# ANALYSIS OF THE LAW ON THE RIGHTS OF ACCUSED PERSONS AND THEIR ENFORCEABILITY IN UGANDA CASE STUDY OF KAMPALA DISTRICT

BY

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## DECLARATION

I NATUKUNDA EVERLYNE declare that, this dissertation is initially and originally my work derived from my tireless efforts and has never been submitted to any university or higher institution for any academic award.

Signature ..... Date..... 02ND MAY 2019

## APPROVAL

This is to certify that NATUKUNDA EVERLYNE did her dissertation under my supervision.

Mr. BARIRERE YOHANA

Signature.....

Date..... 24/08/2019.

## DEDICATION

I dedicate this dissertation to my beloved fiancé, Mr Alamini Drani Martin for his unlimited love, care and un-segregated mentorship he rendered to me for all along even that I can't forget to assert that I wouldn't have gone all this far without him, he stood and is still by my side regardless of any situation. What I can say is that I owe you my life .

I also dedicate this dissertation to my beloved mother, Mr Tuhirirwe Jackline for nurturing me up to this level throughout all the hard times since I was born. May Almighty God continue to bless you abundantly in whatever you do.

This dissertation is also dedicated to my little son, Ambayo Noel Alamini and my siblings Pearl and Promise for their support. I also dedicate this report to my dear friends.

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## ABSTRACT

The study sought to critically analyze law on rights of the accused persons and their enforceability in Uganda a case study of Kampala district, aimed to identify the legal framework regarding the rights of the accused persons, to examine the effectiveness of the legal framework regarding the rights of the accused persons and to assess the weaknesses of the law on the law regarding rights of the accused persons. The study used descriptive case designs using both qualitative and quantitative approaches. Quantitative design was used because it was more accurate in terms of data collection and more reliable in terms of research results. This meant that quantitative research design expressed numerical information captured during the study, which could not be easily expressed in words. Qualitative research design was used because it helped in analyzing the data that was interpreted by words in order to give the meaning to the presented numerals. The researcher recommends that Ugandan government must respect the separation of powers between the executive, legislature and judiciary which is so critical in upholding democracy and the rule of law.

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## CHAPTER ONE

## 1.0 INTRODUCTION

An accused person is one who is charged with an offence where as Rights on the other hand are interests recognised and protected by the law, respect for which is a duty and disregard of which is wrong. Also a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others[1]

Now although an accused person may have committed, an offence, this however does not necessarily mean that he is no longer a full human being with equal rights just as others who may not have committed a crime and in my view I believe that certain the rights of an accused person are absolute.

Rights of an accused person are inherent just like any other human being and are constitutionally provided for under Article 20(1)[2], although he/ she may be subjected to certain disciplinary action like punishment, imprisonment or confinement, etc. This should not be interpreted to mean loss of rights but whatever he/she is subjected to must be within the periphery of law and therefore prescribed by a certain law for example Penal Code Act Chapter 120, MCA, breach of which law leads to the commission of an offence.

### 1.1 Background of the Study

An accused person is a person who has been blamed for wrongdoing, especially a person who has been arrested and brought before a Magistrate or who has been formally charged with a crime as by indictment. A right is an interest recognised and is proper under law, morality or ethics, respect of which is a duty and disregard

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[1] Osborns Concise Law Dictionary Pg. 9

[2] 1995 Constitution of the Republic of Uganda

of which is in a way an offence[3]. It means that a right is correlative to a duty; where there is no right, there is no duty.

Even though an accused person maybe guilty of an offence and deserving of punishment, it does not make him any less of a human being deserving of equal rights and humane treatment like any other human being. And moreover, it is embedded in Article 20(1) of the 1995 Constitution of the Republic of Uganda[4], that "Fundamental rights and freedoms of the individual are inherent and not granted by the state." rights of an accused person are absolute and regardless of the fact that they have committed wrong and are deserving of punishment such as imprisonment, confinement, etc. It should never be interpreted as a loss of rights accrued to them by virtue of being an individual. Whatever form of punishment to be received by these accused persons must be within the periphery of law. Their rights remain and need to be respected.

Furthermore, the 1995 Constitution of the Republic of Uganda provides under Article 28(1)[5] that "In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court established by law". Article 28 (3) (a) further provides that "Every person charged with a criminal offence shall be presumed innocent until proven guilty". Accused persons still have rights that should be upheld regardless of the fact that it is assumed that they are guilty of committing that offence. This is on the basis of the ground that they are presumed innocent until proven guilty. The above constitutional provisions are going to be the basis for arguing for justification for accused persons rights under Uganda's court processes.

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[3] B Odoki, Criminal Procedure in Uganda, Pg. 85

[4] Article 20(1) of the 1995 Constitution of the Republic of Uganda

[5] Article 28(1) of the 1995 constitution of Uganda

This argument is expounded on in the following discussion.

Before we delve into the justification of the rights of the accused, I will tell you what I consider to be a sound basis for the criminal law, which is the authority with the jurisdiction to punish wrongdoers. Having received a background of what the criminal law is, I will expound on justification of the rights of accused persons.

The 1995 Constitution of the Republic of Uganda provides under Article 28(1)[6] that "In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court established by law.

In regards to the above provision, I am of the view that justification of the rights of accused persons should involve the critical looking into the alleged cases of these accused persons so as to uphold their right to a speedy and fair hearing. It means that a judgment reached short of all principles enshrined in the right to a fair hearing is a violation of accused persons' rights. Before passing a judgment, the court needs to ensure that it is certain of why the accused is before it, and should even be more certain that the accused is taken through all due process to reach the said judgment because we cannot conceive how an authority would or should act in a situation except where it can see, know, judge, condemn, change and modify. A court should and must be quite certain of anything if it is to render judgment. The court can be certain of anything it is to render judgment by adhering to the principles on a right to a fair hearing as enshrined in Article 28 hence upholding rights of accused persons.

The right to fair trial is very helpful in numerous declarations which represent customary international law, such as the Universal Declaration of Human Rights (UDHR). Though the UDHR enshrines some fair trial rights, such as the presumption of innocence until the accused is proven guilty, in Articles 6, 7, 8 and

[6] Article 28(1) of the 1995 constitution of Uganda

11, the key provision is Article 10 of the Universal Declaration of Human Rights which states that Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Some years after the UDHR was adopted the right to a fair trial was defined in more detail in the International Covenant on Civil and Political Rights (ICCPR). The right to a fair trial is protected in Articles 14 and 16 of the ICCPR which is binding in international law on those states that are party to it. Article 14(1) of the Universal Declaration of Human Rights (UDHR) establishes the basic right to a fair trial, article 14(2) provides for the presumption of innocence[7], The presumption of innocence is contained in international and regional instruments such as the Universal Declaration of Human Rights (Article 11), the International Covenant on Civil and Political Rights (Article 14(2), the American Declaration of the Rights and Duties of Man (Article XXVI),[8] the American Convention on Human Rights (Article 8(2), the African Charter on Human and Peoples' Rights (Article 7(b)[9], and the Arab Charter on Human Rights (Article 16). It is also found in the United Nations Standard Minimum Rules for the Treatment of Prisoners (Rule 84(2)[10]. Guilt cannot be presumed before the prosecution proves a charge beyond reasonable doubt, and this principle applies until the judgment is made final as defined in Article 266 of the MCCP. There are a number of ways in which the presumption of innocence can be protected.

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[7] Article 14(2) Universal Declaration of Human Rights (UDHR)

[8] American Declaration of the Rights and Duties of Man (Article XXVI),

[9] American Convention on Human Rights (Article 8(2), the African Charter on Human and Peoples' Rights (Article 7(b)

[10] United Nations Standard Minimum Rules for the Treatment of Prisoners (Rule 84(2)

First, according to the United Nations Human Rights Committee, the presumption is breached where public officials prejudge the outcome of a trial (General Comment no. 13, paragraph 7). Public officials include judges, prosecutors, the police, and government officials, all of whom must avoid making public statements of the guilt of an individual prior to a conviction or after an acquittal. It is permissible, however, for the authorities to inform the public of the name of a suspect and that the person has been arrested or has made a confession, as long as the person is not publicly declared guilty (see the European Court of Human Rights case of Worm v. Austria, [11]paragraph 52). A second element in protecting the presumption of innocence relates to the burden of proof. The burden of proof refers to which party will have the burden of proving a particular fact or set of facts.

