

**BAIL PRACTICE IN UGANDA: A CRITICAL ANALYSIS OF THE LAW IN
MAGISTRATE COURTS AND HIGH COURT.**

BY

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DEDICATION

I dedicate this dissertation to my beloved mother Miss CHRISTINE N. KAMYA the family of Mr. A.B KALIBBALA KAGGWA and my family at large whose love, extreme tolerance and understanding has brought me this far. I thank them for their support.

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DECLARATION

I, ESTHER KAGGWA, do hereby declare that the work presented in this dissertation is my own, except where acknowledged, and it has never been submitted or examined in any university as an academic requirement for any award.

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APPROVAL

The undersigned certifies that, she has read the dissertation and hereby recommends for acceptance the Kampala International University a dissertation entitled "**BAIL PRACTICE IN UGANDA. A CRITICAL ANALYSIS OF THE LAW**"

As a requirements of the Degree of Bachelor of Laws

DATE

17th August 2012

SIGNED



BASAJABALABA JALIA

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The Magistrates Court Act Cap 16

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LIST OF ACRONYMS

A.C	Appeal cases
AELR	All England Law Reports
AIR	All India Reports
CID	Criminal Investigations Department
CJ	Chief Justice
Cap.	Chapter (of law)
Crim. App	Criminal Appeal
Crim. Cause	Miscellaneous Criminal Cause
DPP	Director of Public Prosecutions
EALR	East African Law Reports
EACA	East African Court of Appeal law reports
Ex.p	Ex-parte
H.C.B	High Court Bulletin
HCD	High Court Digest
LRT	Law Reports of Tanzania
Misc. Crim.Appl	Miscellaneous Criminal Application
M.B	Monthly Bulletin of the High Court
M.C.A	Magistrates Courts Act
NCLR	Nigerian Constitutional Law reports
NWLR	Nigerian Weekly Law Reports
SCR	Supreme Court of Canada Reports
TIA	Trial on Indictments Act
TLR	Tanganyika Law Reports
ULR	Uganda Law reports
US	United States of American Reports

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ABSTRACT

This dissertation entails the right to bail as one of the fundamental rights that are stipulated under Article 23 of the constitution of the Republic of Uganda 1995 as amended.

The research is intended to critically examine whether the right to bail as enshrined in the constitution has been practically administered in the courts of law, by examining the legal machinery aimed at protecting and enforcing these rights and how the state has contributed to its enforcement among others.

The law on bail in Uganda originally stipulated 360days and 180days respectively such was too long and cruel for an accused to be brought to court to prove their innocence. But the new amendment stipulates 180 days and 60 days in the constitution of Uganda 1995. How has the law on trail been appreciated by the courts of law? This question gives details on how the research as justified its application.

The study used the qualitative method and desk research by using and consulting materials from the libraries, law Journals, internet among others.

The findings show the non procedural causes of delay that have affected the bail process of the criminal justice in Uganda.

The research states that however much there are hindrances to the bail practice in Uganda, bail is a constitutional right of an accused and it's granted in accordance into the relevant law.

Consequently , the research recommends that the law should be in position to take its course independent of other variable by observing supreme constitutionality of law applicable and also the discretion of the judges on matters of trail; should be subjected to amendment for a more precise law on the yardstick of discretion .

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of the Study

The 1995 constitution of Uganda originally provided for bail to be granted after the accused had served remand period for 360 days where the offence was triable by the high court and 180 days where the offence is triable by the subordinate court now it has been amended to 180days and 60 days respectively¹.

'Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognized under constitution of the republic of Uganda², that the crucial power to negate it is a great trust exercisable, to causally buy judiciously, with lively concern for the cost to the individual and community after all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The law four words are the life of that human right."

However, much as it is difficult to define criminal justice, a criminal is defined as a person found guilty of an indictable offence³

Justice on the other hand is the upholding of rights and the punishment of wrong by the law.

At the heart of a free and democratic society is the liberty of its subjects. Liberty lost is never regained and can never be fully compensated for; therefore where the potential exists for the loss of freedom for even a day, we as a free and democratic society must place the highest emphasis on ensuring that our system of justice minimizes the chances of an unwarranted denial of liberty⁴. In the criminal law context, this freedom

¹ Article 23 (6) (c) (b)

² Article 21 of the 1995

³ Osborn's Concise law Dictionary, 8th Edition, page 100

⁴ Lacobucci j in R Vs Hall (2002) SCR 309

is embodied generally in the right to be presumed innocent until proven guilty and especially in the right of bail⁵

The main legal frame work governing bail is the constitution of Uganda among others.

Personal liberty is a fundamental right. The right to personal liberty is secured under Article 23 (1) of the constitution of the Republic of Uganda, which stipulates that,

“No person shall be deprived of his personal liberty

Except in any of the following case....”

The word “except” in the clause indicates that personal liberty is not an absolute right; it recognizes that situations may arise when liberty may be curtailed⁶

One of the situations is the refusal of grant of bail to an accused person. An accused person is admitted to bail when he is released from the custody of officers of the law and is entrusted to the custody of persons known as his sureties, who are bound to produce him to answer, at a specified time and place, the charge against him and who in default of so doing are liable to forfeit such sum as is specified when bail is granted⁷.

Halsbury’s laws of England⁸ generally agrees with the above definition and adds that the sureties may at anytime, seize their principal and discharge themselves by handing him over to the custody of the law. The accused person will then be imprisoned, unless he or she obtains fresh bail.

According to Section 4 (1) of the Trial on indictments Act⁹, one may simply define bail as follows;

“It is the release from custody by the court of a person accused of a criminal offence after such a person has entered a recognizance consisting of a bond

⁵ Ibid, P.312

⁶ Article 23 (1) (a), (b), (c), (d), (e), (g), (h) of the Constitution of the Republic of Uganda 1995

⁷ Byrn’e Law Dictionary at p. 89

⁸ Third edition at pg 377

⁹ Cap 23, Laws of Uganda 2000

with or without sureties for a reasonable sum of money to the effect that he would appear before court for his or her trial”

The High Court is guided by the provisions of the Trial on Indictment Act whereupon section 15(1) is to the effect that;

Notwithstanding section 14, the court may refuse to grant

Bail to a person accused of an offence specified in subsection

(2) If he does not prove to the satisfaction of court

a) That exceptional circumstances exist justifying his or her re lease

On bail, and

b) That he or she will not abscond when released on hail

Section 15 (2) of Trial in Indictment Act specifies the offence being examined in this research which is the justification for the choice of the circumstances in the trial on analysis circumstances (a) and(b) above in that order.

Exceptional circumstances have been defined under the Trial on Indictments Act cap34 to mean:

a) Grave illness certified by a medical officer of the prison or place where the accused is detained as being incapable of adequate medical treatment while the accused is in custody;

b) A certificate of no objection signed by the Director of Public Prosecutions

c) The infancy or advanced age of the accused.

The right to personal liberty enjoins a right to apply for and be granted bail.

Article 23 (6) (a) of the Constitution¹⁰ provides that a person arrested in respect of a criminal offence is entitled to apply to the Court of be released on bail and the court may grant that person bail on such conditions as the court considers reasonable. The

¹⁰ The Constitution of the republic of Uganda 1995

right is a delicate balance between personal liberty and administration of criminal justice, by which courts are given discretion to determine whether the conditions and circumstances of the accused warrant grant of bail whilst not endangering the criminal justice system.

The right to grant of bail has been constructed to be premised on the presumption of innocence¹¹. At common law, an individual is presumed innocent until found guilty, and, a natural corollary of that presumption, it is incumbent on the prosecution to prove each element of the crime alleged beyond reasonable doubt before he may be found guilty. This principle was famously given expression by **Viscount Sankey L.C** in 1934 who felt so sure of it in **Woolmington V DPP**¹² as to describe it as golden thread which runs throughout the web of English criminal law. The presumption of innocence is therefore obviously at the centre of any discussion of a right to bail.

The jurisprudence on bail aims at achieving a balance between personal liberty and security or interest of society. Any person can be accused of an offence.

On the one hand, there can be a situation where a person can be accused of an extremely petty offence. If there is no provision for release on bail, an accused person shall have to spend the whole pre-trial in jail. At the conclusion of the trial, the accused person may be found 'not guilty'. Even if he is found guilty the period already spent in judicial custody may be longer than the period of imprisonment, which could be imposed on him on conviction. If such a situation arises, a great hardship would be caused to the concerned.

To take the argument to the other extreme, if a person accused of serious offence having a long criminal antecedent and also having sufficient means to evade the process of law or tamper or influence the case of the prosecution, his or her release, may in probability have dire consequences.

¹¹ Bbosa J in Charles Onyango Obbo and Another V Attorney criminal Miscellaneous Application 14/9, Twinomujuni JA. In Joseph Tumushabe V Attorney General Constitutional Petition No 6 of 2004

¹² (1935) AC 462 at 481

The person may abscond and may never come back and may continue his criminal activities; the person may threaten or buy the witness or the prosecution and thwart the process of justice. Therefore, detention during pre-trial or trial period, in such cases may be justified.

However, those who are accused of petty offences or who have no criminal antecedent and are not likely to evade the process of law or to influence the case of the prosecution, must not unnecessarily be made to languish in jail during pre-trial period. There is a precarious balance of interests in a challenge to the entire jurisprudence on bail. The analysis of the legal position of the right to bail raises a very important question of whether our Constitution confers only a right to grant or only a right to apply for bail¹³. In the recent past, some judges of high Court have granted bail as an automatic right under the Constitution while some other judges of the same High court have granted or denied bail on the basis of the statutory provisions of **the Trial on Indictment Act**¹⁴. There is thus a real and serious controversy as to what is the true state of the law.

