

THE EFFECTIVENESS OF THE LEGAL FRAMEWORK THAT REGULATES BAIL IN THE HIGH COURT OF UGANDA

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**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL FULFILLMENT OF
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DECLARATION

I KIYEGGA IAN, hereby declare that this dissertation is my original work, and it has never been submitted before for any examination at any other institution of higher learning for the fulfilment of any academic award. All the sources I have used are indicated and acknowledge therein.

Signature: *Ka* Date: *27th / 05 / 2025*


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APPROVAL

This dissertation under the Topic of “The effectiveness of the legal framework that regulates bail in the High Court of Uganda” has been under my supervision and now ready for submission to Uganda Christian University.

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Date: **28TH May, 2025**

DEDICATION

I dedicate this work to my mothers, Mrs Prossie Nkugwa, Mrs Magerette Nansimbi Kayiila, Mrs Juliet Namujjuzi and Nansubuga Enid. For her understanding, generosity and total support throughout my studies.

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LIST OF ACRONYMS

ACHPR- African Charter on Human and People's Rights

ICCPR - International Covenant on Civil and Political Rights

JLOS reports- Justice Law and Order Sector

TIA - Trial on Indictment Act Cap 25

UDHR - Universal Declaration of Human Rights

ABSTRACT

The research is on the Effectiveness of the Legal Framework on Bail Application in the High Court of Uganda. It examines the Constitutional and statutory provisions governing bail application in the High Court of Uganda, focusing on how the High Court has practically applied the law when determining bail applications and the impact of their decisions on the principle of bail application in the High Court. The research explores the balance between the accused's right to bail and the safety or security of society. The legal framework grants the High Court broad discretion, which it has used in determining the bail application for capital offenses, and in turn, affected the effectiveness of the legal framework on bail application in the High Court of Uganda. Other factors also affect the effectiveness of the legal framework in determining bail applications in the High Court of Uganda, and these are the non-legal factors as discussed in the research.

CHAPTER ONE

1.0 Introduction

Bail is the recognizance entered into by the accused himself conditioning him to appear for trial, failure of which may result into the forfeiture of the recognizance. Recognizance is either the amount of money or property deposited by the accused in return for their temporary release from custody. In the case of **Lawrence Luzinda v Uganda**¹, Justice Okello defined bail as the agreement between the court, the accused and sureties on the other hand that the accused will attend his trial when summoned to do so. **Benjamin Odoki the Chief Justice** of Uganda in his book defines bail as an agreement or recognizance between the court and the accused (as well as any sureties, if any).²

The right to bail is a fundamental right premised on the presumption of innocence.³ In **Uganda v Kiiza Besiye**⁴, court stated that the refusal to grant bail should not be based on mere allegations and bail should not be refused merely as a punishment as it would conflict with the presumption of innocence. Thus, in connection with bail application in the High Court, an applicant kept under custody without trial for over 180 days, has a right to apply to be released on bail since they are innocent and not yet proven guilty.

The High Court of Uganda handles bail applications for capital offenses differently from other offenses by applying stricter legal standards, more formal procedures and heightened judicial scrutiny to balance the gravity of the offense with the constitutional rights of the accused and public safety. This is because capital offenses are considered to be graver offenses compared to other offenses and releasing an accused on bail yet charged for a

¹ [1986] HC

² Guide to Criminal Procedure in Uganda 3rd Edition Published by L.D.C in 2006

³ Article 28(3)(a); Foundation for Human Rights Initiative (FHRI), 'The Law Governing Bail in Uganda' at <https://dullahomarinate.org.za/acjr/resource-centre/Bail%20Hndbook.pdf> (accessed 4 April 20224)

⁴ (constitutional Reference No. 20 of 205) [2006] Ugca 42 (25 September 2006)

capital offense, release must be done with great care balancing the safety of the public and the rights of the accused.

Bail applications for capital offenses must be made formally in the High Court by way of written **Notice of Motion supported by an affidavit**. This formal process ensures detailed grounds and evidence to be considered for grant or denial of bail. Bail for capital offenses is either discretionary or mandatory. Mandatory bail is where the accused has been held on remand for over 180 days without trial while discretionary bail is bail determined by the court not relying on specific laws.

The High Court of Uganda has the discretion to either grant or deny a bail application.⁵ Court is not bound by specific legal mandates. In **Foundation for Human Rights Initiative v Attorney General**⁶, Justice Mwangusya Eldad held that the right to bail under Article 23(6)(a) is not an automatic right. The Judge weighs factors on a case-by-case basis and while exercising its discretion, court must act reasonably in the process. In **Gilbert Baalibaseka Bukenya v Uganda**⁷, the anti-corruption court judge Justice Mugamba deemed a recognizance of 50 million shillings as reasonable due to the gravity of the corruption offences that led to the loss of billions of public funds. In **Charles Onyango Obbo and Andrew Mwenda v Uganda**⁸, the high court interfered with the discretion of the lower court, that had imposed a cash bail of UGX 2000000 to each of the accused. It held that the lower court did not act reasonably.

From the above cases, the court exercised its discretion basing on reasonableness. Still the unguided and unlimited discretion is prone to uncertainties, uneven denial or grant of bail.

⁵ Article 23(6)(a) of the 1995 Constitution of Uganda (as amended)

⁶ (constitutional Appeal No. 3 of 2009) [2018] UGSC 46 (26 October 2018)

⁷ HC (Anti-Corruption Division). CC No.094 of 2011

⁸ (1997) 5 KALR 25

Mandatory bail is where court is guided by specific laws in the consideration for bail application like Article 23(6)(c). **Justice Sebutinde** in **Dr. Martin Kato Mugamba and Anor v Uganda**⁹ stated that, “The constitution allows the state a grace period of 360 days now 180 days as amended with which it can lawfully detain an accused person pending committal for trial and during which period the state is expected to complete its investigations and commence prosecution of the accused persons.” However, it is not a guarantee that an accused spending over 180 days in custody without trial is guaranteed bail. If the severity suggests a high risk to public order or if releasing the accused will endanger the society, bail will be denied. In **Kizito v Uganda**¹⁰, the High Court reiterated that bail decisions in capital offenses must carefully consider public safety risks alongside the accused’s rights, emphasizing the courts discretion to deny bail where the risk of harm or interference is substantial. In **Bidongo Zenone and two others v Uganda**¹¹ where the applicants were denied bail on grounds that due to the severity of the offense (murder), granting the applicants bail would amount to exposure of the applicants to the danger of mob justice by the relatives of the deceased and the society. Thus, even under mandatory bail, the need for a reasonable decision to be made by the High Court in the consideration for bail application is so important both to for public safety and protection of the rights of the accused.

Capital offenses are offenses triable only by the High court with a punishment of either death or imprisonment for life. Examples of such offenses are terrorism, under the Anti-Terrorism Act 2002, Cattle rustling contrary to section 266 of the Penal Code Act, Offenses under the Firearms Act punishable by more than 10 years’ imprisonment. Rape contrary to section 123 of the penal code Act, aggravated defilement contrary to section 129(3) of the

⁹ Misc. Crim. Appl. No 51/1996 (un reported)

¹⁰ Misc Application No.005 of 2003 (Arising from Criminal Case No.SOR-20-CR-AA-024 of 2022)

¹¹ Miscellaneous Criminal Application No.0024 of 2015 (Arising from H.C.Cr.Case No. 0028 of 2012)

Penal Code Act, corruption, bribery of member of a public body, embezzlement, causing financial loss contrary to sections 2,5,19,20 of the Anti-Corruption Act 2009, and any other offense in respect of which a Magistrate court has no jurisdiction to grant bail.¹²

The legal framework that guides the High Court when granting or denying the accused bail is the Constitutional provisions under Article 23(6)(a)(c) and the presumption of innocence under Article 28(3)(a). The Trial on Indictment Act Cap 25 section 14 and 15, the Magistrates Courts Act Cap 16 section 75(2), the Constitution Bail Guideline for courts of Judicature) (Practice) Directions 2022, the Judicature (Criminal Procedure) Application Rules 2 & 4 and the Judicature Act under section 34. The available legal framework is uncertain and ambiguous in certain areas and does not provide specific guidelines on court discretion leaving room for inconsistencies and inequality in bail applications.

The office of the Auditor General made a report for financial year 2023/24 which referenced the ever-increasing number of prisoners on remand without trial basing on the high bail fund deposits made in the criminal division of the High Court of Uganda. Of the 889 criminal cases, 706 were concluded within the 12 months' stipulation and 180 cases took from one year to as long as 22 years to conclude. The causes of the delays were delayed investigations due to lack of information during trial, failure by key witnesses to show up on appointed dates of trial and the large case load of judges.¹³ **Chief Justice Benjamin Odoki** in the **Makerere University Law Journal**¹⁴ noted that," The delay in Justice is the enemy of justice and criminal justice in particular and it is Justice Denied." All these delays mean the accused will be kept in custody on remand for periods that warrant release on bail.

¹²Magistrate's Courts Act Cap 16 section 75(2)

¹³ Report of the Auditor General on the Judiciary for the year ended December 2024 page 11

¹⁴ The Delayed Justice page 32

The High Court Criminal Division in the financial year 2023/2024 brought forward 1815 cases from the previous financial year, 1558 cases were registered, 1462 cases were completed and 1911 criminal cases were still pending. The rate of criminal case disposal was at 43.34%¹⁵. A case is considered backlog if it has spent two or more years in the court system before it is disposed of or completed. Case backlog significantly impacts bail applications in several ways, like, delayed hearings lead to prolonged detention without trial. When an accused is kept in custody for very long periods without trial and then applies for release on bail, court is most likely to deny the accused bail on ground that they are desperate to be released and are most likely to abscond trial when granted bail.

In conclusion, this research sought to identify the effectiveness of the current legal framework on bail application in the High Court of Uganda with focus on clarifying ambiguous provisions, standardizing interpretations and tightening bail requirements where necessary for very serious crimes so as to tame the increase in the commission of capital offenses in Uganda.

1.1 Background

During the colonial period, bail was introduced through the reception clause of the 1902 Order in Council. Article 15(2) empowered the Commissioner to apply any law from the United Kingdom and any other protectorate of the United Kingdom in Uganda with modification. These laws were applied verbatim. After Uganda gained independence in 1962, the country's laws continued to evolve. The rights of prisoners to be released, if not, be brought to court without undue delay was provided for in the 1962 Uganda constitution. However, the bail system remained largely restrictive due to reasons which were largely political and procedural. Article 19(3) of the 1962 constitution provided that any person

¹⁵ Judicial Annual report for financial year 2023/2024

arrested or detained... who is not released, be brought without undue delay before a court or is not tried within reasonable time, be released either unconditionally or upon reasonable conditions to ensure his appearance at a later date for trial.

