of a confession occurs when the accused admits to making the confession but claims it was obtained through duress, violence, inducement, or threats. Repudiation of a confession happens when the accused denies making the confession altogether. Generally, repudiated and retracted confessions are admissible as evidence if the court determines they were made voluntarily.

7. Admissibility of Confessions: Section 24 of the Evidence Act states that confessions obtained through violence, force, threat, or inducement, which are calculated to adduce an untrue confession, are inadmissible. This provision aims to ensure that confessions are obtained freely and voluntarily, without coercion or improper influence.

8. Expert Opinion Evidence: In certain cases, expert opinion evidence may be presented during trials before the High Court. Section 59 of the Evidence Act allows for the admission of expert evidence when the court needs assistance in understanding specialized knowledge or evaluating facts in a particular field. The expert's opinion should be relevant, based on their expertise, and assist the court in reaching a decision.

9. Corroboration of Evidence: In some jurisdictions, including Uganda, the law requires corroboration of the accused person's confession before a conviction can be based solely on that confession. This means that there must be additional evidence, independent of the confession, that supports the accused person's guilt.

10. Cross-Examination and Witness Credibility: During trial, cross-examination plays a crucial role in testing the credibility and reliability of witnesses. The defense has the opportunity to question prosecution witnesses and challenge their testimony. The aim is to expose any inconsistencies, biases, or motives that may affect the witness's credibility and the weight given to their testimony.

11. Standard of Proof: In criminal trials before the High Court, the prosecution has the burden of proving the accused's guilt beyond a reasonable doubt. This means that the evidence presented must be sufficiently strong and convincing to leave no reasonable doubt in the minds of the court regarding the accused's guilt.

12. Rules of Evidence: The admissibility of evidence in trials before the High Court is governed by the Evidence Act and other relevant laws. These laws provide rules regarding the relevance, admissibility, and weight given to different types of evidence, such as witness testimony, documents, physical evidence, and expert opinions.

13. Examination-in-Chief: Examination-in-chief refers to the questioning of a witness by the party who called them to testify. The purpose of examination-in-chief is to elicit evidence supporting the party's case and to present a clear and coherent narrative of the events. The questions asked during this stage should be open-ended and non-leading.

14. Re-Examination: After cross-examination by the opposing party, the party who called the witness has the opportunity for re-examination. Re-examination aims to clarify any ambiguities or address issues raised during cross-examination. The questions asked during re-examination should be limited to the scope of cross-examination.

15. Hearsay Evidence: Hearsay evidence is an out-of-court statement made by someone other than the witness and offered in court to prove the truth of the matter asserted. Generally, hearsay evidence is considered unreliable and inadmissible. However, there are exceptions to this rule, such as dying declarations, statements against interest, and statements made in the ordinary course of business.

16. Rules of Court: Trials before the High Court are conducted in accordance with the applicable rules of court. These rules govern various aspects of the trial process, including the filing of pleadings, presentation of evidence, examination of witnesses, and submissions by the parties. It is essential for legal practitioners and parties to familiarize themselves with the relevant rules to ensure compliance.

17. Judicial Discretion: The presiding judge in a trial before the High Court has discretion in various matters, such as admitting or excluding evidence, allowing amendments to pleadings, and managing the proceedings. Judicial discretion is exercised in accordance with legal principles and aims to ensure fairness and justice in the trial process.

18. Sentencing: If the accused person is found guilty, the High Court will proceed to determine an appropriate sentence. The court considers factors such as the nature and severity of the offense, the circumstances of the offender, and the principles of sentencing outlined in the law. Sentencing aims to achieve a balance between punishment, deterrence, rehabilitation, and protection of society.

19. Appeals: After the conclusion of a trial before the High Court, the parties have the right to appeal the decision to a higher court. The grounds for appeal may include errors of law, procedural irregularities, or incorrect application of facts. The appellate court reviews the trial record and arguments presented by the parties to determine if the lower court's decision should be upheld, reversed, or modified.

20. Legal Representation: Parties in trials before the High Court have the right to legal representation. It is advisable for both the prosecution and the accused person to engage competent legal practitioners who can effectively present their case and protect their rights throughout the trial. Legal representation ensures that the parties receive fair treatment and that their interests are properly advocated.

21. Judicial Independence: Trials before the High Court uphold the principle of judicial independence. This means that judges are impartial and free from external influences or pressures in deciding cases. Judicial independence ensures that the judiciary acts as a check and balance on the other branches of government and guarantees the fairness and integrity of the trial process.



22. Contempt of Court: Trials before the High Court demand respect for the court and its proceedings. Contempt of court refers to any behavior that obstructs or disrespects the administration of justice. This can include disobedience of court orders, disrespectful behavior towards the judge or other participants, or interference with the proper functioning of the court. Contempt of court can result in penalties, including fines or imprisonment.

23. Judgment: At the conclusion of a trial before the High Court, the judge delivers a judgment that contains the court's findings of fact, application of law, and the decision reached. The judgment may include reasons for the decision and the applicable legal principles. The judgment serves as the final determination of the case, subject to any appeals to a higher court.

It is important to consult the relevant laws and legal authorities in the specific jurisdiction where the trials before the High Court are taking place, as the legal procedures and considerations may vary. Legal advice from qualified professionals should be sought for specific cases to ensure accurate interpretation and application of the law.

- **DISCUSS 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.

- **DISCUSS 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.

Here is a summary of the legal issues in the procedure of trials before the High Court:

1. Arraignment: The accused is brought before the court, and the charges are read to them. The accused must understand the charges and enter a plea of guilty, not guilty, autre fois acquit, autre fois convict, or pardon.

2. Examination-in-Chief and Cross-Examination: The prosecution presents its case through examination-in-chief, followed by cross-examination by the defense. Witnesses are questioned and evidence is presented to establish the facts of the case.

3. No Case to Answer: After the prosecution's case, the defense may submit a no case to answer, arguing that the prosecution has failed to establish a prima facie case. The judge rules on whether there is sufficient evidence to proceed with the defense's case.



4. Defense: If the judge determines there is a case to answer, the defense presents its case, including examination-in-chief of the accused and any defense witnesses.

5. Summing Up: The judge sums up the evidence and the law for the assessors, providing guidance on the case. Failure to properly sum up may result in a miscarriage of justice.

6. Submissions: Both the prosecution and defense make submissions, presenting their arguments and addressing the evidence and legal principles relevant to the case. The party that begins has the right of reply.

7. Assessors' Opinion: The assessors give their opinion on the matter before the court, considering the evidence and the judge's guidance.

8. Judgment: The judge delivers the judgment, either simultaneously or on notice. The accused is either acquitted or convicted.

9. Sentence: If convicted, the accused awaits sentencing. Before the sentence is passed, an allocutus is conducted where the accused can mitigate the sentence by providing reasons such as being a first offender, having dependents, showing remorse, or poor health.

10. Sentencing Considerations: The judge considers factors such as the age and antecedents of the accused, the gravity of the offense, the accused's health, and the prevalence of the crime. Each count should carry its own sentence and penalty if the accused is convicted on multiple counts.

- **DISCUSS 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 cannot 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.

To summarize the legal issues discussed in the context of appellate practice and appeals in criminal matters, the following points arise:

1. Whether X has a right of appeal?

2. Whether the facts disclose any grounds of appeal?

3. Whether the grounds can be opposed successfully?

4. What other remedies are available to the parties?

5. What is the forum, procedure, and documents needed?

Under the scope of appeals, several key aspects should be noted:

1. An appeal is a creature of statute, meaning it is governed by specific laws and regulations.

2. The scope of appeals can involve points of law, points of fact, or points of mixed law and fact.

3. Appeals are subject to a time frame within which they must be filed.

4. In some cases, an appeal may require a certificate of importance.

5. The law applicable to appellate practice includes various statutes such as the Constitution of Uganda, the Judicature Act, the Penal Code Act, the Magistrate Courts Act, the Criminal Procedure Code Act, the Evidence Act, and others. Additionally, case law, common law, and doctrines of equity are relevant.

1. The most appropriate remedies, such as revision, which allows the High Court to examine and correct mistakes of lower courts in a criminal trial.

2. The power of the High Court to call for records and review the correctness, legality, and propriety of findings, sentences, or orders passed by the Magistrates court.

3. The power of the Magistrates court to call for records of inferior courts and report to the High Court.

4. The failure to follow due procedure in plea taking, where the accused was not properly informed about the essential ingredients of the offense, potentially leading to a flawed conviction.

5. Acting without or in excess of jurisdiction, examining whether the court had the authority to try the offense and the applicable jurisdictional provisions.

6. The merits and demerits of the client's case, considering factors such as procedural errors, jurisdictional issues, and the possibility of sentence enhancement or reduction.

7. The procedure, forum, and documents needed for the appeal, which would depend on the specific requirements set out in the relevant laws and regulations.

Regarding the procedure, forum, and documents needed for the appeal, specific requirements outlined in the applicable laws and regulations should be followed. These may include:

1. Procedure: The procedural steps for filing an appeal, including the time limits within which the appeal must be lodged and any specific forms or documents required. The Criminal Procedure Code Act and the relevant rules of the appellate courts would provide guidance on the procedural aspects.

2. Forum: The appropriate court where the appeal should be filed. This would depend on the hierarchy of the courts and the nature of the appeal. In Uganda, appeals from the Magistrates court usually go to the High Court, and further appeals may be made to the Court of Appeal and the Supreme Court, depending on the circumstances and the applicable laws.

3. Documents: The necessary documents to accompany the appeal, which may include the Notice of Appeal, grounds of appeal, and any supporting documents or evidence. These documents should comply with the prescribed format and contain all relevant information and arguments supporting the appeal.

It is important for the lawyer handling the appeal to carefully review the relevant laws, rules, and practice directions to ensure compliance with the procedural requirements. Additionally, they should thoroughly analyze the facts of the case, identify potential grounds of appeal, and prepare persuasive arguments to support their client's position.

Once the appeal is filed, the appellate court will review the grounds of appeal, supporting documents, and arguments presented by the appellant's lawyer. The court will consider the legal issues raised and determine whether the lower court made any errors that warrant a reversal or modification of the original decision.

During the appellate process, A lawyer be prepared to address the following key aspects:

1. Jurisdictional Issues: The lawyer should ensure that the appellate court has jurisdiction to hear the appeal based on the applicable laws and the nature of the case. They should establish that the appeal falls within the scope of the court's authority and that the necessary requirements for pursuing an appeal have been met.

2. Grounds of Appeal: The lawyer should argue the specific grounds of appeal that challenge the lower court's decision. These grounds may include errors of law, procedural irregularities, misinterpretation of facts, or any other valid legal arguments that demonstrate an unfair or incorrect outcome. The lawyer should present persuasive arguments and cite relevant case law or legal principles to support their position.

3. Review of the Lower Court's Decision: The appellate court will review the lower court's decision and assess whether it was legally sound and based on the correct application of the law. The lawyer should critically analyze the lower court's judgment, identifying any errors, inconsistencies, or improper legal reasoning. They should then present their arguments to demonstrate why the lower court's decision should be reversed or modified.

4. Remedies: The lawyer should consider the appropriate remedies to seek. This may include requesting the appellate court to quash the conviction, reduce the sentence, order a retrial, or any other appropriate relief based on the circumstances of the case. The lawyer should support their requested remedies with legal reasoning and relevant precedents.



5. Oral Arguments: In some appellate proceedings, the lawyer may have an opportunity to present oral arguments before the appellate court. They should be prepared to eloquently present their case, respond to any questions or concerns raised by the judges, and further strengthen their legal arguments during the oral hearing.

It is important to note that the success of the appeal will depend on various factors, including the strength of the legal arguments presented, the applicable laws, the court's interpretation of the facts and evidence, and the overall

fairness of the proceedings. Therefore, the lawyer should thoroughly prepare the appeal, conduct legal research, and seek expert advice to maximize the chances of a favorable outcome.

- **WHAT ARE THE 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.**

**Discuss some of 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.

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 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.

**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.

**Failure to follow due procedure in plea taking**

**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 2 years 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.

**What is the procedure, forum and documents needed?**

The legal issues presented in the provided procedure for revision are as follows:

1. Section 50(5) of the Criminal Procedure Code Act cap 116: This section states that a person aggrieved by any finding, sentence, or order may petition the High Court for revision. However, the petition will not be entertained if the petitioner could have appealed but chose not to.

2. Section 50(8) of the Criminal Procedure Code Act cap 116: According to this section, the Director of Public Prosecutions has the power to apply to the High Court for revision in cases of miscarriage of justice. The application should be made within 30 days of the imposition of the sentence unless the High Court grants an extension.

3. SHABAHURIA MATIA V UGANDA H/C CRIM.REV. CAUSE NO.5/1999: This case establishes that the court has the power to make revisionary orders to prevent the abuse of court process.

4. MICHAEL S/O MESHAKA V R (1962) EA 81: The court should inquire whether an appeal has been filed or is to be filed before exercising revisionary powers. Failing to do so may result in the party losing the right to appeal.

5. Section 50(2) of the Criminal Procedure Code Act cap 116: No order of revision should be made unless the adverse party has had an opportunity to be heard.

6. Section 50(1) of the Criminal Procedure Code Act cap 116: The High Court, upon receiving the record for revision, may enhance the sentence or alter/reverse any other order apart from an order of acquittal.

7. UGANDA V POLASI KASUMBA (1979) EA 567: The High Court has the power to enhance a sentence if it considers the original sentence inadequate, as long as it does not result in a miscarriage of justice.

8. KIWALA V UGANDA (1967) EA 758: Once the High Court exercises its power of revision, the decision is final unless an appeal is lodged with the appellate court.

9. Section 50(4) of the criminal procedure code act cap 116: The High Court has the power to convert an acquittal into a conviction if the accused is found guilty of another offense, whether charged or not.

- **DISCUSS THE PROCEDURE FOR BAIL PENDING REVISION**

6. Section 50(6) of the Criminal Procedure Code Act cap 116: This section grants the court the power to release a convicted person on bail pending revision.

The procedure for bail pending revision is as follows:

i) Apply for bail pending revision by filing a Notice of Motion supported by an affidavit.

ii) Pay the requisite fees as prescribed by the court.

iii) Serve the opposite party with the application and supporting documents.

iv) Set the application for hearing and determination.

v) The court will then decide whether to grant or deny the application for bail pending revision.

It's important to note that the specific requirements and procedures for bail may vary depending on the jurisdiction and the circumstances of the case. It is advisable to consult the relevant laws and seek legal advice to ensure compliance with the applicable rules and regulations.



In summary, the procedure for revision involves petitioning the High Court for revision, while the procedure for bail pending revision entails applying for bail while awaiting the outcome of the revision process. These procedures are governed by the provisions of the criminal procedure code act cap 116 and other relevant laws and court precedents.

- **WHAT ARE THE LEGAL ISSUES ARISING FROM THE PROCEDURE FOR REVISION AND BAIL PENDING REVISION?**

1. Section 50(5) of the Criminal Procedure Code Act cap 116: Any person aggrieved by any finding, sentence, or order may petition the High Court for revision. However, the court will not entertain the petition if the petitioner could have appealed but has not. This raises the issue of the availability of alternative remedies and the requirement to exhaust those remedies before seeking revision.

2. Section 50(8) of the Criminal Procedure Code Act cap 116: The Director of Public Prosecutions (DPP) may also apply to the High Court for revision in cases of miscarriage of justice. The application should be made within 30 days of the imposition of the sentence, unless the High Court grants an extension. This raises the issue of the timeframe within which the DPP can seek revision and the circumstances that constitute a miscarriage of justice.

3. SHABAHURIA MATIA V UGANDA H/C CRIM.REV. CAUSE NO.5/1999 (unreported): This case establishes that the court has the power to make orders for revision to prevent abuse of the court process. This highlights the issue of preventing the misuse or abuse of the revisionary powers by parties involved.

4. MICHAEL S/O MESHAKA V R (1962) EA 81: This case emphasizes that before exercising revisionary powers, the court should inquire whether an appeal has been filed or is to be filed by the applicant. Failure to do so may result in the loss of the right to appeal. This raises the issue of the importance of considering the availability of an appeal before resorting to revision.

5. Section 50(2) of the Criminal Procedure Code Act cap 116: This section stipulates that no order of revision should be made unless the adverse party has had an opportunity to be heard. This raises the issue of the right to be heard and the importance of ensuring procedural fairness in the revision process.

6. Section 50(1) of the Criminal Procedure Code Act cap 116: Upon forwarding the record to the High Court for revision, the court may enhance the sentence or alter or reverse any other order, except an order of acquittal. This raises the issue of the court's powers to modify or reverse previous decisions during the revision process.

7. UGANDA V POLASI KASUMBA (1979) EA 567: This case establishes that the High Court has the power to enhance a sentence if it is deemed inadequate, taking into account the gravity of the offense, as long as it does not result in a miscarriage of justice. This highlights the issue of determining the appropriate scope and limits of the court's power to enhance sentences during the revision process.



8. KIWALA V UGANDA (1967) EA 758: This case establishes that the revisionary power of the court is final unless an appeal is lodged to the appellate court. This raises the issue of the finality of revision decisions and the availability of further recourse through the appeals process.

9. Section 50(4) of the Criminal Procedure Code Act cap 116: This section grants the High Court the power to convert an acquittal into a conviction if the accused is convicted of another offense, whether charged or not. This raises the issue of the court's authority to change the outcome of a case during the revision process.

- **DISCUSS THE PROCEDURE FOR BAIL PENDING REVISION**

1. Section 50(6) of the Criminal Procedure Code Act cap 116: This section grants the court the power to release a convicted person on bail pending revision. The procedure for bail pending revision involves the following steps:

i) Apply for bail pending revision by filing a Notice of Motion supported by an affidavit.

ii) Pay the requisite fees associated with the bail application.

iii) Serve the opposite party with the bail application, ensuring that they receive notice of the application.

iv) The application is set down for hearing and determination by the court.

v) The court grants or denies the application for bail pending revision based on the circumstances and considerations of the case.

LEGAL FORUM FOR REVISION

The High Court of Uganda, as stated in Section 50(1) of the Criminal Procedure Code Act cap 116, serves as the forum for revision. This means that individuals seeking revision must submit their petition or application to the High Court.



