

**AN EXAMINATION OF THE DOCTRINE OF SEPARATION OF POWERS IN LINE
WITH INDEPENDENCE OF JUDICIARY IN UGANDA.**

BY

MUSASIBWAKI NOAH

REG NO 1173-01032-05187

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DECLARATION

I **MUSASIBWAKI NOAH** registration number **1173-01032-05187** declare that the content of this research dissertation is purely my original work, unless otherwise quoted. To the best of my knowledge, the same work has never been submitted, acknowledgement has been made:-

SIGNATURE.....

DATE 11/1/2019.....

MUSASIBWAKI NOAH

REG: NO: 1173-01032-05187

APPROVAL

I hereby certify that this dissertation entitled, "An examination of the doctrine of separation of powers in line with the independence of judiciary in Uganda" has been under my supervision and I have approved it for submission to the faculty of law Kampala International University.

SIGNATURE.....

DATE.....Jan 14th / 2019

COUNSEL NAIRUBA JOAN

(SUPERVISOR)

DEDICATION

I dedicate this piece of work to the family of late Tugume .E. Kweshegyereza Kagamba , and the Basingo clan headed by Hon Yonansan Kanyomozi Ntungamo District for their endless and valuable support extended to me through this course, may Almighty God reward and bless you abundantly thank you very much.

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I am grateful to my parents, guardians, and my mother **Namatovu Joan** for their endless support extended to me thought out this course may God give you whatever you want.

I thank all my friends mostly **Madam Apoya Caroline and Kahweza Shams** in and outside studying circles that have always supported me towards my evolvment and the entire course may you live longer to enjoy your fruits in Jesus' name amen.

In this special regard I extend special gratitude to the staff of Kampala International University whose advice and support have been so much instrumental in pursuing this course. Thank you.

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The 1995 Constitution of the Republic of Uganda (as amended)

The Judicial Service Act, Cap 14 laws of Uganda, 2000

The Magistrates Court Act , Cap 16 Laws of Uganda, 2000

The Magistrates Courts (Amendment) Act, No.

The Penal Code Act Cap 120, Laws of Uganda, 2000

The Trial on Indictment Act, Cap 23 Laws and Uganda, 2000

The Uganda Judicial Code of Conduct.

The Judicature Act, Cao 13 Laws of Uganda, 2000

The Buganda Agreement 1900

The Order in council 1902 and 1920

LIST OF CASES

Kiiza Besigye and 22 others V. The Attorney General Constitutional Petition No. 12 of 2006 (Unreported)

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ABSTRACT

This study “An Examination of the Doctrine of Separation of Powers in line With Independence of Judiciary in Uganda”. The case law was carried out in Uganda, with specific aims to; to analyze the doctrine of separation of powers in Uganda, to examine the relationship between the Judiciary and other arms of government the Executive and the Legislature, to identify the factors affecting the independence of the Judiciary, to identify the root causes of the factors affecting the independence of the judiciary and to recommend possible solutions or remedies towards the maintenance and strengthening the powers and independence of the Judiciary.

This was done through use of a qualitative under qualitative I asked and obtained information from judges magistrate lawyers and political personnel’s. The study was covered from 1995 to 2019 focusing on doctrine of separation of powers and the independence of judiciary in Uganda it has helped so much the country to develop politically in respect of institutions of the government while performing their activity that is judiciary, executive and legislature and other law enforcement bodies.

The research covered five chapters; chapter one contains the introduction of the topics objectives and statement of the problems chapter two has literature review of the research, chapter three has the methods used while correcting the data, chapter four has the findings of the research topics and chapter five has the conclusion and recommendation of the topic.

CHAPTER ONE

INTRODUCTION

1.0 Introduction

The doctrine of separation of powers in Uganda originated from the Buganda agreement and orders in council 1902 and 1920 in Uganda.

Whereby they provided the three arms of the government which are legislature, executive and judiciary that were to act independently while performing their function though it was not respected.

This can be seen when the commissioner was vested with powers to control and make laws, rule and regulations thus **Article 12** of ordinance provided that the commissioner¹ may make ordinances for the administration of justice, the raising of revenue and generally for the peace order and good government of all persons in Uganda.

The commissioner used also to exercise legislative powers. He was to be subjected only to the general or special instruction of the secretary of the state in London. The native custom was to be respected so they were not repugnant to justice. Also he could order ordinance, order the laws of the United Kingdom, India and of other colony be applied to Uganda.

Article 15 of order provided for High Court of Uganda known as Majesty's High Court of Uganda established with full civil and criminal jurisdiction in all cases over all persons in Uganda².

Until 1920 the Uganda Protectorate was ruled virtually by the orders of one man –the commissioner he was the head of the protectorate executive officer and the law maker with the exception of the High Court and their personnel.

In 1920 a new consolidating order in council was promulgated and provision made for the establishment of executive and legislative councils³.

The commissioner was to be re-designated Governor. Members of the two council were to be designated by his majesty the King of the United Kingdom.

¹Article 12 Buganda Agreement 1900

² Article 15 Buganda Agreement 1900

³ Order in council 1920

The membership and function of the executive was not provided for in the order however they were set out in the Royal instruction of 1921 made under the order and provided that the Chief Secretary the Attorney General, Financial Secretary, Director of Medical service, Director of Agriculture and president of Buganda. The governor used to appoint from within or outside the Public Service members of council.

In 1948 Legislature council consisted of the governor as chairman six ex-officio members and ten unofficial members including four representatives of people of Uganda. In March 1948 the number increased where by six members were added they became sixteen. Eight group African, four Asians, and four Europeans. The official bid was correspondingly increased to six⁴.

Basing on Buganda Agreement, its provision like **Article 6, 8 10, 11 and 15** brought out the element of separation of powers (three arms of the government).

This is because due to these Articles the raise of court (High Court) his majesty high court in Uganda as the sign to show judiciary arm of government was bid down.

Lukiiko also had to gain more powers and become court of appeal.

In the agreement Buganda was supposed to foot together with other Kingdoms and this made it difficult for Lukiiko to have one parliament of Buganda and Uganda because Buganda never wanted it.

Finally, the agreement peeving away for the three arms of government to develop that is legislature executive and judiciary however the constitutional principles were not considered for example separation of powers.

Because Buganda (Uganda) was colonized by thus enabling the British to establish the constitutional government due to political governance.

Buganda agreement had to bring the birth of orders in council 1921 and 1920. Because Buganda agreement was not so affected by the whole country, orders in council had to be introduced which also brought out the element of separation of power in the country.

Section 15 established the judicial system comprising of court of justice in particular High Court with civil and criminal jurisdiction. The commissioner had powers to appoint and dismiss the

⁴ Page 8 to 20 Gm Kanyeihamba

officers. As it is seen up to day that the President is the one to appoint Judicial officers with the help of judicial service commission as the fountain of honor. Order in council also provided that commissioner was to be executive over controller of the protectorate was Chief Representative of His.Majesty. **Section 4 to5.**

S.8 -10 it empowered the commissioner to make laws and raise revenue for the protectorate. Today in Uganda it is the duty of parliament to make laws. So it was the first legal constitution document to be established a Frame work for the governance of the whole of the protectorate; It had to put up the element that influenced politics, government throughout the colonial period and after independence we still have them up to date like the three arms of government in 1995 constitution of Uganda and administration of Justice without undue regard to technicalities still recognized under **Art 126 (2)** of the constitution however separation of powers and rule of law were not respected.

In 1920 Oder in council. Where the name of the head of protectorate was changed from the commissioner to governor, the three arms of the government were created.

Executive council members were appointed by His Majesty Governor. Cabinet. director of finance medical serving, transporting agriculture and Attorney general.

Legislature council governor not less than two others were appointed by His Highest Governor Legco had powers to make laws, maintenance of peace, order and good governance.

Judiciary system created by the 1907 order in Council remained intact. The element of checks and balance was not evidenced neither respected because the governor was the overall controller⁵.

The Doctrine of Separation of Powers means that the powers of the Arms of the state must be clearly described in the constitution and these powers must be practiced or done by the different peoples as provided in the constitution of Uganda 1995 as amended.

They are provided under chapter eight, seven and six of the constitution.

⁵ Order in Council 1920

The following are the three arms of Government⁶

- (1) Executive.
- (2) Legislature.
- (3) Judiciary.

Legislative is the arm of Uganda that is known as Parliament. It is also known as the National Assembly. It is composed of members directly elected to present constituencies, one-woman representative, and representative of army, youth, workers, and persons with disabilities, vice president and minister's. Ex officials are not allowed to vote to any issue in parliament however they can give their opinion. Their term per now is for five years. The president come in after he or she has requested for the permission from the speaker of parliament and members of parliament are aware of it is headed by speaker of parliament from the leading party, with the help of deputy speaker.

The Constitution of Uganda empowers the Parliament to make laws under Article 79, to approve the appointed ministers, prepare and approves the budget, protecting and defending the constitution, promote democracy.

The Executive consists of the President as the head, the Vice- President, Ministers and Civil Servants. It is also known as cabinet. The executive carries out all the laws made by Parliament and effective administration of the country. This is because the president is the fountain of Horner. The ministers are responsible to the president (accountable'). They are appointed with the help of service commission. the president is voted through secret ballots under Article 103.

Judiciary is another organ of state which is responsible for the administration of justice in the country. The main function of judiciary is to ensure the enforcement of laws in judiciary and it consists of the Supreme Court, Court of Appeal/Constitutional court, High Court and all Magistrate Courts.

⁶ Constitution of Uganda 1995 as amended chapter 6,7 & 8

It is headed by chief justice in Uganda. It enables in interpreting the laws in the country, protecting and defending the constitution and promoting democracy in the country. It is appointed with the help of judicial service commission in Uganda. They are appointed by the president.

The Doctrine of Separation of Powers requires the powers of the Government to be vested in different persons or bodies/arms. If the functions/duties of legislature, executive and judiciary are performed by the same persons or people then the individuals cannot get proper justice and their rights cannot be protected. These functions must be performed by different bodies or persons. The laws are made by members of parliament who are elected by the people after every five years. These laws are implemented by the executive.

The Judicial services are provided by the Judges and magistrates. In this, the powers of the three organs of the state are separated from each other. If the executive is unable to protect the fundamental rights of the individuals, then they can sue the Government and the judiciary can provide the justice to the individuals.

“The doctrine vis-à-vis” the principles of separation of powers are to the effect that the legislature should never exercise executive or judicial powers and the judiciary should never exercise legislative or executive powers. It is argued that the concentration of these three powers in the same hands results in the abuse of authority and tyranny over the people. **The independence of the Judiciary means** that judges and magistrates can decide the legal cases without any fear or under any pressure from members of the legislature or executive. The independence of the judiciary is, therefore, needed to protect the fundamental rights and freedoms of the individuals⁷.

1.1 Statement of the problem

There is sufficient evidence indicating that powers, functions and the independence of the Judiciary are clearly entrenched in the 1995 Constitution as amended of the Republic of Uganda. Nevertheless, it is vividly observed that the powers, functions and independence of the Judiciary are being interfered with. By the other arms of government (the Executive and the Legislature). This has culminated into breach of the constitutional provisions respecting (pertaining to) the

⁷ M.J.C. Ville constitutionalism and separation of powers 1967

Judiciary, thereby undermining and abusing the Judicial independence. It is therefore imperative to identify the factors that have led to the undermining of the independence of the Judiciary.

The study therefore examined the extent to which the principle of independence of the Judiciary has been addressed in Uganda under the new constitutional order of the post 1995 Constitutional era, and further determined the applicability of the Doctrine of separation of powers in Uganda.

1.2 Research questions

- (a) What is the principle of judicial independence?
- (b) Is the principle of judicial independence respected and upheld in Uganda?
- (c) What should be done to ensure that the principle of judicial independence is respected and upheld in Uganda?

1.3 Objectives of the study.

The main objective of this study is to analyze the respect of the independence of the judiciary in the post 1995 Constitution era.

1.3.1 The specific objectives of the study are

- (a) To analyze the doctrine of separation of powers in Uganda
- (b) To examine the relationship between the Judiciary and other arms of government the Executive and the Legislature.
- (c) To identify the factors affecting the independence of the Judiciary
- (d) To identify the root causes of the factors affecting the independence of the judiciary.
- (e) To recommend possible solutions or remedies towards the maintenance and strengthening the powers and independence of the Judiciary.

1.4 Scope of the study

The study covered the period 1995 — 2018 being the post 1995 constitution era

The researcher chose the year 1995 because this was the year in which the current

Constitution of the Republic of Uganda 1995 was promulgated this constitution expressly provided for the establishment of the Judiciary ⁸and its independence⁹.

Further the researcher chose this period because this was the time when the independence of the Judiciary has been greatly undermined by the other arms of government, especially the executive. This period has seen the direct involvement of the military in the affairs of the Judiciary, caused by the executive's attempt to protect its political interests at the expense of the Rule of Law and Constitutionalism Hence violating the doctrine of separation of powers and undermining the independence of the Judiciary.

The study focused on the Courts of Judicature established by the 1995 Constitution, that is, the Supreme Court, the Court of Appeal/Constitutional Court the High Court and the Magistrates Court.¹⁰, The area of study will be the central region which comprises of three (3) High Court circuits of Kampala, Nakawa and Masaka and nine (9) Magisterial Areas of Buganda Road, Nakawa, Mengo, Mpigi, Mukono, Mubende, Masaka, Entebbe Luweero The Supreme Court and the Court of Appeal/Constitutional Court are also based in this region.