And article 14(3) of the Universal Declaration of Human Rights (UDHR) sets out a list of minimum fair trial rights in criminal proceedings. Article 14(5) establishes the right of a convicted person to have a higher court review the conviction or sentence, and article 14(7) prohibits double jeopardy Article 14(1) states that:

"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public

[11] Application no. 83/1996/702/894 [August 29, 1997],

except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children[12]

This is how the "before an independent and impartial court" comes in. An accused person's right to appear before an independent and impartial court needs to be upheld by actually ensuring that the accused appears before the said court (which in this case happens to be officiated by public individuals placed in public office) for judgment and is not judged basing only on what a private individual said. It is a necessary function of public individuals to punish and judge criminals, to vindicate and defend the oppressed.

To stress the principle of impartiality/independence of the court even more, the public officer is authorized to judge an accused only on the cases of other men but not to one's own case. It means that if, however, a public officer had a case of his own, for in that case he is not a judge, but one of the parties. When these principles are followed under Uganda's court processes, the rights of accused persons will therefore be upheld.

### 1.2 Statement of the problem

An accused person is one who is charged with an offence. A right is an interest recognised and is proper under law, morality or ethics, respect of which is a duty and disregard of which is in a way an offence

Rights of accused, in law, the rights and privileges of a person accused of a crime, guaranteeing him a fair trial. These rights were initially (generally from the 18th century on) confined primarily to the actual trial itself, but in the second half of the 20th century many countries began to extend them to the periods before and after the trial.

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[12] Article 14(3) of the Universal Declaration of Human Rights (UDHR)

All legal systems provide, at least on paper, guarantees that insure certain basic rights of the accused. These include right to trial by jury (unless jury trial is waived), to representation by counsel (at least when he is accused of a serious crime), to present witnesses and evidence that will enable him to prove his innocence, and to confront (i.e. cross-examine) his accusers, as well as freedom from unreasonable searches and seizures and freedom from double jeopardy.

Certain very general rights are attached to the process. An accused person must not be allowed to languish indefinitely in jail but must be given a speedy trial. Involved with this issue are the rights to a reasonable bail and prohibitions against being detained for more than a specified time without bail.

The most important right has been the right to be represented by counsel. During the second half of the 20th century this right was extended to cover the time when a person is arrested until final appeal. Different countries set different times at which an accused must be provided with counsel as well as different types of crimes for which counsel must be provided if the accused is indigent. The United States has made the most far-reaching changes in this area and has set a pattern that other nations have begun to emulate. Essentially, the U.S. system stipulates that the accused has the right to counsel from the time that he is taken into custody until all appeal is exhausted. The Supreme Court has ruled, moreover, that where the accused is indigent, the right to counsel must be implemented by the provision of a court-appointed lawyer in the case of all crimes for which punishment may be imprisonment. The Court established an indigent defendant's right to counsel in the cases Powell v. Alabama[13], and Gideon v. Wainwright[14]. The Supreme Court also decided that at the time of his arrest the accused must be notified of both this right to counsel and the right not to answer any questions that might produce evidence against him. Both rights were introduced to prevent the police from extracting involuntary confessions to be used as evidence in court

[13] (1932) 287 U.S. 45
[14] (1963) 372 U.S. 335

In civil-law countries such as France and Germany, there is less emphasis on the importance of the confession as evidence. It is considered merely as one piece of evidence. Because confessions are not as important, rights to counsel and to remain silent are less clearly defined

Holding persons incommunicado violates Article 23(5)(a) and (b) of the Constitution of Uganda[15] as well as standards in the International Covenant on Civil and Political Rights (ICCPR) which requires the next of kin of the detainee to be informed and access to the detainee by the lawyer and personal doctor. Allegations of torture, cruel, inhuman and degrading treatment are also being investigated, for if they are true, the suspects' rights under Articles 24 and 44 (a) of the Constitution of Uganda would have been violated. In this regard, the Commission reminds law enforcement agencies, particularly the police against negating their obligations on freedom from torture and cruel, inhuman or degrading treatment or punishment which is a non-derogable right, the violation of which is strictly prohibited under the Constitution, the Convention Against Torture (CAT) and the ICCPR.

### 1.3 Main Objective

The main Objective of the study is to analyze the law on rights of the accused persons and their enforceability in Uganda.

#### 1.3.1 Specific Objectives of the Study

1. To identify the legal framework regarding the rights of the accused persons
2. To examine the effectiveness of the law regarding the rights of the accused persons
3. To assess the weaknesses of the law on the rights of the accused persons

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[15] Article 23(5)(a) and (b) of the Constitution of Uganda

## 1.4 Research Questions

1. What is the legal framework regarding the rights of the accused persons?

2. How effective is the law regarding the rights of the rights of the accused persons?

3. What are the weaknesses of the law regarding the rights of the accused person?

## 1.5 Scope of the Study

### 1.5.1 Geographical scope

The study will be centered on Makindye is bordered by Nsambya to the north, Kibuye to the northwest, Najjanankumbi to the west, Lubowa in Wakiso District to the south, Luwafu to the southeast, and Lukuli to the east. Kansanga and Kabalagala lie to Makindye's northeast. The coordinates of Makindye are 0°16'45.0"N, 32°35'10.0"E (Latitude: 0.279175; Longitude: 32.586120). The road distance between Makindye and the central business district of Kampala is about 6 kilometers (3.7 miles) (18 June 2014).[16]

### 1.5.2 Subject scope

The primary objective of the research is to critically analyze the effectiveness of the rights of the accused persons in Uganda Case Study of Kampala District

### 1.5.3 Time scope

This study will be covered in three months that is March, April and May 2019

[16] Location of Makindye, Kampala City, Uganda

## 1.6 Significance of the Study

This study will add to the existing knowledge or literature in the areas of laws on the rights of the accused persons which will become a reference material for the student

The study findings will be useful to the researcher with an award of a diploma in Law of Kampala International University

## 1.7 Methodology

The study were both quantitative and qualitative where by Quantitative research design will help in making valid conclusion and analyzing the rights of the accused persons in Uganda as an inter-linked variable whereas qualitative design involved the use of questions to obtain views from the respondents.

### 1.7.1 Research design

The study used descriptive case designs using both qualitative and quantitative approaches. Quantitative design was used because it was more accurate in terms of data collection and more reliable in terms of research results. This meant that quantitative research design expressed numerical information captured during the study, which could not be easily expressed in words. Qualitative research design will be used because it will help in analyzing the data that will be interpreted by words in order to give the meaning to the presented numerals.

### 1.7.2 Data collection methods

Data will be collected from both primary and secondary sources. Secondary data will be got by extracting information regarding Law on the rights of the accused persons in Uganda by reading law journals, text books plus the already existing information on internet.

I) Documentary Review

Secondary data will be collected and its content analyzed. Specific analysis of documents on Law regarding the rights of the accused persons in Uganda, such as books, law journals, and government reports will be carried out and this will help in generating a synthesized report.

### 1.8 Data Editing

The collected data will be edited for accuracy and completeness to find out how the available data will be in line with consideration.

### 1.9 Limitations of the study.

Presence of outdated information available on internet about the rights of the accused persons in Uganda was the major challenge to the researcher whereby it became tiresome to get updated information about the same.

Furthermore the researcher was limited by the limited resources available to access information regarding rights of the accused persons for example increased costs on accessing internet.