The 1966 Pigeonhole constitution replaced the 1962 and later became the 1967 Uganda constitution that provided for the right to bail in Article 10(3). In **Uganda v Commissioner of Prisons Ex Parte Matovu**¹⁶, where Matovu was charged for murder and an application to be released on bail was made to court and denied, Sir Udo Udoma Egbert ruled that the right to bail is a fundamental right, and its denial should only occur under exceptional circumstances. This case set an important precedent regarding the right to bail in Uganda, affirming that it should not be denied arbitrarily. In **Uganda v Sebbowa**¹⁷, court held that, "the right to bail is a constitutional right and the onus is on the prosecution to show why bail should be denied." Further, in **Uganda v Matovu**¹⁸, the High Court of Uganda ruled that the prosecutions objections to bail based on the accused's potential to abscond were sufficient to justify denial of bail. Therefore, the practice of bail before 1986 was due to significant restrictions and limitations like the colonial administrative era influences, post-independence developments and case law precedents.

When the NRM regime took over power in 1986, there still lingered a question on bail amongst the citizens of Uganda and the applicants for bail. There was confusion as to whether the grant of bail meant an acquittal on the side of the applicants or judicial injustice amongst the public. The citizens found it hard to understand how people charged for serious crimes be walking freely on the streets and sometimes intimidating and threatening the complainants. Why the public had such a view of bail was the fact that an accused released on bail used their freedom to interfere with the police investigations to

¹⁶ (1966) 1 EA 514

¹⁷ [1968] EA 129

¹⁸ [1970] HCB 134

ensure that they do not face trial¹⁹. Thus, there was need for a change in the legal system to curb the social problems of granting bail to suspects involved in capital offenses.

The process of bail application embodies the principle of presumption of innocence²⁰ which means innocent till proven guilty. Bail strikes a balance between protecting individual freedom and serving the public interest. The primary objective of bail is to ensure the accused returns to court for trial, rather than a means of permanent release.

1.1.2 The laws applicable by the High Court when granting or denying bail

Applications.

The laws applicable for bail are the Constitutional Provisions, Articles 23(6) (a) and (c) on discretionary and mandatory bail respectively. Article 28(3)(a) on the presumption of innocence. Sections 14 and 15 of the Trial on Indictment Act cap 25. Constitutional (Bail Guideline for courts of Judicature) (Practice) Directions, 2022, the Magistrates Courts Act Cap 16 section 75(2), the Judicature (Criminal Procedure) Application Rules 2 & 4 and the Judicature Act section 34.

The broad discretion legally coffered to the High Court through the legal framework has played a very big role on the effectiveness of the current legal framework on bail application in the High Court of Uganda. Due to the classification of the offences by limiting the jurisdiction of bail application for capital offenses to only the High Court as seen under section 75(2) of the Magistrates Courts Act, it was intentional by the makers of the laws to grant the High Court with this broad discretion in order to control not only the everyday capital offenders, but also the political capital offenders. It is evidenced that capital offences are classified as very grave offences making them more significant than

¹⁹ The Uganda Constitutional Review Commission

²⁰ Article 28(3) of the 1995 Uganda constitution (as amended)

the rest of the offences. They are clearly defined by these laws and given their own bail application procedures.

The mandatory bail provisions under the constitution²¹ are also subject to court discretion on the basis of protecting public safety and security. This is evidenced in case law especially in high profile political cases of charges like terrorism. For example, the Besigye²² bail application case where the Court has denied the applicant bail on three occasions on grounds that the charges against the accused are one of the gravest crimes in the country's books, a crime against the country thus need for public safety and security.

The issue of suitable sureties is always subject to court discretion even where the surety satisfies the conditions set by the constitutional bail guidelines. On the issue of grave illness, which is one of the exceptional circumstances as provided for under Section 15(3) of the Trial on Indictment Act, the law provides for the need for a medical report from the institution holding the accused in custody to prove that the accused suffers from an illness so grave that they cannot handle it. Through court discretion, the court has awarded bail in instances where the medical facility of the institution holding the accused in custody went silent on whether they are able to handle the health condition of the accused. Stringent bail conditions have been set by the High Court in certain bail applications turning bail into a privilege.

In conclusion bail application in the High Court of Uganda is affected by many factors, though the most important factor affecting the effectiveness of the current legal framework on bail application in the High Court of Uganda is the broad discretion leading

²¹ Article 23(6) (c)

²² Misc Appln No. 0113 of 2025 (Arising from Criminal Case Nak-Cr. NO.A-0008/2025 AT Nakawa Chief Magistrates Court)

to inconsistencies in determining bail applications by the High Court of Uganda and the researcher has discussed these inconsistencies in depth in the following chapters.

1.2 Statement of the problem

The Uganda Constitution provides for the right to apply for bail based on the presumption of innocence. "The High Court has vast discretionary power to accord or not grant bail to the accused, taking into consideration the nature of the offense, the likelihood of absconding and the possibility of tampering with the witnesses in the prevailing bail jurisprudence". In practice, however, the bail legal framework demonstrates it to be contradictory and equivocal. The High Court sometimes lays down both rigid and competing prerequisites for bail, making bail appear to be a 'privilege and not a right'. In some cases, judicial discretion was applied lopsidedly, so the same offences would have different results, while some bail conditions were so wrong they subvert the very right they are meant to safeguard.

The Bail Guidelines aim to harmonize procedures and ensure transparency, yet questions persist regarding their effectiveness in addressing the underlying issues of access, fairness, and uniformity in bail determinations. The ongoing gap between the law and its implementation raises concerns about whether the current legal framework for bail in the High Court of Uganda sufficiently protects the rights of accused individuals while balancing the interests of justice and public safety.

In conclusion, this research seeks to critically examine the effectiveness of the current legal framework on bail application in the High Court of Uganda, identifying the challenges in its implementation and assessing whether it achieves its intended objectives of upholding constitutional rights and ensuring justice for all parties involved.

1.3 Objectives of the study

1.3.1 General Objective

To examine the effectiveness of the current legal framework on bail application in the High Court of Uganda.

1.3.2 The Specific objective

- To examine the current legal framework on bail application in the High Court of Uganda
- To examine the effectiveness of the current legal framework on bail application in the High Court of Uganda
- To examine the non-legal factors that affect bail application in the High Court of Uganda.
- To provide possible recommendations to the inconsistencies in bail application for Capital offences in the High Court

1.4 Research questions

- 1) What is the current legal framework on bail application in the High Court of Uganda?
- 2) What is the effectiveness of the current legal framework on bail application in the High Court of Uganda?
- 3) What non-legal factors affect bail application in the High Court of Uganda?
- 4) What conclusions and reforms should be made to make bail application laws for Capital offenses in the High Court of Uganda effective?

1.5 Significance of the study

The research aims at critically analyzing the effectiveness of the current legal framework on bail application in the High Court of Uganda, ensuring a balance between the rights of the accused and the safety of the public. The study identifies the areas for improvement, ultimately enhancing access to justice for all individuals regardless of their socio-economic status.

1.6 Justification of the study

The researcher noticed that bail applications for capital offences were largely affected or influenced by the inconsistencies and uncertainties enabled by the current legal framework on bail application in the High Court of Uganda which led to miscarriage of justice and thus the need for reforms. The laws give the court too much discretion in the process.

1.7 Scope of the study

The research focuses on the effectiveness of the current legal framework on bail application in the High Court of Uganda. The Study explores the following themes. Chapter one discusses the introduction and background of bail applicability in the High Court of Uganda. Chapter two discusses the effectiveness of the current legal framework on bail application in the High Court of Uganda. Chapter three discusses the non-legal factors that affect bail application in the High Court of Uganda and Chapter 4 discusses the conclusions and recommendations on the effectiveness of the current legal framework on bail application in the High Court of Uganda.

1.8 Literature review

In relation to this research, so many researchers have covered bail and its applicability in Uganda's criminal justice system.

The **Access to Justice Sub Program /" Justice Law and Order Sector (JLOS)"** reports on performance of the Judicial Institution in a financial year. The performance report is generated from the analysis of the data from the institutional submissions. It tracks progress and results in information in the outcome areas of the access to Justice/ JLOS business to enable the sub program and Development Partners as well as other key stakeholders to access progress and target areas for reorganization or increased development. The JLOS financial year reports provided the research with statistical information on cases disposed of by the High Court in a given financial year. The reports also provided the research with statistics on case backlog whereby the increase in case backlog meant an increase in prisoners on remand providing a case for bail applications in the High Court. However, the two JLOS reports of financial years 2021/22 and 2023/24 that the researcher used, provided general court performance of the High Court. The information is not very clear on the performance of the High Court on bail applications for capital offenders which would be used to find the exact effectiveness of the current legal framework on bail application.

The **Report of the Auditor General on the Judiciary for financial year ended December 2024** was used to try to find statistics on the number of bail applications heard by the High Court in a given financial year. But like the JLOS reports, the closest it would provide was the amount of bail fund deposits which are funds collected by court as cash bail for bail applications accepted. The stats were helpful in a way that

the researcher was able to relate the 50% increase in bail fund deposits with the bail application performance of the High Court of Uganda. However, this information was specific on cash bond leaving out non cash bond stats. Thus, the effectiveness of the current legal framework on bail application in the High Court could not be properly gotten.

The **International Journal of Academic Management Science Research (IJAMSR)**²³, a journal so helpful to this research in providing the history of bail application in Uganda. The historical development of bail application from the colonial period to the present date shows how bail application in the High court has evolved.

The Foundation for Human Rights Initiative an independent non-government organization, non-partisan and non-profit human rights organization in their book **“A Citizens Handbook on THE LAW GOVERNING BAIL IN UGANDA”**, emphasized the Presumption of innocence as an integral part to the applicant of bail in the High Court of Uganda. The hand book provides the laws applicable in bail application and highlights them. However, the handbook is silent on many things like the effectiveness of these laws on bail application in the High Court. It does not expound on the meaning of exceptional circumstances and does not expound on the relationship between the presumption of innocence and the right to bail.

The Review of Bail in the Criminal Justice System, a study report of November 2020 by the Uganda Law Reform Commission provided the research with the law applicable on bail application in all courts of Uganda. The study also provided reforms on the

²³ A Legal Review Of Bail Reform Proposal, Court Discretion And The Doctrine Of Precedent In Uganda

applicability and effectiveness of the bail laws in Uganda's Judicial system. However, the study was so general in nature. It was silent on the real issue affecting the effectiveness of the legal framework on bail application in the High Court which is the broad discretion of the Courts.

Chief Justice Benjamin Odoki's textbook a **Guide to Criminal Procedure in Uganda 3rd Edition** Published by L.D.C in 2006 was used to define bail and the definition properly brings out bail. As in, an agreement or recognizance between the court and the accused and also puts the sureties if needed. This definition is so clear that any average individual can understand clearly what bail is. It also states that it's not mandatory that a surety must be provided in order to be granted bail. However, for capital offences, the addition of a surety to a bail application is so important to both the accused and the Court. Due to the gravity of the offence, for the Court to grant the accused bail, they will need a suitable Surety who has control over the accused and will make it that the accused appears for trial as determined by court.

