OBJECTION MY LORD

LEGAL PRACTICE DEMYSTIFIED

FIRST EDITION

ISAAC CHRISTOPHER LUBOGO

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"Legal Practice Demystified"

CIVIL LITIGATION

OBJECTION MY LORD: LEGAL PRACTICE DEMYSTIFIED

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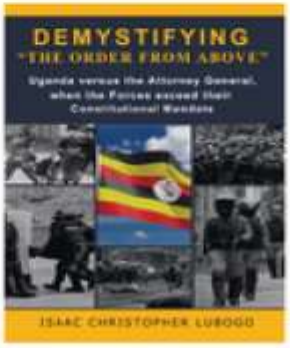
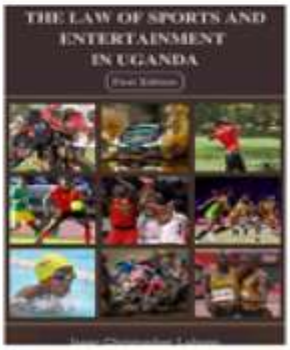
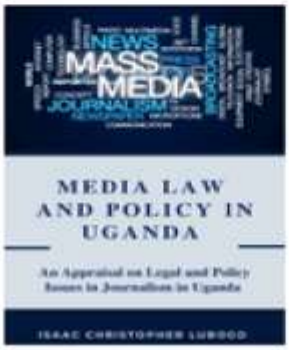
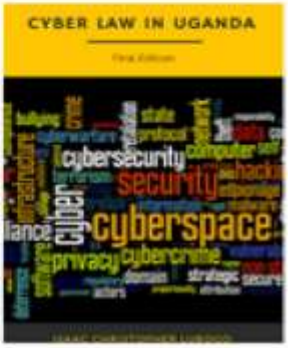
ISAAC CHRISTOPHER LUBOGO'S WORKS

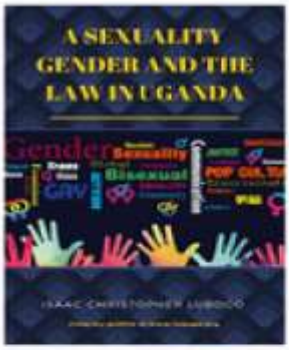


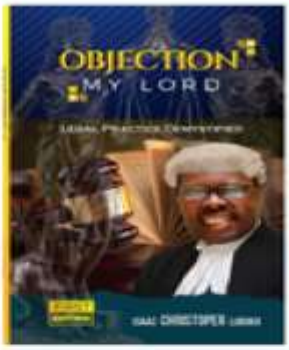



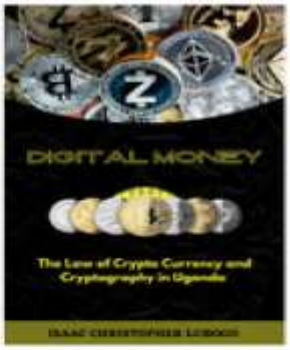


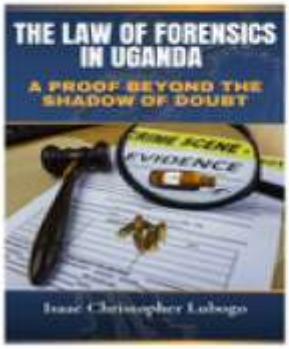


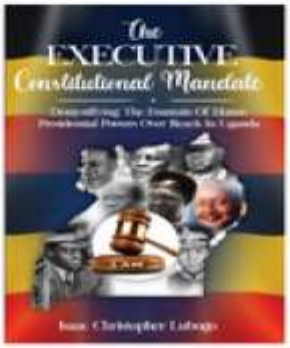


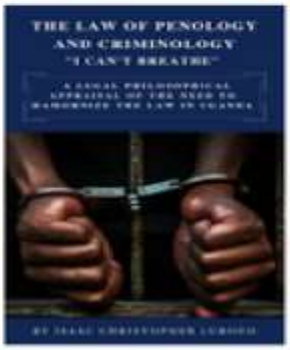


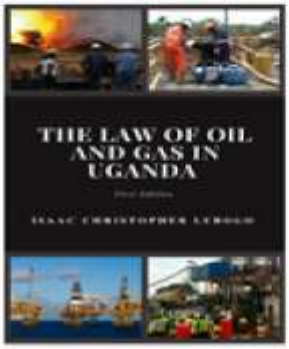


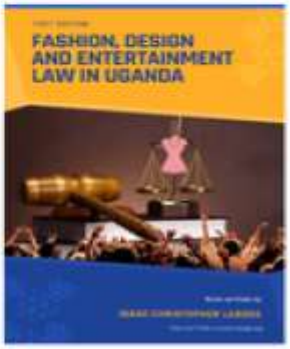


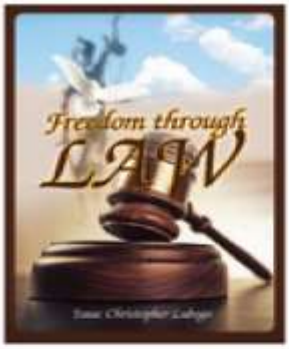


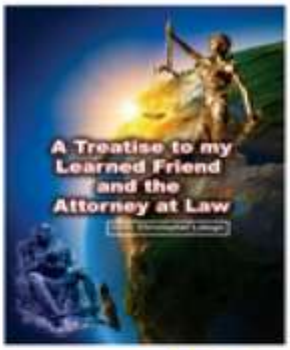


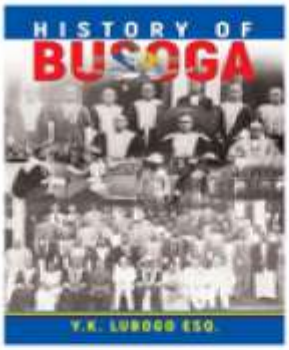


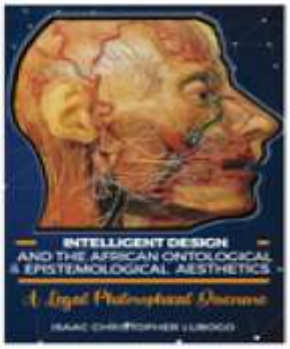


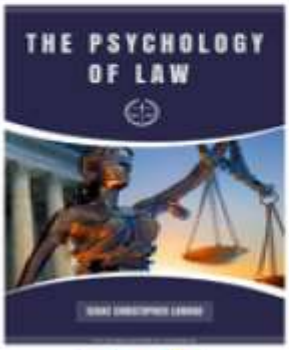


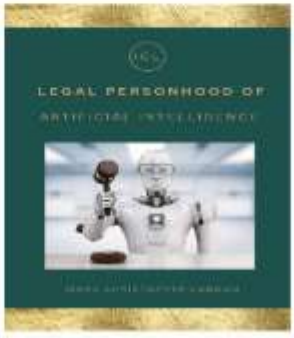


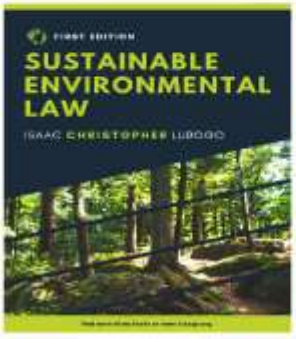


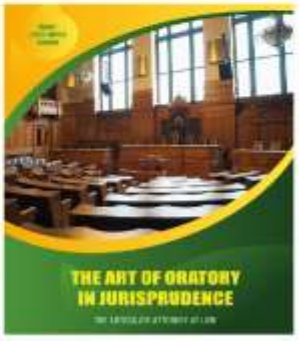












Find all my works, bio and books at www.lubogo.org

DEDICATION

To the Lord Who Breathes Life and Spirit on Me ... Be My Guide Oh Lord of The Entire Universe.

Obey God's law first before considering the laws of man.

ACKNOWLEDGEMENT

Great thanks to Doya, whose materials have inspired me to abridge this tome into a formidable book. I offer distinctive recognition and thanks to my team of researchers whose tireless effort in gathering and adding up material has contributed to this great manuscript. Blessings upon you.

Contents

PRETRIAL PROCEEDINGS

INTERVIEWING OF POTENTIAL CLIENTS

Having received a brief of the client's case, and identified legal issues. You should develop a Checklist to enable you pick necessary legal information you would need to advise the client and also in case of court action, sufficient information to support the action and also the mode of Commencement.

In developing one you can be guided by the Substantive legislation on the matter, case law and even the CPR for example

CHECK LIST

No Standard template

Make sure it covers the details of the workshop question

There and general things in the personal details

0.7. r .1 is also a guiding factor

ISAAC CHRISTOPHER LUBOGO

FORMALIZING INSTRUCTIONS

The formalization of instructions is the reducing agreement stipulating that the named client has issued the advocate with instructions in a given matter and the forms of remuneration agreed upon by the client and the advocate in the agreement. Sometimes it is referred to as a letter of engagement. Regulation 2(1) of the Advocates (professional conduct) Regulations bars an Advocate from acting for any person unless he/she has received instructions from the said person. In the case of ***Okodoi George & Anor v. Okello Opaire, HMCA NO. 0143 of 2016***, court held that the onus is on the Advocate to take steps to make it known to all. The SC in ***Kabale Housing estates Tenants Association v Kabale Mem L.C CA.15 of 2013***

INTERVENTION AS COUNSEL IN AN EXISTING SUIT.

Regulation 2(1) of the advocates (professional conduct) regulations provides that no advocate shall act for any person unless he or she has received instruction from that person or his or her duty authorized agent.

Justice Kawesa in the case of ***Okodoi George and anor v okello opaire sam, hct-04-cv-ma-0143 of 2016*** held that the practical meaning of the aforementioned provision is that the onus is on the advocate so instructed to take steps to make it known to all concerned that he/she has been duty instructed. The prudent advocate, in practice takes out a notice of instruction informing the court and the opposite counsel of such instructions. The court further held that where, there is a change in instructions, again the prudent advocate files a "notice of change of advocates." all this is aimed at avoiding a scenario where the advocates instructions end up being challenged.

PROCEDURE.

1) Inquire from advocate why client wants to change advocate and for any other relevant information.

2) Draft an engagement letter.

3) Draft and file a notice of change advocate in court and serve it on the former advocate.

4) Draft a notice of instructions.

OBJECTION MY LORD

THE REPUBLIC OF UGANDA.

IN THE HIGH COURT OF UGANDA AT MBARARA

CIVIL SUIT NO. 233 Of 2022

PERFECT MUTORAWE ----------PLANTIFF

VERSUS

KAKYE ELIFAZ ----------DEFENDANT

THE REGISTRAR MBARARA

HIGH COURT CIRCUIT

Your worship,

NOTICE OF CHANGE OF ADVOCATE

Take notice that M/S Sui Generis and co advocates, 1st Floor Bukandula Towers PLOT 36 KAMPALA ROAD, P.O BOX 125 KAMPALA has been duly instructed by the defendant in the above civil suit to take over the conduct and defense of the same to its logical conclusion behalf of the defendant.

All correspondences and or service of court process on the defendant in regard to the above matter should be effected on us at the above address.

SIGN To be served on;

KABUNGO JONATHAN

1) Former advocates

2) Plaintiff's advocates

PARTIES TO A SUIT

Order 1 of the Civil Procedure Rules SI 71-1 (hereinafter referred to as the CPR) provides generally for parties to suits. Order 1 rule 1of the CPR SI 71-1 provides that all persons may be joined in one suit as plaintiffs in whom any right to right to relief in respect of or arising out of the same transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if those persons brought separate suits, any common question of law or fact would arise.

In the same vein, Order 1 rule 3 of the CPR SI 71-1 provides that all persons may be joined in one suit as defendants against whom any right to right to relief in respect of or arising out of the same transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against those persons, any common question of law or fact would arise.

This part of the study, with due respect to the above, in ***strict sense*** tends to show how parties like minors, numerous persons, companies, clubs, ***inter alia*** deal with suits(thus sue or be sued), with particular regard to pleadings. The discussion below, therefore, is an attempt to look at the different parties as enunciated below.

SUITS BY OR AGAINST CORPORATIONS.

This is provided for in Order 29 of the CPR. Rule 1 provides that in a suit by or against a corporation, any pleading may be signed on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Forum

The forum is the High Court, since the CPR applies to the High Court by virtue of section 1 of the Civil Procedure Act.

Procedure

This depend on the facts of each case; it is thus not imperative to limit oneself to a given procedure; however, without prejudice to the foregoing, it can be by ordinary plaint, under Order 4, Specially Endorsed Plaint in summary procedure under Order 36, Miscellaneous applications and Miscellaneous Cause under various orders, or even originating summons, where the company falls within the ambit of **Order 37** of the *Civil Procedure Rules.*

Documents

- Can include any of the following:
- Plaint,
- Written statement of Defense.
- Specially endorsed plaint accompanied by an affidavit
- Notice of Motion supported by affidavit,
- Chamber summons supported by affidavit,
- Originating Summons.

SUITS BY OR AGAINST FIRMS OR PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN.

This is provided for in Order 30 of the CPR. Rule 1 provides that any two or more persons claiming or being liable as partners and carrying on business in Uganda may sue or be sued in the name of the firm, if any of which those persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in the firm, to be furnished and verified in such manner as the court may direct. It is a cardinal rule law that where the suit is instituted by partners in the name of the firm, the plaintiffs or their advocates shall, on demand in writing by or on behalf of any defendant, immediately declare in writing the names and places of the residence of all persons constituting the firm on whose behalf the suit is instituted.[1]

[1] Order 30 r2(1) CPR

Failure to comply with this provision may upon application result into a stay of the proceedings on such terms as court deems fit.[2] This application is by summons in chambers under O. 30 r11.

It must be noted that the default mode of instituting the pleadings is by ordinary plaint under Order 4 Rule 1. if the suit being brought is for dissolution of the partnership (if it is still subsisting), or for the purpose of taking the accounts and winding up of the partnership, the then the suit is brought by way of originating summons under O37 r5 of the CPR. For forum, procedure and documents, refer to corporations above.

SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

This is provided for in Order 31 of the CPR. Rule 1 provides that in all suits concerning property vested in trustees, executors or administrators, where the contention if between the persons beneficially interested in the property and a third person, the trustee executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit; but the court may if it thinks fit, order them or any of them to be made parties to the suit.

Where an individual wish to apply to court to add any other persons, not being trustees, executors or administrators; he or she may apply by chamber summons on the strength of order 31r4; the chamber summons is supported by an affidavit; wherein the applicant adduces facts as to why the individuals he wishes to be made parties should be added as parties to the suit. It should be noted further that trustees, executors or administrators, or any other person claiming relief sought as a creditor, devisee, legatee, heir or legal representative may take out originating summons to determine questions dealing with rights or interests of the person claiming to be a creditor, devisee, legatee, heir, ascertainment of any class of creditors, devisees, legatees, heirs, ***inter alia***[3]**.** Thus, this would mean institution of the suit by way of originating summons instead of the normal way by use of plaint. For forum, procedure and documents, refers to corporations above.

SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND.

This is provided for in Order 32 of the CPR. Rule 1(1) provides that every suit by a minor shall be instituted in his or her name by a person who in the suit shall be called the next friend of the minor. This is qualified by sub rule (2) of Rule 1 if the person suing as next friend of the infant, is an advocate. Thus, before the name of any

[2] Order 30 r2(2) CPR

[3] Order 37 r1

such person is used as next friend of any infant, where the suit is instituted by an advocate, that person shall sign a written authority to the advocate for that purpose, and the authority shall be represented together with the plaint and shall be filed on record.

It must be noted that the plaint will be taken off the file if the suit is brought without the next friend, upon application by the defendant. Notice of this application is given to the person, and court shall make an order as it deems fit.

This application is by way of notice of motion under O 32r16; unless it is otherwise provided for.

Where the defendant is a minor, rule 3, sub rule 1 provides that the court on being satisfied of his or her minority, shall appoint a proper person to be guardian ***ad litem*** of the minor. An order for the appointment of a guardian ***ad litem*** may be obtained upon application in the name of the and on behalf of the minor or by the Plaintiff under order 32 r3(2) and r (16). Capability to act as next friend or guardian is conversed in order 32r 4(1); thus, one should be of sound mind and should have attained majority age.

In relation to persons of unsound mind, rule 15 of Order 32 provides rules 1-14 of the same order will apply to persons of unsound mind.

Forum

The forum is the High Court, since the CPR applies to the High Court by virtue of section 1 of the Civil Procedure Act. It is better to use the High Court because it has unlimited original jurisdiction in all matters and such appellate and other jurisdictions as may be conferred by the constitution 1995.

Procedure

This depend on the facts of each case; and as noted earlier, it is thus not imperative to limit oneself to a given procedure; however, without prejudice to the foregoing, it can be by ordinary plaint, under Order 4, Specially Endorsed Plaint in summary procedure under Order 36, Miscellaneous applications and Miscellaneous Cause under various orders ***inter alia***.

Documents

Can include any of the following:

- Plaint,
- Written statement of Defence
- Specially endorsed plaint accompanied by an affidavit
- Notice of Motion supported by affidavit,
- Chamber summons supported by affidavit,

SUITS BY PAUPERS

This is referred to as suits instituted in ***forma pauperis***. 033 r.1(1) provides that any suit may be instituted by a pauper. Sub rule 2 defines a pauper to mean a person not possessed of sufficient means to enable him or her pay the fee prescribed by law for the plaint in the suit.

Rule 2 provides that every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits, together with a statement that the pauper is unable to pay his or her fees, prescribed in the suit.

Rule 8 provides that where the application is admitted, it shall be deemed the plaint in the suit and the suit shall proceed in all other aspects as a suit in the ordinary manner except that the plaintiff shall not be liable to pay any court fee. It must be noted further that where the pauper succeeds, court shall calculate the amount of court fees which would have been paid by the plaintiff if he was not permitted to sue as a pauper; and the amount shall be recoverable by the court from any party ordered by the decree to pay it, and shall be a first charge on the subject matter of the suit.

Procedure

Application for permission to institute a suit as a pauper by way of motion on notice under order 52 rule 1 of the CPR; and order 33 rule 16.

Major Documents

- Notice of Motion supported by an affidavit.
- Statement that the applicant is a pauper.

Forum

The forum is the High Court, since the CPR applies to the High Court by virtue of section 1 of the Civil Procedure Act. It is better to use the High Court because it has unlimited original jurisdiction in all matters and such appellate and other jurisdictions as may be conferred by the constitution 1995.

REPRESENTATIVE SUITS.

Order 1 rule 8(1) of the CPR provides that where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued, or may defend in such suit, on behalf of or for the benefit of all persons so interested. The cardinal points to note about this provision are that;

1) The persons must be numerous. Numerous is defined in the Oxford Advanced Learner's Dictionary to mean a large number of people or things.

2) Secondly, there must be a common interest in the same suit.

3) One or few selected representatives have to apply to court for leave to be granted for them to institute the representative suit

The applications for leave is by summons in chamber. (0.1, 22) **See Taremwa kamishani Thomas v the A. G. HCMC 38 of 2012**

It is prudent to attain true national IDs of each on the written consent as endorsee.

Amendment requires that you file the application with a consent from the parties to be represented and the intended /proposed plaint.

4) Upon application, the applicant should issue out notice disclosing the nature of the suit as well as the reliefs claimed so that the interested parties can go on record in the fast either to support the claim or to defend against it.

Ibrahim Buwembo, Emmanuel sserunjogi and zubairi muwanika 4 and on behalf of 800 others v UTODA Ltd HCCS no.664 of 2003 court held that notice must be issued by way of public advertisement to all persons so represented unless personal service is possible.

Editorial Note

Representative suits ought not to be confused with suits under order 1 rule 12. Order 1 rule 12(1), provides that where there are more plaintiffs than one, any of them may be instituted by any one or more of them may be authorized by any one of them to appear, plead or act for that other in any proceeding, and in like manner, where of them the suit is already instituted

a) Administrators & executors

These can sue & be sued on behalf or representing the state of the deceased

An administrator cannot commence a suit or defend suit on behalf of the estate of deceased without letters of administration

Finnegan v Cementation co. (1953) 1 QB 68, court held that any proceedings take by an administrator before grant of the letters of admin are a nullity

Where a litigant is suing in a rep capacity **0.7 r 4** requires that he/she pleads that he he/she possess letters of administration.

Where a party dies intestate & administration of his estate is granted an ex parte application may be made to the court or judge to have the administrator joined as a party. (0.24 r 5)

b) Trustees

These can sue or be sued in a representative capacity in respect of the trust property. If they are more than one, they all should be named a trustee under an express instrument or under the law of agency bailment or trusts by a statute. (Public trustees Act Cap.16, trustees Act cap 164)

c) Unincorporated Associations.

d) Clubs

A representative action may be taken by or against the member of an unincorporated association. However, it must be shown that the members are numerous involved in the action, that they have a common interest and that they will all represented enjoy some relief by the success of the suit albeit in different portions, the relief must be in a nature beneficial to all members of the class.

e) **Partnerships**

Partnerships may sue or be sued in the firm's name or alternatively in the names of the individual partners. **0.30 r 1** Its good practice where the partner's names are used to add trading as.

Gov't schools: for primary schools it's the management committee & for secondary schools it's the board of governors

Universities: universities S.23 of UOTIA

Procedure

The numerous people attend meetings, where they resolve to have representatives for them in the intended suit and this should be deduced to writing showing the resolution and the appointment of the representatives. All the people must append their signatures.

An application by way of summons in chambers supported by an affidavit; under order 1 rule 22(1). The application is by the representatives.

If the application is granted, then the suit is instituted by way of plaint; by the representatives on behalf of the other numerous persons.

Documents

1. Minutes of meetings resolving to appoint representatives.
2. Chamber summons supported by an affidavit.
3. Plaint, upon grant of leave to institute a representative suit.

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SUITS AGAINST GOVERNMENT

This is governed by the Government Proceedings Act Cap 77 section 10 of the Act provides that all suits where the Government is involved, suits are instituted by or against the Attorney General. This is further qualified by section 2 of the Civil Procedure (Miscellaneous Provisions) Act Cap 72 which provides that no suit shall lie against Government, a local authority or Scheduled corporation until the expiration of 45 days after a written notice has been delivered to or left at the office of the person specified in the first schedule to the Act.

Procedure

Write a statutory notice of intention to sue (of 45 days) to the Attorney General.

Institute the suit by plaint or otherwise.

Basic Documents

- Statutory notice of intention to sue
- Plaint (if it is the mode envisaged by the Plaintiff)

Forum

The forum is the High Court, since the CPR applies to the High Court by virtue of section 1 of the Civil Procedure Act. It is better to use the High Court because it has unlimited original jurisdiction in all matters and such appellate and other jurisdictions as may be conferred by the constitution 1995.

LOCAL GOVERNMENT

According 2 s.6 of the local government Act, these are body corporates with perpetual succession & can sue or be sued in their capacity notice is duly delivered & tendered to the dependents or his lawyer, they shall be required to endorse it. This is mandatory and non-compliance means that service has not been effected

LEGAL REPRESENTATIVES.

Order 3 of the CPR provides for recognized agents and advocates. Rule 1 provides that any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may, except otherwise expressly provided for by any law for the time being in force, be made or done by the party in person, or by his or her recognized agent, or by an advocate duly appointed to act on his behalf; except that any such appearance shall, if the court so directs, be made by the party in question. Other recognized agents are conversed in Rule 2 and they include; persons holding powers of attorney authorizing them to make such appearance and application and do such acts on behalf of parties; and persons carrying on business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

THIRD PARTY PROCEEDINGS

A 3rd party proceeding is an action involving the plaintiffs claim taken by the defendant for contribution or indemnity against a 3rd person or a co-defendant as a 3rd party.(0.1,14)

In ***Sango bay v Dresdenor Bank****;* court held that the object of 3rd party proceedings is to present a multiplicity of suits.

They are only applicable where the defendant claims to be entitled to contribution or indemnity against a 3rd party.

For third party to be joined, the subject matter between the 3rd party and the defendant must be the same as the subject matter between the plaintiff and the defendant and the original cause of action must be the same. m/s new ocean transporters co ltd and m/s Sofitra Ltd . hct-oo-cc-0523- 2006.

RIGHT TO INDEMNITY

It exists where the relationship between the parties is such that in law and in equality , there is an obligation upon one party to indemnify the other.

Right may also arise from contrast where its either expressly or impliedly stated.[4] 3rd party proceeding must be founded on the same cause of action as between the plaintiff and defendant.

In ***Transami (U) Ltd v trans ocean(U) Ltd (1994),Kalr 175***

[4] D.S.S Motors Ltd v Afri-tours and travel Ltd. HCT.CO-CC-0012-2003.

OBJECTION MY LORD

The plaintiff /defendant aim was founded on trespass while the claim court held that it is settled that in 3rd party proceedings for indemnity to claimed, the cause of action as between the defendant and plaintiff must be the same as between defendant and 3rd party.

Application is by chamber summons heard ex parte upon which upon grant, the 3rd party is served with a 3rd party notice and a copy of the pleadings.

NBS v UBC (HMC; 3rd party must not be already a party to the suit.

Cause of action should be the same.

JOINDER OF PARTIES

Two or more parties may be joined to a suit as defendant or plaintiff. The following grounds govern joinder of parties:-

1. Relief in respect of the same or series of transactions

O.1 r 1 & Barclays Bank v Patel

2. common question of fact or law would arise

O.1 r 1 joinder of plaintiffs 0.1 r 3 defendants

3. leave of court obtained
4. joint claimants
5. joint and several liability: where parties are jointly & severally liable for the relief sought
6. persons presence necessary to enable court effectively adjudicate upon the issues or is required by a statute
7. doubt against whom relief is sought 0.1 r 7 where a person is in doubt as to person against whom a plaintiff is entitled to relief notice is duly delivered to the defendant or his lawyer, they shall be required to endorse it. This is mandatory and non-compliance means that service has not been effected.

RULES OF COURT FOR JOINDER OF PARTIES

1) **Interest of co-plaintiff**

A co-plaintiff need not be interested in every course of action or in the relief claimed in a proceeding.

2) **Non joinder or misjoinder of a party**

No proceeding shall be defeated by reason of the misjoinder or misjoinder of a party**.(0.1 r 9)**

3) Joinder cause delay

Where the joinder of parties may complicate or delay a trial or hearing the court:-

a) Order separate trial or hearing

b) Make such order as a just **(0.1r 2)**

4) **Right of court to join a party.**

The court an any time, an application or its own motion may order

- Any necessary or improper party cease to be party .
- Any person, who is necessary to ensure that all matters may be effectively adjudicated upon in a proceeding to be added as a party. **0.1 r 10(2)**
- Any successor of a deceased or bankruptcy party or a corporate party that has been round up or dissolved and its interest has not abated, to be made a party when interest has not abated or when the interest or liability is assigned or transferred or devolved.

5) Right of court to grant leave

The court at any stage of a proceeding may grant leave to add, delete a party upon such terms as the court may order.

Ponjo v Toro African Bus CO. (1980) HCB 57; non existing parties cannot be party to a suit.

Najeno v semwanga (1974) EA 332; an order for substituting a party after the limitation period is improper.

PRE-TRIAL JUDGEMENT REMEDIES

TEMPORARY INJUNCTIONS AND INTER OCCUPANCY (ORDER 41 CPR)

An injunction is an order of the court directing a party to the proceeding to refrain from doing a specified act. It is usually granted in cases where a monetary compensation will afford no adequate remedy to the injured party.

An interlocutory injunction is an injunction that is limited so as to apply only until or final determination by the court with the rights of the parties and accordingly it invests in a form that requires what in the absence is a subsequent order to the centrally it should continue up to but not beyond a final hearing with the proceedings.

An interlocutory injunction is determined from a pending suit and likewise these must be a course action to sustain the suit from which the application will be delivered.

The above position was retreated in this case; ***sugar corporation of Uganda ltd v Mohammed Tijani H.CCS No.39 / 1993.***

Accordingly, ***order 41 rule 2 CPR*** provides that

a) That any property in dispute in a suit is in danger to being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution to decree or

b) That the defendant threatens or intends to remove or dispose with his or her property with a view to defraud his or her creditors, the court may by order grant a temporary injunction to restrain such act, or make sure other order for the purpose of staying and preventing the working, damaging alienation sale removal or disposition of the property as a court that fit until the disposal is the suit or until further orders"

It is imperative to note that appending suit must be before the same court as it was noted in the case of ***Mwaine Nyakana and Company Advocates vs Departed Asians***[5].

The application for the interlocutory relief is not itself a cause of action as the right to the interlocutory relief is also not a cause of action itself.

Lord Diplock noted in the case of ***Siskina the (Cargo owners) v Dostos Campania Naviera CA (1979) AC 210*** that a right to obtain an interlocutory injunction is not a cause of action against the defendant arising out an invasion, actual or threatened by him or her of legal or equitable right with the plaintiff for the enforcement to which the defendants in amendable to the jurisdiction to the court.

After core the injunctive relief is recognition that monetary damages cannot solve problems.

An injunction may be permanent or it may be temporary. A temporary or an interlocutory injunction is a provisional remedy granted to restrain activity on a temporary basis until the court can make a final decision after trial. It is usually necessary to prove the high likelihood of success upon the merits with one's case and a likelihood of irreparable harm in the absence of a preliminary injunction before such as injunction may be granted otherwise a party may be have to wait for trial to obtain a permanent injunction.

The right to obtain an interlocutory injunction is merely auxiliary and incidental to that the existing course of action. Therefore, the right to an interlocutory injunction cannot exist in isolation but is always incidental and dependent on the enforcement of a substantive right which normally takes the shape of a cause of action.

[5] (1987) HCB 91

In a case of ***James Musisi Sentaaba v Ruth Kalyesubula HCMA 329 of 2001*** Justice Lugayizi pointed out that:

Be that as it may, it is now well settled law that before an applicant may be granted a temporary in junction, he has to prove the following thing.

1. *That a purpose with the temporary injunction is to preserve the status quo until the head suit is finally determined (see Noor Mohammed Janmchamed v Cassand; Virjx (1953) 20 EACA 80).*
2. *That is applicant has a prima facie case, which has the head possibility as cross (see Ceilla V Cassmnan Brownco. Ltd*[6]*.*
3. *That is the temporary injunction is not granted, the applicant would suffer irreparable injury, which damages cannot atonic (see Noar Mohammed Jannohamed V Kassami Vivij (supra).*
4. *If court remains in doubt after considering the above three requirements of the law, it would decide the application on the balance of convenience (E.A industries v. Troffords (1972) E.A. 420)(Kiyimba Kaggwa v. Kattende)*

An injunction will normally be granted to restrain the plaintiff at rights. When deciding as to whether or not to grant an application for an interlocutory injunction, the leading decision is the carco. ***American Cyromide C. Ltd V Ethicon Ltd (1975) Ac 396***, which stipulates that a court should as a general rule have regard only to a following criteria.

a) *Is there a serious issue to be tried?*
b) *Are damages an adequate remedy?*
c) *Where does a balance the convenience lie?*
d) *Are these any special factors?*

It should be noted however that this criterion shall be lead in the context with the principle that the discretion with the court should not be retired by laying down any rules which would have the effect is limiting the flexibility is a remedy.

Justice Odoki as he then was, noted in the case of ***Kiyimba Kaggwa V. Hajji Katende***[7] that the granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve matters in status quo until a question to be investigated in a suit is finally dispersedly court further noted conditions for the

[6] *(1973) EA 358.*

[7] *(1985)HCB 43*

grant of interlocutory injunction as being first and foremost that the applicant must show a prima facie case is a probability with success.

Secondly such injunction will not normally be granted unless applicant might otherwise suffer irreparable injury which would not adequately be untested or atoned for by a ward of damages.

Thirdly if the court is in doubt, it will decide an application on the balance to convenience.[8] The applicant must show that he or she has prima – facie case in the pending suit which a probability of success in that pending case.

However, the west term prima facie is contentious and confusing since a grant of a temporary injunction involves the exercise the judicial discretion. It is possible at the interlocutory state for the court to know prospects of success of either party and it would only be embarrassing to the court to ultimately try to case with a pre-conserved mind.

However, the courts have preferred give the term "serious issue to be tried." This seems a straight forward yard stick in determination such a case to allow the applicant to benefit from an interlocutory injunction.

Justice Byamugisha, as she then was, noted in ***Denial Mukwaaya V. Admin General***[9] that the applicant has to satisfy court that there is a serious question to be investigated and that he has a reasonable chance of succeeding in the main suit.

It is open to court to decide that there is a serious question to be investigated and that he has a reasonable chance of succeeding in the main suit.

It is open to court to decide that there is a serious question to be tried if a material available at the interlocutory hearing fails to disclose that the plaintiff has any prospect the succeeding in his or her action for a permanent injunction at the trial. Therefore, a serious question to be tried can only a rise if there is evidential backing it.

The court at this stage should not try to resolve conflict is evidence of affidavits as to be the facts from which the claims of either party may ultimately depend, neither should it decide, default difficult questions is low which call 4 detailed arguments and mutual consideration.

There are matter that have to be dealt with at the trial.

According to Halsbury's laws the England 4th edn Vo. 24 para 855 it is stated that "855. Serious questions to be tried. On an application for an interlocutory injunction the court must be satisfied shall there are serious questions to be tried. The material available to court at the hearing of the application must disclose that the plaintiff how real prospects for succeeding in the claim for a permanent injunction at the trial".

[8] (Robert Kavuma v Hotel International SCCA No. 8 / 1990).
[9] HCCS 630/ 93

Read further: Napro industries Ltd v Five-star industries Limited and Another. HEMA No. 773 of 20046 comm.

Lord Diplock in the American Synamid case stated that.

"My lords, when an application for an interlocutory injunction to restrain a dependent from doing acts alleged to be in violation with plaintiff legal right is made upon contested facts, decision whether pinot to grant on interlocutory injunction has to be taken out a time when ex hypothesis the existence of the right or the violation of or both, is uncertain and will remain uncertain until, not judgment is given action, it was mitigate risk is injustice to a plaintiff during a period before that uncertainty could be resolved that the practice or rose of granting him relief by way with interlocutory injunction but since the middle of the 19th century this has been made subject to his undertaking to pay damages to which dependent for any loss sustained by recession with the injunction it should be held at the trial that a plaintiff had not been entitled to restrain the dependent from doing what he was threatening to do the object is a interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately cooperated in damages revocable in action if a uncertainty were resolved in his favour at a trial but the plaintiff need for such protection must be weighed against the corresponding need to the dependent to be protected against need to be dependent to be protected against. Jury resulting from his having been prevented from exercising his own legal rights for which he couldn't be adequately compensated under the plaintiff undertaking in damage uncertainty were resolved in a defendants favor of the trial. The court must wright one need against another and determine where a balance with convenience" lies.

In these cases where a legal right of the parties depends upon facts that are in dispute between them i.e., evidence available to that the hearing of the application for an interlocutory injunction is incomplete. The purposes sought to be achieved by giving to the court discretion to grant such injunctions will be stultified if or discretion were clogged by a technical role for biding it arouses it upon a that incomplete untested evidence is court evaluated a changes of a plaintiff ultimate success the action at so percent or loss, but permitting its exercise if court evaluated his chances at more than 50 percent.

Unless or court undertakes a view that the claim has no prospects succeeding if should go on the consider the balance of convenience and nature injury for damages.

If the applicant is likely to suffer irreparable injury in an injunction ought to be granted irreparable injury does not mean physical impossibility of repairing to injury but for means that a lejury must be substantial or material, with one that cannot be adequately compensated for in damages in the case of ***American cynomide. Co v Ethican***, Lord Diplock explained that

"your lordships in my view Taboth's opportunity the declaring that there is no such rule. There are to such expression as "approvability" "a prima facie cave," or "a strong prima facie case" the context so exercise of discretionary power to grant an interlocutory relief. The court no doubt must be satisfied that a claim is not frivolous or vexatious, in other words that there is a serious question to be tried.

OBJECTION MY LORD

It is no part of the courts function at this stage of the instigation to try to resolve conflicts of evidence only, development as to facts on which they claim of either party may ultimately depend nor to decide difficult question of low which call for detailed argument and mature considerations.

There are matters to be dealt without the trial one of the reasons for the introduction of the practice of requiring and undertaking as to damages upon grant of interlocutory injunction was that "it aided the court in doing that which was its great object, viz obtaining from expressing any opinion the merits of a case until hearing ***"Wakofied V Dute of Buccleough***[10] is unless the material available to which court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any red prospect of succeeding in his claim for a permanent injunction at a trial the court should go on the consider, whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

As to that, the governing principle is that the court should first consider whether, if the plaintiff were to succeed at a trial in establishing his right to a permanent injunction, he would be adequately compensated by an award, damages for the loss he would have sustained as a result of a defendants continuing to do what was sought to be rejoined between time and application and the time of the trial of damages in the measure coverable at common law would be adequate remedy and the defendant would be in a financial position to pay time no interlocutory injunctions should normally be granted, however string a plaintiff claim appeared to be at that stage if one other hand, damages would not profile an adequate remind for the plaintiff in the event of his succeeding at a trial, the court should then consider whether , one contrary hypothesis that the dependent were to succeed at the trial in establishing his light to do that which was sought to be enjoined he would be adequately compensated under the plaintiffs undertaking as to damages for a loss he would have sustained by being prevented from being so between time age application and or time of trial if damages in the measure recoverable under such an undertaking would be an adequate remedy and a plaintiff would be in a financial position to pay them, there would be no reason up, this ground to refuse an interlocutory injunction.