1.5 Justification of the study

The study was prompted by the feelings about the unpleasant and unfavorable situation under which the Judiciary operates and exposes the challenges being encountered by the Judiciary and the factors which undermine the independence of the Judiciary in Uganda, and to find solutions of a panacea to the same.

I believe that the recommendations will enable in strengthening and protecting or safeguarding the judicial independence and as means to reform or renew the judiciary.

The study was aimed at contributing towards a body of knowledge pertaining to constitutionalism in Uganda. (Respecting the constitution and promoting it).

To add on that, the study will be relevant to government planners, policy makers, politicians, Lawyers and academia/scholars in assisting them **understand how the doctrine of separation**

⁸ The Constitution of the Republic of Uganda Chapter 8 1995as amended

⁹ Article 128 (1)

¹⁰ Article 129 of the Constitution of Uganda

of powers should operate in Uganda and to understand the importance of the independence of the Judiciary. The study will also assist the other arms of government to realize the importance of the Doctrine of separation of powers thereby according respect to the powers and functions of the judiciary and protect the independence of the judiciary.

CHAPTER TWO

LITERATURE REVIEW

2.0 The rule of law, separation of powers and independence of the Judiciary

Independence of the Judiciary.

This research was carried out at a time when the judicial independence has been interfered with, by other arms of government. Many people have written about the subject of judicial independence, however, little has been done in relation to analyzing judicial independence in Uganda in the post 1995 period.

To add on that, this literature is relevant in understanding the doctrine of separation of powers and hence comprehending the Principles of judicial independence in Uganda.

The principle of judicial independence is not a new phenomenon in Uganda's legal system. The principle is well established in the doctrines of separation of powers and rule of law. Hence the three arms of government, the Executive, the Legislature and the Judiciary must act independently from each other. The Judiciary is a distinct and independent arm of government with judicial authority and constitutional mandate to administer and deliver justice to the people of Uganda.

Judicial independence is one of the most important arms of government, however undermined principles in country faced with political interference, intimidation, threats and use of other institutions to ensure that the wish of the Executive is done. This interference is historical in nature especially by those who use oppressive means to entrench selfish interests so as to stay in power.

This affects the performance, functions and duties of judicial officers. The demand for independence and impartiality of judicial officers like judges and magistrates to observe and monitor strict code of conduct, in private life mostly in public life.

He/she must not be swayed by partisan demands, public clamor or considerations of personal popularity or gain. Justice should not be molded or administered according to individual idiosyncracies of those who administer it. Usual and regular methods of administering it should be employed without dramatic, Sensational or spectacular conduct in court.

The major purpose or role of judicial independence is to ensure that justice is done without any inconvenience and impartially without political, social and influences. It's Suffice to note, that judicial independence in Uganda since 1995 has undergone tremendous improvement. However, this is does not mean that interference by other arms of government has ceased or ended In fact as it shall be seen later, the situation may be retro progressing.

This study will examine how the doctrine of separation of powers has been applied in Uganda and how the principle independence of the Judiciary has been addressed in the 1995 constitution.

The principle of judicial independence is not a new phenomenon in Uganda's legal system. The principle is well established in the doctrines of separation of powers and rule of law. That is to say the three arms of government, the Executive, the Legislature and the Judiciary must act as independent institution from the other. The Judiciary is a distinct and independent arm of government with judicial authority and constitutional mandate to administer and deliver justice to the people of Uganda.

Judicial independence is one of the key issues in the country however it is undermined principles in Uganda faced with political interference, intimidation and use of other institutions

It was embedded in the 1967 Constitution of the Republic of Uganda. Though not expressly stated as such, it could be inferred from Constitutional Provisions. To ensure that the will of the Executive is done. This interference is historical in nature especially by those who use oppressive means to entrench selfish interests so as to stay in power.

This affects the performance of the judicial functions by judicial officers The need for independence and impartiality of a judge or magistrate requires him/her to observe a strict code of conduct, in private life but more so in public life.

A person must not be swayed by partisan demands, public clamor or considerations of personal popularity or gain. Justice should not be administered according to individual idiosyncracies of those who administer it. The methods of administering it should be employed without dramatic, sensational or spectacular conduct in court.

The main objective of judicial independence is to ensure that justice is done without any inconvenience and impartially without political, social and economic influences. It's Suffice to note, that judicial independence in Uganda since 1995 has undergone tremendous improvement. However, this is not to mean that interference by other arms of government has ceased. Indeed, as shall be seen later, the situation may be retro progressing. This study will examine how the doctrine of separation of powers has been applied in Uganda and how the principle independence of the Judiciary has been addressed in the 1995 constitution.

Judiciary is an institution which is mandated by the constitution to adjudicate upon disputes in the country and its people. It executes this duty by interpreting and justly applying the laws, bearing in mind the values, norms and aspirations of the people. The Judiciary is one of the three arms of government that works hand in hand with the Executive and Legislature.

Executive initiates policies and implements them, Legislature makes laws, and Judiciary interprets the laws and adjudicates on disputes before it in accordance with the laws. The Judiciary, like the other two arms of the government is supreme in its sphere.

The three arms of government originate from the doctrine of separation of powers which began to evolve under the principle that liberty and the rights of individuals were best observed, preserved and protected if government powers were distributed and described in those arms of government with each largely confined to its sphere of activity and influence.

According to *M.J.C. VILE* noted that "a government which controls all the power, that is the legislative, executive and judicial and which wishes to act arbitrarily, will pass any laws it wishes at any time"¹¹.

Then it will administer and enforce those laws ruthlessly without regard to the rights and freedoms of the people and should anyone criticize or deviate from those laws the same government will judge him or her corruptly and in violation of the minimum standard required by the rule of law. The author warns that the accumulation of government powers in the same hands result in tyranny. However, the author's works are of a general nature and do not address the subject of judicial independence in Uganda especially.

¹¹ M.J.C. Vile

DENNIS LLOYD recommends that in order to avoid usurp of powers it is necessary to distribute government functions, duties and powers among the three arms of government and to adjust their relationship to one another in such a way that a system of *checks and balances* is established between them. It has been observed that the essence of constitutionalism rests and lines against the limitations which the doctrine imposes on the arms of government as well as a certain amount of diffusion of power¹².

*MONTESQUIEU*¹³ argued that “when powers and functions or duties of the three organs or arms of state (that is, the legislature, executive and judiciary) are centered on one of the state organs, the problems of having despotism and tyranny are great”. It can all power to be exercised by one arm of government thus become a source of oppression and conflict in the country. Next, in order to avoid the abuse of such powers there should be division and distribution of functions that promote a system of *checks and balances*.

Though, it would appear that *Montesquieu understands* of the English system as a good example of separation of power was false. In certain respects, the British system is such that no clear line of demarcation can be made between the role of the Executive, the legislature and the judiciary.” Though not expressly referring to Uganda, Montesquieu work is of great importance in understanding the theoretical basis of separation of powers and judicial independence.

Professor Agbede while concluded the concept of the rule of law, points out that the judicial function should be separated and vested in one organ different and distinct from the executive and legislative organs and must be allowed to operate in an atmosphere of freedom from external interference so as to guarantee its impartiality and independence¹⁴. This forms the core of the principle of judicial independence It should be noted that by separating roles and functions, it is easy to determine or point out errors, wrongs and excesses by any organ of the Government. However, the reality seems to be different from practice while the author lays down good

¹² See de Smith and Brazier, *Constitutionalism and Administrative Law*, 6th Edition, Chapter 4

¹³ The Book remains an authority on the subject even today. See Shills; *The fortunes of Constitutional Government in Developing of the New State* (1964) at p.104

¹⁴ Quoted by Justice Benjamin Odoki, C.J of Uganda in his key note address to the Pan –African Forum for Commonwealth Principles on the Accountability of the Relationship between the Three Branches of Government, Nairobi Kenya; 4-6 April 2005. See the *East African Judicial Journal* issues No.3 April-2006, P.12

principles, he does not give any empirical evidence of how it has been applied in modern day democracies like Uganda.

2.1 According to H, W, R. Wade and C.F. Forsyth Administrative Law (1988) P24

Wrote about the rule of law and economic development in Africa, enumerate that the distribution of the powers and duties of the government among its arms that is Legislature, Executive and the Judiciary, and the existence of an independent Judiciary to interpret and apply the law and to check abuse of power and to provide redress for aggrieved individuals are one of the basic tenets of the rule of law From the author's work, it can be submitted that existence of an independent judiciary promotes not only sanity in the legislature and checks the activities of the executive, but also ensures the rule of law That is, ensuring that all the other organs of state play their games according to the well-established rules (laws) While commenting on rule of law, the author farther states **"that disputes as to the legality of acts of government are to be decided by judges who are wholly independent of the executive The right to carry a dispute with the government before the ordinary courts manned by judges of the highest independence is an important element iii the Anglo- American concept of the Rule of Law¹⁵"**

The author however, does not explain the extent to which the judiciary's decisions on the legality of acts of government can be or have been implemented or even respected, especially where they concern political issues.

The position is fortified by **Chief Justice Benjamin Odoki, CJ. Opacity page 15.**In his illuminating discourse (writing about the rule of law), the Honorable Chief Justice **observes that the branch of government which is best suited to protect and strengthen the rule of law is the Judiciary.**

It should be pointed out first, that the role of an independent judiciary needs to be lauded, but the authors do not take into account that in countries like Uganda, judges are appointed by the president, and this gives room for partiality in case of political cases. Secondly, the authors do not point out the extent to which the independence of the judiciary should be applauded and the factors which impede its effective promotion. Suffice to note that the independence of the

¹⁵ H. W.R Administrative Law 1988 p.24

Judiciary has its origin in the doctrine of separation of powers which basically states that the three arms of government must act independently without any interference.

De Smith, The new commonwealth and its constitution London, C. Hurst and Co. 1973, provides for constitutionalism is practiced in a country where the government is accountable to an entity or organ distinct from itself, where elections are held on a wide franchise at frequent intervals, where political groups are free to organize in opposition to the government in office and where there are effective legal guarantees of fundamental civil liberties enforced and an independent Judiciary'. The author contemplates a perfect society where the functions of the executive, legislature and judiciary functions are performed without any interference.

In the Judiciary Staff Hand book, first Edition Kampala (2007) It was noted that the Judiciary is a distinct and independent arm of government entrusted with judicial authority and mandated by the constitution to administer and deliver justice to the people of Uganda¹⁶. It plays a fundamental role in the promotion of the law and order, human rights, social justice, morality and good governance. The Judiciary is constitutionally supposed inter alia to administer justice through resolving disputes between citizens and citizens and between the state and citizens, interpret the constitution and the laws of Uganda, promote the rule of law and to contribute to the maintenance of order in society.

Kanyehamba. Defines the term "independence of the Judiciary" as a state of affairs where the Courts and judges are free to function without fear or favor from or favor to any one individual or authority". Independence or lack of it should not be confused with limitation of jurisdiction. This is quite true to the extent of independent decision making but may not extend to enforcement where the judiciary does not have the enforcement mechanism machinery (ways) and thus, makes their decisions remain as good intentions without realization¹⁷.

Sir Anthony Manson elucidate the principle of judicial independence and stresses that the central element of judicial independence is the freedom of the judge to hear and decide cases without interference and uninfluenced by an outsider-be it government, pressure group or anyone

¹⁶ In the Judiciary Staff Hand book, first Edition Kampala (2007).

¹⁷ According to Kanyehamba, Constitutional and Political History of Uganda from 1894 to the present, (2003)

else The purpose of that independence should be emphasized to serve as a protection of and privilege of the *people, not of the judges*¹⁸.

Moreover **Justice Nyalali** describes independence of the judiciary. **His Lordship** states that self-rule being accountable and exercise of self-rule, being accountable and exercise of the Judiciary. This is because independence means self-rule and self-rule means self-discipline¹⁹.

R Bader- Ginsburg provides the test of judicial independence. He noted that judicial independence is when judges are led by their understanding of the law, the finding on facts and the pull of conscience to a decision which is contrary to what other branches of government or other powerful interests in society want. From the above works, it can be submitted that independence of the judiciary exceeds from division of powers and entails having an environment that promotes free exercise of the powers and respecting the outcomes of the exercise of the judicial powers However, there is a big gap between judicial independence in theory and in practice. Whereby, the practices of the executive arm of government undermine the judicial independence and sometimes interfere with the exercise of judicial powers.

Constitutionalism and the Rule of Law

The term constitutionalism differs from constitution. Constitutionalism deals with the process and principles while the latter deals with the end product, a constitution in modern times a Constitution majorly is termed as a written document with rules and laws governing the country or group of people. **De- Smith argued that,** “ Constitutionalism is practiced in a country where elections are held on a wide franchise at frequent intervals Where political groups are free to organize in opposition to the government in office where there are effective legal guarantees of fundamental civil liberties enforced and an independent Judiciary²⁰”, arms acting independently. A Constitution is contains laws and principles basing on which a state is governed. Also, it is the fundamental law of the state or country.

¹⁸ According to The Appointment and removal of judges in Cunningham (Ed) *Fragile Bastion — Judicial Independence in the Nineties and Beyond* Judicial Commission of N S W, Sydney, 1997 p32

¹⁹ Justice Nyalali, a former Chief Justice of Tanzania gave this definition in a paper he presented at Judges Conference in Entebbe on the Independence of Judiciary 22nd August 2003.

²⁰ S.A De Smith. *The New Commonwealth and its Constitutions*, London, C. Hurst & Co.1973 P.3

According to Black's Law Dictionary, a constitution is the organic and fundamental law of a nation or state which may be written or unwritten, establishing the character of conception of its government, laying down the basic principles to which its internal life is to be confirmed, organizing the government, and regulating, distributing and limiting the functions of its different departments, and prescribing the extent and manner of exercise²¹.