Thus, **in Alphasadi Matovu vs. Uganda**¹⁵ Hon. Justice E. Lugayizi¹⁶ states that,

“In matters under consideration (and in other matters of Bail criminal cases), court must bear in mind a few important principles. Firstly, that bail is now a Constitutional right. Secondly, that Article 23 (6) (a) of the Constitution limits Court’s Discretion in such matters to Setting ‘conditions’ that would guarantee the return of an Accused person to court to answer the charge against Him or her before releasing him or her on bail”

The basis of his reasoning is that for the first time in the legal history of Uganda, the Constitution recognizes the presumption of innocence as a fundamental human right and therefore, such recognition is not vain, and should lead to the liberty of an accused

¹³ | Miscellaneous Application No. 955/2006

¹⁴ Cap 23 Laws of Uganda 2000

¹⁵ Miscellaneous Criminal Application No. 15/2005

¹⁶ Ibid, at p.5

person. Therefore, a person on remand for a criminal offence is now entitled to being released on bail, for he or she has a Constitutional right to bail¹⁷.

Curiously, apart from some recent cosmetic amendments of the trial on Indictments Act (Cap 23), the legislature has not bothered to bring the aid in line with Articles 18 (3) and 23 (6) of the Constitution. For example, section 14 (2) and 15 of the Trial on Indictments Act do not recognize that bail is now a constitutional right and such has no more power to refuse to grant it.

This means that those sections of the Trial on Indictments Act are inconsistent with the 1995 Constitution¹⁸

In the case of **Joseph Tumushabe V Attorney General¹⁹, Twinomujuni J** *inter alia* expressed unease with various provisions of our laws on bail. After pointing out that the laws governing bail in Uganda, which are found in Articles 23 (6) (a), (b) and (c) of the Constitution, the learned judge made this observation²⁰,

“All other laws in this country that are inconsistent with or which contravene this article are null and void to the extent” of inconsistency. The Attorney General of Uganda needs to take a closer look at ... section 15 and 16 of the Trial on Indictments Act Cap 23. There may be urgent need to bring them in conformity with Article 23 (6) of the constitution.”

Conversely in **Dr. Aggrey Kiyingi vs. Uganda²¹**, Hon Lady Justice C.A Okello stated that;

“As can be seen from the wording of the Article, the right that an accused has under it, is the right to apply to court for bail. But the discretion to grant or to reject the application is that of the court.”

¹⁷ Ibid at p.4

¹⁸ Ibid

¹⁹ Constitutional Petition No. 6/2004

²⁰ Ibid, at p. 17

²¹ Miscellaneous Criminal Application No. 41 of 2005, p.4

In **Aliphusadi Matovu Vs. Uganda**²², it was held that under Article 28 (3) (a) of the Constitution, the applicant is presumed to be innocent until the contrary is proved, that being the case, he should get bail until the substantive trial is concluded.

Justice C.A Okello held in response that,²³

“It should be observed that a bail application is not a trial in the substantive charge for which an applicant is held in custody. No evidence in the substantive charges is adduced and the court does not make any pronouncement on the merits and demerits of the charges. It follows that the decision of the Court in an application is not a pronouncement of guilt or innocence in the substantive charge. A court can therefore reject or grant bail without putting into jeopardy the constitutional presumption of innocence. In this respect, my view is that reference to the presumption of innocence in this type of hearing is misconceived.”

From the above discussions, one can deduce that there is a real and serious controversy as what the true state of the law is. How should we interpret and apply the relevant Articles of the Constitution? Are the bail provisions of the Trial on indictments Act Cap 23, let alone those of the Magistrates Courts Act Cap 16 constitutional or not? In the words of **Justice James Ogoola**²⁴

“The situation now obtaining is contradictory and embarrassing at the High court and is downright confusing and perplexing as concerns the subordinate Courts whose decisions and judgments must follow the decisions and judgments of the High courts.”

These judgments have therefore raised a number of issues. The primary issue therefore is whether the Constitution confers an absolute right to bail or only a right to apply for

²² Supra, n. 13

²³ Opcit

²⁴ Criminal rev. No 91 of 1972

bail. Secondly, the presumption of innocence is obviously at the centre of this discussion. Does it apply at the pre-trial stage or merely at the trial?

1.2 Statement of the Problem

Much as bail is a constitutional right, it's not a guarantee that is accessible to every individual who seeks it. The issue here is that the law of bail has been subjected to massive abuse and this faces several challenges politically economic and socially.

Bail in the courts of Uganda has become a selective to the public and whether or not the accused is highly placed will be a determinant factor in granting bail.

The law in place on bail in the magistrate's court and high court does not address the yardstick on how much money should be paid for bail that should be standard. This is supposed to be addressed by parliament.

Secondly, the constitution amendment on the remand period for the accused is still not upheld to a large extent despite its reduction period on remand. The accused persons find it even harder to access bail after they have stayed longer periods on remand as the courts are only willing to hear the bail other than bail.

Pertinent to say the courts should not take longer than the statutory remand period recommended in granting bail.

1.3 Objectives of the Study:

1.3.1. General Objectives

1. To investigate the relevance and efficacy of the law of bail in the administration of justice in Uganda.
2. To enlighten members of the public and other stake holders about the right to bail.
3. To discuss the challenges suspects have in applying for bail in Uganda.

1.3.2 Specific objective of the research

1. To investigate the relevancy and efficacy of the law of bail in the administration of justice in Uganda.

1.4 Justification of the Study

This dissertation strives to provide more knowledge on the law of bail practice to the community, students and the rest. The researcher strongly believes it will be a major step forward for our society if all people knew the general state of the law governing bail in Uganda so as to fight for their rights.

1.5 Hypothesis

Bail is a constitutional right but court has the discretion to grant or refuse bail. The accused therefore has only the right to apply for bail whereas getting it granted depends on the discretion of the court. This discretionary nature of the court to grant or refuse bail has rendered bail practice a nugatory.

1.6 Methodology

The qualitative method and desk research methods shall be employed, this shall involve use of statutes, library materials such as textbooks law journals, articles and cases both reported and unreported and internet among others also it involves interviewing people about their experiences in bail practice. This is aimed at establishing literature related to the subject matter and find out how much has been written on the subject.

1.7 Literature Review

A lot of useful work has been done in the area covering the law of bail and its applicability in criminal justice by both local and foreign authors.

Worldwide, there is a desire that the laws are put in place; there should be efficiency, competent and impartial instruments or mechanisms to enforce them.

Most authors on the subject dismissed it without fully analyzing the effectiveness and relevance of bail in depth and the efficacy and competence of the instruments of criminal justice especially the courts of law.

The Handbook for Magistrates, **Ayume's book on criminal Law and Procedure** and **Odoki's Guide to Criminal Procedure Law in Uganda** and many others have all contributed to the subject of bail²⁵. These authors define bail and, indeed labour to explain how Magistrates, judges should exercise their powers in cases where they are confronted with bail applications. They also labour to explain satisfactorily the factors considered in granting or refusing bail.

Ayume Francis, in his book, **Criminal Procedure and Law in Uganda**²⁶ defined bail to include a recognizance entered into by the accused himself conditioning him to appear before court and failure of which may result in forfeiture of the recognizance. He further notes that the impact of custodial remand is a grave and therefore it should be redeemed by the bail.

That bail should be a substitute for custodial remand and also discusses factors that are considered in granting or refusing bail. Much as he discusses at length, he fails to visualize the rampant abuse that the law faces.

R.E Salhany in his, **Canadian Criminal Procedure**²⁷ wrote that recognition of the prisoner's right to bail arose not from a sense of justice but rather from circumstances of necessity because the prisoners were compelled to wait for a considerable period for their trial without caring for them adequately during their confinement.

However, it should be noted that **R.E Salhany's** analysis of bail in their book, **The Law, Best Practice and debate**²⁸ wrote that the individual should be balanced with the needs of the society. In remanding so many un-convicted persons poses a serious effect on prison ward conditions.

They further note that much as courts have the discretion to grant bail, they should do so following the conditions of the law.

²⁵ A guide to Criminal Procedure Law in Uganda, (1975), Publication Kampala LDC by Odoki, B.J.

²⁶ Ayume Francis: Criminal Procedure and Law in Uganda, page 54 1986

²⁷ R.E Salhany: Canadian Criminal procedure Page 77 1989

²⁸ Paul Cavadinho and B. Gibson: The Law, Best Practice and Debate, page 3

However, **Cavadina and Gilbson**²⁹ failed to comment on the ever increasing influence of politicians in the enforcement of these laws governing criminal justice. This is because sometimes it takes the section of politicians for laws to be put into play.

Douglas Brown in his *Criminal Procedure in Uganda and Kenya*³⁰ noted that bail is not a punishment therefore it should not be excessive and that Magistrates should grant bail to an accused person whenever possible.

Douglas Brown on his part pointed out the presumption of innocence is the basis of the law of bail. He stresses currently that that question of the accused's liberty arises immediately as the prosecution endeavors to prove his guilt after arrest. He stresses that a standard of reasonableness should be used by magistrates and judges when they use their powers to fix cash bail.

Furthermore, **David Bernard in Criminal Court in Action**³¹ argues that bail is a right and the suspect is entitled to its grant. That the question of bail only arises if there is a remand, and that the length of remand is very important in the study of bail since it affects bail applications and effectiveness of the criminal justice system. Much as he is correct, he did not read whether the state can influence the length of its own purposes. This is because the attendance of justice is the first and major rationale for bail.

