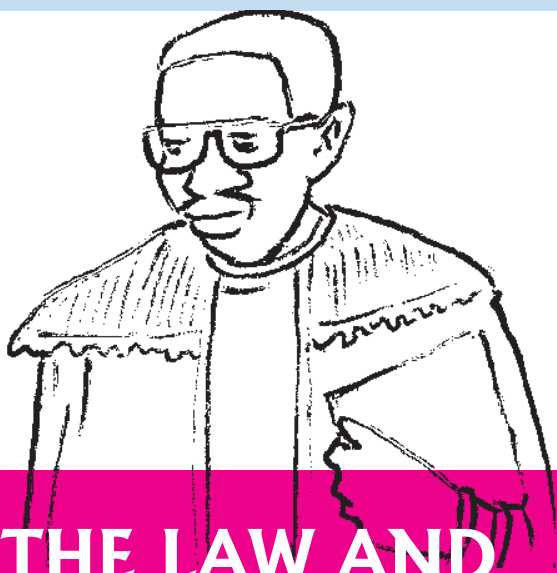




# LEARNING YOUR RIGHTS



## THE LAW AND THE COURTS IN UGANDA

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## FOREWORD

The National effort of creating awareness of our human rights and civic duties requires us to continuously educate ourselves and the general public on those aspects of the law touching the promotion, respect and protection of human rights. These series aim at exactly doing that.

Street Law (Uganda) is fully committed to the promotion and protection of human rights through civic education. That is the rationale behind the production of the materials in the “Learning your Rights Series”. The objectives are in accordance with the organisation’s mission of working for the promotion of the rule of law, democracy and human rights in Uganda. It is a mission shared with the entire family of Street Law organizations in the individual countries in the continents of North America, South America, Europe and other countries in Africa.

We hope in the nearest future to translate these pamphlets into the major Uganda languages so as to reach a vast number of the population who can not read and write the English language.

It is our hope that this effort will have a far reaching impact on the promotion, respect and protection of human rights in Uganda by both the State and non-state actors.

Street Law (U) is grateful to the Open Society Initiative For East Africa who funded this project. Street Law (U) values the partnership with OSIEA.

Solomon Webalearaali  
EXECUTIVE DIRECTOR

## INTRODUCTION

This booklet will be giving you some basic facts about the Court system in Uganda. It is written to help people understand more about the administration of justice in Uganda. We hope it will encourage people to use the Courts to resolve conflicts amongst themselves instead of resorting to other means such as violence in resolving conflicts.

Use of violence tends to aggravate a conflict as well as create more conflicts. There is no winner in the use of violence. A victim of a criminal offence may end up in jail or even being killed because of taking the law in his or her hands. It is strongly advised that people learn to use the law and the Courts in resolving conflicts. Even where it takes long or appears inconvenient to the innocent, it is the best option in a civilized society. The administration of justice as per Article 126 is vested in the Judiciary which is a 3<sup>rd</sup> arm of government. Ofcourse the others being the Cabinet and Legislature. The Judiciary is headed by the Chief Justice.

Below is the hierarchy of Uganda's Courts in the Order of their precedence or importance.

### 1. **The Supreme Court**

The Supreme Court is the highest Court in hierarchy in as far as the administration of justice is concerned. It is the highest appellate Court. It does not have original jurisdiction. Original jurisdiction means the power to hear a suit or Criminal case in its original form i.e. it is not a Court of first instance.

#### **Example**

Okello buys Mukasa's car at shs.50, 000,000. He pays shs. 40,000,000 and promises to pay the balance within six months from the date of sale. One year later, Okello has not paid Mukasa his balance of shs. 10,000,000. Mukasa decides to take Okello to Court. Mukasa is not allowed to file the case in the Supreme

Court as a Court of first instance. When Mukasa takes his case to the Supreme Court, Court officials will advise him to take it to lower Courts in other words it will be rejected. The Court has no original jurisdiction. The Court only hears appeals from the Court of appeal. The Court of Appeal is immediately below the Supreme Court in the Order of importance.

However, there is one exception, that is the Presidential election petitions. Where a party disputes the results of a presidential election as proclaimed by the Uganda Electoral Commission, the party may file a suit in the Supreme Court challenging the results. All other suits must reach the Supreme Court by way of appeal in accordance with the ladder below;

**Supreme Court**  
**Court of Appeal**  
**High Court**  
**Chief Magistrate's Court**  
**Magistrates Court Grade I**  
**Executive Committee Courts.**

### **Composition**

The Supreme Court consists of seven judges. The judges are the Chief Justice who is also its head and six other judges of the Supreme Court otherwise called Justices of the Supreme Court.

### **JURISDICTION**

In its appellate jurisdiction, the Supreme Court hears civil and criminal appeals from the Court of Appeal. When hearing Presidential Election petitions; or where it is entertaining an appeal from a Constitutional Petition, the Supreme Court comprises of a full bench, that is all the seven judges participate in the hearing of the petition. In all other cases the number is five. It is the last Court of Appeal. Their decision is final as far as our legal system is concerned.