Basing on the above state, it can be construed as the commitment of a state to be governed by a written Constitution, which is termed constitutionalism.

The term constitutionalism refers to minimally that the polity must recognize the nature of political power, its distribution and above all, its limitations. Therefore, a constitutional government is one in which government has certain powers that are set within more or less limits²² suggested that a constitutional government is a government pursuant to and consistent with the provisions of the Constitution, since in large measure, a constitutional government is one in which effective restraints divide political powers and effectively prevent the concentration of such powers³

He also noted that in this connection, the concept of constitutionalism will have two related meanings:

(a), constitutionalism necessarily refers to the practice of public affairs of the state according to those rules of the Constitution which improve and ensure effective restraints upon government and other political actions.

(b), constitutionalism also refers to the theorizing about the original desirability content, practical problems, consequences and related matters of the said practice. Suffice is to mention, in a Constitution is embedded the basic and fundamental law which the inhabitants of the state consider to be essential for their governance and wellbeing.

The constitution also provides political and other state institutions and distributes power among them and put limitations on the exercise of those powers.

The question of Constitutionalism mostly deals with aspect of politics. However, deviatory it may look towards economic aspects. It is directed towards solving political problems whose provenances are diverse and may include economic factors *Professors Ali Muzrui and of*

²¹ C.H. Black Law Dictionary (3rd edition) West Publishing Company 1993.

²² Khiddu Makubuya, rightly The constitution and human Rights in Uganda 1962 to 1992

Engholm termed "Constitutionalism" to mean a procedural approach to politics, a faith in legal solutions to political tensions, a relatively open society with institutionalized competition for power in the polity.

A constitutional government is one in which government has certain powers that are set within more or less defined limits. Needless to mention, if one such limit is exceeded and interfered, then constitution is said to have been violated. *This means that it is not up hold and respect.*

When forming or writing the Constitution, people should know that the nature of the Constitution must base on the historical background and geographical position of the state or country her social structure, her political economic development, religious beliefs and tribal composition of the state³⁶. It therefore follows that a Constitution must have sufficient flexibility to allow changing political situations. It should be taken into account, however, that if it changes in haphazard manner, it would unlikely command people's respect.

A Constitution to have an impact on the country, it must realize its objectives, it must be successful and the only way to realize its objectives is by approximating the, political values which affect the warp and woof of the society and it must satisfactorily comprise the major contending forces. In view of this therefore, it can be rightly construed that a meaningful Constitution ought to take into account people's beliefs, their needs and aspirations.

According to **Khiddu Makubuya** rightly stated that while the documentary approach to the Constitution simplifies the process of identification, the approach emphasizing the evolutionary character of the Constitution must be reckoned with it illustrates the need not to focus merely on the formal enactment but to take into account every constitutional culture of communities.

In this context constitutional culture refers to the community's attitudes as well as civil, social, and legal mechanisms which are specifically supportive of constitutional ways and methods of conducting public affairs and constitutionalism generally.

In a nutshell a constitution needs to satisfy the majority opinion of the citizens so that they give it habitual obedience and legality. However, the views of the minority citizens need not to be suppressed and suffocated but have to be accommodated synchronized with the opinions of the majority into the constitution. Even when the constitution takes the form of a specific document,

“such a document is implemented by decisions of a particular organ, normally the highest Court of Appeal of the state which has powers to interpret its contents GP Mukubwa concurs with the above notion by contending that these laws, whether written ordinary laws and written Constitution may be interpreted by the executive or by the bureaucrats but the courts should have the final say as to their validity²³.

2.2 The Doctrine of Separation of Powers

The doctrine of separation of powers means that the three organs of a state, the Executive, the Legislature and the Judiciary should be independent of each other. That is each of these organs acts independently within the limits of its constitutional powers without interference with the others while at the same time, maintaining close cooperation and mutual respect for other.

Hon Justice D Z Lubuva, in his almost every domestic society which noted that, in the rule of law, the concept of the doctrine of separation of powers is almost a household terminology²⁴.

Originally, the Doctrine of separation of powers is as old as origin itself. It's believed that its genesis dates back to the century at the time of Greek political scientist and philosopher Aristotle, John Locke, and an English man and later the French philosopher and Jurist Montesquieu. The doctrine was suggested by *Montesquieu* in the following terms.

“Political liberty is to be found only when there is no abuse of power but Constant experience shows us that every man invested with power is liable to abuse it, and to carry his authority as far as it will go.... To prevent this abuse, it is necessary from the nature of things that one power should be a check to another.... When the executive and legislative powers are united at the same person or body... there can be no liberty if the judicial power is not separated from the legislative and the executive There would be an end to everything if the same person or body whether of the nobles or of the people were to exercise all three powers”

Basing on Montesquieu, he suggested that if powers and functions of the three organs of state are centered on one of the state organs, the risk of having despotism and tyranny were great It can therefore be submitted that the three arms of government aforementioned stem from the doctrine of separation of powers which began to evolve under the principle that liberty and the rights of individuals were best preserved and protected if government powers were distributed

²³ G.T Mukubwa Op city p.1

²⁴ D.Z Lubuv , J.A (Tanzania “The Doctrine of Separation of Powers-Myth or Reality” A paper delivered at the EMJA Conference Kampala , produced in Hakim. Journal of Magistrates and Judges Ass. March , 2007.

amongst the three arms of government with each largely confined to its sphere of activity and influence. The doctrine is closely associated with the rule of law and good governance in a democratic state. In its strict sense, the separation of powers means a rigid compartmentalization of the organs or arms of state which are independent.

It goes without saying that there is no country in the world, where there is complete separation of powers as this would bring the government to a standstill.

In many countries, there are various overlaps for example, in certain respect The British system is such that no clear line of demarcation can be made between the role of the Executive, the Legislature and the Judiciary. For instance Lord Chancellor presides over the House of Lords when sitting as a Chamber of the British Parliament. In that capacity he is a Legislator. On the other hand the Lord Chancellor is also a member of the cabinet. So the British system reflects a system of checks and balances between the three pillars of state rather than a model of pure doctrine of separation of power.

In Uganda Cabinet Ministers are got from elected members of parliament. Similarly, the unelected members of Cabinet are ex-officio members of parliament where Judges are appointed by the President upon approval of parliament. Thus, it is generally accepted that what the doctrine advocates for, is a system of checks and balances aimed at the prevention of tyranny by conferment of too much power on any one person or body and the checking of one power by another.

Justice Lubuva, J.A, the doctrine, if practiced in the strict and pure senses, would paralyze the government business. In this sense, the doctrine is hardly put in practice; it is in this context, rather more of theory and perhaps a myth.

2.2.1 The application of the doctrine of separation of powers in Uganda

The doctrine of separation of powers basically states that the three arms of government, the Executive, the Legislature and the Judiciary are independent of each other. It is generally acknowledged that democracy in any state is closely associated with the rule of law which is a pre-requisite for good governance. In light of this, it is a common phenomenon in the constitutions of various democratic countries to find provisions which prescribe for the recognition of the principle of separation of powers. This brought a pertinent question as to

whether the doctrine of separation of powers is enshrined in the Constitution of the Republic of Uganda (1995)? Uganda's Constitution incorporates the concept of separation of powers and the system of checks and balances as essential means of ensuring democracy and ultimate sovereignty of the people.

There are specific provisions in the 1995 Constitutions which affirm the principle of separation of powers in relations to the three organs of the state. The arrangement of the Constitution in different chapters headed: the Legislature, the Executive and the Judiciary's demonstrates an intention to separate judicial powers from the Legislature and the Executive²⁵.

Under **Article 98 (1)** of the 1995 Constitution provides for the Presidency of the Republic of Uganda. It provides, thus "98(1) there shall be a President Uganda who shall be the Head of state, head of Government and commander in Chief of the Uganda Peoples Defense Forces and the fountain of Honor.

Under **Article 99 (1)** of the 1995 Constitution provides for the exercise of executive authority of the Republic of Uganda. It provides, thus "99(1) The Executive authority of Uganda is vested in the President and shall be exercised in accordance with this Constitution and the Laws of Uganda" Various Articles of the Constitutions under chapter seven provide for the Republic of Uganda and its authority. The Executive or Cabinet consists of the President, Vice President, prime minister, and such number of ministers as may appear to the President to be reasonably necessary for the efficient running of the state, under DL. Lubuva, JA op city page.15 and other ministers to assist Cabinet ministers in the performance of their functions²⁶.

The Cabinet also consists of the Attorney General and the Deputy Attorney General, and the Secretary to the Cabinet

The executive or the Cabinet is the organ of the state which is charged with administrative function of the government and determination, formulation and implementation of policy upon which laws is eventually enacted by Parliament under **Article 114(1)**.

Chapter six concerns the legislature. **Articles 77 to 97** provide inter alia, for the composition functions **Article 111(1)** as amended, powers **Article 111(1)** as amended, procedure, privileges

²⁵ Constitution 1995 as amended

²⁶ Constitution of the Republic of Uganda, Chapter 6.

and immunities of Parliament **Article 79**, the office of Parliament, Speaker and Deputy Speaker **Article 90(40)** and Clerk to Parliament and other staff. **Article 94** it is common knowledge that legislature is, the organ of the state which enacts Laws in the National Assembly based on the policy formulated by the executive arm of government **Article 94** Furthermore the Legislature is empowered to monitor the activities of the Executive with a view to ensure its accountability **Article 97**.

The Judiciary is provided for under Chapter Eight of the Constitution. In this chapter provision is made for the establishment of the Courts of Judicature which consist of the Supreme Court of Uganda, the Court of Appeal of Uganda, the High Court of Uganda and subordinate Courts as Parliament may by law establish including the Quadric' Courts The details of the Court structure are dealt with at length in chapter three of this dissertation .It is common ground that the basic function of the Judiciary it to adjudicate over disputes arising between parties in accordance with the Laws enacted by the Legislature The Courts which constitute the Judiciary are empowered to interpret the Constitution, the Supreme Law of the land and other Laws which are enacted by parliament.

Among the three organs of the state, the Supreme role of Judiciary is underscored under the provisions of **Article 126(1)** of the Constitution It provides to the effect that judicial power is derived from the people and shall be exercised by the Courts established under this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people Further the independence of the Judiciary is enshrined **Article 128** of the Constitution which is to the effect that in the exercise of judicial power, the Courts shall be independent and shall not be subjected to the control or direction of any person or authority, and that no person or authority shall interfere with the Courts or judicial officers in the exercise of their judicial functions. Suffice it to add, the underlying principle of the entire **Article 128** is the issue of judicial independence and security of tenure, the latter being among the traditional safeguards of the former.

The provisions mentioned hereinabove manifest an intention to secure in the Judiciary a freedom from political, legislative and executive powers.

These are wholly satisfactory and appropriate provisions in the constitution which intends that judicial power shall be vested only in the Judicature.

Finally, the principle of judicial independence is part and parcel of not only separation of powers but rooted in the rule of law. In addition, judicial independence goes beyond mere separation of roles and functions, it requires the room in which the judicial powers, duties and functions are exercised without any interference though president may interfere it while doing or performing their duties²⁷

²⁷ Constitution 1995 as amended (Uganda)

CHAPTER THREE

METHODOLOGY

3.0 Introduction

The chapter shows how data, information was collected and interpreted; it also shows how the research was designed, the area, sampling procedures, data collection and analysis

These were essential in the assessment of the effectiveness of the independence of the Judiciary in Uganda

3.1 Research design

The research was carried out using qualitative method and this method was essential in establishing the effectiveness of the independence of the Judiciary in Uganda. Descriptive and analytical methods were combined Qualitative method was used for documentary analysis during and after the field work study especially in finding out the factors affecting the independence of the Judiciary in Uganda

3.2 Study population and area.

The study aimed at the impact of judicial independence in Uganda majorly focusing Courts, Judicial Service Commission, Attorney Generals' Chambers, Ministry of Justice, the office of inspectorate of government and the General Public.

3.3 Sample design

Questionnaires were administered to staff and non-staff Purposive samplings were used to minimize subjectivity and objectivity replies.

3.4 Data collection

Primary and secondary methods were used to collect data

Library research was extensively and intensively used to collect information from the existing Laws, Journals, Newspapers, Text books, Government Documents, and Judiciary Annual Reports to authenticate or refute information obtained from the primary source.

Data collected was analyzed to determine the extent to which the independence of the judiciary has been observed, honored and to determine the applicability of the Doctrine of Separation of Powers in Uganda as the country.

3.4.1 Questionnaires

Questionnaires were administered to some people selected, The Courts of Judicature, Judicial Service Commission, Attorney Generals' Chambers, Ministry of Justice ,Inspectorate of Government and the General Public This helped in documentary analysis and observation.

3.5 Data processing and analysis

The data from the field were analyzed, edited and transcribed. Comparing and sorting were effective in eliminating irrelevancies duplication and disorder. The data collected were analyzed using different analytical techniques such as comparison with similar research work which already existed. Data collected was to determine whether the independence of the Judiciary were being realized and observed according to the law in Uganda.

3.6 Limitation of the study

There were several obstacles and challenges that hindered the researcher in carrying out the research. These included missing of questionnaires, time factors, financial constraints and disappointments among from respondents.

The time allocated to this study was short for example the time to be spent to collect and analyze data and final presentation of the report among others. There was lack of financial and other logistics to facilitate the researcher during the exercise and cluttering for expenses such as printing, transport, photocopying and internet surfing.