In 1994, **Andrew Sanders and Young** wrote in their book *Criminal Justice*³² that bail should be granted where court is satisfied that the accused will not commit an offence, not to obstruct the course of justice and will appear in to understand his trial.

The law should not be made for suppressive purposes but to combat crime, that state power should not be used to deny suspects or accused persons their freedom and liberty.

²⁹ Paul Cavadinho and B. Gibson: The Law, Best Practice and Debate, page 3

³⁰ Deoglas Brown: Criminal procedure in Uganda and Kenya, Page 27

³¹ High Court Msc. Crím. Application No 22/2007

³² Andrew Sanders and Young: Criminal Justice, page 144

Benjamin Odoki in his book³³, *A Guide to Criminal Procedure in Uganda* wrote that the objective of bail is to ensure that the accused persons is removed from the custody of the court thereby observing the right to liberty, which in a constitutional right is seen under Article 23 of the Constitution of the republic of Uganda, 1995.

In 1998, **Robert Ntuyo** in his book *The Right to Bail*³⁴ noted that the 1995 constitution of the Republic of Uganda guarantees the right to liberty and free movement. He stated that the very constitution curtails this freedom of movement in specified ways one of which is by way of arrest by a lawful authority for a criminal offence, constitution allows such a person to apply for and be granted bail by court when a person is given bail.

However, it should be noted that does not offer a sufficient discussion on bail with regard to Uganda's socio-economic situation.

In 2002, **Jimmy O'riordan** in his book, *As Law for O.C.R*³⁵ wrote that bail is an answer to the dilemma created where an innocent person would be held in jail awaiting the chance for the prosecution to prove him guilty because after all the law presumes him innocent till proved guilty. He however noted that there is the problem of balancing the needs of the two sides because the criminal court system wants to prosecute offenders whereas the general public wants to be protected against potentially dangerous people like murderers, thieves.

He later on observed that many people on remand are later found not guilty or have short prison sentences, that they are immediately released from custody, that therefore that courts have to be careful in balancing up the rights of each party.

³³ 2nd edition, page 71

³⁴ Robert Kafuko Ntuyo: The right Bail page 131

³⁵ Jimmy O'riordan: As Law for OCR,, page 43

In 2004, the **Handbook for Magistrates**³⁶ states that the bail is recognizance taken by a duly authorized person to ensure that an accused person appears to answer a charge against him, at an appointed place and time.

It however does not state exactly what place, much as the place may be presumed to be a court. It also fails to state whether or not law on bail is effective or nor hence this research will try to address this issue.

As seen from the above review a lot of useful work has been done on this topic of bail in relation to the criminal justice system.

However, none of the work has attempted to discuss the law in the context of the political, social and economic conditions prevailing in Uganda today. This is probably because the foreign authors are not aware of the condition in Uganda and the fact that most of these books were written over fifteen years ago, hence it leaves further research in this area wanting.

1.8 Chapterization

chapter one of the dissertation shall include the background of the study, statement of the problem, objectives justification of the study, hypothesis, methodology, literature review, synopsis and conclusion.

Chapter two.

Shall cover the Bail practice in Uganda to entail the meaning of bail, effect and object of bail, rationale for bail, power to grant bail and consideration for bail and conclusion

Chapter three of the dissertation shall cover the legal framework. This includes the constitution of the republic of Uganda 995, the children's Act Cap 59, the Magistrates Act Cap 16, and the Trial on Indictments Act Cap 23, International Conventions, case law and conclusion.

³⁶ Ayume Francis: criminal Procedure and law in Uganda, page 54

Chapter four covers the challenges affecting grant of Bail administration of criminal justice in Uganda, such as political factors, discretion of court and conclusion.

Chapter five shall generally wind up the dissertation by covering the findings, conclusions and recommendations.

1.9 Conclusion

The details in chapter one give a detailed analysis of how the dissertation shall be written by showing among others the background of the study whereby the law on bail practice was before and the new amendment how, the problem to be addressed such as lack of a statutory provision on bail money to be charged on a person accused. The researcher intends to use both the qualitative research method and desk research to gather literature from law journals, internet, law reports, and newspapers, among others.

CHAPTER TWO

BAIL PRACTICE IN UGANDA

2.1 Meaning of Bail

Black's Law Dictionary³⁷ defines bail as a process by which a person is released from custody either on the undertaking of a surety or his or her own recognizance.

In **Uganda vs. Luzinda**³⁸, **Okello Ag. J.** as he then was noted that bail involves the court taking a recognizance from the accused person consisting of bond, with or without sureties for such an amount as is reasonable in the circumstances of the case, to appear before the court on such a date and time as is named in the bond.

Accordingly, the applicant for bail must enter into an agreement with court and present to court a guarantee that once released on bail, he or she would not abscond.

In essence, it can summarily be said that an accused person is admitted to bail when he is released from custody on his giving security or accepting certain specific conditions usually imposed by court.

2.1 .1 Effect and object of Bail

The Digest³⁹ states that the object of bail is to secure, by a pecuniary penalty, the appearance of an accused person or prisoner at trial without being detained in prison or remand pending trial.

Bail would reduce the pressure on prisons due to the ever increasing number of prisoners. This is why it has been commonly agreed upon that it is undesirable to detain persons in prison if it's not necessary. Thus, in the case of **Ruparelia vs Uganda**⁴⁰ **Kireju, Ag. J; (as she then was) held.**

³⁷ 8th edition, page 150

³⁸ (1986) HCB 33

³⁹ 2nd Reissue, Volume 15 (i) page 167

⁴⁰ (1992- 1993) HCB 52

“That before court can grant bail, it has to consider whether it is probable that if the accused is released on bail, he or she will appear in court to stand trial, and in considering this matter, the court may have regard to the nature of the evidence and possible punishment, whether the applicant has a fixed Place of abode, the antecedents of the applicant and whether he or she is likely to interfere with the witnesses for the prosecution or the evidence.”

2.1.2 Rationale for Bail

The rationale for bail in our laws is derived from the constitutional presumption of innocence. The criminal justice system presumes a person charged with a criminal offence to be innocent until proved guilty or until he or she pleads guilty⁴¹ According to **Professor Tarsis b. Kabwegyere**⁴² in his book, the custodians of law and justice reside in the institution of the judiciary which is supposed to be independent and unencumbered by the whims of policy makers and implementers. It can therefore be stated that integral to the proper functioning of any criminal justice system is due respect for human rights as was noted in the United Nations and crime Prevention Report of 1991.

Bail is help especially where it is completely unnecessary to remand the accused in prison. However, the court should be very cautious in making a decision of this kind because the objective of the criminal justice system of combating crime may not be achieved if accused persons are released negligently. This therefore means that court has to apply the relevant law and put into consideration the circumstances of each case. Invoking the law on bail would ensure the accused’s liberty subject to his or her trial as well as the after-math of custodial remand especially in instances where charges against the accused are dropped. This in essence would do greater justice to the accused.

⁴¹ Article 28, 1995 Constitution

⁴² The Politics of State Formation and Destruction in Uganda

It is also contended that keeping an accused person in jail or remand would weaken his ability to organize his defence.

This is because the accused loses contact with the witnesses. Thus it would be better if the accused is released on bail to enable him prepare and organize his case, and in certain circumstances to ensure the proper determination of the merits of the case before court. This position was stated by **Egonda Ntende J;** in the case of **Uganda Vs Juruga**⁴³

2.1.3 Power to Grant Bail

The power to grant bail normally vests in the court and this power is discretionary but the court has to exercise this discretion judiciously. The Magistrates courts also have powers to grant bail. This research is however focused on the law administered in the high Court.

The principle Legislations governing grant of bail in the High Court are:

- **The Constitution of the Republic of Uganda, 1995 (as amended)**
- **The Trial on indictments Act cap.23**

The general provision of the constitution enforces the provision of the trial or indictment Act where upon the high Court has power to grant bail at any stage in proceedings, on taking from the applicant a recognizance consisting of a bond with or without the relevant law, this was stated in case of **Musana & Another vs. Uganda.**⁴⁴

The Constitution states a general provision on bail that any person arrested in respect of a criminal offence is entitled to apply for bail. It also provides for mandatory bail which was also re-echoed by **Sebutinde Ag. J;** (as she then was) in the case of **Dr. Mugamba & 2 other vs. Uganda.**⁴⁵

⁴³ High Court Criminal Case No. 57/1993

⁴⁴ Misc. Appl. No. 20/1999

⁴⁵ Misc Crim. Appl. N. 51/1999

2.1.4 Consideration for Bail

Since bail is a constitutional right, it can therefore be stated that any applicant for bail is constitutionally entitled to its grant although the grant or refusal must be in accordance with the relevant law. This was stated in the case of **Musana & Another Vs. Uganda**⁴⁶.

The accused has to satisfy court that in the circumstances of his or her case, he or she should be granted bail, while the prosecution may oppose. The accused's burden is even heavier in view of the fact that the court has discretionary powers to deal with bail applicants.

It should be noted that the High Court has consistently heeded to the requirement of the law as to proof of exceptional circumstances which shows that the criminal justice system is quite effective in as far as promoting justice is concerned.

With regard to grave illness, court requires a certification signed by a medical officer of the prison where the accused is being detained that the ailment of the accused is not capable of adequate medical treatment while in custody. This is the current position of the law.

Previously, there was a requirement of a medical Board Certified by the Chief Medical Officer and comprising not less than two medical practitioners as noted in the case of **Mastula Nakyeyune vs. Uganda**⁴⁷ that since the medical board was absent, the court has to use its own sense of judgment to make its own decision based on available evidence and decide what would have been decided by the board if it existed. The current position has been applied in a number of cases like in the case **Immaculate Lugolobi Vs Uganda**⁴⁸ where the accused was granted bail because she had been terminally ill and had an elderly father to cater for and, **Janet Mureeba Vs.**

⁴⁶ Supra

⁴⁷ (1985) HCB 25

⁴⁸ Misc application No. 30 of 2003

Uganda⁴⁹, **Justice Mukanza** granted bail to the accused because she had permanent grave illness that is, Asthma, hypertension and severe ulcers.