The court of appeal in the cases ***Grace Bamuranya Bororoza and others V. Dr. Kavinu Awoko & Others***[11] said that;

"In order A which applicants to succeed in this application they must satisfy us that if the order of injunction they are seeking is not granted, then they will suffer irreversible damage that cannot be addressed by payment of making cooperation".

Every citizen of Uganda has a constitutional right to acquire any property anywhere in Uganda as long as he / she do as so lawfully in accordance with the laws and custom of the people of the area in this case, the Balado claim to have lived in Bulissa for varying periods between 2 to 6 years. They claim to loss properties there. Whether those claims are correct or not is not for the court of appeal to determine out this stage. The filled application for review to be able to establish that they were in Bulisa legally in accordance with the constitution headed by the 1st respondent refused to hear them. The high court dismissed their suit without giving them a hearing the fact that

[10] (1865) 12 C.7 628, 629

[11] ***Civil Applications*** As at of 2008

they are not ending a new people in Bulisa does not purse give anyone a right to avoid them without investigating them status supposes their claims turnout consideration of matters of alternative relocations and cooperation when? We must all be aware that article 42 of the constitution provides:

"Right instead for treatment in administrative decisions. Any person appearing before any administration official or body has a right to be treated fully and fairly and shall have a right to apply to assault of law in respect of any administrative decision take against him or her".

We have already achieved that a committee channel by the fact respondent were given judicial body and has a duty to act in a accordance with article 420 of the constitution it has no far failed to close. The high court had the duty in accord to the applicant the right guaranteed by article 25 of constitution. It did not accord them any hearing at all the right guaranteed by article 28 are stated to be non – derivable and inviolable under article 44 or the constitution once they are violated, the damage cannot be reversible and cannot be addressed by payment of any amount of money in our view, the second test of immovability of damage has been established before and any development.

The decision to grant or reformed in interlocutory injunction will course in whichever party is unsuccessful some disadvantages with his or her ultimate success out trial may show that he or her ought to have been spread.

The extent to which the disadvantages to each party would be incapable of being compensated in damages in the event of his or her success at the trial or always a significant face In assessing where the balance conveniences.

Another factor to consider before a great of an interlocutory injunction is a balance of convenience Sir John Donaldson explained in ***the Agoc of Francome V Mirror Group Newspaper***[12] that

"I stress once again that we are not at this stage concerned to determine the rights of parties. Our duty is to make such order as it's appropriate pending trial of an action thought it is sometimes sold that this involves weighing of a balance of convenience that is an unfortunate expression".

Our business is justice not convenience which can and must disregard faithful claims by either party subject to that, which must enterprises a possibility that either party may succeed and must do our best in order that nothing account pending as that which with prejudice or right which the parties are wisely assessing insistent claims, this is difficult but we have to do our best, in so doing, we are seeking a balance of justice and not governance."

STATUS QUO

If other factors are usually balanced it is prudent to take such measures that are calculated to preserve the status quo.

[12] (1984) W LR 892

Status quo means, simply the existing states of things before a particular point in time the movement crucial point in determining a status quo to ascertain a period a point in time which is to be preserved.

The status quo may mean the existing state of things that the date when the dependent as respondent did the act with which first act which is alleged to have been wrongful or the date when the plaintiff applicant first learned of the act as the date when the sum man were issued.

Therefore, the 10 bent point of time for purpose so the status quo vary in different cases in the cases ***Elisen Munko VA Mada Kezealka***[13], court noted the main purpose of granting a temporary injunctions is to maintained in the status quo, other circumstances had to be taken consideration where the status quo has changed then it doubtfully the interlocutory injunction will solve any purpose as it may mean preserving the legality as a breach of the wrongs and court can clearly reverse the wrong that has been done before hearing the matter which some cases may involve some hardship to innocent third parties.

The case of the ***Garden Cartoge Fonds Limited v Milk marketing Board***[14] 130 it was noted that for the purpose of deciding whether an interlocutory injunction shall be granted to preserve the status quo the court should consider the status quo as the state of affairs existing during the period immediately preceding the issues of summons and in respect of the motion before an interlocutory injunction the period immediately preceding the motion.

An order in the nature of an interim injunction shall arise to respondent only until after annual day or further order. This order is granted exporter pending to hearing of the main application. The rationale for this is to curve that the status quo does not change during the period before the application for temporary injunction is board. A registered judge to magistrate may grant this interim order.

An interim injunction is made by notice of motion a compound by an affidavit containing the following matters.

a) That the facts relied on government with application being made experts and should show that an injunction necessary and that the matter is urgent.

b) That details of any answer as voted to likely be avoided by the responded to be substance claim if the respondent learning the hearing of the expert application, he may approve the application and where an order he been made he may apply expert it's duchesse to pertain before the hearing inter-parties

[13] (1987) HCB 8
[14] (1984) AC

An injunction is an equitable remedy in the forms of a court order, where by a party is required to do, or to reform from doing, and many have to pay damage or accept junctions for failing to follow the courts order in some cases, broader of injunctions are considered serious criminal offences that most as result and possible prison sentence.

RATIONAL BEHIND INJUNCTION

This injunction power to response status quo another that is to make whole again where one where right have been violated, is eventual to the concept of fairness (equity) for example, monetary damages which will be of scant benefit in a cloud owner who wishes simply to prevent someone from repeatedly trespassing on his hand.

INJUNCTION AGAINST GOVERNMENT

As a general role, an injunction, temporary or permanent cannot have against government.

Under the lower of Uganda, the rationale is that government or that government machinery should not be brought to a halt and it should not be subjected to embarrassment. This was reiterated in the case of ***AG. V . Silver Springs Hotel.***[15] Similarly, public authorities should not be restrained from exercising their statuary duties and power unless the plaintiff or applicant has been extremely strong cases on the movements.

However, it should be noted that under administrative law, an applicant for judicial review can seek an order of injunction against government or its officers in the case of ***Mvitome Office (1994)*** /AC 377. Court issued an injunction to a number of home offices stopping him from deporting an immigrant.

In addition, an injunction can issue to a government authority, or public body, if it is acting contrary to the law or without authority from the law authorizing it and every if it is in violation of a irritation Road[16]) ***Kyambogo University v. Omolo C.A No. 341 of 2013***

However, following the case of ***AG v Osotrain Ltd***[17], there is doubt as to whether these general principles protecting the government is still valid. In that case the court issued an eviction under against the government contrary to clear statutory provision and referred to several cases out of the jurisdiction where injunctions had been issued against the government. The court of appeal concluded that.

[15] ***SCCA No. 1989***
[16] *Grace Batrurangye Bororoza and 53 others V Dr. Atwoki Kevin u and others (supra*
[17] ***CACA No. 32 of 2002***

"Since the 1995 constitution, the rights, powers and immunities of the state are not immutable anymore. Article 20(2) enjoins everybody including government agencies in protect and respect individual fundamental human rights. The constitution has primacy overall other laws and the historic common law doctrines restricting the liability of the state should not be allowed to stand in the way of constitutional protection of fundamental rights.

DISCHARGE OF TEMPORARY INJUNCTION

A person who seeks to discharge an interlocutory injunction must apply by notice of motion to a court which granted the injunction for orders that:

"Any order for an injunction may be discharged, or varied, or set order by the court on application made to the court by any party dissatisfied with the order."

Discharge may be on any of the following grounds: -

(a) Material non – disclosure on an exparte application.

(b) Applicant's none observance of terms of a grant of the injunction.

(c) Material changes in circumstance since the grant.

(d) The plaintiff failure to prosecute the substantive claim sufficiently and expeditiously.

(e) That the effect of injunction interferes with the rights of third parties.

MAREVA INJUNCTION

The Mareva Injunction (vicariously known also as a freezing order. Maccra order or Mareva regime in common wealth jurisdiction, is a court order which freezes assets so that is dependent to an action cannot disparities their assets from beyond the jurisdiction of court so as to instate a judgment. It is named after the case of ***Mareva Campania Naverasavs International Bulk Carven SA***[18]***.*** The Mareva injunctions are typically obtained cash out notice to the others sides (expert) as to top the dependent off would likely cause the prompt movement of the relevant assets before the court could issue it injunction, there by insulating the defendant from contempt.

In ***Aetna Financial Service Ltd. Vs Feigelman***[19] Canada's Supreme Court state that:

[19] 1985 ISCR 2,

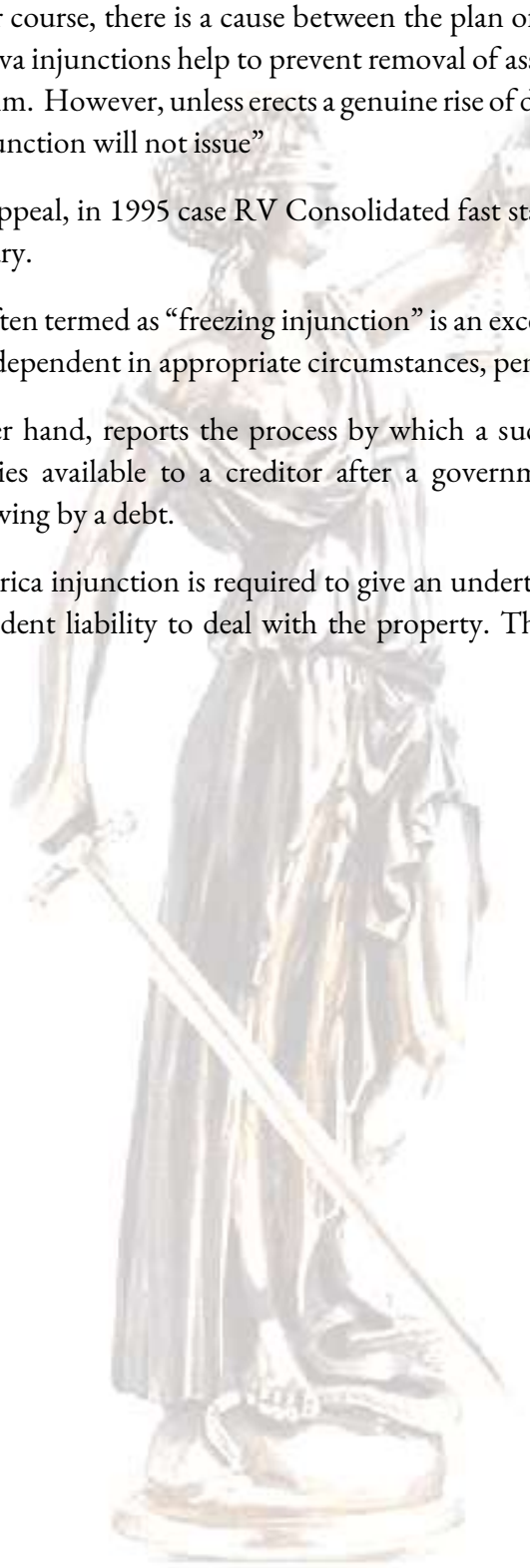
"The government of the Mareva Getinni in freeze-able assets found with the jurisdiction, whoever the defendant may reside providing or course, there is a cause between the plan off and the dependent which justifiable in the court of England. Mareva injunctions help to prevent removal of assets from the jurisdiction and the subsequent defeat of a creditor's claim. However, unless erects a genuine rise of disappearance of assets, other inside or outside the jurisdiction, the injunction will not issue"

The Ontario court of appeal, in 1995 case RV Consolidated fast state transport in the 40 CPC 3rd, 60 provided this compliance summary.

A Mareva injunction often termed as "freezing injunction" is an exceptional form of interlocutory relief designed to freeze the assets of a dependent in appropriate circumstances, pending determination of the plaintiff claim.

Execution, on the other hand, reports the process by which a successful plaintiff may enforce a judgment it empowers have remedies available to a creditor after a government has declared that a sum of money is immediately due and owing by a debt.

A party obtaining America injunction is required to give an undertaking to pay damages, the event that any are suffered due the dependent liability to deal with the property. This is an irrelevant consideration, insofar, an executing is concerned.



INSTITUTION AND FRAMING OF SUITS.

Order 2 rule 1 of the CPR provides that every suit shall include the whole claim which the Plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his or her claim in order to bring the suit within the jurisdiction of any court. It must be noted however, that where a plaintiff omits to sue in respect of or relinquishes any portion of his or her claim, he or she shall not afterwards sue in respect of the portion omitted or relinquished.

The general rule concerning institution of suits is provided for in order 4 rule 1(1), thus every suit shall be instituted by presenting a plaint to the court or such officer as it appoints for this purpose. A plaint has to comply with the rules in Order 6 and 7 of the CPR.

ORDER 6 HAS THE FOLLOWING CARDINAL FEATURES TO NOTE ABOUT PLEADINGS:

Order 6 rule 1(1) provides that every pleading shall contain a brief statement of the material facts on which the party pleading relies for a claim or defense, as the case may be. By virtue of order 6 rule 1(2), the pleadings shall where necessary be divided into paragraphs numbered consecutively; and dates, sums and numbers shall be expressed in figures. In relation to material facts, court held in ***Bruce Vs Odhams Press Limited***[20], thus the word

[20] ***[1939] 1 KB 712***

material means necessary for formulating a complete cause of action and if one material fact is omitted, the statement of claim is bad.

Jessel MR in Thorp vs Houldsworth[21] stated that the whole object of pleadings is to bring the parties to an issue and the meaning of the rules relating to pleadings was to prevent the issue being enlarged; the whole meaning is to narrow the parties to definite issues and thereby to diminish expense and especially as regards the amount of testimony required of either side at the hearing.

Secondly, order 6 rule 2 provides that every pleading shall be accompanied by a brief summary of evidence to be adduced, a list of witnesses, a list of documents and a list of authorities to be relied on; except that an additional list of authorities may be provided later with leave of court.

Thirdly, where a party pleading relies on any misrepresentation, fraud, breach of trust, willful default or undue influence, and in all other cases in which particulars may be necessary, the particulars with dates shall be stated in the pleadings. This is provided for in order 6 rule 3 of the CPR.

Fourthly, rule 6 of the same order provides that the defendant or plaintiff, as the case may be shall raise by his or her pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defense or reply , as the case may be , as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, limitation act, release, payment, performance or facts, showing illegality either by statute or common law.

Fifthly, order 4 rule 7 restricts a departure from previous pleadings. It provides that no pleading shall, not being a petition or application, except by way of amendment, raise any new grounds of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading that pleading. In addition, rule 8 provides that the denial has to be specific. It is not sufficient for a defendant in his or her written statement to deny generally; the grounds alleged in a defense by way of counter claim, but each party must deal specifically with each allegation of fact of which he or she does not admit the truth, except damages.

It must be noted that amendment of pleadings is provided in Order 4 rule 19. The court may, at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real controversy between the parties. Rule 20 ought not to go unnoticed which provides that a plaintiff may, without leave of court amend his or her plaint once at any time within 21 days from the date of issue of a summons to a defendant or where a written statement of defense is filed, then within 14 days from the filing of the written statement of defense or the last of such written statements. A defendant right to amend without leave is provided for in order 4 rule 21; he or she can exercise this option if he has set up a counterclaim or setoff, at any time within 28 days from the date of filing the counter claim or setoff or where the plaintiff files a written statement in reply, then within 14 days from the date of service of the written statement in reply.

[21] (1876) 3 Ch. D 637

It must be noted that where a party has amended his pleading under 20 or 21, the opposite party has a discretion to apply to court under rule 22 of order 4 to disallow the amendment; and court may, if it is satisfied that the justice of the case requires, disallow the amendment or allow the amendment in part to such terms as may be just.

PROCEDURE FOR APPLICATION TO COURT TO DISALLOW AN AMENDMENT.

Application is by Chamber summons supported by an affidavit, under order 4 rule 22 and 31.

DOCUMENTS NEEDED

Chamber summons supported by an affidavit;

Forum

The forum is the High Court, since the CPR applies to the High Court by virtue of section 1 of the Civil Procedure Act.

CAUSE OF ACTION

In the case of ***Auto Garage & Another v Motokov, case No.3 (1971) EA314*** a cause of action was defined in the following terms;

1. *That the plaintiff enjoyed a right*
2. *That the right has been violated*
3. *That the defendant is liable*

In the case of ***Tororo cement CO. LTD v Frokina International co. Ltd****, Tsekooko JSC* held that it is not simply enough to show a cause of action, particulars must be given in the plaint showing precisely in what respect the defendant is liable and the relief frugal

Whether plaint does or does not disclose a cause of action is a matter of law which can be raised by the defendant as a Preliminary point at the commencement of the hearing of the action even if the point had not been pleaded in the WSD. Particulars of a suit cannot be inferred from the evidence of the P/f, but must be disclosed in the plaint The importance of this is to assist parties in financing Issues as well as avoiding Surprises which are bound to happen, if particulars are merely introduced as an intrusion during trial at the time evidence is adduced.

Whether plaint discloses a cause of action see the case of *Okot Ayere Olwedo v .A.G*

It is trite that in considering whether or not the plaint discloses a cause of action, the count only considers the pleading and anything attached there to. The court must only pursue through the plaint only and the amities for it .

Where the plaint discloses the cause of action but lacks material particulars.

Tororo cement; it is now established in jurisdiction that a plaint that discloses a cause of action i.e., that there was a right, the right was adulated and the defendant is liable, cannot be rejected for want of pleading other material particulars as the same can be cured by way of amendment under 0.6 r 19 or by way of further and better statement of particulars under 06 r 4.

Where the Claim or cause of action is founded on vicarious liability

The plaint must plead the facts that give rise to vicarious liability. ***Bamuwayire v A G.*** Was an application to have the suit rejected on ground that failing to allege that the servants who arrested the plaintiff were servants of the defendant, the plaint disclosed no cause f action against the defendant.

Held. The court had to look at only the plaint in deciding whether it discloses a cause of action against the defendant or not. This plaint did not disclose any case of action against the def. as it did not allege the persons who arrested the plaintiff were servants of the defendant and that they were acting in the cause of their of in ***Brigadier Smith Opon Acak v. A.G*** court held that where the plaint admits that the acts complained of were committed by the servants of the defendant in the course of their employment, it does not mean that the plaint does not disclose a cause of action, where the servants have been described as servants of the defendant. This is because; whether a servant did or did not do the acts complained of in the course of employment was a fact peculiarly within the knowledge of the defendant to be pleaded in his defense.

Where the Cause Of action is in breach of contract

The plaint must plead all the prerequisites of valid contract. In ***Yafeesi Katimbo v Grindclay Bank***, the plaintiff sued the defendant for specific performance and its WSD, the defendant raised a P.O that the plaint disclosed no cause of action since no consideration had been pleaded. Issue was whether after acceptance and consideration had to be pleaded.

It was held that since the action was based on a contract consideration was a material fact and had to be pleaded except in negotiable instruments when its proved. There was nothing in the pleadings to show that there was a

binding contract. None of them showed that the offer had been accepted, acceptance was the essence and had it be pleaded.

Where the cause of action is founded on deformations

The plaintiff must plead the alleged deformation words verbartim. In ***Erumiya Ebyatu v Gusbarital.*** The applicant sued the respondent for slander. The pleadings stated that the respondent was a wizard who used to bewitch people, the actual words used by the respondent.

Held that in action for slander, the precise words caused by must be set out in the plaint of or statement of claim. The plaintiff must rely on the words set out in the plaint and not any other expression. Similarly, the names of persons to whom the words were uttered must be set out in the plaint otherwise court will be relevant to consider any publication to person not named in the pleadings.

Where the plaint does not a cause of action, the court is mandated to reject the plaint. The objection or application rejecting the plaint. The objection or application rejecting the plaint may be raised orally before court or through an application - 07 r 11. Suit may be dismissed for non- disclosure of cause of action under 0.6 r 30

JOINDER OF CAUSE OF ACTION

A plaintiff may write the same plaint with several causes of action against the same defendant or the same defendants jointly 0.2 r 5 However 0.2 r 5 allows court the power to order for separate trials if necessary

Under 0.2 r 6, a defendant can object to joinder of any cause of action & the plaintiff has the duty to justify the joinder or else its upheld.

Grounds

The causes joined must raise from the same transaction or a series therefore against the same defendant or the same defendants jointly. May plaintiffs must have several causes of action in which they are jointly interested against the same defendant or the same defendants jointly

On the above grounds a plaintiff may write various causes of action in the same suit.

LIMITATION OF CAUSES OF ACTION

It is a requirement of law that an action should be commenced within the limitation period and any suit filed upon expiry of the limitation period is bad in law & liable to be dismissed

0.7 r 11

Iga v Makerere University, a plaint barred by limitation is barred by law and must be rejected

The limitation Act is the principle legislation on limitation of causes of action save that it does not apply to actions commenced under specific legislations which provide for limitations under that legislation

In ***F.X Miramago v AG***; court held that the period of limitation started to run as against the plaitiff from the time the cause of action accrued until when the suit is actually filled.

Once an action is time barred, it does not matter whether it is meritous or otherwise and court has no option but to dismiss the suit

***Muhammad B. Kasasa v Jasper Buyonga & silas Bwogi*;** the C.A held that statutes of limitation are not concerned with merits. They are by their nature strict & inflexible enactments. Once the axe falls, it falls & a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled of course to insist on his strict rights

Limitations in the Act

1. Contracts 6 years
2. Land issues 12 years (Recovery)
3. Torts 3 years
4. Fraud, starts to only run when the plaintiff gets to know about the fraud or when they reasonably have done so (s.25 of limitation Act)

Where a suit is time barred, the plaintiff might plead disability as an exception. The disability as an exception must be expressly pleaded in the plaint.[22]

- Judgment 12 years
- Arrears and interest of judgement 6 years
- Conversion & detention of goods 6 years
- Mortgage 12 years
- Recovery of rent 6 years
- Foreclosure & recovery of loans & mortgages 12 years
- Fraudulent breach of trust no limitation
- Fatal accidents actions 12 years

[22] Hermeidas mulindwa & Anor v Stanbic Bank

- Claims for equitable relief no limitation period, bt subject to rule that discretionary remedies will not be granted if the result would be unfair and prejudicial

Action claiming personal estate of a deceased person. 12 years. Wilberforce John V sezi wako, s.21 of limitation Act does not limit an executer to apply for probate.

LIMITATIONS OF CAUSES OF ACTION AGAINST GOVERNMENT & CORPORATIONS

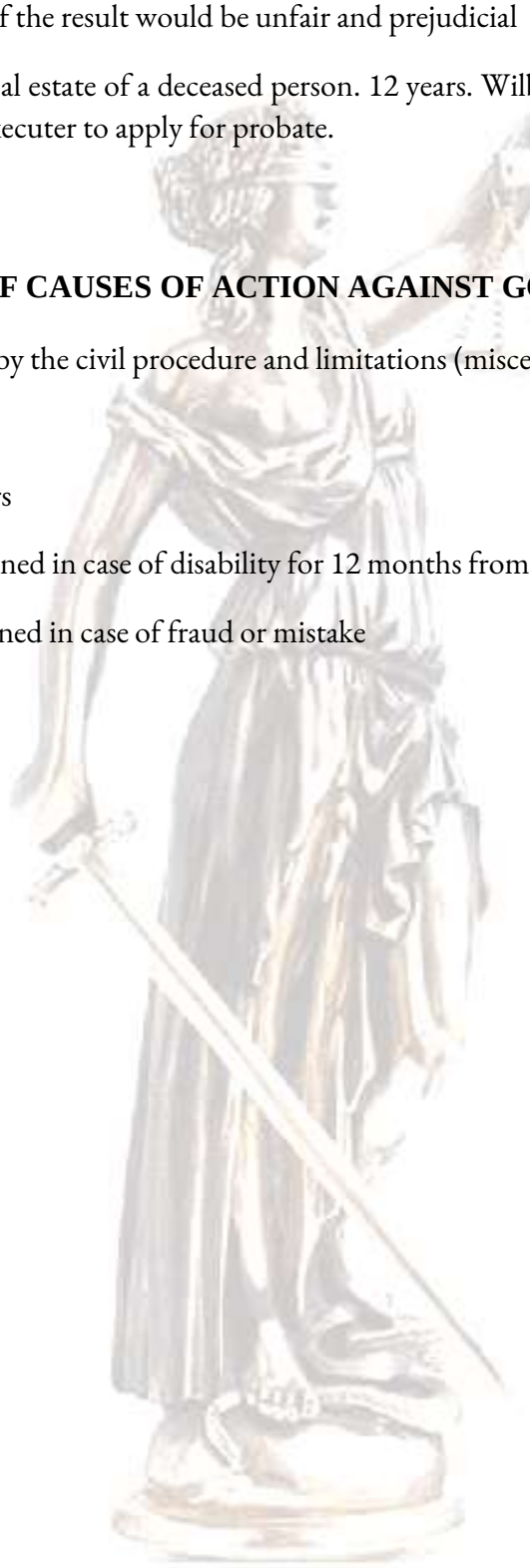
These are provided for by the civil procedure and limitations (miscellaneous provisions) Act.

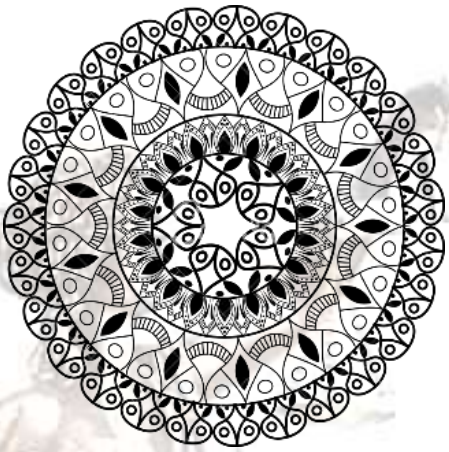
s.3 (1. Tort 2 years

s.3 (2). Contracts 3 years

s.5 limitations is postponed in case of disability for 12 months from date of cessation

s.6, limitation is postponed in case of fraud or mistake





ELECTION PETITIONS.

Law Applicable

- The constitution
- The presidential election act 2005
- The parliamentary election (Amended) Act 2006
- The presidential election selected on petitions rules 2001
- The parliamentary elections (election petitions) (amendment) rules 2006.
- The local governments act ss. 138 to 146.

These are matters of great public interest and public importance and as such must be handled expeditiously. Rule 12(2)(a) of presidential elections (election petition) rules S I No.13/2001, S.63 (2) of the parliamentary election act No.17 of 2005 and section 142 (2) of the local government act cap 243, grant courts the mandate to hear election petitions expeditiously and where need arises, to suspend the other matters pending before them.

PRESIDENTIAL ELECTIONS

The procedure for challenging a presidential election is provided for in article 104 of the constitution which provides that:

(1) subject the provisions of this article any aggrieved candidate may petition the supreme court for an order that a candidate declared by the electoral commission elected as president was not really elected.

(1) A petition under clause (1) of this article shall be lodged in the supreme court regulatory within ten days after the declaration of the election result

(2) The supreme courts shall inquire intend determine the petition expeditiously and shall declare its findings not later than thirty days from the date the petitions filed.

(3) Where no petition filed within no time prescribed under clause (2) of this article or where a petition having been filed is dismissed by the Supreme Court, the candidate declared elected shall conclusively be taken to have been duly elected on president.

(4) After clause inquiry under clause (3) of this article the supreme court may

(a) Dismiss the petition

(b) Declare which candidate was rapidly elected or

(c) Annual the election

(5) Where an election is annulled, a fresh election shall be held within twenty days from date of the annulment.

(6) If after a fresh election hold under clause (6) of this article there is another petition which succeeds then the presidential election shall be postponed and upon the expiry the term or the incumbent provident the specular shall perform the functions of the office of president until a new president is elected and assumes office.

(7) For the purpose of the article, article 98(4) of the constitution shall not apply

(8) Parliament shall make such laws as may be necessary for the purposes of this article, including laws upgrading of annulment and rules of procedure.

PARLIAMENTARY ELECTIONS PETITIONS.

Article 14 of the constitutional provides / or hearing of election cases it states that.

(1) Where any question before the high court for determination under article 86(1) of this constitution, the higher court shall proceed to hear and determine a question expand truly and may for that purpose suspend any other matter pending be paid.

(2) This article shall apply in similar manner the court of appeal and the Supreme Court when having and determining appeal on questions refereed in clause (1) of this article.

Article 686 (1) of the constitution states that

(1) The high court shall have jurisdiction to near and determine any question whether:-

(a) A person has been variably elected a number of parliaments are seat of a number of parliament has become vacant or

(b) A person has been validly elected as speaker or deputy speaker or having been so elected, has vacated that office

1. When they should be brought.

Section 60(3) of the parliamentary elections act No.17 of 2005 (PEA) requires that the election petition is filed within 30 days after the day on which the electrical commission gazette the results.

S.63 (9) of the PEA empowers the high court to determine the petition within 6 months after its lodgment in court.

2. Who may bring the petition

Under S.60 (2) of the PEA the petition may be brought by a losing candidate or a registered voter in the constituency concerned supported by the signatures of not less than 500 voters registered.

3. Grounds for setting aside a parliamentary election. These are set out under s.61 of the PEA and must be proved to the satisfaction of court.

a) Non-compliance with the provisions of the provisions of the parliamentary election act. The court must be satisfied that there has been failure to conduct the election in accordance with the principles laid down in those provisions and that the non-compliance and failure affected the result of the election in a substantial manner. The principles which govern the conduct of elections are laid down in article 61(1)(a) of the constitution and in provisions of PEA are:

1. Conduct the election in freedom and

2. Fairness.

The issues of the non-observance affecting the election in a substantial manner was discussed in **SARAH BIREETE V BOMADATTE AND EC,** election petition no.13 of 2003, where Byamugisha J held that ***substantial effect*** *means that the effect must be calculated to really influence the result in a significant manner. It is not sufficient that there are irregularities but the petitioner must say how they affected the results of the election. This means that the result of the votes a candidate obtained would have been different in a substantial manner that in fact the petitioner has to prove that non-compliance with the principles in the act helped its respondent to win the election when he or she would have therefore not won the election.*

b) That a person other than the one elected won the election. This can arise where the candidate who has won an election is not pronounced sooner and instead the one who has lost is pronounced as the winner.

c) That an illegal practice or any other offence under the act was committed in connection with the election by the candidate personally or with his or her knowledge. The illegal practices and election offences are laid down in section 68 to 83 of PEA and they include bribery, procuring prohibited persons to vote, obstruction of voters etc. see ***Betty Namboze V Bakaluba Mukasa, Scepa No.4 Of 2009.***

BRIBERY IN ELECTION PETITIONS

Section 68 of PEA prohibits a candidate directly or indirectly through his/her agent to bribe a voter. The offence is serious and the following ingredients must be proved:

a) The candidate or his/her agent gave out a gift or money to a registered voter within the constituency

b) The notice must have been to influence such voter to cast his vote for the bribing candidate or such voter to refrain from voting for a candidate of his choice.

c) Gifts and bribes made through the candidates' agents must have been given with the knowledge and or consent of the candidate. In ***E.C And Anor V Nambooze Bakireke***, it was held that money given to an agreement to pass on to a group.

In ***Fred Badda And Ec V Prof Muyanda Mutebi Epa N0.21 Of 2007***, court found that the award of the cow to a runner up team in an annual tournament was a bribe because:

1. Dates had been shifted for the tournament to coincide with campaigns.

2. The team was to receive a goat which was not available on feast day and rejected offer of UGX.100,0001 threatening not to vote for appellant to which he offered the cow and asked them not to let him down on voting day.

The evidence of bribery made by a candidate's agent requires corroboration before it is accepted as true. The court in ***Moses Kabusu Wagaba V Tim Lwanga Ep No.15/2011*** justified the requirement for corroboration on grounds that such supporters have a tendency to exaggerate facts of bribery.

Bribery is an offence committed by the giver and the receipt. Evidence of the receipt is accomplice evidence which requires to be corroborated.

In ***Hon Kirunda Kivejinja V Katuntu Abdu***[23], the court stated that it is common knowledge that every village has registered voters because every village has a polling station. A donation to a village in a constituency by

[23] E.P.A No. 29 of 2006

a candidate who is seeking voters would be targeting of registered voters in that village and those who can influence them to vote.

Use of government property.

Section 25 (1) of PEA bars the use of government resources during campaign. Section 25(2) postulates that a candidate has to use the resources assigned to their office having notified the electoral commission. In ***Darlington Sakwa And Anor V Ec* And 44 Ors**.[24] the court stated that the essence of article .80(4) was to ensure a level ground so that candidates don't use their office resources to campaign.

INTIMIDATING VOTERS.

No candidate has a right to intimidate another, let alone any member of the electorate no matter his political shade or opinion. Article 1 of the constitution vests power in the people to express their free will in determining their political leaders through periodical elections. Threats or acts of intimidation interferes with a peaceful atmosphere and subverts the will of the electorate to choose leaders of their choice. The vice negatively affects the voter turn up

DECLARATION OF RESULTS AND FALSIFICATION OF RESULTS

The declaration of results must be done in accordance with S.47 AND 50 of PEA. In ***Ec And Another V Nambooze Bakireke Epa 1 And 2 Of 2007***, some D.R forms had been white washed. Some DR forms were not filled at the polling stations and filled at Sub County. Some results were filed on a piece of paper from exercise book and later transferred on DR forms with respondent leading.

CONDUCTING A DEFAMATORY CAMPAIGN

Every person is entitled to his/her good name. No candidate or his supporter has a right to make defamatory remarks intended to dent the image of another among the eyes and ears of the electorate. Doing so would be committing an electoral offence. The alleged statements must however not be mere political banter used by politicians to make the campaigns lively and enjoyable. ***Kizza Besigye And Ec And Y.K Museveni.***

24

Illegible voters. (That is don't appear on register, do not hold voter's cards.)

Section 19(2) of the election commission act, no person is qualified to vote if they are not registered as a voter in accordance with article 59. Also, section 29(4), 34(2) (5) of EPA. In ***Ec And Another V Nambooze Bakireke***, [25], students over 60 in number who had no voting cards were ferried to polling stations.

NON-COMPLIANCE.

Article 61 (a) and section 12(1) (e) of the electoral commission act (ECA) enjoin the EC with a duty to conduct a free and fair election. In ***KIRUNDA KIVEJINJA V ABDU KATUNTU,*** court cited with approval the dicta in ***KIZZA BESIGYE V EC AND Y. K MUSEVENI*** on what's deemed as free and fair election. It stated that such an election is one held in an atmosphere of freedom and fairness that will permit the will of the electorate to prevail. That an election marred by wide spread violence, intimidation and torture of voters cannot be said to free and fair. That fairness should be demonstrated at all stages of the electoral process such as registration of voters, display of voter's registrar, updating voters' registrar, nomination of candidates, campaigns, polling date, delivery of voting materials, casting votes, counting of votes, verification of results, declaration of winners, gazzetting of winner's names, secure storage of election material even after voting to cater for evidential requirements of emerging disputes.

DISENFRANCHISEMENT.

Article 59 and 61 of the constitution. ***EC AND ANOR V NAMBOOZE BAKIREKE***, the removal of two gazette polling stations on voting day amounted to disenfranchisement which EC was liable for.

QUALIFICATIONS AND DISQUALIFICATIONS.

1. Education qualifications.

Article. 80(1) (c) of the constitution and section 4 of PEA set the academic qualifications for a prospective candidate for effective nomination and participation in an electoral process.

Failure to meet the requisite academic qualifications is ground for nullification of an election as was in ***PAUL MWIRU V IGEWWWE NABETA***,[26]

[25] EPA 1 AND 2 OF 2007
[26] EPA No. 6 0f 2011.

The academic qualifications set out under article 80(1) (c) of the constitution and section 4 of the PEA is advanced level certificate or its equivalent.

Before coming into force of the regulations, there was no requirement for one to follow and have all education certificates before acquiring UACE. A person could have UACE without UCE. However, after the coming into force of the regulations, any person obtaining UACE after must have PLE, UCE AND UACE. Failure to have any automatically nullifies the UACE.

However, candidates who obtained their UACE before the regulations came into force, their UACE is not affected by failure to have UCE or PLE and thus meet the academic qualification. In ***BUTIME TOM V MUHUMUZA DAVID*** the failure of the candidate to sit for PLE before attaining UCE AND Dip in SD did not taint his academic qualifications having obtained before then regulations came into force and the law does not act retrospectively.

2. Should not be serving public officer.

Article 175(a) of the constitution defines a public officer to mean any person holding or acting in an office in the public service.