CHAPTER FOUR

FINDING OF THE JUDICIARY AND AN EXAMINATION OF THE INDEPENDENCE OF JUDICIARY IN UGANDA IN THE POST A 1995 CONSTITUTIONAL ERA

4.0 Introduction

The chapter provides the findings of the Judiciary. This was done by citing various definitions expounded by different scholars and legislations. It also hints on the characteristics of the Judiciary, its nature and basic components.

In this chapter, functions, duties, authority and constitutional mandate of the Judiciary are explained.

The chapter also highlights the administrative organization of the Judiciary of Uganda, the Court structures, composition and Jurisdiction of the various Courts of Judicature and the Order of Precedence of the Judges/Justices. This was done by critically analyzing the provisions of the 1995 constitution of Uganda and other legislations.

The chapter gives a theoretical overview of the independence of the Judiciary. The chapter hints on the definition of the independence of the Judiciary, the test for judicial independence, and the necessity for judicial independence.

Lastly, the chapter explains how the Law guarantees the independence of the Judiciary. A critical analysis of constitutional provisions and other legislations and International Law principles pertaining to the independence of the Judiciary suffice.

4.1 Main view of the Judiciary

“Judiciary” embraces both the institution of courts and the persons who compose it, judges and magistrates²⁸. Others support staff do definitely also form part of the Judiciary. The Judiciary is a distinct and independent arm of government entrusted with judicial authority and mandated by the constitution to administer and deliver justice to the people of Uganda. It plays a fundamental role in the promotion of the law and order, human rights, social justice, morality and good

²⁸ Chris Peter Maina, The Journal of East African Magistrates and Judges Association 20077 P.1.

governance. The Judiciary is constitutionally empowered to administer justice through resolving disputes between citizens and citizens and between the state and citizens ; interpret the constitution and the laws of Uganda; promote the rule of law and to contribute to the maintenance of order in society, protect human rights of individuals and groups; initiate, develop and implement training programs for the development of the Judiciary staff, contribute to the enforcement of law and order, enroll and license advocates, license and discipline court brokers, keep custody of laws enacted as well as disseminate legal literature, receive government revenue accruing from courts, and introduce modalities for out of courts dispute resolution mechanism to reduce the burden of cases in the court of Judicature²⁹.

As mentioned above Judiciary is an institution which is mandated by the constitution to adjudicate disputes/cases. It executes this duty by interpreting and justly applying the laws bearing in mind the values, and aspiration of the people³⁰.

The key function for the Judiciary therefore is the adjudication of civil and criminal cases. In addition, it interprets the Constitution and gives effect to its provision, as well as providing the expertise in interpreting of the laws. Further the Judiciary performs other related duties in promotion of human rights, social justice and morality.

The Judiciary as an arm of Government is where government power is exercised through the Executive and legislature.

The executive initiate policies and implements them The legislature makes laws to be interpreted by the Judiciary In that regard, parliament determines the establishments of courts subordinate to the High Court' and may determine to increase the number of judges and justices to sit in the Supreme³¹

Appeal/Constitutional under **Article 134 (b)** and High Courts under **Article 138(b)**. Above the constitutionally defined minimums. Parliament is also entrusted to make provisions for the jurisdiction and procedures of those Courts³².To add on that, Parliament makes laws providing

²⁹ As it is provided in Judiciary Staff Hand book, First Ed. Kampala 2007 P.1.

³⁰ Under Article 126.The Constitution of the Republic of U ganda,1995.

³¹ Under Article 130(b) Constitution 1995 as amended (Uganda)

³² Under Article 129(3)..

for the structures, procedures and functions of the Judiciary³³. The Judiciary, like the other two arms of government is supreme in its spheres.

The structure of the Judiciary in Uganda The history of the Court system in Uganda is long and interesting but for the purpose of this research dissertation the brief recount of the system from 1995 will suffice. It is worth noting that the Uganda Judiciary has undergone tremendous changes since the turn of the last century to the present time. In that regard following the enactment of the 1995 Constitution of the Republic of Uganda, the Judiciary structure has been redefined to constitute the following courts: the Supreme Court, the Appeal/Constitutional Court, the High Court, the Chief Magistrate Courts, the Grade I Magistrate's Courts, the Grade II Magistrates Court which also sit as the Family and Children's Court, the Local Council Courts, and Tax appeal tribunals.

4.1.1 Organization of the Judiciary's Administrative

The Ugandan Judiciary is composed of the Supreme Court; The Court of Appeal; The High Court; Magistrates' Courts; and such subordinate Courts including to these Courts for manage, divorce inheritance of property and guardianship as may be prescribed by parliament.

The Uganda Judiciary also has supervisory powers over other quasi-Judicial courts, including; The Local Council Courts.

The Judiciary is organized into two, the judicial officers department and the Finance and Administration Department.

4.1.2 Department of Judiciary

Judiciary is headed by the Chief Justice who doubles as the head of the Supreme Court and he is responsible for the administration and supervision of all Courts in Uganda³⁴. The Constitution of the Republic of Uganda, 1995, and may issue orders and directions to the courts necessary for proper and efficient administration of justice under³⁵.

The Chief Justice as the Chief administrator of the Judiciary formulates and directs policies.

³³ Under Article 150(1)

³⁴ under Article 133 (1)

³⁵ Article 136(2).

The Deputy Chief Justice is the head of the Court Appeal and in that capacity assists the Chief Justice in the administration of that court and the Judiciary. In other words in the absence of the Chief Justice, the Deputy Chief Justice performs the functions of that Office³⁶.

The Principle Judge is the head of the High Court who in that capacity assists the Chief Justice in the administration of the High Court and subordinates Courts ³⁷and performs such other functions as may be delegated or assigned to him or her by the Chief Justice³⁸.

The office of the Registrar is created by **Article 145 (1)** of the 1995 Constitution. The Chief Registrar who is at the level of Permanent Secretary heads the technical branch of judicial activities of the organization. He/she is assisted by a management team of Registrar, and carries out management of the Judiciary on daily basis.

The function of the Chief Registrar and that of the Secretary to the Judiciary are inter-lined. Thus in effect there is a split between management of judicial staff and administrative staff, even though both set of staff work on many of the same activities on a day to day basis.

4.1.3 Inspectorate of Courts

Inspectorate is a unit within the Judiciary. It is headed by a Registrar (Inspector of Courts) assisted by Deputy Registrars in charge of up country High Court circuits. The Inspectorate carries out inspection of courts and evaluation of the performance of magistrates and other judicial officers.

4.1.4 Administration and Finance Department

Administration and finance department is the marrow of the Judiciary. This is support department for the Judiciary for general administration and management of human and financial resources as well as maintenance and control of assets.

The department is headed by the Secretary to the Judiciary who is appointed by the President on recommendation of the Public Service Commission. She/he is the accounting officer and reports directly to the Chief Justice while at the same time holds close consultations and linkage with the Ministry of Public Service. He/she is at the level of a Permanent Secretary. He/she is assisted by

³⁶ Under Article 133(2).

³⁷ Under Article 144(1) (a).,

³⁸ Under Article 141(1) (b)

the Under Secretary who is supported and assisted by other administrative staff like the Principal Personnel officer, Principal Assistant Secretary, Principal Accountant, and Estates Manager among others

4.2 The structure of the Courts in Uganda.

4.2.1 Supreme Court

Supreme Court is established by Article 130 of the 1995 Constitution and stands out at the top of the judicial pyramid as a final appellate Court in Uganda⁸⁴. It has no original jurisdiction save as conferred by law³⁹.

Court is accommodated in the upper Kololo Terrace. The Court consists of the Chief Justice⁸⁶ and not less than six Justices of the Supreme Court or such higher number of justices as parliament may by law or resolution prescribed⁴⁰. It is duly constituted at any sitting by five Justices, but when hearing constitutional appeals from decisions of the Court of Appeal/Constitutional Court, a full bench of seven justices has to be present under **Article 132(2)**.

An appeal lies to the Supreme Court from such decisions of the Court of Appeal as are prescribed by the Constitution under **Article 132(2)**., the Judicature Act' or any other law. For the purposes of hearing and determining an appeal, the Supreme Court has all the powers, authority and jurisdiction vested under any written law in the court from the exercise of the original jurisdiction of which the appeal originally emanated under **S.7. Judicature Act, Cap 13**.

A justice of the Supreme Court may exercise powers vested in the Supreme Court in any interlocutory cause or matter before the Supreme Court under **Article 132(2)**.. Any person dissatisfied with the decision of a single justice is the exercise of power under the foregoing paragraph is entitled to have the matter determined by a bench of three justices of the Supreme Court, which may confirm vary or reverse the decision. The decisions of Supreme Court form precedents followed by all lower courts.

³⁹ Under Article 132(1).

⁴⁰ under Article 131(1)

4.2.2 Court of Appeal

The Court of Appeal is a Child of the 1995 Constitution of the Republic of Uganda. It is the second Court of record and inter-positioned between the Supreme Court and the High Court It is currently accommodated in Bhatia Chambers on Plot 6 Parliamentary Avenue in Kampala.

The Court of Appeal of Uganda consists of the Deputy Chief Justice, and seven Justices of the Court of Appeal or such higher number of justices of the Court of Appeal as Parliament may by law or resolution prescribes As its title suggest, the Court of Appeal has appellate jurisdiction over the High Court as may be prescribed by the Constitution, Judicature Act or any other law as it is provided⁴¹. The Constitution of the Republic of Uganda,⁴².

For purpose of hearing and determining an appeal, the court of Appeal has all the powers, authority and jurisdiction vested under any written law in the Court from the exercise of the original jurisdiction of which the appeal originally emanated as it is provided⁴³.

Appeal is any interlocutory cause or matter before the Court of Appeal as it is provided under Section 12. Judicature Act. Any person dissatisfied with the decision of a single justice in the exercise of the above paragraph is entitled to have the matter determined by a bench of three justices of the Court of Appeal which may confirm, vary or reverse the decision⁴⁴.The Court of Appeal is not a Court of first instance except when hearing constitutional cases since it is a Constitutional Court too by virtue⁴⁵. When sitting as a Constitutional Court, the Court of Appeal consists of a bench of five justices (members) of that Court..

4.2.3 High Court

The High Court of Uganda is established and stand as a symbol of justice It is the third Court of record in order of hierarchy and has unlimited original jurisdiction, that is to say, it can try any case of any value or a crime of any magnitude in Uganda It also has such appellate and other jurisdiction as may be conferred on it by the Constitution or any other laws⁴⁶.

⁴¹ Under Article 134(1)

⁴² Section 9(a) of Cap 13

⁴³ Under Section 11. The Judicature Act

⁴⁴ under Article 137(2) The 1995 Constitution of Uganda.

⁴⁵ Article 137 (1) of the 1995 Constitution

⁴⁶ Article 138 of the 1995 constitution

In addition, the High Court has jurisdiction to hear and determine appeals which lie to it by virtue of any enactment from decisions of Magistrates' courts and other subordinate courts in the exercise of their original jurisdiction. The High Court also exercises general powers of supervision over Magistrates' Court.

High Court of Uganda consists of the Principal Judge and twenty-five judges of the High Court or such higher number of judges of the High Court as may be prescribed by parliament by law.

High Court is headed by the Honorable the Principle Judge⁴⁷. The Constitution of the Republic of Uganda, 1995, who in that capacity assists the Chief Justice in the administration of the High Court and subordinate Court, and perform such other functions as, may be delegated or assigned to him or her by the Chief Justice⁴⁸.

High Court conducts most of its business at its headquarters at Kampala but with the decentralization of the High Court, its services are now obtained at its Circuits. There are about thirteen High Court Circuits and they include the following: Kampala High Court Circuit, at Kampala, Central High Court Circuit, Nakawa, Masaka, Jinja, Gulu, Masindi, Kabale, Mbale, Arua, Soroti, Mbarara, Lira, and Fort portal.

At the Headquarters there are five divisions of the High Court, the Civil Division, the Criminal Division, the Commercial Division, the Family Division, the Land Division, and the Anti Corruption Division.

4.2.3.1 Justices and Judges

Order of precedence among the Justices of the Supreme Court, the Justices of the Court of Appeal and the Judges of the High Court is as follows: The Chief Justice takes precedence over all justices of the Supreme Court and the justices of the Court of Appeal and judges of the High Court.

Deputy Chief Justice and the Principal Judge take precedence immediately after the Deputy Chief Justices⁴⁹.

⁴⁷ As it is provided under Article 138(1).

⁴⁸ As it is provided under Article 138(1)(b) and Section 13(b) of Cap 13

⁴⁹ Under Section 2(2) of Judicature Act, Cap.13

Justices of the Supreme Court take precedence immediately after the Principal Judge, and among themselves, according to the priority of the dates on which they respectively took and subscribed to the Judicial Oath as Judges of the Supreme Court.

Justices of the Court of Appeal take precedence immediately after the Justices of the Supreme Court and among themselves according to the priority of dates on which they respectively took and subscribed to the Judicial Oath as judges of the court of Appeal as it is provided⁵⁰.

Where there is equality of precedence in respect of two or more Judges Precedence among them is determined according to age, a person higher in age takes precedence over a person lower in age as it is provided⁵¹.

4.3 Magistrate's Courts.

Magistrates' Courts are the lowest subordinate Courts established by **Article 129 (1)**, of the 1995 constitution and by **Section 3** of the Magistrate' Courts Act. The Minister in consultation with the Chief Justice, by Statutory Instrument designates Magistrates' Court to be known as the Magistrates' Court for the areas in respect of which it has jurisdiction.