Further in the case of **Enos K. Tumusiime Vs. Uganda**⁵⁰ where the application for bail was grounded on grave illness of the applicant, two medical reports were produced one from Nairobi and a second one from Murchison Bay Hospital whose prison the applicant was being detained at the time.

The accused had constant chest pain that needed regular surveillance from his consultant an orthopedic surgeon.

The learned judge considered the fact that the accused has his consultant in Nairobi who could not attend to him in prison where he was detained and concluded that the applicant was incapable of adequate medical treatment in prison.

The judge, considering this ground inter alia, held that the accused had proved exceptional circumstance to entitle him grant of bail, and was granted bail.

As this stage, it is important to note that the criminal justice system is not effective because the law does not specify which type of disease constitutes grave illness hence in determining whether or not particular condition of the applicant amounts to grave illness the court should act judiciously. The applicant's illness must also be seen to aggravate after commitment to prison (remand)

A certificate of no objection signed by the Director of Public Prosecution is a document tendered to court by a state representative indicating that they are satisfied with the applicant's ground for bail and have no reason to oppose it; and therefore leaving the matter to court to make the appropriate decision.

It is vital that the document be signed by the Director of Public Prosecutions. However, it should be noted that in recent times, this has not been very useful as proof of exceptional circumstance as required by the High Court. This is because most applicants

⁴⁹ Criminal case No. 30 2003

⁵⁰ H.C.C.S. NO. 136/1999

rely on either grave illness or advanced age as exceptional circumstances justifying release on bail.

Several applications for bail have been grounded on advanced age of applicants as exceptional circumstance justifying grant of bail. It should however be noted that there is no statutory definition for advanced age hence this is why in the case of **Dr. Suleiman Kiggundu vs Uganda**⁵¹ it also observed that in the absence of statutory definition of advanced age, cases are often made persuasive.

However, being as the case of **Aldo Okello Vs Uganda**⁵², a person over 51 years of age was held to be one of advanced age. Whereas in the case of Andrew **Adimola vs Uganda**⁵³ the age between 50 and 55 years was as advanced age for purposes of bail application.

It should be noted that there are a number of High Court decisions to this effect. Like the case of **Obia George vs Uganda**⁵⁴ where **Justice Opio Aweri** held that:

“The High Court has always held and continues to hold that the age of or above 50 is deemed to be advanced age for purposes of bail application”

Furthermore, there is no statutory definition of infancy of an applicant and there are hardly any cases to that effect. Thus in the case of **Kamoga vs Uganda**⁵⁵ where the applicant was 16 years of age, an affidavit was sworn by his father contending that the applicant was an infant and that his schooling would be in jeopardy. However, the trial judge declined to grant bail because the ground that the applicant’s schooling would be put into jeopardy by staying in prison was not tenable legally.

It should be noted that currently, the High Court has departed from the legal requirement of proof of exceptional circumstances as a ground justifying grant of bail.

⁵¹ (1991) HCB 42

⁵² Misc. Crim. Appl. No 9/1992

⁵³ Misc. Crim. Appl. No. 16/2000

⁵⁴ (1992-1993) HCB 57

⁵⁵ Misc. Crim Appl. No. 87/1998

This departure, argued by some judges, was instigated by the amendment of **section 14 (1) of Trial on Indictments Act**⁵⁶, which states that:

“Notwithstanding section 14 (1) of the Decree, the court may refuse to grant bail to a person accused of an offence specified in subsection 2 of this section, if he does not prove to the satisfaction of the court;”

a) That exceptional circumstances exist justifying his release on bail, and this is the current position of the law under **the Trial on Indictments Act**⁵⁷

Whereas the amended and current law states that, “the court may refuse” to grant bail, the old law provided that, “this court shall not” grant bail.

From these different positions it can be noted that the previous position was mandatory as evidenced by the use of the word “shall” whereas the current position of the law is discretionary whereby the court may not grant bail if they deem it not to. This argument arose in the case of **Byaruhanga & Anor vs. Uganda**⁵⁸, In this case, the applicants were charged with corruption contrary to Section 1 (2) and 5 (1) of the prevention of corruption Act 1970, They applied to be released on bail pending the determination of the charge against them.

Counsel for the applicants contended that under the present (amended) provision of the Trial on Indictments Act, the court has discretion whether or not to grant bail. The issue here was whether court has discretion to grant bail if exceptional circumstances are not established.

Tabaro J; in his wisdom observed that it is now almost axiomatic that the use of “May” by the drafts men instead of “shall” confers upon the court discretion and hence the provision exceptional circumstances He exercised his discretion in this case, and granted bail without the proof of exceptional circumstances.

⁵⁶ Cap 23

⁵⁷ Section 15 (1) Cap 23

⁵⁸ Supra

This position has been followed in a number of other cases. In **Susan Banace & Another vs. Uganda**⁵⁹ **Mukanza, J**; considered that the legislature had used “may” and not “shall” and are held that the High Court has discretion to grant bail even when exception circumstances are not established.

Justice Ogoola was critical of these decisions in the **Mulanda vs. Uganda**⁶⁰. The applicant faced a charge of causing financial loss to his employer contrary to the penal Code Act⁶¹. He applied to Court to be released on bail pending the final determination of his case. His counsel contended that the Amended the Trial on Indictments Act⁶² gives court discretion to grant or deny bail irrespective of whether the application involves or does not invoke exceptional circumstances to justify his release that the amended formulation above by employing the word “may” instead of “shall” has removed the hitherto mandatory requirement for the court to refuse bail if an applicant does not establish exceptional circumstances to justify his release; and that on the contrary the court’s new found discretion permits grounds akin, or even other than exceptional circumstances. Counsel relied on **Byaruhanga and Anor vs. Uganda and other**⁶³

Ogoola J; disagreed with the above contention. In his own words, the learned judge held that;

“I am not persuaded by any of the above arguments... I find that Section 14 (i) in its revised version, still yields virtually if not exactly the same result as the former exceptional circumstance as a condition precedent for the court to grant bail to an applicant, and does not allow of other grounds for bail beyond those enumerated in section 14 (3) and specifically defined as exceptional circumstances”

⁵⁹ Misc Crim Appl No. 181 /1998

⁶⁰ Misc Crim Appl No. 214/1998

⁶¹ Section 258(1) Cap 120

⁶² Section 141 cap 23

⁶³ [1993] HCB 54

This was in a lengthy and adequately explained ruling in which the learned justice declined to grant bail.

In **Bazilio Musana and Fabian Magino vs. Uganda**.⁶⁴ Counsel for the applicant citing the case of **Byaruhanga & Anor vs. Uganda**⁶⁵ contended that court has unfettered discretion to grant or refuse bail with or without proof of special circumstances.

Onega, J; noted that it is settled and agreed that courts have unfettered discretion; but also, that it is settled and agreed that in exercising this discretion the court must not exercise it in disregard of the existing laws. The learned judge further held that to say that an applicant can be released on bail even when no exceptional circumstances exist is to disregard the precise and clear provisions of the law.

He stated,

"I interpret the use of the word "may" in the statute to mean that even where exceptional circumstances have been proved to the satisfaction of court, the court could still refuse to grant bail"

He further observed that;

"The legislation would not have gone, into pains to define and lay down in writing what exceptional circumstances ,if it had intended that even where these have not been proved the accused applicant could still be released on bail, which would mean leaving it move to the discretion of the court than anything else"

His final holding was effect has, to qualify for release on bail, an applicant must prove that exceptional circumstances exist.

⁶⁴ Misc Crim Appl No. 23 of 1999

⁶⁵ (1976) HCB 177

The other condition for bail is found in Trial on indictment Act⁶⁶ whereupon the accused or applicant should prove to the satisfaction of the court that he will not abscond when released on bail. In considering whether or not the accused has a fixed place of abode the court may take into account a number of factors.

First, whether the accused has a fixed place of abode, within the jurisdiction of the court or is ordinarily resident outside Uganda as seen under the Trial on Indictments Act⁶⁷.

The constitution⁶⁸ of the Republic of Uganda, 1995 gives the high Court unlimited original jurisdiction in all matters country-wide. Thus where it is proved that the applicant has no fixed abode or permanent residence within jurisdiction of the court, the court may reluctant to release him on bail, since it may be difficult to trace him once granted bail. Thus in the case of **Livingstone Mukasa & 5 others vs. Uganda**⁶⁹

SAIED C.J: clearly stated that;

“The fact that accused persons may be married or have permanent abode within the jurisdiction of Uganda, courts are not by themselves cogent reasons for granting Bail, i take the view that where the considerations concerning liberty of the person are involved, courts must equally bear in mind the interests of justice and neither ought to be sacrificed at the expense of the other”

Therefore whereas the accused has a fixed abode within the jurisdiction of Court, he may be granted bail.

⁶⁶ Section 15 (1) Cap 23

⁶⁷ Section 15 (4) (a) Cap 23

⁶⁸ Article 139

⁶⁹ [1976]HCB117

In **Dan Odwedo vs Uganda**⁷⁰ the applicant's affidavit indicated that he was a resident of a place of abode, he was not likely to abscond when released on bail. The applicant was accordingly granted bail.