### 1.10 Literature Review

In the Foundation for Human Rights Initiatives vs. Attorney General[17], deputy chief justice Kikonyogo stated that violation of the rights of accused does not occur simply because the accused is required to assure court that he will appear to answer

[17] Constitutional petition No.20 of 2006 at pg. 28

the charges all that is required of the court is to impose reasonable conditions, acceptable and demonstrably justifiable in a free and democratic society..." rights, be them fundamental rights or not, must be enjoyed within the confines of law.

Dr.Menal H. Upadhay (2014)[18] tried to expose the role of judiciary in protecting the rights of accused persons and put up that the Indian judiciary is not only watching against violation of human rights defer declaration article 21 of the constitution developed the human rights jurisprudence for the preservation and protection of the rights of the accused persons to human dignity and self respect. The rights of prisoners were not recognized in India during the British rule of which these rights came to be recognized in the time of freedom fight by the prosecutor of prisoners. The Indian freedom fighter strongly played a crucial role in the process of freedom

Dr. R.K.Guptaet.all. (2016)[19] explained and clarified that the right of prisoners who where residing in the prison that prisoners right have become and valuable item and how prisoners were facing under trial and they are human beings and they have been protected under constitution of their certain rights and remedies as prescribe by law and regulation. the international convention Sabah convention of the prisoners and cover the protection by the international convention of prisoners rights and prisoners have certain rights to fight again the incensement the right they are immune from the protection and certain privileged as human being are born equal in dignities rights these are moral claims which are recognize in the protection of prisoners' rights.

Jenifer Gunning and Shoren Holam in their book Ethics law and Society Volume II 2006[20] specified that How Sadam Husain's trial was conducted was largely

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[18] Dr.Menal H. Upadhay (2014)

[19] Dr. R.K.Guptaet.all. (2016)

[20] Jenifer Gunning and Shoren Holam in their book Ethics law and Society Volume II 2006

consolidated on International opinion strategy, the verdict as fool and will influence how past Judges the united state and also united kingdom, Australia in Iraq that trial will also influence Iraqi jurisprudence for generation for a statute of law implement trial in promoting rule of law when as a trial that is continued so as to avoid implicating companies and individuals.

Governments will mark a written to the type of corruption that prevents democratic ideals taking hold as society like that Iraq[21].

According to Human rights watch May 2014, the courts of "Absolute Power" Fair Trial Violations by Somalia's Military Court, The Author specify that in his book military tribunal guys think they have absolute power, and you can't talk to them, you can't ask them anything, and they don't respect the human rights of people, forces to try a broad range of crimes and defendants. The court has brought to trial, in addition to members of the armed forces, alleged members of the main Islamist armed group Al-Shabaab, police and intelligence agents, and ordinary civilians. Hundreds of defendants have been tried in the capital, Mogadishu, and in other towns in Somalia's south-central region that are nominally under the government's authority. The military court has filled a vacuum left by barely functioning civilian trial courts, operated without judicial review from the Supreme Court, and conducted proceedings that fall far short of international fair trial standards. The military court, consisting of serving military officers, does not meet the fundamental requirement under international law of being a competent, independent, and impartial court. Trials have violated the basic fair trial rights of defendants to obtain counsel of their choice, prepare and present a defense, receive a public hearing, not incriminate themselves, and appeal a conviction to a higher court.

[21] Jenifer Gunning and Shoren Holam in their book Ethics law and Society Volume II 2006

More than a dozen of those convicted over the last year have been sentenced to death and executed, magnifying the harm to basic rights[22].

The Foundation for Human Rights Initiative in 2006 with support of the Legal Aid Basket Fund FHRI in accordance with the Constitutional right to a fair, speedy and impartial trial provided for in the bill of rights, Chapter IV, Uganda Constitution 1995 (as amended). [23]

In spite of these constitutional provisions the rights of pre-trial detainees are often overlooked. This is due to a number of factors including a lack of awareness of the rights of detainees and the laws that provide for protection of those rights. This leads to overstay in detention resulting into overcrowding in prisons and its related problems.

In a concerted effort to remedy the situation, the Justice, Law and Order Sector, local non-governmental organizations, development partners as well as individual human rights defenders have devised various means to improve the conditions of pre-trial detainees in addition to improving access to justice.

One such step was undertaken by the Foundation for Human Rights Initiative in 2006 with support of the Legal Aid Basket Fund. FHRI undertook a project entitled 'Enhancing Access to Justice for Pre-trial Detainees through Creation of Awareness and Enforcement of their Constitutional Right to Bail'. The main objective of the project is to create awareness among the public of the problem and its effect on the judicial system in the country. This activity entails public education and publication of a Handbook on rights of pre-trial detainees.[24]

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[22] Human rights watch May 2014

[23] Uganda Constitution 1995 (as amended).

[24] Foundation for Human Rights Initiative in 2006 with support of the Legal Aid Basket Fund FHR

Dr. scholastic Omondi (2014) reviewed on the rights of accused person in criminal proceeding and the importance of protecting victims trial under the adversarial legal system procedures discuss the importance of protecting the right of accused person to a fair trial in criminal proceeding, Analyzing the unique challenges of proceeding under the classical court procedure while safeguarding accused person right and difficult experience[25].

According to the United Nations Human Rights Committee in General Comment no. 13, as part of the right to freedom from self-incrimination and the right to silence, any methods of compulsion are wholly unacceptable (paragraph 14). In addressing a number of cases brought before it, the United Nations Human Rights Committee has stated that the freedom from compulsion to testify or to confess guilt "must be understood in terms of the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused with a view to obtaining a confession of guilt" Kelly v. Jamaica, communication no. 253/1987, Judgment [April 8, 1991], [26]UN document CCPR/C/4/D/253/1987, paragraph 5.5[27]. The right to freedom from torture or cruel, inhuman, or degrading treatment stems from a number of international instruments, including the Universal Declaration of Human Rights (Article 5), the International Covenant on Civil and Political Rights (Article 7), the American Convention on Human Rights (Article 5), the African Charter on Human and Peoples' Rights (Article 5), and the Convention on the Rights of the Child (Article 37). Unlike other rights, such as the right to privacy or the right to freedom of expression, the right to freedom from torture or cruel, inhuman, or degrading treatment is an absolute right. This means that under no circumstances can a person's right to freedom from torture be violated.

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[25] Dr. scholastic Omondi (2014)

[26] communication no. 253/1987, Judgment [April 8, 1991],

[27] UN document CCPR/C/4/D/253/1987

According to the United Nations Human Rights Committee, the prohibition of torture "allows of no limitation" (General Comment no. 20, paragraph 3), In 1984 a convention was drafted and signed specifically on this subject: the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The meaning of torture is spelled out in Article 1 of the convention: (1) the infliction of "severe pain or suffering" (discussed below), (2) for a number of purposes listed in the convention

The case law on such limitations on the right to silence and freedom from self-incrimination, mainly deriving from the European Court of Human Rights, is somewhat unclear. Under cases such as Funke v. France (application no. 10828/84, Judgment [February 25, 1993], paragraph 44), the European Court has stated that the freedom from self-incrimination is absolute. In the case of Saunders v. United Kingdom (application no. 19187, Judgment [December 17, 1996], paragraph 71), the court stated that self-incrimination was an absolute right and even applied where the compulsion to testify resulted in the giving of exculpatory evidence. On the other hand, in the case of Murray v. United Kingdom, the European Court – dealing with both the right to freedom from self-incrimination and the right to silence – deemed that a law that drew adverse inferences from an accused person's silence did not violate the European Convention because the inferences were not decisive to the finding of criminal responsibility.

# CHAPTER TWO

## THE LEGAL FRAMEWORK ON THE RIGHTS OF THE ACCUSED PERSONS

### 2.1 The legal frame work on the rights of the accused persons

Rights of accused, in law, the rights and privileges of a person accused of a crime, guaranteeing him a fair trial. These rights were initially (generally from the 18th century on) confined primarily to the actual trial itself, but in the second half of the 20th century many countries began to extend them to the periods before and after the trial.