Article 175(b) of the constitution defines public service as service in any civil capacity of the government the emoluments for which are payable directly from consolidated fund. Article 257(2)(b) provides that a reference to an office in public service does not include a reference to the office of the president, the V.P, the speaker or D. speaker or minister, the A.G, a member of parliament of any commission, authority, council or committee established by this constitution.

Article 80(4) requires any serving public officer to resign their office at least 90 days before nomination day. Where the person chooses early retirement, they must satisfy the necessary pre-conditions or else their election may be nullified. In light of by –elections, it is 14 days from date of nomination as per section 4 (4b) of PEA.

These were set down in ***HON.SSASAGA ISIAS JONNY V WOBOYA***. The court stated the conditions for early retirement by pensionable officer as in ***GEORGE MIKE MUKULA V UGANDA***[27]. Court held that ministers are not employees of government (public officers). Also in ***DARLINGTON SAKWA AND ANOTHER V THE EC AND 44 ORS***[28]

The qualifications are

(a) He/she must be at least 45 years old.

(b) He must have been in continuous service for a minimum of 10 years

[27] (2013)1 HCB 100

[28] CONST.PETITION No.8 of 2006

(c) He/she must have written the request for early retirement to the pension authority giving a 6 months' notice prior to the intended exist date.

(d) The written request to the pension authority must be made through the responsible officer who should advice the pension authority of whether to accept the request for early retirement or not. Where the responsible officer is of the opinion that the officer should be retired, he must communicate his opinion to the pension authority with a computation of the officer's benefits.

Other qualifications and disqualifications are set out under Article 80 and section 4 of the PEA.

Burden and standard of proof in election petition.

LOCAL COUNCIL ELECTIONS

These are covered in section 138 to 146 of the local governments act, section 138 states that

1. An aggrieved candidate / chairperson may petition the high court for an order, that a candidate declared elected as chairperson of a local government council was not validly elected.
2. A person qualified in petition under sub section (3) who is aggrieved by a declaration or the results of a councilor may petition the chief magistrate court having jurisdiction in the constitution
3. An election petition may be filed by any of the following persons.
   (a) A candidate who has been or not elected
   (b) A registered voter in a constituency concerned supplied by the signatures of not less than five hundred voters required the prudency
4. An election petition shall be filed within fourteen days after the day on which their results of the section has been notified by the electoral commission in the gazette.

Look at a contents and form of presentation of an election petition.

The petition.

Procedure.

1. Lodging 6 copies of the petition and notice of presentation of the petition to the high court within 30 days from date of gazetting. Rule 4(1) of the parliamentary elections(interim provisions) (elections petitions) rules S.I No.141-2

2. Paying the prescribed fees. Fee is UGX.150,000 as per rule 5(3) of the rules S.I. No.141-2
3. Depositing security on the petition.
4. Effecting service of the petition, affidavits in support of notice of presentation of the petition on the respondents within 7 days from the date of lodging the petition in court. Rule 6 of the rules S.I.141-2
5. Service must as much as possible be personal.
6. A respondent who has been served is required to file 6 copies of his answer to the petition accompanied by affidavits in support.
7. Pay filing fees on the answers.
8. Serve the petitioner within.

Documents.

a) Petition

b) Affidavits in support

c) Notice of presentation of the petition.

REMEDIES BEFORE GAZZETTING OF RESULTS BY ELECTORAL COMMISION

1. Lodging a complaint with the EC

According to Article 61(f) of the constitution, one of the functions of the electoral commission is to hear and determine election complaints arising before and during polling.

Under S.15 (1) of ECA cap 140 the commission has the mandate to examine and decide on any complaint relating to irregularities in the electoral process and take appropriate action.

Under S.15 (2), (3) and 4 of ECA, the decision of the EC is appealable to the H.C and it's a final appeal.

2. Application for a recount

As per S.55 of the PEA, one may apply for a recount within 7 days after the date on which the returning officer declared the winner. The application is made to the chief magistrate.

Procedure

The procedure was discussed in ***Kasibante Moses V Katongole Singh M And Another***[29]**.** The court stated that process involves a two-step court process.

1. The court hears the application for recount and the applicant must satisfy court that there is good cause to order a recount.
2. If the CM is satisfied there is good cause to order a recount, it must order so and set a date for the recount and the time.

The recount is done in the court premised with the CM presiding over the process and he/she has the power to decide which ballot is valid or invalid. The CM makes a usual court record in respect of each ballot box or polling station whose contents are recounted. At the end of the process the CM will prepare and sign a certificate of recount. The certificate must show any variation made if any from those earlier tallied by the returning officer.

[29] *NO.23 OF 2011*

ISAAC CHRISTOPHER LUBOGO

NOTICE OF PETITION.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MPIGI

IN THE MATTER OF THE PARLIAMENTARYH ELECTIONS

ACT NO.17 OF 2005 (AS AMENDED)

AND

IN THE MATTER OF THE PARLIAMENTARY ELECTION HELD

ON THE 12TH OF FEBRAUARY 2020 IN MADDUDU COUNTY

CONSTITUENCY, KABULASOKE DISTRICT

ELECTION PETITION NO.....2020.

SUI GENERIS A ..... PETITIONER

VERSUS

1. SUI GENERIS B.....

2. ELECTORAL COMMISSION.....RESPONDENTS

NOTICE OF PRESENTATION OF PETITION.

TO: MUSISI ISMEAL AND EC.

WHERE THE PETITIONER has petitioned this Honorable court praying for a declaration that the election of the 1st respondent as a member of parliament for Maddudu county constituency should be nullified.

YOU ARE HEREBY summoned to appear in this Honorable court in person or through an advocate on the .....day of .....2022 at .....o'clock in the fore/afternoon or soon thereafter as the election petition shall be heard and disposed of.

OBJECTION MY LORD

You are also given 10 days from the date of service to file your reply to the petition.

TAKE NOTICE that default of your so doing, the petition shall be heard and determined in your absence.

GIVEN under my hand and seal of this Honorable court on this.....day of.....2022

.....

REGISTRAR.

ISAAC CHRISTOPHER LUBOGO

PETITION.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MPIGI

IN THE MATTER OF THE PARLIAMENTARYH ELECTIONS

ACT NO.17 OF 2005 (AS AMENDED)

AND

IN THE MATTER OF THE PARLIAMENTARY ELECTION HELD

ON THE 12TH OF FEBRUARY 2022 IN MADDUDU COUNTY

CONSTITUENCY, KABULASOKE DISTRICT

ELECTION PETITION NO.....2022.

SUI GENERIS A..... PETITIONER

VERSUS

3. SUI GENERIS B.....RESPONDENT

4. ELECTORAL COMMISSION.

PETITION

The humble petition of

SUI GENERIS A whose address for purposes of this petition shall be Sui Generis and co advocates, plot No.17 main street, Mpigi shows and state as follows;

1. Your petitioner is a male adult Ugandan of sound mind and a registered voter in Kinkiizi county constituency, Kanungu District (the constituency)

2. Your humble petitioner and the 1st respondent were among the candidates in the Member of Parliament elections in the constituency conducted on the 12th February 2020 where upon the 2nd respondent declared the 1st respondent as the winner.

OBJECTION MY LORD

3. The 1st respondent was gazetted by the 2nd respondent as the winner of the constituency election on 17th August 2020.

4. Your humble petitioner states that during nomination and at the time of the election, the election process was not conducted in accordance with the provisions of the constitution and PEA No.17of 2005 (as amended), ECA (as amended), the education (pre-primary, primary and post primary) act no.13 of 2008 and other laws and this non –compliance affected the results of the election in a substantial manner.

5. Your humble petitioner thus contends that illegal practices and offences contrary to Article 80 of constitution, section 40(4), 47(3) and (7), 50,68,73,78,80 of PEA,S.2 and 10 of the education(pre.....) were committed in correction with the election of the 1st respondent ,personally or with their knowledgeable and consent or approval, against the petitioner his agents and supporters

6. Your humble petitioner contends therefore that the election of the 1st respondent as the M.P of the constituency was marred with irregularities and did not comply with the electrical laws.

7. Your humble petitioner contends that in the constituency, the election officials and in conspiracy with the 1st respondent grossly failed in its statutory duty to conduct a free and fair election to the detriment of the petitioner contrary to provisions of Article 61 of the constitution (as amended) and s.12 of the ECA (As amended)

8. Petitioner further contends that the 2nd respondent conducted the entire election process with incompetence, particularly, bias, malafide and prejudice against the petitioner.

9. As a result, such non-compliance with the principles and provisions of the constitution PEA and ECA, the result of the election was affected in a substantial manner.

10. The impugned acts of non-compliance with the electoral laws, principles and practices were to such extent that they qualitatively and quantitatively affected the outcome of the results of the election in the constituency.

WHEREFORE your petitioner prays that:

1. The election of the 1st respondent as MP for the constituency be nullified
2. The 2nd respondent conducts fresh elections in the constituency.
3. Costs of this petition.

Dated at MPIGI this.....day of.....2020.

ISAAC CHRISTOPHER LUBOGO

PETITIONER

LODGED and filed at the court registry on this.....day of August 2020.

.....

REGISTRAR

TO BE SERVED ON:

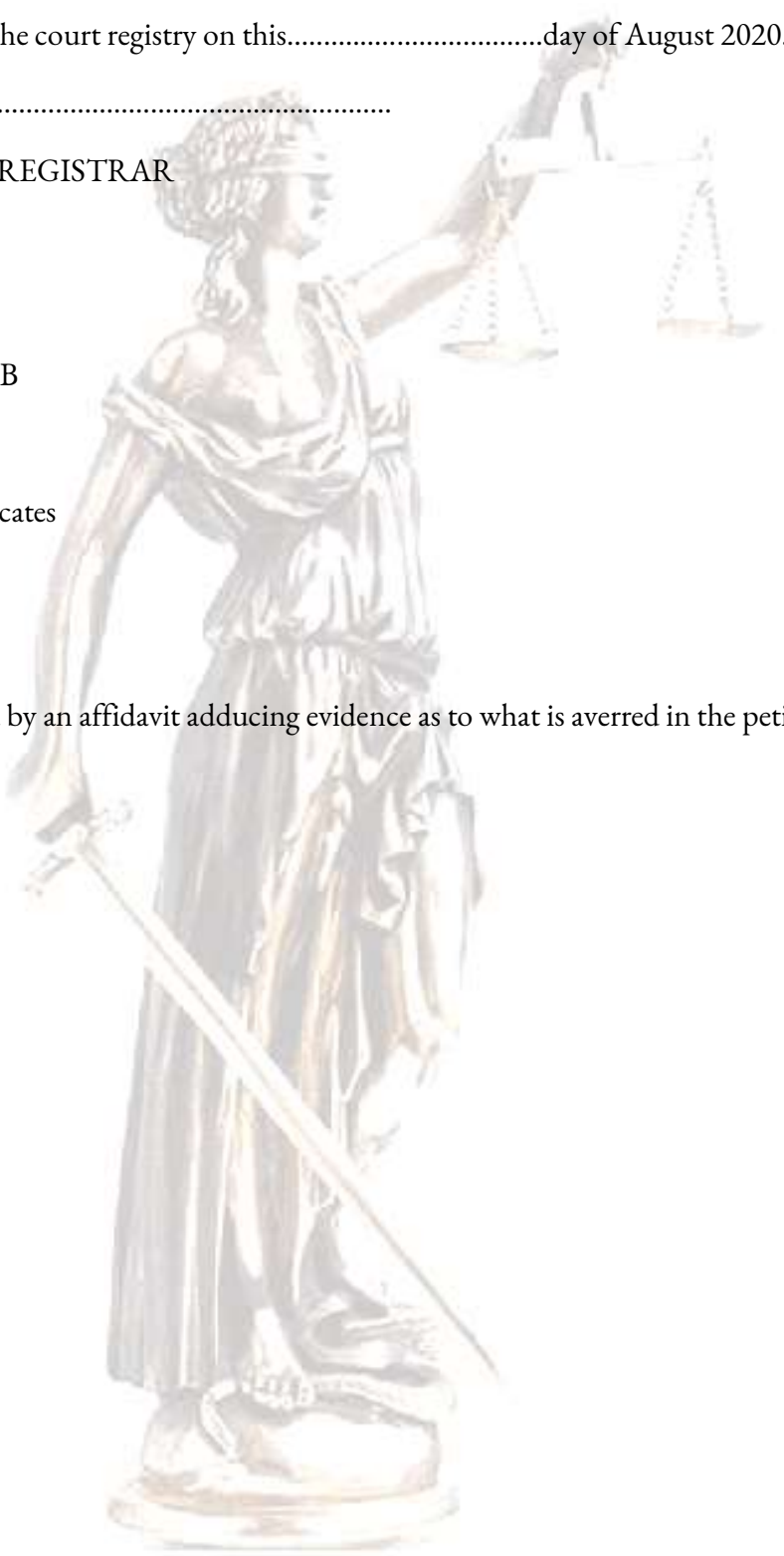
1. E.C
2. SUI GENERIS B

Drawn and filed by:

Sui Generis & Co- advocates

Kampala.

Should be accompanied by an affidavit adducing evidence as to what is averred in the petition.



PLEADINGS BY PLAINTIFF

Order 7 has the following cardinal features about a Plaint:

Order 7 rule 1 provides for particulars which need to be contained in a plaint and these include the following;

a) ***The name of the Court in which the suit is brought.***

b) ***The name, description and place of residence of the plaintiff and his or her address for service.***

A description of the plaintiff infers that in case of an artificial person, a legal entity like a company, the name of the company is followed by the fact that it is incorporated according to the laws of Uganda. In addition, where the plaintiff is suing in representative capacity, such a material fact ought to be stated. Court held in ***Otim vs Okuza***[30] that the judgement in the preceding case ought to be set aside since the plaint did not disclose that the plaintiff was suing in representative capacity.

It must be noted further that a description of the residence of the plaintiff is very necessary. A mere box number is insufficient for service. This was upheld in ***Ram Nath vs Mohamed Rawji***[31]

The name, description and place of residence of the defendant so far as can be ascertainable.

c) Whether the plaintiff or defendant is a minor or person of unsound mind, a statement to that effect.

[30] **Civil Appeal 61 of 1968**
[31] **[1954] 27 KLR 43**.

d) The facts constituting the cause of action and when it arose.

A cause of action has been defined by several cases. In **AUTOGARAGE –VS- MOTOKOV [1971] EA 514;** it was held that there are three essential elements to support a cause of action namely; first and foremost, that the Plaintiff enjoyed a right; secondly, the right has been violated; and thirdly that the Defendant is liable. This was followed with modification in ***attorney general vs major general david tinyefuza supreme court***[32] ,where "a cause of action was defined as meaning every fact, which, if traversed, it would be necessary for the Plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the Plaintiff a right to relief against the Defendant. It must include some act done by the Defendant since in the absence of such an act; no cause of action can possibly accrue...[33]

e) The facts showing that court has jurisdiction.

This was followed in ***CAT Bisuti vs Buziga District Administration***[34] where Dickson J. held that a mere assertion in the plaint that the court has jurisdiction is not enough. What matters is not an assertion in the plaint that the court has jurisdiction but a statement of fact showing that the court has jurisdiction.

f) The relief which the plaintiff claims; *inter alia*

A **plaintiff is enjoined to plead his damages.** General damages need not be specifically pleaded, but there should be an averment that the Plaintiff claims damages for pain, suffering, inter alia. It must be noted however that special damages should be specifically pleaded. This has developed as a matter of legal practice.

Order 6 rule 26 provides that every pleading shall be signed by an advocate or by the party if he or she sues or defends in person. The effect of failure to sign was discussed in ***Transgem Trust vs Tanzania Zoisiten Corp. Ltd***[35] where court held that the signing of the plaint was a matter of procedure and failure to do so would not affect the merits of the case.

REJECTION OF A PLAINT

It must be noted that under order 7 rule 11, the plaint may be rejected in the following cases;

a) Where it does not disclose a cause of action.

[32] **CONSTITUTIONAL APPEAL NO. 1 OF 1997**

[33] Relying on MULLER ON THE CODE OF CRIMINAL PROCEDURE, VOLUME 14TH EDITION AT PAGE 206

[34] HCCS 83/1969

[35] (1968) HOD 501

b) *Where the relief claimed is undervalued and the plaintiff, on being required by the court to correct the valuation within a time fixed by court, fails to do so.*

c) *Where the relief claimed is properly valued but an insufficient fee has been paid and the plaintiff on being required by the court fails to do so.*

d) *Where the suit appears from the statement in the plaint to be barred by any law.*

e) *Where the suit is shown by the Plaint to be frivolous or vexatious.*

Frivolous and vexatious pleadings can be struck out at the discretion of court. This was fortified in ***Sarwan Singh v Micheal Notkin***[36] and the court of appeal noted that this power should only be exercised in plain and obvious cases.

Procedure for application for rejection of the Plaint

The application to court is made by way of summons in chambers under Order 7 rule 19. It must be noted that where a plaint is rejected, the judge shall record an order to the effect with the reasons for the order.

Documents needed

Chamber summons supported by an affidavit; where the applicant prays to court for a rejection of the plaint, relying on any of the grounds provided for in order 7 rule 11.

Forum

The forum is the High Court, since the CPR applies to the High Court by virtue of section 1 of the Civil Procedure Act.

Pleadings By Way Of Defence

This is conversed by order 8 of the CPR. Rule 1(1) provides that the defendant may, if so required by court at the time of issue of the summons or at any time thereafter shall, at or before the first hearing or within such time as the court may prescribe, file his or her defense. Rule 3 provides that each allegation of fact in the plaint if not

[36] (1952) 19 EACA 117

denied specifically or by necessary implication or stated not to be admitted in the pleadings of the opposite party, shall be taken to be admitted, except against a person under disability; ***inter alia.***

It must be noted that where any defendant seeks to rely upon any grounds as supporting a right of counterclaim, he or she shall in his or her statement of defense, state or specifically that he or she does so by way of counterclaim.[37] Order 8 rule 11 provides that a reply to a counterclaim filed, shall be served on the defendant within 15 days from the date of filing the counterclaim.

Failure To Plead And Consequences

As noted earlier, a Written Statement of Defense is filed in accordance with **08 r 1 of the Civil Procedure Rules S.1 71-1.** Filing of a written statement enables a person to gain *locus standi* in court. This was discussed in **SENGENDO –VS- ATTORNEY GENERAL [1972] HCB at Pg. 356** where court formed an opinion to the effect that a Defendant who fails to file Written Statement of Defense puts himself out of the court and therefore can't be heard.

Consequences Of Defective Pleadings

The **CPR** [supra] lays down the consequences of defective pleadings in orders 6 and 7 of the **CPR** respectively, these are discussed herein below:

AMENDMENT OF PLEADINGS

Amendment of pleadings refers to correction of errors including curing of defects in pleadings. This is conversed by order 6 rule 19,20,21,31 and O 52 rule 1 and 2 of the CPR SI 71-1. Amendment of pleadings may be done with or without leave of court.

Amendment without leave of court.

This is covered in **O6 rule 20 and 21** of the of the CPR thus; a plaintiff may, without leave amend his or her plaint once at any time within twenty-one days from the date of issue of the summons to the defendant or where

[37] Rule 7 of Order 8

a written statement of defense has been filed, then within 14 days form the filing of the written statement of defense or the last of such written statements.

O6 rule 21 provides that a defendant who has set up any counterclaim or setoff may without leave amend the counterclaim or setoff at any time within twenty-eight days of the filing of the counterclaim or setoff, or, where the plaintiff files a written statement in reply to the counterclaim or setoff, then within fourteen days from the filing of the written statement in reply.

It must be noted that the rationale for amendment is to have the necessity and the purpose of determining the real questions in controversy between the parties as laid out in **rule 19**.

Amendment with leave of court.

This is juxtaposed from the provisions of rule 2 and 21 of the rules. If the period is more than twenty-one days from the date of issue of the summons to the defendant or where a written statement of defense has been filed, then the plaintiff can only amend with leave.

If the period if more than twenty-eight days of the filing of the counterclaim or setoff, or, where the plaintiff files a written statement in reply to the counterclaim or setoff, then the defendant has to seek leave of court to amend.

Cardinal points to note about amendment of pleadings:

The amendment should not amount to a departure from the proceedings as fortified by **Kasolo Vs Nile Bus Service.**

Secondly, the amendment should be made within the limitation period as fortified by **UCB Vs Paineto Mubiru** wherein court held that the law does not allow statutes of limitation to be circumvented.

An application for a leave to amend cannot be allowed where it discloses a new cause of action which is inconsistent with the pleadings. This was held in **African Overseas Company Vs Acharya [1963].**

Procedure, Forum and Documents

One drafts chamber summons supported by an affidavit, [hereinafter referred to as the application] under **O6 r. 19 and 31**, wherein he swears or affirms that it will cause no injustice to the other party and that it will determine the real issues in dispute between the parties.

Upon completion, these are commissioned; and a commissioner for oaths certifies the annexures.

The application is then taken to the cash/revenue office of the High Court and it's assessed for filing. The assessment is paid in the bank, whereupon a receipt is issued. It's at this stage that the application is filed.

Upon filing of the application, it is given a reference number and taken to the Registrar for signature, sealing and fixing of a date for hearing.

Striking Out Pleadings

This is conversed by **O.6 rule 30 of the CPR SI 71-1** thus,(1) The court may, upon application, order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and, in any such case, or in case of the suit or defence being shown by the pleadings to be frivolous or vexatious, may order the suit to be stayed or dismissed or judgment to be entered accordingly, as may be just. It must be noted that all orders made in pursuance of this rule shall be appealable as of right.

Dismissal Of Suit.

If, in the opinion of the court, the decision of the point of law substantially disposes of the whole suit, or of any distinct cause of action, ground of defence, setoff, counterclaim, or reply therein, the court may dismiss the suit or make such other order in the suit as may be just. This is conversed by **O 6 rule 2 of the CPR SI 71-1**

Discontinuance Of A Suit.

This is provided for in order 8 rule 13 which is to the effect that discontinuance of suits occurs if in any case in which the defendant sets up a counterclaim, the suit of the plaintiff is stayed, discontinued or dismissed; the counterclaim may nevertheless be proceeded with.

Settlement Of Preliminary Objections

Order 15 rule 2 provides that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case may be disposed of on the issues of law only, it shall try those issues first and for that purpose

may, if it thinks fit postpone the settlement of the issues of fact after the issues of law have been determined. Case law is to the effect however, that if the issues of law to be disposed of raise triable issues, then court will not determine the case on those issues of law. This is due to the fact that it may necessitate adducing evidence.

WITHDRAWAL OF SUITS

This is provided for in **Order 25** of the **CPR**, and provides a mode of withdrawal of suits by either the defendant or the plaintiff.

Rule 1(1) provides that the Plaintiff may at any time before the delivery of the defendants' defence or after receipt of the defense, before taking any other proceedings in the suit *(except any application in chambers)* by notice in writing to wholly discontinue his or her suit against all or any of the defendants. We are fortified by ***Mulondo Vs Semakula [1982***] where court held the principle laid out in **O25 r1(1).**

Rule 1(2) provides that except as in this rule otherwise provided, it shall not be competent for the Plaintiff to withdraw or discontinue a suit without leave of court, but the court may before or at or after hearing upon such terms as to costs, and as to any other suit, and otherwise as may be just, order the action to be discontinued or any part of the alleged cause of the complaint to be struck out.

Three points should be noted about withdrawal of suits by a plaintiff, as follows

- *First and foremost, the withdrawal should be before delivery of the defendants' defense or after receipt of the defense, before taking any other proceedings in the suit.*
- *Secondly, the notice should be given in writing wholly discontinuing the suit or withdrawing part of the suit.*
- *Thirdly, the plaintiff undertakes to pay costs of the suit of the defendant.*

Withdrawal of a suit by the defendant is not allowed without leave of court; it would still be in the same format; as provided for under order 25 rule 1(3).

It must be noted that withdrawal of a suit can also be done by consent. Order 25 rule 2 provides that when a suit has been set down for hearing, it may be withdrawn prior to the hearing by either the plaintiff or the defendant upon filing a consent signed by both parties.

PROCEDURE FOR WITHDRAWAL OF SUIT;

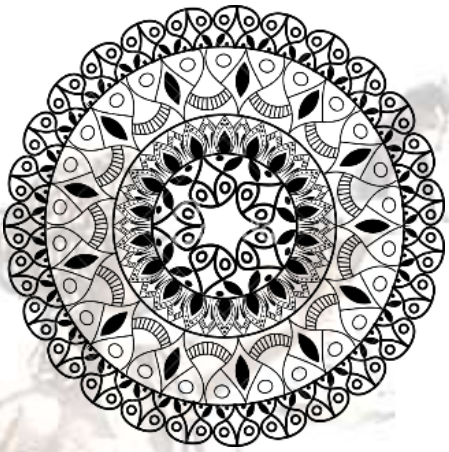
This is done by application vide summons in chambers under order 25 rule 1 and rule 7 of the CPR.

Documents needed

Chamber summons supported by an affidavit; where the applicant prays to court for withdrawal of the suit.

Forum

The forum is the High Court, since the CPR applies to the High Court by virtue of section 1 of the Civil Procedure Act.



ISSUE AND SERVICE OF SUMMONS

What is a summons?

Summons is an official order requiring a person to attend court either to answer a claim / charge or to give evidence

The summon must be signed an must contain a seal of court 0.5, 1 **In Kaur v City Auto mart (1967) EA 108,** court held that the requirements of signing and sealing are mandatory and failure to comply with them renders the summons a nullity.

EFFECT OF IRREGULARITIES IN THE COURT PROCESS

There are situations where for one reason or another court summons are not signed and sealed by the responsible officers. In ***Tommy Otto v Uganda Wildlife Authority***,[38] In this case the hearing notice was either signed nor dated. The court held that a hearing notice is issued by the court and the plaintiff cannot be held liable for the negligence of the staff in court registry to have issued an undated and unsigned hearing notice. The hearing notice indicated when the matter was due before the court and was sealed by a seal of court. That despite the said effects, the hearing notice served the purpose for which it was intended and both parties were before court. They said did not cause any injustices to any of the parties.

[38] HECS No. 208/2002

WHAT MUST ACCOMPANY THE SUMMONS

0.5 r 2 mandates that the summons are accompanied by a copy of the plaint, a brief summary of evidence to be addressed, a list of witnesses, a list of documents and a list of authorities.

ON WHOM ARE SUMMONS SERVED

0.5 r 10 requires that summons are served personally on the defendant. This was buttressed in the case of **Kasirivu and 4 ORS v Bamurangye and 3 ORS**

SUMMONS ON AGENT / ADULT MEMBER

Under 0.5 r 13 of CPR, where it is not possible to personally access the defendant or defendant connect be found, summons can be served on his agent or an adult member of his family. In **Erukaria Karuma v Mehla**[39] the process served his wife having been told the defendant was in India. The court held that where the defendant cannot be found, the process server must do due diligence to establish their whereabouts. Its upon such failure that an agent or adult member may be served. In this case court found that it was inadequate ground to say that the defendants could not be found in the absence of any enquiry as to the defendants address in the country he has gone to, the duration of his stay and the likely dates for his return. The judge said that without these one could not say that the defendant cannot be found. The ex parte decree was set aside.

FIXING OF SUMMONS AT A CONSPICUOUS PLACE

Under 0.5 r 15, a process server upon carrying out all due and reasonable diligence cannot find the defendant or any person on whom service can be effected, the process server can affix a copy of the summons on the outer doors or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain and shall then return the original summons to count with a report annexed to it stating that he or she has affixed the copy.

[39] **(1960) EA 305,**

OBJECTION MY LORD

SUBSTITUTED SERVICE

Where the court is satisfied that for any reason the summons cannot be served in the ordinary way, the court shall order the summons to be served by a fixing a copy of it in some conspicuous place in the court house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the courts thinks fit **0.5 r 18(1).** E.g., newspaper ads The substituted service under order of the court shall be as effectual as if it had been made on the defendant personally 0.5 r 18(2).

In ***Satuinder Singh v Sarinder Kaur***[40]**,** substituted service is granted with a purpose or goal to achieve. It is granted when the court is satisfied that there exists a practical impossibility of actual service that the method of substituted service assured by the plaintiff/petitioner is one which will in all reasonable probability, if not certainty, be effective to bring knowledge of the plaint / petition to the respondent / defendant. Substituted service should only be effected if the person is within the jurisdiction of the court. If the person to be served is outside the jurisdiction of court, the provisions of **0.5 rule22 CPR** which govern service outside the jurisdiction apply[41]**.**

PROOF OF SERVICE

The person served or who receives service on behalf of the defendant should sign on the original court process acknowledging receipt of the process. **0.5r 14.** In **Kasirivu and 4 ORS v Bamurangye and 3 ORS**[42]**,** it was held that where a duplicate or copy of the summons

NECESSITY OF ISSUE AND SERVICE OF SUMMONS

This is conversed in Order 5 of the CPR. Order 5 rule 1(1) provides that when a suit has been duly instituted a summons may be issued to the defendant ordering him or her to file a defence within a time specified in the summons; or ordering him or her to appear and answer the claim on a day to be specified in the summons.

Rule 2 provides that the summons has to be accompanied by a copy of the plaint, a brief summary of the evidence to be adduced, a list of witnesses, a list of authorities, a list of documents to be relied on except that an additional list of authorities may be provided later with the leave of court.

[40] **HCCS NO.2 of 2002**

[41] 41

[42] **(2009)1 HCB 42**

MODES OF EFFECTING SERVICE

Rule 8 provides that for the mode of service; it shall be made delivering or tendering a duplicate of the summons signed by the judge, or such officers the judge appoints for this purpose and sealed with the seal of court.

Rule 10 provides that whenever it is practicable, service shall be made on the defendant personally unless he or she has an agent empowered to accept service, in which case service on an agent shall be sufficient. To this end, rule 13 provides that where in any suit the defendant cannot be found, service may be made on an agent or an adult member of the family of the defendant who is residing with him or her.

The defendant is enjoined to endorse an acknowledgement on the original summons except that if court is satisfied that the defendant or his agent or other person on his or her behalf has refused to endorse, the court may declare the summons to have been duly served.[43]

Rule 15 provides that the serving officer after using all due and reasonable diligence, cannot find the defendant, or any person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house where the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the court from which it was issued with a report endorsed on it or annexed to it stating that he or she has so affixed the copy; the circumstances under which he or she did so, and the name and address of the person, if any , by whom the house was identified and in whose presence the copy was affixed.

The serving officer has to make or cause to be made, under rule 16 an affidavit of service to be annexed if the service was made under rule 14; stating the time when and the manner under which the summons was served, and the name and address of the person, if any, identifying the person served and witnessing the delivery or tender of the summons.

Service on a defendant in prison is effected by serving the officer in charge of the prison under rule 19. In addition, rule 20(1) provides that where the defendant is a public officer in civil employment, or is a servant of a railway company or local authority, summons may be most conveniently served on the defendant's head of office.

Rule 20(2) provides that where the defendant is a soldier, the court shall send the summons to his or her commanding officer, together with a copy to be retained by the defendant.

Rule 24 provides that every application for leave to serve summons or notice on a defendant out of jurisdiction shall be supported by an affidavit ***inter alia*** and showing in what place or country the defendant is or probably may be found. Rule 27 provides that where the defendant is neither a commonwealth citizen nor a British protected person and is not in a commonwealth country, notice of the summons and not the summons itself shall be served upon him or her.

[43] Order 5 rule 14

PROCEDURE FOR APPLICATION FOR LEAVE TO SERVE OUT OF JURISDICTION

Application is by chamber summons supported by an affidavit under order 5 rules 24 and 32.

When leave has been granted, rule 28 provides that the notice to be served shall be sealed with the seal of the High Court for use out of the jurisdiction and shall be forwarded by the Registrar to the Minister together with a copy of it translated into the language of the country in which service is to be effected. A request for further transmission of the notice through proper channels of the country in which service is to be effected shall be in form 10 of Appendix A to the Rules.

Another rule which ought to be noted thus service cannot be effected on Sunday. Rule 9 of order 51 provides that service of pleadings, notices and summons other than summonses on plaints, orders rules and other proceedings shall be effected before the hours of six in the afternoon, except on Saturdays before the hour of one in the afternoon. It must be noted that for purposes of computing time service after six on a weekday or after the hour of one on a Saturday shall be deemed to have been service on the following day, and for Saturday it will be deemed service on Monday.

Substituted service is provided for under rule 18 thus, where the court is satisfied that for any reason the summons cannot be served by affixing a copy of it in some conspicuous place in the courthouse and also on some conspicuous part of the house, if any, in which the defendant was known to have last resided or carried on business or personally worked for gain, or in such manner as court thinks fit; and substituted service shall be taken to be as effectual as if it had been made on the defendant personally. Application for leave to serve summons through use of substituted service is by chamber summons under order 5 rule32, where the applicant should satisfy court he or she has used reasonable steps to effect service of summons on the defendant and failed.

SERVICE OF SUMMONS ON DIFFERENT KINDS OF PARTIES

PERIOD OF LIMITATION OF SERVICE

Summons have to be served within 21 days from the date of issue, as enunciated in order 5. It must be noted that where the summons issued under Order 5 have not been effected within 21 days from the date of issue, and there is no application for extension of time or the application for extension of time has been dismissed; the suit shall be dismissed without notice.

Procedure for application for extension of time to effect service

One makes an application by chamber summons under order 5 rules 1(2) and 32. The applicant has to show court sufficient reasons to court justifying the extension of time for service.

Documents

Chamber summons accompanied by an affidavit.

List of authorities, witnesses, documents and witnesses under order 6 rule 2

EFFECT OF EXPIRY OF PERIOD

This is conversed in order 5 rule 1(3)(a) which provides that where summons have been issued and service has not been effected within 21 days from the date of issue or there is no application for extension of time, or the application for extension of time has been dismissed; the suit shall be dismissed without notice.

WHO CAN EFFECT SERVICE

It must be noted that order 5 rule 7 provides that where court has issued a summons to a defendant, it may be delivered for service to any person for the time being duly authorized by the court, or to an advocate or an advocate's clerk who may be approved by the court generally to effect service of the process. This means that a person has to be authorized by court to effect service. Failure of this requirement leads to improper service of the court process.

EFFECT OF PROCEEDING WITHOUT SERVICE OF SUMMONS;

In practice, the proceedings go on ex parte; but the defendant can apply to court to set aside the ex parte judgment, if it has been passed, under order 9 rule 12.

Procedure for application to set aside the ex parte judgment.

Application to court by summons in chambers under order 98 rule 29; supported by an affidavit, where the defendant avers that he or she was not served with the summons.

Documents

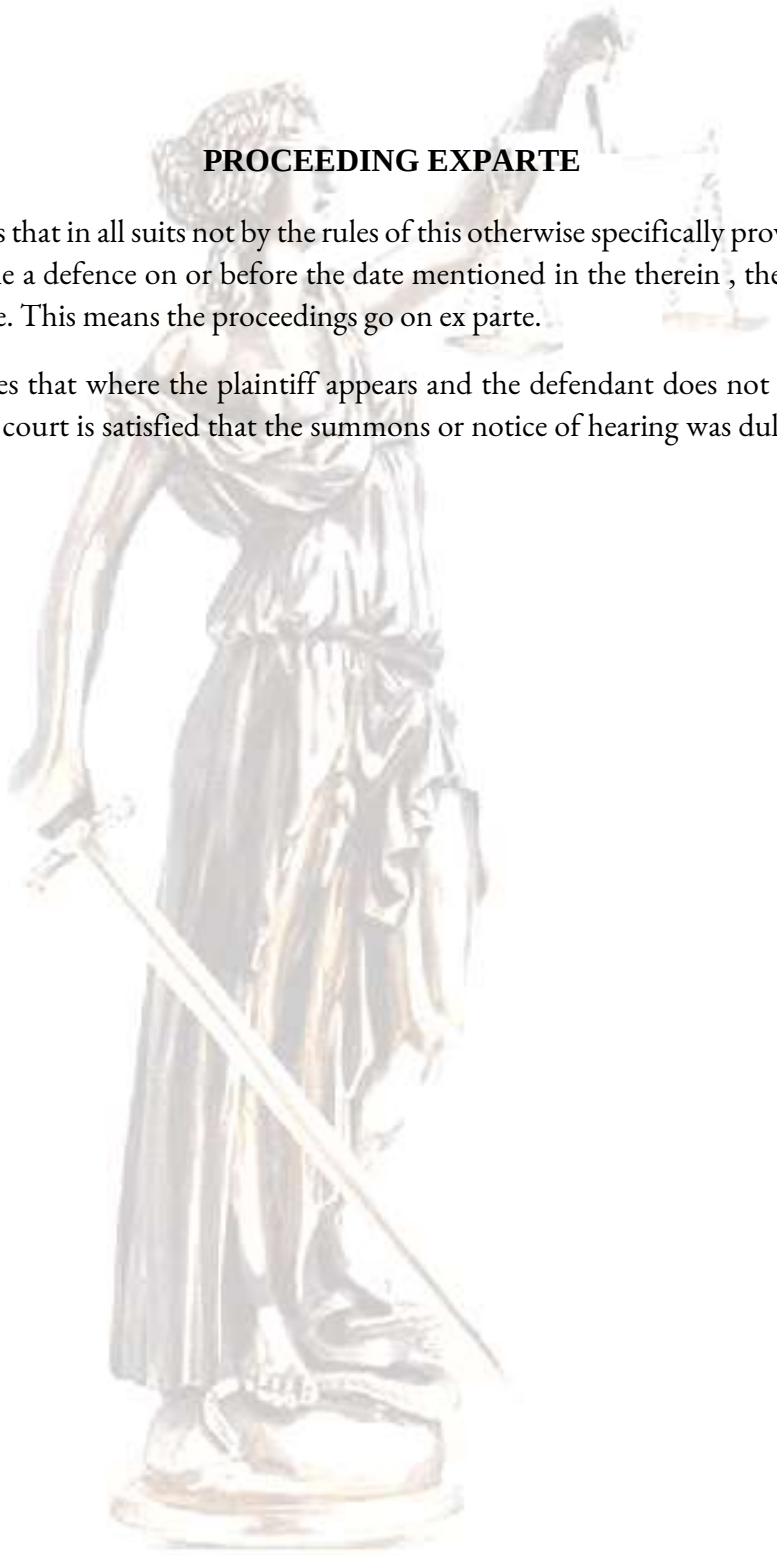
Summons in chambers.