Furthermore, in the case of **Emmanuel Katto vs. Uganda**⁷¹, the applicant was granted bail and one of the grounds was the fact that he had a fixed abode hence showing that the criminal justice system is effective in as far as dispensation of justice is concerned.

The second factor is whether the accused has sound sureties within the jurisdiction of court to undertake that the accused shall comply with conditions of his bail. This factor is laid down under Trial on Indictments Act⁷² Court normally requires the applicant to produce substantial sureties.

According to **Benjamin Odoki**⁷³ C.J in his book the sureties should be persons of some social standing in the community and it is important that the court inquires into their worth and social position. Thus in the case of **Andrew Adimola Vs. Uganda**⁷⁴ where the applicant introduced his eldest daughter a civil servant as a surety and two other gentlemen professor Walube of Mulago and Mr. Wanendeya, a council member, **Lady justice Kireju** granted bail to the applicant. This is because the applicant had produced sound sureties who were responsible members of the community.

On the country, where the court finds that the sureties are not sound, it may refuse to accept them as was in the case of **Bazilio Musana &Anor vs. Uganda**⁷⁵ the prosecution contended that the sureties produced by the applicants were not substantial.

Onega,J ; agreed with prosecution and observed that

⁷⁰ Misc Crim Appl. No.15/2000

⁷¹ Misc Crim Appl No. 10 / 2005

⁷² Section 5 (4) (b) Cap 23

⁷³ A guide to criminal procedure in Uganda

⁷⁴ (1995) HCB 12

⁷⁵ Supra

“Both sureties were peasants who seemed to be persons who did not even understand what it meant to be a surety. They did not look the kind that would fulfill the duty of ensuring that the accused persons came to attend trial if released on bail”

The learned judge therefore declined to accept them as sureties and neither was the bail granted. In essence therefore, a surety should be able to compel the accused to attend court when released on bail or else he or she should be able to meet the costs should the accused abscond. As was in the case of **Uganda Vs. Hajji Abbas Mugerwa & Anor**⁷⁶ where it was stated that it was the responsibility of the sureties to secure the attendance of the accused in court in terms of the bond and on learning about his intention to leave the jurisdiction, of the court to resort the matter and have the accused arrested and ask to be discharged as none of them would secure his attendance once he left the jurisdiction.

The Trial on Indictments Act⁷⁷ states another factor to be considered and it is to the effect that the court takes into account the fact whether the accused has on a previous occasion when released on bail failed to comply with the conditions of his or her bail. The court in this case may be reluctant to grant bail to the applicant when it is found that on a previous occasion, he or she violated his or her bail terms.

However, where it is found that he or she had on previous occasion honored his bail terms, the court may grant him or her bail as was considered in the case of **Andrew Adimola vs Uganda**⁷⁸ where **Kireju Ag. J.** noted that:

“On the question on bail as to whether the accused on previous occasion when released on bail failed to comply with conditions of bail. There was nothing on record against the applicant in respect of the condition, and then bail has to be granted without any complaint from the state”

⁷⁶ (1975) HCB 216

⁷⁷ Section 15 (4) (c) Cap 23

⁷⁸ (1995) HCB 12

The fourth factor is whether there are other charges pending against accused. It is unlikely that the court would grant the bail to an applicant where there is other charges pending in court against him or her. This is because the grant of bail may affect proceedings in those other cases or charges.

In the case of **Patrick Kandole vs Uganda**⁷⁹ 1991 it was held that the applicant facing a charge of causing financial loss contrary to the penal Code Act cap⁸⁰ had failed to meet the above conditions since there was another change pending against him in Buganda Road Court of corruption contrary to the prevention of corruption Act⁸¹. That taking into account the gravity of the offence, it was not in the interest.

Basing on the above discussion, it can be noted that the antecedents of the accused person remain a primary factor in any attempt to 'dig' out the fact as to whether the accused is likely to abscond or not.

Indeed these were the factors that guided the learned **Justice Ntagoba** in reaching a decision as he did in the case of **Philip Otekat vs. Uganda**⁸²

The circumstances surrounding the life of the applicant before and during the hearing of the petition were unbelievable it was evident that he was in hiding on releasing he was wanted by the court. He knew English, yet appeared elusive when questioned as if he did not understand the question put before him.

The learned judge considered these and other factors and held that the accused was likely to abscond and declined to grant bail. He was persuaded by the conduct of the accused before and during the hearing.

In essence therefore, after discussing the meaning of bail, its rationale, power to grant bail and consideration for granting bail under the trial on Indictment Act, it should not be forgotten that bail is a constitutional right. It is therefore in this light that the

⁷⁹ Misc Crim Appl. No. 198/1998

⁸⁰ Section 258 (1) Cap 120

⁸¹ Section 4 (1) & 5 (1) 1970

⁸² Misc Crim Appl. No. 24/1991

research now proceeds to discuss the constitutional provisions that govern bail as well as other legal provisions governing it.

2.2 Conclusions

In summation, this chapter discusses the effect and object of bail. Although Bail practice is not an absolute right as cited in the constitution new should put into consideration a few factors such as to rationale, the object of bail and when it may be granted as already discussed above.

CHAPTER THREE

3.1 THE LAW GOVERNING BAIL PRACTICE IN UGANDA

3. 2 Introduction

Constitutional Law is the basic Law; the constitution prevails over all other laws. The supremacy of the constitution is seen from the provision that it has a binding force over all authorities and, persons and all laws and customs derive their validity from the constitution of the Republic of Uganda 1995 as amended⁸³.

It should be noted that the principle constitutional function of the Judiciary is the administration of justice⁸⁴. To attain justice, the judiciary must maintain the rule of law since the end of the law is the attendance to justice.

The fundamental duty of the courts therefore is to conduct a fair trial of the accused, bearing in mind his or her constitutional rights and the objectives of the Criminal Justice system.

Article ⁸⁵of the Constitution of Republic of Uganda, 1995 is to the effect that in the process of adjudication, the courts shall apply, inter alia, the principles that: Justice shall be done to all irrespective of their social or economic status, substantive justice shall be administered without undue regard to technicalities and that just not be delayed.

Justice requires that the applicable laws be applied to the facts evidenced without due regard to the probable reaction of the executive or any other institution. Thus in **Musana and Anor. Vs. Uganda⁸⁶ Onega, .J;** noted

‘When administering justice, a judicial officer must not be swayed by the public but justice must be administered strictly in accordance with the law’

⁸³ Article 2

⁸⁴ Article 126

⁸⁵ Supra

⁸⁶ Misc Crim Appl No. 22/1999

The judiciary is therefore, obliged to ensure that in all cases, the accused person is afforded fair, speedy and public hearing before an independent and impartial court. Indeed the right to a fair and speedy trial is the Cornerstone of the criminal justice system.

"This is a basic human right guaranteed by the constitution of the Republic of Uganda, 1995 **under Article 28 (1) which states, In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law**⁸⁷

The above constitutional provision indicates the urgency with which the judiciary has to handle the case before them bearing in mind the rights of the parties thereto. However, much as the principle that an accused person is entitled to a fair trial within a reasonable time is universally recognized and is entrenched in many countries, the right has been elusive to observe and protect in Uganda's Criminal Justice system as was noted by **Justice B. Odoki**⁸⁸. He states that "Constitutional Law is the basic law; the constitution prevails over all other laws. The supremacy of the constitution is seen from the provision that it has a binding force over all authorities and, persons and all laws and customs derive their validity from the constitution."

There has been a lot of delay in handling cases, with the effect that many cases have had to drag in court for a long time. This has a devastating effect on both the state and the accused person.

3.3 The Constitution of the Republic of Uganda, 1995 as amended.

The purpose of the law of bail is to facilitate the attendance of justice. This law is invoked by an accused (or his counsel) where the accused is on remand, it cannot be commenced with immediate effect due to given factors or even where the trial has commenced but is likely to take a long time before completion. The accused can apply

⁸⁷ Article 7 (a) (d) of the African Charter on Human and Peoples Rights

⁸⁸ Makerere Law Journal. 1996 page 31.

for bail and attend court out of prison. Bail is therefore a constitutional right guaranteed by constitution of republic of Uganda, 1995, under Article 23 (6) (a) which states, **“Where a person is arrested in respect of a criminal offence, the person is entitled to apply to the court to be released on bail in such conditions the court considers reasonable”**

Thus in the case of **Kandole Patrick Vs. Uganda**⁸⁹ the learned Lady Justice observed that the legal position with regard to bail is that the grant or refusal to grant: bail is at the discretion of the court, which discretion must be exercised judiciously, The right to bail being a constitutional right should be strictly upheld by the judiciary and it should be granted only when there is evidence. Thus in **Panju vs. R**⁹⁰ it was observed that:

“If courts are simply to act on allegations, fears and suspicions, then the sky is the limit, and one can envisage no occasion when bail would be granted whenever such allegations are made”

The essence of this observation is that the court should critically assess the circumstances of each case before it, and reach the appropriate decision. Court should be informed decisions and should avoid as much as possible being driven by the force of allegations, fear and suspicions in reaching a decision on bail.

Bail should therefore not be denied as a way of punishment. Where cash bail is required, the court should not use its discretion to overcharge it ,this would make it virtually impossible for the accused to raise the money. Similarly, it should not be so low as to defeat the purpose for which it was asked. All these factors have to be considered if the constitutional right to bail is to become a reality.

Article 23 (6) (a) of the constitution of the Republic of Uganda, 1995 is reinforced by Article 23 (6) (c) as amended which empowers the High Court to release an accused person who has been on remand custody for one hundred eight days before the

⁸⁹ Misc. Crim. Appl. No. 51 / 1996 (unreported)

⁹⁰ (1973) E.A . 28

accused is committed to the High court for trial. This is a mandatory release as shown by the phrase, the court shall release.....”