The **Bail Conditions in the Criminal Justice Systems in Kenya, Uganda, Rwanda and Tanzania**²⁴ was used by the researcher to contrast the bail application laws in the neighboring countries of Uganda with those applied in the High Court of Uganda. This information was used in chapter two of the research under the regional legal framework on bail application in the various criminal justice systems of the particular countries.

²⁴ By Luke Kelly University of Manchester 7 August 2020

The research was also guided by other researchers on bail application in Uganda like Kamalha Ram then a Kampala University Law Student²⁵, Kityo Martin then a law student at Islamic University in Uganda²⁶ and Apio Zillah Anna also a then law student at Kampala International University²⁷. Both Kamalha Ram and Kityo Martin research are mainly on bail application procedure in the courts of Uganda. Apio Zillah did research on bail laws and critiques the laws on bail application in the courts of Uganda. The researcher used all these researches to get the general information on bail application. However, both Kamalha and Kityo didn't critique the existing legal framework on bail applications in Uganda. All research was general in nature, they all looked at bail in the courts of Uganda while this research is specifically on bail application in the High Court of Uganda on capital offences. The researchers by the time they wrote their researches, it was mandatory for an accused to prove exceptional circumstances so as to be granted bail.²⁸ To date it is no longer mandatory to prove exceptional circumstances. In **Uganda v Rt. Col. Dr. Kiiza Besigye**²⁹ it was stated that proof of exceptional circumstance in an application for bail is no longer mandatory. However, when an applicant seeks to rely on exceptional circumstances, the applicant is required to satisfy court leaving no doubt of the exceptional circumstance pleaded.

In conclusion, all research material used by the researcher is rich in the law and procedure of bail application in the High Court, but lacks the proper critical view of the effectiveness of the current bail application legal framework especially the broad

²⁵ Bail Practice in Uganda: A Critical Analysis Of The Law In The Magistrate Courts And High Court

²⁶ Outside Bars: The Right To Bail In Uganda

²⁷ The Efficacy Of The Law On Bail In Uganda "Critique"

²⁸ Section 15(1) of the Trial On Indictment Act CAP 43

²⁹ *supra*

unlimited and unguided discretion the legal framework awards the High Court when determining bail application.

1.9 Methodology

The qualitative desktop methodology also known as secondary research or complementary research, focusses on gathering and analyzing existing information and data from various sources. For the research on the effectiveness of the current legal framework on bail applications in the High Court of Uganda, this research methodology was valuable for gaining in-depth insights without primary data collection. The various data sources used were;

Legal Documents

Legal documents that were used by the researcher were the 1995 Constitution of the Republic of Uganda (as amended) Article 23(6)(a)(c) and Article 28(3). In consideration for bail application in the High Court of Uganda, these two Articles provide for discretionary bail, Mandatory bail and the Presumption of innocence. The statutes and Acts of Parliament related to bail application in the High Court of Uganda used in this research were The Trial on Indictment Act Cap 43 section 14 and 15, Magistrates Courts Act cap 16 section 75(2), the Judicature Act, the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 and the Judicial (Criminal Procedure) Application Rules 2 & 4. Decided cases used as precedents in consideration for bail application in the High Court of Uganda.

Academic Literature

This entailed law Journals, articles on bail application, criminal procedure and human rights in Uganda. Text books on criminal law procedure and bail application in the justice system of Uganda were also used. Dissertations related to bail application, criminal justice and the Judiciary also provided a source of information to the researcher.

Official Reports and Publications

The research employed Judicial annual reports on the performance of courts in criminal justice and Auditor General Reports on the management of bail funds.

Policy Documents and Guidelines

Government policy papers on criminal justice reform and access to justice were used. Guidelines and manuals issued by the judiciary or ministry of justice on bail procedures and reports and recommendations from law reform commissions or committees related to bail application in Uganda were used.

Data Collection Process

After identifying the issue, a research problem, research question was established, and objectives that centered on how well the current judicial system handles bail requests in the Ugandan High Court. A review on the bail application process in Uganda was taken into consideration, to find contradictions, or areas that needed more study. From the chosen sources, which included law journals, judicial reports, legal provisions, and case summaries, pertinent material was taken out.

Data Analysis Techniques

Various data analysis techniques were employed by the researcher. Like the content analysis where the researcher systematically analyzed the content of legal documents, reports and publications to identify inconsistencies and uncertainties in the available legal framework on bail application in the High Court of Uganda. Then the Thematic analysis where data was organized based on research questions and objectives. This involved identifying common issues, challenges and perspectives related to the effectiveness of the available legal framework on bail application in the High Court of Uganda. Then the Comparative analysis where different sources of data used by the researcher were compared and contrasted so as to enable the readers of the research to understand the research topic.

Advantages of the Qualitative Desktop Research Methodology

It is a secondary data collection method thus less expensive compared to primary research since it relies on existing data sources. Data collection and analysis is conducted more quickly as the researcher doesn't need to collect new data. It provides for a comprehensive overview of the research topic since it allows the examination of a wide range of sources and perspectives. It is an ethical research method in that the source of the data used cannot be claimed by the researcher and credit for their information is credited to them through referencing the source of the data.

Limitations of the Qualitative Desktop Research Methodology

The existing data quality and availability was limited due to various factors. The researcher could not find the exact statistics on bail applications in the High Court of Uganda. Bail fund deposit stats and case backlog stats of the High Court to relate to bail applications were relied on. The accuracy and reliability of secondary data is a question the researcher must consider before relying on the data. A case in point on the issue of effectiveness of exceptional circumstances in considerations for bail applications in the High Court of Uganda, most data sources stated it was mandatory for the accused to prove exceptional circumstances. And this was because by the time they gathered their data, it was so. Section 15(1) was amended giving the court discretion to grant bail even if the accused didn't prove exceptional circumstances and thus the researcher has to always keep in mind the reliability of secondary data to avoid misleading the intended audience of the research.

In conclusion, the qualitative desktop research approach was an appropriate research method of collecting data on the effectiveness of the legal framework on bail application in the High Court of Uganda. The researcher collected data from various sources, examined key problem such as ambiguities and inconsistencies in the application of the legal framework on bail application in the High Court of Uganda.

CHAPTER TWO

EFFECTIVENESS OF THE CURRENT LEGAL FRAMEWORK ON BAIL APPLICATION IN THE HIGH COURT OF UGANDA

2.0 Introduction

Bail application in the High Court of Uganda is guided by a rich legal framework. We have the international legal framework, regional legal framework and the national legal framework. This chapter discusses the effectiveness of the legal frameworks on bail application in the High Court of Uganda.

2.1 International Legal Framework on bail Application in the High Court of Uganda

The international legal framework governing bail applications in the High Court of Uganda emphasizes the presumption of innocence, minimal pre-trial detention and equitable access to liberty as outlined by the key treaties and guidelines Uganda ratified to. Below is an analysis of how these principles intersect with Uganda's domestic bail laws in the High Court.

2.1.1 Presumption of Innocence

In criminal cases, the international legal framework on burden of proof is grounded in the principle of presumption of innocence, which places the burden on the prosecution to prove the accused's guilt beyond reasonable doubt. The International Covenant on Civil and Political Rights³⁰ states that everyone charged with a criminal offense shall be presumed innocent till proven guilty. The Human Rights Committee's General Comment 32 elaborates that the prosecution must carry the burden of proving the charge and that no guilt can be presumed until the charge is established beyond reasonable doubt.

³⁰ Article 14(2)

In relation to bail application laws in the High Court of Uganda, bail is not an acquittal of charges. **Justice C.A. Ocelli**³¹ held that, "it should be observed that bail application is not a trial in the substantive charge for which an applicant is held in custody. No evidence of the substantive charge is adduced and the court does not make any pronouncement on the merits and demerits of the charge." This means that under a bail application, it is the burden of the prosecution to prove why the accused should not be awarded bail.

2.1.2 Prohibition of Arbitrary Detention

Arbitrary detention is unlawful detention and occurs when an individual is arrested and detained by a government without due process and without the legal protections of a fair trial, or when an individual is detained without any legal basis for the deprivation of their liberty. In relation to the study, the 1995 Uganda Constitution (as amended), Article 23(6) (c) provides that when an accused is held in custody for an offense only triable by the High Court for over 180 days without trial, the court is mandated to release them on bail. This means that an accused held in custody for over 180 days without trial is unlawfully detained.

In relation to bail laws in the High Court of Uganda, for detention to be justified or lawful, it must be justified by specific risks like flight risks, evidence tampering, likelihood to commit another crime while out on bail and likelihood to abscond trial. Detention should not be used as a punitive measure before conviction since the accused

³¹ Aliphusadi Matovu v Uganda Criminal Miscellaneous Application No. 15 of 2005s

is still innocent not yet proven guilty. Detention should last no longer than necessary to achieve the legitimate aims of the criminal process.

The Universal Declaration of Human Rights³², prohibits arbitrary detention. The instrument promotes human rights in cases relating to personal liberty through the prohibition of arbitrary detention. Deviation from the provisions of the Declaration amounts to violation of commitment to the protection of Human rights under the UDHR. Uganda is signatory to the declaration and as such has the obligation under international law to respect, observe and promote all declarations pertaining human rights therein.

The ICCPR³³ states that anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial, emphasizing that pre-trial detention should be the exception rather than the rule. The UN Human Rights Committee interpreted this to mean that detention must be necessary and proportionate to prevent risks such as flight, interference with justice or further offenses. The United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)³⁴ specifies that pre-trial detention should be used as the last resort only when less intrusive measures like bail are insufficient to meet the needs of justice and public safety. The European Convention on Human Rights³⁵, permits deprivation of liberty only in connection with the criminal proceedings and requires that detention be lawful and justified. The European Court of Human Rights has ruled that detention must be closely scrutinized, reviewed to prevent arbitrariness and undue length. Thus, in

³² Article 9

³³ Article 9

³⁴ Rule 5.1

³⁵ Article 5(1) (c)

relation to the bail rules in Uganda, the High Court recognizes the fact that keeping the accused on remand for more than the specified time (180 days) amounts to delay in justice and is against the international treaties which Uganda ratified to.

2.2 Regional Legal Framework on Bail Application in the High Court of Uganda

The regional legal framework on bail for capital offenses in East Africa reflects a mix of constitutional safeguards, judicial discretion and restrictive provisions influenced by both international standards and local socio-political contexts. Below is an analysis of Uganda's framework compared to neighboring countries drawing from regional treaties, domestic laws and comparative studies.

2.2.1 African Charter on Human and Peoples 'Rights

Upholds the presumption of innocence³⁶ and the right to liberty which is against arbitrary detentions. Uganda's 180-day rule aligns with this Article. Article 2-3 of the African Charter on Human and People's Rights prohibits legal discrimination in all spheres of life. this is in conformity with the Uganda laws which emphasize equality of all before the law. In regards to bail application, the High Court of Uganda is meant to consistently apply the bail laws to each bail applicant on merit. **Justice Musalu Musene**³⁷ noted that discretion in bail matters must be exercised judiciously without malice, ill will or ulterior motives.