It is important to note that specific procedural requirements, timelines, and considerations may vary based on the circumstances of each case, applicable laws, and court practices. It is advisable to consult legal professionals or refer to the relevant statutes and case law to ensure accurate and up-to-date information when navigating the procedure for revision and bail pending revision in Uganda.

Please keep in mind that legal advice tailored to your specific situation is always recommended for a thorough understanding and guidance on the applicable legal processes.

SUMMARY OF PROCEDURE FOR REVISION

The procedure for revision, as outlined in the provided information, can be summarized as follows:

1. Request the certified record of proceedings: Write a letter requesting the certified record of the relevant court proceedings that are subject to revision. This record will be necessary for the revision process.

2. File an application for revision: Prepare an application for revision by submitting a notice of motion along with an affidavit. The notice of motion should clearly state the grounds for revision and the relief sought.

3. Pay the requisite fees: Ensure that the necessary fees associated with the revision application are paid. Compliance with fee requirements is essential for the application to be considered.

4. Serve the opposite party: Effect proper service of the revision application and accompanying documents on the opposite party. This involves providing them with copies of the application and giving them sufficient time to respond.

5. Set down for hearing and determination: Once the application is served, the court will schedule a date for the hearing and determination of the revision application. Both parties will be notified of the hearing date through a hearing notice.

6. Revision order issued or denied: Based on the arguments and evidence presented during the hearing, the court will make a decision on the revision application. The court may issue a revision order if it deems it appropriate, or it may deny the application if it finds no grounds for revision.

**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

Legal Issues in the Documents for Bail Pending Revision:

1. Right of Appeal: The documents discuss the right of appeal and clarify that appeal is a creature of statute. It is emphasized that there is no automatic right of appeal, and the right to appeal only lies against a final order of the court determining the case. Interlocutory or interim orders are not appealable. The relevant provisions of the Magistrates Court Act (Section 204) are referenced to outline the right of appeal for persons convicted in a court presided over by a chief magistrate or magistrate grade 1.

2. Procedural Steps for an Appeal: The documents outline the procedural steps for filing an appeal. It is mentioned that every appeal must be commenced by a written notice signed by the appellant or their advocate, which should be lodged with the registrar within 14 days from the date of the judgment or order being appealed. The possibility of extending the filing period for a notice of appeal is mentioned. A request for the certified record of proceedings is discussed, and the duty of the court to prepare the record and make it available to the appellant is highlighted. The content that should be included in the record of appeal is mentioned, such as the memorandum of appeal, record of proceedings, judgment, order, notice of appeal, and any required certificates.

3. Payment of Requisite Fees: The documents touch upon the requirement of paying the prescribed fees associated with filing an appeal. It is mentioned that a fee is payable for filing the notice of appeal, and upon payment, a receipt is issued. The need to endorse documents upon payment of the prescribed fee is also mentioned.

4. Service of Documents: The documents state that the memorandum of appeal must be served on the respondent, and an affidavit of service should be filed as proof of service. This highlights the importance of ensuring proper service of documents to all relevant parties.

5. Hearing: The documents discuss the hearing process for an appeal. It is mentioned that a hearing notice will be issued to the parties, specifying the time and place of the appeal hearing. Both the appellant and the respondent (or their advocates) are expected to make arguments or submissions based on the record of proceedings and judgment of the trial court. The burden of proof is on the appellant to demonstrate good and strong grounds for interfering with the lower court's findings. The right of an appellant in custody to be present at the hearing is also mentioned. After the hearing, the judgment is delivered in open court.

6. Constitutional and Statutory References: The documents identify the applicable laws that govern the appeal process, including the 1995 Constitution of the Republic of Uganda, the Penal Code Act, the Evidence Act, the Magistrates Court Act, the Criminal Procedure Code Act, and the Judicature Rules. These references establish the legal framework within which the appeal is to be conducted and provide the basis for the appellant's arguments and grounds for appeal.

7. Case Law: The documents acknowledge the relevance of case law in shaping the interpretation and application of the law. They refer to specific cases, such as Alinyo and Anor v R and Charles Harry Twagira v Uganda, to support the assertion that the right of appeal is not automatic and is limited to final orders of the court. The case law serves as persuasive authority to guide the court's understanding of the legal issues involved.

8. Time Limits and Extensions: The documents highlight the importance of adhering to prescribed time limits for filing the notice of appeal. They also mention that the appellate court has the discretion to grant an extension of time for filing the notice of appeal upon a showing of good cause. These provisions emphasize the significance of timely action and the need to seek an extension when necessary.

9. Grounds for Appeal: While the documents do not provide specific grounds for appeal, they mention the requirement of including grounds of objection to the decision appealed against in the memorandum of appeal. It is implied that the appellant must identify and articulate the legal or factual errors made by the lower court, which form the basis for seeking the reversal or modification of the decision.

10. Presence of Appellant: The documents recognize that an appellant who is in custody has the right to be present at the hearing of the appeal. This ensures that the appellant can actively participate in the proceedings and present their case before the appellate court.

11. Judgment Delivery: The documents state that after the appeal hearing, the judgment is delivered in open court. This implies that the appellate court will render its decision based on the arguments and evidence presented during the hearing and provide reasons for its decision.

It is essential to note that the specific details and legal issues involved in a particular case may vary, and additional legal issues could arise depending on the circumstances. Therefore, it is crucial to consult with legal professionals or reference the applicable laws and precedents to address the specific legal issues relevant to the case at hand.

- **WHAT ARE THE 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.

**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.

**Section 29** of the criminal procedure code act the appellant should pay a prescribed fee for filing the notice of appeal at the time of lodging the notice.

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.

The legal issues in the case of Kifamunte Henry v Uganda (SCCA 10/1997) and the grounds of appeal can be summarized as follows:

1. Duty of the First Appellate Court: The first appellate court has a duty to review the evidence, reconsider the materials before the trial judge, and make its own independent judgment while carefully considering the judgment appealed from.

2. Powers of the Appellate Court on Appeals from Convictions: The appellate court has the power to allow the appeal and set aside the judgment if it is unreasonable, wrong on a question of law resulting in a miscarriage of justice, or for any other ground where a miscarriage of justice has occurred. The court can also reverse the finding and sentence, acquit or discharge the appellant, order a retrial, alter the finding and find the appellant guilty of another offense, or alter the nature of the sentence.

3. Appeals from Orders: The appellate court can also hear appeals from various orders, such as acquittal resulting from a finding of no case to answer, orders for giving security for good behavior, orders for forfeiture of bond or recognition, orders for costs, and orders relating to the return of stolen property. The court has the power to alter or reverse such orders.

4. Effects of a Criminal Appeal: The appeal process can have certain effects, such as the detention of seized property, retention of exhibits, suspension of a fine sentence, and suspension of orders for the restitution of certain property.

5. Scope of First Appeal from a Magistrate's Court: The appeal by a convict from a magistrate's court can involve matters of law and matters of fact that have a bearing on future cases.

6. Grounds of Appeal: The grounds of appeal in the case include errors in law and fact, failure to evaluate the evidence in totality, wrongful rejection of an alibi, heavy reliance on uncorroborated evidence of an accomplice or a child, errors in the assessment of evidence and interpretation of the law regarding identification, reliance on a dying declaration without corroboration, reliance on an involuntarily taken or retracted confession, misdirection on the doctrine of common intention, misdirection on the burden of proof, passing an excessive sentence without considering the period spent on remand, and failure to consider mitigating factors in sentencing.

7. Testimony of a Single Witness: When a case depends exclusively on circumstantial evidence or the testimony of a single witness, the first appellate court must exercise great care in evaluating such evidence. The court should scrutinize the exculpatory facts and ensure that they are incompatible with the accused's innocence and incapable of explanation on any reasonable hypothesis other than guilt.

8. Evaluation of Evidence as a Whole: The first appellate court should evaluate the evidence as a whole, considering both the prosecution and defense evidence together. Failure to evaluate the evidence in totality may result in a miscarriage of justice.

9. Rejection of Alibi: If an accused person raises an alibi as a defense, the court should not require the accused to prove the alibi. Instead, if the alibi raises a reasonable doubt as to the accused's guilt, it is sufficient for an acquittal.

10. Corroboration of Accomplice Evidence: When the trial magistrate heavily relies on the uncorroborated evidence of an accomplice, it is essential for the first appellate court to carefully consider the law. According to Section 134 of the Evidence Act, accomplice evidence is competent, but it must be corroborated.

11. Testimony of Child Witnesses: When the trial magistrate relies on the uncorroborated evidence of a child of tender years, the first appellate court must ensure that a voir dire was conducted to determine the child's understanding of the nature of an oath and the duty to tell the truth. The court should also consider whether the child's testimony raises a reasonable doubt.

12. Identification Evidence: In cases where identification is a crucial issue, the first appellate court should scrutinize the circumstances under which identification was made. Factors such as the length of observation, distance, lighting conditions, and familiarity of the witness with the accused should be examined. The court should be cautious when relying on identification evidence, as mistaken identity is a possibility.

13. Admissibility of Dying Declaration: A dying declaration must meet certain requirements to be admissible. It must establish the death of the declarant, be complete, and be a free expression of the deceased. Corroboration of a dying declaration is generally required.

14. Voluntariness of Confession: The first appellate court should consider whether a confession was obtained voluntarily. Confessions extracted through force, violence, threats, or promises to cause untrue confessions are inadmissible.



15. Retraction of Confession: When a confession has been retracted, the court should exercise caution in relying on it unless it is corroborated in material particulars or its truth has been established through a trial within a trial.

16. Doctrine of Common Intention: If the trial magistrate misdirects themselves on the doctrine of common intention, it may result in a miscarriage of justice. The first appellate court should ensure that the correct principles of common intention are applied.

17. Burden of Proof: The trial magistrate should properly understand and apply the burden of proof. The burden lies on the prosecution to prove the accused's guilt beyond reasonable doubt, and the accused is presumed innocent until proven guilty.

18. Sentencing Considerations: The trial magistrate should take into account the period the appellant has been on remand and consider mitigating factors in sentencing. Factors such as antecedents of the accused, gravity of the offense, remorsefulness, and time spent on remand should be considered.

19. Legal Defenses: The first appellate court should assess whether the trial magistrate properly considered and applied any legal defenses raised by the accused, such as self-defense, duress, necessity, or insanity. Failure to properly apply a valid legal defense may result in an unfair conviction.

20. Admissibility of Evidence: The first appellate court should review the trial magistrate's rulings on the admissibility of evidence. It should assess whether any improperly admitted evidence, such as hearsay or illegally obtained evidence, affected the fairness of the trial.

21. Jury Instructions: If the trial involved a jury, the first appellate court should examine the instructions given by the trial magistrate to the jury. Incorrect or misleading jury instructions may lead to an improper verdict and require appellate intervention.

22. Judicial Misdirection: If the trial magistrate misdirected the jury on a point of law or misstated the legal standard, it may constitute a ground for appeal. The first appellate court should assess whether such misdirection affected the fairness of the trial.

23. Ineffective Assistance of Counsel: If the accused was represented by legal counsel during the trial, the first appellate court may consider claims of ineffective assistance of counsel. It should evaluate whether the counsel's performance fell below the standard expected, resulting in prejudice to the accused.

24. Legal Errors: The first appellate court should identify and correct any legal errors made by the trial magistrate. This includes misapplication of statutes, misinterpretation of case law, or failure to consider relevant legal principles.

25. Procedural Irregularities: The first appellate court should examine whether there were any procedural irregularities during the trial that may have prejudiced the accused's rights. This could include violations of procedural rules, denial of the right to a fair hearing, or failure to follow due process.

26. Sentence Disproportionality: If the trial magistrate imposed a sentence that is manifestly excessive or disproportionate to the gravity of the offense, the first appellate court may intervene and adjust the sentence accordingly.

27. Prejudicial Publicity: If there was extensive media coverage of the case that may have prejudiced the accused's right to a fair trial, the first appellate court should consider whether the trial magistrate took appropriate measures to mitigate the effects of such publicity.

28. Fresh Evidence: In exceptional circumstances, the first appellate court may consider the admission of fresh evidence that was not presented during the trial. This typically requires demonstrating that the evidence is both credible and significant and that it could potentially have affected the outcome of the trial.

These additional grounds of appeal and legal issues highlight the importance of the first appellate court's role in reviewing the trial court's decision and ensuring that the principles of justice are upheld.

- **WHAT IS THE 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 section 83 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.

**ABUDALAH 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 38I** 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.

- **WHAT ARE THE KEY CONSIDERATIONS FOR GROUNDS OF APPEAL?**

1. Misdirection and non-direction on matters of law and fact.
2. Incorrect interpretation of the law.
3. Incorrect application of principles of law.
4. Overlooking material facts.
5. Findings not supported by evidence.
6. Decisions made per in curium.

PROCEDURAL ERRORS

7. Acting without or in excess of jurisdiction.

8. Proceedings on a fatally defective charge.

9. Omitting essential steps in the trial process.

10. Manifested bias in the trial process.

11. Improper exercise of discretion in interlocutory matters.

12. Improper exercise of discretion when imposing sentence or imposing an illegal sentence.

13. Ineffective legal representation.

14. Failure to properly evaluate the evidence.

15. Contradictions and inconsistencies.

GROUNDS FOR OPPOSING THE APPEAL:

16. Trial magistrate properly evaluated the evidence.

17. Ingredients proved to the required standards of the Evidence Act.

18. Frivolous appeal.

19. No miscarriage of justice.

20. Considerations for bail pending appeal include the character of the applicant, whether they are a first offender, whether the offense involved personal violence, whether the appeal has a reasonable possibility of success, the possibility of substantial delay in the appeal's determination, and whether the applicant has complied with previous bail conditions.

21. Bail pending appeal is granted at the discretion of the court, considering the merits and circumstances of each case.

22. The burden is on the applicant to satisfy the court that bail pending appeal is warranted and that they will not abscond.



These key considerations and guidelines provide an overview of the legal issues and factors that may be relevant when presenting grounds of appeal and considering bail pending the determination of an appeal.

- **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 2003 Justice 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 satisfy court that the application warrants the grant of bail pending appeal and that if granted bail the applicant will not abscond.

1. Certificate of General Importance: The rules and criteria for obtaining a Certificate of General Importance are outlined for both the Court of Appeal and the Supreme Court. The matters of great public importance or questions of law of general importance must be demonstrated to warrant the grant of leave to appeal.

2. Appeals from the Court of Appeal: The right of appeal from the Court of Appeal lies in the Supreme Court. The scope of the appeal in the Supreme Court depends on whether it is a conviction, an acquittal, or a subsequent conviction or acquittal. The grounds of appeal include trial conduct, sufficiency of evidence, errors of fact and law, legality of the sentence, misdirections, admission of evidence, material irregularities, and evaluation of evidence.

3. Time Frames for Lodging Appeals: The general rule is that an appeal is commenced by filing a notice of appeal within a specified time frame. However, extensions of time can be sought from the High Court if filing the appeal out of time.

4. Procedure for Application for Extension of Time: An application for extension of time is made through a notice of motion supported by an affidavit. The specific rules governing the application vary depending on whether the appeal is to the Court of Appeal or the Supreme Court.

5. DPP's Right of Appeal: The Director of Public Prosecutions (DPP) has the right to appeal to the Supreme Court, particularly in criminal matters involving death sentences.

6. Notice of Appeal in Capital Cases: In both the Court of Appeal and the Supreme Court, notice of appeal is presumed to have been given at the time of passing the judgment in capital cases. This is based on the constitutional provision that a sentence of death shall not be executed until confirmed by the highest appellate court.

7. Notice of Appeal in Non-Capital Cases: In non-capital cases, notice of appeal may be given informally at the time of passing the decision against which the appellant intends to appeal. Formal applications for leave to appeal or certificates of general importance are not required in such cases.

8. Notice of Appeal in Acquittals: In cases of acquittals, the Director of Public Prosecutions (DPP) is required to give notice of appeal. The specific rules and procedures for filing the notice of appeal depend on whether the appeal is made to the Court of Appeal or the Supreme Court.

9. DPP's Appeal as of Right: The Director of Public Prosecutions has the right to appeal to the Supreme Court as specified in Section 5(1) of the Judicature Act. This includes the right to appeal in criminal matters and in cases involving death sentences.

10. Scope of Appeals: The scope of appeals to the Supreme Court is determined by the nature of the case. Section 5(1) of the Judicature Act outlines the following:

a. Conviction from the High Court or Court of Appeal: The appeal to the Supreme Court is limited to matters of law or mixed law and fact.



b. Acquittal from the High Court and subsequent conviction in the Court of Appeal: The appeal to the Supreme Court can cover matters of law, fact, or mixed law and fact.

c. Conviction in the High Court followed by an acquittal in the Court of Appeal: The Director of Public Prosecutions' (DPP) appeal in the Supreme Court is limited to matters of law or mixed law and fact for a declaratory judgment.

d. Acquittal in the High Court and subsequent acquittal in the Court of Appeal: The DPP's appeal to the Supreme Court is limited to matters of law of general importance.

11. Grounds of Appeal: When determining the grounds of appeal, several factors should be considered, including:

- Conduct of the trial.

- Sufficiency of evidence to sustain the charges.

- Errors of fact and law by the trial judge or magistrate.

- Legality of the sentence.

- Misdirection's or non-directions by the trial judge or magistrate.

- Admission of evidence, particularly regarding inadmissibility and irrelevance.

- Reliance on fanciful theories by the trial judge or magistrate.

- Material irregularities.

- Evaluation of evidence on record.

These grounds provide a basis for challenging the trial court's decision and seeking a review or reversal of the judgment on appeal. It is crucial to analyze the specific circumstances and seek legal advice to identify the most effective grounds of appeal in each case.

12. Time Frames for Lodging Appeals: The general rule, as per Section 28 of the Criminal Procedure Code Act, is that an appeal is initiated by lodging a notice of appeal with the Registrar of the court where the decision was made. If an appeal is filed after the prescribed time, an application for an extension of time can be made to the High Court, as provided under Section 31 of the Criminal Procedure Code Act.

The specific time frames and procedures for lodging appeals may vary depending on the court to which the appeal is made. It is important to adhere to these time limits and seek an extension if necessary to ensure that the appeal is filed within the prescribed period.