## COURT OF APPEAL

The Court next in hierarchy to the Supreme Court is the Court of Appeal. The Court of Appeal like the Supreme Court does not have original jurisdiction. It only hears appeals from the High Court. This means that when a party is not satisfied with a decision of the High Court, he or she may appeal to the Court of Appeal.

There is one exception to its appellate jurisdiction. The exception is in matters to do with the interpretation of the Constitution. That is when it sits as a Constitutional Court. More will be said about the Court of appeal as a Constitutional Court later. In its appellate jurisdiction, the Court of Appeal hears both civil and criminal appeals from the High Court. When a person charged with a criminal offence in the High Court gets a conviction and is sentenced to a term of imprisonment or is fined or is both imprisoned and fined in some cases, the person is allowed to make an appeal to the Court of Appeal against that decision. In the appeal, the person is allowed to appeal against either the conviction or sentence or both conviction and the sentence.



The Court of Appeal is headed by the Deputy Chief Justice and Seven Justices of Appeal. In all matters the quorum is three however where it is sitting as the Constitutional Court, the quorum is five.

**Note:** Quorum means the number required by law of Judicial Officers to hear a particular case.

### **Example**

Musoke is in the High Court charged with theft of a car. He is tried and convicted (found guilty) by the High Court. Musoke believes he was unjustly convicted by the High Court because he did not steal the car. The car was lent to him by the owner, Bido. However when Bido learnt that Mukasa had used the car to take his girl friend to Nairobi for a weekend, he became jealousy and reported to police that his car was stolen. It is on that basis that Mukasa was convicted and sentenced to seven years imprisonment. The High Court did not believe his evidence that he had lawfully borrowed the car from Bido.

Since Mukasa believes he was wrongly convicted, he may appeal against the conviction. His appeal will be heard by the Court of Appeal. In this case Mukasa must appeal within 14 days from the date of his conviction.

However there are also cases where a convict may only appeal against the sentence and not the conviction. Let us assume that Mukasa feels that he was rightly convicted as he knows in his heart that he had stolen Bido's car. He believes that the high Court was justified in finding him guilty. However, Mukasa feels that the High Court was very harsh in sentencing him to 7 years in jail. He feels that he should have been sentenced to not more than three years. In this case, Mukasa may only appeal against the sentence but not the conviction. In his appeal he must show reasons why he is asking the Court to find the 7 years harsh and pray for reduction of the sentence.

## CIVIL APPEALS

The procedures in civil appeals from the High Court to the Court of Appeal is quite similar to Criminal Appeal apart from a few aspects. An example is where there is a land dispute between Apio and Akello. Apio takes Akello to Court for trespassing on her land. In the High Court Akello convinces the judge that the land does not belong to Apio but to her and Court gives judgment in her favour. Should Apio feel that, the high Court was wrong in its decision, she may appeal to the Court of Appeal within 14 days from the date of Judgment.

The appeal process involves getting the written judgement and the Court proceedings from the High Court and filing them in the Court of appeal together with the grounds of appeal. Grounds of appeal means the reasons the person gives to the Court of Appeal for his or her dissatisfaction with the judgment of the lower Court, in this case the High Court. Court proceedings means the notes made by the judge as adduced by all the parties during the hearing of the case. It is always important to begin the appeal process within the 14 days because Court may refuse to hear an appeal filed after the stipulated time for being time barred.

### **The Court of Appeal as a Constitutional Court**

Some times the Court of Appeal works as a Constitutional Court. Article 137 of the Constitution of the Republic of Uganda gives power or jurisdiction to the Court of Appeal to constitute itself into a Constitutional Court on matters to do with interpretation of the Constitution. Interpretation of the Constitution means giving clear meaning to the provision of the Constitution where a dispute arises among different parties.

An example is where parties disagree on the meaning of the right to life. Article 22 of the Constitution provides that no person shall be deprived of life

intentionally except in execution of a Court sentence passed after a fair trial by a Court of competent jurisdiction in respect of a criminal offence under the Laws of Uganda. In the case of **Susan Kigula and Ors Vs Attorney General**. Some people who had been sentenced to death challenged the provision arguing that the death sentence was inhuman and cruel contrary to Article 24 of the Constitution which states that no person shall be subjected to any form of torture, cruel and inhuman treatment or punishment that as such the death penalty is unconstitutional. While the government of Uganda felt that the death sentence was not unconstitutional.

The different interpretations therefore called for an independent body to give a clear meaning with regard to the death sentence. The body charged with that responsibility in our laws is the Court of Appeal which sits as a Constitutional Court when hearing matters to do with interpretation of the constitution. That is where the death sentence inmates took their case.