List of authorities, witnesses, documents and witnesses under order 6 rule 2.

Forum

OBJECTION MY LORD

The forum is the High Court, since the CPR applies to the High Court by virtue of section 1 of the Civil Procedure Act.



PROCEEDING EXPARTE

Order 9 rule 10 provides that in all suits not by the rules of this otherwise specifically provided for, in a case where a defendant does not file a defence on or before the date mentioned in the therein , the suit may proceed if the party had filed a defence. This means the proceedings go on ex parte.

Order 9 rule 20 provides that where the plaintiff appears and the defendant does not appear where the suit is called on for hearing; if court is satisfied that the summons or notice of hearing was duly served, it may proceed ex parte.

FILING DEFENCE FOR DEFENDING

A defense is a written plea made against a plaintiff's statement of claim.

There are several defenses:

NON-CONDITIONAL DEFENSE:

Is one which is available under an express right to do so e.g., when someone commences an ordinary suit, they have a right to write a WSD under 0.9 r 1(1) of CP rules.

CONDITIONAL DEFENCE:

Under 0.36 of CPR, a defendant does not have an automatic right to defense. They have to apply for leave to appear and defend the right of application once granted may order the defendant to satisfy certain conditions before filing the defence.

TECHNICAL DEFENSE:

Is one premised on a point of law e.g., filing the suit out of time, then limitation is a defence.

Other technical defence is res judicata.5.7 of the CPA.

GENERAL DEFENSES.

These are intended to address facts raised by adverse parties. Not specific but evasive denials are not permissible under 0.6 r10.

A good defense must traverse each and every fact 0.6 r 8 and 0.8 r 3.

0.6 r 8 provides that it shall not be sufficient for the defendant in his/her WSD to deny generally the grounds alleged by the statement of claim or for the plaintiff in his/her written statement in reply to deny generally the grounds alleged in a defense by way of counter claim but each party must deal specifically with each allegation of facts of that he/she does not admit the truth except damages.

0.8 r3 provides for specific denial of every allegation of fact in the plaintiff not denied specifically or by necessary implication or stated to be not admitted in the pleading of the opposite party shall be taken as admitted except as against a person under disability but court may in its discretion require any facts so admitted to be proved otherwise than by that admission.

PLAUSIBLE DEFENCES AND SHAM DEFENCES.

Plausible defences are defences with merit or which on the face of it have merit.

Sham defences are those without merit filed in bad faith to buy time or filed out of dishonesty.

DEFENCES CONTAINING ADMISSIONS.

Where the defendant admits part of the claimer all the claim.

CONTENTS OF THE DEFENCE.

In the defence, tell us what allegations you deny.

What allegations your unable to admit/deny but would require the plaintiff to prove.

State the allegation you admit.

Denials must be expressed and companied with a reason for denial not evasive through. 0.6 r10.If you intend to put forward your own version of facts then do so e.g. “In respect to para 2, I deny the facts stated and over that”.

If you raise limitation, give details of the dates.

WRITTEN STATEMENT OF DEFENCE (WSD).

0.5 r. 1(a) requires a defendant served with summons to file a WSD with in the time prescribed in the summons.

In the case of A.G and UCB v Westmont the court held that failure to file a defence excludes a party from participating in court proceedings.

PRINCIPLES/ GUIDELINES.

Defence must be filed in the same court or division of the court where the suit is pending.

Pinnacle projects Ltd v Business in motion consultants.

Filing a defence must be done with in a period of 15 days from the date of service and is complete when the WSD and evidence of payment of court fees is filed in the relevant registry of the appropriate court.

0.8 r1(2)- A defence must be filed within 15 days after service of summons.

The defense must be endorsed by the registrar magistrate, stamped and sealed. Only then can the WSD be served. 0.9 r1.

Where the defendant is the attorney general, the defense is required to be filed within 30 days from the date of service. (r.6 of the government proceedings rules).

CONTENTS OF WRITEN STATEMENT OF DEFENCE

It should not contain a bare denial but must contain facts that constitute a reasonable defence otherwise 0.6 r 30 will be involved to strike out the defence on ground that it discloses no reasonable answer. The plaintiff must apply by notice of mention to have the defence struck off.

0.6 r 8 requires that denial should be specific and shall not be sufficient for the defendant in his /her words to deny generally the grounds alleged by the statement of claim.

In ***Nile Bank Ltd v Thomas kato Ors***[44],. Justice Arach-Amoko held that the defence contained general demands to the p/fs allegations which offended 0.6r7(now 8) which requires each party to specifically deal with each allegation of fact denied. Here the plaintiff had by notice of motion applied to court to have the defendants defence struck off and it was granted.

A WSD is a pleading and must be accompanied by the summary of evidence, list of authorities ,list of witnesses and documents.(0.6r2).

Rule 5 of the judicature rules 2013 requires that the WSD is filed together with the defendant's mediation case summary.

[44] HMCA NO.1190 of 1999

OBJECTION MY LORD

EXTENSION OF TIME TO FILE A WRITEN STATEMENT OF DEFENCE.

Defendant may apply for extension of time with in which to file a defence or to file a defence out of time and apply for extension of time to validate it. 0.51 r6 and 7.

HOW DONE AND WHEN DONE

This is envisaged in **Order 8 of the CPR. Rule 1 [2]** provides that a defendant shall unless some other or further order is made by the court, file his or her defense within fifteen days after service of the summons.

It is advisable to have specific denials in a defence. This is laid out in **Rule 3** which provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against a person under disability; but the court may in its discretion require any facts so admitted to be proved otherwise than by that admission.

CONSEQUENCES OF FAILURE TO FILE A DEFENCE

This is covered above under the sub heading "Proceeding ex parte". In a nutshell, an ex parte judgment shall be entered against the defendant. Failure to file a defence ousts the Defendant's locus before court. This was held in ***sengendo –vs- attorney general [1972] hcb at pg. 356*** where court formed an opinion to the effect that a Defendant who fails to file Written Statement of Defence puts himself out of the court and therefore can't be heard.

TYPES OF JUDGMENTS

The law relating to judgements is set out under 0.21 of CPR.

0.21 OR 3(1) mandates that the judgement be dated and signed by the judge issuing it in open court.

Under 0.21 or 3(3) judgements once signed shall not afterwards be altered to except as provided by section 99 of the act or on review.

CONTENTS OF JUDGEMENT.

Under 0.21 or 4, judgements in defended suits must contain a concise statement of the case, the points for determinant decision on the case and the reasons 4 the decision.

R 5 requires that where issues have been framed, the court must state its finding or decision, with reasons for the finding or decision.

SUMMARY JUDGMENT

This is provided for in **O 36 of the CPR**. Rule 2 provides thus;

"all suits where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising upon a contract, expressed or implied, on a bond or contract written for payment of a liquidated amount of money;

on a guaranty where the claim against the principal is in respect of a debt or liquidated amount only; on a trust; or upon a debt to the Government for income tax;

or being actions for the recovery of land, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit,

or has become liable to forfeiture for nonpayment of rent, or against persons claiming under the tenant;"

may, at the option of the plaintiff, be instituted by presenting a plaint in the form prescribed endorsed "Summary Procedure Order XXXVI" and accompanied by an affidavit made by the plaintiff, or by any other person who can swear positively to the facts, verifying the cause of action, and the amount claimed, if any, and stating that in his or her belief there is no defense to the suit.

CONSENT JUDGMENT

Easily put, this is a type of judgment whereby the parties' consent to it. The parties draft a consent judgment and file it in court for the judge to sign it.

DEFAULT JUDGMENT

This is provided for in **Order 36 rule 3** which provides that Upon the filing of an endorsed plaint and an affidavit as is provided in rule 2 of the Order, the court shall cause to be served upon the defendant a summons .... and the defendant shall not appear and defend the suit except upon applying for and obtaining leave from the court.

Sub rule (2) which is the gist of this type of judgment states that in default of the application by the defendant or by any of the defendants (if more than one) within the period fixed by the summons served upon him or her, the plaintiff shall be entitled to a decree for an amount not exceeding the sum claimed in the plaint, together with interest, if any, or for the recovery of the land (with or without mesne profits), as the case may be, and costs against the defendant or such of the defendants as have failed to apply for leave to appear and defend the suit.

It must be noted that where a defendant wishes to be given leave to appear and defend, he or she follows the principles laid down in rule 4 of the order ***to*** An application by a defendant served with a summons.... for leave to appear and defend the suit shall be supported by affidavit, which shall state whether the defense alleged goes to the whole or to part only, and if so, to what part of the plaintiff's claim...

A default judgment is also evident under **Order 9 rule 6 to wit where** the plaint is drawn claiming a liquidated demand and the defendant fails to file a defense, the court may subject to rule 5 of this Order, pass judgment for any sum not exceeding the sum claimed in the plaint together with interest at the rate specified, if any, or if no rate is specified, at the rate of 8 percent per year to the date of judgment and costs.

INTERLOCUTORY JUDGMENT

This can be categorized into two and is discussed below:

First and foremost**,** under **order 9 rule 8,** where the plaint is drawn with a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and the defendant[s] fail[s] to file a defense on or before the day fixed in the summons, the plaintiff may, subject to rule 5 of the order, enter an interlocutory judgment against the defendant[s] and set down the suit for assessment of the value of the goods and/ or damages only, in respect of the amount found to be due in the course of the assessment.

Secondly, where an application is before court during the subsistence of a main suit or if the application is originating, the type of judgment passed is called an interlocutory judgment. Examples of such applications include applications for temporary injunctions under order 41, security for costs under order 26, stay of execution under order 22.

A defendant is at liberty under **O9 rule 27** to apply to court to set aside a decree passed against him ***ex parte* .** Rule 27 provides thus, in any case in which a decree is passed ex parte against a defendant, he or she may apply to the court by which the decree was passed for an order to set it aside; on two grounds:

- *If he or she satisfies the court that the summons was not duly served;*
- *He or she was prevented by any sufficient cause from appearing when the suit was called on for hearing;*

The court shall at its discretion make an order setting aside the decree passed against him or her upon such terms as to costs, payment into court, or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit;

there is an exception to setting aside a decree passed ***ex parte***; if the decree is of such a nature that it cannot be set aside as against such defendant only, it may be set aside as against all or any of the other defendants also. It must be noted further that on the strength of rule 28, no decree shall be set aside on any such application as aforesaid unless notice of the application has been served on the opposite party.

ORDINARY JUDGMENT

This is provided for under **Order 21 of the CPR**. This is the type of judgment pronounced at the close of a case. Rule 1 of the order provides that in suits where a hearing is necessary, the court, after the case has been heard, shall pronounce judgment in open court, either at once or on some future day, of which due notice shall be given to the parties or their advocates.

A judgment pronounced by the judge who wrote it shall be[45] dated and signed by him or her in open court at the time of pronouncing it.

It must be noted that judgments in defended suits shall contain;

- A concise statement of the case,
- the points for determination,
- the decision on the case and the reasons for the decision.[46] In suits in which issues have been framed, the court shall state its finding or decision, with the reasons for the finding or decision, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties and particulars of the claim, and it shall specify clearly the relief granted or other determination of the suit.[47] The decree shall also state by whom or out of what property or in what proportion the costs incurred in the suit are to be paid.

EX PARTE JUDGEMENTS.

This kind of judgement arises when only the plaintiff is heard in the suit. Ex parte proceedings may be initiated under 0.9r11(2) where a defendant fails to file a defense within the prescribed time the plaintiff may set suit down 4 hearing ex parte.

[45] Rule 3
[46] Rule4
[47] Rule 6

They may also be initiated under 0.9 r 20(1)(a) where although a defendant filed a defense, he/she is absent on the day of the hearing have been served with summons / hearing notice.

During ex parte proceedings, the plaintiff has the burden to satisfy court that he/she is entitled to the remedies sought. ***Abedrrego Ongom v Amos Kaberu.***[48]

Setting Aside Interlocutory And Default Judgements Under 0.9r 6 and 0.9 r 8

0.5 r1(a) requires a defendant served with summon to file a WSD with in the time prescribed in the summons.

Under 0.8 r1(2) a defense must be filed within 15 days after service of summon

Where a defendant does not file a defense within the prescribed time the plaintiff pursuant to 0.9 r5 causes an affidavit of service to be filed on court record and then proceeds under 0.9 r6 to apply for a default judgment on if the claim is for a liquidated demand or apply for an interlocutory judgment under 0.9 r8 if the claim is for pecuniary damages

A party aggrieved by the insurance of the default or an interlocutory judgement under 0.9 r 6 or 0.9 r 8 can apply to have it set aside under 0.9 r 12 of CPR.

In ***Nicholas Rossous v Gulam Hussein Habib Viran and Anor***, the supreme court held that 0.9 r 12 of CPR was the appropriate provision when setting aside any judgment issued under 0.9 r6 or 0.9 r8.

0.9 r12, does not specify the grounds for setting aside and any sufficient ground that gives cause to the court to exercise its discretion is sufficient.

Sufficient cause was defined.

PROCEDURE

Application is by notice of motion with an affidavit in support brought under 5.98 of CPA and 0.9 r12, 0.52 r 1 of CPR

However, an omnibus application seeking an order for setting aside and enlargement of time within which to file the defence is brought.

This is brought under s.96,s.98 of CPA,0.9r12, o.15r6 and 0.52 r 1 of CPR.

[48] (1995) 111 KALR 7.

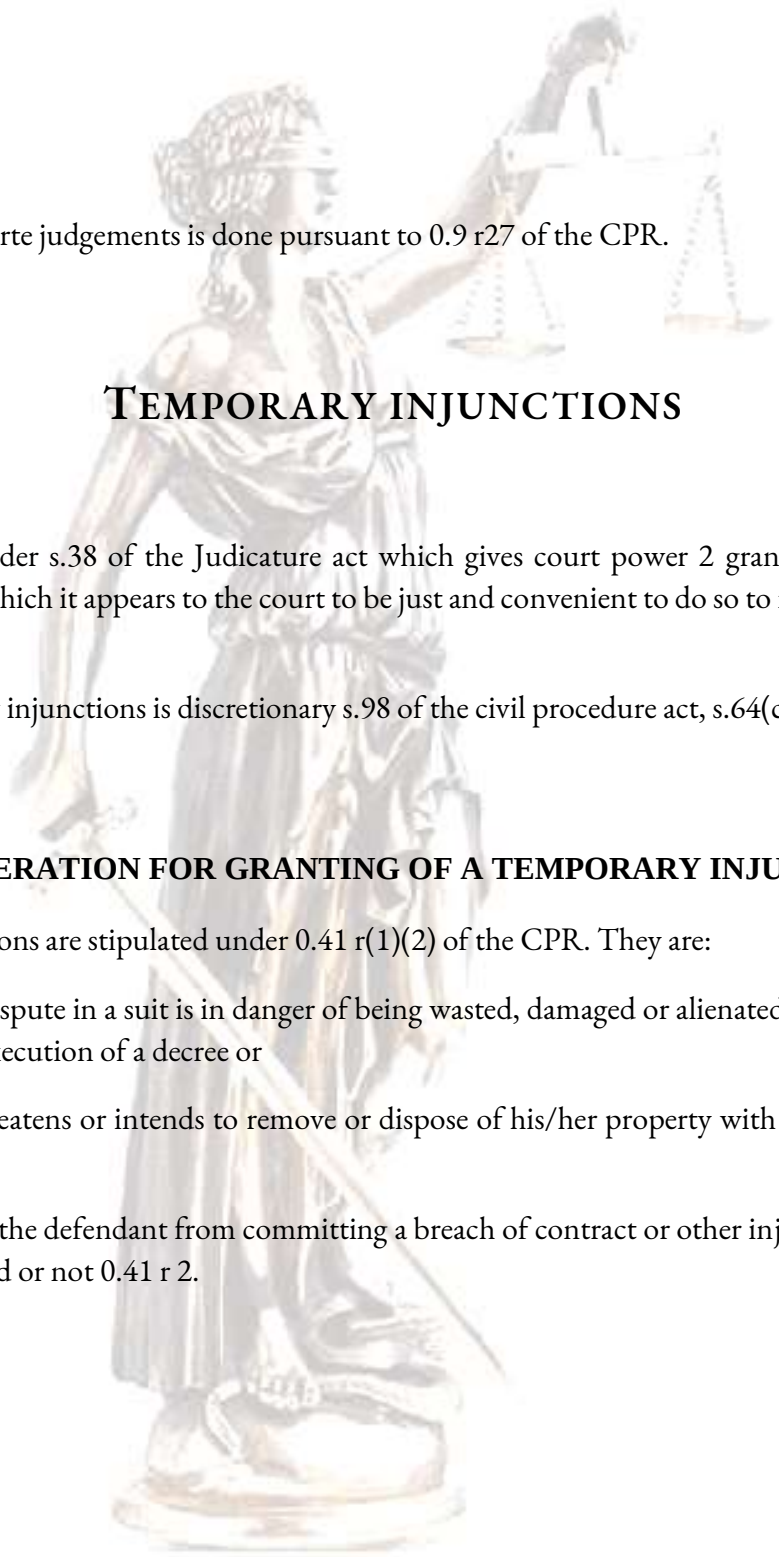
DOCUMENTS.

Notice of motion

Affidavit in support.

WSD.

NB: Setting Aside Exparte judgements is done pursuant to 0.9 r27 of the CPR.



TEMPORARY INJUNCTIONS

Law applicable:

These are governed under s.38 of the Judicature act which gives court power 2 grant orders of a temporary injunction in all cases which it appears to the court to be just and convenient to do so to restrain any person from doing acts.

The grant of temporary injunctions is discretionary s.98 of the civil procedure act, s.64(c) of CPA.

CONSIDERATION FOR GRANTING OF A TEMPORARY INJUNCTION.

The general considerations are stipulated under 0.41 r(1)(2) of the CPR. They are:

That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or

That the defendant threatens or intends to remove or dispose of his/her property with a view to defraud his or creditors.

In a suit for restraining the defendant from committing a breach of contract or other injury of any kind whether compensation is claimed or not 0.41 r 2.

OBJECTION MY LORD

PURPOSE OF AN ORDER OF TEMPORARY INJUNCTION.

In the case of ***Makerere university v Omumbejja Namusisi,***[49] the court stated that the purpose of an order for a temporary injunction is primarily to preserve the status quo of the subject matter of the dispute pending final determination of the case and the order is granted in order to prevent the ends of justice from being defeated.

The court further defined the *status quo* as simply devoting the existing state of affairs existing before a given particular point in time. In case of land ,status quo is purely a question of fact and the relevant consideration is the point in time at which the acts complained of as affecting or likely to affect or threatening to affect the existing state of things accrued.

Status quo may thus be in retrospect as in case of trespass or *ex post facto* as in case of a threatened action.

In ***Koko construction Ltd v Finasi / Roko construction SPV and Anor***. Status quo was defined simply to mean 'existing state of things or existing condition before a particular point of time. When or before what time will normally on facts of each case. In all circumstances, however the existing state of things must be as at the date when the defendant did the acts or the first at which is alleged to have been wrongful or the date then the plaintiff learned of the act or the date when he/she issued summons.

GUIDING PRINCIPLES WHEN GRANTING TEMPORARY INJUNCTIONS.

These were laid down by lord Diplock in the case of ***American Cyanamid CO. v Ethieon Ltd*** and cited with approval in the case of ***Kiyimba kagwa v katende***[50]. They are :

APPLICANT WILL SUFFER IRREPARABLE INJURY.

Where court is in doubt in regard 2 the two above the balance of conveniences of growing the application.

PRIMA FACIE CASE:

Applicant must show they have a prima facie case in the substantive suit. In the substantive suit, In ***Daniel Mukwaya v Administrator General***[51]***,*** The court held that what is relevant is for court to determine whether there is a serious issue to be tried at trial.

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[49] MISC APP NO.658 of 2013
[50] (1985) HCB 43
[51] ***HCCS 630/1993***

IRREPARABLE INJURY:

In ***Giella v Cassman University v Omumbeja Namusisi***[52], court defined irreparable injury to mean injury or damage which is so substantial or material that it cannot be adequately atoned for in damages.

In ***America Cyanamid v Ethicon Limited,***[53] court noted that the injunction would not be granted if damages in the measure recoverable at common law would be adequate remedy and the defendant would be in financial position to pay them no interlocutory injunction should normally be granted however strong the plaintiffs claim appeared to be at that stage. The damage is usually not reversible and cannot be quantified.

BALANCE OF CONVENIENCE.

Where the court is still in doubt having decided on the above two, it determines the application and a balance convenience. In ***Gapco(U) Ltd v Kaweesa Badru***[54], Court defined balance of convenience as meaning that if the risk of doing an injustice is going to make the applicants suffer them probably the balance of convenience is favorable to him/her and court would most likely be inclined to grant to him/her the application for the temporary injunction.

PROCEDURE.

Applications for temporary injunctions are by summons in chamber .0.41 r9 of CPr.

DOCUMENTS.

Summons in chamber.

Affidavit in support.

TEMPORARY INJUNCTIONS AGAINST GOVERNMENT PROJECTS AND PUBLIC BODIES.

In ***Alcohol association of Uganda and 39 ORS v The attorney General and URA***[55], justice Musa Ssekaana stated that courts should be slow in granting injunctions against government projects which are meant for the interests of the public at large as against the private proprietary interest or otherwise for a few individuals.

[52] HMCA NO.658 of 2013
[53](1975). Ac 396
[54] HCMA NO. 259/2013
[55] ***HCMA,*** NO.744 of 2022

Public interests is one of the paramount and relevant considerations for granting or refusing to grant or discharge of an interim injunction.

He further noted that injunctions against public bodies can issue against a public body from acting in a way that is unlawful or abusing its statutory powers or to compel the performance of a duty created under the statue.

The courts should be reluctant to restrain the public body from doing what the law allows to do. In such circumstances, grant of the injunction may perpetrate breach of the law which they are mandated to uphold.

The rationale for barning courts from granting injunctions which will have the effect of suspending the operation of legislation was articulated in the case of ***shell petroleum Development company of Nigeria Limited and Anor v The Governor of lagos*** state & others[56] where Rhodes –Vivour held that suspending the operation of law that has not been declared unconstitutional is a very serious matter. The grant of this application would amount to just that and this would be without leaving evidence. Laws are made for the good of the state and the power to tax quite rightly pointed out by the AG is a power upon which the entire fabric of society is based.

Courts should always consider and take into account the wider public interest. Public bodies should not be prevented from exercising the powers conferred under the statue unless the person seeking an injunction can establish a prima facie case that the authority is acting unlawfully. The public body is deemed to have taken the decision or adopted a measure in exercise of powers which it meant to use 4 the public good.

TEMPORARY INJUNCTIONS IN DEFAMATION SUITS.

Damages to reputation can be atoned for in damages as was established in the case of ***J.N Ntangoba v The editor in chief of the new vision*** approved in ***James Musinguzi and Anor v Chris Baryomusi and 3 Ors***[57]

An injunction can issue against a person defaming another where such is necessary. One cannot hide behind their constitutional rights i.e., the right to freedom of expression and right to engage in lawful occupation o win another person's reputation. The constitutional rights must be exercised in accordance within the maxim *sic utere tuo ut alienum no laedas* which translates into use your own as not to injure another's property or rights.

A temporary injunction restraining the respondents, their servants against an applicant or make further slanderous, malicious statements or any further defamatory publications pending leaving an order to grant. It's difficult to enforce and may curtail the right to information by the public. As a result, the balance of convenience often lies in not granting the injunction. Any further injurious publication is often considered in awarding damages in the main suit.

[56] 5 ALL NTC
[57] HCMA NO.817 OF 2016.

INTERIM ORDERS

They are sought by parties if there is a pending application before court and there is likelihood that the application will be rendered nugatory by the actions of the parties.

Law applicable.

S.98 of the civil procedure act which allows court to exercise its discretionary inherit powers.

ESSENCE OF INTERIM INJUNCTIONS/ORDERS.

In ***Souna cosmetics ltd Vs. The commissioner customs URA and commissioner General URA***[58], Justice Madrama observed that an application for an interim injunction is not application on the merits but meant to preserve the right of appeal or the right of hearing on the merits which right may be curtailed if the status quo is changed.

In exercising the discretion to prevent an appeal or application from being rendered nugatory the court does not consider the merits of the application for a temporary injunction.

CONSIDERATIONS FOR INTERIM INJUNCTIONS

Not the merits of the application for a temporary injunction are considered but rather whether the applicant or appellant has to have it heard would be curtailed if an interim measure of injunction or stay of execution is not granted. ***Souna cosmetics Ltd v The commissioner customs and Anor.***

There must be a pending substantive application with a likelihood of success. 0.50 r3A(3).

PROCEDURE.

It's by notice of motion with a valid affidavit.

An application for an ex parte interim application is made orally under 0.50 r 3A (4).

DOCUMENTS.

Notice of motion.

Affidavit in support.

[58] HCMA NO.424 of 2011

OBJECTION MY LORD

EX PARTE INTERIM ORDER

Under 0.50 r3A (1), am ex parte interim order can only be granted where it appears that the giving of such notice would cause undue delay and that the object of granting the interim relief would thereby be defeated

Under 0.50 r 3A(2) all applications for interim relief must be inter parties except for exceptional circumstances that may include:

a. Where the matter is urgent in nature
b. Where there is a real threat or danger.
c. Where the application is made in good faith

PERIOD OF EX PARTE INTERIM ORDER.

An ex parte interim order is granted 4 a period not exceeding 3 days from the date issue and upon hearing of the substantive application, the order shall lapse. 0.50 r 3A(5).

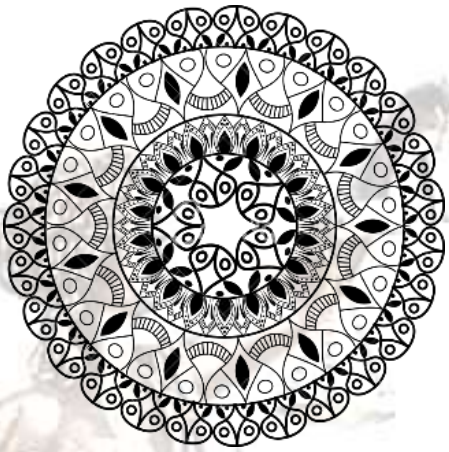
The applicant must within the 3 days present proof of effective service on the opposite party. 0.50 r 3A(6) and where the proof of effective service is not presented within the 3 days the order lapses. 0.50r3A(7).

VARIATION OF INTERIM AND TEMPORARY INJUNCTIONS.

Under 0.41 r 4, interim injunctions and temporary injunctions may be varied or vacated on application by a party.

Procedure.

It's by notice of motion with a valid affidavit. 0.41 r 4 and s.98 of CPA.



SECURITY FOR COSTS

Security for costs is governed by the following laws

1. Civil Procedure Act Cap.71

2. Civil Procedure Rules S.I No.71-1

3. Case Law

Security for costs and further security for cost. This is money paid into court of which unsuccessful plaintiff will be able to satisfy any eventual award of costs made against him.

In relation to the **CPR,** this is governed by **Order 26 r 1,2 & 3** of **Civil Procedure Rules. Rule 1** provides that the court may if it deems fit order a Plaintiff in any suit to give security for the payment of all costs incurred by the Defendant.

Rule 2 (i) provides; thus, in the event of such security not being furnished within the time fixed, the court shall take an order dismissing the suit unless the Plaintiff or Plaintiffs are permitted to withdraw therefrom.

Rule 2(ii) provides that where a suit is dismissed under this rule, the Plaintiff may apply for order to set the dismissal aside, and, if it is proved to the satisfaction of the court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

The case of **JOHN MUKASA & LITHOPACK LTD –VS- M/S SRIJAYA LTD Misc. Application. No. 215 OF 2004** arising from ***Misc. Application. No.111*** *of* ***2004*** and ***H.C.C.S No. 796 of 2000,*** it was clearly pointed out *inter alia* that the purpose of security for costs as provided under **0.23 r.1 CPR** is to secure a defendant who may incur costs to defend a suit instituted by a plaintiff who cannot pay his costs.

Some of the reasons which might prompt a Defendant to apply for security for costs include;

(a) Where the Plaintiff is resident abroad and does not have substantial property within jurisdiction of the court,

(b) Where the Plaintiff is merely a nominal and impecunious Plaintiff suing for benefit of some other person,

(c) Where the Plaintiff has with a view of avoiding the consequences of the litigation omitted to disclose his address or has changed such address without notice,

(d) Where the Defendant is made to defend a frivolous and vexatious suit by the Plaintiff and,

(e) In case where the Plaintiff is a company, is insolvent.

The purpose of this order is to secure a Defendant who may incur hefty costs of defending frivolous and vexatious suit instituted by the Plaintiff who cannot pay the costs of litigation. Court held in ***G.M Combined –Vs- A.K Detergents (U) Ltd SCCA 34/95 [1996] 1 Kalr 51*** that a Plaintiff's impecuniosity and being under liquidation ***inter alia*** justifies an order for security for costs **unless the Defendant** has admitted liability, offers to settle the claim or that the **defendant has no Reasonable defence.**

It must be noted that the courts have overtime come up with conditions that have to be proved by a Defendant before an order for security for costs is made. To this end therefore, in **ANTHONY NAMBORO & WABUROKO –VS- HENRY KAALA [1975] HCB 315 SEKANDI J.** (as he then was) held that the main considerations to be taken into account in an application for costs are;-

a) Whether the applicant is being put in undue expense of defending a frivolous and vexatious action,

b) Whether the Defendant has a good defence to the suit, and

c) Whether such a defence is likely to succeed.

It must be noted that **mere poverty is not itself a ground for ordering security for costs**. Otherwise, poor litigants would be deterred from enforcing their legitimate rights through the legal process. In this case, the court was convinced that the respondents had triable cause of action with a likelihood of success on that ground security for costs was not ordered.

In **PHILLIPS KATABALWA –VS- NTEGE SSEBAGALA AND ANOTHER ELECTION PETITION 11/98 [1998] 1 KALR 110** court held:-

1. That insolvency of the litigant is not a ground for an order for security for costs.

2. That an order for security for costs would be granted if the petition is merely frivolous and vexatious. In the petition, the issues to be resolved by court were seen to be of great public importance and were neither frivolous and vexatious.

With regard to *"frivolous action"* it was observed in the case of **JOHN MUKASA & LITHOPACK LTD –VS- M/S SRIJAYA LTD M.A NO. 215 OF 2004** arising from **M.A No. 111** of **2004** and **H.C.C.S No. 796 of 2000** that there is an inherent power in every court to stay and dismiss actions or applications, which are frivolous and vexatious and abusive of the process of the court.

In order to bring a case within the description it is not sufficient merely to say that the Plaintiff has no cause of action. It must appear that the alleged cause of action is one, which on the face of it is clearly one, which no reasonable person could properly treat as *bonafide,* and contend that he had a grievance, which was entitled to bring before the court. This position was stated by **Lush J.** in **NORMAN –VS- MATHEWS [1916] 85 LJKB 857 AT 859.**

It must be noted further that Plaintiff who seeks to avoid an order for security for costs must show to the satisfaction of the court that he / she has fixed assets within the jurisdiction to satisfy a possible order for costs in event of losing the case. This was the position in **ROHINI SIDIPRA –VS- FRENY SIDIPRA AND OTHERS HCCS 591/90 [1995] V KALR 22** where an order for security for costs would not be vacated against the Plaintiff who did not ordinarily reside within jurisdiction of court. See also: **RAMZANALI MOHAMEDALI MEGHANI –VS- KIBONA ENTERPRISES LTD C.A 27 / 2003.**

Though non residence has been one of the strong grounds upon which court may order security for costs, the following should be observed;

1. Much as the general rule seems to be that where a plaintiff is non-resident, security for costs bearing in mind other factors will usually be granted to the applicant. This however is not without exception, that is, where such non-resident has property that may satisfy a possible claim, within the jurisdiction, security for costs may not be awarded (refer to**JOHN MUKASA & LITHOPACK LTD –VS- M/S SRIJAYA LTD M.A NO. 215 OF 2004** arising from **M.A No.111** of **2004** and **HCCS No. 796 of 2000.** Hence assets / property needs to be fixed it's as long as it is substantial. This case distinguishes **Rohin case** above.

2. Of recent the courts have held that non-residence per se does not give a Defendant a right to apply for security for costs where countries have a Reciprocal Arrangement for Enforcement of Foreign Judgments.

In **KAKPDIA –VS- LAXIMIDAS [1960] E.A. 852** the Defendant applied for security for costs on the ground that the respondent / Plaintiff was not a resident in Kenya but in Zanzibar. Rejecting the application court held

that by **S.3** of the **Judgments Extension Decree Cap 23Laws of Zanzibar** a decree obtained in Kenya could be registered and enforced in Zanzibar.

In **DEEPAK SHAH & ORS –VS- PAPARAMA & ORS MA 361 / 2001** from **HCCS 354 / 2001** court observed that in light of East African Community the issue of security for costs should be reconsidered where the Plaintiff is resident in one of the member countries in East African Community. The court was convinced that a decree obtained in Uganda would be enforced in Kenya. Court quoted a number of authorities where it was held that **court cannot order security for costs against a person who is a resident member of one of the Union Countries.**

In relation to **0.23 R.2** of **CPR** which provides that where the Plaintiff does not furnish security for costs within the time set down by the court, then the suit shall be dismissed; the same rule gives court powers to enlarge such time if it is convinced that the Plaintiff was prevented by sufficient cause from depositing security within the time stipulated.

In **NJEREGE NGUMI –VS- MUTHUI 22 EACA 43** court had ordered for security for costs and Counsel tendered a bond which was rejected and the suit dismissed. The Plaintiff applied successfully to set aside the dismissal order and the Judge held that he was convinced that the Plaintiff was prevented by sufficient cause from furnishing security within the time allowed. The Defendant appealed and it was held on appeal that the correct cause of action was for the Plaintiff to apply as soon as possible after obtaining the funds for extension of the time to furnish security; that there was no reason why court could not have allowed such an application.

WHO MAY APPLY?

The application can't only be made by defendants to claim, defendants to counter claims, respondents to appeal and by appellants in respect of cross appeals. 0.26 r 1.

They can also be made by 3rd parties against the defendants who commenced 3rd party proceedings.

GROUNDS FOR APPLICATION FOR SECURITY FOR COSTS.

In ***Bank of Uganda v Nsereko 2 ORS***[59], court stated that in an application 4 costs, court has wide and virtually unfettered discretion, the only fetter is to exercise the discretion judicially. The applicant must satisfy court that the circumstances warrant an order for security for costs being made i.e.:

[59] SCCA NO.7 of 2002

PROSPECT OF SUCCESS IN THE SUBSTANTIVE SUIT.

In G.M Combined (U) Ltd v A.k. Detergents (U) Ltd SCCA NO.23/1994, court noted that it's a demand of justice to order a plaintiff to give security for costs of a defendant who has no defence to the claim.

Where the respondent is resident outside the jurisdiction of court. Residence is determined by the claimants habitual or normal residence as opposed to any temporary or occasional residency. In Re Little Olympian Bach Ways Ltd (1995), WLR 360, Lindsay J identified the following to be the key considerations in determining the residency of a company the contents of the object clause its place of incorporation, where its real trade or business is carried on where its books are kept where its administrative keeps house where its chief office is situated and where its secretary resides.