³⁶ Article 6

³⁷ Col (RTD) Kiiza Besigye v Uganda (criminal Application No. 83 of 2016) [2018] UGHCCRD 7 (12 July 2016)

2.2.2 The African Commission

This body was established by the African Charter sets out standards like the principles of fair trial in Africa³⁸, Guidelines on Arrest, Police Custody and Pre-Trial Detention in Africa³⁹ and the Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa Part 3(c)⁴⁰. All these provisions accept that release on bail may be subject to certain conditions. However, the burden rests with the state to prove the need for such conditions for the release or detention of the accused.

2.2.3 Kenya Bail laws

Article 49(1)⁴¹ guarantees bail as a right unless compelling reasons like flight risk and witness interference. This means bail should be granted as a default position and the burden lies on the prosecution to show compelling reasons to justify denial. Bail is a constitutional right in Kenya. Article 49(2) provides that a person shall not be remanded in custody for an offense if the offense is punishable by a fine only or by imprisonment for not more than six months. Just like in Uganda, bail is a right but not absolute. Kenyan Courts may deny bail if compelling reasons exist such as risks of flight, interference with witnesses or threats to public safety. A little contrast to Uganda's bail laws in the High Court is that Kenyan Judicial officers are mandated to treat bail as a right rather than a privilege and courts have reduced bail amounts on review to uphold this principle.

³⁸ Section M1(e)

³⁹ The Luanda Guidelines Paragraph 1(b), 4(i), 6(a), 7, 10-11, 31,32 (a)

⁴⁰ <http://www.achpr.org/legalinstruments/details?id=9>

⁴¹ Kenya Constitution 2010

2.2.4 Tanzania Bail laws

Like in Kenya and Uganda, bail is recognized as a constitutional right. Article 13(6)(b) of the Constitution of United Republic of Tanzania (1977, as amended), every person charged with a criminal offense is presumed innocent until proven guilty and is entitled to bail as a matter of right, subject to conditions prescribed by court. Denies bail for offenses like murder unless exceptional circumstances are shown. This position mirrors Uganda's position on bail. the Bail and Bond policy (2016) encourages non-monetary bail and mandates periodic judicial reviews. This is inconsistent with Uganda's position where cash bail is practiced and emphasized more than non-monetary bail.

2.2.5 Burundi

In Burundi, the legal frame work on bail indicates that bail is not the right but its application is the right. This is so consistent with Uganda's bail laws. The Judiciary has the discretion to grant or deny the accused bail based on the seriousness of the offense and risk of absconding trial. The Criminal Procedure Code (2013) explicitly denies bail for crimes punishable by over 20 years. If an accused is charged for offenses like aggravated murder will, in Burundi they will not be granted bail. The exception to this law is a minor charged for such offense and an accused who has deposited very large amounts of bail funds. This is slightly in line with Uganda's bail laws where by capital offenses necessitate very strict conditions in order to be granted bail and in addition very high cash bail deposits will have to be made to the High Court.

2.2.6 Rwanda

Rwanda's constitution does not mention bail but Article 21 sets out the right to be presumed innocent and to appear before a court and Article 24 provides for the right

to liberty. The criminal procedure law⁴² sets out rules on bail and states that bail is determined in consideration of the damages caused by the offense, the good conduct of the suspect attested by the local authority of his or her residence and on whether he or she has never been condemned by a court. If the offense is against property, bail must be double the value of the property. For other offenses, bail is determined by the discretion of the competent authority in consideration of the gravity of the offense committed and the wealth of the guarantor. There is a similarity to the bail laws of Uganda, the discretion of the authority which is the High Court of Uganda in determining capital offenses.

2.3 Inconsistencies with Uganda's Domestic Legal Framework on bail application in the High Court of Uganda

2.3.1 Burden of proof

Section 15(1)⁴³ states that it's no longer mandatory for an accused to prove the presence of exceptional circumstances in order to be granted bail. The fact that its no longer mandatory leaves room for situations where the accused will rely on exceptional circumstances to be granted bail. When this situation arises, the accused will have to prove the exceptional circumstance thus shifting the burden of proof to the accused contrary to the International Covenant on Civil and Political Right's standards of presumption of innocence.

⁴² No 027/2019- Law relating to Criminal Procedure

⁴³ Trial on Indictment Act Cap 25

2.3.2 Socioeconomic Disparities

Article 26 of the ICCPR provides that all persons are equal before the law and are entitled to equal protection of the law. Uganda ratified to this covenant and is bound to uphold and apply this principle in determining bail applications of capital offenders consistently. The African Charter on Human and People's Rights also prohibits discrimination in all forms and requires states to ensure equality before the law. In addition to that, Article 21 of the 1995 Uganda constitution guarantees that all persons are equal before and under the law and prohibits discrimination on grounds of social or economic standing. When determining bail applications in the High Court of Uganda, the wealth-based surety requirements and documentation hurdles like the Local Council 1 letter are a disadvantage to the low-income defendants conflicting with the ICCPR's and the African Charter on the prohibition of discriminatory practices.

2.3.3 Pro-longed Pre-Trial Detentions

The mandatory bail rule is set for 180 days in custody without trial⁴⁴, there are other causes of delays in justice like judicial discretion which often extends detention periods, technicalities in evidence collection methods or the cases of high profile where the court denies bail on grounds of gravity of the offence neglecting the rights of the accused. The issue of case backlog which cannot be overlooked, socioeconomic factors whereby the poor cannot access lawyers to help them in their bail application procedure and executive interest in particular cases for political reasons also causes pro-longed

⁴⁴ Article 23(6)(c) of the 1995 Uganda Constitution (as amended)

pre-trial detentions. These pre-trial detentions are inconsistent with the international covenants on pre-trial detentions.

In conclusion, Uganda bail laws reflect international and regional human rights principles in theory but face implementation gaps, particularly for capital offenses. While the 180-day rule and constitutional safe guards align with the ACHPR and the ICCPR, the broad High Court discretion and centralized High Court jurisdiction over bail application for Capital offenses undermines the equitable access to bail and the effectiveness of the current legal framework on bail application in the High Court of Uganda.

2.4 National legal framework on bail application in the High Court of Uganda

Bail application in the High Court of Uganda is guided by specific laws due to the nature of the offence (capital offences). The Offences are capital in nature and are taken to be very grave offences. The 1995 Uganda Constitution (as amended) under Articles 23(6)(a)(c)⁴⁵ and 28(3)(a)⁴⁶, sections 14 and 15 of the Trial on Indictment Act Cap 25⁴⁷, Constitutional (Bail Guidelines for Courts of Judicature) (Practice) Directions 2022, Judicature (Criminal Procedure) Application Rules 2 & 4 Act, section 75(2)⁴⁸ of the Magistrates' Courts Act and section 34 of the Judicature Act.

2.5 The Effectiveness of the Legal Framework on Bail Application in the High Court of Uganda

⁴⁵ On Discretionary and Mandatory bail respectively

⁴⁶ On the Presumption of innocence

⁴⁷ On the High Court discretion in determining bail applications and Exceptional Circumstance and likelihood to abscond trial.

⁴⁸ On jurisdiction of the High Court in determining bail applications for Capital offenses.

2.5.1 The Constitutional Guarantees and Judicial Discretion in bail applications

The constitution empowers the High Court with Discretionary⁴⁹ powers to grant or deny bail applications and also mandates⁵⁰ the High Court to grant bail to an accused kept on remand for over 180 days without trial. Article 28(3)(a) provides for the presumption of innocence of an accused to always be considered by the High Court whenever determining a bail application. Articles 23(6)(a)(c) and 28(3)(a) should be applied concurrently during bail applications in the High Court of Uganda. In **Aliphusadi Matovu v Uganda**⁵¹, court held that under Article 28(3)(a) of the constitution, the applicant for bail is presumed innocent until the contrary is proven. That being the case, he or she should get bail until substituted trial is proved. **Justice C.A. Ocelli** held in response that, "it should be observed that bail application is not a trial in the substantive charge for which an applicant is held in custody. No evidence of the substantive charge is adduced and the court does not make any pronouncement on the merits and demerits of the charge." Guideline 5 of the bail Guidelines provides the general principles a court my take into account while considering a bail application and the presumption of innocence is one of the principles. This case showed the importance of the presumption of innocence in a bail application.

While Article 23(6) guarantees the right to apply for bail and mandates release after 180 days on remand without trial, courts conflict over whether it confers a right to bail or merely a right to apply for bail. Such inconsistencies have greatly affected the effectiveness of the Constitutional framework on bail applications in the High Court of

⁴⁹ Article 23(6)(a) of the 1995 Uganda Constitution (as amended)

⁵⁰ Article 23(6)(c)

⁵¹ Supra

Uganda. In **Kigula v Uganda**⁵², the Court stated that, “The objective of bail is to ensure that the accused person will attend their trial without being detained in prison on remand without trial, so that they can duly prepare their defense. The accused is not free from the charges against them, they continue to attend court as provided for in the bail terms. This means bail is not a punishment.” Granting or denying bail application is done on a case-by-case basis and should be done on merit and consistently. Applicability of the constitutional bail provisions is dependent on court discretion as was evidenced by **Justice Kania** in the 2025 Besigye⁵³ bail application denial reasoned that, “Although I find that the applicants have satisfied all the relevant requirements for the grant of bail.... the bail application is denied. The charges against the applicants are among the gravest on our statute books... since the charges were committed in different cities Kampala, Nairobi... they require more time and resources to conclude investigations.”

Discretionary Bail

Discretionary bail is bail granted by the court based on its judgement and assessment of various factors without being bound by specific legal mandates. While the constitution guarantees the right to bail, the right is not absolute and its grant or denial is at the discretion of court. In **Foundation for Human Rights Initiative v Attorney General**⁵⁴, Justice Mwangusya Zelda’s stated that the right to bail under Article 23(6)(a) is not an automatic right. Bail is dependent on the judges’ -discretion, who weighs based

⁵² [2005] UGSC 15

⁵³ Misc Appln No. 0113 of 2025 (arising from criminal case NAK-CR. No. A-0008/2025 at Nakawa Chief Magistrates Court)

⁵⁴ constitutional petition no 20 of 2006

on a case-by-case basis whether they should grant bail. What matters is that it should not be denied or granted frivolously. In **Col (RTD) Kiiza Besigye v Uganda**⁵⁵, Justice Musalu Musene noted that discretion in bail matters must be exercised judiciously without malice, ill will or ulterior motives. The court must consider the constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions which reinforce the general principles for granting bail enshrined in the Constitution. Also, in **Dr. Aggrey Kiyingi v Uganda**⁵⁶, Hon,Hudy Justice C.A Okello stated that, the right an accused has is the right to apply to court for bail, the discretion to grant or to reject the application is that of court. In **Kalule v Uganda**⁵⁷, where it was stated that the High court has discretionary powers to set bail conditions that they deem reasonable.