Please note that the information provided here is a summary of certain legal issues related to appeals and should not be considered as legal advice. The specific rules, procedures, and requirements may vary based on jurisdiction and individual circumstances. It is recommended to consult with a qualified legal professional for accurate guidance in your particular case.



- **Highlight the key legal issues related to third appeals and certificates of general importance**

1. Certificate of General Importance: The criteria for obtaining a certificate of general importance differ depending on whether the application is made to the Court of Appeal or the Supreme Court. In the Court of Appeal, the applicant must demonstrate that the matter raises a question of great public importance or a question of law of

general importance. In the Supreme Court, an application for certification should be made informally at the time the Court of Appeal's decision is given, or within 14 days after the Court of Appeal's refusal to grant the certificate.

2. Appeals from the Court of Appeal: The Constitution and the Judicature Act establish the right of appeal from the Court of Appeal to the Supreme Court. The scope of the appeal in the Supreme Court depends on the nature of the case, such as whether it involves a conviction, acquittal, or a combination of both. The scope can be limited to matters of law, fact, or mixed law and fact.

3. Grounds of Appeal: Various grounds can be considered when determining the basis for an appeal, including the conduct of the trial, sufficiency of evidence, errors of fact and law by the trial judge, legality of the sentence, misdirection's or non-directions by the trial judge, admission of evidence, reliance on fanciful theories, material irregularities, and evaluation of evidence on record.

4. Time Frames for Lodging Appeals: The general rule is that an appeal is initiated by lodging a notice of appeal with the relevant court within the prescribed time frame. If an appeal is filed after the specified period, an application for an extension of time can be made to the appropriate court.

5. DPP's Right of Appeal: The Director of Public Prosecutions (DPP) has the right to appeal to the Supreme Court in certain criminal matters, including cases where a person is sentenced to death or in other criminal matters as provided by the Judicature Act.

Please note that this summary provides an overview of the legal issues related to third appeals and certificates of general importance. It is important to consult the relevant laws, rules, and seek legal advice for accurate and specific guidance in each individual case.

- **DISCUSS 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.

- **OUTLINE 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.

**Director of public prosecution'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.

The legal issues related to remedies, specifically bail pending appeal and appeals under the UPDF Act, can be summarized as follows:

1. Bail Pending Appeal:

- Bail pending appeal is the basic remedy available in appeals, except in cases where the appellant has been sentenced to death.

- Exceptional circumstances need to be proven to be granted bail pending appeal.

- Factors considered for exceptional circumstances include the character of the appellant, the possibility of substantial delay in the appeal hearing, the appeal not being frivolous or vexatious, and the non-violent nature of the offense.

2. Procedure for Application for Bail Pending Appeal:

- The specific procedure for applying for bail pending appeal may vary depending on the applicable legislation.

- In the Criminal Procedure Act and the Trial on Indictments Act, Section 40 and Section 132(4) respectively govern the bail pending appeal process.

3. Appeals under the UPDF Act:

- The UPDF Act provides a right of appeal from a unit disciplinary committee or a court martial to the court martial court.

- The grounds of appeal include the legality of findings, the legality of the sentence (whole or part), and the severity or leniency of the sentence.

- Notice of appeal must be lodged with the Registrar of the Unit Disciplinary Committee or the Court Martial within a specified period after the delivery of the decision.

- Bail pending appeal in the UPDF Act is only granted in exceptional circumstances, except in cases where the person has been sentenced to death or a maximum of 5 years imprisonment.

4. Procedure of Appeal under the UPDF Act:

- The appeal process under the UPDF Act involves lodging a notice of appeal, followed by a memorandum of appeal.

- The notice of appeal should be lodged within 30 days from the date of delivery of the court martial court's judgment.

- The memorandum of appeal should be lodged within 30 days from the date of receipt of the copy of the court martials judgment.

It's important to note that the information provided is a summary and may not cover all the intricacies of these legal issues. If you have specific questions or require further clarification, please let me know.

5. Notice of Appeal and Memorandum of Appeal:

- In both the Criminal Procedure Act and the UPDF Act, the appeal process involves lodging a notice of appeal and a memorandum of appeal.

- The notice of appeal is a formal document that initiates the appeal process and notifies the court and the opposing party about the intent to appeal.

- The memorandum of appeal provides detailed grounds for the appeal and outlines the arguments and legal basis for challenging the lower court's decision.

- Both the notice of appeal and the memorandum of appeal are crucial documents in the appeal process and must be submitted within the specified time limits.

6. Time Limits for Appeal:

- In both the Criminal Procedure Act and the UPDF Act, there are specific time limits within which the notice of appeal and the memorandum of appeal must be lodged.

- Failure to comply with these time limits may result in the appeal being dismissed or rejected.

- It is important for appellants to be aware of and adhere to these time limits to ensure their appeal is properly filed.

7. Court Martial Appeal Court Regulations:

- The UPDF (Court Martial Appeal Court) Regulations SI 307-7 provide additional procedural guidelines for appeals under the UPDF Act.

- These regulations govern various aspects of the appeal process, including the format and content of the notice of appeal and the memorandum of appeal, timelines for lodging the appeal, and other procedural requirements.

- Parties involved in the appeal should familiarize themselves with these regulations to ensure compliance with the procedural rules.



8. Exceptional Circumstances for Bail Pending Appeal:

- When seeking bail pending appeal, the appellant must demonstrate exceptional circumstances to be granted such bail, except in cases where the appellant has been sentenced to death.

- The case law of Merali vs. Republic (1972) EA 48 and Arvind Patel vs. Uganda SCCA 1 of 2003 provide guidance on the exceptional circumstances that may be considered, including factors such as the character of the appellant,

the possibility of substantial delay in the appeal hearing, the non-frivolous or vexatious nature of the appeal, and the non-violent nature of the offense.

9. Procedure for Application for Bail Pending Appeal:

- The specific procedure for applying for bail pending appeal may vary depending on the jurisdiction and the applicable laws.

- Generally, the appellant or their legal representative would need to file an application with the relevant court, supported by an affidavit outlining the exceptional circumstances and reasons why bail should be granted.

- The court will consider factors such as the likelihood of success on appeal, the risk of flight, the appellant's ties to the community, and the potential impact on public safety when deciding whether to grant bail pending appeal.

It is important to note that legal procedures and requirements can vary depending on the jurisdiction and the specific laws applicable to the case. Therefore, it is always recommended to consult with a qualified legal professional to ensure accurate and up-to-date information regarding remedies such as bail pending appeal.

10. Appeals under the UPDF Act:

- Section 227(1) of the UPDF Act provides for the right of appeal from a unit disciplinary committee or a court martial to the court martial court. The appeal can be made regarding the legality of the findings, the legality of the sentence, or the severity or leniency of the sentence.

- According to Section 229(2) of the Act, the appeal is initiated by lodging a notice of appeal with the Registrar of the Unit Disciplinary Committee or the Court Martial within a specified period after the delivery of the decision. This notice is followed by the submission of a memorandum of appeal.

11. Bail Pending Appeal under the UPDF Act:

- Section 231 of the UPDF Act stipulates that bail pending appeal in military cases will only be granted in exceptional circumstances, except when the person has been sentenced to death or a maximum of 5 years imprisonment.

- Rule 8 of the UPDF (Court Martial Appeal Court) Regulations SI 307-7 reinforces the requirement of exceptional circumstances for granting bail pending appeal.



12. Appeal Procedure under the UPDF Act:

- Regulation 6(1) of the UPDF (Court Martial Appeal Court) Regulations SI 307-7 states that the appeal process begins with the lodging of a notice of appeal, followed by a memorandum of appeal.

- The notice of appeal must be lodged within 30 days from the date of the delivery of the judgment by the court martial court, as per Regulation 6(2).

- Similarly, the memorandum of appeal should be lodged within 30 days from the receipt of the copy of the court martials judgment, as per Regulation 6(3).

13. APPEALS UNDER THE ADMINISTRATIVE LAW:

- In administrative law, remedies for appeals may vary depending on the jurisdiction and the nature of the administrative decision being challenged.

- Generally, an appeal may be filed to a higher administrative authority, an administrative tribunal, or a specialized court designated to hear administrative law matters.

- The specific procedures and requirements for filing an appeal in administrative law cases are typically outlined in the relevant administrative law statutes or regulations of the jurisdiction.

14. JUDICIAL REVIEW:

- Judicial review is another important remedy in administrative law. It involves the review of administrative decisions by the courts to ensure they are lawful, reasonable, and fair.

- Judicial review can be sought when there are allegations of procedural errors, ultra vires (beyond the authority) actions, errors of law, or violations of fundamental rights by the administrative body.

- The grounds and procedures for seeking judicial review may vary depending on the jurisdiction, but they generally involve filing an application to the appropriate court within a specified timeframe.

15. REMEDIES IN CIVIL LAW:

- In civil law, remedies primarily aim to compensate for any harm or loss suffered by the aggrieved party.

- Common remedies in civil law include monetary damages, specific performance (compelling the party to fulfill contractual obligations), injunctions (court orders to restrain certain actions), and declaratory judgments (determining the parties' rights and legal obligations).

- The availability and scope of these remedies depend on the nature of the civil claim and the applicable civil law statutes and precedents.

It's important to note that the specifics of remedies in appeals, administrative law, and civil law can vary significantly across jurisdictions and legal systems. Consulting the relevant laws, regulations, and seeking legal advice from a qualified professional are crucial for accurate guidance in specific cases.



16. REMEDIES IN EQUITY:

- Equity is a branch of law that provides additional remedies beyond those available in common law jurisdictions.

- Remedies in equity focus on fairness, justice, and equitable principles rather than strict legal rights and rules.

- Some common remedies in equity include specific performance, injunctions, rescission (canceling a contract), restitution (returning property or compensation), and equitable compensation (monetary awards based on equitable principles).

- The availability of equitable remedies depends on the jurisdiction and the specific circumstances of the case.

17. REMEDIES IN INTERNATIONAL LAW:

- In international law, remedies are sought for violations of international legal obligations by states or other international actors.

- Remedies in international law can include diplomatic measures, economic sanctions, arbitration, international adjudication, and the invocation of international treaties and conventions.

- The enforcement of international law and the availability of remedies can vary depending on the specific legal framework and the consent of the involved states or parties.

18. ALTERNATIVE DISPUTE RESOLUTION (ADR):

- Alternative Dispute Resolution methods, such as mediation and arbitration, provide alternative remedies outside of traditional litigation.

- These methods offer parties an opportunity to resolve disputes through negotiation, facilitated discussions, or binding decisions made by a neutral third party.

- ADR can be a quicker, cost-effective, and less adversarial alternative to traditional litigation, and the remedies available are determined by the agreed-upon rules and procedures of the chosen ADR method.

It's important to note that the specific remedies available in different areas of law can be complex and subject to change based on legislation, case law, and jurisdiction. Seeking legal advice and consulting the applicable laws and regulations in specific situations is crucial to understanding and pursuing the appropriate remedies.

19. REMEDIES IN CONTRACT LAW:

- In contract law, remedies are sought for breach of contract, where one party fails to fulfill their contractual obligations.

- Common remedies in contract law include damages (monetary compensation), specific performance (compelling the breaching party to fulfill their contractual obligations), and rescission (canceling the contract and restoring the parties to their pre-contractual positions).

- The availability of specific remedies in contract law may depend on the nature of the breach, the terms of the contract, and the applicable laws and principles governing contracts in the jurisdiction.



20. REMEDIES IN TORT LAW:

- Tort law addresses civil wrongs or injuries caused by one party to another, leading to legal liability.

- Remedies in tort law aim to compensate the injured party for their losses or injuries.

- Common remedies in tort law include damages (compensatory and punitive), injunctions (restraining orders), and declaratory relief (a court declaration of the rights and obligations of the parties).

- The specific remedies available in tort law may vary depending on the type of tort, jurisdiction, and the circumstances of the case.

21. REMEDIES IN PROPERTY LAW:

- Property law governs the rights and interests in real property (land and real estate) and personal property (movable assets).

- Remedies in property law include actions to protect property rights, such as eviction, quiet title actions (resolving ownership disputes), and specific performance (enforcing agreements related to property).

- In cases of property damage or trespass, remedies may include damages, injunctive relief, or the restoration of the property to its original condition.

22. REMEDIES IN FAMILY LAW:

- Family law deals with legal issues concerning marriage, divorce, child custody, support, and related matters.

- Remedies in family law can include divorce decrees, child custody orders, child support orders, spousal support (alimony), and property division.

- Family law remedies aim to address the legal rights and responsibilities of family members and promote the best interests of children involved.

23. REMEDIES IN EMPLOYMENT LAW:

- Employment law governs the relationship between employers and employees, including their rights, obligations, and working conditions.

- Remedies in employment law can include back pay (compensation for lost wages), reinstatement (restoring the employee to their previous position), injunctive relief (restraining orders), and damages for wrongful termination or discrimination.

- Other remedies may include remedies for workplace harassment, breach of employment contracts, or violations of labor laws.

24. REMEDIES IN INTELLECTUAL PROPERTY LAW:

- Intellectual property law protects creations of the mind, such as inventions, trademarks, copyrights, and trade secrets.

- Remedies in intellectual property law can include injunctive relief (preventing the unauthorized use or infringement of intellectual property), damages (monetary compensation for losses), and account of profits (disgorgement of profits made by the infringing party).

- Specialized remedies such as seizure and destruction of infringing goods may also be available in some cases.

25. REMEDIES IN ADMINISTRATIVE LAW:

- Administrative law deals with the actions and decisions of administrative agencies and government bodies.

- Remedies in administrative law can include judicial review (challenging the legality or fairness of administrative decisions in court), declaratory relief (determining the rights and obligations of the parties), and injunctions (restraining orders) to prevent or compel certain administrative actions.

- Administrative law remedies seek to ensure that administrative agencies act within their delegated authority and in accordance with the law.

26. REMEDIES IN INTERNATIONAL LAW:

- International law governs the relations between sovereign states and other international actors.

- Remedies in international law can include diplomatic negotiations, arbitration, and adjudication before international courts or tribunals.

- Remedies in international law aim to resolve disputes between states, enforce international obligations, and provide redress for violations of international law.

27. REMEDIES IN CONSUMER LAW:

- Consumer law protects consumers from unfair practices and ensures their rights in transactions with businesses.

- Remedies in consumer law can include refunds, replacements, repairs, or compensation for defective or misrepresented goods or services.

- Other remedies may include the right to cancel contracts or seek compensation for financial losses caused by unfair business practices.

28. REMEDIES IN ENVIRONMENTAL LAW:

- Environmental law focuses on the protection and preservation of the environment and natural resources.

- Remedies in environmental law can include injunctive relief to stop or prevent environmental harm, restoration orders to repair or rehabilitate damaged ecosystems, and monetary damages for environmental pollution or destruction.

- Remedies may also involve regulatory enforcement, penalties, and fines for non-compliance with environmental regulations.



29. REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW:

- International human rights law protects the fundamental rights and freedoms of individuals worldwide.

- Remedies in international human rights law can include individual complaints mechanisms before international human rights bodies, such as the United Nations Human Rights Council or regional human rights courts.

- Remedies aim to provide redress for human rights violations, seek reparations for victims, and hold states accountable for their actions.

30. REMEDIES IN TAX LAW:

- Tax law governs the collection and administration of taxes imposed by governments.

- Remedies in tax law can include filing appeals or disputes against tax assessments, seeking tax refunds, negotiating settlements with tax authorities, and challenging tax-related decisions in court.

- Other remedies may involve tax credits, deductions, or exemptions available under tax laws.

1. Applicable Laws: Criminal revision applications are governed by Sections 48 and 50 of the Criminal Procedure Code Act Cap 116 and Section 17 of the Judicature Act Cap 13.

2. Power of High Court: Section 48 of the Criminal Procedure Act empowers the High Court to call for and examine the record of any criminal proceedings before a magistrate's court to assess the correctness, legality, or propriety of any finding, sentence, order, or the regularity of the proceedings.

3. Grounds for Criminal Revision: Under Section 50 of the Criminal Procedure Act, the High Court may exercise its power of revision if it appears that an error material to the merits of the case or involving a miscarriage of justice has occurred in the proceedings before the magistrate's court.

4. Revision of Convictions: In case of a conviction, the High Court can exercise the powers conferred on it as a court of appeal to review the conviction, enhance the sentence, and alter or reverse any other order, except an order of acquittal.

5. Meaning of "Any Other Order": The term "any other order" referred to in Section 50(1)(b) of the Criminal Procedure Act pertains to a final order of the lower court, and not interlocutory orders. Interlocutory orders are not subject to revision or appeal until a final decision is reached.

6. Final Order as Revisional Order: A judgment or final order is the appealable order in a criminal case. It must be definitive of the rights of the parties and dispose of at least a substantial portion of the relief claimed in the main proceedings.



7. Scope of Revisional Powers: The revisional powers of the High Court are not ordinarily applicable to interlocutory orders. A wrong view of the law or a misapprehension of evidence alone does not justify interference or revision unless it has resulted in grave injustice.

8. Abuse of Process and Expeditious Trials: Section 17(2) of the Judicature Act grants the High Court inherent power to prevent abuse of the court process, ensure expeditious trials, curtail delays, and administer substantive justice without undue regard to technicalities. Revision of interlocutory orders goes against these principles and can lead to undue delay and abuse of the process of the court.

9. Right to Fair Trial: The right to a fair trial does not imply that an accused person has the right to challenge every objection or ruling during the proceedings. Allowing revision of interlocutory orders would unduly undermine the procedures and effective conduct of trials, potentially leading to the abuse of the court process.

10. Competency and Prematurity of Revision Applications: Revision applications filed against interlocutory orders are considered incompetent, premature, and incurable in law. Such applications are aimed at delaying or frustrating the delivery of substantive justice and are not deserving of a revisional order.

11. Need for Finality in Litigation: Section 17(2) of the Judicature Act emphasizes the importance of bringing litigation to finality. Subjecting interlocutory orders to revision would hinder the goal of achieving expeditious trials, curtailing delays, and ensuring substantive justice. Revision should be reserved for final orders that definitively determine the rights of the parties.

12. Judicial Discretion: It is important to note that the power of criminal revision lies within the discretion of the High Court. The court has the authority to determine whether a revision application is appropriate based on the circumstances of the case, the nature of the order being challenged, and the interests of justice.