In applying this constitutional provision, the court has a duty to ensure that the statutory period of 180 days_within which an accused person may lawfully be detained by the state prior to committal for trial is not exceeded or abused in any way.

In the case of **Dr. Martin Kato Mugamba & Another Vs. Uganda Sebutinde**⁹¹ J observed that the constitution allows the state a “grace period” of 360 days now 180 days as amended within which it can lawfully detain an accused person pending committal for trial, and during which period the state is expected to complete its investigations and commence the prosecution of the accused person.

If the expiry of the grace period, the state is for any reason not ready to commit the accused person for trial, they may take as much extra time as they require preparing, but this should not be at the expense of the accused’s personal liberty.

This observation suggests that when an accused person spends 180 days in custody without being committed for trial, the High Court is bounded by this provision of the constitution to release the accused on bail. Further detention would be derogative to the accused’s constitutional rights since it is not by his making that the accused was not committed for trial.

The right to liberty is a constitutional right which relates to bail. It is a fundamental and inalienable right a person has by virtue of being a human. It is a foundation of the right to bail because it is what an applicant for bail demands liberty. It is provided under Article 23(1) of the constitution of the Republic of Uganda 1995.

‘No person shall be deprived of personal liberty’

The law of bail facilitates the achievement of liberty is vital to the accused since it puts the accused in a better position to prepare and organize the defence. It can therefore be safely stated that the right to bail is “collateral” to the protection of right to personal

⁹¹ Misc. Crim. Appl No. 51/1996 (unreported)

liberty. It is therefore essential that bail be promoted as an alternative to custodial remand where prisoners are kept for lengthy periods of time in overcrowded, and often unhygienic conditions.

3 .4 Magistrates Court Act Cap 16

The states the provisions⁹² for release on bail in a magistrates court that "A magistrate's court before which a person appears or is brought charged with any offence other than the offences specified in subsection (2) may, at any stage in the proceedings release the person on bail, on taking from him or her a recognizance consisting of a bond with or without sureties, for such an amount as is reasonable in the circumstances of the case to appear before the court on such a date and at such a time as is named in the bond.

Subsection (3) provides that a chief magistrate may, in any case other than in the case of offence specified in subsection (2) direct any person to whom bail has been refused by a lower court within the area of his or her jurisdiction, be released on bail or that the amount required on any bail should be reduced.

The provision of Bail in the High Court under the Magistrates Court Act⁹³, states that where an accused is appearing before a Magistrate's Court and the case is not one mentioned in subsection (2) direct that any person to whom bail has been refused by the magistrate's court be released on bail or that the amount required for any bail bound be reduced; and where the case is one mentioned in subsection (2) direct that the accused person be released on bail.

The Magistrate's Court Act ⁹⁴ further gives the considerations for bail, where any person appears before a magistrate court charged neither offence for which bail may be granted, the court shall inform the person of his or her right to apply for bail.

⁹² Section 75 Cap 16

⁹³ Section 75 (4) Cap 16

⁹⁴ Section 77 Cap 16

3.5. The Trial on Indictment Act.

The law of bail gives the court a wide discretion. The jurisdiction to grant bail is constitutionally subject only to such conditions as the court considers reasonable as stated under Trial on Indictments Act whose section 14 (1)⁹⁵ is to the effect that:

“The High court may at any stage in the proceedings release the accused person on bail, that is to say, on taking from him or her a recognizance such an amount as is reasonable in the circumstances of the case, to appear before the Court on such a date at such a time as is named in the bond”.

The discretion of the court here is demonstrated by the use of the work ‘may’ as shown above.

The court is also given the discretion to decide on certain matters not expressly stated the law for instance what amounts to advanced age, what kind of sickness amounts to grave illness.

3.6 The Children’s Act Cap 59.

Unless the offence to remove him or her from the association with any person the officer has reason to believe that the release of the child will defeat the aims of justice, it is mandatory that the child be released on bail on his or her own recognizance or a recognizance entered into by his or her other person responsible⁹⁶

It should be noted that the age of criminal responsibility under the Children Act⁹⁷ is 12 years and it is mandatory. In essence therefore and subject to the above provisions, the child has to be released on bail as of right. Section 50 (1) Children Act provides that.

“Where a child appears before a court charged with an offence, the Magistrate or person presiding over the court shall look into the case and unless there is a serious danger to the child, release the child on bail....”

⁹⁵ Cap 23

⁹⁶ Section 89-90 Children Act Cap 59

⁹⁷ Section 88 Ibid

The law further joins the court to give and record the reasons for its refusal to grant bail to a child applicant and inform the applicant (child) of this or her right to apply for bail to a Chief Magistrate's court or to the High Court⁹⁸

3.7 The International Conventions

On the International perspective, the right to liberty is provided for under the **International Covenant on Civil and Political Rights (I.C.C.P.R)** whose **Article 9 (1)** states that

"Every one has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such provisions as established by law."

Related to the above is Article 6 of the African Charter on Human and people's Rights which enforces the same provision by stating that:

"Every individual shall have the right to liberty and to security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular no one may be arbitrarily arrested or detained"

Basing on these provisions, it can correctly be stated that the right to liberty and freedom from arbitrary arrest are vital human rights in relation to the institution of bail.

The other provision of the constitution which relates to the right to bail is under Article 28 (3) (a), the legal presumption of innocence which states that

"Every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty or until that person has pleaded guilty"

Article 14(2) of the International Covenant on civil and Political Rights supplemented this constitutional provision and is to the effect that every one charged with a criminal

⁹⁸ Section 90 (2) Cap 59

offences shall have the right to be presumed innocent until proved guilty according to law

The African charter

Whereas Article 7(1) (b) of the African Charter on Human and people's Rights also compliments this provision by stating that:

Every individual shall have the right to be presumed innocent until proved guilty by a competent court or tribunal

This provision is mandatory and it does justify the grant to bail. The question is why "innocent" person should be remanded in custody usually for a long period of time before the accused's guilt is determined. The principle underlying the presumption of innocence is the cardinal principle of justice as administered in the common law countries that an accused person does not have to prove his innocence.

3.8 Case Law.

However, that the prosecution must satisfy the court beyond reasonable doubt that the accused committed the offence with which he is charged. Thus in the case of **Woolmington vs. DPP**⁹⁹ Lord Sankey observed that,

".....no matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the accused is part of the Common law of England and an attempt to whittle it down cannot be entertained."

This is the presumption and position upon which our law stands today. Surely, in country like ours [Uganda] where the majority of the population is ignorant of the laws that govern them and the fact that very few of such people can afford the legal services, it would be fatal to presume them guilty and ask them to prove their innocence.

⁹⁹ (1935) AC 462

However, where incriminating evidence has already been adduced against the accused, grant of bail is not desirable as was noted by **Ayume F.J.** (RIP) in his book, ***Criminal Procedure and Law in Uganda.***¹⁰⁰

The rationale behind this is that an accused, who by the evidence gets to know that he or she has no chances of an acquittal, will do all within his or her means to abscond which would tamper with the course of justice. Be that as it may, the right to bail paramount, logically locking up a person who has not yet been proved a criminal period of time, would tantamount to punishing an innocent person as earlier noted.

When an individual is arrested or detained for having committed a crime, or suspected committing a crime, many of his basic rights and freedoms are curtailed if not suspended, including the fundamental right to personal liberty.

These practices violate the legal presumption of innocence entrenched in the constitution of the Republic of Uganda, 1995 and also the provision relating to freedom from any form of torture, cruel in-human or degrading treatment guaranteed under of under the Ugandan Constitution 1995 .¹⁰¹

The grant of bail in these circumstances would be a perfect remedy to salvage the rights and freedoms of the accused person.

In the final analysis, the constitution does enough to indicate the importance that should be attached to the right to bail and the rights that relate to it for instance the right to personal liberty, and the provision of the legal presumption of innocence. The constitution further stipulates that all these laws, the colonial legacy of not only humiliating suspects, but also dehumanizing them continue in this country as was **noted in the Uganda Judicial Journal.**¹⁰²

It can also be seen in the current case of the 22 peoples' Redemption Army (PRA) rebel suspects whom court granted bail but they are still being imprisoned on the orders of

¹⁰⁰ Page 59

¹⁰¹ Article 24

¹⁰² (1999) page18

the General Court Martial, a court subordinate to both the High Court which 1999, page 18 granted the bail and the constitutional court which pronounced itself on this matter and clearly stated that these rebel suspects should be released.

These practices therefore show how these officers seem to avert the legal presumption of innocence and presume the suspects guilty. This is a truly big blow to the spirit of the constitution with regard to bail. We owe it to ourselves to ensure that we advocate for the total observance of the provisions of the constitution more so the fundamental rights guaranteed there under, to achieve respect for human dignity which is inherent and inalienable¹⁰³

3.9 Conclusion

Consequently the legal framework on bail practice has been justified by the above laws and international conventions cited. The accused persons may invoke the right to bail by applying for it in any the above laws appropriate to the circumstances.

¹⁰³ Article 44(a) Constitution of the Republic of Uganda 1995

CHAPTER FOUR

4.1. CHALLENGES AFFECTING GRANT OF BAIL ADMINISTRATION OF CRIMINAL JUSTICE IN UGANDA.

4.2 Introduction

There are a number of problems faced by the criminal justice system in its attempt to affectively administer justice of which bail is a major component this study. As a result of delay in the administration of justice, the study established that there has been a violation of the principle of nature justice and the constitution which states that

"In determination of civil rights and obligations or any criminal charge a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law"¹⁰⁴

This in other words is a right to a fair hearing. It has also been re-echoed in the Universal Declaration of Human Rights, which provides that,

"Everyone is entitled in full equity to a fair and public hearing an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him"¹⁰⁵

The research therefore found that delay in administration of criminal justice has been very pronounced and is blamed on many factors such as corruption, inadequate staffing, slow investigations and general technicalities involved in criminal proceedings as discussed here under. The factors will be divided into procedural and non-procedural.