However, the broad High Court Discretion in determining bail applications has greatly affected the effectiveness of the current legal framework on bail application in the High Court. There is a lot of inconsistency in bail decisions with similar facts. In **Mathew Kanyamunyu &Ors v Uganda**⁵⁸, where three parties were jointly accused of murder, bail was awarded to the principal offender alone. Some Judicial officers have used their discretion to deny bail on grounds of surety relationship with the accused leaving out the fact that the surety has control and command over the accused. They have gone ahead and awarded bail without regard to laid down bail guidelines and the law especially on the need for a medical report of the institution holding the accused in custody to state that they cannot handle the health condition of the bail applicant who

⁵⁵ Supra

⁵⁶ miscellaneous criminal application no.41 of 2005

⁵⁷ (Criminal miscellaneous Application no 001 of 2018.) [2018] UGHCI CD 1(10 April 2018)

⁵⁸ (HCT-00-CR-CM-0369-2016) [2017] UGHCCRD 1(10 January 2017)

has relied on grave illness to acquire bail. In Ali Mwizera⁵⁹ bail application decision, inconsistency was observed when the prison medical report read that the accused complained of severe gastric pain, vomiting, diarrhea, yellow eyes and passing of melena stool. The court considered the illness grave even after **stating** that the report was silent on whether the prison hospital was able to handle his condition. Yet for an illness to be considered grave, the institution holding the applicant in custody must state that they cannot handle the illness. Thus, in this case, Court through its discretion usurped the medical doctor's powers and granted the applicant bail. They have also used their discretion to succumb to executive commands in denying bail applications of high-profile opposition members even when the applicants meet the bail conditions and lastly, they have inconsistently set very high cash bail amounts basing on the financial muscle of both the accused and sureties which turned out to be discriminatory to the low-income earners who can't afford the high cash bail amounts.

Mandatory bail

Mandatory bail is bail granted or denied by court basing on specific rules underlined by law. The High Court bases its judgement in Article 23 (6)(c) of the 1995 Uganda Constitution (as amended). Article 23(6)(c) provides for an accused held in custody before trial for an offense triable only by the High court after lapse of 180 days without trial to be released on bail. In **Uganda v Col. (Rtd) Dr Kiiza Besigye**⁶⁰, it was stated that once the conditions under Article 23(6)(c) are met, the court is stripped of its power to exercise its discretion and hence the accused is entitled to be granted bail.

⁵⁹ Misc Appln No. 0408 of 2024 (arising out of Chief Magistrate's court of Entebbe at Entebbe criminal case No. AA 27 of 2024)

⁶⁰ Constitutional Reference No. 20 of 2005

However, even with the ruling in the prior discussed case, mandatory bail is subject to court discretion, especially where the gravity of the offence is so high or where the grant of bail endangers the life of the accused or where the grant of bail endangers the security of the public. There instances where the court in balancing the rights of the accused and safety of the public must use its discretion over mandatory bail. In **Bidong Zenone and Others v Uganda**⁶¹, the court was of the view that granting the accused's bail who had been on remand for **three years pending trial** would endanger their right to life by the likelihood of mob justice against them by the relatives of the deceased and the society since they had committed murder and one of the accused's had confessed to the murder that took place in the same village they wanted to go back to. Therefore, law on mandatory bail is also affected by the broad High Court discretion sometimes for the safety of the public and sometime for political reasons or pressure from the media and public analysis of high-profile cases.

2.5.2 Trial on Indictment Act Cap 25

2.5.2.1 Section 14

Section 14 of the Act confers discretion to the High court to award bail to an accused at any stage of the proceedings. This is one of the legal frameworks that grants the High Court broad discretion when determining bail applications.

2.5.2.2 Section 15(1)

This section provides that it's no longer mandatory for an accused to prove exceptional circumstance in a bail application. The court has the discretion to deny bail even when

⁶¹ supra

the accused has not proved any exceptional circumstance. In **Attorney General v Joseph Tumushabe**⁶² where it was held that it is no longer necessary for the applicant to prove exceptional circumstances to be granted bail. However, since section 15(1) states that it's no longer mandatory for an accused to prove the existence of exceptional circumstances and court has the discretion to grant bail even when they have not been proved⁶³, if an applicant relies on any exceptional circumstance, then it will be taken into account and the applicant must prove the exceptional circumstance to the satisfaction of court as was held in **Florence Byabazaire v Uganda**.⁶⁴, Thus shifting the burden of proof to the accused contrary to the normal bail application where the prosecution has to prove why a bail application should not be awarded.

2.5.2.3 Section 15(3) Exceptional Circumstances

This section gives examples of the exceptional circumstances. The exceptional circumstances mean grave illness, a certificate of no objection signed by the Director of Public Prosecutions and infancy or advanced age of the accused.

Grave illness

The court recognizes the accused's need for medical treatment that may not be adequately provided in a prison or detention facility they are held in custody and must be proved by a certified medical expert of the facility where they are held in custody.⁶⁵ The medical officer of the prison where the applicant is detained must state that the health needs of the accused are incapable of being addressed while the accused is I

⁶² Constitutional Appeal No.3 of 2005

⁶³ Janet Mureaba v Uganda Criminal Case No.0136/1994

⁶⁴ Misc Appln No. 284 of 2006

⁶⁵ Section 15(3) of the TIA cap23

custody. Section 74⁶⁶ on the removal of sick prisoners to hospital provides that, “In the case of illness of a prisoner confined in a prison where there is no suitable accommodation for that prisoner, the officer in charge on the advice of the medical officer may make an order for his or her removal to a hospital and in cases of emergency, the removal may be ordered by the officer in charge without the advice of the medical officer. Thus section 15(3) of the TIA cap 23 and section 74 of the Prisons Act should be read together and the sick accused be attended to at an external superior medical facility for medical attention when necessary and returning to the prison whenever necessary. In **Sheikh Mohammed Yunus Kamoga v Uganda**⁶⁷, Hon. Mr. Justice Christopher Mandrama stated that section 75 of the Prisons Act 2006 (now section 74 of the Prisons Act Cap 325) allows prison authorities to make a report that a prisoner is in need of outside medical treatment inclusive of being admitted in Hospital outside the prison walls. In **Tigawalana Bakali**⁶⁸ bail application, court agreed that asthma and hypertension amount to grave illness within s.14A(3) of the bail guidelines. In **Orena John Mackay v Uganda**⁶⁹, the accused having shown that he had heart complications approved by the prisons medical officer, was entitled to bail by court on grounds of grave illness. In **Immaculate Lugolobi v Uganda**⁷⁰, where it was stated that for an illness to qualify as a grave illness, the illness must be certified by a medical officer of the prison, institution or place where the accused is in custody. In **Enos K. Tumusiime v Uganda**⁷¹, where the bail applicant had constant chest pains that needed

⁶⁶ Prisons Act Cap 325

⁶⁷ Court of Appeal Criminal Application No. 77 of 2017

⁶⁸ (Criminal Application 23 of 2003) [2003] UGHCCRD 7(12 August 2003)

⁶⁹ Criminal Miscellaneous Application No.22 of 2022

⁷⁰ H.C. Misc. Appn. No. 30 of 2003

⁷¹ H.C.C.S. No. 136/1999

regular surveillance from their consultant an orthopedic surgeon. Two medical reports were produced from Nairobi and Murchison Bay hospital (prison hospital) where the applicant was detained at the time. The Judge held that the accused had proved exceptional circumstances to entitle them bail since they would not be attended to by their consultant who was in Nairobi thus incapable of adequate medical care in the prison.

The inconsistency in applying section 15(3) was evidenced in **Ali Mwizera v Uganda**⁷², court didn't follow this law while determining the issue of grave illness. The medical report from the prison hospital was silent on whether they could handle the applicant's health condition and court used its discretion to find the illness grave. Yet in **Capt. Wilberforce Serunkuma v Uganda**⁷³ where the accused stated that they were suffering from AIDS and needed constant care which they could not get while in prison. To justify grant of bail, the applicant has to prove to the satisfaction of court that he was incapable of getting adequate treatment while in custody. The intention of the makers of the law to place the institution holding the accused in custody as responsible for clarification that the applicant really needs outside medical attention which the institution cannot handle, was to control applicants from using grave illness as a condition to get bail. Thus, the institution must state that it can't handle the health condition of the accused.

⁷² *supra*

⁷³ [1995] 1 KALR

Age and Infancy of the Accused

Age is a relevant consideration when granting bail. The accused maybe young or elderly, court looks at their vulnerability and special needs. Guideline 4 of the Constitution (Bail guidelines for Courts of Judicature) (Practice) Directions, defines advanced age as above 60 years. In **Twesigye Charles v Uganda**⁷⁴, it was stated that courts have recognized that prison conditions are not favorable to the health of old people, who are in any case presumed to be innocent until proven guilty. In **Niwamanya v Uganda**⁷⁵, court rejected the fact that the accused was of advanced age despite proving that he was 51 years of age at the time. In **Mutyaba Semu v Uganda**⁷⁶ where the accused was 60 years old and suffered from diabetes. He brought an application for bail on the ground that he was of advanced age. Court held that 60 years wasn't advanced age, but coupled with the fact that he was diabetic, a disease that required good diet that couldn't be granted by the prison, he would be granted bail.

Certificate of No Objection

A Certificate of no objection is a formal document issued by the Director of Public Prosecution proving that they are okay with the court granting bail to the accused. It signals to the court that the prosecution does not believe the accused's release would jeopardize the administration of justice, public safety or the integrity of the trial. While the certificate of no objection is a significant factor, it does not guarantee bail to the accused. The High Court still retains the discretion and will consider other factors

⁷⁴ Criminal Application no.8 of 2011

⁷⁵ (Criminal Application No.87 of 2019) [2020] UGCA 2025 (3 March 2020).

⁷⁶ [1997] 5 KALR 143

such as likelihood to abscond trial, seriousness of the offense and the sufficiency of sureties.

2.5.2.4 Section 15(4) on the likelihood of an accused to abscond

On considering whether or not the accused is likely to abscond, the court may take into account factors like whether the accused has a fixed place of abode within the jurisdiction of court, whether the accused has sound securities within the jurisdiction of court, whether the accused has on previous occasions when released on bail failed to comply with the court conditions and whether there are other charges pending against the accused. In **Obey & 2 Ors v Uganda**⁷⁷, Justice Margret Tibulya noted that the likelihood of the accused absconding bail is based on an interplay-of several factors such as gravity of the offense, likely resultant penalty of the crime, if the accused has a known address in the jurisdiction of court and quality of sureties advanced before court as per section 15(4) of the TIA. In **Okello Augustine v Uganda**⁷⁸, court emphasized that once the likelihood to abscond and interference with the investigations has been established, the courts should be hesitant to grant bail.