13. Grounds for Revision: Section 50(1) of the Criminal Procedure Code Act provides the grounds for revision, which include the presence of an error material to the merits of the case or a miscarriage of justice. These grounds must be satisfied for the High Court to exercise its revisional powers.

14. Scope of Revision: The scope of revision is limited to correcting errors or miscarriages of justice in the proceedings of the lower court. The High Court may alter, reverse, or enhance a conviction or any other order, except an order of acquittal, if it deems necessary to rectify the error or injustice.

15. Role of Case Law: Case law plays a crucial role in guiding the interpretation and application of the provisions related to criminal revision. Previous court decisions, as cited in the text, provide guidance on what constitutes a final order, the limitations on revision, and the importance of differentiating between interlocutory and final orders.

16. Importance of Due Process: The underlying principle in criminal revision is to ensure due process and fair administration of justice. The High Court's power to call for records and revise orders aims to safeguard the correctness, legality, and propriety of the proceedings, preventing any potential miscarriage of justice.

17. Judicial Efficiency and Expediency: Balancing the need for fair trials with judicial efficiency and expediency is crucial. Allowing revision of interlocutory orders could lead to unnecessary delays, increased caseload, and potential abuse of the revision process. Therefore, the focus is often on final orders that have a substantial impact on the outcome of the case.

18. Protection against Abuse: The limitations on revising interlocutory orders are in place to protect against the abuse of the revision process. Allowing revision of every objection or ruling in the course of proceedings could lead to excessive interference, procedural delays, and undermine the efficient administration of justice.

19. Finality of Decisions: Emphasizing the importance of finality, the Criminal Procedure Code Act and case law highlight that revision is typically applicable to final orders or judgments that dispose of a substantial portion of the relief claimed in the main proceedings. Interlocutory orders, which are typically procedural or preliminary in nature, are not subject to revision.

20. Inherent Powers of the High Court: Section 17(2) of the Judicature Act empowers the High Court with inherent powers over its own procedures and those of the magistrates' courts. These powers aim to prevent abuse of the court process, ensure expeditious trials, and administer substantive justice without undue regard to technicalities.

21. Procedural Fairness: While criminal revision safeguards the rights of the accused, it is important to strike a balance between procedural fairness and the need for efficient legal proceedings. Allowing revision of interlocutory orders would undermine the timely resolution of cases and potentially disrupt the overall administration of justice.

22. Dismissal of Incompetent Applications: When a criminal revision application challenges an interlocutory order, it is considered premature, incompetent, and misconceived. Such applications do not fulfill the requirements for revision and are aimed at delaying or frustrating the delivery of substantive justice.

23. Judicial Discretion and Justifiable Revision: The exercise of revisional powers lies within the discretion of the High Court. It is the court's responsibility to assess the merits of each application, determine whether an error or miscarriage of justice has occurred, and decide whether revision is justifiable in the given circumstances.

24. Role of Appellate Process: It is important to note that the appellate process provides a more appropriate avenue for challenging interlocutory orders. Appeals allow for a comprehensive review of the entire case and provide an opportunity to address any errors or injustices that may have occurred during the proceedings.

25. Respecting Procedural Hierarchy: The legal framework surrounding criminal revision underscores the hierarchical nature of the court system. Interlocutory orders are meant to be addressed and resolved within the lower court before advancing to higher courts for review. This procedural hierarchy promotes efficiency and allows for the orderly progression of cases.

26. Safeguarding Substantive Justice: The ultimate goal of the criminal justice system is to ensure substantive justice is served. By focusing revision on final orders that have a significant impact on the outcome of a case, the system aims to uphold the rights of the accused, protect against miscarriages of justice, and promote the fair and efficient resolution of criminal matters.

27. Application of Precedent: The cited cases and legal interpretations serve as precedents in guiding the understanding of the scope and application of criminal revision provisions. They establish the requirement for a final order or judgment as the subject of revision and clarify that interlocutory orders are not suitable for revision.

28. Judicial Discretion in Exceptional Circumstances: While the general principle is to limit revision to final orders, there may be exceptional circumstances where the High Court may exercise its discretion to revise interlocutory orders. However, such cases are rare and require compelling reasons that demonstrate a grave injustice or exceptional circumstances warranting intervention.

29. Consistent Application of the Law: The judiciary strives for consistency and uniformity in its application of the law. By adhering to established principles and precedents, the courts ensure predictability and fairness in their decisions, thereby maintaining public confidence in the justice system.

30. Need for Timely and Effective Justice: The exclusion of interlocutory orders from revision ensures that the criminal justice system operates smoothly and efficiently. Allowing revision of every interlocutory order could lead to unnecessary delays and abuse of the process. It is crucial to strike a balance between providing access to justice and preventing undue hindrance to the progress of criminal cases.

31. Importance of Appeal Mechanism: The availability of an appeal mechanism provides an appropriate avenue for parties to challenge interlocutory orders. Appeals allow for a comprehensive review of the case, including both legal and factual aspects, and provide an opportunity to correct any errors or address any perceived injustices. This promotes fairness and ensures that parties have a chance to present their arguments before a higher court.

32. Preserving the Distinction between Revision and Appeal: Maintaining a clear distinction between revision and appeal is essential for the effective functioning of the criminal justice system. Revision is intended to address errors of a substantial nature or miscarriages of justice in final orders, while appeals focus on reviewing the entirety of the case. Adhering to this distinction enhances clarity, consistency, and fairness in the administration of justice.

33. Balancing Judicial Resources: Limiting revision to final orders helps allocate judicial resources effectively. The courts can prioritize their time and attention to cases that require immediate review and decision-making, rather than being burdened with numerous applications for revising interlocutory orders. This approach enables the judiciary to handle cases more efficiently and expeditiously.

34. Protecting the Rights of the Accused and the Prosecution: By limiting revision to final orders, the rights of both the accused and the prosecution are safeguarded. Final orders have a direct impact on the outcome of the case, and it is at this stage that revision can address any errors or injustices that may have occurred. This ensures that the parties receive a fair trial and have the opportunity to seek appropriate remedies.

35. Legislative Intent and Interpretation: The interpretation and application of criminal revision provisions should align with the legislative intent behind enacting such laws. The purpose of criminal revision is to rectify substantial

errors or miscarriages of justice in final orders, and the courts should interpret the provisions in a manner that upholds this intent and promotes the effective administration of justice.

In summary, the legal issues involved in the criminal revision context discussed above revolve around the scope of revision, the distinction between interlocutory and final orders, the role of the appellate process, the need for timely and effective justice, the preservation of judicial resources, and the protection of the rights of the accused and the prosecution. By adhering to established principles and striking a balance between access to justice and procedural efficiency, the criminal justice system can uphold the rule of law and ensure fairness in the resolution of criminal cases.

- **DISCUSS 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 injure the delivery of substantive justice, and is not deserving of a Revisional Order.

Summary of Legal Issues in the Given Circumstances:

1. Revision as a Remedy: Revision is available as a remedy after the final judgment of the court, and it cannot be applied for against an interlocutory or preliminary decision of the court.



2. Statutory Right of Appeal: Revision is an available remedy when there is no statutory right of appeal, as stated in Section 50(5) of the Criminal Procedure Code Act.

3. Withdrawal of Appeal: Revision is applicable when an appeal has been filed but later withdrawn.

4. Power of High Court to Call for Records: The High Court has the power to call and examine the records of any criminal proceedings before a magistrate's court to determine the correctness, legality, or propriety of any finding, sentence, or order passed.

5. Supervision over Magistrate Courts: Under Section 17(4) of the Judicature Act, the High Court exercises general powers of supervision over magistrate courts.

6. Grounds for Revision: The High Court can revise a case based on the grounds of correctness, legality, or propriety of any finding, sentence, or order recorded or passed and the regularity of any proceedings of the magistrate's court.

7. Illegal Order: Any order by a magistrate's court without jurisdiction is deemed illegal and null and void abinitio.

8. Erroneous Order or Miscarriage of Justice: 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.

9. Power of Magistrate's Court to Call for Records: Magistrates have the power to call for records of inferior courts and report to the High Court.

10. Bail Pending Revision: The High Court may release a convicted person on bail pending the final determination of the case, and the time spent on bail will be excluded when calculating the sentence.

- **Merits and Demerits of the Client's Case**

Merits:

- Failure to follow due procedure in plea taking: The accused was not properly explained the essential ingredients of the offense and the charge, which may invalidate the guilty plea.

- Acting without or in excess of jurisdiction: The accused can be tried anywhere as per the East African Community Customs Management Act, without the issue of jurisdiction arising.

Demerits:

- Possibility of sentence enhancement: The power of the High Court may extend to enhancing the sentence, although factors such as being a first-time offender, remorseful, and the breadwinner may be considered.

Procedure, Forum, and Documents Needed:

Procedure for Revision:

1. Request the certified record of proceedings.

2. Apply for revision through a notice of motion and affidavit.

3. Pay the requisite fees.

4. Serve the opposite party.

5. Set the application for hearing and determination.

6. Obtain the revision order or denial.

Forum for Revision: The High Court of Uganda.

Procedure for Bail Pending Revision:

1. Apply for bail pending revision through a notice of motion and affidavit.

2. Pay the requisite fees.

3. Serve the opposite party.

4. Set the application for hearing and determination.

5. Obtain the decision on the bail application.

Forum for Bail Pending Revision: The High Court of Uganda.

DOCUMENTS NEEDED FOR REVISION:

1. Certified record of proceedings: A letter should be written to request the certified record of proceedings from the lower court where the conviction took place.



DOCUMENTS NEEDED FOR BAIL PENDING REVISION:

1. Notice of Motion: This document should be prepared, stating the application for bail pending revision and the grounds for the application.

2. Affidavit: An affidavit should be attached to the Notice of Motion, supporting the reasons for seeking bail pending revision.

3. Supporting documents: Any relevant supporting documents, such as character references or evidence of ties to the community, can be included to strengthen the bail application.

Merits and demerits of the client's case:

1. Failure to follow due procedure in plea taking: The client's plea of guilty may be challenged based on the failure to explain the essential ingredients of the offense and the charge properly. This could potentially result in the plea being declared invalid.

2. Acting without or in excess of jurisdiction: The jurisdiction of the magistrate's court to hear the case may be questioned, as the accused can be tried anywhere based on the provisions of the East African Community Customs Management Act 2004.

3. Merits of acting without jurisdiction: The accused was found in Kitgum District, which falls within the jurisdiction of the magistrate's court where the trial took place. Therefore, the issue of jurisdiction may not be a strong argument in this case.

4. Demerits of the case: The client's conviction and sentence may be considered severe, considering factors such as being a first-time offender, remorsefulness, and being the breadwinner. These factors may support a potential reduction of the sentence on revision.

In summary, the legal issues in this case involve the appropriateness of remedies such as revision and bail pending revision. The merits and demerits of the case revolve around the failure to follow due procedure in plea taking and the jurisdiction of the magistrate's court. The applicable laws include the constitution of Uganda, the East African Community Customs Management Act 2004, the judicature act cap 13, the criminal procedure code Act cap 116, and other relevant regulations and guidelines. The procedure for revision and bail pending revision should be followed, and the necessary documents should be prepared and submitted to the High Court, which is the appropriate forum for these applications.

- **STRATEGY FOR REVISING THE CONVICTION**

To challenge the client's conviction, the following strategies can be employed:

1. Identify procedural irregularities: Thoroughly review the records of proceedings to identify any procedural irregularities during the trial. Focus on issues such as failure to properly explain the charges, violation of the accused's rights, or any other errors that could render the conviction invalid.

2. Gather supporting evidence: Collect any additional evidence that may support the client's defense or raise doubts about their guilt. This could include witness statements, alibi evidence, or any other relevant information that was not presented during the original trial.

3. Draft a strong application for revision: Prepare a comprehensive application for revision, highlighting the grounds for challenging the conviction and explaining how the procedural irregularities or new evidence warrant a re-evaluation of the case.

4. Engage legal experts: Seek the assistance of experienced criminal defense lawyers or legal experts specializing in appellate work. Their expertise can greatly strengthen the client's case and ensure that all relevant legal arguments are presented effectively.

5. Submit the application to the High Court: Once the application for revision is complete, file it with the High Court, adhering to the required procedures and timelines. Ensure that all supporting documents, affidavits, and legal arguments are properly included.

- **STRATEGY FOR BAIL PENDING REVISION**

To secure bail for the client pending the revision process, the following strategies can be pursued:

1. Establish exceptional circumstances: Emphasize the exceptional circumstances surrounding the case that justify granting bail pending revision. This could include factors such as the client's strong ties to the community, lack of prior criminal record, or the potential hardship being faced by the client's dependents in their absence.

2. Provide strong surety: Arrange for reliable sureties who can vouch for the client's good character, their willingness to abide by bail conditions, and their commitment to attending all future court hearings.

3. Address flight risk concerns: Address any concerns the court may have regarding the client being a flight risk. Offer assurances that the client has strong reasons to remain in the country and will cooperate fully with the legal proceedings.

4. Argue for the client's right to liberty: Highlight the importance of the client's right to liberty and the principle of "innocent until proven guilty." Demonstrate that the client poses no threat to society and that their continued detention would be unduly harsh considering the prospects of a successful revision.

5. Present mitigating factors: Emphasize any mitigating factors that could influence the court's decision to grant bail, such as the client's exemplary behavior during their time in custody, their cooperation with the authorities, or their participation in rehabilitative programs.



6. Argue based on precedent: Research and identify relevant legal precedents that support the granting of bail pending revision in similar cases. Use these precedents to strengthen the argument that bail should be granted to the client, highlighting similarities in circumstances and legal principles.

7. Address public interest concerns: Anticipate any potential concerns from the prosecution or the court regarding public safety or the risk of the client reoffending if granted bail. Present a compelling case demonstrating that appropriate measures can be put in place to address these concerns, such as strict bail conditions, electronic monitoring, or regular reporting to authorities.

8. Demonstrate progress in the case: Show the court that progress is being made in the revision process, such as the discovery of new evidence or the identification of significant errors in the original trial. This can help build confidence that the revision is likely to result in a different outcome.

9. Highlight potential harm from continued detention: Present evidence of any physical or mental harm the client is experiencing as a result of their continued detention. Medical reports, psychological assessments, or testimonies from experts can help establish the detrimental effects of prolonged incarceration.

10. Craft a persuasive argument: Develop a strong, concise, and persuasive argument in support of the bail application. Clearly articulate the grounds for bail, address counterarguments, and emphasize the client's rights to fair treatment and access to justice.

11. Present a bail plan: Outline a comprehensive bail plan that addresses any concerns raised by the court or the prosecution. This may include proposing suitable bail conditions such as the surrendering of travel documents, regular reporting to authorities, providing a surety, or undergoing counseling or rehabilitation programs.

12. Emphasize ties to the community: Highlight the client's strong ties to the community, such as family, employment, or educational commitments, that serve as incentives for them to comply with bail conditions and appear for the revision proceedings. This can help demonstrate that the client is not a flight risk.

13. Address the risk of interference: If there are concerns about the client interfering with witnesses or the revision process, provide assurances that measures will be taken to prevent any such interference. This may include proposing restrictions on communication, non-contact orders, or the appointment of a bail supervisor to monitor the client's activities.

14. Reference applicable laws and guidelines: Refer to relevant laws, guidelines, and principles that support the granting of bail pending revision. These may include provisions in the criminal procedure code, constitutional rights, or international human rights standards that recognize the right to liberty and fair trial.



15. Prepare supporting documents: Gather supporting documents such as character references, employment records, academic transcripts, or evidence of community involvement to strengthen the client's case for bail. These documents can help establish the client's positive character, stability, and strong roots in the community.

16. Anticipate and address potential objections: Anticipate any potential objections from the prosecution or the court and prepare persuasive counterarguments. This may involve addressing concerns about flight risk, danger to the community, or the seriousness of the alleged offense.

17. Engage a skilled legal advocate: Consider engaging an experienced legal advocate who specializes in criminal law and bail applications. Their expertise and knowledge of the legal system can significantly enhance the chances of a successful bail application.

18. Respect court procedures and decorum: Ensure that all submissions and arguments are presented respectfully and in accordance with court procedures. Maintain professionalism and adhere to the legal standards of conduct throughout the bail application process.

19. Address any potential flight risk concerns: If the prosecution raises concerns about the client being a flight risk, present evidence and arguments to rebut those claims. This may include demonstrating the client's strong community ties, their stable employment or business, their family obligations, or their lack of a criminal record.

20. Propose alternative measures: If the court is hesitant to grant bail due to concerns about public safety or the seriousness of the alleged offense, propose alternative measures that can address those concerns. This could include house arrest, electronic monitoring, regular check-ins with law enforcement, or enrollment in a treatment or rehabilitation program.

21. Offer a strong surety: If a surety is required as part of the bail conditions, identify a reliable and financially stable individual who is willing to act as a surety for the client. Ensure that the proposed surety has a good reputation, can provide the necessary financial guarantee, and is willing to take on the responsibility of ensuring the client's compliance with bail conditions.

22. Highlight weaknesses in the prosecution's case: If there are weaknesses or inconsistencies in the prosecution's case, point them out during the bail application. This can help cast doubt on the strength of the evidence against the client and support the argument for granting bail pending revision.

23. Demonstrate cooperation and willingness to comply: Emphasize the client's willingness to cooperate with the legal process and comply with any bail conditions that may be imposed. This can be done by presenting evidence of the client's past compliance with court orders, their prompt appearance in court, or their voluntary surrender to authorities.



24. Address the impact on the client's well-being: If the client's continued detention poses a significant risk to their physical or mental well-being, present medical or psychological reports that support this claim. It is important to highlight any conditions or circumstances that make the client particularly vulnerable while in custody.

25. Prepare for potential objections from the court: Anticipate any objections that the court may have regarding the bail application and be prepared to address them effectively. This may involve providing additional evidence, legal precedents, or persuasive arguments to alleviate the court's concerns.

26. Respect victim's rights and concerns: Acknowledge and respect the rights and concerns of any victims involved in the case. Address their concerns during the bail application, and if necessary, propose conditions that can ensure their safety and protection.