After hearing the case, the Constitutional Court held that the death sentence was constitutional and that it did not violate any human rights. However the Court ruled that where the death sentence inmates were not hanged within three years from the date of passing the sentence, thereafter the sentence shall be commuted into a life sentence. The reasons for this were that it was cruel, inhuman and degrading to keep prisoners in permanent suspense without certainty as to whether they would be hanged or not. Since then it has become law that if the death sentence is not effected within three years from date of sentence then it is reduced to life sentence.

Another important case decided by the Constitutional Court was the case of **Muwanga Kivumbi versus the Attorney General, Constitutional Petition No. 9 of 2005**. The case touched on the right of Ugandans to assemble. Section 32(2) of the Police Act stated that “if it comes to the knowledge of the Inspector General of Police that any group of persons intended to convene any assembly or form any procession at any Public place, and the Inspector General has reasonable grounds for believing that the assembly or procession is likely to cause a breach of peace, The Inspector General might by notice in writing to the



person responsible for convening the assembly or forming the procession.” Stop that assembly or procession.

On a number of occasions, the police with the support of the President and Cabinet used the above provision to violate the rights of Ugandans to freely assemble or organize any protest. The prohibition was and continues to be applied to prevent people from discussing and protesting against unpopular government policies.

Unable to stand the violation of his rights to freely assemble, Muwanga Kivumbi sued the Attorney General in the Constitutional Court. Among others the Constitutional Court stated that “the Constitution of Uganda presupposes the existence of universal and democratic values and principles, to which every democratic society adheres. It also reaffirmed the fact that Uganda is a democratic state committed to adhere to those principles and values”

Against the above background the Constitutional Court declared section 32(2) of the Police Act as contravening the Constitution and hence null and void.

Therefore though the police and government continue demanding that the police be informed before any procession or assembly can take place, the demand is illegal and unconstitutional. The demand violates the principles of the rule of law and democracy.

## **THE HIGH COURT**

The High Court is also a very important Court in the judicial hierarchy of Courts. It is the third most important Court in Uganda. The High Court is headed by the Principle Judge and quorum is a single Judge.

Unlike the Supreme and Court of appeal, the High Court has both original and appellate jurisdiction. This means that in both criminal and civil cases, the case may start in the High Court or may go to the High Court as an appeal from the Chief Magistrates’ Courts’ decisions.

Apart from appeals coming from decisions of Chief Magistrates Courts only

grave criminal cases start in the High Court. Such cases include murder, treason, rape, kidnap, corruption, aggravated defilement and many others. The less criminal offences such as theft, house breaking, simple defilement and arson etc. are tried in the Magistrates' Courts although they may end up in the High Court on appeal.

In civil matters, the Court has jurisdiction in cases whose subject matter is over fifty million shillings.

Illustration:

*Tom and Bob have a dispute over a piece of land valued at thirty million shillings. Tom claims that he inherited it from his father Doch. On the other hand Bob claims that he bought the land in dispute from Doch before he died and lost the written agreement. Should one of the parties decide to go to Court, the case must be filed in a Magistrate Court because the value of the subject matter is below Ug.Shs.50,000,000.=.*

*On the other hand, if the value of the piece of land is fifty million shillings and above, then it must be filed in the High Court.*

## **MAGISTRATES COURT**

Magistrates Courts are established under S.3 the Magistrates Courts Act. They are presided over by different grades of Magistrates. These include;

1. The Chief Magistrate
2. Magistrate Grade I
3. Magistrate Grade II

The Chief Magistrates have both original and appellate jurisdiction and quorum is a single Magistrate. E.g. a Chief Magistrate may hear an appeal from a

decision of a Grade II Magistrate. However, appeals against decisions of the Chief Magistrate and Grade I Magistrates are made to the High Court although the Chief Magistrate is the administrative Supervisor of a Grade I Magistrate. Besides hearing Civil or Criminal cases, Chief Magistrates also carry out administrative functions. Among the administrative functions is the exercise of supervisory powers over Grade I and II Magistrates within his area of jurisdiction. The Chief Magistrate may also act as a District Registrar in cases of a vacuum . Therefore where a litigant feels that his case is not being properly handled by a Grade I or Grade II Magistrate, the litigant does not have to wait until the case is over so that he/she can appeal but can complain to the Chief Magistrate as the Supervisor of the Grade I or Grade II Magistrate. On receiving the complaint, the Chief Magistrate may take such administrative action he/she deems fit including the removing the case file from the impugned Magistrate, suspending the hearing and allocating it to another Magistrate or to himself or herself. However, where the impugned Magistrate has made a final decision, the Chief Magistrate can only call for the file, peruse, make his recommendations or observations and send to the High Court which may revise that decision of the Grade I or Grade II Magistrate. However if the complaint relates to a Chief Magistrate a litigant may apply to the High Court for revision or may complain to the Judicial Service Commission. Infact the last option is available as an option in respect of complaints against Grade I or II Magistrates.

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