Security for costs may well be ordered where the p/fs are joined for the purpose of defeating an application for security or where it's impossible to predict the likely outcome on costs, or here each claimant is likely to be liable for only a portion of the defendants costs.[60]

Where there is reason to believe that the plaintiff will be unable to pay the applicants costs. In Bank of ***Uganda v Nsereko and 2ORS, SCCA NO.7 of 2002***, courted noted that the burden is on the applicant to prove this assertion with evidence. Mere lack of knowledge on part of the applicant's fact that a burden is on the applicant to prove this assertion with evidence. Mere lack of knowledge on part of the applicant's part about the assets of the respondent does not mount to evidence of the respondent's inability.

The respondent has changed his /her address since the claim / appeal was commenced with a view to evade the consequences of litigation or has failed to give his address in that form.

The respondent has taken steps in relation to his or her assets that would make it difficult to enforce an order against them.[61]

The mere fact that the plaintiff is poor is not a ground 4 court to grant security 4 costs because justice shouldn't be restricted to the rich. Poor litigants would be deterred from enforcing their legitimate rights through the legal process[62].

The defendant who applies for security for costs must have filed a WSD or answer or reply as the case may be prescribed by the rules.

Where a respondent/ plaintiff is resident in a country with which Uganda has a reciprocal execution of judgements, security for costs may not be granted.

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[60] Slazengers Ltd v Seaspeed Ferries International Ltd (1988)1 WLR 221.
[61] ***Aouni v Bahri (***2002) 3 ALLER 182.
[62] Namboro v Kaala (1975) HCB 315.

However, where execution is possible in a country where Uganda has a reciprocal agreement but likely to be expensive so as to render it not viable the court may grant security 4 costs.

TESTS FOR GRANTING AN ORDER FOR SECURITY.

In G.M. combined (U) Ltd v A.K Detergents (U) Ltd ,SCCA NO.7 of 1998, court held that the power to order for security costs is purely a discretionary .It must always be exercised in very special circumstances of each case.

In Parkinson (sir Lindsay) v Triplan Ltd (1973) QB 315, Land denning laid down the test applied in granting an order for security for costs and these are:

CLAIMANTS' PROSPECTS OF SUCCESS.

Whether defendant has made any admissions to the claimants claim.

Whether the defendant has made any payments into court.

Whether the claimant's detriment has been brought about by the defendants conduct.

The stage at which the application is being made oppressively and therefore designed to stifle a claim which has reasonable prospects of success.

Commentary

In relation to the **mode and quantity of security for costs** once the application has been made and in juxtaposition with **G.M Combined (U) Ltd case** (supra), there is no hard and fast rule but that courts must do the best they can in the circumstances of each case. This means that there is no conventional approach in qualifying the magnitude of security for costs. Thus, the award is discretional, which is always governed by the principle of reasonableness in acting.

PROCEDURE;

The application is made under **0.23 Rule 3 of CPR** i.e., by chamber summons accompanied by an affidavit. However, in relation to other jurisdictions; in **FARRAB –VS- BRAIN [1957] EA 441,** Defendants in Kenya made an application for security for costs on the grounds that the Plaintiff was resident abroad. The application

was not supported by an affidavit and was challenged as being defective. It was held that where the ground of the application is non-residence it needs not be supported by an affidavit.

OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MUBENDE

MISC APPLICATION NO.24 OF 2020

(Arising from HCCS no.443 of 2022)

SUI GENERIS A ----------APPLICANT

VERSUS

SUI GENERIS B ----------RESPONDENT

CHAMBER SUMMONS

LET ALL PARTIES CONCERNED attend to the learned registrar in chambers on the 13th day of January 2020 at 9;00 O'clock in the forenoon or soon thereafter as counsel for the applicant can be heard on an application for orders that;

a) The respondent give security for the payment of all costs to be incurred by the applicant in HCCS No. 443 of 2022

b) The costs of their application.

This summons is extracted by SUI GENERIS ADVOCATES, on behalf of the applicant GIVEN under my hand and seal of this Honorable court on this 11th day of January 2020

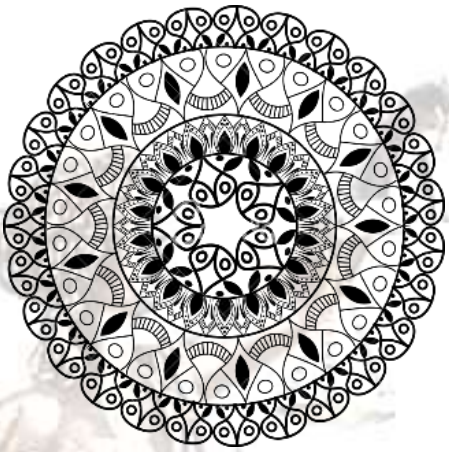
.....

REGISTRAR

Extracted by;

SUI GENERIS ADVOCATES

UGANDA.



ARREST AND ATTACHMENT BEFORE JUDGEMENT.

The purpose is to secure the plaintiff against any attempt on the part of the defendant to defeat the execution of any decree that may be passed against him/her.

Under 0.40 r 1 where at any stage of a suit other than suit of the nature referred to in s.12(a) to (d) of CPA, the court is satisfied by affidavit that the defendant with intent to delay the plaintiff or to avoid of any decree that may be passed against them, the court may issue a warrant to arrest the defendant and bring him or her before the court to show cause why he or she should not furnish security for his or her appearance.

The decree under 0.40 r 1 may be issued where:

Defendant has absconded or left the local limits of the jurisdiction of the court.

Defendant is about to leave the local limits of the jurisdiction of the court of his property or any part thereof.

Under 0.40 r2, the defendant is about to leave Uganda in circumstances affording a reasonable probability that the plaintiff will or may thereby be delayed in the execution of any decree that may be passed against the defendant in the suit, the court may issue a warrant to arrest the defendant and bring him or her before the court to show cause why he or she should not furnish security 4 their appearance.

Suits excluded by virtual of s.12(a)-(d) of the CPA.

- For the recovery of immovable property with or without rent or profits.

- For the position of immovable property.
- For the foreclosure, sale or redemption in the case of a mortgage of on charge upon immovable property
- For the determination of any other right to or interest in immovable property.
- For compensation for wrong to immovable property
- For the recovery of movable property actually under distress or attachment.

REQUIREMENT FOR A PRIMA FACIE CASE.

In ***Pyarali Datardini v Anglo Amusement Park***[63], the court emphasized the fact that the order for arrest and attachment before judgement only issues where the plaintiffis able to make out a prima facie case. Failure to comply with an order 4 attachment. Under 0.40 r 4 where the defendants fail to comply with the order, court may commit him or her to prison until the decision of the suit or where the decree is passed against a defendant, until the decree has been satisfied.

However, the person cannot be detained in prison for a period longer than 6 months nor for a longer period than six weeks when the amount or value of the subject matter of the suit does not exceed 100 hundred shillings.

PROCEDURE.

Application is by chamber summons pursuant to 0.40r 12.

The court can order under 0.40 that: Security e.g., articles

Making an order 2 attach the property of the def. Procedure 4 attaching property under 0.40 is the same as that under 0.22.

Arrest and detention in civil prison for not more than 6 months.

FREEZING ORDERS

Under 0.40 r 5, where at any stage of a suit the court is satisfied by affidavit evidence that the defendant with the intent to obstruct or delay the execution of any decree that may be passed against him/her:

[63] (1930) 4 ULR28

- Is about to dispose of the whole or any part of his/her property.
- Is about to remove the whole or any part of his/her property from the local limits of the jurisdiction of the court.
- Has quit the jurisdiction of the court leaving in that jurisdiction property belonging to him/her.

The court may order the def. within a time fixed by it to either furnish security in order to produce and place at the disposal of the court when required the property or the value of the property or such portion of it as may be sufficient to satisfy the decree or to appear and show cause why he/she should not furnish security.

PROCEDURE.

Application is by chamber summons pursuant to 0.40 r 12

Relevant test to be satisfied.

Prima facie case.

Existence of assets.

REAL RISK OF DISSIPATION.

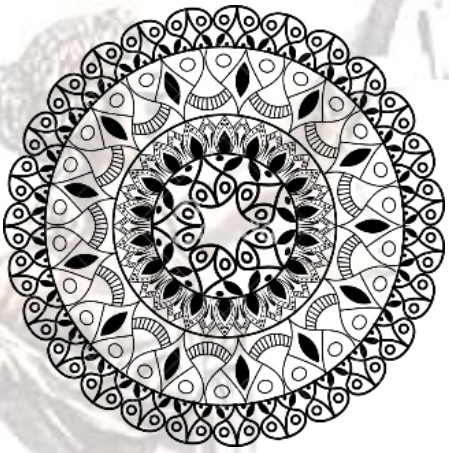
The dissipation must not be in the ordinary course of business. The test is whether they are real risks as opposed to a financial risk. There must be solid evidence of dissipation and not mere expressions of opinion or assertions of the likelihood of dissipation.

Where the respondent is moving property that is evidence of a real risk of dissipation. In ***Abe Mugimu v Luciano Basabusa***[64], Karokora J held that freezing injunctions are evoked where the property is at risk of being taken out of the country or sold to obstruct or delay justice.

JUST AND CONVENIENT.

Court will consider all the circumstances in describing whether it's just and convenient to make the order. Usually where there is an arguable case and applicant has proved a real risk of dissipation, it will normally follow that the order sought is just convenient.

[64] (1991) HCB 70



CONSOLIDATION OF SUITS AND TEST SUITS.

Consolidation:

The power of the court to consolidate suits is granted under 0.11 r1 of the CPR. The power is involved where:

Suits are pending in same court wen if before different judicial officers. For the HC, the various divisions and currants are considered as one.

The questions of law or fact arising from the said suits are the same and therefore capable of being disposed off in one hearing of the consolidated suits.

That it's in the interest of the justice that court avoids a multiplicity of suits and a possibility of conflicting decisions arising from separate hearings.

When to consolidate

The court allowed to stay are of proceeding under 0.11 r1 (b) for purpose of bring e other suit up to speed for purpose of consolidation. However, the supreme court in ***Yowana Ankodu Firipo Malinga***[65] , court held that

[65] C.A No.6 of 1987

consolidation should usually be agreed upon at the beginning or earlier stage of the trial, with the issues evenly drown up.

WHO MAY APPLY?

Either party or on courts motion.

PROCEDURE

Application is summons in Chamber.0.11r2. Or by oral application in court.

TEST SUITS

There are provided 4 under 0.39of CPR. The under applies where 2 or more persons have instituted suits against e same defendant and those people would number e provision of 0.1r1 have been joined as co-plaintiff or where a plaintiff has instituted two or more suits where the defendants could pursuant to 0.1 r3 have been properly joined as co-defendants in one suit.

WHO APPLIES?

Either party to the suit may apply that one of the suits is stayed and court order that one is tried as a test suit

WHEN TO APPLY.

Where any right or relief in respect of arising out of the same act alleged to exist whether jointly, severally or in the alternative.

Common Questions of law or fact are arising in the suits.

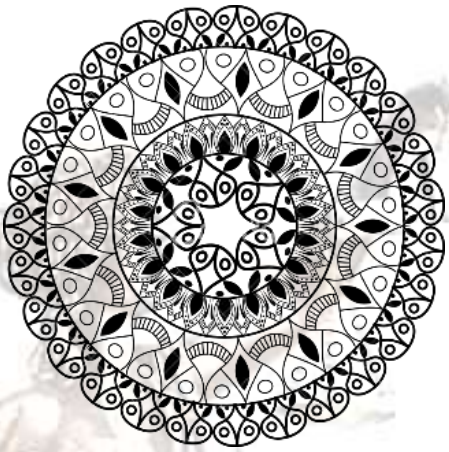
APPLICATION OF TEST SUIT TO STAYED SUITS.

In ***Amos v Chadwick (1876)***, Malins vc, held that in principle the judgement in the test suit will apply to and bind the suits which have been stayed where there has been a bonafide trial on the merits in the test suit.

Justice Madrama in ***Mars Tours and Travel Ltd v Stanbic Bank Ltd***[66], held that even if a test suit has been tried under 0.39r1 of CPR, it's not automatic that the outcome of the suit would apply to the suits which have

[66] HCCS NO. 120 of 2010

been stayed. The completed suit should qualify to be a trial of the real issues in the suit which has been stayed before its application therein.



TRIAL PRACTICE

SCHEDULING CONFERENCE

This is provided for under 0.12 of the CPR S.I 71-1. The rationale of a scheduling conference is to narrow down a case between parties. It must be noted that a scheduling conference is done in the presence of a Judge; where parties:-

a) Agree on facts

b) Agree on points of contention

c) Agree on documents

d) Agree on witnesses

It must be noted that under Order 12, parties can use a scheduling conference to have an out of court settlement through;

1) Conciliation

2) Negotiation

3) Mediation and

4) Arbitration

It must be noted that before parties' resort to this method, there has to be a provision for arbitration. This is evident in the Arbitration and Conciliation Act (cap. 4 sec 23)]. We are fortified by ***Agip Vs Shell*** **(SCCA 49**

OF 1995) where court held that where parties have a clause showing arbitration; they have to use arbitration before they go to Court.

The procedure for registering an arbitral award is laid out in the Arbitration and Conciliation Act cap 4, wherein;

Upon grant of the award; it has to be registered with the Registrar in the Civil courts. It must be noted that the award is as effectual as a Judgment.

Upon registration of the award, one extracts a decree from the award, and applies for execution following the procedural rules of execution of judgements.

According to sec 35 of in the Arbitration and Conciliation Act cap 4, the application has to be made in writing.

Before registration; the person presenting the award avails the certified copy of the award of certified copy, a copy of the agreement, and the application. The award is then enforced if no appeal is preferred.

The grounds for challenging an Arbitral award include some of the following:

- If the arbitration agreement was not valid in law
- Unique influence
- Bias of Arbitrators
- If made out of terms of reference (e.g., out of prescribed time)
- If made out without giving notice of appointment of Arbitration.
- If the composition of the arbitration tribunal is not in accordance with the agreement.
- Incapacity on the part of one of the parties or was under inability to appear.
- corruption.

PROCEDURE FOR CHALLENGING THE AWARD

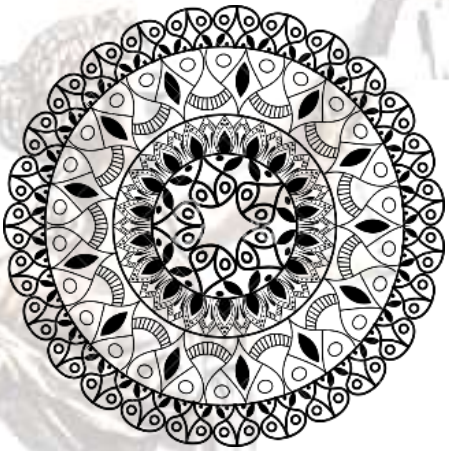
The procedure for challenging the award is by chamber summons supported by affidavit, according to rule 1 & 13 of Arbitration and Conciliation Rules.

PROCEDURE FOR SETTING DOWN SUIT FOR HEARING.

This is conversed under Order 9 of the CPR SI7-1 thus;

The plaintiff takes out hearing notices, which are duly signed by the registrar and seal of court, to set down Suit for hearing. The date of hearing is got from the clerk assigned such Judge.

This hearing notice, once signed by Registrar and sealed with the seal of court is then served the defendant.



INTERROGATORIES

The questions of importance which a prudent lawyer ought to have in his mind are;

- What are the prerequisites of the interrogatories;
- What is the procedure for obtaining the interrogatories;
- What are the consequences of non-compliance

Discussion

Interrogatories are provided for in **order 10** of the **CPR SI 71-1,** wherein, in any suit the plaintiff or defendant may apply to the court within twenty-one days from the date of the last reply or rejoinder .... for leave to deliver interrogatories and discoveries in writing for the examination of the opposite parties. It must be noted that those interrogatories when delivered shall have a note at the foot of them stating which persons are required to answer which interrogatories each;[67]

The exception to this principle [Order 10 r1[a]and [b] is evident thus; first and foremost no party shall deliver more than one set of interrogatories to the same party without an order for that purpose; and secondly, the

[67] order 10 rule1

interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding their admissibility on the oral cross-examination of a witness.

An interrogatory is grossly defined a form of questions by one party to another to find out the nature of the case; narrow done the issues and promote an expeditious trial.

In ***Griebart v Morris (1920) 1 KB 659*****,** the court stated that the aim of interrogatories is to obtain an admission, support the interrogating party's case and thus destroy the opponent's case.

In ***D'soviza v Ferrao***[68], The Court Held that interrogations must meet the following requirement:-

a) Must relate to a matter in question between the parties

b) Must be necessary for saving costs

c) Where there are various respondents to the interrogatories, there should be a note at foot stating which parties are required to answer which interrogatories

Guidelines for determining the grant of leave to administer interrogatories

RELEVANCE

Interrogatories should relate to matter in issue. Lord Esther in **marriot v chamberlain (1886) 17 QBD 154** noted that, the right to interrogate is not confined to facts directly in issues, but extends to any facts the existence or non-existence of facts directly in issue.

However, there are restrictions to the rule above:

a) Interrogations relevant only to the credibility of witness will be disallowed

b) Interrogatories may be sought only as to matters relevant to the present action questions that are relevant not to the present action but to other or future actions should be disallowed

c) Fishing interrogatories are not allowed. Fishing was defined in ***Hennesey v Wright***[69] as the moment it appears that questions are asked and answers insisted upon in order to enable the party to see if he can find a case, either complaint or defense of which at the present he knows nothing and which will be a different case from that which he now makes, rule against fishing "interrogatories apply:

[68] (1959) EA 100
[69] (1888)24 QBD 445

Fishing interrogatories include interrogatories designed to try to establish a cause of action or defense not pleaded or a new cause of action against a 3rd party

Facts

Interrogatories are for facts and so will only be disallowed where:-

a) They call upon the interrogated party to express an opinion on something

b) Where they are aimed at discovering the evidence available to the other side, they are not intended to provide a substitute for evidence

c) Where they are aimed at discovering the contents of an existing document or as to what documents a party has or had on his possession or control

Necessity

Interrogations are necessary only to dispose fairly or more expeditiously of the action, or saving costs. They are therefore not normally necessary if witnesses are likely to be called at trial to give evidence on the same matter

Aggarwal v Official Receiver[70]

Interrogatories which support the case of the opponent & not that of the interrogating party will generally be disallowed

Oppressive interrogations such as those which exceed the legitimate requirements of a particular occasion or are not formulated with precision & clarity or are prolx, place on the interrogated party's secret manufacturing processes, seek to obtain admissions seriatim of all the statements in the pleading of the interrogated party are disallowed

ANSWERS TO INTERROGATORIES

These are answered by affidavit and are binding on the interrogated party in the sense that an answer is intended to be an admission by the party who makes it, or at any rate a statement by which in ordinary circumstances he or she will be bound

[70] 1967) EA 585

- In most cases, the answers must be simple and where are included, they must be unambiguous, precise and reasonable.
- If answers provided are insufficient, the interrogating party may seek an order that the opponent should file a further & better answer & the court may order the latter to answer further, either by way of affidavit or upon and examination
- Insufficiency of an answer is determined by court
- A party may object to answering on the ground of privilege, such objection is conclusive unless the contrary is shown

FAILURE TO ANSWER

- Court may dismiss the action or order the defense to be struck out
- Court can also commit the defaulting party to prison for contempt

PROCEDURE

The Plaintiff/Defendant applies for leave to deliver the questions under order 10 as discussed herein above. Under rule 24 of the said order, the application is by chamber summons supported by an affidavit. Rule 2 [1] provides that on an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court.

Court is enjoined, in deciding upon the application to take into account any offer, which may be made by the party sought to be interrogated, to deliver particulars or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs.

Interrogatories take the format laid out in Form 2 of Appendix B to the CPR SI 71-1 Rules, with such variations as circumstances may require.[71]

It must be noted, that where a party to the suit is a corporation or a body of persons, empowered by the law to sue or be sued, under rule 5 of the order, any opposite party may apply for an order allowing him or her to deliver interrogatories to any member or officer of the corporation or body, and an order may be made accordingly**.** Rule

[71] rule 4 of order 10

6 of order 10 provides that where any objection to answering any interrogatories on the ground that they are scandalous or irrelevant, or that they are not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer which is filed by the party to whom an order for delivery of interrogatories is served. To this end therefore, any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatious, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous[72];

The party to whom an order for delivery of interrogatories is served is enjoined by law under order 10 rule 8 Ito answer the interrogatories by filing an affidavit in answer or reply within ten days, or within such other time as the court may allow from the date of service of the application for delivery of interrogatories. The affidavit in answer to interrogatories shall be in Form 3 of Appendix B to these Rules, with such variations as circumstances may require.

DISCOVERY OF DOCUMENTS

Is a process by which the parties to litigation obtain information of the existence and the contents of all relevant documents relating to the matters in question between them. The intent of discovery is to provide the parties with the relevant documentary material before the trial so as to assist them in appraising the strength or weakness of their respective cases & thus to provide the basis for the fair disposal of proceeding before trial.

This is provided for under Order 10 rule 12 wherein under sub rule [1] any party may, without filing any affidavit, apply to the court for an order directing any other party to the suit to make discovery on oath of the documents, which are or have been in his or her possession or power, relating to any matter in question in the suit.

DOCUMENT MUST BE RELEVANT

They must relate to any matter in question between the parties in the action. In ***Campagmie Financiere v. Peruviam guano company***[73]. Court held that "every document relates to the matters in question in the action, which not only would be evidence upon any issue, but also which it is reasonable to suppose contains information.

[72] rule 7

[73] (1882) 11 QB 55 AT 63

IMPROPER USE OF DISCOVERED DOCUMENTS.

This involves using discovered materials to start new causes of action, a party is thus required to give an undertaking not to use the discovered material for any purpose other than in furtherance of the present action.

PRIVILEGED DOCUMENTS

A party may object to producing privileged documents. Where the privilege is claimed, court may itself inspect the documents to satisfy itself as to claim.

PRIVILEGED DOCUMENTS MAY INCLUDE;

a) Communication between an advocate and the client.

b) Documents prepared with a view to litigation.

c) Privilege against self-incrimination.

PROCEDURE

This application is by chamber summons on the strength of rule 24 of order 10. The distinction between discovery and interrogatories is that discovery needs not an affidavit in support unlike interrogatories.

It must be noted that on the hearing of the application the court may either refuse or adjourn the hearing, if satisfied that the discovery is not necessary, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit;

It must be noted further that that discovery shall not be ordered when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.[74]

[74] rule 12[2]

Where a party against whom such order as is mentioned above has an objection, he or she shall swear or affirm an affidavit specifying which if any of the documents mentioned in the affidavit, he or she objects to produce[75]. The format of this affidavit takes Form 5 of Appendix B to these Rules, with such variation as the case may require.

Where other party does not disclose. 0.10 Or 12, The aggrieved party may, without filing any affiant by summons in chamber apply to the court for an order directing any other party to suit to make discovery on oath of the documents, which are or have been in his or her possession or power relating to any matter in the suit.

Objections to production of documents, 0.10r13. The party ordered to disclose documents under rule 12, may by affidavits specify which if any document mentioned in the affidavit that he/she objects to procedure

PRODUCTION OF DOCUMENTS.

During the pendency of any suit, the court may under order 10 rule 14 order the production by any party to the suit, upon oath, of such of the documents in his or her possession or power, relating to any matter in question in the suit, as the court shall think right; and the court may deal with the documents, when produced, in such manner as shall appear just.

Procedure

Given the noble fact that each party is supposed to exercise vigilance, a party which wants court to exercise this power has to make the application by way of chamber summons supported by an affidavit under order 10 rule 24.

INSPECTION OF DOCUMENTS.

This is provided for in order 10 rule 15 and it deals with inspection of documents referred to in pleadings or affidavits. Every party to a suit is entitled under this rule, at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce the document for the inspection of the party giving the notice, or of his or her advocate, and to permit him or her or them to take copies of the document;

[75] rule 13

The court in **Grant v southwestern and country properties**[76] stated that inspection means examination and is not confirmed to mere ocular inspection

If the party with whom notice is served does not comply with the notice, he or she shall not afterwards be at liberty to put any such document in evidence in respect of the said suit unless he or she satisfies the court that

1. The document relates only to his or her own title, he or she being a defendant to the suit; or
2. That he or she had some other cause or excuse which the court shall deem sufficient for not complying with the notice.

Where the party served with notice of inspection of documents omits to do any of the following; thus[77];

1. Give the notice of a time for inspection, or
2. Objects to give inspection, or
3. Offers inspection elsewhere than at the office of his or her advocate,

The court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit;

It must be noted further that an application to inspect documents, except such as are referred to in the pleadings, particulars, or affidavits of the party against whom the application is made, or disclosed in his or her affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.

PROCEDURE AND DOCUMENT

Under rule 16 the notice to any party to produce for inspection any documents referred to in his or her pleading or affidavits shall take the Format of Form 7 of Appendix B to the Rules, with such variations as circumstances may require.

It must be noted further that of the order, the party to whom the notice is given shall, within ten days from the receipt of the notice, deliver to the party giving a notice, stating a time within three days from the delivery of the notice at which the documents ... may be inspected at the office of his or her advocate, or, in the case of bankers'

[76] **[1975] ch.185**
[77] rule 18

books or other books of account, or books in constant use for the purposes of any trade or business, at their usual place of custody. The party to whom the notice is given shall also state which if any of the documents he or she objects to produce, and on what ground he or she does so. The notice under rule 17[2] shall be in Form 8 of Appendix B to the Rules with such variations as the case may require.

- A party who wishes to inspect a document must notify the other party in his /her pleadings or affidavits.0.10 r15
- The notice must be in writing in form 7 of the appendix B to the rules
- The party to whom the notice is served shall within 10 days from the receipt of notice deliver to the party giving it notice stating a time [within 3 days from the delivery of the notice at which the document may be inspected 0.10 r17]
- The notice is as per n form of appendix b to the rules

INSPECTION MAY BE DECLINED ON GROUNDS OR;

Legal professional privilege

Privilege against self-incrimination

The grounds may be challenged under **0.10 r 18**

NONCOMPLIANCE WITH ORDER FOR INTERROGATORIES, INSPECTION AND DISCOVERY.

Under rule 21, where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he or she shall, if

1. A plaintiff, be liable to have his or her suit dismissed for want of prosecution, and,
2. If a defendant, be liable to have his or her defence, if any, struck out;

and as a result, shall be placed in the same position as if he or she had not defended; and the party interrogating or seeking discovery or inspection may apply to the court for an order to that effect, and an order may be made accordingly.

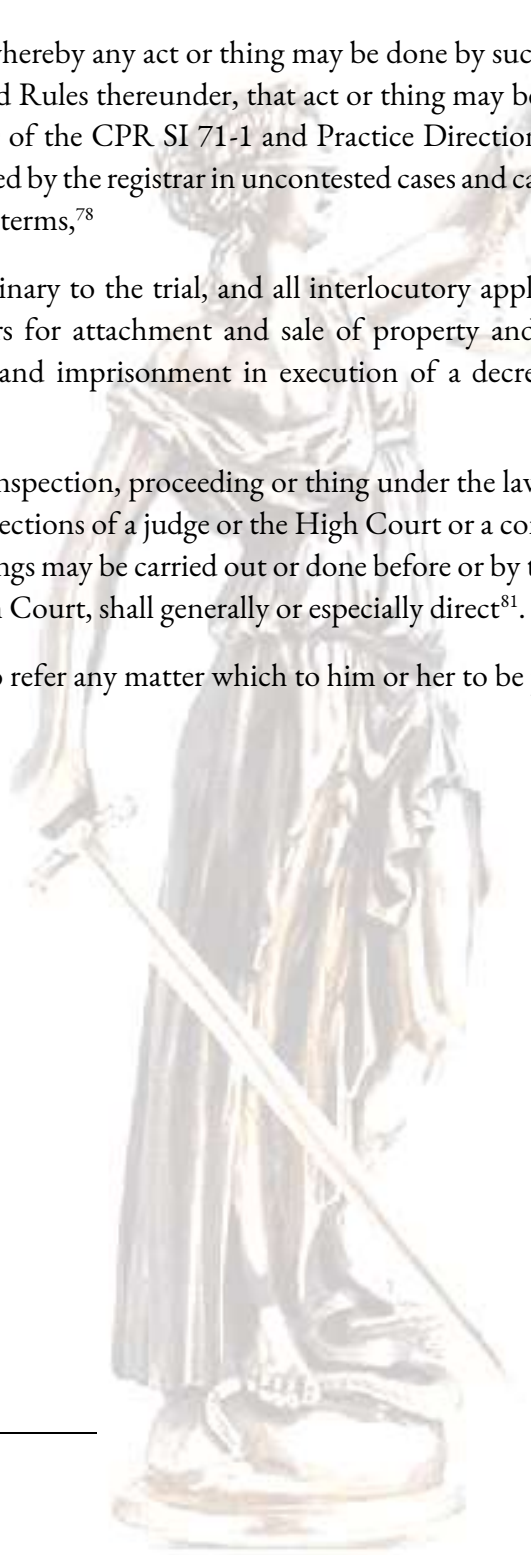
Powers Of Registrars

It must be noted that whereby any act or thing may be done by such officer as the court may appoint under the Civil Procedure Act and Rules thereunder, that act or thing may be done by registrars. The powers of registrars are laid out in order 50 of the CPR SI 71-1 and Practice Directions 1of 2000 and are streamlined below thus; Judgment may be entered by the registrar in uncontested cases and cases in which the parties' consent to judgment being entered in agreed terms,[78]

All formal steps preliminary to the trial, and all interlocutory applications, may be made and taken before the registrar[79].Formal orders for attachment and sale of property and for the issue of notices to show cause on applications for arrest and imprisonment in execution of a decree of the High Court may be made by the registrar[80].

Any act, undertaking, inspection, proceeding or thing under the law to be carried out to the satisfaction of or in accordance with the directions of a judge or the High Court or a commissioner appointed to examine and adjust accounts, then such things may be carried out or done before or by the registrar or such other officer of the court as the judge or the High Court, shall generally or especially direct[81].

A registrar has power to refer any matter which to him or her to be proper for the decision of the High Court to a judge. [82]



[78] order 50 rule 2
[79] rule 3 [ibid]
[80] rule 4 [ibid]
[81] rule 5 [ibid]
[82] rule 7 [ibid]

DAMAGES

GENERAL AND SPECIAL DAMAGES,

General damages, in the case of storms v Hutchinson (1950) AC 515 are such as the law will presume to be the direct natural or probable consequence of the act complained of.

Special damages are as such as the law will not inter from the nature of the act. They do not act. They do not follow in the ordinary course. They are exceptional in their character, and therefore, they must be claimed especially and proved strictly.

Special damages relate to past pecuniary loss calculate-able at the date of trial, on the other hand, General damages relate to all other items of damages whether pecuniary or not pecuniary. Thus, in personal injuries claim, special damages encompass past expenses and loss of earning's whilst general damages will include anticipated future loss as well as damage for pain and suffering and loss of majority.[83]

Nominal damages. Beaumont v great head 91846) 2 CB494 Nominal damages means a sum of money that may be spoked of but has no existence in point of quantity e.g. a seller brings an action for the non- acceptance of goods, the price of which has risen since the contract was made. In practice, a small sum of money is awarded, say are dollar or its equivalent.

[83] uganda commercial bank v Kigoze (2002) IEA 293.

EXEMPLARY DAMAGES

Means damages for example save as case of Butterworth v Butterworth (1920) p126

These damages are positive in nature or exemplary in nature. They represent a sum of money of a penal nature in addition to the compensatory damages given for the pecuniary v physical and mental suffering.

The award of exemplary damages was considered by the house of lord in the land mark case of ***Reokes v Bernard***[84] lord Devlin stated that in his view there are only three categories of cases in which exemplary damages are awarded namely;

a. Where there has been oppressive, arbitrary , an unconstitutional action by the servants of the government.

b. Where the defendant's conduct has been calculated by him to make a profit which may well exceed the compensation payable to the plaintiff or.

c. Where some law for the time being in force authorizes the award of exemplary damages.

d. The rational for exemplary damages should not be used to enrich the plaintiff but to punish the defendant and determine him from repeating his conduct but it should not be excessive.

e. Fredick J.K Zaabwe v Orient bank & others[85]

AGGRAVATED DAMAGES

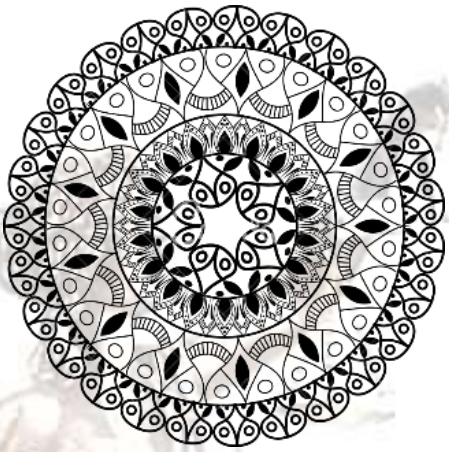
According to the case of *Fredrick Zaabwe,* aggregated damages are extra compensation to the plaintiff for injury to his feelings and dignity caused by the manner in which the defendant acted.

LIQUIDATED DAMAGES

Liquidated damages are unique to claims for breach of contract. The parties may agree by contract that a particular sum is payable on default of one of them and if the agreement is not nonobvious as a penalty such a sum constitutes liquidated damages and is payable by the party in default.

[84] (1964) ALLER 36 7

[85] Supreme Court Civil Appeal No. 4 / 2006 (un reported).



EXECUTION OF JUDGMENTS, DECREES AND COURT ORDERS

Introduction

Under order 21 rule 1, judgment when pronounced, where a hearing is necessary, in open court, either at once or on some future day after due notice to the parties or their advocates.

Under rule 3 of order 21, a judgment pronounced by the judge who wrote it shall be dated and signed by him or her in open court at the time of pronouncing it. If the judgment is pronounced by a judge who did not write it, it shall be dated and countersigned by the judge reading it in open court at the time of pronouncing it. rule 3 (3) of order 21 gives a rule of cardinal importance; thus, a judgment once signed shall not afterwards be altered or added to except as provided by section 99 the Civil Procedure Act or on Review.

A Judgment in a defended suit shall contain a concise statement of the case,

the issues, the decision on the case and the reasons for the decision. Court has a duty under rule 5 to state its decision on each issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

A decree on the other order is extracted from a judgment for the sole purpose of execution or effecting other court application or procedures where it is needed. Under rule 6 of order 21, the decree shall agree with the judgment;

shall contain the number of the suit, the names and descriptions of the parties and particulars of the claim, and it shall specify clearly the relief granted or other determination of the suit.

Under rule 7[1] of order 21, it's the duty of the successful party in a suit to prepare a draft decree and submit it for the approval of the other parties to the suit, who shall approve it with or without amendment, or reject it, without undue delay.

If the draft is approved by the parties, it shall be submitted to the registrar who, if he or she is satisfied that it is drawn up in accordance with the judgment, shall sign and seal the decree accordingly. If all the parties and the registrar do not agree upon the terms of the decree within such time as the registrar shall fix, it shall be settled by the judge who pronounced the judgment, and the parties shall be entitled to be heard on the terms of the decree if they so desire. It must be noted further that under rule 7 (3) if it is a magistrate's court, the decree shall be drawn up and signed by the magistrate who pronounced it or by his or her successor.

EXECUTION OF DECREE AND ORDERS

Execution is defined as the process of releasing the fruits of judgement by enforcing the decree against the unsuccessful party through any one or more of the various modes of execution as by law prescribed. Execution is as the act of carrying out or putting into effect a court order by the successful party.

WHICH COURT EXECUTES THE DECREE?

S.30 of the CPA states that the decree is executed by the court which passed it or by the court to which the decree is sent by the former execution.

TIME FOR EXECUTION OF A DECREE.

Under s.35 (1) (a) of the CPA, the decree must be executed within 12 yrs. from its date. There are however exceptions where the time may be extended if the judgement creditor has been prevented either by fraud or by force under s.35 (1)(b) of the CPA.

TRANSFER ASSIGNMENT OF DECREE.

A decree is capable of being transferred under s.36 CPA. The transfer holds the decree subject to the equities which the judgement debtor may have enforced against the original decree holder.

Enforcement of decree against legal representatives.

Pursuant to s.37 of the CPA the judgement debtor does not cease being liable on a decree merely by reason of death. The decree remains enforceable to its full extent against the deceased's legal representative i.e., executor or administrator of the estate or against an intermeddle.

MODES OF EXECUTION

In ***Madavia v Rattan singh*** (1968) EA 149 court stated that it's the decree holder to select the appropriate means of execution of his decree subject to the discretion of the court. 0.22 r 27 emphasizes that there is nothing to prevent a plaintiff from applying for several modes of execution. In ***Rajimpex v National textiles board***[86], the court stated that it may in its discretion refuse execution at the same time against the person and property of the judgement debtor.