The main challenges affecting bail practice in the magistrates and high court in Uganda are mainly, the delay in administration of criminal justice; political factors the issue of court and no statutory provision on bail money to be specific *interalia*.

¹⁰⁴ Article 28 (1) 1995 constitution

¹⁰⁵ Article 10 UDHR, 1948

4.3 Political Factors

Our criminal justice system has been so much invaded by politics hence it is absurd that certain judicial officers are guided by political ideology in reaching decisions or adjudicating over matters in court.

In Uganda today, there is excessive political interference in the work of the judiciary for example when the High Court was besieged by Army men (black mambas) Nov 2005 during the trial of the 22 PRA rebel suspects who were Besigye's co-accused charged with the offence of treason.

The executive interferes with the work of the judiciary for example recently the judges were on strike because their ruling was not respected; by re-arresting the PRA suspects. This happened in the case of **Col. (RTD) Kiiza Besigye & 22 others .Vs. Uganda**¹⁰⁶, whereby much as the petitioners had been granted bail, by the High Court, they were still under detention under the orders of the **General Court Martial (GCM)**¹⁰⁷ whose proceedings has been declared unconstitutional by the Constitutional Court in the constitutional Petition of **Uganda Law Society .Vs. Attorney General**¹⁰⁸. The political influence henceforth contravenes Article 128 (1) and (2) of the Constitution of the Republic of Uganda 1995 which is to the effect that: 128 (1) in the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority.

(2) No person or authority shall interfere with the courts or judicial officers in the exercise of their judicial functions.

In essence therefore, they continue to bail petitioners inspite of the fact that they been granted bail by the High Court and the fact that the proceedings of the **GCM** under which the prisons authorities continue to detain the bailed petitioners under the law governing the grant of bail.

¹⁰⁶ HCCS No. 955 /2006

¹⁰⁷ UPDF Case No. 75 / 2005

¹⁰⁸ Constitutional Petition No. 18/ 2005

The judicial decisions are not followed thus leaving the judicial officers in a dilemma like the recent-arrest of the PRA after the Court (High Court) had granted them bail left the judges no option but to strike only for three days.

In the research's considered opinion, as the judiciary strikes, there are crimes accusing many people with petty charges languishing in prisons with rejected bail applicants whereas persons of influence use their popularity, power and money are seen to be above the law. This in essence implies that the law on bail is recent effective especially when politics become a consideration for grant or refusal of granting bail.

4.4 Discretion of Court

The law of bail gives the court a wide discretion. The jurisdiction to grant bail is constitutionally subject only to such conditions as the court considers reasonable as stated under trial on Indictments Act whose section 14 (1)¹⁰⁹ is to the effect that:

'The High court may at any stage in the proceedings release the accused person on bail, that is to say, on taking from him or her a recognizance such an amount as is reasonable in the

Circumstances of the case, to appear before the Court on such a date at such a time as is named in the bond'.

The discretion of the court here is demonstrated by the use of the work 'may' as shown above.

The court is also given the discretion to decide on certain matters not expressly stated the law for instance what amounts to advanced age, what kind of sickness amounts to grace illness.

The same view was started in the case of **Chemuswa Vs Attorney General**¹¹⁰ and it was further stated that each case had to be considered on its own merits. Further, in the case of **Dr. Aggrey Kiyingi .Vs. Uganda.**¹¹¹ Dr. Aggrey Kiyingi filed an application for order of releasing him on bail pending disposal of a criminal case

¹⁰⁹ Cap 23

¹¹⁰ (1973) HCB

¹¹¹ High Court Misc. Appl. No. 497/2005

preferred against him. The court used and exercised its discretion, judiciously and refused to grant him bail. His application was rejected because he was not of advanced age basing on the activities he answer engaged in that is, practicing cardiologist, businessman, visiting senior lecturer, Makerere University in addition, he did not disclose his dual citizenship implying that he would abscond if released on bail hence it was refused; although he was eventually granted bail in subsequent applications. However, these discretionary powers may not only render the law uncertain but also may be used. Thus in the case of **Byaruhanga and another Vs. Uganda**¹¹² **Tabaro J.** held that:

“The court is given discretion by the law to grant bail even where the accused does not prove exceptional circumstances.” In the present case, the law says that the Court may refuse to grant bail if exceptional circumstances are not proved.

This decision was followed by the dissenting judgments of **Ogoola, J;** and **Onega J** According to **Ogoola J; in Mulando Simon Vs Uganda**¹¹³ where defense counsel argued basing on **Tabaro J’s** decision above, he (**Ogoola, J**) stated that, **“I am not at all persuaded by the above argument i find that section 14 A in its revised version still yields virtually, if not exactly, the same result as the former formulation. It still requires proof of an exceptional circumstance as condition precedent for the court to grant bail to an applicant”**

The above indicates how uncertain and ambiguous the law is hence for purpose of this research, the position taken by **Ogoola J:** shall be adopted.

This indicates that, with due respect, following the position taken by the learned justice, **Tabaro J** would render the provision of the Trial on Indictments requiring for exceptional circumstances, nugatory and thus makes justice cheaply attained.

¹¹² Supra

¹¹³ Misc. Crim. Appl. No. 214/2008

Thus to ensure that the law certain and to avoid ambiguities and controversies the ambiguity should be cured.

Uncertainty can also be seen under what amount to grave illness since statutory law does not provide a definition of grave illness. Diseases such as hypertension, Asthma, diabetes have not provided a definition of grave illnesses. This is why in the case of **Ahmed Sengendo vs. Uganda**¹¹⁴ , **Okello, Ag. J**; held such petty criminals are the ones languishing in prisons countrywide because they cannot fulfill bail conditions for example payment of cash bail; neither can they afford paying for legal services due to abject poverty prevalent in Uganda today.

4.5 Conclusion

As a result of these challenges as stated in this chapter, bail practice in these courts is a nugatory as the hindrances among others political factors and discretion of court are paramount in affecting bail administration in court's jurisdiction. Pertinent to say these among others disguise the constitutionality of the right to bail in our constitution¹¹⁵

¹¹⁴ Criminal Case No. 189/2001

¹¹⁵ Article 23 (6)

CHAPTER FIVE

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0 Findings

5.1 Non-Procedural causes of delay

5.1.1 Corruption

Judicial offices, especially Magistrates are very corrupt. The inspector General of Government (IGG) noted the receipt of complaints of corruption against Magistrates especially. This inter alia means that judges are more ethical than Magistrates because of facilitation.

Due to corrupt tendencies, the research found that some key witnesses are paid not to appear in court to give evidence against the accused. This implies that court cannot proceed especially where this evidence is very important hence corruption leads to mismanagement of files which go missing and take time to be traced thereby delaying the process of administration of criminal justice.

5.1.2 Slow investigations

The Concept of Delay

Delay means some slow pace or late handling of a matter or case. According to **Chambers 21 century Dictionary** delay means to slow someone or something down or to make them late or to be slow in doing something. It may also mean a waiting period between a step in the proceedings to another. For instance the delay may occur between arraignment and trial, which may result into remand of the accused person for a specific period of time.

It should therefore be noted that delay defeats justice. The constitution of the Republic of Uganda 1995 is to the effect that justice shall not be delayed and it requires fair and

speedy dispensation of justice as a mandatory right to the accused person(s)¹¹⁶
This position is completed by the African Charter on Human and Peoples' Rights which is to the effect that

"Every individual shall have the right to be tried within a reasonable time by an impartial court or tribunal"

A similar view is held in The United Nations International Convention on Civil and Political Rights¹¹⁷

In relation to the concept of delay, **Justice B. Odoki** in the *Makerere University Law journal*¹¹⁸ noted that,

"Delay is the enemy of justice, and criminal justice in particular, he further stated that delay of justice is denial of justice" Magna Charta also declared that: To no one will we sell, to no one will we deny or delay the Right to justice."

However, much as delay is undesirable, it is generally accepted that some measure of delay is inevitable in criminal proceedings and therefore in some instances be justified as stated by Lord Justice Lane stated that:

"It is course true that some measure of delay is inevitable in the Criminal process in so far as time acquired for the prosecution to prepare their case, and for the defense to meet it, and for witnesses are to be gathered and investigations are to be carried out."

A complex case involving extensive documentary evidence may take several months to prepare adequately and it is in everybody's interest that it should come to trial in a fit state.

Nor would any one wish to see trials themselves being abbreviated to the point where a fair hearing becomes impossible or the accuser's safeguards were eroded. Never the

¹¹⁶ Article 126 (2) (b) & 28 (1) respectively

¹¹⁷ Article 9 (3)

¹¹⁸ The Delayed Justice: what are its full costs? page 32

less, there comes a point when delay becomes counterproductive. Once that point is reached, the situation deteriorates rapidly¹¹⁹.

In essence therefore, to determine whether or not delay in a particular instance is justifiable or acceptable, we should look into the degree of delay, its cause, objects and extent, so that the longer it becomes, the more it may be unjustifiable and indeed a denial of justice considering that "justice denied"

This can be shown for example in the present situation of peoples' Redemption Army (PRA) rebel suspects who have on several occasions been produced at the High Court to be released but the general Court Martial still insists that they stay locked up thus infringing on their right to access justice due to unreasonable delay.