It should be first noted that Article 23 guarantees right to liberty as well as provides procedural and remedial recourse to courts for realisation of the rights to personal liberty. And, Article 23 (1) of the 1995 constitution of Uganda [28]provides instances in which the right to personality may be taken away or deprived and these are;

1. In respect of administration of Justice of law and order concerns with execution of a sentence of imprisonment, arrest for purposes of bringing persons before court on grounds of commission or suspicion of commission of criminal offence. Article 23 (1) (c ) is subjected to provisions, Article 23 (4) of the 1995 constitution of Uganda which requires such a person arrested for commission or reasonable suspicion of commission of an offence to be proved before court within 48 hours[29].
2. Purposes of preventing spread of an infections or contagious disease, Article 23 (1) (d) of the 1995 constitution of Uganda
3. In respect to certain categories of persons at 23 (1) paragraphs, e, f, g, h.

Article 23 (11) provides for specified, gazetted area for detainees, authorized by law, accessible by the public, i.e. traditional places, are, police cells, government prisons,

[28] 23 (1) of the 1995 constitution of Uganda

[29] Article 23 (4) of the 1995 constitution of Uganda

minors, children houses, these excludes military detention centres in barracks for civilians and safe houses.

Article 23 (11) closely related with Article 23 (5) right to be visited by next of kin, lawyer, personal doctor; it caters for the security of the person and individual.

The right to apply for bail is guaranteed under Article 23(6) in respect to the accused's right to freedom of liberty and presumption of innocence. (Article 23) (1) and Article 28 (a) respectively of the constitution of Uganda .As justice Twinomujuni stated; "The idea is that a person presumed to be innocent and who is entitled to a speedy trial should not be kept behind bars for unnecessary long before trial. I opine that this is conclusively the essence of granting bail.
Section 75 (1) of the Magistrate Court Act Cap 16 empowers the Magistrates Courts to hear and grant bail applications of cases within its jurisdictions. It also specifies cases that a Magistrates court cannot hear as bail applications. One has to apply to the Chief Magistrates and High Court for bail respectively[30].
However this is in contravention with Art 23 of the constitution. An accused is entitled to apply for bail under all circumstances. What this involves is that one has to remain on remand until their application proceeds to the High court. There is no clear justification as to why one can be tried by a court yet that court cannot hear and later on grant the accused bail. The failure for an accused to apply for bail also infringes on the accused's right to a speedy and fair trial. Applying for bail is a tedious process that consumes time. The accused would therefore spend more time on remand without a speedy process to apply for bail. Refusing to grant bail is one thing but denying an accused the right to apply for bail is another and direct infringement and abuse to ones fundamental right to apply for bail.

[30] 75 (1) of the Magistrate Court Act Cap 16

This is a balance between the right to personal liberty and administration to criminal justice, i.e. the right of an accused to be free, while at same time attending his / her trial. The question for courts is whether or not to grant bail and what conditions. The criminal justice system is based on the principle of presumption of innocence of an accused and therefore a grant of bail protects this principle as it was expounded in the case of OBBO & another Vs. Uganda[31]

There are instances where laws are passed to exclude grant of bail is respect of certain offences e.g. the Trial on Indictment Amendment statute of 1985 excluded grant of bail in respect of terrorism, cattle rustling and possession of fire arms. A case in point is one of OKOT vs. UGANDA [32]appellate sought to challenge the constitutionality of the 1985, statute as infringing in the right to grant of bail by the courts the high court held that the accused rights were limited by that statute in public interest.

Also in NGUI Vs. REPUBLIC[33] and DPP Vs. PETE s/o DAUDI[34]in both cases the high court of Kenya and Tanzania declared legislation, that sought to exclude grant of bail, in respect of certain offences as un constitutional as it interfered with the Judicial discretion of courts i.e. separation of powers.

An accused has also a right to automatic grant of bail where an individual has been on remand for 120 days in respect of offences triable by the High court, and other subordinate court and 360 days in respect of offences triable only by the High court. The presumption is that the judicial process isn't functioning and the individual should be allowed to gain his/ her personal liberty. In JOSEPH LUSSE vs. UGANDA [35]the appellant had been on remand for treason and misprision of treason

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[31] crimm. Misc. Appn. 145/1997

[32] 1987 HCB, Pg. 4

[33] LRC Pg. 308 (KY

[34] LRC (1991) Pg. 553 (TZ)

[35] Misc CRIMM APP 73/ 1997

for 365 days. Justice Taboro held that, the appellant was entitled to automatic grant of bail under Article 23 (6) (c).

Also Article 23 (7) provides for right of an individual who has been unlawfully deprived of his personal liberty to compensation, where as Article 23 (8) provides for the right of an individual sentenced to a term of imprisonment to have the period spent in lawful custody considered during the passing of the lawful sentence to imprisonment.

Further still Article 23 (9) provides for an order of Habeas corpus this right cannot be suspended by any law or otherwise and in fact, is non-derogable under Article 44 (d) of the 1995 constitution of Uganda in essence, an order of Habeas corpus is a remedial guarantee with a right to personal liberty, Ibingira & Others Vs. Uganda[36], and, also see Re Sherkh Abdul Ssentamu case, C/Ref 7 1998

Article 24 of the 1995 constitution of Uganda, provides rights of freedom from torture, cruel, inhuman degrading punishment or treatment, not only does it protect the dignity of the individual but also extends to physical and psychological integrity of the individual, this freedom is non-derogable by virtue of Article 44 (a) of the 1995 constitution of Uganda, a case in place is one of SIMON KYAMANYWA Vs. UGANDA[37], where the constitutionality of corporal punishment as part of the sentencing by courts in effect of provision of section 274 of the Magistrates Court Act (MCA), the point I wish to make here is that although KYAMANYWA was accused, he still had his rights by virtue of Article 24.[38]

Article 28, guarantees the right to fair trial, under clause (1) an individual is entitled to a fair and quick public hearing before and independent and impartial court. The trial must take place in a public place as a guarantee towards its

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[36] (1960) E.A. Pg. 305

[37] crim App, 16/1998

[38] 1995 constitution of Uganda

fairness as the member of the public will be able to observe the proceedings. However this right is not absolute as under 28 (11) the public may be excluded for reasons of morality, public order or national security, Further under Article 28 (1), the court must be independent and impartial guarantee a fair hearing, therefore the court shouldn't be controlled by another person /organ of government, and there should not be likely hood of bias in the country or any member of the court. pinnochet's case where one of the judges was asked to disqualify himself from the trial because his wife was a member of Amnesty International which was prosecuting and was likely to be influenced by his wife. Also, the case of professor Isaac Newton Ojok Vs. Uganda (1991) [39]where one of the Judges was asked to disqualify himself because of his close ties with government and was likely to be biased towards the accused, cross reference, this with a case in which Kanyeihamba, J. refused to disqualify himself, arguing that he swore an oath to be fair impartial without ill will or favour

The right to a fair trial has been defined in numerous regional and international human rights instruments. It is one of the most extensive human rights and all international human rights instruments enshrine it in more than one article.[9] The right to a fair trial is one of the most litigated human rights and substantial case law that have been established on the interpretation of this human right.[8] Despite variations in wording and placement of the various fair trial rights, international human rights instrument define the right to a fair trial in broadly the same terms. The aim of the right is to ensure the proper administration of justice. As a minimum the right to fair trial includes the following fair trial rights in civil and criminal proceedings

Article 28 (3) provides for guarantees for a fair trial in what is referred to as the criminal justice system, the 1st guarantee is the right to be presumed innocent until proved guilty Criminal proceedings which start from a presumption of guilt and put the onus to prove one's innocence on the accused are inherently unfair.

[39] Isaac Newton Ojok Vs. Uganda (1991)

It is not by accident that virtually all enlightened judicial systems take the opposite approach, assuming that, in Blackstone's famous words, "it is better that ten guilty persons escape than that one innocent suffer". Today the presumption of innocence is explicitly recognized not only by the Article 11 (1) of the Universal Declaration of Human Rights but also by most constitutions and a plethora of international treaties. While its results may at times be hard for the public to stomach any encroachment upon this fundamental principle must be resisted.