The modes of execution include:

- By delivery of any property specifically decreed.
- By attachment and sale or by sale without attachment of any property.
- By attachment of debts.
- By arrest and detention in prison of any person.
- By appointing a receiver. 0.22.

In such other manner as the nature of the relief granted may require.

APPLICATION FOR EXECUTION.

Under 0.22 r 7, a holder of a decree if he/she desires to execute it may apply to the court that passed the decree or to the court where it has been sent for execution.

0.22 r 8 requires that the application 4 execution be in writing. The only execution being for decree for payment of money and judgement debtor is in the precincts of the court when the decree is Passed, where court will order

[86] HCCS NO.1033 of 1986

the decree by arrest of the of judgement debtor before preparation of the warrant on the oral application of the decree holder at the time of passing the decree.

The application must confirm to the requirements as provided in rule 8(2), failure to do so court may reject the application or allow the defect to be remedied then & there or within time fixed by court as per 0.22 r 14(1).

Where an application is remedied , it should be deemed to have been an application in accordance with law and presented on the date when it was fast presented as per 0.22 r 14(2).The amendment made by the decree holder must be signed by the judge.0.22 r14(3).

Upon admitting the application for the execution, court directs execution to issue according to the nature of the execution except that in the case of a decree for payment of money the value of the property shall as nearly as may be correspond with the amount due under the decree.

NOTICE BEFORE ORDERING EXECUTION.

Whereas, generally the CPR do not provide for any notice to be issued to the party against when the execution is made, 0.22 r19 provides 4 exceptions and these are:

Against the legal representative of a party to the decree

- Where the decree is for payments of money. 0.22 r 34.
- Where the application 4 execution is made 1 yr. after the date of the decree.
- Where the person to whom notice is issued does not appear or does not show cause to the satisfaction of court why the decree should not be executed, the court shall order the decree to be executed.
- Where person offers any objection to the execution of the decree, the court shall consider the objection and make such order as it thinks fit.

PARTIES OF EXECUTION.

The judgement creditor who is named or ascertained in a judgement or order is entitled to the benefit thereof and may issue execution against the person called a judgement debtor.

Execution can't issue against a non-party to the suit as was stated in ***Rajimpex v National textiles Board***[87].

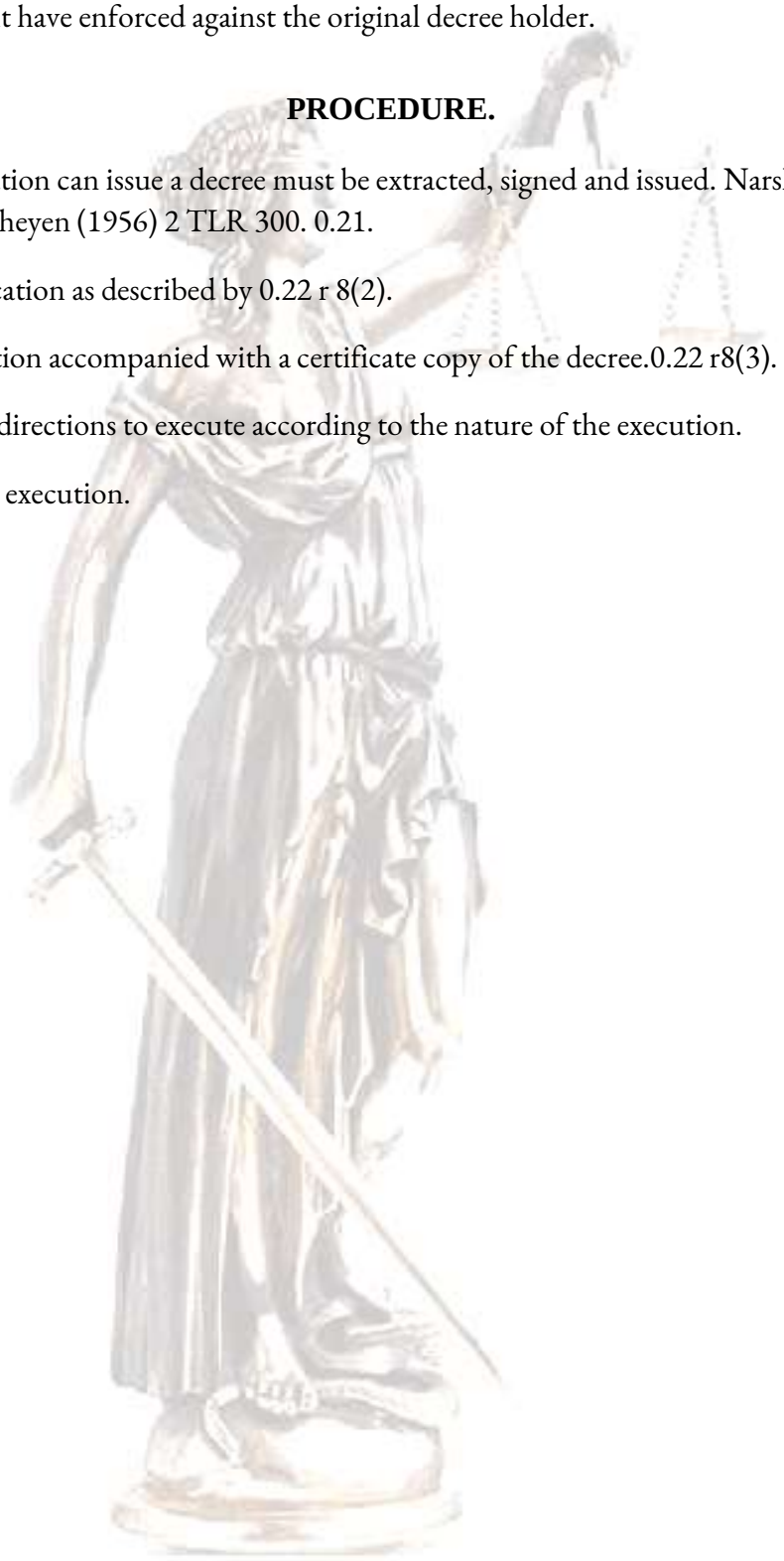
However, under s.93 of the CPA, where a person has become liable as a surety, then the decree or order may issue be executed against him/her to the extent to which he/she has rendered himself/herself personally liable.

[87] HCCS NO.1033 of 1986

Under s.37 of the CPA, every transfer of a decree holds the same subject to the equities, if any which the judgement debtor might have enforced against the original decree holder.

PROCEDURE.

- Before an execution can issue a decree must be extracted, signed and issued. Narshidas M.Meinta & CO. Ltd v Baron verheyen (1956) 2 TLR 300. 0.21.
- Draft the application as described by 0.22 r 8(2).
- File the application accompanied with a certificate copy of the decree.0.22 r8(3).
- Issuance of the directions to execute according to the nature of the execution.
- Application for execution.



THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

EXECUTION &BAILIFFS DIVISION.

(Arising from civil suit No. 554 of 2016).

SUI GENERIS A - APPLICANT.

VERSUS

SUI GENERIS B- RESPONDENT

APPLICATION FOR EXECUTION OF DECREE.

We SUI GENERIS & CO. Advocates for decree holder hereby apply for execution of the decree here in below set forth.

NO. of suit	High court civil suit NO.554
Date of decree	7/12/2017
Whether any appeal performed from the decree	NONE
Payment or adjustment made if any	NIL
Previous application if any with date and result	N/A
Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross-decree	
Amount of costs, awarded is Shs./Amount as awarded in the decree	Shs.
Against whom to be executed	SUI GENERIS B.

Discussion

The law applicable to execution is basically the CPR and CPA

OBJECTION MY LORD

Under section **38 (d) of the CPA Cap. 71** court is enjoined with powers to enforce execution i*nter alia* by arrest and detention in civil prison of any person.

The method of arrest is laid out in section 40 of the CPA thus;

Under section 43 of the CPA, a person detained may be released on ground of illness. Under order 19 **Rule 36, a judgment debtor is not supposed to be arrested until the** until the decree holder has paid into court sufficient subsistence allowance for the Judgment/Debtor's upkeep depending on the judgment debtor's class.

Under **Rule 37** of the same order if the judgment debtor in obedience appears in obedience to the warrant of arrest and show sufficient cause why he should not be arrested, he may be released and allowed to pay by installments.

ORDER ABSOLUTE

The court has discretion as to whether the order should be made absolute and in exercising its discretion, however in rainbow v mouregate properties Ltd (1975) 1 WLR 788 the court must have regard to the positions of the other creditors so far as they are known to the court. In Bains v Halmibibi (1957) EA 13, court stated that the court granting the order must be satisfied before it makes an order absolute that there is a debt in praesenti.

ATTACHMENT OF MOVABLE PROPERTY OTHER THAN AGRICULTURAL PRODUCE

The attachment is by seizure of the attaching officer keeps the property in his own custody or in the custody of one of his subordinates and is responsible of the due custody. 0.22 r 40(1) of CPR

EXECUTION AGAINST LOCAL GOVERNMENT

s.7 of local government act cap. 243, executions proceedings against an LG can be commenced after 6 months from date of judgement.

Under s.7, the following properties cannot be attached;

a) Fixed assets and stationary transfers or grants are immune from attachments

b) Stationary transfers or grants are provided for under S 83 of LGA and that is money periodically approved by government and they are not debts therefore there is no debtor creditor relationship as per Soroti Municipal Council ULC and AG (1999) KALR 832

Other movable properties can be attached after the 6 months periods

Execution against A.G (governed by S.19-21 of GPA, Cap 7, No attachment of government property, Government cannot suffer liability on a suit brought by summary Procedure

Laid down in Bro Peter v A.G (1980) HCB 107

a) Extract decree 0.21 r 7(2). Asadi v Livingstone of (1985) HCB SO

b) Taxation

c) Apply for a court of order from the registrar of the executing court upon lapse of 21 days from the day of judgement as per s.19(1) of government proceedings Act. Application is by formal letter.

d) Serve the copy to A.G(copy of order) S.19(2). By formal letter with the accounts of beneficiary stated.

e) A.G advises secretary to treasury to pay

FAILURE TO COMPLY

Debtor can apply for the unit of Mandamus under S.36 and 37 of Judicature Act requiring the officer in question to do that for which he is under public duty to do.

In shah v A.G (1970) EA S43 court held that a mandamus could issue to the treasury officer of acts to compel them to carry out the duty upon him to pay. Where they do comply with mandamus order you commence contempt of court proceeding.[88]

ATTACHMENT.

PROPERTY LIABLE TO ATTACHMENT.

Pursuant to s.4 4(1)of the CPA, the following is liable to attachment and sale in execution of a decree namely: lands, houses, other buildings, goods, money, banknotes, cheques, bills of exchange , promissory notes, govt securities, bonds or other securities of money, debt, shares of corporation &all other saleable property movable or immovable belonging to the judgement debtor or over which the profits which he has a disposing power , which he may exercise for his own benefit, whether the same be held in the name of the judgement debtor by another person in trust or on his behalf.

Section further gives the exceptions of such goods not liable to attachment.

[88] ***Kiryabwire and 4 Ors v A.G[88]***

In ***Imelda Nassanga v Stanbic bank & Anor***, the court held that only property belonging to the judgement debtor should be attached.

The court held that the property to be attached in execution of a court decree must be those saleable property which belongs to the judgement debtor or over which he/she has a disposing power for his benefit whether the property is held in his or her name or in the name of other person in trust for him or on his behalf. In this case, name of the property the appellant purported to buy belonged to the judgement debtor in the court decree under which the warrant of attachment and sale was issued. The judgement debtor cannot be allowed to offer for attachment.

ATTACHMENT OF DEBTS.

Under 0.23 r1 of the CPR, attachment of debts is a process by means of which a judgement creditor is enabled to reach money due to the judgement debtor which is in the hands of a 3rd person. The order to attach a debt is called a garnishee order and the 3rd party having the money, garnishee.

The garnishee order once made absolute changes the obligation of the 3rd party to pay the judgement debtor into an obligation to pay the judgement creditor.

WHEN TO INSTITUTE GARNISHEE PROCEEDINGS.

They may be instituted by any person who has obtained a judgement or order for recovery of payment of money.

In ***Abdul Wahib & sons v Mushiramu & Co***. (1932) 14 the court stated that in order to support a garnishee, there must be a debt due or accruing due, it's not sufficient to show a contingent liability.

In ***Sunder Das v Municipal council of Nairobi***[89], the court stated that the test as to whether a debt attachable is whether it owning by the garnishee and it's the type of debt which the judgement debtor can enforce if he desires.

In Webb v Stenton (1883) 11 QBD 518, and Lucas v Lucas & high commissioner 4 India (1943) 2 ALLER 110, the court held that such debt capable of attachment must be in existence at the date when the attachment becomes operative & something that the law recognizes as a debt & not something which may or may not become a debt.

[89] (1948) is EACA 33

In Howell v Metropolitan District Rail CO. (1881)10 CH 508, court noted that when the existence of a debt depends upon the performance of a condition, there is no attachable debt until the condition has been duly performed.

Money in the hands of a bank is always attachable by garnishee and the bank has to show why the decree should not be made absolutely by claiming a claim over the money in its possession. In ***U.C.B v Ziritwawula***,[90] court stated that until the garnishee admits his indebtedness to the judgement debtor, the garnishee order cannot meaningfully be made absolute. The existence and availability of funds belonging to a judgement debtor has to be conclusively established as a condition precedent to making the order absolute.

PROCEDURE

Under 0.23 r 10 of the CPR, an application for an order of attachment of a debt is made. Ex parte by chamber summons with a supporting affidavit.

The affidavit must state:

- The name of the address of the judgement debtor.
- Identify the judgement to be enforced giving the amount remaining unpaid.
- Whether deponent is within the court's jurisdiction and is indebted to a judgement debtor.
- Whether the garnishee is a deposit taking institution having more than one place of business & give the name & address of the branch at which the judgement debtors account is believe d to be held 4 account number.

Under 0.21 r 1 of the CPR, if the order is granted, it must be served on the garnishee and judgement debtor unless otherwise ordered within 7 days.

EFFECTS OF THE ORDER.

Until service of the order, there is no attachment of the debt. If the garnishee bona fide pays to the judgement debtor the amount of debt before service, the order is obsolete as there is no longer any debt to which it can attach, Court stated that the service of order creates an equitable.

90

OBJECTION MY LORD

SETTING ASIDE A GARNISH ORDER

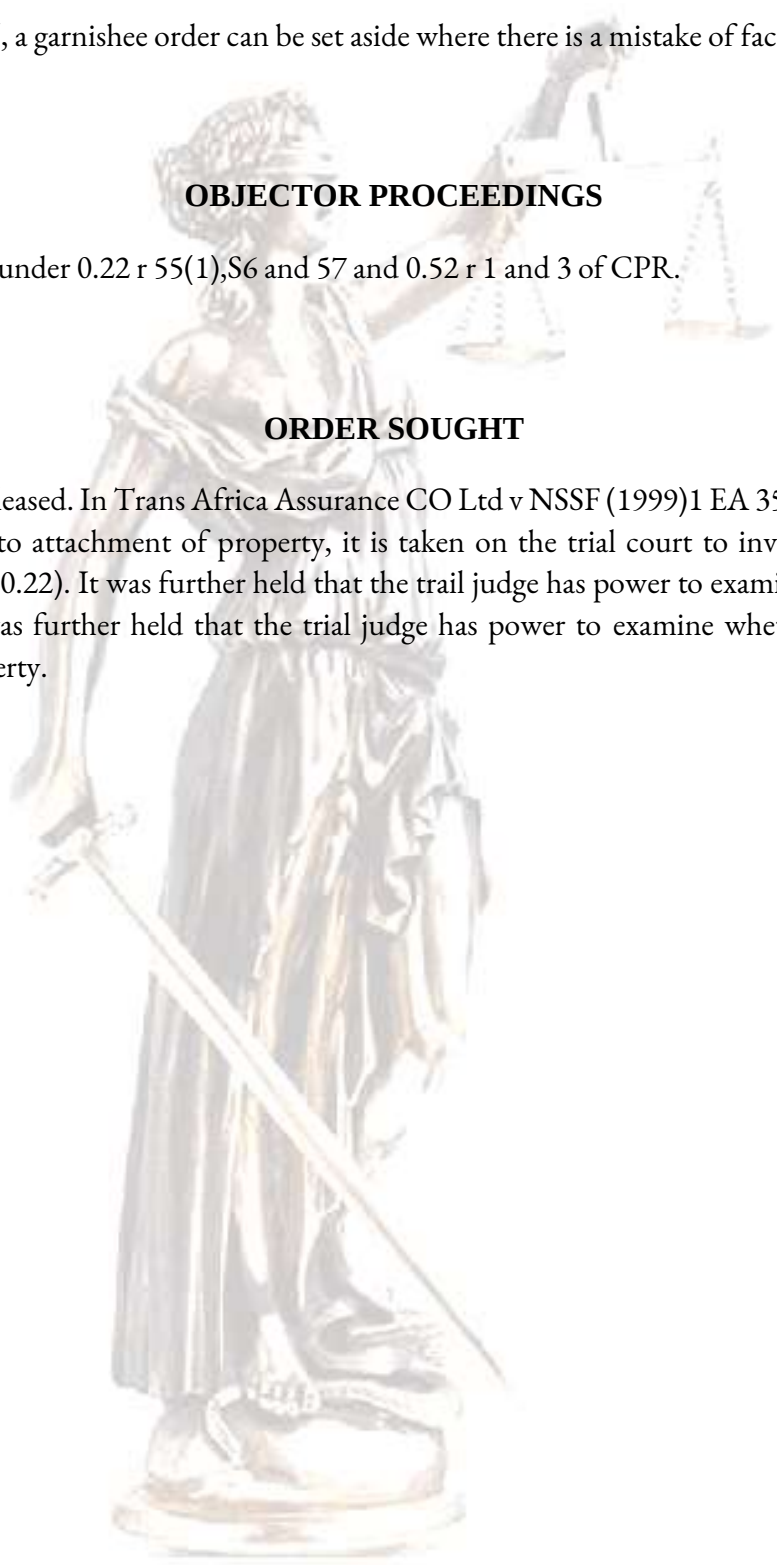
In ***Moure v Peachay***[91], a garnishee order can be set aside where there is a mistake of fact.

OBJECTOR PROCEEDINGS

Application is brought under 0.22 r 55(1),S6 and 57 and 0.52 r 1 and 3 of CPR.

ORDER SOUGHT

That the property be released. In Trans Africa Assurance CO Ltd v NSSF (1999)1 EA 352, court held that where any objection is made to attachment of property, it is taken on the trial court to investigate the objection as provided by 0.19 (now 0.22). It was further held that the trail judge has power to examine whether the objector was in possession .It was further held that the trial judge has power to examine whether the objector was in possession of that property.



[91] (1892) 8 TLR 406

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CIVIL SUIT NO.541 OF 2013

XXX----------PLAINTIFF

VERSUS

YYY---------- DEFENDANT

DECREE

This suit is coming up for final disposal on the 21St day of February 2020 before Your Lordship SUI GENERIS , Judge of the high court civil division in the presence of counsel for the plaintiff and counsel for the defendant.

It is hereby decreed and ordered that the judgement be entered for the plaintiff against the defendant for the following orders

1)

2)

3)

Given under my hand and seal of this honorable court on this 21st day of February 2020

Judge

Extracted by;

SUI GENERIS Advocates

OBJECTION MY LORD

NOTICE TO SHOW CAUSE

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CIVIL SUIT NO.541 OF 2013

XXX----------PLAINTIFF

VERSUS

YYY----------DEFENDANT NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.

(Under 0.22 And 19 Of CPR)

TO; ----------

Whereas ----------has applied to this court for execution of a decree in sent No ----------of ----------on the allegation that the decree has been transferred to him or her by assignment, this is to give you notice that you are to appear before this court at ----------on the ----------day of ----------2020

REGISTRAR

JUDICAL REVIEW.

The process by which the high court exercises its supervisory jurisdiction over the proceedings and decisions of subordinate courts, tribunals and other bodies or persons carrying out quasi-judicial powers or are charged with the performance of public acts or duties.

R.3 of the judicature (judicial review) (amendment) rules SI 32/2022.

Object of JUDICIAL REVIEW

In chief constable of NORTH WALES V EVAN (1982) 3 ALL ER 141, the purposes of JUDICIAL REVIEW include:

a) To ensure that individuals receive fair treatment by authorities to whom they have been subjected.

b) To ensure that public powers are exercised in accordance with basic standards of legality, fairness and rationality and that the opinion of an individual judge/public officer is not construed as that of the authority where the serve.

c) To adhere to the constitutional right of fair and expeditious hearing.

IN KOLUE JOSEPH AND 2 ORS V AG MISC CAUSE No.106 OF 2010, court stated that JUDICIAL REVIEW is not concerned with the decision in issue per se but with the decision-making process.

WHAT IS A PUBLIC BODY

R.3 of JUDICIAL REVIEW rules states that a public body to include the government, department, services or undertakings of government. The test for what is a public body is laid down in YASIN OMARI V EC AND 2 ORS HCMC No.374 of 2022. Court stated that a body is a public body if it is defined as such or exercises/performs public functions. Rule 2 (as amended by judicature (JUDICIAL REVIEW) (Amendment) Rules, 2022, gives a list of public bodies.

What must be satisfied in an application for JUDICIAL REVIEW

These are listed in Rule 7A:

a) Application is amenable for JUDICIAL REVIEW

b) Aggrieved person has exhausted all remedies available within the public body or under the laws

c) Matter involves an admin public or official.

Rule 7A (2):

Court must grant an order for JUDICIAL REVIEW where it is satisfied that the decision-making body or officer did not follow due process in reaching a decision and that as a result there was unfair and unjust treatment.

In YASIN OMARI V EC AND 2ORS, justice Ssekaana stated that a person seeking a remedy under judicial review must satisfy to requirements:

1. *That the body under challenge must be a public authority/body performing public function.*
2. *The subject matter of the challenge must involve claims based on public law principles not enforcement of private rights.*

WHO CAN APPLY?

Rule 3 A states that any person who has a direct interest or sufficient interest in the matter may apply for JUDICIAL REVIEW.

GROUNDS FOR JUDICIAL REVIEW

Lord Diplock in Council of civil service union's minister for civil service (1985) ac 314, categorized the grounds of JUDICIAL REVIEW under three broad heads. These are: illegality, irrationality and unfairness. In ***PASTORI V KABALE DISTRICT***[92] court stated that proof of one ground is sufficient.

1. Illegality

Arises when a public body, officer or tribunal acts ultra vires or use public power for an improper purpose. In O'REILLEY V MACK MAN (1982) 3 ALL ER 1129, court held that all errors of law by administrative bodies are reviewable under the ground of illegality. Further in HAMMERSMITH AND FULLHAM LONDON BOROUGH COUNCIL V SECRETARY OF STATE FOR THE ENVIRONMENT (1990)3 ALL ER 589, court held that illegality also includes the fettering of a discretion by a rigid rule or policy or because of an undertaking or agreement, failing to take relevant factors into account, acting for a purpose outside the scope of the governing legislation and acting in bad faith.

2. Irrationality

In ASSOCIATED PROVINCIAL PICTURE HOUSES LTD V WEDNESBURY CORP (1947) 2 ALL ER 680, an unreasonable decision according to Lord Greene is one that no reasonable body could have come to. It is not what the court considers reasonable. In ***Pastori Kabale District Local government Council And Ors,*** the court held that irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards. In MAREN DOROTHY, court laid down a four-part test to determine irrationality and the burden is on the public body to prove them. The part test entails:

a) Is the public body's objective legitimate

b) Is the measure taken by that body suitable for achieving that objective

c) Is it necessary in the sense of being the least instructive means of achieving the aim.

d) Does the end justify the means.

In ***Amuron Dorothy V. Law Development Centre***, court stated that there is procedural impropriety when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness maybe in non-observance of rules of natural justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere to and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.

[92] L.G.C AND ORS (2008) 2 EA 300

Time lines for filing an application for JUDICIAL REVIEW

Rule 5 (1) of JUDICIAL REVIEW rules provide that an application for JUDICIAL REVIEW review must be made promptly and in any event within 3 months from the date when the grounds of the application first arose unless the court considers that there is good reason for extending the period within which an application for JUDICIAL REVIEW maybe made.

PREROGATIVE REMEDIES

There can only be claimed by way of judicial review and include: certiorari, prohibition, mandamus, declarations, injunctions and habeas corpus.

These remedies are conversed by the following laws:

- The Constitution [under articles 28, 42 and 50].
- Judicature Act Cap 13 [under section 36
- Judicature Act (Amendment) Act No. 3 of 2000 [under section 3.]
- The Civil Procedure (Amendment) Judicial -Review Rules SI 75/2003.
- Public Service Regulations [under regulations 36, 43]

CERTIORARI

The function of certiorari is to quash an invalid decision. IN RIDGE V BALDWIN (1964) AC AND In *ENG. WILLIAM KAYA KIZITO V AG*[93], both cited with approval in AMURON DOROTHY[94] court held that where a prejudicial decision has been made by a public authority in the course of exercise of its statutory authority without according the affected party a right to be heard, then a writ of certiorari should often be freely granted by the court. Rule 2(as amended) define certiorari to mean order of court to quash a decision which is ultra vires.

Section 36 [1][c] of the Judicature Act Cap 13 provides that the High Court may make an order, as the case may be, of certiorari removing any proceedings or matter to the High Court. Sub section [2] provides that no order of

[93] HCMC NO. 38 OF 2006
[94] (SUPRA),

... certiorari shall be made in any case in which the High Court is empowered, by the exercise of the powers of review or revision contained in this or any other enactment, to make an order having the like effect as the order applied for or where the order applied for would be rendered unnecessary.

Before one makes an application to court for an order of certiorari under section 36, the leave shall not be granted unless the application for leave is made within a period of less than six months from the date of the proceedings or much shorter period provided for by law.

In ***Cheborion Barishaki Vs. A.G.***[95] on all fours where Katutsi held that the remedy of **certiorari** only lies to bring up to court and quash something which is a determination or a decision. He added that it lies to quash decisions which are **ultra vires** or nullities in law or **intra vires** but show error on the face and are merely voidable.

Another important decision to look at is ***Denis Bereije Vs. AG***[96]***.*** wherein court held that an administrative action will be subject to judicial control for illegal irrationality, procedural impropriety. It must be noted that the application is not time barred as it concerns enforcement of fundamental rights and courts have adopted a liberal approach as regards limitation.

This remedy was applied in ***Pius Niwagaba Vs. LDC***[97]**,** Justice Okumu Wengi quashed decision of LDC refusing to admit him for the Post Graduate Bar Course under the pretext that he had obtained a degree from a University that had not been recognized by the Law Council.

FORUM PROCEDURE AND DOCUMENTS

The Forum is the High Court by virtue of section 14[1] of the Judicature Act.

MANDAMUS

Section 37 of the Judicature Act Cap 13 provides that the High Court may make an order, as the case may be, of mandamus requiring an act to be done. Sub section [2] provides that no order of ... certiorari shall be made in any case in which the High Court is empowered, by the exercise of the powers of review or revision contained in this or any other enactment, to make an order having the like effect as the order applied for or where the order applied for would be rendered unnecessary.

[95] **High Court Misc .Applic. No. 851 of 2004**
[96] **H.C. Misc. Applic. No. 902 of 2004**
[97] **H.C. Misc. Civil Applic. No. 589 of 2005**

The writ is issued to compel a public body that has failed to perform its function or duty to execute such function/duty. Rule 2 (as amended) defines mandamus as an order issued to compel performance by public officers of statutory duty imposed on them.

JOHN JET TAMWEBAZE V ATTORNEY GENERAL AND TREASURY OFFICER OF ACCOUNTS[98], court held that the remedy can only be given if the applicant can show a clear legal right to have the thing sought by it done. A demand for performance must precede an application for mandamus and the demand must have been unequivocally refused.

Mandamus can lie in respect of an ultra vires decision and can take the form of an order to a tribunal or authority to make a new decision in accordance with the law.

Read: ***Goodman Agencies V Attorney General***[99] on grant of the order in execution against government.

Before one makes an application to court for an order of mandamus under section 36, the leave shall not be granted unless the application for leave is made within a period of less than six months from the date of the proceedings or much shorter period provided for by law.

The High Court is entitled under section 37 of the Judicature Act, to grant an order of mandamus in all cases where it appears just or convenient to do so.

PROHIBITION

Section 36 [1][b] of the Judicature Act Cap 13 provides that the High Court may make an order, as the case may be, of prohibition, prohibiting any proceedings or matter. Sub section [2] provides that no order of ... prohibition shall be made in any case in which the High Court is empowered, by the exercise of the powers of review or revision contained in this or any other enactment, to make an order having the like effect as the order applied for or where the order applied for would be rendered unnecessary.

It serves to prohibit the happening of some act or the taking of some decision which would be *ultravires*. It looks at the future as a prohibitive remedy and it's discretionary like all other units. STREAM AVIATION V CAA (2008) HCB 156.

[98] HCMA NO .121 OF 2010
[99] ***HCMA No.34 Of 2011***

Before one makes an application to court for an order of prohibition under section 36, the leave shall not be granted unless the application for leave is made within a period of less than six months from the date of the proceedings or much shorter period provided for by law.

DECLARATIONS

A declaration is a statement of legal relationship between the parties. A declaration records only existing legal rights and cannot change the legal position in any way

In ***Opoloto V Attorney General***, the appellant sought a declaration that his discharge from the army was invalid and that he was still a member of the armed forces and chief of the defense staff. The court of appeal held that the court has a wide power to make a binding declaration of right, but it is a discretionary power and should be exercised only with care where the effect would be to create a relationship between persons which has an essential element of mutual confidence. This discretion should not be exercised where the result would be seriously to embarrass and prejudice the security of the state.

Originally a declaration had to be linked to another cause of action e.g., a claim for damages and was thus not a suitable public law remedy. However, in ***Pyx Gramite Co. Ltd V Ministry Of Housing And Local Government***[100], the House of Lords allowed a declaration to lie in a case where certiorari might have served the same purpose and where a statutory remedy was also provided.

HABEAS CORPUS

This is defined in ***Re Henry Sempira***[101] as a prerogative writ directed to a person who is detaining another in custody commanding him to produce that person before court to test the legality of such detention. The remedy of Habeas corpus is provided for in section 34 of the Judicature Act and it has three types namely;

Habeas Corpus ad subjiciendum, which is directed to the person in whose custody the person deprived of liberty is;

Habeas Corpus ad testificandum and **Habeas Corpus ad respodendum**; which are for bringing up any prisoner detained in any prison before any court, court martial, an official or special referee, an arbitrator or any commissioners acting under any powers of the commission from the president for trial or as the case may be.

[100] (1960) AC 260

[101] ***High Court*** **Misc. Applic. No.13 of 2003**

If any person is aggrieved by an order made by court under section 34, he or she may appeal to the court of appeal within 30 days after making of the order appealed from.

The Law Applicable includes the following:

The Constitution of the Republic of Uganda 1995

The Judicature Act Cap. 13

The Police Act cap. 303. S.24 (4)

The Judicature [Habeas corpus] Rules SI

THE PROCEDURE FOR APPLICATION OF A WRIT OF HABEAS CORPUS IS AS FOLLOWS;

One makes an application ex parte in the prescribed form to the rules

Upon making of the application, a writ is issued to the person in whose custody the person deprived of liberty is.

The writ is then returned .....

CLAIM FOR DAMAGES UNDER JUDICIAL REVIEW

In ***Stream Aviation Limited V. The Civil Aviation Authority*** (2008) HCB, the applicant brought an application by way of motion seeking for the prerogative writ certiorari, prohibition, mandamus together with an injunction, special damages and general damages and costs. On whether the court could award damages in an application JUDICIAL REVIEW, the court held that damages are available as remedy in judicial review in limited circumstances. Compensation is not available merely because a public authority has acted unlawfully. For damages to be available, there must be either a recognized 'private law' cause of action such as negligence or breach of statutory duty or a claim under express written law or human rights statute.

Further in ***American Dorothy V Law Development Centre***[102] the court dealt with a similar issue on award of damages in an application for Judicial Review. the court held that damages are available as a remedy in JUDICIAL REVIEW in limited circumstances. Compensation is not available merely because a public authority has acted unlawfully. For damages to be available, there must be either a recognized private law cause of action such as negligence or breach of statutory duty or a claim under express written law or human rights statute.

Rule 8(1), damages will be awarded if:

Applicant included in motion a claim for damages arising from any matter to which the application relates. Court is satisfied that if the claim had been made in an action begun by the applicant at the time of inhaling they could have been awarded damages.

APPLICATION FOR JUDICIAL REVIEW (JUDICIAL REVIEW)

DOCUMENT

As per rule 6 (1) of the JUDICIAL REVIEW rules, the application is by notice of motion

Should be accompanied by an affidavit in support

PROCEDURE

Drafting of documents

Payment of fees

Lodgment of documents

Service of documents on respondent (rule 6(2))

Rule 6 (4) of JUDICIAL REVIEW rules requires that the application be fixed for hearing within 14 days from date of service.

[102] (SUPRA),

FORUM

Private bodies are amenable to JUDICIAL REVIEW if exercising public power. In this case, respondent offers tertiary education as a private entity but in compliance with general education policy and national standards. It is important to note that private matters aren't amenable to JUDICIAL REVIEW[103]

In ***Arua Kubala Park Operations And Market Vendors Cooperative Society Ltd V Arua Municipal Council***[104], it was stated that public body wasn't amenable to JUDICIAL REVIEW because of circumstances at hand showed that the matter was of private law.

[103] See ***Yasin Ssentumbe And Anor V UCU*** (MC NO.22 0F 2017)
[104] MC NO.3 OF 2016

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT

KAMPALA (CIVIL DIVISION)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND

IN THE MATTER OF JUDICATURE (JUDICIAL REVIEW) RULES,

XYZ .....APPLICANT

VERSUS

ABC

.....RESPONDENT.

NOTICE OF MOTION

TAKE NOTICE that the court will be moved on the .....day of.....2020 or as soon as counsel for the applicant can be heard on the applicant's behalf for orders that:

a) Certiorari/mandamus/prohibition/injunction/damages/costs.

b) TAKE FURTHER NOTICE that the grounds for the application are

    a) .....

AND TAKE NOTICE that on hearing this motion, the applicant will rely on the affidavit of .....and the exhibits, copies of which a company this motion.

COUNSEL FOR THE APPLICANT

TO: the respondent

Given under my hand and the seal of this court this.....day of .....2020.

.....

REGISTRAR.

POST JUDGEMENT REMEDIES

Delivery of a judgement does not necessarily mark the end of the litigation process. There are certain post judgement remedies whose purpose is mainly to clarify the judgement or correct the judgement where there is an error.

The substantive post judgement remedy is an appeal. However, there are other remedies such as: the rule, preview and revision.

THE SLIP RULE REMEDY

S.99 of the Civil Procedure Act, provides that chemical or mathematical errors in judgement, decrees, or rulings arising from any accidental slip or omission may at any time be corrected by the court either on its own motion or on application by either party.

The rule is thus an exception to the *functus officio* rule when courts deliver their judgements.

The ship rule remedy deals with only chemical or mathematical errors arising from accidental ships or omissions. The errors can be corrected at any time and the correction is done by the court which issued the judgement.

It is prudent that the correction is by the actual judicial officer who issued the judgement but where it is not possible, any judge in that court may remedy the mistake. Other provisions providing for the slip rule include Rule 36(1) & (2) of the Judicature (Court of Appeal Rules) Direction and Rule 35(1) & (2) of the supreme court Rules.

In ***Orient Bank Limited v Fredrick Zaabwe & Anor.***[105] The supreme court held that the courts have power to amend their judgements, decrees and orders for achieving the ends of justice for the purpose of giving effect to the intension of the courts at the time when judgement was given.

The court also held that the powers under the slip rule are not open ended. The application should not be brought to have the court reverse its decision on any issue or law.

In ***Muhenda v Mirembe***[106] the court defined "the phrase at any time" appearing in S.99 & Rule 35(1) & (2) of the supreme court rules. The court held that the phrase should not be interpreted to mean that inordinately delayed applications without justification will be permitted the court. In this case the application had been brought 6 years later and no sufficient reason given for the delay. Court declined to apply the slip rule remedy.

[105] **SCC App No. 17 of 2007**
[106] **Supreme Court Civil App. No.5 of 2012**

In ***Vallabhadas Karsandas Ramiga v Mansuklal Jivaj & Ors***[107]**,** the court laid down the principles applicable under the slip rule and these are;

ii) Slip orders may be made to rectify omissions resulting from the failure of counsel to make some particular application.

ii) A slip rule order will only be made where the court is fully satisfied that is giving effect to the intentions of the court at the time when judgement was given, or in the case of matter which was over looked, where the it is satisfied beyond doubt, as to the order which it would have made had the matter been brought to its attention.