The three levels of Magistrate Courts. Chief Magistrates, Magistrates Grade I and Magistrates Grade II Courts. Similarly the level of the magistrates entails the grades of the same¹ These Courts handle the bulk of cases in Uganda. Presently the country is divided into thirty-eight Chief Magisterial Areas administered by Chief Magistrates who have supervisory powers over all Magisterial Courts and LC courts within their area of their jurisdiction as it is provided⁵².

Powers and jurisdiction of the Magistrates are determined by the grade of appointment conferred upon that grade by law.

Magistrates Court is deemed duly constituted when presided over by any one magistrate lawfully empowered to adjudicate in the Court 'as seen in **Section 5 Caps 16**. Every magistrate appointed is deemed to have been appointed to, and has jurisdiction in each and every magisterial area.

But, Chief Justice may assign him or her to any particular magisterial area or to a part of any magisterial area as it is provided⁵³.

⁵⁰Under Section 2(d) of Judicature Act,Cap.13

⁵¹Under Section 2(2) of Judicature Act, Cap.13

⁵²Under Section 6 Cap. 16

⁵³Under magistrate Act Section 6 Cap. 16

4.3.1 Criminal Jurisdiction of Magistrates:

A Magistrate's Court presided over by a Chief Magistrate who may try any offence other than an offence in respect of which the maximum penalty is death⁵⁴.

A Magistrate Grade I may try any offence other than an offence in respect of which the maximum penalty is death or imprisonment for life as it is provided⁵⁵.

A Magistrate Grade II may try any offence under, and has jurisdiction to administer and enforce any of the provisions of any written law other than the offences and provisions specified in the First schedule to the Magistrate's Court's Act⁵⁶.

4.3.2 Sentencing powers of Magistrates

A Chief Magistrate may pass any sentence authorized by law.

Magistrate Grade I may pass any sentence of imprisonment for a period not exceeding ten years or a fine

4.3.3 Civil Jurisdiction of Magistrates.

The jurisdiction of Magistrate presiding over Magistrates Courts for the trial and determination of causes and matters of a civil nature is as follows:

A Chief Magistrate has jurisdiction where the monetary value of the subject matter does not exceed fifty million shillings (50m) and has unlimited jurisdiction in disputes relating to conversion, damage to property or trespass⁵⁷.

Magistrate Grade I has jurisdiction where the monetary value of a subject matter in disputes does not exceed twenty million shillings (20m)'207(1) (b) Cap 16.

Magistrate Grade H has jurisdiction where the monetary value of the subject matter in dispute does not exceed five hundred thousand shillings⁵⁸.

⁵⁴As seen under magistrate Act section 161(a) Cap.16

⁵⁵Under magistrate Act Section 161(b) Cap.16

⁵⁶Magistrate's Court's Act Section 162(c) Cap.16

⁵⁷magistrate Act Section 207(1) Cap 16 (as amended)

⁵⁸Section 207(1)c cap16

Where civil customary law governs the cause or matter of a civil nature, the jurisdiction of a Chief Magistrate and a Magistrate Grade I is unlimited.

4.4 The term Independence of the Judiciary

Principle of the independence of the Judiciary has its origins in the doctrine of separation of powers, which basically states that the three arms of government, that is the Executive, Legislature and the Judiciary must be independent from one another.

The phrase “independence of the Judiciary” has been defined by several writers, amongst who is Justice Kanyeihamba who defines judicial independence as a state of affairs where the Courts and judges are free to function without fear, favor and or ill will to any one individual or authority. Independence or lack of it should not be confused with limitation of jurisdiction’ according to Kanyeihamba: Constitutional and Political History of Uganda from 1894-2003.

According to Justice Nyalali independence of the Judiciary means self-rule, means being accountable- judges must exercise self-discipline as a corollary to the fundamental principle of independence of the Judiciary. This is because independence means self- rule and self-rule means self-discipline’ according Justice Nyalali, a former Chief Justice of Tanzania gave this definition in a paper he presented in Entebbe on the independence of the Judiciary.

The three definitions offer sufficient definitive materials for the phrase independence of the Judiciary” Independence of the Judiciary in our view therefore refers to a situation where Courts, judges, magistrates and any other persons charged with judicial power adjudicate and determine cases before them based on evidence and the relevant law applicable to them without any fear, favor.

The first principle of independence of the Judiciary flows directly from the Judiciary Constitutional mandate. Constitutional democracy depends upon the limitation on government imposed by the Constitutional through separation of powers between government institutions.

4.5 Testing of Judicial Independence

According to R Bader- Ginsburg the real test of judicial independence comes when judges are led by their understanding of the law, the finding on facts and the pull of conscience to a decision which is contrary to what other branches of government or other powerful interests in society want something different from what “the home crowd” wants’.

4.5.1 Need for judicial independence

The necessity for the independence of the judiciary is underscored by the following variables

- A. Courts cannot act as an effective check and balance against the executive
- B. and legislature if they are not independent and strong
- C. . The Judiciary is the custodian of the constitution, which must be jealously guarded if it is to act as the basis for orderly conduct of affairs in a democracy.
- D. . Judicial independence is necessary for impartial and fair adjudication of disputes. 127 Remarks on the independence of the Judiciary (1998) quoted in Kirby's paper-Independence of the Judiciary, Basic Principles, and New Challenges.
- E. Litigants who refer their disputes to courts require a decision maker who is competent, independence is a charade wrapped in a farce inside Oppression
- F. . Judicial independence promotes the respect and promotion of human rights. The Courts are often the only line of defense against the excesses of executive or legislative power. Wronged citizens can only be assured of redress and protection against violation of their fights through an H Independent Judiciary.
- G. Judicial independence promotes the cultures of rule according to the law or what is commonly known as the rule of law.

4.5.2 Guarantee of the independence of the Judiciary in Uganda?

The 1995 Constitution of the Republic of Uganda: The Constitution provides for an independent Judiciary.

Article 128(1) of the Constitution provides that:

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 authority⁵⁹.

No person shall interfere with the Courts or judicial offices in the exercise of their judicial functions.

The Constitution obliges all organs and agencies of the state (to) accord the Courts such assistance as may be required to ensure the effectiveness of the Courts²⁸. The Constitution

⁵⁹Article 128 (2)

further provides for other individual and institutional guarantees of the independence of the Judiciary. The Constitution provides for security of tenure for judges and magistrates, entrenched procedures of removing judges²⁹, parliament determines.

128 Article 128 (3) Constitution of the Republic of Uganda, 1995.

129 Magistrates and other Judicial officers may however be removed by the Judicial Service Commission. Judicial salaries; Judiciary expenses are chargeable on the consolidated fund and judicial officers and recruited by an independent Judicial Service Commission.

Judicial Immunity is provided⁶⁰, which provides that any person exercising judicial power shall not be liable to any action or suit or for any act or omission by that person in the exercise of judicial power.

4.5.3 Other Uganda Legislations.

a. Judicature Act provides for judicial immunity'Cap.13 Laws of Uganda. Section 46 of the Act provides, inter alia that a judge or other persons acting judicially shall not be liable to any action or suit for any omission by the person in the exercise of his or her judicial powers in the discharge of his or her judicial function whether or not within the limits of her jurisdiction.

b. under the Penal Code Act judicial officers are insulated from criminal liability for anything done or omitted to be done by him or her in the exercise of his or her judicial function, although the act done is in excess of his or her judicial authority or although he or she is bound to do the act omitted to be done⁶¹.

The Penal Code Act also provides for offences against the administration of justice. Besides, the Penal Code provides for the offence of contempt of Court and subjudice, which insulate judicial officers and prohibit undue interference from the public and press into the adjudicating mechanism under, **Section 107**, thereby protecting the due process of law. According to Justice Kanyeihamba- the subjudice rule enables the judges to administer justice without fear of public

⁶⁰Under clause (4) of Article 128 of the 1995 Constitutional

⁶¹under Section 13. Cap 120 Laws of Uganda.

clam our, political prejudice or social or other means of propaganda' according to G.W Kanyeihamba (Supra) P.292.

c. The Uganda Code of Judicial Conduct also has principles providing for judicial independence and impartiality.

d. The recent decision of **MasaluMusene and others Vs Attorney General' Constitutional Petition No.5/2004 F**, provides that taxation of judicial officer's is a violation of the independence of the Judiciary.

4.5.4 International Law Principles on the Independence of the Judiciary

International law reorganizes the independence of the Judiciary as an indispensable tool for enforcement of human rights, maintenance of international peace, rule of law and the torchbearer for giving effect to the right to a fair trial before an impartial and independent tribunal.

In spite of this, the international community has not come up with a comprehensive enforceable instrument on the independence of the Judiciary. There is a General Council Resolution on the Independence of the Judiciary which was approved by all members of the **General Assembly' Resolution 40/32 of November 29th 1985**. This resolution is a codification of international customary law principles on the independence of the Judiciary. I will briefly address this resolution, suffice it is mention there are other important conferences that have expounded on the independence of the Judiciary, which will also be addressed.

4.6 United Nation Basic Principles on the Independence of the Judiciary

United Nation Basic Principles on the independence of the Judiciary are standards, which the United National General Assembly approves as minimum standards that must apply to any national Judiciary if the rights to equality before the law, presumption of innocence and the right to a fair and public hearing are to be enjoyed to their maximum.

Principles are meant to foster judicial independence; inspire public confidence in the judicial systems; increase realization of the right in the International Covenant on Economic, Cultural and Social Rights and the International Covenants on Civil and Political Rights, and the declaratory rights in the Universal Declaration of Human Rights, which are contained in the Bills of the of most Constitutions of the World.

Principles reorganize the important role judges play in the administration of justice and are premised on the ground that independence of the Judiciary is indispensable because judges are charged with the ultimate decision over life; freedoms, rights, duties and property of citizens, and that no effort should be spared by national jurisdictions to guarantee independent judiciaries.

Below are Principles stating that:-

- A. Each state shall guarantee the independence of the Judiciary
- B. The Judiciary shall decide matters before it impartially, based on facts and in accordance with the law, without any restrictions, improper influence.
- C. The Judiciary shall have jurisdiction over all issues of a judicial nature and shall have the exclusive authority to decide whether an issue submitted for its decision is within its competence.
- D. There shall be no unwarranted or inappropriate interference with the judicial process, nor shall judicial decisions be subject to revision.
- E. Every one shall have the right to be tried by ordinary Courts or tribunal using established legal procedure.
- F. Judicial proceedings must be conducted fairly and rights of the parties respected.
- G. The Judiciary shall be accorded adequate resources to perform their functions.
- H. Members of the Judiciary are entitled to freedom of expression, belief, association, and assembly provided that in exercising such rights, judges shall always conduct themselves in a manner as to preserve the dignity of their office and impartiality and independence of the Judiciary.
- I. Conditions of service, qualification for appointment to judicial office and the training offered to judges shall promote and enhance judicial and professional

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charged with the ultimate decision over life; freedoms, rights, duties and property of citizens, and that no effort should be spared by national jurisdictions to guarantee independent judiciaries. Capacity shall be processed expeditiously and fairly under an appropriate procedure.

4.6.1 Burgh House Principles on the Independence of International Judiciary

Burgh House Principles on the Independence of the Judiciary related to international judicial tribunals but are relevant to national judiciaries because there is no difference between international and national justice.

They include

- i. Independence of the Judiciary promotes legitimacy and effectiveness in the adjudicating process.
- ii. Judges must be independent of the parties to cases before them
- iii. Judges must be free from undue influence from any source.
- iv. Judges shall decide cases impartially, based on the facts of the case and the law applicable.
- v. Judges shall avoid conflict of interest and shall not place themselves in a situation, which might give rise to any conflict of interest.
- vi. Judges shall refrain from impropriety in their judicial and related activities
- vii. Allocation of cases should promote independence of the Judiciary
- viii. Courts must be free to determine the conditions for its internal administration recruitment, funding and information.
- ix. Judges shall be recruited in a transparent manner among persons of high moral integrity and conscientiousness, which are academically and professionally competent.
- x. Judges shall have security of tenure
- xi. A Judge's salary and other conditions of service shall not be varied to his disadvantage.
- xii. Judges shall receive adequate remuneration which shall be adjusted periodically to suit the cost of living.
- xiii. Judges shall enjoy judicial immunity.
- xiv. Judges shall enjoy freedom of association and expression while in office but it must be consistent with judicial functions and should not affect judicial independence or impartiality.

- xv. Judges shall not engage in extra judicial activity that is incompatible with their judicial functions, or the efficiency and timely functioning of the Court.
- xvi. Judges shall not exercise any political function.
- xvii. Judges shall not serve in case where they have previously served as agent, counsel, and advocate, expert or in any way connected with it.
- xviii. Judges shall not serve in a case where they have interest in the outcome of the case (material, financial or professional interest).
- xix. Judges shall avoid contact with the parties and avoid expert communication with the parties.

4.7 Bangalore Principles of Judicial Conduct 2002

Preamble of the Bangalore principles provides for aspirations from the Universal Declaration of Human Rights, especially from the right to full equality to a fair trial and public hearing before an impartial tribunal.

The Code highlights ethical conduct and judicial accountability as the bedrock of the independence of the Judiciary.

4.8 The Principles in line with Independence of judiciary

- A. Independence of judiciary is a perquisite to the rule of law and fundamental guarantee of a fair trial.
- B. Judges shall therefore uphold and exemplify judicial independence in both his individual and institutional aspect.
- C. Judges shall exercise judicial functions independently based on the fact and applicable laws free from any inducements, pressure, threats or interference from any person.
- D. Judge shall be independent in relation to society in general and in particular to be dispute, which the judge has to adjudicate on
- E. Judge shall be free from inappropriate connection with the executive and legislative branches of government but must also appear to a reasonable observer to be free there from
- F. While performing judicial duties and functions a judge shall be independent of judicial colleagues in respect of decisions, which the judge is obliged to make.