A Fixed Place of Abode in the Jurisdiction of Court

The applicant must prove to court that they have a place of abode in the jurisdiction of the court intended to award the bail. Having a fixed place of abode is a pointer to the fact whether the applicant is likely to abscond once granted bail.⁷⁹ In **Mugenyi Steven v Uganda**⁸⁰, court held on the issue of place of abode that it was the onus of

⁷⁷ Uganda (Miscellaneous Application No's 045,046 and 047/2015) [2016]

⁷⁸ CR-CM 006 of 2012

⁷⁹ Section 15(4) TIA cap 25

⁸⁰ Misc Appln No. 0065 of 2004

the applicant to satisfy court that they have a permanent place of abode in a particular village, sub-county and district. This is to enable the court exercise jurisdiction over the applicant while on bail being able to trace his whereabouts whenever it is necessary. In **Ahamad Ssebuwufu v Uganda**⁸¹, the accused advanced an LC1 letter of introduction, a copy of the certificate of title of his land and sound sureties, was substantial proof that the accused had a permanent place of abode not likely to skip trial and hence entitled to bail. In this case, the place of abode in the jurisdiction of court played a crucial role in the grant for bail. Also, in the case of **Sudhir Ruparelia v Uganda**⁸² whereby the accused's possession of land and home in the jurisdiction of court was a strong factor in granting the accused bail.

However, the intention of the makers of the law was that the fixed place of abode is a place owned by the accused, they reside there and, when needed they can be traced there. The issue is, the law simply says fixed place of abode. It also means place of rent. So long as the Local Council 1 letter proves you live there. An accused has no attachment to a place where they only live and pay rent. However long they have stayed there, they can relocate anytime. Thus, the law should be changed to mean place owned by the accused and should be included onto their recognizance so as in case they abscond, it's taken over by the court.

⁸¹ (HCT-00-ICT-CM-0021-2019) [2020] UGHICID 1 (8 January 2020)

⁸² [1992-1993] HCB 52

A suitable surety in the jurisdiction of Court determining the bail application

The need for sound sureties is also an important condition court shall follow when determining whether an accused is likely to abscond trial. A surety is that person who takes on the legal responsibility of ensuring that the accused appears in court at the appointed time. This is a person who guarantees to court that upon the grant of bail to an accused, the accused will return to court every time he or she is required to attend his or her trial. In **Mugera John v Uganda**⁸³, court stated that a surety should possess a certain amount of authority or influence over the bail applicant. In **Kawanguzi Nsereko David V Uganda**⁸⁴, court was of the view that the role of a surety goes beyond the ability to forfeit the bond, bail is not designed as an income generating avenue for courts to which bail applications are made. What is pertinent about sureties is that there must be indication that they have been advised of their roles as sureties, they identified themselves properly and have shown and proved their authoritative relationships in respect to the applicants showing that they are able to exercise their authority and command appearance of the applicant in the court when needed. **Justice Stephen Mubiru in Abindi & Anor v Uganda**⁸⁵ stated that, “An applicant should not be incarcerated if he, has sound sureties capable of guaranteeing that he will comply with the conditions of his or her bail and is willing to abide by all other conditions set by the court.” In the case of **R v Kifampa**⁸⁶, the High Court of Uganda held that the accused’s failure to provide sureties was sufficient grounds for denying bail.

⁸³ Criminal Misc Application (ICD) No. 0021/2025

⁸⁴ Misc Appln No. 426 of 2023

⁸⁵ (Miscellaneous Criminal Application No.20 of 2016) [2017] UGHCCRD 49(4pril 2017)

⁸⁶ [1964] EA 432

The provision for a **suitable surety** in a bail application in the High Court of Uganda ensures that the applicant will not abscond from trial which is the main factor in the grant of bail. However, the High Court at times sets very stringent conditions for sureties due to the discretion they possess in determining bail applications. Even when the surety meets the provided legal conditions as stated, court can refuse them on grounds of suitability or gravity of the offence. This can be seen in the case of **Tumusiime David v Uganda**⁸⁷, where Hon. Justice Ssekana held that he was uncomfortable with cousins even if they had fixed places of abode. That sureties must be credible, independent and financially stable. Their role is not merely ceremonial but requires a proven ability to supervise the accused effectively, ensure adherence to bail conditions and bear financial liability if the accused absconds.

Pending Charges against the accused

In case the accused is facing pending charges in different cases, the court will take into account the weight of the charges when deciding on a bail application. Thus, although sections 15(1)(a) and section 15(3) of the TIA necessitate the accused to prove the exceptional circumstances in order to be granted bail, the existence of pending court charges influences the courts position of granting the accused bail. If the applicant is a habitual criminal with previous convictions, this would suggest that the applicant is likely to commit more offence when released and therefore bail maybe refused for this reason. In **Hon. Allan Ssewanyana Aloysius and Hon. Ssegirinya Muhammad v**

⁸⁷ Criminal Application No.29 of 2019

Uganda⁸⁸, court denied the bail application on grounds that the applicants had new charges of murder against them in addition to the charges they had earlier.

Even if it is no longer mandatory to prove the existence of exceptional circumstances in determining a bail application in the High Court of Uganda, an accused who relies on an exceptional circumstance and able to satisfactorily prove it, stands a higher chance of being granted bail in the High Court of Uganda. Therefore, there is need to widen the scope of exceptional circumstances to cater for the likes of breastfeeding women who have been charged or convicted, people with grave or very serious disability, pregnant women and especially sole care takers of families who have been convicted. More clarity should be emphasized on what a fixed place of abode means. It should be ownership of the property or place of residence because with only residence, the accused can relocate to a new place any time. There is no concrete attachment of the accused to the fixed place of abode. The Local Council 1 letter is simply to prove that they actually know the applicant and that he or she lives in that area. The suitability of sureties should strictly be on whether the surety has that much control over the accused that they can command they can command the accused to attend their trial when need be.

2.6 The impact of the Constitution (Bail Guidelines for Courts of Judicature)

(Practice) Directions 2022

These are guidelines to be followed by all courts when granting or denying bail. They were introduced to standardize and improve bail procedures in Ugandan courts

⁸⁸ Misc Criminal Application No. 018 of 2021

including the High Court. While they represent a significant step toward uniformity and constitutional compliance, several strengths and challenges affect their overall effectiveness.

Guideline 5 provides for the need for the High Court to consider the presumption of innocence of the accused when determining their bail application. This is in conformity with Article 28(3)(a) of the 1995 Uganda Constitution (as amended). Guideline 4 defines a suitable surety as that person who undertakes to ensure that the applicant will appear in court and abide by the bail conditions and furnishes security which may be forfeited to the state if the applicant fails to appear in court. Part III provides for the procedure and considerations for bail application and mandatory bail for offenses only triable by the High Court is provided for under guideline 10.

Guideline 13 provides for the exceptional circumstances that the High Court will follow when determining bail applications and some of them are gravity of the offence, antecedents of the applicant, possibility of a substantial delay of the trial, likelihood to abscond trial, stage of proceedings, likelihood of the applicant to commit an offence while on bail, the likelihood of the applicant to interfere with the witnesses and the safety of the applicant, community and the applicant etc. In **Bongomin Richard Akal v Uganda**⁸⁹, Court stated that, where an applicant does not rely on exceptional circumstances, the burden is upon the applicant to satisfy the court by putting forth before court a set of facts beyond the ordinary considerations for bail, upon which the court can act in its discretion to admit the bail application.

⁸⁹ Misc Appln No. 0037 of 2008

It is well known that an accused on remand is most likely to abscond bail if the offense charged is so grave and carries a hard sentence. The accused will want to escape the sentence which is always either death or imprisonment for life. In **John Muhanguzi Kashaka v Uganda**⁹⁰, court emphasized that with all factors to a bail applicant's credit, including being a first-time offender, being of advanced age, having a fixed place of abode, recede to the background when weighed against the seriousness of the offense. In **Makokha Samuel & 35 others v Uganda**⁹¹ where on the issue of gravity of the offence vis-à-vis a bail application, it was held that despite the gravity of the allegations against the applicants, court must determine whether sufficient evidence is presented to indicate the guilt or innocence of the applicants. That the fundamental principle for court to release an applicant on bail is the presumption of innocence provided that following it will not compromise the interests of justice. In the case of **Aganyira v Uganda**⁹² the gravity of the offense was considered to deny the accused bail. In this case, the court was convinced the accused had no previous record of absconding bail and no charges were pending against them but the nature and gravity of the offense-robbery made the court deny the accused bail. The gravity of the offense sometimes leads to a delay in commencement of the trial so as to avoid any slight miscarriage of justice because of the nature of sentence it carries. In **Col. (RTD) DR. Kizza Besigye and Anor V Uganda**⁹³, where bail application was denied on grounds that the offence the applicants were charged for treason is amongst the gravest if not the gravest in the

⁹⁰ Supreme Court Misc Appln No. 18 of 2023

⁹¹ Criminal Application No. 24 of 2024

⁹² (Criminal Miscellaneous Application No. 71 of 2013) [2013] UGHCCRD 31(29 August 2013)

⁹³ Supra

country's statute books and was committed in various locations in Uganda and other countries.

The reputation of the accused can hinder their grant of bail and this was explained in the case of **Uganda v Wilberforce Nadiope & 5 others**⁹⁴. Court denied the applicant bail on ground that the applicant was a very prominent person in the society and was likely to use his influence to interfere with the witnesses. In **Opio Simon Peter and another v Uganda**⁹⁵, the applicants filed an application seeking to be released on bail pending their trial, having been indicted on 3 counts of murder. The applicants' case was that, they have a fixed place of abode, they have substantial sureties and do not have any other criminal charges against them pending and the offense with which they were indicted was bailable in the High Court of Uganda. Court denied the applicants bail on grounds that the 1st applicant was still the Chairperson Local Council 1 of the village where the offense was committed and thus most likely to interfere with the witnesses or evidence because of his position in the village.

Guideline 15 of the bail guidelines provides for the suitability of a surety and court will consider the following into account. The age of the surety, work and residence of the surety, character and antecedents of the surety, relationship to the accused and any other factor as court may deem fit. Under sub paragraph 2 of guideline 15, the surety shall provide the following documentary proof. A valid National Identity Card or Refugees status card dating their place of work, business or residence. A valid passport or driving permit, a letter of introduction from the office of the prime minister and a

⁹⁴ H.C. Misc. Criminal Application No. 51-56 of 1969

⁹⁵ Criminal Misc. Application No.0074 of 2023 (Arising from criminal session case No. 0100 of 2023)

letter from the LC1 chairman of the area where they reside. The availability of dependable sureties is so essential, as it reduces the risk of the accused absconding bail and strengthens the courts confidence in releasing the accused. In **Tumusiime David v Uganda**⁹⁶, Hon. Justice Ssekaana held that he was uncomfortable with cousins even if they had fixed places of abode. In case the accused jumps bail and it is proven that the surety knew of the fact that the accused would jump bail and didn't disclose the fact to the court, he will be held liable for denying lawful orders and will be arrested and charged. A surety can also apply to court at any time to be discharged from that responsibility especially when the accused has failed or refused to return to court to attend his or her trial. In **Ocan Isaac v Uganda**⁹⁷, on the issue of sureties, the applicant had submitted his mother and elder brother as his sureties and the prosecution was of the view that these two would not care so much in case the applicant absconded trial. Court held that, when considering the suitability of the surety, court considers the age of the surety, the work and residence address of the surety, character of the surety, relationship to the accused person and any other factor the court may deem fit.⁹⁸.