Basically, the delay has to be reasonable in the circumstances of a particular case before court, to be acceptable. This was considered in the case of **Uganda vs. Alfred Juruga**¹²⁰ where the learned **judge Egonda Ntende** held that the delay of the trial of the accused was unreasonable as to Warrant the release of the accused person on bail pending his trial.

In case, Juruga was indicted for the offence of defilement contrary to section 123(1) of the penal code Act cap. 106 (now section 129 cap 120) was committed for trial but when case was called for hearing, prosecution applied for an adjournment on the ground they had no witnesses in court yet the case had dragged on for too long with the accused in custody.

Defence counsel objected to the application for adjournment and prayer for bail under section 51 of the Trial on Indictments Decree. This is because this section empowered court to admit the accused to bail subject to appropriate conditions after having exercised its power to post pone or adjourning as provided under the law. The learned judge observed,

¹¹⁹ Ibid page 32

¹²⁰ HCCS No. 57/ 1993

“When an accused is tried within a reasonable time, he must be released. Such delay in bringing the indictment to trial the accused may prejudice the accused in his defence since his witness may relocate, and being in prison, may not be able to trace them”

Similarly for the prosecution witnesses may lose interest in case. He further noted that:

“Court ought to ensure that the constitutional rights of an accused Person are not rendered nugatory by a delay in trial.”

This was a wise ruling. The researcher’s submission is that the approach adopted by this court reflected the constitutional mandate of the courts of law, to ensure that all cases brought before them are dealt with expeditiously without fear or favour or ill will. It is also the researcher’s view that if this approach is adopted by the judiciary as an institution, the protection of rights of individuals accused of committing crimes shall be realized.

The state as well benefits from this speedy dispensation of justice for example by cutting down the expenses of custodial remand of the accused persons in prisons.

The institution of the bail has been put in place to mitigate circumstances that are caused by the inevitable and reasonable delay. Bail ensures that those caught up in crimes are not unduly punished due to delay. The law of bail is the concern of this research and specific provisions of the constitution on bail are thus discussed herein.

The study established that as a result of slow investigations, there has always been a frequent adjournment especially by the state which may decide to always pray for adjournment claiming that the police are still investigating. It should be noted that

these slow investigations are due to poor funding of police CID in terms of transport and other equipment to ease their work.

5.1.3 Inadequate staffing

This research found that the judiciary is poorly staffed in terms of prosecutors, judges, interpreters. In the judiciary **Monthly staff Newsletter**¹²¹, it was noted that there is still indispensable outcry against delay justice and, the rate at which cases are coming into the system exceeds the rate of disposal.

Therefore, in a bid to ensure efficient dispensation of justice, there is an imperative need for the government to increase the number of judicial justice to maintain court of law as well as state attorneys and interpreters to ease the process to trial.

5.1.4 Lack of Motivation

During this research, the researcher observed that there was need to motivate the judiciary through allowances, increased salaries inter alia.

The judiciary is not well equipped in terms of interpreters and judges. This limits their ability to administer justice much as they may be willing to work tirelessly: the work load is too much for them to core; which is to the disadvantage of the of the accused persons who languish in jail.

5.1.5 Legal and Procedural causes of delay

Political influence greatly affects the court's discretion to grant or refuse bail whether or not it is desirable for example the case of Col. (RTD) **Kiiza Besigye and 22 others Vs Uganda**¹²² can be used to show this point whereby the 22 co- accused were continuously detained even alter they had been granted bail by the High

¹²¹ Vol. 3, Issue 2 Feb. 2003 pg. 5

¹²² HCCC No. 955 / 2006

Court. They were for example taken to different destinations of the country recently to face further trial still under detention which is quite unfair in as far as access to justice is concerned.

Furthermore, the study found that once some politicians are granted bail, they are likely to interfere with prosecution witnesses given their political and economic status in the area as was in the case of **Dr. Aggrey Kiyingi .Vs. Uganda**¹²³ thus in the case of **Uganda .Vs. Wilberforce Nadiope & 5 others**¹²⁴ , bail was refused on the ground that because of the accused's prominence and apparent influence in life, there was every likelihood of his using his influence to interfere with witness.

In essence therefore, political influence delays the administration of justice as discussed and this affects the accused persons who are on remand thereby infringing on their right to liberty and security of the person enshrined in the Constitution¹²⁵ and also in the **Universal Declaration of Human Rights (UDHR)** which states that;

"Everyone has right to life liberty and security of the person"¹²⁶

Article 23(6) (a) of the 1995 Constitution of the Republic of Uganda which provides that, where a person is arrested in respect of a criminal offence, the person is entitled to apply to the court to be released on bail and the Court may grant that person bail on such conditions as the court considers reasonable has in effect delayed justice. This is because the provision is at times invoked to grant bail where it is not even applicable or appropriate due to factors like bribery.

Article 23(b) (c) of the 1995 constitution of the Republic of Uganda which provides that:

Where a person is arrested in respect of a criminal offence, in case of an offence triable only by the High Court, the person shall be released on bail on such conditions as the court considers reasonable if the person has

¹²³ Misc.Crim.Appl. No. 41/2008

¹²⁴

¹²⁵ Article 23 (1)

¹²⁶ Article 3

been remanded in custody for one hundred eighty days before the case is committed to the High court.

This provision delays justice because when such people are released to bail especially those on capital offences like murder, they rarely come back for trial and when a warrant of arrest is issued, it also takes too long to be executed as the accused will have taken advantage of the justice system to escape trial and thereby defeat the aims of the criminal justice system.

5.2 Conclusion

5.2.1 Critique of the law

As earlier noted the purpose of the law of bail is to facilitate justice and not to defeat it, The Constitution of the Republic of Uganda, 1995, guarantees the right to bail. However, bail should be granted in accordance with the relevant law in view of the circumstances of a particular case.

The jurisdiction for grant or refusal of bail in corruption offences is currently vested in the High Court. The rationale for this is probably due to the magnitude of the offences and the public concern about these offences. The public has a lot of concern about the crimes related to corruption.

In considering whether or not to grant bail, the High Court requires the accused to satisfactorily prove that exceptional circumstances existing warrant release on bail and proof that when released the accused will not abscond

A critical examination of the law of bail as applied in the High Court, especially in respect of corruption and cognate offences, as compared to other offences leaves a lot to be desired. The law looks weak and is further weakened by others, with the effect that in certain cases the rights of the accused persons are rendered nugatory.

This research now proceeds to discuss the circumstances under which the law on bail is rendered weak.

Corruption, abuse of office embezzlement and causing financial loss are grave criminal offences especially found in the public sector.

Much as there are laws governing these offences the administration of justice in such scenarios is undermined.

As already discussed, **bail is a Constitutional right** of an accused person and it is granted in accordance with the relevant law. It should be noted that bail is simply an alternative to custodial remand, where a person's trial can be expended.

The Criminal Justice System in its effort in its effort to address the law on bail has been affected by many factors as discussed herein however, it should be noted that the public needs to be protected against persons who are corrupt for example. This is because their acquittal would imply that the public [victim] is denied justice. In essence therefore, the courts of judicature should not be accomplice at the transgression of people's rights and freedoms as thus be used to promote justice and also uphold the fundamental rights and freedoms as stipulated under chapter four of the 1995 Constitution of the Republic of Uganda.

5.3 Recommendation

Having examined the nature of the offences of abuse of office, embezzlement and causing financial loss and having highlighted the weaknesses in the law the researcher recommends as follows.

To begin with, the rule of law should be strictly and strongly adhered to in this country. The law should be in position to take its course without any interference, political or otherwise. The independence of the judiciary should be strongly observed and the court should be left to perform its constitutional mandate independently as seen under **Article 128(1)** of the Constitution which states:

In the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority.

This is because interferences may lead to derogations from the law and the basic trends of the administration of justices. Politicians should therefore be reminded that the best they can do is not to interfere with the adjudications, because real justice cannot be attained where there is an element of bias.

Likewise, the law on bail in the High Court, especially the issue of discretion should be revisited. This is because the discretion is abused by some judges who for example set a very high amount of cash bail thereby defeating the aim of justice as was in the case of **Charles Onyango Obbo and Anor .Vs. Uganda**¹²⁷.

The applicants who were charged with publishing false news were released on bail by a cash bail of shs. 2,000,000/= each and bound sureties in non-cash bonds of 5,000,000/= each. These conditions were too high hence on application to the High Court, Justice Bossa stated that it is a fundamental principle of our criminal justice system that an accused person is presumed innocent until proved guilty.

The learned Justice further noted that a Court should not impose such tough bail conditions that, on the whole, bail looks like a punishment to the accused. The judge accordingly reduced that bail cash to 200,000/= each and 300,000/= each respectively and ordered for a refund of the excess to the applicants.

This shows that the Magistrate misused his discretion and imposed a high amount of cash bail. The High court judge on the other hand reduced the cash bail to a reasonable amount to ensure that the accused attend trial at the same time ensuring that investigations into the case are completed without interference and above all, that justice runs its course.

¹²⁷ High Court Misc.Appl. No. 145 / 1997

Furthermore, the wording of the law is also ambiguous hence subject to the interpretation of the judges thereby rendering the rights of an accused uncertain.

The researcher's considered view is that court should be massive sensitization of the general public about their rights, the right to apply for and be released on bail being one of those rights as enshrined under the Constitution of the Republic of Uganda 1995 as amended.

This would encourage transparency and reduce on the temptations of judicial officers to take the cash bail for selfish use. It would also save them the embarrassment from allegations that the cash bail is a bribe. The public will be in position to ascertain whether cash bail is refundable to the accused upon completion of the trial.

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