The above two considerations have been adopted by the court in ***Orient Bank Limited v Fredrick Zaabwe*** in which the court stated that "the above position still holds good. It is therefore, now fairly well settled that there are two circumstances in which the slip rule applies. Namely;

i) Where the court is satisfied that it is giving effect to the intention of the court at the time when the judgement was given.

ii) In the case of a matter which was overlooked, where it was satisfied beyond doubt, as to the order which it would have made had the matter been brought to its attention

In ***Ahmed Kawooya Kaugu v Bangu Aggrey Fred***[108], the applicant filed an application seeking an order that the COA correct its judgement under the slip rule by listing what the applicant called the right laws. The court held that rule 36(1) & 2 of the CAR entitles the court to correct its judgement where there are found chemical or mathematical mistakes or accidental slips. The error or omission must be an error in expressing the manifest intention of the court. Court cannot correct a mistake of its own law or otherwise even where apparent on the face of the record. Under the slip rule, court cannot correct a mistake arising from its own misunderstanding of the law. The present application deals with what is alleged to be the misunderstanding by court of the law and its alleged application or misconstruction. The Application was thus unutterable under the slip rule.

APPLICATION

Application is by notice of motion under 0.52 and an affidavit in support.

DOCUMENTS

1) Notice of motion

[107] **(1965) EA 700)**
[108] **CACA No. 03 of 2007**

2) Affidavit

REVIEW

S.82 of the CPA postulates that any person considering himself or herself aggrieved by a decision / decree or order that has not been applied or by a decision / decree or order which is not appealable may apply 4 review of that judgement and make orders as may be necessary.

WHO IS AN AGGRIEVED PERSON

In ***Re Nakivubo Chemists (u) Ltd (1979) HCB*** 12 an aggrieved person was defined as a person who has suffered a legal grievance. In ***Ladak Abdallah Mohmmed Hussein v Isingoma Kakiiza***[109], court held that any person means a person who has suffered a legal grievance which has wrongly deprived him of something. A third party cannot, generally apply 4 review of an order or a decree in which he or she was not a party.

However, as the court held in ***Mohammed Alibbani v W.E Bukenya & Anor***[110], a third party who can prove that he or she is an aggrieved person and has suffered a legal grievance may apply 4 review. Review may be invoked by any person who considers himself or herself aggrieved by a decree or order.

The person must be legally aggrieved in the sense that the decree affects the applicant's legal equitable interest in the subject matter of the suit.

Busoga Growers Cooperative Union Ltd v Nsamba & Sons Ltd.[111]

For an Application from review to succeed, the party applying must show that test he/she has suffered a legal grievance and that the decision pronounced against him/her by court was wrong depriving him or her of something or has wrongful effect in title to something. The right to appeal is a creature of the statute.

Section 82 of the CPA provides that "any person considering himself or herself aggrieved by a decree or order from which an appeal is allowed but not preferred apply for a review of judgment to the court which passed the decree or made the order and the court may rule such order as it thinks fit.

Dr. Sheikh Ahmed Mohammed Kisuule v M/S Greenland Bank Ltd in liquidation under 0.44 R.1(2) &(3) applicant to get leave to appeal also that test under 0.46 R.3 (20 an application to strictly prove new evidence.

[109] SCCA No. 8 of 1995
[110] SCCA No. 56 of 1996
[111] HCMA NO. 123 of 2000

Mubuuke v. UEB[112]**,** the appellant was seeking review and contended that an award interest on special damages from the date of judgement was or not on the face of the record. It was held that the right to review cannot be inferred.

Review is an exception to the general rule that once a court passes a judgment it cannot afterward be altered or added to it by the same court that pronounced. ***Margret Senkute v Musa Nakirya***[113]

Power to review is a creature of the statute and courts have to inherent power to review therefore special jurisdiction to review must be done according to provisions of the enabling law and according to the law, an application for review is to be placed before the court which passed the decree or made the order.

Under section 82 CPA, it is exercised both where no right of appeal has been provided and if provided where it has been preferred.

In FX Mubuure, Review is different from an appeal in that a review is reconsideration of the subject of the suit by the same court under special conditions set by law while an appeal is a hearing by the appellate court.

A review does not open Questions decided upon between parties except under specific instances accorded by law while an appeal reopens all issues subject to the appeal.

Reveal is available to any person who has suffered legal grieve i.e., a person against when a judgment has been passed or where interest has been affected by the court's decision and order.

Mohammed Apibjai v E.W. Bukenya & DAPCB[114]**.** The issue was whether the Applicant who was not a party to the original proceedings hence a 3rd party is aggrieved party to apply for review. It was held that there is no statutory definition of legal grievance. In reference to section 83 and 100 and 0.42 as relevant provisions any person who considers himself /herself aggrieved by a decision of the High Court can seek review can be sought. Any person who has been legally a aggrieved is free to pursue their legal rights in the courts of law and must have the right in the current application for review as long as he has had locus standi even though he was not a party to the original suit. *See Gordon Sentiba v IGG CACA NO.14 OF 2007,*

According to section 82 and 0.45 R.1 CPR, any aggrieved party may move court to review a judgment. That may be done by an aggrieved party who may not necessarily be a party to the proceedings giving rise to the order.

[112] **HCMA No. 98 of 2005**
[113] ***HCRC No.7/2009***
[114] **SCCA No. 50/**

Section 82 & 0.46 are to an aggrieved party and not necessary a party to the original suit.

CIRCUMSTANCES UNDER WHICH REVIEW MAY BE ADOPTED

0.46 R.1 CPR sets out the grounds upon which an application for review may be sustained Section 82 provides the circumstances.

The application is made where the order/ Decree is appealable as of right but not preferred Section 82 (2) & 0.46 (1) (a) CPR.

Where there is no right of appeal from the decree or order S.82 (1) (b) & 0.46 R.1 (1) (b)

In ***Eng. Yorokamu Katwirene v Elijah Mustenza***[115] it was held that 0.46 R.1 (1) (b) an application for review may be made where the order of the court sought to be reviewed is not appealable but falling within the circumstances prescribed in (b) which category does not include an election petition. S.67 of the CPA provides that no appeal shall lie from a convert decree. The proper remedy is review under S.82 (b).

John Genda & Ors v Coffee Marketing Board (1997) KACR 15;

It was held that 0.46 R.1 (1) of the CPR and 82 of the CPA for review provides that a person considering himself aggrieved by judgment or order while is not appealed from may apply to have such an order reviewed by the court that passed it upon proof of discovery of new and material evidence not available after due diligence of the party before the judgment/ order is made. However, the person must be aggrieved.

CONDITIONS

1) Must be an aggrieved person
2) No appeal has been preferred. (s.82(a) (b) & 0.46 r 1(1)(a))

GROUNDS

The grounds are set out under 0.46 r 1 (1)(6) of the CPR and these are;

[115] [1997-2000] UCGR 66

1) There was a mistake manifest error apparent on the face of the record. In FX Mubuuke v UEB, HCMA No. 98 of 2005. It was held that for review to succeed on the basis of an error on the face of record, the error must be so manifest & clear that no court would permit such an error to remain on the record, A wrong application of the law or failure to apply the appropriate law is not an error on the face of record.

2) Discovery of new and important matter. In ***Busoga Growers Co-operative Union Ltd v Nsamba & sons Ltd,***[116] the Plaintiffinstituted a summary suit against the defendant for recovery of money. The defendant filed an application for leave to appear and defend the suit which was disallowed. He then made an application for review of the decision and sought to set aside the orders. It was held that; the applicant did not claim that he had discovered some new and important matter of evidence which in spite of exercise of due diligence was not within knowledge at the time of judgement was entered and did not swear any affidavit indicating what grievances he had against the decree passed against him. The grounds stated where not grounds which called 4 review the applicant hat a right of appeal not the right of review.

3) **Sufficient Cause**

In ***Re Nakivubo Chemists (u) Ltd*** (1979) HCB 12, it was held that the expression sufficient should be read as meaning sufficiently of a kind analogous to the discovery of new and important matter of evidence previously overlooked by excusable misfortune and some mistake or error apparent on the face record

In ***Buladina Nankya v Bulasio Kande***[117], counsel 4 the plaintiff and defendant be4 the registrar and got the suit disposed off in of a compromise

The applicant applied for review; the court held that the words any other sufficient reasons mean a reason sufficient on grounds at least analogous to those specified immediately previously, the ground that counsel had entered into a comprehensive without instructions of his client did not fall within the meaning of those words. But as told the justice of the case demanded that the consent judgement should be set aside the court would exercise its irrelevant powers to set aside the compromise

Margret Senkuute v Musa Nakirya[118]

It was held that for an application for review to succeed, the applicant must satisfy court by providing one of the following

(i) discovery of new and important matter of evidence which we not in the knowledge of the applicant, (ii) an error or mistake appeal on the face of record, (iii) some other sufficient

[116] HCMA No. 123/2000,
[117] (1979) HCB 239
[118] **HCCR No.7/2009**

(ii) Where there is an error or mistake apparent on the face of the record for example judgment is entered where there is no affidavit of services.

In **Edison Kanyabwera v Pastor Tumwebaze SCCA No. 61.** It was held that in order for an error to be apparent on the face of the record, it must be an error so manifest or clear that no court would permit such an error to remain on court's record.

It may be one of fact and of law e.g.

The absence of an affidavit of service was an error justifying review.

(iii) The application may also be so grounded on any other sufficient cause which means "cause" analog as to the other 2 grounds.

Yusuf v Nokranti, Any other sufficient reason means a sufficient reason of a kind analogus to those set out in the rule.[119]

Levei Outa v Uganda Transport Corporate [1975] HCB 340, there were 3 suits against the defendant and he applied to have the two suits of 2 firms of advocates be struck out a they were based on the same facts. The judge dismissed the advocates themselves instead of suits he applied for review.

The court held this was a sufficient application that justified an order striking out the suit to be substituted it was patently abused.

Review of a consent judgement

In ***Muhammed Allibhai & W.E Bukenya Mukasa & Anor***[120], the main compliant in the suit was that the appellant had failed to show that he was entitled to review of the consent judgement between the 1st and 2nd respondents in a suit of which he was not a party. It was held that a consent judgement may be set aside for fraud, collusion or for any other reason which would enable the court to set aside an agreement.

[119] (1971) EA 107
[120] SCCA No. 56 of 1996

HEARING OF THE APPLICATION

The application should be heard by the same judge or judges who heard the matter from which it arose & no matter other judge 0.46 r 4 of r the CPR

Application

The Application as per 0.46r 8 of the CPR is by notice of motion with an affidavit

Documents	Procedure
1) Notice of motion	1) Lodging the Application
2) affidavit	2) payment of court fees 3) service of a copy of the application on the respondent

REVISION

Revision is provided 4 under S.83 of the CPA. It is only exercised by the High Court in relation to the exercise of power by the lower court

The grounds upon which revision is exercised include;

- Exercised a jurisdiction not rested in it by law
- Failed to exercise a jurisdiction vested in that court
- Acted in the exercise of its jurisdiction illegally or with material irregularity
- Here the court must have jurisdiction but exercise it wrongly through some procedural or evidential defect.

In ***Mubiru v Kayiwa***[121], it was held that where there has been a procedural irregularity in proceedings leading to the judgement or order which is a judgement such order ought to be treated as a nullity or set aside

On time

[121] ***(1975)HCB***

As per S. 83(d)(e) of the CPA, no revision will be ordered where, from lapse of time or other cause the exercise of that power would involve serious lordship to any person

WHEN AN APPLICATION FOR REVISION MAY BE BROUGHT

In *Bwambale Byasaki v Shaka Augustine*[122], the application 4 review was brought when the applicant's list was struck out the c/m court. The court stated revisions can only be filed against final orders in a matter conclusively determined.

In this case there was room 4 the applicant to apply for revision after the final judgement of the court when the cm finally determines the suit. A case pending formal proof in court is not envisaged as fit for revision orders owing to the phrase "any case which has been determined" in S.83.

DUTY OF THE COURT IN REVISION CASES

These were summarized in ***Mumoba Mohamed v Uganda Muslim Supreme Council***[123] in which court held that high court in exercising its revision power, its duty entails examination by the court of the record of any proceedings be4 the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regulating of any proceeding before it.

The law on revision is set out in Section 83 of the CPA it provides that; the High Court may call for the record of any case which has been determined under the Act by any Magistrates Court, and if that court appears to have

a) Exercised a jurisdiction so vested; in it in law

b) Failed to exercise of its jurisdiction so vested;

c) Acted in the exercise of its jurisdiction illegally or with material irregularity or injustice.

The high Court may revise the case and may make sure order in ot as it thinks fit, but no such power of revision shall be exercised.

d) Unless the parties shall first be given the opportunity of being heard: or

e) Where from lapse of time or other cause the exercise of that power would invoke serious hardships to any person.

This section confess jurisdiction on the High Court and no other court to call for any file of a lower Magistrate's Court for purposes of revising the same.

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[122]**HCMA No.64 / 2014**

[123] Revision Cause No.1 of 2008

In **Muhabwe Mohammed v Uganda Muslim Supreme Council Revision No. 1/2006:**

It was held that the powers of the High Court in revision are not limited. These powers are not precluded in cases where an appeal could not be preferred.

Twine Amos v Timusuzon Jamas.[124] Herein it was stated that according to Black's law dictionary, revision means Re-Examination or a careful review for correction or improvement or an alternative of worth; that the court while exercising its revisional jurisdiction examines the records of any proceeding for the purpose of satisfying itself as to the correctness, legally or propriety of any finding or order or another decision the High Court can revise a decision under section 83 of CPA even when an appeal would lie in its power of revision, the High Court can use its wide powers in any proceedings. It appears that an error material to the merits of the case or involving a miscarriage of justice has occurred.

The High Court is also vested with the powers of revision under Section 17 of the Judicature Act under section 4(1). The High Court shall exercise general powers of supervision over Magistrate's Courts

Under section 17(2) the High Court shall exercise its internal powers to prevent abuse of the process of the court by curtailing delays including the power to limit and stay delays prosecutions as may be necessary for achieving the ends of justice. However, in the contest of orders of registrars of the High Court, power of revision is not available as they are deemed to be of the High Court

AG and anor V. James Mark Kamoga & Anor[125]***,*** the best relief for someone aggrieved is review under Section 80 & or appeal under 0.50 R.8. The registrar has no power to review delegated to him as it is vested in a subordinate court, the High Court.

SCOPE OF REVISION IS LIMITED TO THE GROUNDS

Revision is founded on grounds set out in section 33 of the CPA; the exercise of Jurisdiction not vested in the court failure to exercise a jurisdiction so vested, illegal, exercise of jurisdiction could cause a miscarriage of justice. On either of these grounds the High Court may be moved to exercise jurisdiction by a party to the dispute, his or her counsel, judicial officer with supervisory powers e.g., a chief Magistrate, a Registrar or an inspector of courts or it may move itself

[124] **HCCR No. 0011/2009:**

[125] Civil appeal no.

Byanyima Winnie v. Ngoma Ngime[126] the applicant files an application for review of the order in the High Court for are count. That the chief Magistrate exercised Jurisdiction not vested in him and had exercised the Jurisdiction with material irregularity. It was held that the chief Magistrate order for is count after the applicant had already sworn in and therefore, he had no jurisdiction left in the matter and therefore the order was subject to revision. The court further held that the burden lies on applicant to prove that the application is found on the statutory grounds in Section 83.

The court exercising its power is entitled to exhaustively scrutinize the decision and proceedings in the lower court to confirm or a ascertain the alleged illegalities.[127]

The power of revision is discretionary in nature implying that it will only be exercised in appropriate and fitting circumstances.

Section 83(a) the power of revision shall not be exercised unless the parties shall first be given the opportunity of being heard. Revision will not be available where it is belatedly to the detriment of third parties who may have acquired interest to the subject matter of the suit. ***Section 83(c)*** the power of revision shall not be exercised where from lapse of time or other cause, the exercise of that power would involve serious hardships of any person.[128]

Kisame Samson v Ali Kiyinkibi[129]. It was held that Section 83 provides the grounds for the exercise of the power of revision in the High Court where a magistrate court has exercised a jurisdiction not vested in it or acted in the exercise of its jurisdiction illegally or with material irregularities or injustices or failed to exercise a jurisdiction so vested in.

However as provided for under Section 83(d) the powers of court should be exercised where from lapse of time or other cause which would otherwise involve a serious hardship to any person.

The party likely to be affected by the High Court's Revision decision must be served with a notice for revision. A court cannot entertain an application for revision save where the adversary party is duly noticed by way of service of a hearing notice.

The remedy may not be granted if the person seeking it is guilty of lacks and circumstances are that the orders are likely to cause hardships of third parties who have benefited from the decision or order being challenged.

[126] **HC CV. Revision 009 of 2001**
[127] Twine Amos v Tamusuza James High Court Civil Revision No.0011/2009
[128] Kabwengure v Charles Kenjali [1977] HCB 89.
[129] [2010] UGH021

PROCEDURE

In ***Gulu Munipal Council v Nyeko Gabriel***[130]***,*** the Court stated that there is no prescribed procedure of applying if revision proceedings and that there is no legal prohibition of the revision proceedings being initiated by an application of an aggrieved party moving court to exercise its powers.

There is no specific procedure that has been laid down for revision. In **Assumpta Sebanya v Kyomukama James**[131]**;** the Application was by way of Notice of motion under Section 83 of the CPA and 0.52 R.1 &3 of the CPR. It was held that where an Affidavit in support of an application is argumentative and full of submission on the matter in dispute, it thereby contravenes the requirements of 0.19 R.3 (1) & (2) of the CPR and will be struck out. However prudent practice requires that the application is formal by notice of motion and an affidavit

DOCUMENTS

- Notice of motion
- Affidavit

INTERIM APPLICATIONS PENDING REVIEW OR REVISION

An applicant is entitled to an interim relief like stay of execution during the pendency of either applicant.

The application is not however brought under 0.43 r 4 of CPR as that is 4 when there is a pending appeal. This one is brought under S.33 of judicature Act, S.98 of CPA & 0.52 of CPR involving the inherent power of court. Art 126(2)(e) In ***Kasirye Byaruhanga & Co. Advocates v Uganda Development Bank***[132], the Court held that a litigand who relies on the provisions of Art. 126(2)(c) of the Court must satisfy the Court that in the circumstances of a particular case be4 the court it was not desirable to pay undue regard 2 the relevant technically Art. 126(2)(e) is not a magic wand in the hands of defaulting litigants

DIFFERENCE BETWEEN REVIEW & REVISION.

According to **AG & anor v. James Mark Kamoga & Anor**[133] The difference is with regard to powers of the High Court. High Court has supervisory Jurisdiction to revise decision of Magistrate's Courts which are subordinate to it while Section 82 CPA empowers the High Court to review.

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[130] ***(1996) HCB 66***
[131] **Misc. cause No. 55/2021**
[132] SCCAPP No. 2 of 1997
[133] **SCOA No. 8/2004**

Decisions. Conditions on which the 2 Jurisdictions are invoked are necessarily different and SU are the principles applicable to their exercise.

JURISDICTION OF THE CONSTITUTIONAL COURT

This is based on Article 137 of the Constitution 1995 wherein the constitutional court is warranted with powers to interpret the constitution. The basic articles to look at include Articles 137, 50, 2, 4, 40, (2), 119, 152, 153, 154, 159, and 163.

Another law to look at is the Rules of the Constitutional Court (Petitions for Declarations under Art. 137 of the Constitution) Legal Notice No. 4 of 1996

In ***Mbabalijude V Edward Sekandi Conszt.Petitionno.*** Justice Remmy Kasule held that a constitutional question that has to be interpreted by the constitutional court arises when there is an issue legal or otherwise requiring an interpretation of the constitution for the resolution of the cause out of which that issue arises from.

The issue that calls for interpretation of the constitution by the constitutional court must involve and show that there is an apparent conflict with the constitution by an act of parliament or some other law or an act or omission done or failed to be done by some person or authority. Further the dispute where the apparent conflict exists must be such that its resolution must be only when and after the constitutional court has interpreted the constitution.

Further in ISMAIL SERUGO V. KAMPALA CITY COUNCIL[134] Wambuzi c.j held that the petition must show on the face of it, that interpretation of a provision has been violated. The applicant must go further to show prima facie, the violation alleged and its effect before a question could be referred to the constitutional court

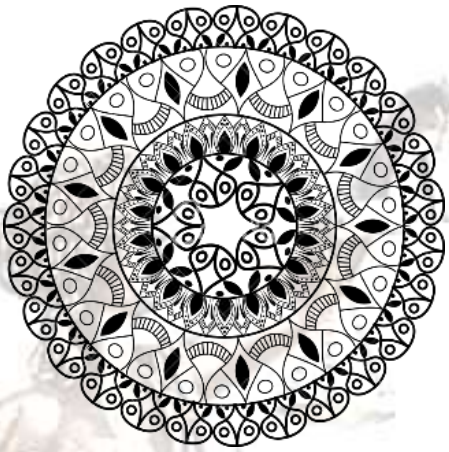
In **PAUL K. SSEMWOGERERE & ANOR. –VS- A.G S.C CONST. APPEAL NO. 1/2000** court held that jurisdiction of the Constitutional Court is derived from **Art. 137** of the Constitution**.** An application for redress can be made to the Constitutional Court in the context of a petition under Article 137brought for interpretation of the Constitution. **Clauses (3) and (4) of Article 137** empower the Constitutional Court when adjudicating on a petition for interpretation of the Constitution to grant redress where appropriate.

It must be noted that any person who seeks to enforce a right or freedom guaranteed under the Const. by claiming redress for its infringement but whose claim does not call for an interpretation of the Const. has to apply to **any other competent court.**

The question of limitation period was discussed in **FOX ODOI – OYWELOWO & ANOR VS AG**[135] where court held that Article . 137 (3) (a) of the Constitution under which the petition is brought does not provide the time limit within which to file any petition under the Constitutional Court. To this end therefore, court

[134] CONST. APPEAL NO.2 OF 1998,
[135] **CONST. PET. NO. 8 OF 2003**

overruled the objection that petition was not brought within 30 days. as per Rule 4 (1) of L.N 4 of 1996 [now **The Judicature (Rules of the Constitutional Court) (Petitions for Declarations under Article 137 of the Constitution) Directions**].



CONSTITUTIONAL PETITIONS.

These are brought to seek the court's interpretation of the constitutional provision(s) in light of any act or legislation.

LAW APPLICABLE.

They are brought under article 137(3) of the 1995 constitution of Uganda

Rule 3 of the constitutional court (petitions and references) rules 2005, stipulates the form and contents of the petition

LOCUS

This is governed by Article 137(3) of the constitution and it permits any person whether aggrieved or not to bring a constitutional petition.

The jurisdiction of the constitutional court was well reiterated in the case of ***Paul Kawanga Ssemwogerere & others V. Attorney General***[136] where Mulenga JSC said that

"My conclusion from reading a preliminary ruling and the judgment in this case, is that the under current, which is what the court meant to portal in the said holding was that it had no power, to the said holding was that it had

[136] constitutional appeal No. 1 of 2002

a power to declare any provision of the constitution void in my mind however, Jurisdiction to interpret or construct a constitutional provision and power to declare such a provision void are two different things, Never the less in the final decision, the majority of the court appear to have considered that their hands were yield by the holding he preliminary ruling to the extent that they declined to consider questions, which clearly arose from the pleading for thereof interpreting one constitutional provision against another" the issue of the court's jurisdiction is now subject of with ground of appeal, which reads in part as follows:- "the constitutional court erred in law and fact when they hold that a constitutional court would have an jurisdiction to construe part of the constitution as against the rest of the constitution".

The constitution prescribes the jurisdiction of the constitutional court in clause (1) of article 137 as follows;

Any question as to the interpretation of this constitution shall be determined by the courts appeal sitting with the constitutional court.

The court is thus unreserved by vested with jurisdiction to determine any question as to the interpretation of my envision of the constitution with regard to interpretation of the constitution the court's jurisdiction is unlimited and unfettered to reiterated in clause (5) which provides for referenda of any question as to other petition of this constitution". A rising in any proceedings in a court of law, to the constitutional court for decision in accordance with clause (3) provides that any person or authority, is inconsistent with or in intervention of my provision of the constitution, has a right to access the constitutional court directly by petition.

There upon the constitutional court may grant a declaration that such law, thing act or omission is inconsistent with or contravenes the provision in question in my mind, the clause does not there by preclude the court from interpreting or consisting two or more provisions of constitution brought before it, which may appear to be inflict in my opinion, the court has not only the jurisdiction, but also the responsibility to construes such provisions with a view to harmonies them, where possible through interpretation. It is a cardinal rule in constitutional interpretation, that provisions a constitution concerned with the same subject should as much as possible before construed as complimenting, and not contradicting one another. The constitution must be read as an integrated and cohesive whole. The supreme court of U.S.A in ***Smith Dolcotavs North Lordine***[137] pol the same point thus.

"It is an elementary rule of constitution that no one provision of the constitution is to be segregated from other and in be considered alone but that all the provisions bearing upon a particular subject are to be brought into view and in be interpreted as to effectuate a great purpose of the instrument".

There is no authority other than the constitutional court, charged with the responsibility to ensure that harmonist even where it is not possible to harmonies the provisions brought before it, the court have responsibility to construes them and pronounce, itself on them, albeit in hold in the ex that they are inconsistent with each other. Through the execution of that responsibility, rather than shamming it the court is able to guide the appropriate

[137] 192 US 268 (1945)

authorities need if any to cause harmonization through amendment in my opinion therefore, the decision that the constitution is mis-concerned and erroneous in law, the sixth ground of appeal ought to succeed.

Article 137(3) provides that'

" A person who alleges that:-

(a) An act of parliament or any other in anything in or other line under the authority of any lower.

(b) Any act or omission by any person , or authority

(c) Is inconsistent with rule contravention of a provision of this constitution may petition the constitutional court for a declaration to that effect, and for redress where appropriate".

Reforming to the above provision in the cases of ***Philip Karugaba v Attorney General***[138], Kanyeihamba J.S.C said that:

"It is clear that the right to petition the constitutional court is rested in every person in their even individual capacity person in their even individual capacity in my opinion, this is a clear case where this right expires with the deceased person and such death does not applied the rights or obligation of any other person nor does the death company residual right to any other person let alone the deceased course".

From the wording of article 137(3), HCCA be seen that the procedures by petition and the order that will usually be sought is a declaration, and redress where possible.

Questions unnamable to constitutional interpretation may arise out of:

An inconsistence of an act of parliament within the provisions of the constitutions

An act or omission by any power or authority which in insistent where contravenes a proviso of the constitution.

PROCEEDINGS IN A COURT OF LAW OTHER THAN A FIELD COURT MARTIAL

Ideally the constitutional court is empowered under article 137 (4) to make a declaration and grant an order for redress where it considers it necessary it may disappear the matter to the high court to investigate and determine the appropriate remedy.

[138] constitutional Appeal No. 1 of 2004

It is provided under clause that:

"Where any question as the interpretation of this constitution arises in any proceedings in a court of law other than a filed court marital the court.

(a) May if it is of the opinion that the question involves a substantial question of law and

(b) Shall, if any party the proceedings request it to do so refer the question to the constitutional court for decision in accordance with clause of this article".

Clause b provides that a court in which a question of constitutional interpretation arises shall disprove of the case in accordance with the decision of the constitutional court. Constitutional proceedings are to be given by priority by the court of appeal, appeal article 137(7) state that

"Upon a petition being made or a question being referred under this article the court of appeal shall proceed and determine petition as soon as possible and may as that purpose suspend another matter bending before it.

PROCEDURE

1. Drafting of petition and affidavits .Rule 3 of rules
2. Preservation of petition by lodging at the court registry eight copies. Rule 4(2) of rules.
3. Pay requisite fees and deposit of 200,000 shillings as security for costs. Rule 4(3) of the rules
4. Effect service on all the respondents within 5 days and the A.G if they are not party. Rule 5(1) and (2).
5. Respondent upon service within 3 days must file an address of service and serve it on the petitioner. Rule 6(1) of the rules.
6. Within 7 days, after service of petition, the respondent must file their reply if they intend to oppose the petition. Reply is filed in 8 copies. Rule 6(3) of the rules. Reply should be accompanied with an affidavit. Rule 6(5).
7. Serve the reply immediately on the petitioner upon filing reply. Rule 6(6).

DOCUMENTS

1. Petition
2. Affidavit.

CONSTITUTIONAL PETITION

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO.....OF 2020

MUKASA JJINGO .....PETITIONER

VERSUS

ATTORNEY GENERAL.....RESPONDENT.

PETITION

(Brought under article 137(1), (2), (3) and (7) of the constitution and rule 3 of the constitutional court (petitions and reference rules 2005)

The humble petition of MUKASA JINGO whose address for the purposes of this petition is SUI GENERIS AND CO ADVOCATES, shows and states as follows:

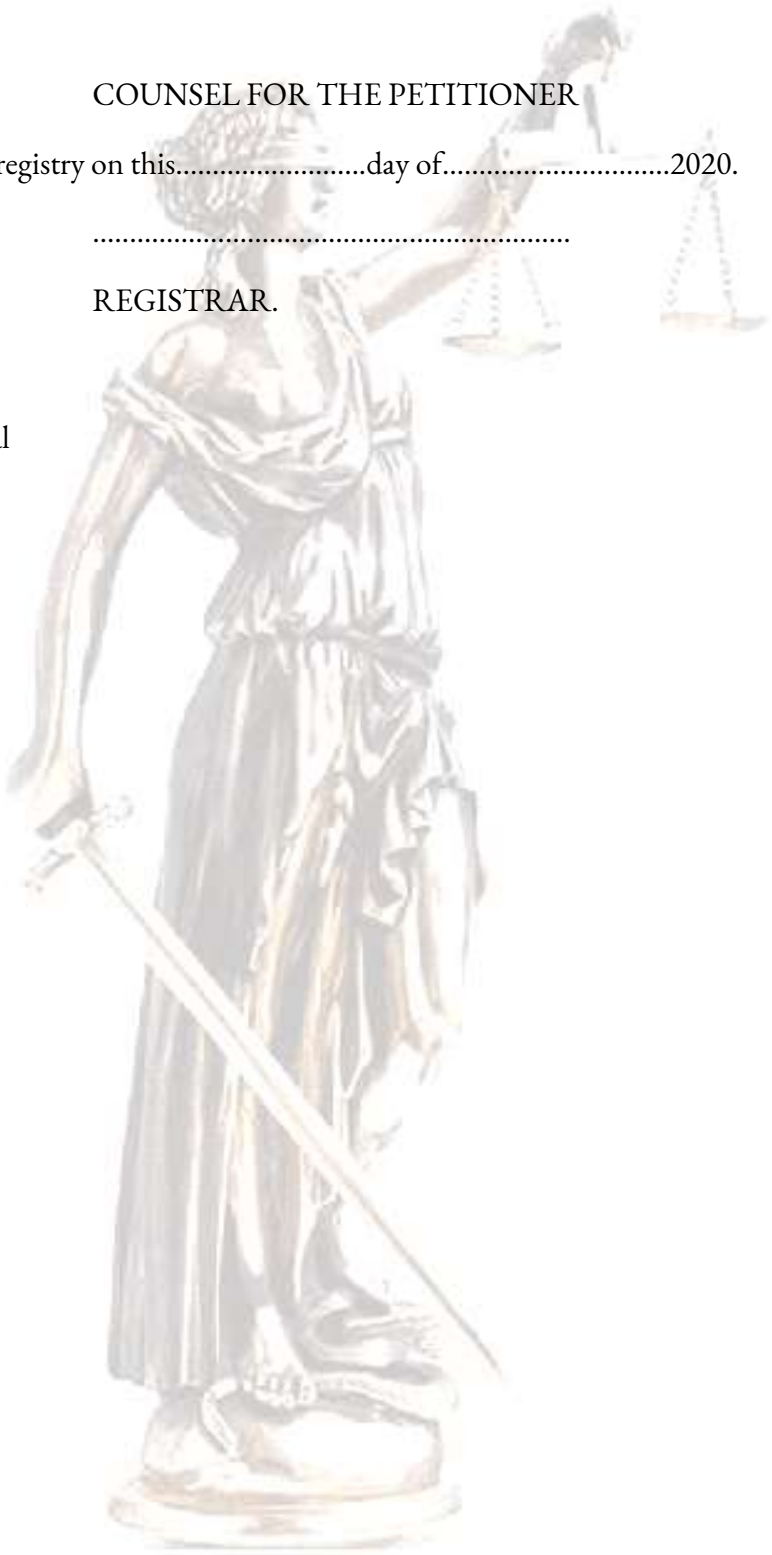
1. Your petitioner is a male adult Ugandan and the registered owner of truck Reg. no. UAP 611A
2. The respondent is the mandated legal representative of the government of Uganda by virtue of article 119 of the constitution.
3. Your petitioner is aggrieved with s.165 of the traffic and road safety act which contravenes and is in concise with article 21(1) of the 1995 constitution as it imposes liability of another person on another for driving without a valid permit.

WHEREFORE YOUR PETITIONER prays for:

a) A declaration that section 165 of the traffic and road safety act is inconsistent and contravenes article 28 of the constitution

b) Costs of the petition

Dated at Kampala this.....day of July 2020



COUNSEL FOR THE PETITIONER

LODGED at the court registry on this.....day of.....2020.

.....

REGISTRAR.

To be served on

1. Attorney general

Drawn and filed by:

SUI GENERIS

Kampala.

JURISDICTION IN CIVIL MATTERS

PROCEDURE IN SPECIAL TRIBUNALS DEALING WITH CIVIL MATTERS IN WHICH ADVOCATES HAVE LOCUS

The black's laws dictionary, 9th edition at page 112, defines an appeal as proceedings taken to rectify an erroneous decision of the court by bringing it before a higher court.

TAX APPEALS TRIBUNAL

The Tax Appeals Tribunal is established by section 2 of the Tax Appeals Tribunal Act cap 345 of the Laws of Uganda. To this end therefore, it is governed in part by the ;

Tax Appeals Tribunal Act cap 345,

Tax Appeals [Tribunal Rules] SI 345-1

Income Tax Act cap 340,

Civil Procedure Rules SI 71-1

Section 14[1] of the Tax Appeals Tribunal Act cap 345 provides that any person aggrieved by a decision made under a taxing act by Uganda Revenue Authority can apply to the relevant tribunal for review. It must be noted that a right of appeal from the Tribunal is sanctioned by section 27 of the Tax Appeals Tribunal Act cap 345 and case law in **Capital Finance Corporation Ltd Vs URA Civil Appeal 43 of 2000**. It must be noted further that this right of appeal from the decisions of the Tax Appeals Tribunal Act to the High Court is on questions of law only [see section 27[2] of the Tax Appeals Tribunal Act cap 345]

There are some necessary preconditions, which an aggrieved person has to fulfil before lodging the application to the tribunal.

First and foremost, the taxpayer should have got an assessment by URA. This is a contextual interpretation of section 15 of the Act.

Secondly, the taxpayer lodges a notice of objection to URA under section15 [1] of the Tax Appeals Tribunal Act cap 345. In **URA Vs UCP Ltd [Court of Appeal C. Application. 3 of 2000],** a mandatory requirement is laid out thus, an application for review must be filed within 30 days form receipt of the decision from URA. Time limits are set by statute and are matters of substantive law and not mere technicalities and must be strictly complied with. URA is enjoined to either review or affirm the decision and thus communicate it to the taxpayer.

Thirdly , at this point after receipt of the decision, the taxpayer is at liberty to apply to the tribunal for review of the decision of URA within a period of thirty days on the strength of section 16[1] [c] of the Tax Appeals Tribunal Act cap 345. It must be noted that a taxpayer cannot challenge the decision of the URA after the expiry of six months. This is canvassed in section 16[7] of the Tax Appeals Tribunal Act cap 345.

It must be noted further; that the statutory provision is to the effect that lodging of the objection is synonymous with paying of 30% of the tax assessed or part of the tax assessed which is not in dispute. This statutory provision has however been successfully challenged in **Multichoice Ltd Vs URA Misc. Application. 1 of 2000** where court held that payment of the 30% is not a precondition for lodging the appeal and failure to do so does not render the application void.

PROCEDURE

The tax payer; according to section 16[1] of the Tax Appeals Tribunal Act cap 345, lodges an application in writing in the prescribed form, including the statement of reasons for the application; within 3 days from the date of receipt of the decision of the URA.

The taxpayer is enjoined to pay a non-refundable fee of 20,000 [refer to rule 2 of the Rules] in respect of the application under section 16[5] of the Tax Appeals Tribunal Act cap 345.

Thirdly, after filing the application, a copy thereof should be served on the URA within five days from date of lodgment of the application as provided for by section 16[3] of the Tax Appeals Tribunal Act cap 345.