This therefore pre supposes that the prosecution has a burden of proof to prove an accused beyond reasonable doubt, the exception to the burden proof as an aspect of the right to innocence is provided for under Article 28 (4) which contains what is referred to as 'reverse onus' of proof.

Between 1971 and 1975, the right to a fair trial was suspended in Northern Ireland. Suspects were simply imprisoned without trial, and interrogated by the British army for information. This power was mostly used against the Catholic minority. The British government supplied deliberately misleading evidence to the European Court of Human Rights when it investigated this issue in 1978. The Irish government and human rights group Amnesty International requested that the ECHR reconsider the case in December 2014. Three court cases related to the Northern Ireland conflict that took place in mainland Britain in 1975 and 1976 have been accused of being unfair, resulting in the false imprisonment of the Birmingham Six, Guildford Four and Maguire Seven. These convictions were later overturned, though an investigation into allegations that police officers perverted the course of justice failed to convict anyone of wrongdoing.

The second guarantee is the right to be informed immediately in the language an individual understands of the nature of the offence his changed with, this right is closely related to the right to an interpreter where the individual doesn't

understand the language of the trial Andrea Vs. R (1970) E.A., 26, also Article 28 (3) (a). [40]

The 3rd guarantee is the right to preparation of legal defence and legal representation in court under Article 28 (3) c, d, e, Muyiimba and others Vs. Uganda[41], and Katatryeba and others Vs. Uganda [42]

In cases of offences carrying death sentence or life imprisonment, the individual has a right to legal representation at the expense of the state a case in place is STATE Vs. VERMAAS South African constitutional court (1995) where the South African constitutional court remarked, on the fact that 2 years after the constitution it hadn't been demonstrated that financial and administrative measures had been put in place to ensure the realisation and enjoyment of the right to legal representation at the state's expense[43]. It's also necessary that the accused have to be brought before a judiciary officer within 24 hours of his arrest.

It's unfortunate however that most accused are detained as suspects for over 24 hours, without appealing in a court of law, this unlawful imprisonment and is a sue able tort with damages if the victim decides to sue.

Further still Article 28 (c) says; "be given adequate time and facilities for the preparation of his or her defence" usually this in case of Uganda should entail reasonable notice of the offence the accused has committed plus when one is likely in trial. It's then after this that one prepares his defence, witnesses, evidences etc. Also, 28 (d) "be permitted to appear before the court in person or at that person's own expense, by a lawyer of his or her choice".

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[40] (1970) E.A.26, also Article 28 (3) (a).

[41] (1969) E.A. Pg. 533

[42] (1996) HCB Pg. 16.

[43] South African constitutional court (1995)

The purpose of this is to hire an advocate to defend the accused, and also give the advocate sufficient time for his defence submission. Section 53 of the trial and indictment peace says "any person accused of an offence before the high court be defended by an advocate, at his own expense" and sec. 154 of the Magistrates Court Act (MCA), "any person accused of an offence before the magistrate's court may of right be defended by an advocate."

It is also a right for the accused to cross-examine prosecution witnesses and right to call and examine his own witnesses; this is stipulated in Article 28 (3) (g) "be afforded facilities to examine witnesses before the court". This implies that every person charged with a criminal offence is entitled to facilities to examine personally or by his legal representative; the witnesses called by the prosecution before the court and to obtain the attendance and examine witness to testify on his behalf before the court on the same conditions just as those applying to witness called by the prosecution.

Cross examination as a right is very necessary and the accused or his counsel must be given an opportunity to do so on the prosecution witnesses this helps to test the veracity and reliability of a witness and also helps the court to amicably arrive at the truth.

This aspect is so important if witnesses refuse to come to court when properly served, they can be arrested as stipulated in section 93 of the Magistrates Court Act( MCA) [44]"if without sufficient excuse, a witness doesn't appear in obedience to the summons, the court, on proof of the proper service of the summons a reasonable time be for, May issue a warrant to bring him before the court at such time and place as shall be therein specified:" Section 93 of the Magistrates Court Act (MCA) A witness who refuses to be sworn, give evidence or produce any document then required to do so, is considered a refractory witness Sec. 93 of the Magistrates Court Act (MCA)

[44] section 93 of the Magistrates Court Act( MCA)

Another important absolute right for an accused is the right to be present during trial and have assistance of interpreter, its incumbent upon the court to ensure that the accused as a right is present while he is on trial, unless absent with his own consent, or his conduct affects the procession of the trial this is stipulated in Article 28 (5) "Except with his or her consent, the trial of any person shall not take place in the absence of that person unless the person conducts himself or herself as to render the continuance of the proceedings in the presence of that person impracticable and the court makes an order for the person to be removed from the trial and proceed in the absence of that person.". The accused's presence at the trial helps him /her to exercise his right to cross examine and also defend him/herself, Esau Namanda & others Vs. Uganda (1991)[45]. This right to be present during the trial can be further, stipulated, by section 135 of the Magistrates Court Act (MCA), which says that evidence must be taken in presence of accused. "Except as otherwise expressly provided, as evidence taken in any proceedings under his act shall be taken to the presence of the accused, or when his personal attendance has been dispensed with, in the presence of his advocate, if any[46]". Also, the trial of indictments decrees.

(1). "The accused shall be entitled to be present in court during the whole of the trial so long as he conducts himself properly[47].

(2). If an accused does not conduct himself properly, the court may in its discretion direct him to be remained and kept in custody and proceeds with the trial in his absence. Making such provisions in its discretion appears sufficient for his being informed of what passed at the trial and for the making of his defence."

Furthermore, an accused person has a right to be afforded without payment by that person, the assistance of an interpreter if that person cannot understand the

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[45] Esau Namanda & others Vs. Uganda (1991)

[46] section 135 of the Magistrates Court Act (MCA

[47] section 135 of the Magistrates Court Act (MCA),

language used at the trial [48]clarity of language helps the accused to cross – examine and present his defence.

Uganda being a multi ethnic country, many languages exist and yet constitutionally and even in law, the official language of courts is English, its not common to find the majority of witnesses, and accused person using the vernaculars, this entails, the need for interpreter in courts, and the need for interpretation can further be seen in section 54 of the Trial on Indictment Act (T.I.A)[19].,

"(1).whenever the evidence is given in a language not understood by the accused person. It shall be interpreted to him in open court in a language understood by him.

(2). If the accused appears by an advocate and the evidence is given in a language other than English and not understood by the advocate, it shall be interpreted to such advocate in English". Article 28, 3 (f) constitution of Rep. of Uganda; also see Andrea vs. Uganda (1970) E.A. 26

This can further be emphasised in the section 137 of the Magistrates Court Act (MCA) "(1). Where by evidence is given in a language not understood by the accused and he is present in person. It shall be interpreted to him to open court in a language understood by him"

"(2) If he appears by an advocate and the evidence is given in a language other than English, and not understood by the advocate, it shall be interpreted to such advocates in English".

Also 138 of the Magistrates Court Act (MCA) "when documents are put in for the purpose a formal proof, it shall be in the discretion of the court to interpret as much

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[48] article 28, 3 (f) constitution of Rep. of Uganda; also see Andrea Vs. Uganda (1970) E.A. 26

[49] 54 of the Trial on Indictment Act (T.I.A)

there of as appears necessary". It can further be argued that, an accused deaf-mute, should be accorded, a sign reader in order to understand the proceedings. If the accused cannot be made to understand, the proceedings then provisions 116 of the Magistrates Court Act (MCA), and sec. 47 of the Trial on Indictment Act (T.I.A[50]) will apply.

It can be noted further that an accused person has a right to copy of proceedings and judgement if he so requires however this is subject to some fee as may be prescribed by law to be given with a reasonable time after judgement, i.e. "Article 6 of constitution a person tried by any criminal offence, or any person authorised by him or her, shall after the judgement in respect of that offence, be entitled to a copy of the proceedings upon payment of a fee prescribed by law".