- G. Judge shall uphold safe guards that maintain and enhance institutional and operational independence
- H. Judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the Judiciary, which is fundamental to maintenance of judicial independence
- I. Judges shall maintaining high standards of impartiality and integrity

4.8.1 Caracas, Venezuela Conference on the Independence of Lawyers and Judges held under the auspices of the United Nations on January 1989 at Caracas, Venezuela.

The Conference made worth resolutions on the independence of the Judiciary, some of which are

- A. An independent Judiciary was the firmest guarantee of the rule of law and protection of human rights
- B. The independence of the Judiciary can be guaranteed if the legal community and public are committed to sustaining free and democratic institutions
- C. Imposition of a state of emergency poses a fundamental threat to the independence of the Judiciary.
- D. Judicial guarantees should be made non-derogable in the Constitution.
- E. Judges should not allow abrogation of the constitutions because they are the guardians of the constitution.
- F. The legal profession should work for the common good of maintaining a vibrant and independent Judiciary.

The tents of an independent judiciary are spelt out in three distinct elements each of which must exist and be practiced before any judiciary can be said to be constitutionally independent and adequate. The first two elements, namely, security of tenure and financial security of both officers and the institution of the judiciary are formalized and secured by the provisions of the Constitutions. The third element which concerns the relationship between the Judiciary and other branches of government and, the public has been termed institutional independence.

Institutional independence in major democracies of a world is not founded or prescribed by formal provisions of the Constitution or any written law. It is founded in the minds and belief of the people. It is based on the culture of the people and their successive government over the years.

4.9 An examination of the Judicial Independence

Judiciary as an arm of Government relates to the other organs of the state, namely, the Executive and the Legislature, therefore addressing the term or the element of independence of Judiciary in Uganda. Research focuses on the functional relationship between the Executive, Legislature and the Judiciary, and how this relationship interferes with the independence of the Judiciary.

4.9.1 The relationship between the Judiciary, Executive and Legislature

In the 1994 the Constitutional Commission under the Chairmanship of Justice Benjamin Odoki (as he then was), now The Chief Justice of Uganda, collected

Constitutional views from the citizens of Uganda all over the country and later made recommendations to the Constituent Assembly which accepted and enacted the Presidential System of Governance. Central to that system are the cardinal principles of:

- A. Separation of power
- B. The rule of law
- C. Independence of the judiciary

Constitution of the Republic of Uganda, 1995 provides for separate provisions on the Executive, the Legislature and the Judiciary. It suffices to note that the Constitution (Supra) contains elaborate provisions designed to enshrine the principles of separation of powers, the rule of law and independence of the Judiciary as already stated above.

Powers exercisable by the three organs of government are distinctly demarcated, and controls against excess and misuse of powers have been put in place. The executive powers are vested in the president who is directly elected by the people. Parliament is also elected by the people. It is vested in the legislative powers as well as an oversight role. Neither organ of state has legal powers of control over the other.

It is recognized that judicial power is derived from the people and is exercised by the Courts in the name of the people 'as provided in the Constitution of the Republic of Uganda, 1995⁶².

⁶² Article 126

Judicial functions relate to the other functions of governance through the principles that the Judiciary is independent of control and direction from any person or authority. No person or authority must interfere with the exercise of judicial functions. The Judiciary in exercising its independence must put into account of the three arms of government each having separate powers. The Judiciary always tries to maintain its autonomy while at the same time refraining from making decisions over issues reserved for the other arms of government.

In reference to the above, the provisions entrenched in the 1995 Constitution; the practical application of the doctrine separation of powers in Uganda is not free from difficulties. In the course of dealing with constitutional and legal disputes, the courts (or Judiciary) have at times encountered problems with the executive and the legislature this results from the apparent clamor for supremacy among the state organs which hampers the application of the doctrine of separation of powers in Uganda.

There is a misconception on the part of the executive (and perhaps the legislature) that it has exclusive authority and ownership over the Constitution and other legislation such that no other individual or organ has the right to challenge the Constitution or any legislation. In that light, when the Court deals with such a case it is perceived by the executive as treading on other's territory. It is not surprising therefore that whenever, the court declares some part of the legislation null and void on grounds of it being unconstitutional the court has met the unprecedented scathing attack. At times the court's decision is nullified by an Act of parliament.

4.10 Interference of Independence of Judiciary in Uganda.

In the case of *Semwogerere and Olum vs. Attorney General*' Constitutional Petition No.1/1999 (unreported). aptly set out this point.

The petitioners challenged in the Constitutional Court that the Referendum and other Provision Act 1999 has been passed by Parliament in total disregard of the procedures of Parliament without the required.

The petition challenging the constitutionality of the Act, the Constitutional Court showed that it was not prepared to lock horns with the Executive and declared the Act as being unconstitutional and therefore null and void. The Court was hesitant to rule that the Act was passed in

unconstitutional manner and therefore null and void. It upheld the preliminary objection raised by the Attorney General that the Court had no power to entertain the case in which the internal workings and privileges of Parliament were questioned. It dismissed the petition as being incompetent and held that it had no jurisdiction to handle the matter.

On appeal by the petitioners⁴¹, the Supreme Court held that the Constitutional Court had jurisdiction to hear the matter and directed the Court to hear the petition on its merit. This showed the fear/lack of impartiality by the Justices of the Constitutional Court had vehemently declared what the Parliament had passed irregularly void because it serves the interests of the executive. However the Supreme Court displayed their sobriety by directing that the Constitutional court hears the petition on its merit. Hence some degree of judicial independence was exhibited.

Apparently, the Executive did not take kindly the decision of the Supreme Court. The Court was loudly criticized for what was referred to as the Court's (or Judiciary's) interference with the Legislature.

In a series of events that were reminiscent of the Ibingira saga of 1960's perhaps in the bid to avert an impending constitutional crisis, the government (or the Executive) through the Legislature hastily enacted the Referendum (Political Systems) Act, No. 3 of 2000 before the Constitutional Court could rule on the matter. In other words, it can be rightly construed that the Legislature H circumvented the decision of the Supreme Court and in effect the Act No. 3 of 2000 nullified the same, and pre-empted the decision of the Constitutional Court.

In August, 2000, the Constitutional Court, redeemed itself and in a manner that left Semwogerere and fellow opposition politicians clapping with glee rose to the occasion. The Court held that the Referendum Act 1999 had been passed improperly on the ground that there was no quorum as required by the Constitution and the that the Speaker of Parliament was in error in determining the quorum by using wrong methods of it. It declared the Referendum Act, 1999 unconstitutional and therefore null and void.

Constitutional Court ruling prompted the President to blast the Judiciary (and Parliament) for trying to cause a constitutional crisis while meeting the Movement Parliamentary caucus at the International Conference, Centre Kampala, President Museveni said the ruling of the

Constitutional Court on Referendum and other Provisions Act could cause a legal disorder, court litigations and political anxieties. “They judges) are not sensitive what they have done shows legal bankruptcy and insensitiveness to the aspirations of the ordinary people”⁶³.

In the same vein on June, 25 2004, the Constitutional Court declared the 2000 Referendum (Political System) Act, No. 3 null and void.

The immediate repercussions of the ruling were enormous and this further escalated criticizing against the Court (Judiciary). The Executive and/or the government reacted like it had been slapped in the face and decided that it would not take the ruling lying down. As construed by the learned Professor Law of Makerere University, Tumusiime Monica, never before had the government (or the Executive) come out to confront the Judiciary in such a blatant manner’. As it is provided M.K. Tusiime, Independence and Accountability of the Judiciary in Uganda.

It was alleged that the court (Judiciary) was insensitive to issues of public importance and that the decision would paralyze the business of Parliament.

In the week following the landmark judgment, the Movement or the supporter for a big demonstration against the Judiciary. In a clear act geared at intimidating the Constitutional Court, on June, 29, 2004, hundreds of Movement supporters poured on the streets of Kampala to protest the ruling. They chanted anti-Judiciary slogans and appealed to the President to sack the five judges who presided over the case.

They presented a petition to the Speaker of Parliament demanding that punitive action be taken against the Judges. In a show of co-called “people’s power” against the Judiciary, some judges were focused to stay away from their chambers and the Courts. Nevertheless, the Judiciary too came out to defend itself Chief Justice Benjamin Odoki called upon the government and the people to leave the Courts to function without intimidation. He encouraged the judges to execute their duties without fear or favor. He also attempted to calm the storm by assuring the nation that there would be no Constitutional crisis as a result of the judgment.

The Judiciary was ‘also put to test in **Constitutional Petition No. 7. 2000, in which the petitioners (Ssemwogerere and Olum) challenged the validity of the Constitutional (Amendment) Act, No, 13.of 2000 which sought to amend Articles 80-90 of the 1995**

⁶³The New Vision, Vol.15 No.196. Friday August, 18th 2000. Lead story Museveni blasts Judiciary

Constitution. The Bill for the Act was debated, passed and assented to by the President on the same day. It was published in the Gazette the following day and thereby became law. Semwogerere and Olum petitioned the Constitutional Court for a declaration that the Act was invalid for failure to comply with the constitutional requirements for amendment of the constitution. The Constitutional Court held that the amendment had been made in accordance with the law and that there was nothing wrong in passing the Act in two days.

In his lone dissenting judgment Twinomujuni, J.A, described the amendment as a coup against sovereignty of people and the supremacy of the Constitution. On appeal the Supreme Court, the declared that the Act No 13 of 2000 was null void because it was passed in total disregard of the Constitution.

Needless to mention the ruling caused a lot of excitement among opposition members of parliament and among the legal fraternity. According to the petitioners' lawyers, the Supreme Court ruling was a "landmark" judgment, notable not just for its ruling on parliamentary voting procedures, but because it reaffirmed the Judiciary as a protector of human rights and a bulwark against Executive impunity acting the cahoots with the Legislature'.

The relationship between the Judiciary and the Executive was put to a litmus test in the case of Uganda V. Kiiza Besigye⁴⁵ and others, in which a key opposition politician and a presidential candidate⁴⁶ and others were charged interlaid with treason and misprision of treason On 16th November, 2005 during the bail application and consideration of the suspects, the Executive deployed heavily armed military personnel' Dr.KiizaBesigye was a presidential candidate for FDC 2006, Presidential Elections.

at the High Court in anticipation of the release of the suspects on bail by the High Court This was intended to re-arrest the suspects in the event of being lawfully released on bail, apparently in order to charge the same suspects in the General Court Martial.

This act of besieging the High Court did not augur well with the Judiciary. The chief Justice Benjamin Odoki and the Principal Judge James Ogoola condemned the act on separate occasion. The Principal Judge James Ogoola, called the act a "naked rape" defilement," desecration" and a horrendous on slaughter" on the Judiciary constituting "the most naked grotesque violation of the

twin doctrines of the Rule of Law and the Independence of the Judiciary⁶⁴. He rightly construed that without doubt the “Rape of the Temple of Justice” is one such event in the judicial history of this country. To put it briefly, it is human to remember, purchase to block a repetition’ (**Key note address by The Hon. Justice James Ogoola PJ during the official launch of the Rule of Law**)

In that regard the Principal Judge composed some verses- poetry- to put on record the terrible events that befell the Judiciary on that inauspicious day of November 16, 2005 and to commemorate the said Tragedy⁶⁹. The “Poem” summaries the events of the tragedy and the embarrassment and pain inflicted on the Judiciary. It further indicates that such a tragedy has never occurred at any given time anywhere in the world since the Age of Enlighten.

The judges of the Supreme Court, the Court of Appeal and the High Court of Uganda held an extra-ordinary meeting on 16th December, 2005, under the chairmanship of His Lordship the Honorable Mr. Justice Benjamin Odoki, the Chief Justice of Uganda, during which they reviewed a number of events that threatened to undermine the independence of the Judiciary and the Rule of Law in this Country. In particular, the judges considered circumstances and the impact of the 16th November, 2005, military siege of the High Court.

In their deliberations, the judges perceived the siege of the High Court to be the fiercest act of intimidation to the Ugandan Judiciary since 1972, when the then Chief Justice Benedict Kiwanuka was abducted by armed men from his chambers at the High Court and caused him to disappear forever. The Judges noted with unreserved approval and satisfaction, the prompt and public statements that their Lordships, the Chief Justice of Uganda and the Principal Judge, made condemning the siege. They (Judges) unanimously endorsed and supported both statements and reiterated that the incident constituted a very grave and heinous violating of the “twin” principles of the Rule of Law and judicial independence, which violation had a chilling impact on the administration of justice and ought to be unreservedly condemned by all.

The Judges viewed the events in the context of the constitutional mandate of the Judiciary which is described in Article 126(1) of 1995 Constitution of the Republic of Uganda and the doctrine of separation of powers of the Executive, Legislative and Judicial arms of Government which is

⁶⁴It was noted The Daily Monitor, No.358, Saturday, December 24th, 2005 at page 2

enshrined in the Constitution, and the principle of Judicial Independence entrenched under Article 128 of the Constitution.

Statement by the Judiciary 22nd Dec, 2005 issued by the Ag. Chief Registrar Courts of Judicature. Published in the Daily Monitor Friday Dec, 2005 at page 27.