27. Stay informed about bail laws and precedents: Stay up to date with the latest developments in bail laws and precedents in your jurisdiction. This knowledge can help you build a stronger case by citing relevant legal principles and recent court decisions that support your client's right to bail pending revision.

Remember, the specific strategies and approaches may vary depending on the jurisdiction and the individual circumstances of the case. Consulting with a skilled defense attorney will provide you with tailored advice and guidance throughout the bail application process.

- **OUTLINE CIRCUMSTANCES FOR REVISION**

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

It cannot be applied for against an interlocutory or preliminary decision of the court. (**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.

**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.

**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.

- **DISCUSS 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

**Summary of Legal Issues in the Criminal Proceedings:**

1. Offences Disclosed: The offences disclosed by the facts include Abuse of Office, Embezzlement, Diversion of Public Resources, Causing Financial Loss, False Accounting by a Public Official, and Corruption.

2. Evidence on the Police File: The evidence on the police file needs to be examined to determine if it supports the identified offences. The burden of proof lies with the prosecution, and they need to prove the guilt of the accused beyond a reasonable doubt.

3. Necessary Documents for Court Action: The necessary documents for court action would include the requisitions, accountabilities, bank records, and any other relevant evidence related to the funds and their utilization.



4. Insufficient Evidence: If the evidence is insufficient to support the identified offences, the investigator needs to gather more evidence to strengthen the case. This may involve conducting further investigations, collecting additional documents, or interviewing witnesses.

5. Injustice Caused by Magistrate Grade 1: If there is an injustice caused by a Magistrate Grade 1, the Chief Magistrate should take practical steps to address the situation. This may involve reviewing the case, considering appeals or petitions, and ensuring that the principles of justice are upheld.

6. Applicable Laws: The applicable laws in this case include the Constitution of the Republic of Uganda, the Anti-Corruption Act, the Inspectorate of Government Act, the Criminal Procedure Code Act, the Evidence Act, the Magistrates' Courts Act, and relevant case law.

- **WHAT ARE THE LEGAL ISSUES IN THE CRIMINAL PROCEEDINGS CAN BE SUMMARIZED AS FOLLOWS?**

(a) Offences disclosed by the facts:

1. Abuse of Office: The Refugee Desk Officer-Arua allegedly performed arbitrary acts prejudicial to the interests of his employer, the Office of the Prime Minister, by preparing requisitions with discrepancies and inflated costs. This offense is punishable by imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty-eight currency points, or both.

2. Embezzlement: The Refugee Desk Officer-Arua, as an employee of a public body, allegedly stole UGX. 498,886,000 belonging to his employer. Embezzlement carries a sentence of imprisonment for not less than three years and not more than fourteen years.

3. Diversion of Public Resources: The accused is alleged to have converted, transferred, or disposed of public funds for purposes unrelated to those for which the resources were intended. This offense carries a sentence of imprisonment not exceeding ten years or a fine not exceeding two hundred and forty currency points, or both.

4. Causing Financial Loss: If it can be proven that the accused, in the performance of their duties, knowingly did an act or omission that caused financial loss to their employer, they may be charged with this offense. The penalty for causing financial loss is not specified.

5. False Accounting by a Public Official: If the accused, who is responsible for public money or property, knowingly gave a wrong statement of that money or property, they may be charged with false accounting. The penalty for this offense is not specified.

6. Corruption: The accused may be charged with corruption if they diverted or used public property for purposes unrelated to their intended use or if they engaged in any act or omission in the discharge of their duties for the purpose of obtaining illicit benefits. The penalties for corruption offenses are not specified.

(b) Whether the evidence on the police file supports the offenses identified:

This question requires a detailed analysis of the evidence contained in the police file. Without access to the specific details of the evidence, it is not possible to determine whether the evidence supports the identified offenses.

(c) Document(s) necessary for court action:

The specific document(s) necessary for court action would depend on the nature of the case and the charges brought against the accused. However, relevant documents may include the requisitions, accountabilities, bank statements, and any other evidence that supports the charges.

(d) Next course of action for the investigator where evidence is insufficient:

If the evidence is insufficient to support the identified offenses, the investigator may need to gather additional evidence through further investigation, interviews, or forensic analysis. They may also consult with legal experts for guidance on how to proceed.

(e) Practical steps undertaken by a Chief Magistrate for injustice caused by Magistrate Grade 1:

The question about practical steps to be undertaken by a Chief Magistrate for injustice caused by a Magistrate Grade 1 is not directly related to the given facts and legal issues. It would require a separate analysis and understanding of the specific circumstances and context surrounding the injustice caused.

(b) Whether the evidence on the police file supports the offences identified?

To determine whether the evidence on the police file supports the identified offenses, a comprehensive review of the evidence gathered during the investigation would be necessary. The evidence should be examined to establish whether it establishes the elements of each offense beyond a reasonable doubt. Here are some key points to consider:

1. Abuse of Office: The evidence should establish that the accused, John Musisi, was employed in a public body, namely the Office of the Prime Minister (OPM). It should be proven that he performed an arbitrary act in abuse of his authority that was prejudicial to the interests of his employer. The evidence should demonstrate a direct link between Musisi's actions and the discrepancies in the accountabilities submitted, which suggest inflated costs and misallocation of funds.

2. Embezzlement: The evidence should establish that John Musisi, as an employee of the government, stole or misappropriated the funds amounting to UGX. 498,886,000 that were under his possession by virtue of his employment. It should demonstrate that Musisi intentionally and unlawfully converted the public funds for his own benefit or for the benefit of a third party.

3. Diversion of Public Resources: The evidence should show that John Musisi converted, transferred, or disposed of the public funds for purposes unrelated to the settlement of Congolese and Sudanese refugees, as intended. It should demonstrate that he diverted the funds for his personal gain or for the benefit of a third party.

4. Causing Financial Loss: The evidence should establish that John Musisi, in the performance of his duties, did an act or omission that he knew or had reason to believe would cause financial loss to his employer, the OPM. The evidence should demonstrate the actual occurrence of financial loss and a direct causal link between Musisi's actions and the resulting loss.

5. False Accounting by a Public Official: The evidence should demonstrate that John Musisi, as a public official responsible for the administration and custody of public funds, knowingly provided a false statement or return of the money entrusted to him. It should establish that he deliberately misrepresented the costs and allocations in the accountabilities submitted, providing inaccurate information about the utilization of the funds.

6. Corruption: The evidence should establish that John Musisi, as a public official, engaged in acts or omissions with the intention of illicitly obtaining benefits for himself or a third party. It should demonstrate that he diverted public resources or used them for purposes unrelated to their intended use, resulting in personal gain or benefit for others.

It is important to thoroughly analyze the evidence on the police file, including witness statements, financial records, correspondence, and any other relevant documentation. If the evidence gathered during the investigation supports the elements of the identified offenses beyond a reasonable doubt, it would be appropriate to proceed with court action.

(c) What document(s) are necessary for court action?

- **OUTLINE FOR COURT ACTION, THE DOCUMENTS THAT WOULD BE NECESSARY**

1. Charge Sheet: This document formally charges the accused with the specific offenses identified based on the evidence gathered during the investigation.

2. Witness Statements: Statements provided by witnesses during the investigation, documenting their observations, knowledge, or involvement in the case. These statements may be used as evidence during the trial.



3. Financial Records: Any relevant financial documents, such as bank statements, receipts, or accountabilities, that support the allegations of embezzlement, diversion of funds, or false accounting.

4. Investigative Reports: Reports summarizing the findings of the investigation, including the evidence gathered, analysis conducted, and conclusions reached. These reports provide a comprehensive overview of the case and support the charges against the accused.

5. Any Other Relevant Documentation: This may include emails, memos, or other records that demonstrate the accused's involvement in the alleged offenses or provide further context to support the charges.

(d) What should the investigator do if the evidence is insufficient?

If the evidence on the police file is deemed insufficient to support the identified offenses, the investigator should consider taking the following steps:

1. Re-evaluate the Evidence: Review the existing evidence to identify any potential gaps or weaknesses. Assess whether additional analysis, examination, or expert opinions could strengthen the case.

2. Conduct Further Investigation: If the evidence is insufficient, the investigator may need to gather additional evidence through further investigation. This could involve re-interviewing witnesses, obtaining additional financial records, conducting forensic analysis, or seeking new sources of information.

3. Consult Legal Experts: Seek advice from legal experts, such as prosecutors or senior investigators, to determine if the available evidence can be augmented or if there are alternative legal approaches that could strengthen the case.

4. Collaborate with Other Agencies: If necessary, collaborate with other relevant agencies, such as forensic experts or specialized investigative units, to gather additional evidence or expertise.

5. Preserve the Chain of Custody: Ensure that the existing evidence is properly preserved and documented to maintain its integrity and admissibility in court.



(e) Practical steps undertaken by a Chief Magistrate for injustice caused by a Magistrate Grade 1:

To address any injustice caused by a Magistrate Grade 1, the Chief Magistrate may consider the following practical steps:

1. Review the Case: Thoroughly review the case where the injustice occurred, including examining the court records, evidence, and proceedings. Identify any irregularities, errors, or instances where justice may not have been served.

2. Consult with Legal Experts: Seek advice from legal experts, such as senior judges or legal scholars, to evaluate the merits of the case and the potential injustice caused. Their expertise can provide insights into legal remedies or avenues for redress.

3. Conduct an Internal Inquiry: If warranted, initiate an internal inquiry into the conduct of the Magistrate Grade 1 to assess whether their actions or decisions deviated from legal standards or codes of conduct. This inquiry may involve gathering evidence, interviewing relevant parties, and considering any mitigating or aggravating factors.

4. Provide Remedial Measures: If the inquiry confirms an injustice, the Chief Magistrate may take remedial measures, such as ordering a retrial, vacating the judgment, or recommending disciplinary action against the Magistrate Grade 1. The specific actions will depend on the nature and severity of the injustice.

5. Enhance Judicial Training: Implement measures to improve judicial training and professional development, ensuring that magistrates receive ongoing education on legal principles, ethics, and best practices. This can help prevent future injustices and enhance the overall quality of the judiciary.

It's important to note that the practical steps mentioned above are general suggestions, and the specific actions taken may vary depending on the legal jurisdiction, the magnitude of the injustice, and the available mechanisms for accountability and redress.

6. Judicial Oversight: Establish mechanisms for ongoing judicial oversight to monitor the performance and conduct of magistrates. This can involve regular evaluations, peer reviews, or feedback mechanisms to address any concerns or issues promptly.
7. Public Awareness and Transparency: Promote transparency and public awareness of the judiciary's actions and processes. This can be achieved through initiatives such as publishing judgments, providing accessible information about legal procedures, and actively engaging with the public to address their concerns.
8. Appropriate Training and Support: Ensure that magistrates receive the necessary training and support to perform their duties effectively. This includes providing guidance on ethical conduct, legal interpretation, case management, and decision-making processes.
9. Collaboration with Judicial Institutions: Foster collaboration with other judicial institutions, such as higher courts or judicial commissions, to address complex cases or situations where there is a risk of injustice. This collaboration can provide valuable insights, guidance, or even facilitate the transfer of cases for review.
10. Continuous Improvement: Implement a culture of continuous improvement within the judiciary. This involves regularly evaluating and reflecting on past cases and decisions to identify areas for improvement, address systemic issues, and enhance the overall fairness and efficiency of the judicial system

- **USE THESE BRIEF FACTS FOR STUDY**

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

The legal issues involved in the given scenario are as follows:

1. Insufficiency of Evidence: The investigator is facing a situation where the evidence gathered so far is not sufficient to establish and prove all the elements of the offense beyond a reasonable doubt. This raises concerns about the possibility of an acquittal if the case proceeds without additional evidence.

2. Special Investigation Powers: The Anti-Corruption Act grants special investigation powers to the Inspector General of Government and the Director of Public Prosecutions. These powers include authorizing police officers or special investigators to investigate bank accounts, share accounts, or purchase accounts of individuals suspected of committing offenses under the Act.

3. Restriction of Assets and Bank Accounts: The court has the authority to issue orders restricting the operation of bank accounts or disposal of property associated with the accused person or persons suspected of committing an offense. This is done to ensure the payment of compensation to victims or prevent the dissipation of any proceeds derived from the offense.

4. Inspection of Documents: The Inspector General of Government and the Director of Public Prosecutions have the power to order the inspection of documents if they believe that such documents contain evidence related to the commission of an offense. Police officers or special investigators can be authorized to enter the premises and inspect the specified documents.

5. Obtaining Information: The Director of Public Prosecutions and the Inspector General of Government have the power to obtain information related to an offense by issuing a written notice. This can include requiring individuals to provide sworn statements enumerating their movable or immovable property and the dates of acquisition.

6. Need for Additional Evidence: The defense counsel identifies several discrepancies and missing evidence in the case, such as the report of a handwriting expert, employment contracts, bank statements, evidence of payments, search warrant and certificates, and other relevant documents. The defense counsel suggests that additional evidence is necessary to address these gaps and inconsistencies.



The next course of action for the investigator, as advised, would be to gather more evidence to establish and prove the elements of the offense that have not been adequately established. This can involve utilizing the special investigation powers granted by the law, such as ordering sworn statements, investigating bank accounts, inspecting documents, and obtaining relevant information.

As defense counsel, after the prosecution has closed its case and led evidence from the witnesses mentioned, the next step would be to make a submission of a "no case to answer." This means arguing that the evidence presented by the prosecution is insufficient to establish a prima facie case against the accused. The defense counsel would contend that there is no need for the accused to present a defense as the prosecution has failed to meet the required standard of proof.

It's important to note that legal strategies and actions may vary depending on the specific jurisdiction and applicable laws. It's advisable for the defense counsel to consult with legal experts and consider the relevant legal provisions and precedents in the jurisdiction where the case is being tried.

In making a submission of a "no case to answer," the defense counsel would argue that the prosecution has not presented sufficient evidence to establish the essential elements of the offense. The defense counsel may point out the inconsistencies in the testimonies of the prosecution witnesses, the missing documents, and the lack of concrete evidence linking the accused to the alleged offenses.

The defense counsel could highlight the following points:

1. Lack of Corroborating Evidence: The defense can argue that the prosecution's witnesses have provided contradictory statements and that their testimonies are not supported by any corroborating evidence. For example, the defense counsel can question the reliability of the handwriting expert's report, the absence of the accused's employment contract, and the discrepancies in the bank statements.
2. Unreliable Witnesses: The defense counsel can challenge the credibility of the prosecution witnesses. For instance, the defense may question the motive of witnesses who assert they received significantly lower amounts of money than what the accused accounted for, or who claim to have sold a substantially smaller number of items compared to the reported figures.
3. Failure to Establish the Accused's Knowledge or Involvement: The defense counsel can argue that the prosecution has not provided sufficient evidence to demonstrate that the accused had knowledge of the alleged corrupt activities or actively participated in them. The absence of clear links between the accused and the fraudulent transactions can be emphasized.
4. Lack of Proper Documentation: The defense can highlight the missing documents, such as the search warrant, search certificate, and the three recovered documents. This raises doubts about the validity and completeness of the evidence presented by the prosecution.
5. Failure to Quantify the Amount Stolen: The defense counsel can question the prosecution's failure to provide a precise report on the amount of money actually stolen. Without a clear determination of the actual loss incurred, it becomes difficult to establish the magnitude of the offense and the accused's specific involvement.

Based on these arguments, the defense counsel can request the court to dismiss the case on the grounds that the prosecution has failed to establish a prima facie case against the accused. The defense may argue that there is no need for the accused to present a defense since the evidence presented is insufficient to meet the required standard of proof.

It's important to note that the specific legal strategies and arguments will depend on the jurisdiction and the applicable laws. The defense counsel should consult with legal experts and consider the specific circumstances of the case to determine the most appropriate course of action

Summary of Legal Issues in the "No Case to Answer" submission:

1. Prima Facie Case: A prima facie case refers to a case in which a reasonable tribunal, properly directing its mind to the law and evidence, could convict if no explanation is offered by the defense. It is not equivalent to proof beyond reasonable doubt but requires sufficient evidence for a reasonable tribunal to potentially convict.

2. Essential Elements of the Offense: A submission of no case to answer may be upheld if there is no evidence to prove an essential element of the alleged offense. The prosecution must establish all the essential ingredients of the offense for a prima facie case to be established.

3. Discredited or Unreliable Evidence: A submission of no case to answer can succeed if the evidence adduced by the prosecution has been discredited through cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict based on it.

4. Manifestly Unreliable Prosecution Witnesses: If the principal prosecution witnesses have been shown to be manifestly unreliable, the submission of no case to answer may be successful. Major contradictions in their evidence or deliberate lies that undermine the credibility of the witnesses can weaken the prosecution's case.

5. No Evidence to Sustain the Charge: If there is no evidence to sustain a charge, there is no case for the accused to answer. The essential ingredients of the offense must be proved for a prima facie case to be established.

6. Weight of Evidence: A mere scintilla of evidence or any amount of worthless discredited evidence is insufficient to establish a prima facie case. The evidence must have sufficient credibility and weight to potentially support a conviction.

7. Acquittal and Dismissal of the Case: 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 or her to make a defense, the court shall dismiss the case and acquit the accused. This means that if the evidence presented by the prosecution is insufficient to establish a prima facie case, the court can enter a no case to answer and acquit the accused.



8. Corroborated Evidence: Corroborated evidence refers to evidence that is supported by other evidence or facts. If the prosecution's witnesses provide corroborated evidence that is credible and reliable, it strengthens the prosecution's case and makes it less likely for a submission of no case to answer to be successful.

9. Objective Test: The determination of whether there is a prima facie case relies on an objective test. It is not based on the court's decision of whether the evidence is worth of credit or whether it proves the case conclusively. Rather, it considers whether a reasonable tribunal might convict based on the evidence presented thus far.

10. Onus of Proof: The onus is on the prosecution to prove its case beyond reasonable doubt. A prima facie case is not established if, at the close of the prosecution's case, the evidence is only potentially sufficient to sustain a conviction upon full consideration. The prosecution must present evidence that meets the standard of proof beyond reasonable doubt.

11. Manifestly Unreliable Evidence: One of the grounds for a successful submission of no case to answer is when the prosecution's evidence is so manifestly unreliable that no reasonable tribunal could safely convict based on it. This means that if the evidence presented by the prosecution is highly unreliable and lacks credibility, the court may find that there is no case for the accused to answer.