This becomes necessary when the accused wishes to file an appeal, and helps the advocate to prepare his memorandum of appeal against the conviction or sentence.

It's also an absolute right for an accused that no person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence. This is stipulated in Article 28 (7) "No person shall be charged with or convicted of a criminal offence which is founded on act or a mission that did not at time it took place constitute a criminal offence"[51].

The point here I wish to underscore is the element of the principal of legality a case in point here is one of: Roberts Vs Republic And Anor[52], The accused were charged with and convicted on their own pleas, of being in possession of Moshi, without a licence, contrary to the Moshi (Manufacture and distillation) Act 1966. The Act had not yet been brought into force as required by notice in the gazette. On revision it

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[50] 116 of the Magistrates Court Act (MCA), and sec. 47 of the Trial on Indictment Act (T.I.A)

[51] Article 28 (7) of the 1995 constitution of Uganda as amended

[52] 1969 E.A. 622(T)

was decided that the proceedings were nullity. The court ordered that the accused be released. This is a clear principal that no person shall be charged with or convicted of a criminal offence, which is founded on an act or omission that did not at the time it took place constitute a criminal offence.

And no penalty shall be imposed for any criminal offence that severer in degree or description the maximum penalty that might have been imposed for that offence at the time when it was committed. This is stipulated in Article 28 (8) " No penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that could have been imposed for that offence at the time when it was committed". The point to note here is that as a rule of statutory construction, penal statutes must be strictly construed, thus the principle applied in construing a penal Act is that if there is a reasonable interpretation, which will avoid the penalty in any particular case, must be adopted where the constructions are two the most lenient one is taken by the court.

It's also provided in Article 28 (9) of the 1995 constitution of Uganda as amended which raises the rule against double jeopardy. "A person who shows that he or she has been tried by a competent court for a criminal offence and convict or acquitted of that offence, shall not again be tried for the offence in for any other criminal offence of which he or she could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal".[53]

The Double Jeopardy Clause encompasses four distinct prohibitions: subsequent prosecution after acquittal, subsequent prosecution after conviction, subsequent prosecution after certain mistrials, and multiple punishments in the same indictment. Jeopardy "attaches" when the jury is impaneled, the first witness is sworn, or a plea is accepted.

[53] Article 28 (9) of the 1995 constitution of Uganda as amended

The government is not permitted to appeal or try again after the entry of an acquittal. The prohibition extends to a directed verdict before the case is submitted to the jury, a directed verdict after a deadlocked jury, an appellate reversal for sufficiency (except by direct appeal to a higher appellate court), and an "implied acquittal" via conviction of a lesser included offense.

Blockburger v. United States addresses multiple punishments, including prosecution after conviction. In Blockburger v. United States (1932), the Supreme Court announced the following test: the government may separately try and punish the defendant for two crimes if each crime contains an element that the other does not. Blockburger is the default rule, unless the legislature intends to depart from it via enacted law; for example, Continuing Criminal Enterprise (CCE) may be punished separately from its predicates, as can conspiracy[54].

The rule for prosecution after mistrials depends on who sought the mistrial. If the defendant moved for a mistrial, there is no bar to retrial, unless the prosecutor acted in bad faith. For example, the prosecutor goads the defendant into moving for a mistrial because the government specifically wanted a mistrial. If the prosecutor moves for a mistrial, there is no bar to retrial if the trial judge finds "manifest necessity" for granting the mistrial. The same standard governs mistrials granted sua sponte.

Here the point to note is the doctrine of Res Judicata, whose aim is to protect the accused rights being violated; the doctrine also brings an end to litigation and hence promotes the respect of judicial decision. Res Judicata pro veritate accipitur, means the matter has been adjudicated or decided upon by a competent court. The only option in this case would be appeal, revision or review in case of nugatory decision or other incidental remedies such as injunctions or restraining orders. The basis of this doctrine of Res Judicata which supports the rights of the accused can also be

[54] Blockburger v. United States (1932)

further found in statutory provisions, especially, section 7 of civil procedure Act. There is also pleas found in section 87 of the Magistrates Court Act (MCA), "A person who has been once tried by a court of competent jurisdiction for an offence and convicted of acquitted of such offence shall, while such conviction or acquittal has not been revealed or set side, not be liable to be tried again on the same facts for the same offence".[55]

This provision lays down what are generally known as the doctrines of autre fois, convict, autre fois acquit and autre fois pardon See Article 28 (10) of constitution Republic of Uganda (1995). Also the Residence Council (Judicial Powers) statute 1988, under section 18, the doctrine of Res Judicata is highlighted. This fact greatly contributes to the right of an accused[56]. A case in place is one of DANIEL SEMPA MBABALI vs. WILLIAM KIIZA AND ADMINISTRATION GENERAL[57]. This was an action for cancellation of the certificate of title issued to the defendants in respect of land and order on the Registrar of Titles to issue a certificate of title in the name of the deceased. When the matter came up for hearing counsel for the first defendant raised a preliminary issue of Res Judicata by tendering copies of the decisions of the principal court of Buganda and of the Judicial Advisor to the Kabaka, which was held in favour of first defendant. It was held that a matter is said to be Res Judicata when the matter in issue was directly and substantially in issue in a former suit, the subsequent suit should be between the same parties or between the parties under whom they or any of them claim: also in JENNIFER BOGERE Vs. UGANDA RAILWAY CORPORATION[58]., the court would not proceed, having looked at the plaints in both suits was convinced that there were two suits in respect of the same subject matter and the same parties.

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[55] section 87 of the Magistrates Court Act (MCA

[56] Article 28 (10) of constitution Republic of Uganda (1995)

[57] [1992 – 1993] HCB Civil suit No. 615 of 1969

[58] [1992 – 2993] HCB Civil suit No. 631 of 1987

Another important right is embedded in Article 28 (12), which says, "except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law". Here the issue to note is the rule against unwritten criminal offences; the only exception to this principal of legality is that the courts are permitted to punish any person for contempt of court even if the act constituting the contempt is not defined in a written penal law. This rule helps to give a degree of predictability and certainty to the criminal law. Secondly although the law emphasises presumption of innocence especially criminal offences, there seem to be certain offences, which are of strict liability offences such that, once one is caught in the breech of it there is no way out. Here the rights of the accused are not absolute in such cases of strict liability; there is no presumption of innocence or proof beyond reasonable doubt. Strict liability offences usually fall under statutory offences for example failure to observe the conditions of a public service licence is an offence of strict liability. In ABDULLAH Vs. REPUBLIC[59],the owner and holder of a public service vehicle was convicted of failing to comply with a special condition of his road service licence contrary to section 23 (3) and sec 26 of the Tanganyika transport licensing ordinance (cap 373). On appeal against the conviction it was not common ground that the appellant was not on the vehicle when the offence neither was committed nor was he a party to the offence, nor did he know of it. Brian H. dismissed the appeal after remaking that the wording of the ordinance was equivalent and capable of the imposing strict liability or not[60]. Also in the case of WOOD ROW (1846) 15 M & W 464, the accused was found guilty of having his possession-adulterated tobacco although he did not know it was adulterated.

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[59] (1694) E.A.Pg. 270 (T).

[60] section 23 (3) and sec 26 of the Tanganyika transport licensing ordinance (cap 373)

Furthermore, although it's a right for an accused to get bail this right is not absolute, section 78 (1) of the magistrates court act (MCA) points out that where any person appears before a magistrate's court charged with an offence for which bail may be granted, the court shall inform him of his right to apply for bail. Although it's a right for an accused to get bail, this right is however not absolute because firstly not all offences can lead to bail being granted. Secondly, section 75 (2) of the Magistrates Court Act (MCA) stipulates circumstance to be justified for one to be granted bail[61].