The Bail guidelines were passed and launched by the Chief Justice on 27th July 2022. They were to enhance procedural clarity and align bail practice with the constitutional mandates seeking to reduce unnecessary pretrial detention in the Uganda High Court. However, some clauses consequently amended the Constitutional Provision on mandatory bail to capital offenders. Previously the Magistrates had jurisdiction to grant mandatory bail to capital offenders before their cases were committed to the High

⁹⁶ supra

⁹⁷ Miscellaneous Application No. 0026 of 2003 (Arising from Criminal Session Case No.23 of 2003)

⁹⁸ Paragraph 15 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions

Court. The coming into force of the bail guidelines limited the jurisdiction to grant mandatory bail for capital offenders to the High Court. This has hindered access to justice for pre-trial detainees. Release of capital offenders on mandatory bail has become challenging because those who manage to apply to the High Court for release on mandatory bail get committed for trial before their bail application files are called by the High Court. Committing the accused to the High Court and actually hearing your case are two different things. There is a likelihood that the accused will remain in custody for more time till the actual date of hearing and even on that day, there is a possibility case will be adjourned for any reason.

The implementation of the guidelines is greatly affected by the broad High Court discretionary powers in determining bail applications. There is a lack of uniformity on the cash bail amounts set by the High Court in similar case facts. This level of inconsistency due to the broad discretionary powers awarded to the court has hindered the effectiveness of the Constitutional (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022.

2.7 The Magistrates Courts Act under section 75(2)

This section bars the Magistrates' court from awarding bail to an accused charged for an offense only triable by the High Court. This classifies offenses making capital offenses more important cases compared to others. Before committal to the High Court, the accused is kept in custody till the office of the Director of Public Prosecution and the Police find evidence that will be used to form a case against the state in the High

Court. In **Hon Godi Akbar v Uganda**⁹⁹, where the accused had been in custody but not committed for trial in the High Court. It was not known when the trial would commence, he didn't know any of the witnesses the prosecution was to line up and testify against him and had a fixed place of abode both in Kampala and Arua. Justice Zehurikize granted bail to the accused. The delays in committing the accused to the High Court for trial simply because a case is only triable by the High Court delays justice.

2.8 Judicature (Criminal Procedure) Application Rules 2 & 4

were introduced by the Constitutional (Bail Guidelines for Courts of Judicature) (practice) Directions, 2022 (Legal Notice 8 of 2022). Rule 2 is on mode of application which is through a written notice of motion supported by an affidavit. Rule 4 deals with listing and hearing by the Registrar and the Judge. In **Byaruhanga & Anor v Uganda** highlighted Judicial discretion under rule 2 where courts grant bail even without proof of exceptional circumstances. And rule 4 enforces mandatory bail for prolonged remands. While these rules provide a robust framework, their full effectiveness depends on addressing systematic challenges in the High Court of Uganda.

2.9 The Judicature Act under section 34

Provides for unlawful detention and confers powers onto the High Court to order anyone holding a detained person unlawfully to release them. Therefore, when an accused is detained for over 60 or 180 days without trial, then such detention is unlawful and it is at this instance that section 34 can be implemented. While section 34 isn't a direct bail

⁹⁹ HC Misc. App. No.20 of 2009

provision, its enforcement of lawful detention aligns with the release of a bail applicant under capital cases whose detention has violated the constitutional periods of remand.

In conclusion, bail application in the High Court of Uganda is governed by a rich legal framework. The effectiveness of the legal framework is largely affected by the broad High Court discretion in determining bail applications, leading to inconsistencies and unequal grant or denial of bail applications. The uncertainties in the law, case in point on the issue of advanced age where in practice some decided cases take 50 and above, while the law says 60 years and above leaving it for the Judicial officers to determine basing on the facts of the bail application at hand, the issue of fixed place of abode is ambiguous in that it doesn't mean permanent ownership yet you can't have permanent renting and Mandatory bail is still subject to court discretion. All these factors are potential subjects to injustice or miscarriage of justice which isn't the intention of the legal framework on bail application in the High Court of Uganda.

CHAPTER THREE

Non-Legal Factors that affect bail application in the High Court of Uganda

3.0 Introduction

Bail decisions made by the High Court of Uganda are influenced by not only the legal standards but also the non-legal factors. These influences significantly impact the accessibility, fairness and consistency of bail decisions. Below is a critical examination of the effect of non-legal factors on bail application in the High Court of Uganda.

3.1 Political Influence and Pressure

Political pressure has from the pre-colonial period played a role in bail applications in the High Court of Uganda. Once the Executive has interest in a given case, the accused's will exercise their right to apply for bail but court will find ways of denying the application. This pressure can influence Judicial officers sometimes resulting in denial of bail for reasons not strictly grounded in law. Public statements by political leaders criticizing bail for capital offenders creates implicit pressure on Judges to deny bail in sensitive cases. Like President Museveni labeled bail for capital offenders as a provocation to the victims meaning capital offenders should not be granted bail. The 2021 cabinet memo, the Attorney General proposed that Article 23(6)(b) of the Constitution be amended to provide that a person accused of committing an offense only triable by the High Court shall not be granted bail until after 180 days or trial commencement or when the DPP discontinues the case.¹⁰⁰ In 2005, the security

¹⁰⁰ <https://MonitorNattional> Tuesday October 12 2021 by Anthony Wesaka & Esther Oluka

personnel (Black Mamba) stormed court premises during Dr. Kiiza Besigye treason trial¹⁰¹ preventing the process of bail application.

Courts have denied bail applications to government critics on grounds of public safety or national security¹⁰² even when all bail conditions have been met. Judges deny bail to avoid backlash with the Executive. Legal experts and practitioners note that bail is sometimes withheld to suppress political opposition or as a tool of political control, rather than for genuine concerns about justice or public safety. Intimidation disrupts bail processes by either delaying or denying bail applications. Therefore, Political influence has systematically undermined bail applications in the High Court despite constitutional protections through executive overreach by proposing reforms and public statements, security forces interfering with judicial processes and politicizing high profile criminal cases before they are decided.

3.2 The social economic status of the accused

The accused's social status plays a significant role in the process of bail application in the High Court of Uganda. Article 23(6) guarantees the accused a right to apply for bail but does not explicitly address the socioeconomic disparities. A case in point, court under the Trial on Indictment Act and Bail Guidelines (2022) require sureties, cash bail, fixed place of abode which conditions are so challenging for the poor to meet. Once impoverished applicants fail to comply with the high cash bail set, the need for a fixed place of abode, they are subject to prolonged detention without trial. In **Kigongo V**

¹⁰¹ Uganda Law Society v Attorney General constitutional petition No.52 of 2017

¹⁰² Besigye & Anor v Uganda Misc Appln No.0113 of 2025 (Arising From Criminal Case Nak-Cr.No. A-0008/2025 At Nakawa Chief Magistrates Court)

Uganda¹⁰³, the court explicitly acknowledged socioeconomic disparities. But sureties for the poor remains a systematic barrier. The Uganda Law Society has criticized excessive bail amounts as limiting access to justice. The wealthy accused has the capacity to hire the very skilled lawyers to navigate bail applications while the poor rely on the overburdened legal aid or self-representation. The Uganda Law Society notes that 70% of remand prisoners lack legal counsel a reason for their prolonged detentions without trial. Rural defendants face challenges like transportation costs to the High Court making accessibility to justice impossible. In 2019 study by Kampala International University found that 60% of bail applicants in rural areas abandon applications due to financial constraints. Keeping people in detention without trial is costly for both family members and the state.

The socioeconomic status of the accused is a very critical issue in bail application in the High Court of Uganda. While the law on bail application is meant to promote equality when determining bail applications, the practical applicability of the law is so different. The stringent conditions set by the court due to the gravity and nature of the offense end up failing bail applications for the economically vulnerable individuals. The high cash bails set, high legal representation costs and suitable sureties are some of the barriers to the impoverished defendants creating disparities in bail grant. Addressing these disparities requires legislative clarity, judicial training and robust legal framework to uphold constitutional rights of all accused persons.

¹⁰³ (2024 UGHCCRD 14)

3.3 Public Opinion and Media Scrutiny

Intense media scrutiny of certain cases sometimes sways public sentiment and the Judicial decisions. Judges may feel pressured to deny bail in certain media scrutinized cases to avoid public backlash or to appear tough on crime. The recent aggravated defilement case of Hajji Mwizera¹⁰⁴ which was all over social media platforms for everyone to say whatever they want. It can be evidenced wife of the accused had already been castigated by the public and deemed someone who was after the husband's property. These public sentiments swayed the court to grant the accused bail yet some of the grounds the applicant based on were still wanting. The accused was a flight risk, he had homes and businesses in Juba South Sudan, the medical report relied on to show he suffered from grave illness did not disclose the fact that the prison hospital could not handle his health condition something so important for an applicant who has relied on grave illness.

The severity of a case at times influences whether bail will be denied or granted. Under this, court sometimes will deny the applicant bail when it deems it that the release of the accused on bail will expose him or her to mob justice by the relatives of the offended.¹⁰⁵ In such a situation, court has denied bail to protect life which is legally right. Their situations where the Judges might prioritize maintaining public confidence in the justice system over individual rights especially in cases involving very violent crimes of corruption. In **Gilbert Balibaaseka Bukenya v Uganda**¹⁰⁶, the accused was

¹⁰⁴ Misc Appln No. 0408 of 2024 (arising from chief magistrate's court of Entebbe at Entebbe criminal case No. AA 27 of 2024)

¹⁰⁵ Bidong Zenone and Ors v Uganda Miscellaneous Criminal Application No.0024 of 2015 (Arising from H.C.Cr.Case No. 0028 of 2012)

¹⁰⁶ *supra*

charged for corruption, misuse of public funds and causing financial loss to the government of Uganda. The media was so interested in this case because the accused was the Vice President of Uganda, the funds mismanaged were meant for CHOGM a high-profile ceremony which if poorly managed dented the image of Uganda as a state and billions of funds had been mismanaged. Questions were raised, whether the Vice President would be implicated, whether the granting the Vice President bail even after satisfying the court considerations would be welcomed by the public to show justice done by the Judiciary. The bail application was accepted with very stringent conditions. A cash bail of UGX 50 million was set on grounds that depending on the amount misused, it was an amount reasonable to be paid by the accused for their temporary release something that would appease the public and media at large.