12. Contradictions and Discrepancies: The presence of major contradictions or discrepancies in the evidence given by the prosecution witnesses can undermine the prosecution's case. If the court finds that the principal prosecution witnesses have deliberately lied or provided contradictory statements, it can lead to a submission of no case to answer being upheld.

13. Testimony of Accomplices: In some cases, the credibility of the prosecution witnesses may be in question, particularly if they are considered accomplices. If the court determines that the witnesses' testimonies are unreliable or untrustworthy, it can support a submission of no case to answer.

14. Standard of Proof: It is essential to emphasize that a prima facie case does not require the evidence to prove the accused's guilt beyond a reasonable doubt. The standard of proof for establishing a prima facie case is lower than that required for a conviction. A reasonable tribunal should be able to conclude, based on the evidence presented, that the accused could be convicted if no explanation is offered by the defense.

- **DISCUSS THE LEGAL ISSUES THAT ENCOMPASS THE EVALUATION OF EVIDENCE, CREDIBILITY OF WITNESSES, PRESENCE OF CONTRADICTIONS, AND THE OVERALL SUFFICIENCY OF THE PROSECUTION'S CASE.**

1. Jurisdiction of Magistrate Grade 1: According to Section 161 of the Magistrate Court Act, a Magistrate Grade 1 has the authority to try any offense except those carrying a maximum penalty of death or life imprisonment. The sentencing powers of a Magistrate Grade 1 are provided under Section 162(1) (b), which limits imprisonment to a maximum of 10 years.

2. Jurisdiction of Magistrate Grade 2: Under Section 161(1) (c) of the Magistrate Court Act, a Magistrate Grade 2 has jurisdiction over any offense and the power to enforce any provisions of the law, excluding offenses listed in the first schedule of the Act. The sentencing powers of a Magistrate Grade 2 are stated in Section 162(1) (c), allowing imprisonment for a maximum period of 3 years or a fine not exceeding 500,000/=, or both.

3. Combination of Sentences: Section 172 of the Magistrates Courts Act permits a magistrate's court to pass lawful sentences that combine any of the sentences authorized by law.

4. Confirmation of Sentences: Section 173 states that certain sentences imposed by a magistrate's court, such as imprisonment for two years or more or preventive detention under the Habitual Criminals (Preventive Detention) Act, require confirmation by the High Court. Section 174 provides for release on bail pending confirmation.

5. Sentences for Conviction of Several Offenses: Section 175 deals with the sentencing of a person convicted of multiple distinct offenses in one trial. The court can impose separate punishments for each offense, with consecutive or concurrent sentences. Consecutive sentences do not require the offender to be sent for trial before a higher court if the aggregate punishment exceeds the maximum for a single offense.

6. Powers of the Chief Magistrate: Section 221 of the Magistrates Courts Act grants the Chief Magistrate general powers of supervision within their jurisdiction. The Chief Magistrate can call for and examine the record of proceedings before a lower magistrate's court and, if necessary, forward it to the High Court with remarks.

7. Limitations of Chief Magistrate's Revision Powers: The Chief Magistrate does not have revision powers over decisions of Magistrates Grade 1 and 2. Their authority is limited to reviewing the legality of findings or orders passed by lower courts within their jurisdiction.

These legal issues revolve around the jurisdiction of different magistrate grades, the combination and confirmation of sentences, the sentencing of multiple offenses, and the powers of the Chief Magistrate in overseeing lower courts.

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.

8. Powers of Chief Magistrate for Release on Bail: Section 221(4) of the Magistrate Court Act grants the Chief Magistrate the power to release any person serving a sentence of imprisonment, resulting from the proceedings under their jurisdiction, on bail pending the determination of the High Court. This power can be exercised if the Chief Magistrate believes it is in the interests of justice to do so.

9. Limitations on Chief Magistrate's Revision Powers: In the case of Uganda Vs. Akai and Others (1979) HCB 8, it was established that the Chief Magistrate does not have revision powers over decisions made by Magistrate Grade 1 and Grade 2. Instead, the Chief Magistrate can only examine the records of such courts within their jurisdiction to ensure the legality of any findings or orders passed.

Overall, the legal issues raised in "The Injustice; (Concerning Jurisdiction of Courts)" pertain to the jurisdiction and sentencing powers of different magistrate grades, the confirmation of sentences, the authority and powers of the Chief Magistrate, and the limitations on their revision powers. These issues are crucial for ensuring the proper administration of justice and adherence to legal procedures within the court system.

SUMMARY OF LEGAL ISSUES:

1. Preliminary steps for desired remedy: The convicts must file an appeal within 14 days of the judgment. To appeal out of time, they need to make an application for an extension of time supported by an affidavit stating sufficient reasons.

2. Requisite documents: The convicts need to submit a Notice of Motion and a supporting affidavit to the Court of Appeal.

3. Merit of the convict's case: The question arises whether the convict's case has any merit, which will be assessed during the appeal process.

4. Necessary documents: In addition to the Notice of Motion and supporting affidavit, any other relevant documents related to the appeal should be included.

5. Possible course of action if A1 loses interest: It is unclear what specific action can be taken if A1 loses interest in further legal redress. Further details or provisions may need to be examined to determine any available options.

6. Redress if A2, who filed a separate memorandum, has died: The impact of A2's death on the separate memorandum filed after the decision of the High Court of appeal needs to be considered. Relevant provisions and rules may apply in such situations.

7. Redress if A3 is interested in pursuing further legal redress: A3, who wants to pursue further legal redress, has filed a notice of motion and a memorandum of appeal with one general ground of appeal. The available redress options will depend on the specific grounds raised and applicable laws.

8. A4's appeal to reduce the sentence: The question is whether A4 can appeal to have the sentence reduced. The grounds for such an appeal would need to be examined in accordance with relevant laws and precedents.

9. Grounds to oppose preliminary and substantive remedies: The potential grounds to oppose the preliminary remedy (extension of time) and the substantive remedy (the appeal itself) need to be considered based on applicable laws, rules, and case precedents.

DISCUSSION:

The issues presented in the example primarily revolve around the convicts' right to appeal their conviction and sentence. The discussion highlights the preliminary steps required to achieve the desired remedy, such as filing an appeal within the specified time frame or seeking an extension of time. It emphasizes the importance of submitting the necessary documents, including the Notice of Motion and supporting affidavit.

The example raises questions regarding the merit of the convicts' case, particularly examining the grounds for appeal and the possibility of success. It also explores potential scenarios, such as A1 losing interest in further legal redress or the impact of A2's death on the appeal process.

Additionally, the example contemplates the possibility of redress for A3, who intends to pursue further legal action and has filed a notice of motion and a memorandum of appeal with a single ground of appeal. The available options and the chances of success would depend on the specific grounds raised and the applicable laws.

Furthermore, the example questions whether A4 can appeal to have the sentence reduced. This would require an examination of the grounds for the appeal and an assessment of relevant legal provisions and precedents.

Lastly, the issues touch upon the potential grounds to oppose both the preliminary and substantive remedies. Any arguments against the extension of time or the appeal itself would need to be supported by relevant legal provisions, rules, and case law.

Overall, the legal issues presented in the example require careful consideration of the applicable laws, rules, and case precedents to determine the viability and success of the desired remedies.



In the given scenario, Task D discusses the possible grounds to oppose the preliminary remedy and substantive remedy. It also anticipates grounds for opposing the arguments presented in Part B of the document. Here's a breakdown of the legal issues involved:

ISSUE NINE: Whether there are any grounds to oppose the preliminary remedy and substantive remedy.

1. Lodging of Notice of Appeal: Rule 60(1) of the Judicature (Court of Appeal) Rules requires that a notice of appeal must be lodged with the Registrar within 14 days after the decision. The opposing party can argue that the appellant failed to comply with this requirement, and as such, the appeal should not be entertained.

2. Extension of Time: While the court has inherent powers to make necessary orders for justice, Rule 5 of the Rules states that the court can only extend the time for filing an appeal if there is a sufficient reason. The opposing party can argue that the appellant has not demonstrated sufficient reason for the extension of time, citing cases like Waida Okuku Stephen v Uganda and William Odoi Nyandusi v Jackson Oyuko Kasendi.

3. Discretionary Nature: The extension of time for filing an appeal is at the court's discretion and not automatic. The opposing party can argue that the court should exercise its discretion to deny the application for extension of time since the appellant failed to provide sufficient reason.

ANTICIPATED GROUNDS FOR OPPOSING THE ARGUMENTS IN PART B:

1. Evaluation of Evidence: The opposing party can argue that the learned trial judge properly evaluated the evidence on record and came to a correct finding regarding the elements of the offense of aggravated robbery. They can cite the case of Bogere Moses and Another v Uganda to support their argument.

2. Single Identifying Witness: If the prosecution relied on the testimony of a single identifying witness, the opposing party can argue that the judge correctly applied the principles of law regarding single identifying witnesses, as established in the case of Abdallah Nabulere and 2 Others v Uganda. They can contend that corroboration is not required if the witness is deemed truthful and the identification process was reliable.

3. Sentencing Discretion: Sentencing is a matter of judicial discretion, and an appellate court can only interfere with the sentence if it is illegal, founded on wrong principles, or manifestly harsh and excessive. The opposing party can argue that the sentence imposed on the appellant is within the appropriate range and cite the case of Kyalimpa Edward v Uganda to support their position. They can also mention the applicable sentencing guidelines and the deduction of time spent on remand as required by article 23(8) of the constitution, as stated in the case of Rwabugande Moses v Uganda.



In conclusion, the opposing party should request that the appellant's conviction be upheld, arguing that the trial judge properly evaluated the evidence, applied the relevant legal principles, and exercised discretion appropriately in sentencing.

The opposing party can further argue that the appellant has not presented any compelling grounds to challenge the preliminary remedy and substantive remedy sought. They can emphasize that the appellant failed to comply

with the procedural requirements, such as timely lodging of the Notice of Appeal, and has not provided sufficient reasons for an extension of time.

Regarding the evaluation of evidence, the opposing party can assert that the trial judge properly considered the principles of law on alibi and single identifying witnesses. They can contend that the judge weighed the evidence from both the prosecution and the defense before rejecting the defense of alibi, as established in the case of Bogere Moses and Another v Uganda.

In addressing the issue of sentencing, the opposing party can argue that the trial judge exercised judicial discretion appropriately. They can highlight that the sentence imposed is within the permissible range as per the Sentencing Guidelines for Courts of Judicature. Moreover, they can emphasize that the trial judge took into account the period spent on remand, as required by the constitution and the precedent set in the case of Rwabugande Moses v Uganda.

In conclusion, the opposing party should stress that the appellant has failed to provide substantial grounds to oppose the preliminary remedy and substantive remedy sought. They can argue that the trial judge's evaluation of evidence, application of legal principles, and exercise of discretion in sentencing were correct. Thus, they should request that the appellate court upholds the appellant's conviction and dismisses the appeal.

The opposing party may also argue that the appellant has not demonstrated any exceptional circumstances or compelling reasons to justify an extension of time for filing the appeal. They can assert that the appellant bears the burden of proving sufficient reason for the delay, as established in the case of Waida Okuku Stephen v Uganda.

Furthermore, the opposing party can contend that the extension of time to file an appeal is at the discretion of the court and not automatic. They can emphasize that the court should exercise its discretion judiciously, considering the circumstances of the case and the interests of justice.

Regarding the anticipated grounds for opposing the arguments in Part B, the opposing party can assert that the trial judge correctly evaluated the evidence on record. They can emphasize that the judge properly applied the principles of law on alibi and single identifying witnesses, as established in the cases of Abdallah Nabulere and 2 Others v Uganda and Bogere Moses and Another v Uganda.



In addressing the issue of sentencing, the opposing party can argue that the trial judge exercised judicial discretion within the prescribed guidelines. They can assert that the sentence imposed was neither illegal nor manifestly harsh or excessive, as it falls within the permissible range under the Sentencing Guidelines for Courts of Judicature.

To conclude, the opposing party should reiterate that the appellant has not provided sufficient grounds to oppose the preliminary remedy and substantive remedy sought. They can emphasize that the trial judge's evaluation of evidence, application of legal principles, and exercise of discretion in sentencing were appropriate. Therefore, they should request that the appellate court upholds the appellant's conviction and dismisses the appeal.

ISSUE TEN: Whether there are any grounds to support the preliminary remedy and substantive remedy.

The party seeking the preliminary and substantive remedies can present several arguments to support their case. They can argue that the notice of appeal was lodged within the prescribed timeframe as per Rule 60(1) of the Judicature (Court of Appeal) Rules. They can emphasize that the appellant complied with the procedural requirement by submitting the notice of appeal within 14 days after the decision.

Additionally, they can assert that the court has the inherent power to make orders necessary for attaining the ends of justice, as outlined in Rule 2(2) of the Judicature (Court of Appeal) Rules. They can argue that the court should exercise its discretion in extending the time for filing the appeal based on sufficient reasons provided by the appellant.

The party seeking the remedies can also argue that the appellant has demonstrated sufficient reason for the delay in filing the appeal. They can present evidence or arguments to support the appellant's claim of inability to file the appeal within the prescribed time, as established in previous cases such as William Odoi Nyandusi v Jackson Oyuko Kasendi.

Furthermore, they can contend that the extension of time is crucial to ensure access to justice and to prevent a miscarriage of justice. They can assert that the court should consider the interests of justice, fairness, and the merits of the case in granting the preliminary and substantive remedies sought.

In conclusion, the party seeking the preliminary and substantive remedies should emphasize that the appellant complied with the procedural requirements and has provided sufficient reasons for the delay in filing the appeal. They should argue that the court has the discretion to extend the time and that doing so would serve the interests of justice. Therefore, they should request that the appellate court grants the preliminary and substantive remedies sought by the appellant.

ISSUE ELEVEN: Whether there are any grounds to oppose the preliminary remedy and substantive remedy.



The opposing party can present counterarguments to challenge the preliminary and substantive remedies sought by the appellant. They can contend that the appellant failed to comply with the prescribed timeframe for filing the notice of appeal, as stated in Rule 60(1) of the Judicature (Court of Appeal) Rules. They can argue that the appellant has not provided sufficient reasons for the delay and that the extension of time would not be justified.

Moreover, they can assert that the court should exercise caution in granting extensions of time and that it should prioritize the adherence to procedural rules to maintain efficiency and fairness in the legal process. They can cite cases such as Waida Okuku Stephen v Uganda to support their argument that the burden is on the appellant to prove the existence of sufficient reasons justifying the extension of time.

The opposing party can also challenge the claim that the preliminary and substantive remedies are necessary to prevent a miscarriage of justice. They can argue that the delay in filing the appeal has already caused prejudice to their case and that granting the remedies sought would further undermine the fairness and efficiency of the legal proceedings.

Additionally, they can argue that the interests of justice and the merits of the case should not be solely determined based on the appellant's claims but should consider the overall circumstances and the impact of the delay on the opposing party's rights and interests.

In conclusion, the opposing party should emphasize the appellant's failure to comply with the prescribed timeframe and the lack of sufficient reasons for the delay. They should argue that granting the preliminary and substantive remedies sought would be unjust and prejudicial to their case. Therefore, they should request that the appellate court denies the preliminary and substantive remedies and upholds the existing procedural rules and principles.

In this case, the following charges can be included in the charge sheet:

1. Theft: Charge Bitaama Philemon with the offense of theft under Section 254(1) and 261 of the Penal Code Act for fraudulently and without claim of right, taking the dried vanilla from the factory premises, which is capable of being stolen.

2. Conspiracy to commit a felony: Charge Bitaama Philemon and Kapale Bruno with the offense of conspiracy to commit a felony under Section 390 of the Penal Code Act for agreeing to effect the unlawful purpose of stealing the dried vanilla from the factory premises.

3. Breaking into building and committing felony: Charge Bitaama Philemon with the offense of breaking into a building and committing a felony under Section 297 of the Penal Code Act for unlawfully entering the vanilla store and committing the offense of theft.

4. Criminal trespass: Charge Bitaama Philemon with the offense of criminal trespass under Section 302 of the Penal Code Act for entering the factory premises with the intent to commit theft.

The charge sheet should contain the details of the accused, the offenses charged, the sections of the law violated, and a brief summary of the facts supporting the charges. It should also be signed by the magistrate or authorized officer.

**Task B**

**Identify the areas that require further investigation based on the facts provided.**

1. Determine the extent of the theft: Further investigation should be conducted to ascertain the exact quantity and value of the dried vanilla stolen from the factory premises. This will help in accurately assessing the magnitude of the offense and the corresponding charges.

2. Investigate the involvement of Moze Alias Tugume Moses: Moze, a former worker of the vanilla company, was mentioned in Kapale Bruno's statement as being involved in the distribution and sale of the stolen vanilla. It is important to investigate Moze's role, gather evidence against him, and consider charging him for his involvement in the theft.

3. Establish the whereabouts of the suspect at large: Investigate and gather information to locate and apprehend the suspect who is still at large. This may involve conducting interviews, gathering intelligence, and collaborating with other law enforcement agencies to ensure the suspect is brought to justice.

4. Identify any other potential accomplices: Explore the possibility of other individuals being involved in the theft. This could include examining communication records, conducting interviews with witnesses and employees, and analyzing the CCTV footage to identify any other persons who may have assisted in the commission of the offense.

**Task C**

**Discuss the proper procedure for the police to follow to recover and preserve 200kgs of vanilla locked up in a suspect's house.**



1. Obtain a search warrant: The police should apply to a magistrate for a search warrant to legally search the suspect's house and recover the stolen vanilla. The application should provide sufficient grounds and evidence to justify the issuance of the search warrant.

2. Execute the search warrant: Once the search warrant is obtained, the police should execute it by visiting the suspect's house. They should clearly identify themselves, present the search warrant to the occupant, and proceed to conduct a thorough search for the stolen vanilla.

3. Document the search: During the search, the police should meticulously document their actions, including the items seized, their locations, and any relevant observations or evidence found. This documentation will be important for future legal proceedings.

4. Seize and preserve the vanilla: If the stolen vanilla is found during the search, the police should seize it as evidence. The vanilla should be carefully handled, packaged, and labeled to ensure its preservation and integrity. It should be stored securely to prevent tampering or contamination.