In Arvind Patel v Uganda Supreme Court[62], the Supreme Court gave guidance on considerations of granting bail in an appellant court. These conditions were summarized in Teddy Sseezi Cheeye v Uganda [63]as;

The character of the applicant

Whether he /she is a first time offender or not

Whether the offence of which the applicant was convicted involved personal violence

The appeal is not frivolous and has a reasonable possibility of success

The possibility of substantial delay in the determination of the appeal

Whether the applicant has complied with built conditions granted before

Lastly courts also have the jurisdiction to arrest the accused despite granting bail. This strengthens its mantle to control the accused on bail. For instance, in case the court deems that the amount of the bail needs to be increased, a re-arrest can be made directing that a new bond for the increased amount be paid.(section 14(2) of the Trial on Indictment Act Cap 23)

In case of fraud, a mistake, insufficient sure ties or otherwise have been accepted by the court, the High court can also issue a warrant of arrest to re-arrest the accused released on bail.

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[61] section 75 (2) of the Magistrates Court Act (MCA)

[62] Criminal Appeal No. 1 of 2003

[63] Miscellaneous Criminal Appeal No.37 of 2009)

All in all, bail is a fundamental right of an accused person which should be exercised judiciously. Conditions set for the granting of bail should indeed be "reasonable" that the applicant is able to meet them thus they are not viewed as punishments as if an accused person is remanded but is subsequently acquitted, he/she may have suffered gross injustice.

# CHAPTER THREE

## 3.0 The effectiveness of the law regarding rights of the accused persons.

### 3.1 Introduction

The effectiveness of the law regarding the rights of the accused persons can be premised on the following principles.

### 3.2 The Presumption of Innocence

The Presumption of Innocence is provided for under Article 28 (3) which provides for guarantees for a fair trial in what is referred to as the criminal justice system, the 1st guarantee is the right to be presumed innocent until proved guilty Criminal proceedings which start from a presumption of guilt and put the onus to prove one's innocence on the accused are inherently unfair.

In Canada, a person accused of a crime is presumed innocent until the judge or jury finds him guilty. This is called the "presumption of innocence."

The presumption of innocence is one of the most important rights in our criminal justice system.

This right means many things:

**The accused does not have to prove his innocence.** The prosecutor, who is the lawyer for the government, must prove and convince the judge or jury that the accused committed the crime. Prosecutors are officially called "criminal and penal prosecuting attorneys". They used to be called "Crown prosecutors".

The prosecutor must prove that the accused is guilty "beyond a reasonable doubt". At the end of the trial, if the prosecutor has not presented enough evidence, or if the judge or jury still has a reasonable doubt about whether the accused committed the crime, he must be found not guilty. In other words, he will be "acquitted".

The judge and jury must be fair. They can't be prejudiced against the accused during the proceedings. For example, a judge can't be involved in a case if the victim is a member of her family.

It is not by accident that virtually all enlightened judicial systems take the opposite approach, assuming that, in Blackstone's famous words, "it is better that ten guilty persons escape than that one innocent suffer". Today the presumption of innocence is explicitly recognized not only by the Article 11 (1) of the Universal Declaration of Human Rights but also by most constitutions and a plethora of international treaties. While its results may at times be hard for the public to stomach any encroachment upon this fundamental principle must be resisted.

This therefore pre supposes that the prosecution has a burden of proof to prove an accused beyond reasonable doubt, the exception to the burden proof as an aspect of the right to innocence is provided for under Article 28 (4) which contains what is referred to as 'reverse onus' of proof.

This principle is further enshrined in Article 216 of the MCCP. A third way in which the presumption of innocence can be maintained relates to how the suspect or accused person is presented. A suspect or accused person should not be made to look like a guilty person by being caged or shackled in the courtroom or forced to appear in court wearing a prison uniform or with his or her head shaved. If possible, the accused should be allowed to dress in civilian clothes for the duration of the trial. The presumption of innocence will not be violated where the accused person needs to be handcuffed or restrained to prevent his or her escape or to maintain the general security of the court room. In addition to these guarantees, it is important that prior convictions of the accused not be disclosed to the court in the course of the

trial, a disclosure that might unduly influence the decision of the judge and consequently violate the presumption of innocence. (Prior convictions may be considered, however, at a hearing on penalties con-ducted once an accused person has been found guilty of a criminal offense.) A person's right to the presumption of innocence may be violated not only leading up to and during a trial but also, if the person has been acquitted, afterward. Where a person has been acquitted, it is important for public officials not to make any statements suggesting that the person should have been found guilty. The presumption of innocence is linked to many other fair trial rights; for example, the presumption of liberty found in Article 169 of the MCCP stems from the presumption of innocence, as does the right to trial without undue delay and the right of a detained person to trial within a reasonable time or release found in Article 63, and the freedom from self-incrimination laid out in Article 57. The right to a trial by an impartial judge as set out in Article 17 overlaps with the presumption of innocence.

### 3.4 The principle of the natural justice

The effectiveness of the law regarding the rights of the accused persons based on the principle of natural was expressed in the leading precedent of ridge v Baldwin[64]where by the consequence of failure to observe the principles of natural justice was that the decision made in violation of one of the principles of natural justice is null and void. This was made by overturning the decision that was reached at in this case by the watch committee by dismissing the chief constable of Brighton without offering him any notice of hearing. It was further held that the watch committee was bound to observe to observe the rules of natural justice but in this instance the watch committee had not observed them, for the applicant had not been charged nor informed of the grounds on which they proposed to proceed and had not been given a proper opportunity to present his defense.

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[64] [1963]

Furthermore in the case of De Souza v Tanga Town council[65], the decision to dismiss the fire master was arrived at without giving him a reasonable opportunity to respond to allegations against him.
This decision was overturned by the court of appeal basing on the ground that any decision made in violation of natural justice is null and void.

### 3.4.1 The duty to give reasons

Administrative law has generally shown a progressive and positive trend towards the development of the law relating to the principle of natural justice/duty to act fairly by decision makers to give reasons for their decisions.
Indeed, Lord Woolf regards "the giving of satisfactory reasons for a decision as being the hallmark of good administration." Woolf, Protection of the Public, p. 92.

The giving of reasons is considered to be inextricably bound up with natural justice or the right to be fairly heard and is fundamentally important as a public law principle. It has been described by Lord Denning MR in Breen v. AEU [66]as "one of the fundamentals of good administration."

Indeed, to omit reasons is not only to take away the "good" in the administration, but also to instill bad administration on society. The giving of reasons is a fundamental requirement of fairness and is necessary for the satisfaction of parties. The concepts of fairness, justice and reasons are interchangeable and one cannot be achieved without the other. Reasons are the link between the decision and the mind of the decision maker.

This Article outlines the common law development with regard to the duty to give reasons. Originally, the Courts were reluctant to enquire into what was viewed as administrative policy as outlined in the late nineteen century cases of The Queen v.

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[65] [1961]EA 377

[66] [1971] 1 All E.R. 1148, 1154

Bishop of London [67] and Alcroft v. London Bishop[68]. The Courts rigidly adhered to the position that there was no general duty to give reasons. This position was stated in the English cases of McInnes v. Onslow-Fane [69]R v. Kensington and Chelsea Royal LBC exp. Grillo [70]and the Australian case of Public Service Board of NSW v. Osmond [71]which has been described as "an opportunity lost".

However, notwithstanding a few common law setbacks, the Courts have recognized the "serious gap" and while still seeking to maintain the original common law, the Courts have adopted various approaches or grounds to justify the giving of reasons. It has been stated that although there is no duty at common law to give reasons, the duty is, inter alia, implied since it is necessary to ensure fairness, personal liberty and to prevent an aberrant, unreasonable or irrational decision.

This Article reviews the advantages and disadvantages of the duty to give reasons. It also highlights the various approaches adopted by the Courts and concludes that although there is no express general duty to give reasons, in practice this must be done. The standard of duty is also outlined. Lastly, recommendations are made and the need for appropriate legislation and a fundamental right provision is emphasized.