Further, the judges, recalled that the Ugandan Judiciary has at all-time faithfully executed its constitutional mandate to uphold the said principle without fear or favor, despite intermittent acts of interference and intimidation particularly from the Executive arm of Government. Those acts of interference and intimidation have intensified since 2001, so the judge's perceived the 16th November siege of the High Court not as an isolated incident but as a culmination of a trend that threatened to whittle away judicial independence unless every effort was made to arrest the trend.

In that connection the judges appreciated and commended the reactions of the Uganda Law Society, the East Africa Law Society, the Ugandan Judicial Offices Association, the Uganda Christian Joint Council, the International Commission of Jurists, and the other diverse organizations and institutions in Uganda, the United Kingdom and the United States of America, and above all the many individuals, all of whom had spoken out firmly in defense of Judicial Independence and condemned intimidation against the Judiciary, and all forms of interference by the Executive arm and, its organs and agencies in the administration of justice.

4.11 Finally, the Judges stated that-

A. To strongly condemn the deployment of military and other security personnel within court premises for interfering with judicial process and to resist all past present acts and conduct calculated to intimidate the Courts or otherwise to interfere with the proper administration of justice.

B. To call upon the Executive arm of Government to abide by its Constitutional obligation to uphold and promote principles of the Rule of Law and judicial independence and to accord to the Judiciary the assistance required for ensuring the effectiveness of the Courts and to restrain its organs and agencies from perpetrating any form of interference with judicial process and harassment against the Court.

C. To urge the Ugandan public to cherish and vigilantly defend the Independence of the Judiciary, recognizing that it is a fundamental element of the Rule of Law and that the principle is not a privilege to or for the benefit of judicial personnel, but rather the guarantee of the people's right to have an impartial Judicial that ensures equality of all before the law and protects the human rights and fundamental freedoms enshrined in the Constitution.

D. To assure the Ugandan public that notwithstanding the past and present interference and intimidation, the judges will individually and collectively continue to adhere to and collectively continue to adhere to and uphold the principle of Judicial Independence and to administer justice impartially without fear or favor in accordance with the judicial oath.

The statement by the Judiciary highlighted hereinabove drove the Executive into a paroxysm of rage, to the extent of accusing judges of supporting the Opposition politician Dr. Kizza Besigye and taking an antagonistic action against the Executive. This clearly manifested itself in the words of the Government spokesman Dr. James Nsaba Buturo during a press briefing at president's office Nakasero.

"By supporting the position and actions of the Law societies the Judiciary is upholding its legal position on the case. These organizations have expressed political support for Dr. Besigye against the government... The statement of the Judiciary is unprecedented. There is a case between government and the Uganda Law Society before the Courts of Law. The public advertisement is an antagonistic action. It is a commentary that reveals the Judiciary has taken sides.... In this case who will make a judgment?

It should be noted that earlier, the 800- strong Uganda Law Society (ULS) members had on the 28th November 2007 held a demonstration outside the High Court protesting against what they called the "deterioration of the Rule of Law" in the country and in condemnation of the 16 November Military siege of the High Court.

The Uganda Law Society petitioned the Constitutional Court'No.18/2005⁶⁵., challenging inter alia, the invasion of the High Court by military personnel. The petitioners, contended that the acts of the Anti-Terrorism Task Force (the infamous Black Mambas) were calculated to intimidate and inculcate fear in the minds of the judges and other judicial officers to induce them

⁶⁵The Uganda Law Society petitioned the Constitutional Court'No.18/2005

to be partial in their judgment and to feel dependent on the state (Executive) for their positions and as a warning that if they did not enter into judgment in their favor, they would be in danger and that the acts, were to compromise the Independence of the Judiciary in contravention of the Constitution of the Republic of Uganda. Wherefore, the petitioners prayed to Court to make a declaration which will in effect restrain any further occurrence of these acts.

The constitutional Court held that the invasion of the High Court was illegal Justice Byamugisha J.A, held:

“It was in my view a threatening scenario that interfered with the normal operation of Court the military had no right whatsoever to interfere with the Independence of the Judiciary.”

DCJ Leticia- Kikonyongo held that” ... the execution of the surprise’ deployment was not the best method. It appears it fostered fear and anxiety especially as the security personnel even went beyond their security intentioned limits and they entered the criminal registry and cells where it’s alleged they interrupted the course of the court ‘s normal duty of processing bail of the accused persons... I find that on the 16u1’1 November 2005, the acts of the security agents at the High Court premises constituted, acts of security interference that contravened Articles 23(1) (2) and (3) of Constitution. This glaringly points to the political interference by the state in the exercise of the discretion by courts and thereby undermines their functions.

4.11.1 152 Constitutional Petition No.1 8/2005, Uganda Law Society v AG⁶⁶.

It follows therefore that the PRA suspects who were being detained then were being held illegally in contravention of their constitutional right to bail as granted by the court which went to depict the continue failure of the state to heed to the judiciary’s sobriety on constitution and in promoting judicial independence in Uganda

According to Justice Engwawu J A in the same case, “the manner of invasion was deplorable and prejudicial to the independence of the judiciary”

In the same vein, the Constitutional Court declared the trial of Dr. Kiiza Besigye and 22 others before the Military General Court Martial unconstitutional and therefore illegal. It

⁶⁶152 Constitutional Petition No.1 8/2005,Uganda Law Society v AG.

held thus “The General Court Martial was established by an Act of Parliament as a disciplinary organ to deal with the Uganda People’s Defense Force (UPDF) but not civilians⁶⁷ who have committed offences of terrorism and illegal possessions of fire arms.”

Nevertheless, the Military General Court Martial defied the Constitutional Court ruling and continued with the trail of the civilians suspects. This came in the wake of outburst by Army Generals against the Judiciary in reference to the ruling of the Constitutional Court. The Coordinator of Security Services, General David Tunyefuza accused the judges of siding with wrong doers instead of helping the state get rid of terrorism “Why don’t they want to help the state, why don’t they see the problem of terrorism.

Why are they looking as if they are always siding with offenders?’ Daily Monitor No.34 Friday February, 3, 2006⁶⁷. Lead story Titled “Besigye Ruling Angers Tenyefuza at page 1-2.

General Tenyefuza who is also a Senior Presidential Advisor was on Wednesday, February 1 2006 appearing on a live Radio talk show “Tonight with Kabagambe Julius Live” on 92.5 radios west to discuss the implications of the Constitutional Court ruling. The General who kept on referring to judges angrily as “these fellows” said the Army respects the ruling of the Court but that the judges have no power to order the army. That the army will not accept “this business of being ordered by the judges”. He rather dismissed claims by the Principal Judge, Justice James Ogoola that the army raped and defiled the Temple of Justice, calling it rubbish.

The defiance of the Constitutional Court by the General Court Martial prompted the media- “the Fourth Arm of the state” — to implore the Chief Justice to act swiftly to salvage the tattered image of the Judiciary that” was being continually pierced by an impudent Army Court at the behest of a belligerent Executive”

Indeed, Justice John Bosco Katutsi withdrew from hearing the case of Uganda V Col (Rtd) Dr. Kiiza (supra)⁶⁸, citing pressure and irresponsible talk’ that he was favoring the FDC president. His lordship stated, it is my sincere wish that I step down from this case. The withdrawal came two days after the coordinator of security agencies; General David Tunyefuza accused the judiciary of siding with ‘terrorists’ instead of helping the state to fight terror.

⁶⁷. Daily Monitor No.34 Friday February, 3, 2006

⁶⁸Uganda V Col (Rtd) Dr. Kiiza (supra),

Before Justice Katutsi's withdrawal, Justice Edmond Ssempe Lugayizi had withdrawn from the trial of the rape and treason cases involving Dr. Kiiza Besigye following the siege of the High Court by the 'Black mambas'⁵⁷. This shows not only interference with the exercise and performance of judicial functions as well as judicial independence, but also entails an attempt by the security organ (of course under the control and direction of the executive) to direct how the judiciary should perform its functions. That is, they should heed to their whims and when they reach different conclusions, it means that they are not promoting justice.

This is an unfortunate state of affairs and greatly undermines the very purpose of having the judicial arm of government and its independence.

The interference of the executive in the affairs of the Judiciary through the Military resurfaced on March, 20, 2007 when the High Court was in the process of ruling on the bail application of the suspects in the case of Kiiza Besigye and Others (*supra*). "Police" deployed heavily at the High Court long before Justice Eldad Mwangusha ruled on the matter. With ambiguity looming large and policemen getting on the ready outside Court, the state was set for scenes that almost replicated the events of November 16, 2005 High Court siege by a shadow Para-military group, the "Black Mambas" when 14 PRA suspects were granted bail only to be returned to prison because the siege made it impossible for them to walk to freedom.

This time round the Court ordered the release of the suspects on bail in accordance with the Court's earlier order of November, 16, 2005 and in obedience to the Constitutional Court decision⁵⁸ ordering the release of the suspects on bail. As the Registrar was processing the documents, security personnel surrounded the Criminal Registry insisting that they had orders to return the suspects to prisons under any circumstances. Fights ensued between the security personnel and members of the public and in the process doors and other Court property were damaged.

Eventually six out of the nine suspects fulfilled bail conditions while three did not and were surrendered to prison authority by their counsel. However, the six were prevented from leaving on account of the heavy military deployment in the High Court premises. In meantime, the Acting Chief Justice, Honorable Lady Justice Leticia Mukasa Kikonyogo, convened the top managers in the Judiciary in a crisis meeting, which was also attended by the DPP, the Regional

Police Commander and Prisons personnel, to consider the developments. The meeting was informed by the officer in charge of the Prisons that they had been directed by the Commissioner General of Prisons to take back the suspects.

As the situation deteriorated the Judiciary directed the security officer to remove all security personnel including their dogs from the Court premises. This directive was disobeyed and instead reinforcement was intensified with the apparent intention of storming the Registry to arrest the suspects. Violence escalated to the extent that a defense counsel was assaulted and sustained an open wound in the face. Protracted negotiations continued with the Judiciary, security personnel and defense counsel with the agreement that security personnel and the public evacuate the High Court premises to enable the peaceful release of the suspects. Later at around 8:30pm (at night!!!) The suspects were finally handed over to their respective counsel in the middle of precincts of the High Court and counsel received them, threw them on the back of a police pick up and drove them while they yelled to unknown destination.

These extra-ordinary events prompted the Judiciary to convene an extra-ordinary session of all Judges of all Courts of Judicature to consider the matter and resolved⁵⁹.

- A. To Issue a comprehensive statement on this atrocious incident and unprecedented event;
- B. The Executive gives assurances of the non-repetition of these repeated incidents of affront to the integrity and Independence of the Judiciary.
- C. That all judicial business for all Courts in Uganda be suspended with effect from March 5, 2007.
- D. That a meeting of judicial offices of the rank of Chief Magistrates and above be convened at the High Court, Kampala to chart the way forward. It was further resolved that the above actions taken had nothing to do with the re-arrest or re-charging of the PRA suspects but because of the following:
 - A. The repeated violation of the sanctity of the Court premise.
 - B. Disobedience of Court orders with impunity (by the Executive)
 - C. . The constant threats and attacks on the safety and Independence of the Judiciary and judicial officers.
 - D. The savage violence exhibited by security personnel within the Court premises.

E. The total failure by all organs and agencies of the state to accord to Court assistance as required ensuring effectiveness of Courts under Article 128(3) of the 1995 Constitution of the Republic of Uganda;

F. The recognition that judicial power is derived from the people, to be exercised by the Courts on behalf of the people in conformity with the law, the values, norms and aspirations of the people of Uganda.

Subsequently for the first time in 44 years since Uganda's attainment of independence, the Judiciary laid down its tools over gross infringement on its independence by the Executive during the course of the Judicial strike, the Chief Justice, the Honorable Justice Benjamin Odoki, the Deputy Chief Justice.

The Honorable Lady Justice Leticia Kikonyogo and the Principle Judge the Honorable Justice James Ogoola met President Museveni on March, 6, 2007 in an attempt to resolve the standoff. The Chief Justice also wrote a letter to the President dated 2, March, 2007 forwarding to him a copy of the resolutions of the Courts of Judicature. On 6th March, 2007, the Minister of Internal Affairs presented to Parliament a joint statement of the Minister of Internal Affairs and the Attorney General regarding the matter¹⁶⁰. It was indicated that it was not the intention of the government (the Executive) to disrespect or defy the Court orders. Wherefore the government regretted the incident that occurred at the High Court on March, 1, 2007.

Further the government promised to carry out more investigations of the events to determine if there were any breaches of the law or procedure and to take appropriate action. The statement also added that the leadership of the three arms of government have met and agreed on what to do to prevent the recurrence of similar incidents in future.

Global human rights organizations also condemned the March, 1, 2007, armed siege of the High Court, saying the act was a blatant interference with the independence of the administration of the Judiciary.

In a statement issued on March by the office of the United Nations High Commissioner for Human Rights, it was pointed out that the government has a responsibility to fully respect and observe the Independence of the Judiciary and to respect its obligations under the International Covenant on Civil and Political Rights (ICCPR) to which Uganda is a state party.

“The office of the United Nations High Commissioner for Human Rights unequivocally condemns the interference by armed security forces with the independence of the Judiciary contrary to the Constitution and International Human Rights Principles which undermines the rule of law and administration of justice in Uganda”⁶², the statement said.

In a related development, the US based Human Rights Watch (HRW) also called upon the government to stop intimidating the civilians Courts, saying the Court siege was a blatant violation of Article 128 of the 1995 Ugandan Constitution that provides for the independence of the Judiciary. Georgette Gagon, Deputy Director of HRW is reported to have said

“The Museveni government’s attempt to intimidate the Courts shows its profound lack of respect for the law”.