5. Prepare an inventory: The police should prepare a detailed inventory of all the items seized during the search, including the 200kgs of vanilla. The inventory should include a description of the seized items, their quantities, any distinguishing marks or characteristics, and their locations within the suspect's house. This inventory will serve as an official record and will be important for legal proceedings.

6. Follow proper handling procedures: The seized vanilla should be handled according to proper evidence handling procedures. It should be carefully packaged in suitable containers or bags to prevent contamination or damage. The containers should be properly sealed and labeled with relevant information such as case number, date, and description of the contents.

7. Maintain chain of custody: It is crucial to establish and maintain a proper chain of custody for the seized vanilla. This involves documenting each transfer or movement of the evidence from the suspect's house to a secure storage facility. Each person who handles the evidence should sign and date the chain of custody log, indicating their role and the date and time of transfer.

8. Store the seized vanilla securely: The seized vanilla should be stored in a secure location, such as a police evidence room or a designated storage facility. The storage area should have controlled access and be equipped with security measures, including locks, surveillance cameras, and alarm systems. Proper temperature and humidity conditions should be maintained to preserve the integrity of the vanilla.

9. Notify relevant parties: The police should notify the prosecution, the defense counsel (if known), and any other relevant parties about the seizure and preservation of the vanilla. This ensures transparency and allows all parties to participate in the legal process.

10. Maintain documentation: Throughout the process, it is important to maintain detailed documentation of the seizure, handling, storage, and any subsequent transfers or examinations of the seized vanilla. This documentation should include dates, times, individuals involved, and any relevant observations or actions taken. It serves as a record of the evidence's integrity and can be used to demonstrate the continuity of custody.

It is important for the police to adhere to these procedures to ensure the admissibility and reliability of the seized vanilla as evidence in court.

Charge Sheet

IN THE MAGISTRATE'S COURT OF UGANDA AT [Insert Location]

CRIMINAL CASE NO. [Insert Case Number]

THE REPUBLIC

VERSUS

1. Bitaama Philemon

2. Kapale Bruno

CHARGE SHEET

The above-named accused persons are charged with the following offences:

1. Theft contrary to Section 254(1) and 261 of the Penal Code Act.

Particulars of Offence:

That Bitaama Philemon and Kapale Bruno, on or between April 2018 and 24/09/2018, at [Insert Location], with fraudulent intent and without claim of right, did take and steal approximately 1200kg of dried vanilla, valued at three billion shillings, property capable of being stolen, belonging to "Savvy Saucy & Spicy Trading Company."

2. Conspiracy to commit a felony contrary to Section 390 of the Penal Code Act.

Particulars of Offence:

That Bitaama Philemon and Kapale Bruno, on or between April 2018 and 24/09/2018, at [Insert Location], did agree to effect the unlawful purpose of stealing dried vanilla from "Savvy Saucy & Spicy Trading Company," thereby committing the offence of conspiracy.

3. Breaking into building and committing felony contrary to Section 297 of the Penal Code Act.

Particulars of Offence:

That Bitaama Philemon and Kapale Bruno, on or between April 2018 and 24/09/2018, at [Insert Location], did break and enter into a building adjacent to a dwelling house, being a storehouse where dried vanilla was stored, and committed the felony of theft therein, thereby committing the offence of breaking into building and committing felony.

4. Criminal trespass contrary to Section 302 of the Penal Code Act.

Particulars of Offence:

That Bitaama Philemon, on or between April 2018 and 24/09/2018, at [Insert Location], did enter into the property in the possession of "Savvy Saucy & Spicy Trading Company," namely the factory premises, with intent to commit the offence of theft of dried vanilla, thereby committing the offence of criminal trespass.

[Include any additional charges based on further investigations, if applicable.]

DATED this [Insert Date]

[Insert Name and Rank of Police Officer]

Investigating Officer

[Include any additional supporting documents, statements, and evidence as exhibits.]

Note: This is a general template for a charge sheet. It should be customized as per the specific requirements of the jurisdiction and court where the case is being filed.

- **OUTLINE SEVERAL LEGAL ISSUES RELATED TO ELECTRONIC EVIDENCE, THE GUN, TELEPHONE RECORDS, TIME, AND THE OPTIONS AVAILABLE FOR CHARGING A SUSPECT WHO IS STILL AT LARGE.**

1. Electronic Evidence:

The admissibility of electronic evidence is subject to certain requirements. In order for electronic evidence to be admitted in court, the proponent of the evidence must establish a proper foundation. This foundation should demonstrate the reliability of the equipment used, the accuracy of data entry and storage, the integrity of the computer program used, and the competence of the person accessing and presenting the evidence. Additionally, the authenticity of the electronic evidence should be ascertained through further investigations.

2. The Gun:

The statement mentions that Kapale Bruno's A.K.47 failed to release the bullet. Further investigation is needed to determine whether the gun was indeed faulty. It is also important to establish whether the gun was recovered and exhibited, as this could help determine Bruno's involvement in the offense. By examining the gun and its functionality, the investigators can gather evidence regarding Bruno's actions.

3. Telephone Records:

The statement refers to phone calls made by someone to Bruno during the event and a subsequent call from Philemon asking for a job. It is crucial to investigate whether these calls actually occurred, as they could provide evidence of Bruno's participation in the offense. Obtaining a court order to extract the relevant call records and inspecting them can help establish the truthfulness of the statements.

4. Time:

Discrepancies exist regarding the timing of the theft. The complainant mentions receiving a telephone call around 04:00, while the general manager claims to have woken up around 04:32. It is necessary to conduct further investigations to establish the correct timeline of events. Determining the exact crucial times can help clarify the sequence of actions and provide a more accurate understanding of the case.

5. Ensuring the Charging of the Suspect:

The suspect, Machomoto Deus, is currently at large. The available option for ensuring that the suspect is charged is through arrest. Arrest can be carried out with or without a warrant. A warrant of arrest is typically issued by a court when the accused fails to appear after being summoned. The police should obtain an arrest warrant from the appropriate court, in this case, the Nabweru Chief Magistrates Court, to facilitate the suspect's arrest. However, if the police have reasonable cause to believe that a warrant has been issued, they can arrest the suspect without the warrant under Section 10(h) of the Criminal Procedure Code Act Cap 116.

6. Arrest Warrant:

An arrest warrant is typically issued when the accused fails to appear in court after being summoned. The warrant allows law enforcement authorities to apprehend the person named in the warrant and bring them before the court. The requirements for issuing an arrest warrant may vary depending on the jurisdiction and the specific circumstances of the case.

7. Arrest without a Warrant:

In certain situations, law enforcement authorities can make an arrest without a warrant. This is usually done when they have reasonable cause to believe that a crime has been committed and that the person to be arrested is responsible for it. The specific conditions under which an arrest without a warrant is permitted may vary based on the laws of the jurisdiction.



8. Investigation into Electronic Evidence:

When dealing with electronic evidence, it is crucial to conduct a thorough investigation to determine its reliability and authenticity. This may involve examining the equipment used, the manner in which the data was entered, the measures taken to ensure data accuracy, the storage methods, and the verification of the software and processes used. Additionally, steps should be taken to preserve the original form of digital evidence and authenticate it for admissibility in court.

9. Authentication of Electronic Evidence:

To establish the authenticity of electronic evidence, further investigations are often necessary. This may involve verifying the source of the evidence, examining metadata, conducting forensic analysis, and ensuring the chain of custody. Authentication is crucial to demonstrate that the electronic evidence is genuine, hasn't been tampered with, and is reliable for use in legal proceedings.

10. Compliance with Legal Procedures:

It is important for law enforcement authorities and investigators to adhere to the legal procedures and requirements of their jurisdiction when collecting and handling evidence. This includes obtaining necessary court orders, warrants, or permissions for accessing electronic records, conducting searches, or making arrests. Failure to comply with legal procedures could result in the evidence being challenged or excluded in court.

Remember that legal procedures and requirements can vary depending on the jurisdiction and the specific circumstances of the case. It's always advisable to consult the applicable laws, regulations, and legal professionals in the relevant jurisdiction for accurate and up-to-date information.

The legal issues involved in the recovery and preservation of the 200 kilograms of dry vanilla from the suspect's house in Natete are as follows:

1. Search Warrant:

To conduct a search of the suspect's premises, it is advisable for the police to obtain a search warrant. A search warrant is a written authorization issued by a court that grants the police the authority to search a specific location for the purpose of finding and seizing relevant evidence. The warrant must be signed by a magistrate, bear the seal of the court, and provide specific details about the premises to be searched.

2. Execution of the Search:

Once the search warrant is obtained, the police can proceed to the suspect's house in Natete. It is important to follow proper procedures during the search:

a) Local authorities should be invited to witness the search. This helps ensure transparency and accountability.

b) The premises should be searched in the presence of the local authorities and the suspect. This allows for an independent verification of the search process.

c) The officer conducting the search should draft a search certificate detailing the place, date, and time of the search, names of those present, and their signatures. If the suspect refuses to sign, the investigating officer should make a note of it.

3. Seizure of Evidence:

During the search, if the 200 kilograms of dry vanilla are found, they should be seized as evidence. Section 73(1) of the Magistrate Courts Act allows for the seizure of any property that is relevant to the case or investigation. The seized items should be entered in the Police Exhibit Book, and an exhibit slip should be issued and kept in the case file.

4. Preservation of Exhibits:

To ensure the preservation of the seized vanilla as evidence for future court action, the following steps should be taken:

a) All exhibits must be entered in the police exhibit books of the relevant police station, and an exhibit slip should be issued and kept in the case file.

b) The exhibits should be securely kept under lock and key by the officer in charge of the Police Exhibits Store. This ensures the integrity and security of the evidence.

c) If the vanilla is likely to decay or decompose, it should be sent to the Chief Government Chemist as soon as possible. The government chemist will examine the state of the exhibit, prepare a report, and provide accompanying photos, which can be presented as evidence in court.

d) The chain of handling of the exhibits is crucial. It is essential to maintain a proper record of who has custody of the exhibits at all times. Any break in the chain of custody may raise doubts about the integrity and admissibility of the evidence.

By following these procedures, the police can recover and preserve the 200 kilograms of dry vanilla as evidence for future court action, ensuring that it remains admissible and reliable in the legal proceedings.

5. Foundation for Tendering the Exhibit:

Before the seized vanilla can be presented as evidence in court, a foundation must be established to ensure its admissibility. The following factors should be considered:

a) Competence of the Witness: The witness presenting the exhibit should be competent to testify about its authenticity and relevance. This could be an investigating officer or an expert in the field.

b) Relevancy of the Evidence: The exhibit should be directly related to the case and have probative value in establishing the facts or supporting a particular argument.

c) Authentication or Identification: The exhibit must be properly authenticated or identified to prove that it is indeed the same vanilla that was seized from the suspect's premises. This can be done through documentation, witness testimony, or other means.

d) Trustworthiness of the Exhibit: The exhibit should be handled and stored in a way that ensures its integrity and prevents tampering or contamination. The chain of custody should be carefully documented to demonstrate that the exhibit has not been altered or substituted.

6. Presentation of the Exhibit in Court:

During the trial or court proceedings, the officer in charge of the Police Exhibits Store will be responsible for presenting the seized vanilla as evidence. The exhibit should be securely stored and properly labeled to maintain its integrity. The exhibit slip and relevant documentation should accompany the exhibit to provide necessary details and background information.

7. Objection to the Tendering of Exhibits:

If there are any doubts raised about the source of the exhibit or the integrity of its handling, the opposing party may object to its admissibility. In such cases, the court will consider the objection and make a ruling based on the rules of evidence and the admissibility criteria discussed earlier.

It is important for the investigating officer and relevant authorities to follow these procedures meticulously to ensure the recovery, preservation, and admissibility of the seized vanilla as evidence in future court action. By doing so, the prosecution can present a strong case based on reliable and properly handled exhibits, increasing the chances of a successful outcome.

8. Collaboration with the Chief Government Chemist:

In cases where the seized vanilla is likely to decay or decompose, it is advisable to collaborate with the Chief Government Chemist or relevant forensic experts. They can analyze and document the state of the exhibit through scientific testing and provide a report on its condition.

The Chief Government Chemist will examine the seized vanilla, conduct necessary tests, and prepare a comprehensive report detailing its state at the time of analysis. This report, along with accompanying photographs, will serve as additional evidence to support the integrity and condition of the exhibit.

9. Storage and Preservation of Exhibits:

To ensure the long-term preservation of the seized vanilla, it is crucial to store it in appropriate conditions. The officer in charge of the Police Exhibits Store should take necessary measures to prevent deterioration, spoilage, or contamination. This includes maintaining suitable temperature, humidity, and storage conditions.

10. Adherence to Legal and Procedural Requirements:

Throughout the process of recovering, preserving, and presenting the seized vanilla as evidence, it is essential to adhere to all relevant legal and procedural requirements. This includes following the provisions outlined in the Magistrate Courts Act or any other applicable legislation that governs search and seizure procedures, the handling of exhibits, and the presentation of evidence in court.

By complying with these legal and procedural requirements, law enforcement authorities can ensure that the recovered vanilla is admissible as evidence and that its integrity is preserved. This contributes to a fair and just legal process, enhancing the prospects of a successful court action against the suspect.

It is important to note that specific legal procedures and requirements may vary depending on the jurisdiction and applicable laws. Therefore, it is advisable for the investigating officer to consult with legal professionals or relevant authorities to ensure compliance with the specific legal framework in their jurisdiction.

**CRIMINAL PROCEEDINGS**

**LIST OF TOPICS COVERED**

**1. The contents of and perusal of police files**

- Right hand side, correspondences btn prosecution and police.
- Left hand side, statements of suspect, witnesses &documentary evidence.
- Charge sheet

**Police forms**

- 2B- Recording statements
- 53-charge sheet
- 17 A – Exhibit form
- 24A- Medical examination of person accused of sexual assault
- 69- identification parade
- 24- Medical examination of victims of serious crime
- PF3- examination of injured persons
- 3A- Examination of victim of sexual assault
- 48B- Post mortem report
- 18- Release on bond
- 20- record of finger prints

**2. Arrests, searches and recovery of exhibits.**

**Arrests**

- Article 23(1) (c) constitution

**Who can arrest**

Magistrate.

- Sec 20 CPCA Cap 116

**Police officer**

- Sec 23 police Act Cap 303

**Private persons**

- Sec CPCA Cap 116

**Arrest with a warrant**

- Sec 56 MCA & Sec 6 TIA

**Arrest without a warrant**

- Sec 10 CPCA

**Case:** Ismail Kisegerwa Vs Uganda CACA No. 6/1978, no use of excessive force in effecting arrest

**Searches**

- Article 27(1) constitution- Right to privacy
- Search with a warrant. Sec 70 MCA
- Search without a warrant. Sec 69 MCA

**Exhibits**

- Sec 7391) MCA

**How to recover exhibits**

- Recover the exhibit
- Labeling
- Marking if its money
- Enter into the exhibit book
- Kept under key and lock
- Attach the exhibit slip
- Exhibits tendered in court

**3. The rights of the suspect while under police custody.**

- Article 23 of the constitution
- Presumption of innocence Art 23(3) (a)
- Lawful detention Art 23 (2)
- Informed of the charges Art 23(3)
- Detention for a maximum period of 48 hrs Art 23(4)
- Reasonable access to the suspect Art 23 (5)



**Practical steps as defence counsel to attain freedom of an accused person**

- Police bond. Sec 17(1) CPCA, Sec 24 Police Act
- Complaint to DPP. Art 120
- Apply to court for unconditional release. Sec25(1) Police Act

**4. Identification of offences.**

- ❖ Sec 2 (s) defines an offence
- ❖ Principle of legality, Art 28(7) &(12)

**Case:** Salvatori Abuki Vs AG Constitutional case No 2 of 1997

5. **The ingredients of offences.**
    - ❖ Always use a decided case to get the ingredients
6. **General principles and practical application of the law of evidence.**

- ❖ Burden of proof. Sec 101, 102, 103 Evidence Act, on the prosecution

**Case:** Woolmington Vs DPP (1935) AC 452

- ❖ Standard of proof. **Case:** Miller Vs Minister of pensions (1947)2 ALLER 372

**LAW OF EVIDENCE**

- ❖ Documentary evidence. Sec 60 EA Cap 6
- ❖ Hearsay evidence. Sec 59 hearsay evidence is inadmissible
- ❖ Exception sec30 EA Cap 6
- ❖ Opinion evidence. Sec 43- 48 EA Cap 6
- ❖ Circumstantial evidence. Sec 5-8 EA Cap 6
- ❖ Identification by a single witness

**Case**: Abdalla Nabulere & 4 Ors Vs Uganda Cr. App No.9 of 1978



**CONFESSION**

Sec 23 EA Cap 6

**Who may record a confession?**

- ❖ Sec 23 EA Cap 6
- ❖ Magistrate – extra judicial statement
- ❖ Police officer- charge and caution statement

**Procedure for recording a confession**

**Case:** Festo Androa Asenua & Anor Vs Uganda SCCA No. 1 of 1998

**Corroboration**

- **Case:** R Vs Baskeville (1916) 2 KB 653- corroboration is independent evidence.
- Sec 132 EA Cap 6

7. Evaluation and Sufficiency evidence in support of a charge.
   - Burden of proof. Sec 101, 102, 103 EA Cap 4
   - Standard of proof. Balance of probabilities
   - Relate the evidence with the ingredients.

**NB**. If the evidence is insufficient DPP will order for further investigations

8. **Interviewing of suspects who are in police custody.**
   - Art 23(3)
   - Facts of the case
   - Dates of arrest
   - When was the offence committed
   - Evidence available ,any witness
   - Record of statements made

9. **Access to police files and pre-trial disclosure in criminal proceedings.**
   - Article 28 guarantees right to a fair hearing
   - Art 44
   - Disclosure of all evidence to be relied on

**Sources of disclosure**

- Statement form persons interviewed
- Medical reports
- Confessions and admissions
- Exhibits
- Notes by SOCO

**Case:** Uganda Vs Mpanga & 6 others HCT-00-SC-14 OF 2014.disclosure is premised on the principle of fair hearing.

10. **General defences to criminal charges.**

- ❖ Diminished responsibility. Sec 194 PCA

**Case:** Rukarekoha Vs Uganda (1999) 1 EA 363, disease of the mind.

- ❖ Intoxication. Sec 12 PCA

**Case:** Kiyongo Vs Uganda (20050 EA 106

- ❖ Insanity. Sec 10 PCA, Sec 11 PCA

**Case:** Kimani Vs R (2002) 2 EA 417

- ❖ Infancy. Sec 88(1) children Act
- ❖ Mistake of fact. Sec 7 PCA

**Case:** Musa Vs Republic (1970) EA 42

- ❖ Alibi.