### 3.4.2 Advantages of duty to give reasons

There are many valid reasons to justify the giving of reasons. In order to be acting lawfully, the decision maker must have reasons for the decision. To have to give them is likely to be some assurance that the reasons will be likely to be properly

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[67] (1890) 24 Q.B.D. 213

[68] (1891) A.C. 666

[69] (1978) 3 All E.R. 211,

[70] (1996) 28 HLR 94

[71] [1987] LRC 681

thought out and possibly good in law, for, having made them known; the decision will be open to scrutiny. The decision maker is likely to focus more carefully on the decision and minimize whim and caprice. Giving reasons is also "a self-disciplining exercise", Sir Louis Blom-Cooper, QC. In R v. Islington LBC, exp. Hinds [72]and in Tramountana Annadora SA v Atlantic Shipping Co. [73]Donaldson J stated "Having to give reasons concentrates the mind wonderfully".

In addition, to give reasons is to invite accountability and transparency and to expose oneself to criticism; this helps to ensure that power is not abused or arbitrarily exercised. This will in turn promote public confidence in the system.

A further advantage of giving reasons is that the process will facilitate appeals and assist the Courts in performing their supervisory functions to know whether the decision maker or body took into account relevant considerations or acted properly. This might well reduce the number of unsustainable appeals. Reasons also provide guidance for future conduct and so deter applications which would be unsuccessful. In short, it is essential for the efficient functioning of the machinery of good government.

In the case of Flannery v. Halifax Estate Agencies Ltd[74], Henry LJ stated that "The duty is a function of due process, and therefore justice."

It is submitted that constitutional justice imposes a requirement of procedural fairness and consequentially this necessitates a duty to give reasons. To not give reasons is the very essence of arbitrariness as one's status could be redefined without adequate explanation as to why this was done. Secrecy creates suspicion, justly or unjustly. This secrecy may also be described as the hallmark of inefficient

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[72] (1995) 27 HLR 65 at 75

[73] (1978) 2 All E.R. 870 at 872

[74] (2000) 1 W.L.R. 337 at 381

and corrupt administration. Reasons must therefore be disclosed. Besides, the giving of good reasons would inevitably earn respect for the decision maker.

## CHAPTER FOUR

### 4.0 The weakness of the law regarding the rights of accused persons.

#### 4.1 Introduction

However much the law regarding the rights of accused persons has been effective on account that all the decisions made in violation of rights of accused persons are held null and void as it was expounded in the cases of De Souza vs. Tanga town council and Ridge vs. Baldwin[75].

**Undermined independence of the judicially.**

According to article 28 of the constitution which guarantees a right to a fair hearing , it provides that in determination of civil rights and any obligation or criminal charge, a person shall be entitled to affair , speedy and public hearing before an independent and partial court or tribunal established by law. The independence of the Judiciary with respect to: repeated criticism and defiance by government officials of judicial decisions; allegations that some members of the Judiciary have been pressured to collude with the police in the arrest of people for example politicians more especially opposition politicians and cases of direct interference with the discharge of the duties of the Judiciary hence violation of the accused's rights.

**The President threatens to suspend Judges also undermined the independence of the judicially**

At the beginning of October 2005, President Museveni, in a move to counter the widespread eviction of customary inhabitants of land parcels, directed an immediate end to all evictions of lawful and bona fide land tenants across the country.

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[75] [1963]

In June 2005, President Museveni had already warned landowners not to exploit the tenants' ignorance of land law. He also directed warnings at judicial officers who issued what he called 'bogus eviction warrants'. A State House statement quoted the President as saying that he 'will suspend a judge who colludes in illegal evictions and institute an inquiry[76].

The President repeated his stance in his Statement of Acceptance to the NRM National Delegates Conference in November 2006 at which he was elected the Presidential Candidate for the forthcoming Presidential elections.

The statement was criticized by the Uganda Law Society on the basis that under the Constitution, the President had no power to take disciplinary action against judges; rather this power lay within the domain on the Judicial Service Commission.

In a statement the Uganda Judicial Officers Association (UJOA) complained of continued threats against Judges, which they said undermined the principle of independence of the Judiciary as enshrined in the Constitution. The statement added, 'we specifically condemn threats of firing judicial officers when handling in land matters, for the state should be the last to call for mob justice when there are avenues of due process for one who is dissatisfied with a decision of court. This undermined the independence of the judiciary.

**Lack of Funding is also a weakness on the law regarding the rights of the accused persons**

In a number of interviews, the severe lack of funds available to the Judiciary in Uganda. According to the High Court's Principal Judge, James Ogoola as he was then the Judiciary's budget was subject to severe cuts in the last three to four years[77].

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[76] The Monitor, Judicial independence undermined, 2007

[77] The Monitor, Judiciary , 16 December 2006

This cut in funding has consequences both for court facilities, such as the library, and for the administration of justice. According to Judge Ogoola, as a result of the cuts, the High Court has had to scale down its activities. The criminal sessions work, for instance, had been cut by 60 percent. This in turn has led to a backlog of cases at all levels of the Judiciary.

In December 2006, the Deputy Registrar of the Criminal Division, Roy Byaruhanga, warned that it could take up to 300 years to clear the backlog of cases should the current conditions prevail.

This has serious implications for Uganda's 26,000 prisoners, 58 percent of whom are on remand awaiting trial which is up against the principle of natural justice of a right to a fair hearing.

The former State Minister for Justice and Constitutional Affairs, Frederick Ruhindi, stated that the length of time remand prisoners has been held as of October 2006 was as follows: 689 prisoners had spent 24-32 months detained, 513 had been detained for 32-40 months, 370 prisoners had spent 40-48 months in prison and 334 had been held for over 48 months awaiting trial[78].

In April 2007, Parliament passed the Judicature Amendment Bill 2006, which allows government to increase the numbers of judges at the Supreme Court from seven to 11 and in the Court of Appeal from eight to 12.

Lack of sensitization among the citizens about the law

It is right to assert that most Ugandans are ignorant about the law and most especially their rights when appearing before any official or administrative body for example to be heard, right to cross examine the witness. The law regarding the rights of accused persons as provided for under chapter four of the 1995 constitution of Uganda most especially under article 28 of the 1995 constitution of Uganda which provides for right to a fair hearing.

[78] The Monitor December 2006

High rates of poverty among the Ugandans

Increased poverty among Ugandans to the extent that these people are not in the position of accessing justice in a way that they cannot even afford to legal services for example hiring lawyers

Limited courts of justice in some parts of Uganda

Most Ugandans have failed to access justice in Uganda due to fact that they really lack access to these courts. This is whereby a district is having one court which may be hard for all of the citizens to access it thus denying them a fair trial.

# CHAPTER FIVE

## 5.0 CONCLUSIONS.

In conclusion therefore the rights of accused persons as they are embedded in the 1995 constitution of Uganda under chapter four especially article 28 and has been applied by Uganda courts and to some extent it has been effective due to the fact that the decision makers are bound to abide by the rules of natural justice of which failure to observe them the consequence is that the decision made is held null and void.

Furthermore the decision makers are required to record the reasons for their decisions in order to affect the law regarding the rights of the accused persons.

However, even though the law regarding rights of accused persons as embedded in the 1995 constitution of Uganda but has got its weaknesses or loopholes as they have been discussed above.

## 5.1 RECOMMENDATIONS.

With respect to matters that are threats to judicial independence in political cases. The researcher recommends that Ugandan Government must respect the separation of powers between the executive, legislature and judiciary which is so critical in upholding democracy and the rule of law.

The principle of the independence of the Judiciary extends to the personal independence of judges. They have the right to decide cases before them according to the law, free from fear of personal criticism or reprisals of any kind, even in situations where they are obliged to render judgments in difficult and sensitive cases. for example in 2005 The Executive sent a clear warning to other judges who might succeed Judge Lugayizi that their reputations and careers might be put in jeopardy too if they take decisions which run counter to the government's interests.

Having noted a potential lack of coordination between the police and the Directorate of Public Prosecutions, I recommend that the government review policies, practices and procedures to ensure better case management of accused and defendants.

The researcher recommends in the strongest terms that the Executive and government desist from direct interferences with decisions of the court especially in such circumstances where their actions were designed to intimidate and frighten those present.

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