3.4 Case Backlog

As of 2024 and early 2025, the High Court of Uganda faces a significant case backlog. The High court recorded 81087 pending cases at the end of 2024. The Parliament approved increasing High Court Judges from 83 to 151 in mid-2024 to address the backlog and workload of the High Court. Slow case processing and delays in the criminal justice system often mean that bail applications are not prioritized thus prolonging pretrial detention even when legal grounds for bail exist. Committing an accused to the High Court by the Magistrates court takes time. At that time, the Magistrates court has no jurisdiction to grant the accused bail. listing the application for hearing is another thing that also takes months. This is especially for low profile capital offenders or capital offenders whose cases have not caught the public and media.

3.5 Judicial Subjectivity

The broad discretion exercised by court when interpreting terms like exceptional circumstances or likelihood to abscond, judges may prioritize personal perceptions of an applicant's character over objective evidence. Varying interpretations of advanced age or grave illness led to inconsistent rulings with some courts accepting medical reports from private facilities while others dismiss them.

3.6 Administrative Inefficiencies

The High Court lacks the resources to thoroughly vet sureties, leading to reliance on superficial documentation like local council letters. Poor tracking of prior bail violations allows repeat offenders to exploit gaps in the system.

3.7 Cultural Perceptions

Traditional views linking bail denial to presumed guilt and at the same time linking bail grant to acquittal of charges. This pressurizes judges in determining bail applications.

In conclusion, the non-legal factors have affected bail applications in the High Court in various ways. These influences undermine the constitutional right to bail application leading to selective justice and perpetuating inequality. Addressing these challenges requires not only legal reforms but also broader efforts to insulate judicial processes from external pressures and to promote equity in the administration of Justice.

CHAPTER 4

CONCLUSIONS AND RECOMMENDATIONS ON THE EFFECTIVENESS OF THE LEGAL FRAMEWORK ON BAIL APPLICATION IN THE HIGH COURT OF UGANDA

4.0 Introduction

As discussed in the previous chapters, the effectiveness of the current legal framework on bail application in the High Court of Uganda is undermined by systemic inconsistencies due to the broad discretion given to the court by the laws, resource constraints and legal ambiguities to mention but a few. Below are the key conclusions and recommendations from the research to address the effectiveness of the current legal framework on bail application in the High Court of Uganda.

4.1 Conclusions

From the research, it is a fact that the current legal frame work on bail application in the High Court of Uganda is affected by the broad discretion conferred to the High Court by the legal frame work governing bail application itself. The discretion is provided for in all the bail laws and is unlimited in nature. The Constitution under Article 23(6)(a) does provide the High Court with powers to grant or deny bail at any stage of proceedings of court. Section 14 of the Trial on Indictment Act also provides the High Court with the discretion to grant or deny bail to an accused with or without sureties at any stage of proceedings. Section 75(2) of the Magistrates Courts Act limits the Jurisdiction over bail application for capital offenses to only the High Court of Uganda. This section is in conformity with guideline 10 of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 Legal Notice 8 of 2022. And through

this discretion inconsistencies and unequal grant and denial of bail applications have been witnessed.

The current legal framework on bail application in the High Court of Uganda is ambiguous and uncertain in certain provisions and amends must be made in order to achieve its full effectiveness as intended by the framers of these laws. Case in point, the courts are inconsistent in determining what grave illness is, what qualifies to be a grave illness. There is no consistency in the amounts of cash bail even in similar cases like murder and aggravated defilement to mention but a few. Mandatory bail cannot be practically applied as the law intended it to be. Its subject to court discretion. Fixed place of abode is determined inconsistently. Sometimes its ownership of the place of abode, at times receipts of rent payment prove fixed place of abode. The issue of suitable surety is left to the discretion of court to determine even where the surety satisfies the Guideline provisions for a suitable surety. Last but not the least is the inconsistency in court interpretation whether the accused has a right to bail or has a right to apply for bail. these conclusions have been made by the researcher on the subject effectiveness of the current legal framework on bail application in the High Court of Uganda.

4.2 Recommendations

The researcher recommends the following as discussed below in order for the bail application laws in the High Court of Uganda to attain the intended effectiveness.

4.2.1 Legislative reforms

From the conclusions on the research discussed above, the researcher has proposed certain reforms for the effectiveness of the current legal framework on bail application in the High Court of Uganda.

Article 23(6) (c)¹⁰⁷ on mandatory bail should be amended to actually mean mandatory bail not subject to court discretion. As long as the accused has been kept in custody **without trial** for over 180 days, he or she should be released on bail. this would actually mean bail is a fundamental right which was the initial intention of the makers of the law. By this, the High Court will have to always speed up trials for pre-detainees, the Police and the office of the Director of Public Prosecution must quickly collect evidence to incriminate the accused and put them up for trial before the deadline of 180 days so as not to delay trials due to lack of evidence. The ruling in **Uganda v Col. (Rtd) Dr Kiiza Besigye**¹⁰⁸ that stated that, “**once** the conditions under Article 23(6)(c) are met, the court is stripped of its power to exercise its discretion and hence the accused is entitled to be granted bail.” should be practically enforced by the High Court. This will put an end to politically motivated trials where opposition capital offenders are denied bail on grounds of safety of the society, evidence is still being collected like the 2025 Besigye¹⁰⁹ bail application denial decision which was based on the fact that since the offence was done in more than one city, evidence to incriminate the accused was still being gathered.

¹⁰⁷ 1995 Constitution of Uganda (as amended)

¹⁰⁸ *supra*

¹⁰⁹ *supra*

The Magistrates Courts Act¹¹⁰ should be amended to cater for some capital offence bail application. The High Court is faced with the case backlog issue which is part of the reason for the delay in hearing bail applications and also hinders the award of bail to the accused who has spent more time on remand on grounds that by equating the amount of time the accused has been in custody and the nature of sentence to be awarded for the capital offense, once the accused is awarded bail they are most likely to abscond trial. Thus, if the issue of jurisdiction is opened to the Magistrate Court for some capital cases like corruption cases, the case backlog and listing of bail applications can be heard and justice is not delayed. The Prosecution can always appeal to the High Court if they find the decision of the Magistrate Court was not done on merit.

The 2022 bail Guidelines should have a guideline on the control of the broad discretion given to the High Court when determining bail applications for capital offences. The Guideline should clearly state the guide on how the discretion should be exercised. **Justice Musalu Musene noted that discretion in bail matters must be exercised judiciously without malice, ill will or ulterior motives. The court must consider the constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions which reinforce the general principles for granting bail enshrined in the Constitution.**¹¹¹ Article 23(6) (a) and Section 14 of the Trial on Indictment Act Cap 25 provide court with broad discretion which it has used inconsistently to deny or grant bail applications which has negatively affected the implementation of the bail application legal framework in the High Court of Uganda.

¹¹⁰ Section 75(2)

¹¹¹ *supra*

Section 15 (3) of the Trial on Indictment Act Cap 25 on exceptional circumstances should also be clarified. The wording grave illness needs more clarification and at least examples of grave illnesses should be listed. The fact that a medical report must be made by the institution holding the accused in custody, it should be made mandatory for an accused to be kept in custody in institutions that can cater for the health of the accused especially those that certify that they had the illness before remanded. For those who develop the illness within the place of custody should be first taken to available hospitals to provide medical health facilities. Only that the health condition persists should it then be considered a grave illness. This is meant to provide uniformity amongst the accuseds. The wealthy detainees have come up with health complications so grave that they need outside medication thus easily awarded bail on grounds of grave illness. The prisons department should coordinate with the big hospitals and find them wards where such patients can access medical care at their cost. They can be transported to and from the hospital on schedule.

It should be mandatory for the High Court to be given a medical report about the illness suffered by the accused while in custody and the report should clearly state that the health condition **cannot be handled** by the institution holding the accused in custody. This is meant to control the High Court discretion in determining whether the institution can handle the applicants' health condition using reasonableness. This will also stop the inconsistencies in grant or denial of bail applications on grounds of grave illness as was evidenced in the Mwizera¹¹² bail application where the court stated that the

¹¹² Mwizera Ali v Uganda Misc. Appln No. 0408 of 2024 (Arising from Criminal Case No. AA 27 of 2024)

medical report was silent whether the place of custody could handle the health condition of the applicant or not but used its discretion to grant the bail on grounds of grave illness.

In determining whether the accused if granted bail will abscond trial, the accused having a Fixed place of Abode in the jurisdiction of the court to grant the bail application is so important. What lacks in this is that the fixed place of abode should mean a home owned by the accused not merely a place of residence. A place of residence does not attach any significance to the bail applicant. Staying in the same place and area for many years doesn't mean you can't relocate to a new area. But if it is mandatory that the fixed place of abode is owned by the accused, and also included as part of the security in their bail application, there is much improved security that the accused will not abscond from their trial for fear of losing their homes.

Suitable surety should be that person who understands the duties of a surety (ability to place the accused at trial when needed) and fulfills the bail conditions the availability of dependable sureties is so essential, it reduces the risk of the accused absconding bail and strengthens the courts confidence in releasing the accused. Some of the considerations of a suitable surety that need change are the age and the work place and relationship to the accused. On the issue of age, in this day to date Uganda, your boss can either be older than you or younger than you are. The High Court greatly relies on sureties over 50 years and above. They find them responsible citizens of the country. On the issue of relationship of the surety to the accused, some courts prefer close blood relation sureties. **Hon. Justice Ssekaana held that he was uncomfortable with cousins**

even if they had fixed places of abode.¹¹³ I think what is important is the control the surety commands over the accused. The High Court should endeavor to prove that the surety has command and control enough over the accused to endeavor he attends their trial at the given time. The amount of cash bail deposited as security can be forfeited by the surety and thus justice not attained.

4.2.2 Procedural improvements

Mandatory risk assessment reports to evaluate threats to the public safety, flight risk or witness interference should be introduced. The makers of these risk assessment reports should be chosen from the society and should be people of very high moral ethics just like members of the jury. Applicants should be required to disclose their prior criminal records, bail compliance history and suitable sureties should be required to take oath in court to act as sureties.

4.2.3 Institutional Mechanisms

Private agencies should be given the role to monitor accused's' granted bail and if found in any violation of the set conditions of bail, they should be rearrested. A centralized database to track sureties, repeat offenders and bail violations should be setup to help in determining bail decisions.

4.3 General Conclusion of the Study

In conclusion, the right to bail is not absolute but is a right guaranteed by the High Court through its broad discretion when determining bail applications, depending on certain conditions and considerations such as gravity of the offence, strength of the

¹¹³ supra

evidence, antecedents of the accused, advance age, grave illness and likelihood to abscond trial. Bail is based upon a non derogable right which is the presumption of innocence. The study found that the broad discretion given to the High Court is sometimes abused by court who inconsistently grant or deny bail applications. In addition to the broad discretion, the executive arm of the government has also interfered in bail applications for opposition members who have been granted bail and later rearrested. These have greatly affected the function of the available legal framework on bail application in the High Court of Uganda.

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