**Case**: Sekitoleko Vs Uganda (1967) EA 53

- ❖ Provocation. Sec192 PCA

**Case:** Okwang William Vs Uganda criminal Appeal No. 69 of 2002

- ❖ Self defence. Uganda Vs Sebastian Otti (1994) HCB 21
- ❖ Compulsion. Sec 14 PCA
- ❖ Immunity. Art 31 Diplomatic privileges Act

11. **The role of Advocates in securing release of suspects on police bond.**
    - ❖ Legal representation
    - ❖ Ensuring speedy trial
    - ❖
12. **Applications for release of suspects whose post-arrest detention has exceeded 48 hours before production in court.**
    - ❖ Unconditional release
    - ❖ Police bond
    - ❖ Applying for a production warrant
13. **The role, powers and duties of the Director of Public Prosecutions.**
    - ❖ Art 120

**Powers of DPP**

- ❖ Direct the police to carry out investigations
- ❖ Institute criminal proceedings
- ❖ Take over and continue any criminal proceedings

- ❖ Discontinue at any stage criminal proceedings before judgment

**Duties of DPP**

- ❖ Take control over private prosecution. Art 120(3) (c)
- ❖ Determine the offence to be committed to the high court. Sec 169 MCA
- ❖ To appoint prosecutors. Sec 223 MCA
- ❖ Duty to discontinue proceedings
- ❖ To consent and sanction charges

14. **The framing of charges, defects in and amendment of charges.**

- ❖ Sec 86 MCA , Contents of a charge sheet, statement and particulars of offence
- ❖ Sec 88 MCA, Rules governing framing of charges
- ❖ Joinder of persons. Sec 87Bmca & Sec 24 TIA
- ❖ Joinder of offences. Sec 86 (1) MCA & Sec 23 (1) TIA

**Amendment of charges**

- ❖ Sec 132MCA. Only allowed if it does not cause an injustice.

**Effect of defective charges**

- ❖ Sec 42 MCA

**Case:** Uganda Vs Mpaya (1975) HCB 245. A defective charge leads to acquittal of the accused.

**15. Criminal jurisdiction of Magistrates' Courts.**

- ❖ Sec 161 MCA

**Chief magistrate**

- ❖ Sec 161(1) (a) MCA, try all offences other than those whose penalty is death

**Grade 1**

- ❖ Sec 161(1) (b) MCA, try all offences other than those whose penalty is death or imprisonment for life.

**Grade 2**

- ❖ Sec 161(1) (c) try offences specified in the third schedule

**16. Modes of commencement of Criminal prosecutions.**

- ❖ Sec 42(1) MCA
- ❖ By a police officer bringing a person arrested
- ❖ By a public prosecutor

- By any person other than a public prosecutor or police officer

**Case:** Basajjabalaba Vs Kakande HC Crim Revision No. 2 of 2013

**17. Pleas and the recording of pleas**

A plea is a reply to a charge

- Article 28(3)(a) presumption of innocence till proved guilty
- Article 28(4) person arrested to be brought to court within 48 hrs
- Nature of the charge is read and the accused pleads.

**Case:** Uganda Vs Kiwalabye Muhammed HCC case No. 20 of 2013, accused may change plea at any time before judgment.

**Plea of guilty**

- Sec 124(1) MCA accused has to be asked if he admits or denies the charge
- Case R Vs Inns 60 Crim Appeal Reports 231, accused should admit the charge voluntarily without any force or threats.
- Sec 124(2) MCA admission should be recorded in the words of the accused

**Procedure for recording plea of guilty**

Case: Adan Vs Republic 1973 EA 445

- Read the particulars to the accused
- Magistrate to explain ingredients to the accused
- Prosecutor states the facts of the offence
- If accused does not agree, he rises his questions
- The charges are read back to him
- If he pleads guilty, he will be convicted
- Hear further facts and sentence the accused

**Plea of not guilty**

- Sec 124(3) MCA, court shall proceed to hear the case
- Sec 124(4) MCA if the accused refuses to plead , the court shall order a plea of not guilty to be entered

**Procedure of not guilty**

- Sec 126(1) MCA, Court shall proceed to hear evidence of the prosecution
- Sec 126(2) MCA, accused or his advocate may put questions to each witness produced
- Case; Uganda Vs Balikamanya Patrick HC Crim case No. 25 of 2012, when the accused pleads guilty, all ingredients of the offence have to be proved.

**Plea of previous conviction or acquittal**

- Sec 89 MCA
- Sec 124(5) (a) MCA, when an accused pleads previous convict or acquittal, the court shall investigate the alleged fact.

**Plea of pardon**

- Art 23(10), No person shall be tried if he has been pardoned.
- Art 121(4)(a) president may pardon any person using the prerogative of mercy
- Sec 124(5) MCA, court will investigate if the plea of pardon is true or false

**18. Plea bargaining.**

- Rule 4 judicature plea bargaining rules 2016, plea bargaining means the process between an accused person and the prosecution in which the accused person agrees to plead guilty in exchange to drop charges, reduce charges.
- Rule 5, it can be initiated orally or in writing by the accused or state
- Rule 6,deals with promise of a lesser sentence, drop some of the charges
- Rule 7, prosecution to disclose all relevant information.
- Rule 8, judicial officer who participated in failed plea bargaining shall not try the accused
- Rule 9, agreement to be executed in the prescribed form in schedule
- Rule 10, agreement to be signed by the accused and explained to him
- Rule 12, court to inform the accused his rights

**19. Pre-trial remedies available to suspects.**

- Bail
- Police Bond
- Unconditional release



**20. The practice relating to bail in Magistrates' Courts.**

- Art 23(1), No person shall be deprived of his liberty
- Art 23(6), person arrested is entitled to apply for bail
- Art 28(3) (a), premised on presumption of innocence
- Rule 3 of the judicature criminal procedure application rules, bail in magistrate courts may be orally or in writing.
- Section 75(1) MCA, magistrate may release a person on bail

- Case: Attorney General Vs Joseph Tumushabe SCCC Appeal No. 3 of 2005, applying for bail is for everyone without exception.
- Sec 77(1) MCA, court to inform the accused of the right to apply for bail

21. Bail applications and the considerations for bail by Magistrates

- Sec 77(2) MCA
- Nature of the accusation
- Gravity of the offence
- Antecedents of the applicant
- Fixed place of abode
- Likelihood of the accused to interfere with the witnesses

**Procedure**

- Rule 3, orally or in writing

**Where it is in writing**

- By way of notice of motion
- Affidavit in support

**Grounds in the application**

- Offence is tried and bailable by the court
- Presumption of innocence
- Fixed place of abode
- Substantial sureties
- Interest of justice

**Substantial sureties**

- Introduction letter, LC1
- Valid national ID or passport
- Place of residence

**Review of bail conditions**

- Sec 75(3) MCA, Chief magistrate can review the amount of bail
- Sec 75(4) MCA, only high court and chief magistrate can vary bail terms
- Case: Charles Onyango Obbo & Andrew Mwenda Vs Uganda HCMA 145 of 1997,, court should not impose tough terms to make bail look like a punishment.

**Procedure for review**

- Notice of motion
- Affidavit

**22. The practice regarding cancellation of bail**

- Case: Uganda Vs Lawrence Luzinda (1986) HCB 33, its trite law that bail once granted can be lawfully cancelled upon satisfaction of the court that there has been a breach of the conditions set by it or of the law.
- Absconding bail
- Interfering with the witnesses

**23. The right to counsel and the duties of advocates at the initial stages.**

- Art 23(3), accused entitled to legal representation of his choice

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- Representation in court
- Interviewing the client
- Visiting the accused to ascertain the charges
- Requesting for disclosure from the prosecution
- Preparing the defense case
- Applying for pre- trial remedies, like bail
- Interviewing prosecution witnesses if available

**24. Exercise of the discretion to prosecute**

- Art 120, the DPP has the power to initiate and discontinue the proceedings
- Consent to some charges like corruption

**25. The power and authority to prosecute.**

- Art 120, Powers of the DPP
- Initiate proceedings
- Discontinue proceedings before judgment
- Consent and sanction charges

**26. Statutory offences, their nature and defences thereto.**

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- Bribery c/s 5
- Embezzlement c/s 19
- Causing financial loss c/s 20
- Abuse of office c/s 11

**Narcotic drugs and control Act**

- Being in possession of narcotic drugs c/s 4
- Trafficking of drugs c/s 5

**Fire arms Act**

- Being in possession of a fire arm without permission c/s 3

**27. Prosecutorial ethics.**

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- Competence
- Impartiality
- Equality, just, no discrimination
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- Decorum
- Decency
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**28. The right to a fair trial.**

- Art 28, right to a fair hearing
- Art 44 (c), its non derogable

**Contents**

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- Adequate time to prepare his defence
- Be represented by a lawyer of his choice
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- Afforded facilities to examine witnesses

**29.The right to affair trial.**

- Art 28(1)
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- Fair
- Public hearing
- Before an impartial court
- Art 126(2) (b) should not be delayed

**30.The right to legal representation at a trial**

- Art 28(3) (d) accused entitled to a lawyer of his choice
- Art 28(3)(e), at the expense of the state where the sentence is death or imprisonment for life

**31.Summoning, interviewing and examination of witnesses.**

- Sec 50 MCA, summons maybe served at any place in Uganda

**Form and contents of summons**

- Sec 94 (1) MCA
- Sec 18(1) MCA, magistrate shall issue summons to require any person to appear before court.
- Sec 44(1) MCA, summons must be in writing, signed and sealed by a magistrate

**Service of summons**

- Sec 45(1) MCA, shall be served by a police officer or any other officer of court
- Sec 45(2) MCA, shall be signed and a duplicate returned

**Examination**

- Sec 136(1) Evidence Act cap 6, examination in chief
- Sec 136(2) cross examination
- Sec 136(3) re- examination

**32.Adjournments, withdrawal and dismissal of cases.**

**Adjournments**

- Sec 122 (1) MCA, the court may adjourn the hearing for sufficient cause

- Sec 122(2) MCA, court shall appoint a time and place to resume the proceedings

**Withdrawal**

- Art 120 (3) (d), DPP has power to discontinue the proceedings
- Sec 121 MCA, prosecutor may withdrawal from prosecution

**Dismissal of cases**

- Sec 119(1) MCA, dismissal for want of prosecution
- Sec 119(2) MCA, dismissal shall not bar subsequent proceedings against the accused

**33.Introduction of exhibits in evidence.**

- Sec 73 (1) MCA, things seized may be presented as exhibits
- Usually tendered in court during trial
- They are marked and kept in the exhibit store
- Entered in the exhibit book

**Disposal**

- Sec 202(1) MCA, the court can make such orders as to disposal of such exhibits

**34.Ruling on prima facie case and general contents of rulings.**

- Sec 73 TIA, happens when the prosecution closes its case and has established a prima facie case.
- Case: Ramanlal T Bahatt Vs R [1957]1 EA 332, prima facie means one which a tribunal could convict if no explanation is given by the defence.
- Uganda Vs Katabazi Manuel (1977) HCB 109, if witnesses contradict themselves then no case to answer may succeed.

**35.Options available to an accused in the conduct of the defence.**

- Sec 73(3) TIA
- Accused my take oath and will be cross examined, can call witnesses
- Accused may not take oath and will not be cross examined, can call witnesses
- Accused may keep silent

**36.Conduct of the defence case.**

- Sec 128(1) MCA, accused may make a statement on oath and call any witnesses
- Case: Kooky Shama & Anor Vs Uganda SC Crim App No.44 of 2000, if the accused chooses to make a statement not on oath from the dock, he will not be led by his advocate.

- He can remain silent; the prosecution shall then sum up the case.

**37.Final submissions, evaluation of evidence and the contents of a judgment.**

- Sec 131 (2) MCA, after the close of the prosecution case, the defence will open its case
- Sec 131 (4) MCA, the right to reply maybe exercised by an advocate

**Evaluation of evidence**

- Abdu Ngobi Vs Uganda SC Cr. Appeal No. 10/ 1991, court noted that the evidence of the prosecution should be weighed against the evidence of the defence so that a final decision is not taken until all evidence has been considered.
- In Mujuni Apollo Vs Uganda SC Crim Appl No. 46 of 2000, court held that it it trite law that there is no set form of evaluation of evidence.

**Judgment**

- Sec 133(1) MCA, court after hearing the case it may convict or acquit
- Sec 135 (1) MCA, judgment shall be explained in open court

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- Sec 136(1) MCA
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- Questions to be decided
- Discussion of the relevant law
- Determination of issues
- Final findings of court

**38.Sentencing procedures and options.**

- Governed by the sentencing guidelines
- Para 12, upon conviction the court shall allow a reasonable period not exceeding 7 days to determine the appropriate sentence
- Para 13, sentence should be in respect of the offence
- Para 14, court to consider other factors to mitigate
- Para 15, court to take into account period spent on remand
- Convict should be in lawful custody

Sentencing options

- Para 10 sentencing guidelines
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- Imprisonment for life
- Fine

- Community service
- Probation
- Caution and discharge without punishment

**39.Disposal of exhibits.**

- Sec 202 (1) MCA, during the trial or after the conclusion the court may make such orders to dispose of the exhibits

**40.Supervisory duties of Chief Magistrates.**

- Sec 76 MCA
- Review bail terms
- Review records of proceedings

**41.Committal proceedings in Magistrates' courts**

- Sec 168 MCA, DPP files an indictment
- Sec 1 TIA, High court has powers to try any offence
- Sec 168(2) MCA summary of the case to contain particulars
- Sec 168(3) MCA, magistrate gives the accused a copy of the indictment and case summary
- Read the indictment and the case summary
- Commit the accused person for trial to high court

Case: Kizza Besigye & 22 Ors Vs AG Constn Pet No. 12 of 2006, committal proceedings are intended to inform the accused of the offence

**42.Bail practice in the High Court.**

- Art 23(6)(a), person arrested is entitled to apply for bail
- Art 23(6) (b), conditional bail
- Art 23(6) (c), release of a person on bail
- Sec 14 TIA, high court may release the accused on bail
- Sec 15 TIA, grounds
- Case: Uganda Vs Kizza Besigye Constn Reference No. 20 of 2005
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- Not abscond bail

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- Certificate of no objection
- Infancy or old age
- Sound sureties
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**43.Jurisdiction and structure of the High Court.**

- Established under Art 138, original and appellant jurisdiction
- Sec 19 Judicature Act Cap 13, holds sessions in various areas in Uganda
- Sec 1 TIA, jurisdiction to try any offences
- Sec 4 TIA, original criminal jurisdiction to hold sittings

**44.PreparationofIndictments.**

- Sec 22 TIA, Contents of the indictment, statement and particulars of offence
- Sec 23 TIA, Joinder of counts
- Sec 24 TIA, Joinder of persons
- Sec 25 TIA, Rules of framing of charges
- Sec 26 TIA, indictments to be signed by DPP
- Sec 27 TIA, Form of indictment
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**45.Legal Representation in the High Court.**

- Art 28(3) (d) accused entitled to a lawyer of his choice
- Art 28(3)(e), at the expense of the state where the sentence is death or imprisonment for life



**46.The power of the Inspector General of Government to investigate and prosecute.**

- Art 225(2) IGG may investigate any matter
- Sec 10 IGG Act, IGG may investigate any matter
- Art 230 (1), shall have power to investigate, arrest, cause arrest or prosecute in cases involving corruption, abuse of authority.

**Powers of the IGG under the Anti- Corruption Act**

- Sec 33 ACA, may order for special investigations

- Sec 36(1) ACA, appointing special investigator
- Sec 37(1) ACA, can order for search, seizure and detention of any document containing evidence
- Sec 49 ACA, consent on the charges
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**49.Organizing, preparing for and convening High Court Criminal sessions**

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- Cause list is served to the DPP
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- Registrar prepares lists of assessors
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**50.Legal representation of accused persons in the High Court.**

- Art 28(3) (d) accused entitled to a lawyer of his choice
- Art 28(3)(e), at the expense of the state where the sentence is death or imprisonment for life

**51.Role of defence counsel upon receiving instructions, before the trial during the trial and after.**

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- Sec 66(3) TIA, documents admitted shall be deemed to have been proved
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**54. Commencement, conduct and closure of the prosecution case.**

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- Sec 3TIA, before court begins, the number of assessors shall be two or more

- Rule 5 Assessors Rules, summoned 7 days before the session begins
- Rule 9, failure to attend by the assessor attracts a fine of shs. 400

**Commencement**

- Sec 67 TIA
- Sec 68(1) TIA,

**Opening prosecution case**

- Sec 71 TIA, prosecution shall call witnesses upon swearing in of assessors
- Sec 72 TIA, witnesses shall be subject to cross- examination

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**57. Options for the accused in conducting defence.**

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- Can refuse to take oath, will not be cross examined and can call witnesses
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- Standard of proof
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**60. Summing up to the assessors and assessors' opinion(s)**

- Sec 82(1) TIA, the judge will sum up for the assessors after closure of the case by both sides
- Sec 82(2) TIA, judge will give his judgment
- Case: Godfrey Tinkamalirwe & Anor Vs Uganda SCCA No.5 of 1983, its mandatory that the judge must sum up the law and evidence to the assessors.

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- Sec 82(2) TIA, after summing up the judge shall deliver judgment
- Sec 86 (1) TIA, shall be in writing
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**Mode of delivering a judgment**

- Sec 85(1) TIA, judgement shall be pronounced and explained in open court
- Sec 85(3) TIA, judgment delivered where no party is present or any advocate is invalid



**62. Sentencing options, powers and procedures.**

- Sentencing 82(5) TIA, if the accused is convicted the judge will pass a sentence
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