In the same vein, the International Commission of Jurists (ICJ) issued a statement⁶⁴ on March 4, 2007 in which it called upon the Ugandan authorities to respect the independence of the Judiciary by ceasing the intimidation of judges and Lawyers. The ICJ expressed deep concerns over the military deployment at the High Court, saying that this episode seriously undermines the rule of law and Constitutional Independence of the Judiciary.

It re-stated the ICCPR which obliges state parties to ensure that criminal trial are fair and to take place before independent and impartial courts, and that the United Nation Basic Principles on the Independence of the Judiciary affirm this principles by emphasizing that there shall be no inappropriate interference with a Court Legal authority by the Executive branch and that judgments of Courts are not subject to revision by the Executive. Similarly the Uganda Journalists Safety Committee (UJSC) expressed concern over the High Court siege saying that what Uganda faced then was a breakdown of Constitutional order against state institutions which are supposed to safe guard the observance of human rights and people’s freedom. The UJSC supported the decision of the Judiciary to suspend judicial business, saying that it was in the right direction to fight for its independence as provided for in the Constitution of Uganda.

The Judiciary ended their week-long suspension of Court business (strike) on 9, March, 2007, after getting firm assurance from President Yoweri Museveni that the institution would remain independent. The decision was taken at a meeting attended by all Judges, Registrars and Chief

Magistrates at the High Court at Kampala. This followed a letter¹⁶⁶ written by the President to the Chief Justice of Uganda which was read out at the meeting. The letter was in response to the concerns expressed in the resolutions by the Judiciary. In that letter the President reiterated that the Government was concerned and regretted the unfortunate events, which took place on 1 march 2007, the government assured the Judiciary and the general public that it undertakes to do all its powers to ensure that no repetition of such incident will take place.

The government re-affirmed its adherence to the safety and Independence of the Judiciary as an institution and of individual judicial officers, and to uphold the rule of law all organs and agencies of state will always accord the Courts such assistance as may be required to ensure the effectiveness of the Courts as provided by Article 128 (3) of the Constitution; the legal and transparent modus operandi for re-arresting suspects released by Courts will be formulated and agreed on by the agencies involved in the H administration of justice. . Shall be no inappropriate interference with a Court Legal authority by the Executive branch and that judgment of Courts are not subject to revision by the Executive. Similarly the Uganda Journalists Safety Committee (UJSC) expressed concern over the High Court siege saying that what Uganda faced then was a breakdown of Constitutional order against state institutions which are supposed to safe guard the observance of human rights and people's freedom. The UJSC supported the decision of the Judiciary to suspend judicial business, saying that it was in the right direction to fight for its independence as provided for in the Constitution of Uganda.

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4.11.2 Conclusion

While the principle of judicial independence has been encapsulated in the Constitution, which is the supreme law of the country, there has been great interference by the executive arm of government in the independence of the judiciary directly and indirectly. This has partially affected the performance of the judiciary in performance of its functions especially dispensing justice.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0 Conclusions

In order to understand underlying variables that explain the current status of the Judiciary viz-a-vis the judicial independence, we have discussed the background of the court system in Uganda under the 1995 Constitution. The research revealed all the courts of judicature are established by **Article 126 (1)** of the 1995 constitution⁶⁹. Further the constitution clearly spells out the mandate, functions, composition and jurisdiction and hierarchy of the courts of judicature. There are also specific constitutional provisions and other legislation which insulate the Judiciary with judicial independence and judicial immunity.

The study has revealed that the doctrine is closely associated with the rule of law and good governance in a democratic state. In its sense separation of powers means rigid compartmentalization of the organs of the state which are independent. The study has also revealed that there is no country in the world where there is complete separation of powers. If the doctrine is practiced in the strict and pure sense, would paralyse government business, thereby bringing the government to a standstill.

The study further revealed that in Uganda, the Doctrine of separation of powers is enshrined in the 1995 constitution of the Republic of Uganda, which incorporates the concept of separation of powers and the system of checks and balances as essential means of ensuring democracy and ultimate sovereignty of the people. There are specific constitutional provisions which reaffirm the principle of separation of powers in relations to the three organs of the state. The arrangement of the constitution in different chapters in the constitution demonstrates an intention to separate judicial powers from the legislature and the executive.

Nevertheless, the practice in Uganda reflects a fused system of functions among the three organs of the state. For instance cabinet ministers are drawn mostly from elected members of Parliament while the unelected cabinet Ministers are ex-officio members of Parliament. The president who is also the head of state and government, the Commander in Chief of the armed forces, is also

⁶⁹Article 126 (1) of the 1995 constitution

empowers to appointed high judicial officers such as the Justices of the Supreme Court, the Justice of the Court Appeal and the Judges of the High Court.

This study was undertaken to examine the doctrine of separation of powers and applicability in Uganda with particularly focusing on the independence of Judiciary as the arm of the government.

This has been discussed in above chapters showing the different arms, functions and kinds of people who are in them. These include Executive, Judiciary and Legislature.

These arms of government may act as the three cooking stones whereby they enable to hold the saucepan, while cooking thus the cooker to provide ready food to the people. Otherwise if the three stones were to be separated from one another, the saucepan would pour food in fire hence leading the people not to get ready food. So it is only one thing that enables the cooker to serve ready food that is togetherness or cooperation of the three stones.

In the same way, the family to be happy, it must have father mother and children reflecting the three arms or organs of government. The family in this case, I refer it as the country. Peace to reign in the country all organ must work together to achieve the common objectives.

To add on the conclusions of this study, the following recommendations are provided. The recommendations states below may not be a panacea to the problems or challenges which the Judiciary in Uganda faces, but it hoped that they will be a starting point in the quest for judicial independence. The onus is on the entire citizenry, policy makers and other concerned parties to prudently and analytically study their viability, independence for a democratic and peaceful state.

5.1 Recommendations

The element of checks and balances should be enhanced in the country without being interfered, injustices, corruption, and individualism should never be evidenced anywhere in this process.

Two, Judiciary arm of the government comprises of highly educated people and it is abased that they are less paid government servants. Their qualification to be a judiciary officer is to have done a Diploma in Law and Practice (Certificate) at LDC and an advanced but for other arms like Legislature, the qualification is certificate, A level and they are highly paid which is

unfortunate in Uganda. So, the government should also pay more money to these judicial officers and other people in the judiciary.

Three, the power of the president should also be reduced on side of appoint judiciary officers and ministers. For example, judiciary should also be elected to reduce corrupt leaders in government and to allow fairness in judiciary. This is because the judges may favors the person who appointed the, into power leading to injustice in the country. The candidates should be having the qualification required to be voted.

Four , Judiciary should be also be respected by other arm of the government that is legislature and executive mostly the decision made by them for example on the petition of age limit that was held in high court in Mbale. The President commented that, “that was nothing” which is wrong as it was also said by former Chief Justice Odoki while on recommendation of Chief Justice Benedicto Kiwanuka who was killed by Amin.

Five Judicial officers should be allowed to do other business to uplift their economic standards of living if the government does not increase on their salaries.

Six Separations of powers. The doctrine of separation of powers should be strictly applied thereby de-lining the Judiciary form the other arms of government. It is therefore recommended that the President should be stripped of the powers to appoint high judicial officers-the Justice of the Supreme Court, Court of Appeal / Constitutional Court and High Court Judges.

Seven Powers of appointment. This power of appointment should be vested in the judicial service commission. The Judiciary needs to be independent not only administratively but also most important financially. It is only after it's so independent that it can be able to preserve the rule of law and protect eh rights and liberties guaranteed by the constitution and other laws of the state.

Eight Financial independence in the premise it is recommended that the Judiciary should be made financially independent of the Executive. It is therefore imperative that the role of the Judiciary in society be accorded the recognition and facilitation it deserves.

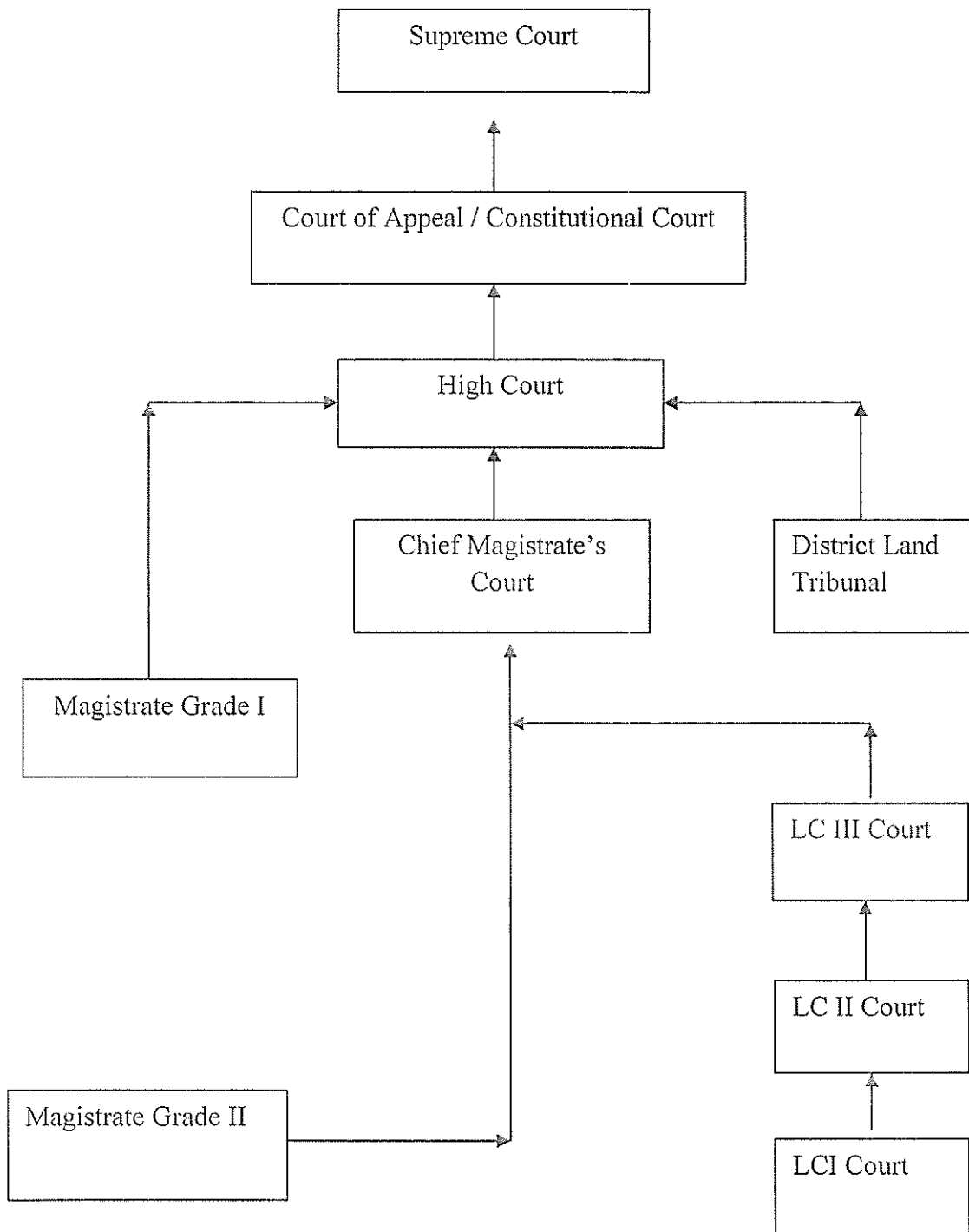
Nine Judicial Independence. The independence of the Judiciary should be safeguarded not merely by the provisions of the constitution but also by all the other organs of the government including their agents and operatives and entire citizenry giving due respect to the judiciary's decision and implementing the same decisions and implanting the same decisions when directed.

Therefore, constitutional safeguards should be put in place to prevent military involvement in settling constitutional and legal affairs and there must be specific constitutional provisions which provide that the Judiciary has the right to interpret the constitution with finality and determine the constitutionality of the Executive and Legislative acts.

Ten Public awareness. Efforts should be made to create and sustain public awareness of the provisions of the constitution on the fundamental law of the land. This will help to educate the citizens how to defend the constitution and the independence of the judiciary against all forms of abuse. Civic education is essential in the creation for public awareness about the law, the administration of justice and basic human rights. The public are stakeholders and beneficiaries of the Rule of Law. Hence there is a need to create both human rights culture and respect for the rule of law. This would be facilitated further by the introduction of conditional studies as an examinable subject at all educational level.

Eleven the doctrine of separation of powers is being violated by politicians in Uganda whereby they have failed to observe it and not respecting those institutions. I therefore recommend that however much separation of powers is needed, in the country three arms of government that is legislature, judiciary and executive must work together as a team to develop and achieve their goals and objectives because together we stand and divide we fall. Thank you

The hierarchy of Courts



QUESTIONNAIRE

1. What are the functions, duties and constitutional mandate of the Judiciary in Uganda?
2. What are the functions of three arms of Government?
3. What is the administrative organization of the Judiciary?
4. Are you independent in executing your duties?
5. Is judicial independence necessary?
6. Does the law guarantee the independence of the judiciary in Uganda?
7. What are the principles of judicial independence?
8. How has judicial independence been upheld in the recent past?
9. Has the independence of the judiciary been abused, and if so by who?
10. What recommendations would you advocate for an independent judiciary?
11. What is the hierarchy of courts in Uganda?
12. What is the administrative organization of the Judiciary?

How many arms of Government in Uganda?

a, 1 b, 2 c, 3 d, 4

Is there a need for separation of powers in Uganda?

a, yes b, no c, none d, others

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