Within a period of thirty days, after service of the application the decision maker [URA] is enjoined to lodge with the tribunal two copies of the notice of the decision, a statement giving reasons for the decision and every other document in the decision maker's possession or under his or her control which is necessary to the tribunal's review of the decision. [see section 17[1][a-c] of the Tax Appeals Tribunal Act cap 345.

The burden of proof is on the applicant to prove that where the objection is in relation to the assessment, the assessment is excessive or in any other case, the taxation decision should not have been made or should have been made differently. This is provided for in section 18 of the Tax Appeals Tribunal Act cap 345.

Upon receipt of the evidence of either party, the tribunal has powers under section 19 of the Tax Appeals Tribunal Act cap 345 to affirm, vary or set aside the decision.

FORUM AND DOCUMENTS

The application is filed in the format of **formT.A.T.1** in the Tax Appeals [Tribunal Rules] SI 345-1 [hereinafter referred to as the rules], and is filed in the Registry at the Tax Appeals Tribunal under rule 7[1] of the rules.

Upon receipt of the application, the registrar under rule 10[2] of the rules; duly dates, stamps and sighs the application; retains one copy of the application. The second and third copy of the application are retained by the applicant whereby he or she is enjoined to serve a copy on the decision maker [URA] in accordance with rule 13 of the rules.

Upon service of the application on URA, it is enjoined within 3 days after service of the application to lodge a reply in the format of **form T.A.T. 2** with the registrar of the tribunal with two copies of the notice of the decision, a statement giving reasons for the decision and every other document in the decision maker's possession or under his or her control which is necessary to the tribunal's review of the decision as fortified by section 17[1][a-c] of the Tax Appeals Tribunal Act cap 345. The notice of the decision is in **form T.A.T. 3** to the rules.

The registrar then serves hearing notices on the parties in the format of **form T.A.T. 4** to the rules in accordance with rule 6 of the rules.

It must be noted that before hearing the application, the registrar issues summons in accordance with rule 17 of the rules, in **form T.A.T. 5** in the schedule to the rules requiring attendance at a date, time and place specified in the summons of witnesses. It must be noted that if a witness without sufficient reason absconds; yet there is proof of service, the tribunal may issue a warrant of arrest in the format of **form T.A.T. 6** of the schedule to the rules.

If the respondent does not turn up; the tribunal proceeds to hear the application and upon completion adjourns the hearing.

After conclusion of the hearing and submissions; the tribunal shall make a decision in the presence of the parties or their advocates and shall cause a copy to be served on each party under rule 24 of the rules.

The contents of the decision are provided for under rule 25 to the rules, thus; nature of the application, summary of the evidence, reasons for the decision, relief or remedy to which the applicant is entitled and orders as to costs.

There is a rule of cardinal importance laid out in rule 30 of the rules, to the effect that if the Tax Appeals Tribunal Rules do not provide for a matter, then the rules of practice apply.

HUMAN RIGHTS COMMISSION

The laws of great importance in this scope of study include the following;

Constitution of the republic of Uganda 1995

Uganda Human Rights Commission Act Cap 24

Uganda Human Rights Commission [Procedure] Rules SI 24-1

Universal Declaration of Human Rights 1948

Government Proceedings Act

Civil Procedure Rules SI 71-1

Article 2 of the Constitution 1995 that all rights are inherent in an individual and not granted by the state. To this end therefore, to find out whether one's rights have been infringed, one looks at cap 4 [or the bill of rights] of the constitution and other relevant articles. International instruments duly ratified by Uganda are also cornerstones of protection of rights of individuals.

To this end therefore, article 50 of the constitution provides that anyone who feels his rights have been infringed; he is at liberty to apply to a court of competent jurisdiction and obtain redress. Article 53[2][c] of the Constitution provides that if the commission is satisfied, it may order for payment of compensation or any other legal remedy or redress.

The Uganda Human Rights Commission established under the constitution has powers to investigate into violation of human rights; at its own initiative or upon lodgment of a complaint by an individual; under article 52[1][i] of the constitution. In addition, rule 4 of the Uganda Human Rights Commission [Procedure] Rules SI 24-1 [hereinafter referred to as the rules], provides that all persons claiming any right or relief in respect of a violation of any human right or freedom may apply to the commission for redress.

Article 8 of the Universal Declaration of Human Rights 1948 provides that everyone has a right to an effective remedy by a competent national tribunal for acts violating his fundamental rights granted by law.

Where one is lodging a complaint against an organ of Government, he or she invokes the principle of vicarious liability as laid out in section 10 of the Government Proceedings Act and on the *locus classicus* case of **AG vs Muwonge [1967].**

Forum and Procedure

One applies to the commission under rule 4 to the rules wherein he fills out form 7 in the schedule to the rules, stating the particulars of the complaint, facts of the complaint and particulars of the person complained against. In practice, the complainant is interviewed and a statement is made. The commission may write to the police to get evidence.

After filing the complaint, it is served on the respondent in accordance with rule 13 and form 3 to the schedule to the rules. It must be noted that on the strength of rule 30; no fees are levied on an individual for filing of a complaint. If the respondent is the Attorney General, a formal letter is thereby written to him or her, asking him to respond. After the Attorney General's response, a hearing is fixed. It must be noted that statutory notice does not apply in cases of human rights as fortified by the **Osotraco Case [2000].**

Witness summons are issued before the date of hearing under rule 14[1] and use of form 1 to the schedule to the rules. Failure to attend by a person duly served with the summons can lead to arrest as provided for in rule 16 and form 2 to the rules.

Rule 21 provides for hearing of the case, which is like in normal cases. Rule 32 provides that the Civil Procedure Rules apply in the hearings. After concluding the hearing, a decision is passed in accordance with rule 23 of the rules ***to wit***, shall be in writing and shall contain the nature of the complaint, evidence, a summary of the evidence, the remedies and the order.

It must be noted that on the strength of rule 24 of the rules, execution of the orders of the commission follows the rule of procedure ***to wit*** CPR SI 71-1.

OBJECTION MY LORD

MAJOR DOCUMENTS.

These have been discussed above and they include the following;

The Complaint Form - Form 7 to the schedule to the Rules.

Summons - Form 3 to the schedule to the Rules.

Witness Summons - Form 1 to the schedule to the Rules.

ENFORCEMENT OF ORDERS MADE BY THE COMMISSION.

The usual rules of procedure apply; to wit, one extracts a decree, serves it on Government to satisfy. If Government fails to satisfy the decree, one obtains leave of court and applies for mandamus.

INDUSTRIAL COURT

The law of major application in this area of study includes the following:

The law applicable to this scope of the study is:

- The Constitution of the Republic of Uganda 1995
- The Judicature Act Cap 13
- The Civil Procedure Act Cap 71
- The Civil Procedure Rules SI 71-1
- The Evidence Act Cap 6
- The Judicature (Court of Appeal) Rules Directions SI13-8
- The Judicature (Supreme Court) Rules Directions SI13-10
- Practice Directions 2 of 2005
- Practice Directions 4 of 2005
- Case law
- Common law and Doctrines of Equity

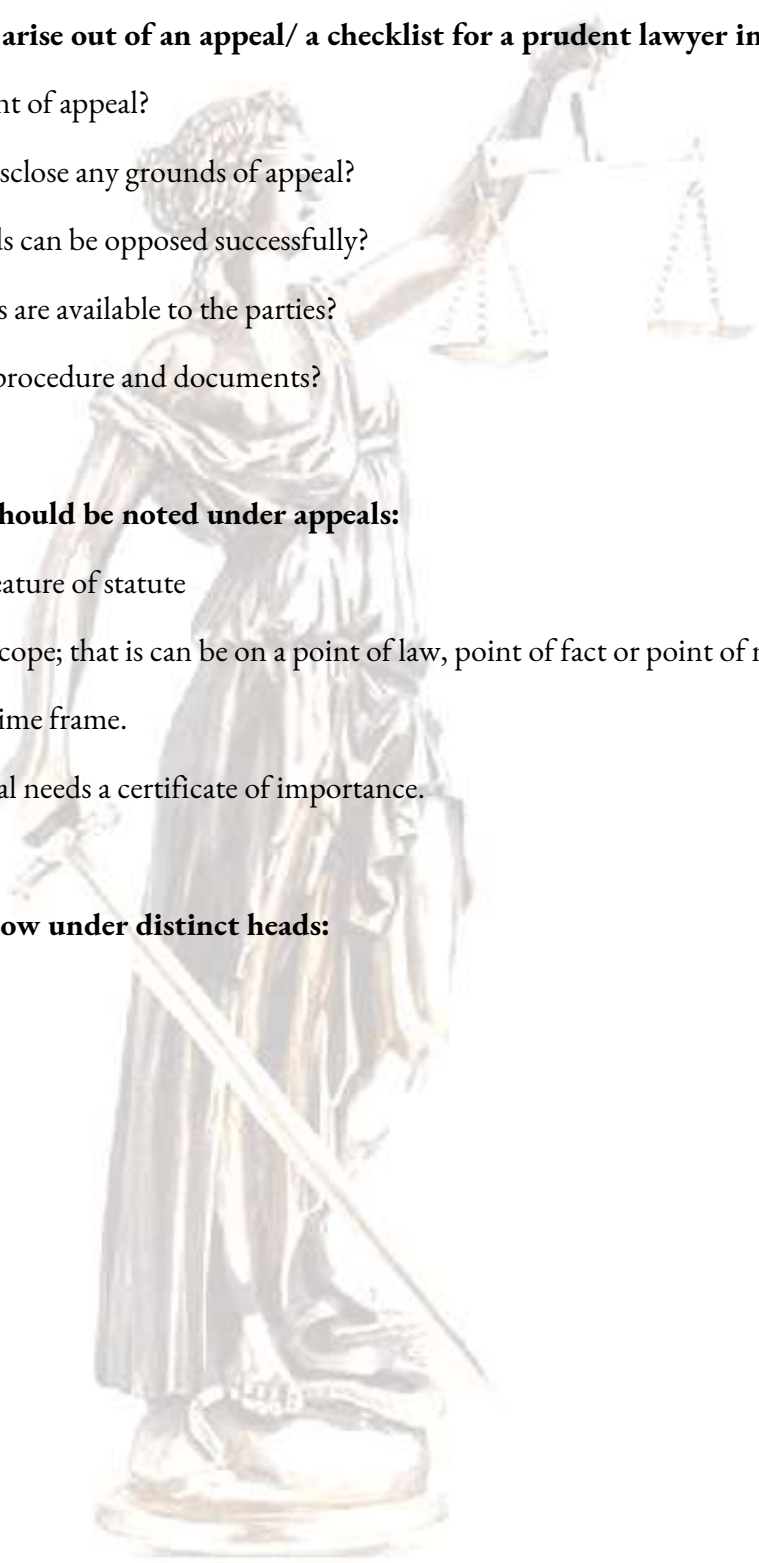
The basic issues which arise out of an appeal/ a checklist for a prudent lawyer include:

- Whether X has a right of appeal?
- Whether the facts disclose any grounds of appeal?
- Whether the grounds can be opposed successfully?
- What other remedies are available to the parties?
- What is the forum, procedure and documents?

The following points should be noted under appeals:

1. An appeal is a creature of statute
2. An appeal has a scope; that is can be on a point of law, point of fact or point of mixed law and fact.
3. An appeal has a time frame.
4. At times an appeal needs a certificate of importance.

These are discussed below under distinct heads:



RIGHT OF APPEAL

There is no inherent right of appeal. For an individual to appeal, he or she should show court that the right of appeal is expressly provided for in a given statute. this principle was discussed in ***AG vs Shah*** **(No.4) (1971) EA 50**, ***Bhogal Vs Khashan*** **[1953]20 EACA 17**and followed with approval in the case of ***UNEB Vs Mparo Constructors***[139]. It must be noted that unlike appeals in criminal cases which should be from final orders of court; appeals in civil suits are from rulings and orders. To this end therefore, appellate courts have power and jurisdiction vested in them as a result of statutory provision. In **BAKU RAPHEAL V ATTORNEY GENERAL SCCA NO 1 OLF 2005**, the Supreme Court held that there is no inherent right of appeal. The same court held in **LUKWAGO V ATTORNEY GENERAL SCCA N0. 6 OF 2014** that the right of appeal is a creature of statute and there is nothing known in law as an inherent right of appeal. The right must thus be provided for by the law and any party seeking to invoke it must comply with all the stipulations therein.

DUTIES OF THE APPELLATE COURT

DUTY OF THE FIRST APPELLATE COURT.

In BANCO ARABE ESPANOL V BANK OF UGANDA SCCA N0. 8 of 1998, the court stated that the duty of the first appellate is the evidence on record as a whole and come to its own conclusion bearing in

[139] **Civil Appeal 19 of 2004**

mind that is has neither seen nor heard the witnesses and should make due allowance in that regard. The same is re-echoed in ***Uganda Revenue Authority V Rwakasaija Azarious*** **And 2 Ors**[140]

POWERS OF THE FIRST APPELLATE COURT.

These were laid down by the supreme court in ***fr.narsensio begumisaw and 3 ors v eric kawtibebaga,***[141]. The court held that it is a well settled principle that on a 1st appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in case of conflicting evidence, the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses. It must weigh the conflicting evidence and draw its own inference and conclusions. Even where the appeal turns out on a question of fact, the court of appeal has to bear in mind that its duty is to rehear the case and the court must re-consider the materials before the judge with such other materials as it may have decided to admit.

The court must then make up its own mind not disregarding the judgement appealed from but weighing and conflicting and not striking and over ruling it of on full consideration the court comes to the conclusion that the judgement is wrong. When the question arises which, witness is to be believed rather than another and that question turns on manner and demeanor, the court of appeal always is and must be guided by the impression made on the judge who saw the witnesses.

In **Banco Arabe Espennal V Bank of Uganda SCCA 8/1998**, the court commented on the duty of a first appellate court as follows.

"The first appellate courts have a duty re appellee or re-evaluate evidence by affidavit as well as in ordinary oral testimony with the exception of the manner and clean of the manner and demeanor of where it must be guided by the impellor on this court evaluate the evidence. The Supreme Court found that the court of appeal failed in its duty, is first court of appeal in subject the evidence in the location that fresh serrating which the appellant expected it to do.

The court specifically said that:

The duty of court of appeal force capacity evidence on an appeal from high court in its original jurisdiction is set at in rule 29 rules of the court of appeal as follows: -

29(1) on any appeal from a decision of a high court acting the exercise of its original jurisdiction the court may.

(a) Re-appraise the evidence and draw inference of fact.

[140] **CACA NO.8 0F 2007**
[141] **SCCA N0.17 0F 2002**

(b) In its discretion, for sufficient reconstitute add final evidence or direct that additional evidence be taken by the trial court by commissioner;

The court restated the approaches of this rule in the case of ***Kifamunte Henry v Uganda***[142] although the principal states there in co are in respect of a criminal appeal these can be an doubt that they equally apply to civil appeals on the first opted an appellate courts own consideration and review of the evidence as whole and its own decision there on in Kitiormate Henry (supra) this court said;

"We agree that on the first appeal....The appellant is entitled in have the appellant own any direction and views of the evidence as a whole and in own decision there on the first appeal court has a duty in rehear the case and in recondite, the material before the trial of judge, the appellate court must then make up it own mind not dis regarding the judgment appealed grants if card weighing and considering it when the question arises which o matter stable beloved rather that another and that question from an manner and demean, the appellate court must be guided by the impeding made on the judge whose we witness but there may be other circumstances given apart from a manner and do means, which may show whether statements credited in differing from the judge excess the question of each turning on credibility of witness where the appellate court intention,

see Pandges v R (1957) EA 336, Olen v Republic (1972) EA 32 and Charla, Bitove v Uganda land appeal No. 23/85 (SCU) (unreported)"

In my opinion the days of a first appellate court as restated in the case of a fomenter (Supra) applies to re-appraisal or re-evaded of evidence by oral testimony except of court, that by oral testimony except of course, that implement of demand over of witness or draw implementation of demeanor of witness draw crises in the case of affidavit over dues. In the same case the court when said

"it does not seem to it that except in the courts and of cases, we are required in the evacuate the evidence be a trial appreciate the court. In second appeal it is sufficient to decide whether that first appellate court on approaching its check, applied or failed in apply such principles V*CC DK Pandya v R (1957) EA (Supra); Kens v. Digenda*[143]

After referring to provisions of the judicature act and the trial on indictments decree, where not relevant to the instant case, the court continued.

"This court will no doubt consider the facts of the appeal to the extent of considering the relevant point of laws, mixed law and fact raised in any appeals of the re-evaluate the facts of each come wide clear we shall assume the duty in the 1st appellate court and creates. Unnecessary certainly which can interfere with the conclusions of the court of appeal if it appears that in consider action of the appeal as a first appellate court, the court of appeal misapplied or folioed in apt the principles of out in such decisions and Pander (Supra) Reawake (Supra) basis (Supra)"

[142] Supreme Court criminal appeal No.1 of 1997 (unreported)
[143] *(1978) HCB 123*

The same principles were actioned by the court in subsequent car as seen in Bogere Morah Annoix Uganda[144] and *Bogere Charles v Uganda Supreme court criminal appeal No. 10 of 1998 (unreported)".*

In ***URA v R, WEakaSaija XZarious and 2 others*** CACA 8/2007, Engwau, JA said that.

"This being the 1st appellate courts, it is duty bound there appraise the evidence on recorder a whole and dome to its conclusion, bearing him and that it has neither seen nor heard the witnesses and should make due allowance in that regard. ***see D.R Pandyer V.R (1957) E.A 336 EphariomOngom& Anor Francis Binega Dongo,*** S.C C.A No. 10 of 1987 (Unreported) and rule 30(1) (a0 of that rule of this court.

Having cautioned myself about a rule of this court in its capacity of the first applicable court, I have subjected to evidence on record as a whole to a fresh and exhaustive examination and scrutiny. Usually, the first appellate court will determine questions of law and fact

RE-EVALUATION OF EVIDENCE

One of the duties of the first appellate court is to re-evaluate, assess and scrutinize the evidence on record. This was upheld in **Pandya vs Republic [1957] EA 336** and followed in **Uganda Breweries Vs Uganda Railways Corporation SCCA 6 of 2001.** The first appellate court will thus not shrink from overruling the trial judge if on full consideration the court comes to the conclusion that the judgment is wrong.

The duty of the second appellate court is to decide whether the first appellate court re-evaluated the evidence, but in the clearest cases, the second appellate court may re-evaluate the evidence. This principle was upheld in ***Kifamunte Henry vs Uganda***[145] where court held thus

"it does not seem to us that except in the clearest of cases, we are required to re-evaluate the evidence like a first appellate court. On second appeal, it is sufficient to decide whether the first appellate court on approaching its task applied or failed to apply such a principle as stated in Pandya vs R [supra]... The principles stated in Kifamunte[supra] which was a crimainal case apply to civil cases as well."

INTERFERENCE WITH DISCRETION OF A LOWER COURT

The appellate court has a power to interfere with the discretionary powers of a trial judge, if it deems fit. This principle was upheld in ***Mbogo and anor vs shah***[146]***.*** where court held that a court of appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been injustice.

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[144] Supreme Court criminal appeal No. 1 of 1997 (unreported

[145] Crim Appeal 10 of 1997

[146] ***{1968} EA 93 C.A.***

It must be noted that discretionary powers once exercised judiciously, the appellate court will be reluctant to interfere unless the trial court has acted upon a wrong principle of law or that [in case of damages awarded] the amount is so high or so low as to make it an entirely erroneous estimate of the damages to which the plaintiff is entitled. This principle was laid out in ***Robert Coussens vs Attorney General***[147]**.** Other authorities to look at include ***Francis Sembuya vs All Port Services {U} Ltd***[148] and **Uganda Breweries Vs Uganda Railways Corporation SCCA 6 of 2001.** In **Banco Espanyol vs Bank of Uganda SCCA 3 of 1997,** court held that

"it is now well settled that an appellate court should not interfere with the exercise of unfettered discretion of a trial court unless it is satisfied that trial court misdirected itself in some matter and as a result arrived at a wrong decision or unless its manifest from the case as a whole that the trial court was clearly wrong in exercise of its discretion and that as a result there was failure of justice".

CALLING ADDITIONAL EVIDENCE

Where it appears that where evidence was wrongly rejected by a trial court, or where the appellate court requires any document to be produced or for any substantial cause, the appellate can call additional evidence. This can be envisaged in **rule 29** of the **Judicature (Court of Appeal) Rules Directions SI 13-8** for the court of appeal, **rule 29** of the **Judicature (Supreme Court) Rules Directions SI13-10** for the supreme court and **Order 43 rule 22** of the **CPR** for the **High Court.**

The principles upon which additional evidence may be taken were laid out in ***GM Combined [U] Limited Vs AK Detergents and 4 Others***[149] a page 15 where Wambuzi CJ held that; [on the strength of **Karmali Tarmohamed and another Vs IH Lakhani and co. {1958} EA 567**] the party seeking to adduce evidence must show that the evidence was not available at the time of the trial or couyld not with reasonable diligence have been produced. The evidence must be credible and have an important influence on the result of the case.

ORDERING A RETRIAL

An appellate court may order a retrial of the case. In the case of **Gokaldas Tanna Vs Sr. Rosemary Muyinza and Anor**, it was held in context that ordering a retrial is only made if its clear on the face of it that the retrial would serve a useful purpose.

[147] **SCCA 8 of 1999**
[148] **SCCA 6 of 1999**
[149] **C.A. 7 of 1998**

DUTY OF SECOND APPELLATE COURT

In UGANDA BREWERIES LTD V UGANDA RAILWAYS CORPORATION(2002) EA 634, Court held that the duty of the second appellate court is to ascertain and confirm whether the first appellate court has adequately discharged its duty to re-evaluate and scrutinize the evidence on record as a whole to come to a correct conclusion and that, where the second appellate court finds that the 1st appellate court has failed in its duty, the second appellate court should re-evaluate the evidence and make appropriate orders.

In ***Administrator General V James Bwanika***[150], the court noted that the authorities also state that a second appellate court will not interfere with the findings of fact by the first appellate court. It will do so only where the first appellate court has erred in law in that it has not treated the evidence as whole to that fresh and exhaustive scrutiny which the appellant was entitled to expect.

THIRD APPELLATE COURT.

Section 6 (2) of the judicature act cap 13, stipulates at a 3rd appeal may lie to the supreme court if it concerns a matter of law of great public or general importance or it necessary that justice be done by hearing of the matter.

INTERIM APPLICATIONS PENDING APPEALS.

1. Leave to Appeal.

Application is only granted where the intending appellant satisfies the chief magistrate or the high court that the decision against which an appeal is intended involves a substantial question of law or is a decision appearing to have caused a substantial miscarriage of justice.

There must be a substantial question of law and the proceedings were manifested by a miscarriage of justice that merits consideration by the appellate court as per the court in **ALLEY ROUTE LTD V UGANDA DEV'T BANK LTD HCMA N0.634.**

IN SANGO BAY ESTATES LIMITED V DRESDNER BANK (1971) E.A 17, the court held that leave to appeal from order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious consideration.

In **FIDA BIRABWA V SULEIMAN TIGAWALANA HCCA N0.27 0F 1992,**court stated that a substantial miscarriage of justice is said to occur where there has been misdirection by the trial court on of facts relating to the evidence given where there has been unfairness in the conduct of the trial.

Application.

[150] **SCCA N0. 7 Of 2001**

In ***G.M COMBINED (U) LTD V A.K DETERGENTS (U) LTD CIVIL APPLICATION***[151], court stated an application for leave to appeal may be made informally if counsel has instructions to appeal at the time of delivering the judgement. It however may also be made formally by notice of motion with an affidavit.

Documents.

Notice of motion

Affidavit.

Other applications include:

1. Stay of execution and interim stay of execution
2. Extension of time if any of the timelines have not been complied with.

APPEALS IN LOCAL COUNCIL COURTS

Section 32(1) of the local council courts Act comperes the right of appeal and prohibits appeals from a sent judgment or orders. Under section 32(2) it is provided that an appeal shall lie:-

a) From the judgment and orders of a village local and court to apparent local council court.

b) From the judgment and orders of a parish land council court to a town dividing country council court;

c) From the judgment and orders of the town division or Sub County, local council court to a court provided over by a chief magistrate.

d) From decrees and orders modern appeal by a chief magistrate, with is leavers, the chief magistrate or the high court to the high court".

Section 32(3) regulars that have to appeal under paragraph bill of sub section (2) of this section shall not be granted except where the intending applicant set out as the chief magistrate or the high court that the decision against which an appeal is intended involves substantial question of law or is a decision appealing to have caused a substantial miscarriage of justice.

Section 32(4) prescribes that the application for leave in appeal must be made within 30 days from the date the decision. The first application in the chief magistrate and upon this refusal then an application should be made within 21 days of the refusal to the high court.

[151] **N0.23 OF 1994**

Section 33(1) requires an appeal from a village, parish, town, division or sub county local council court to be lodged within fourteen days from the date of the judgment or order appended against the that from the chief magistrate court to two lodged within pattern days from the date leave to appeal is granted.

Section 33(2) requires every appeal to be presented in form of amended the final of which is set out in form of demand in the fourth schedule to the act.

Sub section 3 requires the appeal court to cover article of the management of appeal to be served out the respondent and the final of the notice is set out inform of the fourth schedule to the Act.

Section 34 empowers the appellate court to hear ultravires if it considers the interest of justice. The court can do so on the application of a party or on its own motion under the former section, the court is also empowered to heal the cases a fresh.

Section 35 of the Act provides to form powers of the appellate court it provides that:-

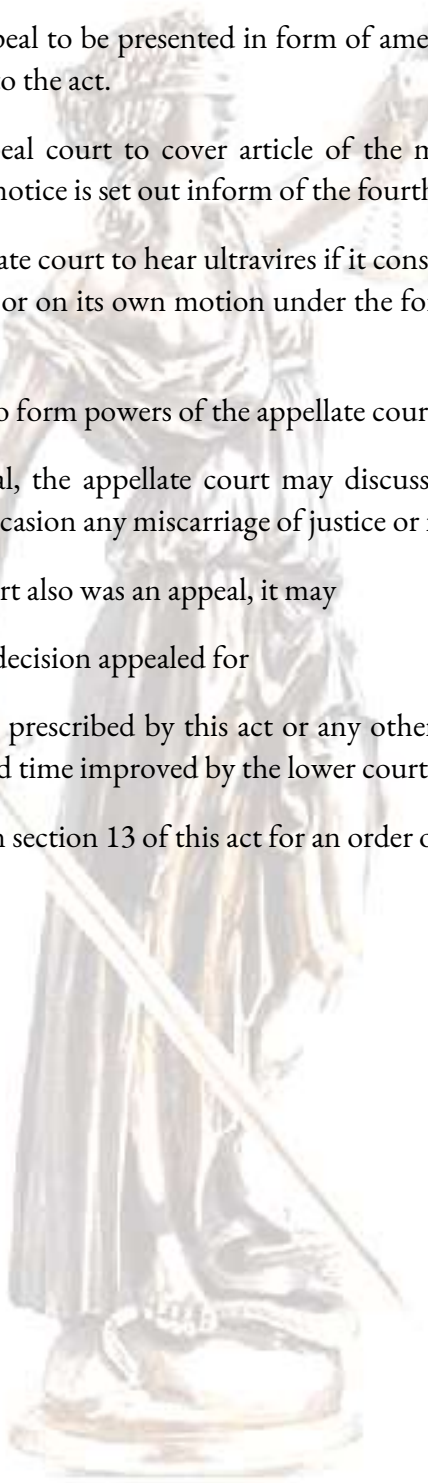
(1) Upon hearing an appeal, the appellate court may discuss the appeal on the grand that the decision appealed that did not occasion any miscarriage of justice or may allow the appeal.

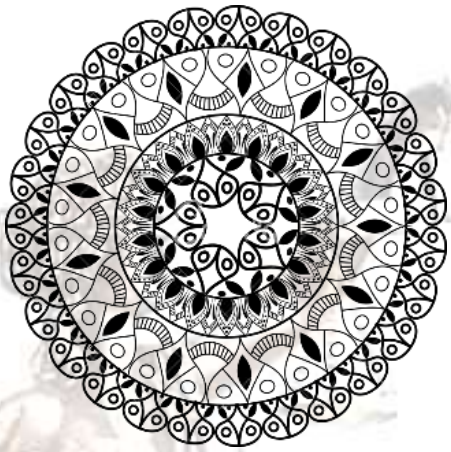
(2) Where the appellate court also was an appeal, it may

a) Reverse or vary the decision appealed for

b) Subject to any limit prescribed by this act or any other matters law, increase as reduce on amount compilation awarded time improved by the lower court; or

c) The orders set out in section 13 of this act for an order or orders made by the lower court”





APPEALS TO HIGH COURT

These appeals are governed by the Civil Procedure Act Cap 71, Magistrate Courts Act Cap 16 and the Civil Procedure Rules SI 71-1.

s.220 (1) (a) of MCA creates a right of a civil appeal from decrees and orders of magistrate grade one and CMs court while exercising original jurisdiction to the high court.

What is a decree/order

S.1 of the CPA and the case of ***HWAN SUNGLTD V M &D MERCHANTS AND TRANSPORTERS LTD***[152], define a decree as a forum expression of an adjudication which conclusively determines the rights of the parties to any matter in controversy in the suit and it may be preliminary or final.

An order means a formal expression of any decision of a civil court which is not a decree.

In INCAFEX (U) LTD V KABATEREINE (1999) KALR 645, the court emphasized that appeals arise from final decrees or orders of court and not interlocutory orders.

Appeals from consent judgements.

Under s.67 (2) of the CPA, no appeal lies from a decree arising from the consent of the parties.

Order 43 of the CPR covers appeals to the High Court Rule 1 provides that the form of appeal shall be preferred in the form of a memorandum signed by the appellant or his or her advocate and presented to the court or to such officer as it shall appoint for that purpose. It must be noted that the memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and the grounds shall be numbered consecutively.

[152] **SCCAR N0.2 of 2008**

Under rule 4 of the order, the High Court may for sufficient cause order stay of execution of the decree from which an appeal is preferred. It must be noted that no order for stay of execution shall be made under rule 4 (1) or (2) unless the court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of the decree or order as may ultimately be binding upon him or her.

In relation to appeals from orders, appeals as of right are provided for in **order 44 of the CPR** to wit an order under rule 10 of Order 7 returning a plaint to be presented to the proper court; an order made under rule 23 of Order 9 rejecting an application for an order to set aside the dismissal of a suit; an order under rule 27 of Order 9 rejecting an application for an order to set aside a decree passed ex parte; (d) an order made under rule 21 of Order 10; an order under rule 10 of Order 16 for the attachment of property; an order under rule 19 of Order 16 pronouncing judgment against a party; an order under rule 31 of Order 22 on an objection to the draft of a document or of an endorsement; an order under rule 67 of Order 22 setting aside or refusing to set aside a sale; an order that execution be levied made under rule 6 of Order 23; an order under rule 8 of Order 24 refusing to set aside the abatement or dismissal of a suit; an order under rule 9 of Order 24 giving or refusing to give leave; an order under rule 6 of Order 25 recording or refusing to record an agreement, compromise, or satisfaction; an order under rule 2 of Order 26 rejecting an application for an order to set aside the dismissal of a suit; orders in interpleader suits under rule 3, 6 or 7 of Order 34; an order made upon the hearing of an originating summons under Order 37; an order made under rule 2, 3 or 6 of Order 40; an order made under rule 1, 2, 4 or 8 of Order 41; an order under rule 1 or 4 of Order 42; an order of refusal under rule 16 of Order 43 to readmit or under rule 18 of that Order to rehear an appeal; an order under rule 4 of Order 44 granting an application for review; an order made in an interlocutory matter by a registrar. It must be noted that an appeal under these Rules shall not lie from any other order except with leave of the court making the order or of the court to which an appeal would lie if leave were given. Rule (3) applications for leave to appeal shall in the first instance be made to the court making the order sought to be appealed from.

APPEALS ARISING AS 2ND APPEALS FROM CHIEF MAGISTRATE'S DECISION.

Under s.220 (1) (c) these are filed in the high court with leave of court. In ***OKELLO OKELLO v. AYGA OGENGA***[153], court held that where the requirement to seek leave prior to the institution of the appeal is not a mere technicality but a mandatory one.

[153] ***(2005) LALR 540***

The court noted that the jurisdiction for the requirement is to avoid a multiplicity of appeals regardless of merit.

GROUNDS OF APPEAL.

S.77 (1) of the CPA requires that an appeal sets forth as a ground of appeal any error, defect or irregularity in such order affecting the decision appealed.

O.43(2) of CPR requires that the MOA sets forth, concisely and under distinct heads the grounds of objection (Appeal) to the decree appealed from without any argument or narrative and the grounds shall be numbered consecutively.

When raising grounds look at the record in totality with all the attendant documents. From the above identity: a procedural error of fact, an error of law of mixed law and fact, a defect and or an irregularity.

Example of grounds from workshop.

1. The learned trial magistrate erred in law when he misdirected himself on the principle himself on the principle governing proof of a triable issue in an application for leave to file a defense in a summary suit.
2. The learned trial magistrate erred in law and fact when he failed to properly evaluate the evidence on record and grant the appellant leave to defend the suit when;
    a) He had denied liability of the suit claim.
    b) Had explained circumstances upon which the subject acknowledgement of receipt of suit sum was made.
    c) Had explained circumstances under which cheques drawn from M/S sunset enterprises ltd had been issued and countermanded.

PROCEDURE, FORUM AND DOCUMENTS.

PROCEDURE

1. Extraction of a decree/order.
2. Filing of a memorandum of appeal in the high court within 30 days from the date of then judgement (ORDER 43 R 1(1)
3. Payment of the prescribed fees

4. Under deserving circumstances court may order for security for costs at the time of filling of the appeal. Such security is mandatory in all cases where the appellant resides outside Uganda and not in possession of sufficient immovable property within Uganda. (ORDER 43 R 9(1)).

A court may dismiss an appeal where security is ordered and not furnished by the appellant (ORDER 43 R 9(2)) of the CPR.

5. On receipt of MOA, registrar of high court is required to communicate a notice of appeal to the relevant lower court under which he /she also requests such court to urgently forward a certified typed record of proceedings and judgment to the high court to enable court fix the appeal. (ORDER 43 R 10). The practice however is that counsel for the appellant writes to the lower court requesting for a certified typed record of proceedings of judgement, serving a copy of such letter onto the opposite party. Once the record is obtained, counsel will prepare an order/decree, MOA and index of appeal for filing in high court.

6. Service of the MOA plus an order /decree on opposite party; at his last known address.

FORUM

High court. Article 139(1) of the constitution, section 220(1) (a) and section 229 of the MCA, section 79(1) of the CPA.

DOCUMENTS.

1. An order/decree
2. MOA
3. Letter requesting for certified proceedings of judgement.

WHAT IS THE PROCEDURE, FORUM AND DOCUMENTS NECESSARY TO LODGE ON APPEAL.

PROCEDURE

The intending appellant Ordinarily has the obligations on extract a decree, or order cause it to be signed and sealed and also request for proceedings to be prepared, certified and availed from the Judgement or ruling of the trial court. S.220(1) as ***Abato Tumushabe v Startcy Beinae Abalo.***[154]

Held: S.220 (1) (a) MCA (Magistrate Court Act) requires that an Appeal must be from a decree, that at the time the appeal is lodged, a decree appealed from must be in existence 0.18 R.7 (now 0.21 R.7) puts the Duty of extracting a decree on the successful party. It was therefore erroneous for the respondent to argue that the intending appellant has the duty to extract the decree.

Haji Muhammed Nyanzi Ali Segne (1992-1993) HCJ 21:

Held, that it is the duty of the successful party to prepare without delay a draft decree and submit it to the magistrate for signature and sealing. If the applicant's Lawyer prepared the decree which gave wing data, they have themselves to blare, especially so if they left it to the court to do.

Previously failure to extract a decree was total to the appeal.

Kintu Sarah v Jombwe Ssebaduka.[155]

Held; further under S.220 (1) (a) of MCA laws of Uganda, it is provided that an Appeal from the Chief Magistrate Court or Magistrate GJ is from the decree or order from the decision of the trial court.

I have perused the court judgment it doesn't indicate that the appellant extracted the decree or order before preferring an appeal.

In the case of ***Kiwege and Mgude Sisal Estates Land Vs Manilal Ambala Nathwans***[156]***;*** It was held that "an Appeal to the High Court must be against a decree which must be extracted and filed together with

[154] (1998) III KAGR 5.

[155] *(Civil Appeal No. 025/2011)*

[156] *CA No. 69/1952 C.A for Eastern see also Alexander Monison Vs. Mohammedras a Suleiman and Another court of Appeal for Eastern Africa, W.Y.N. Kisule vs Nampera v CA No. 110 of 1988 and Robert Bisso vs. Mary T: Bamwenda reported in [1991] HCB 92,*

memorandum failure to extract a formal decree before filing the appeal was a defect going to the jurisdiction to the court and could not be wailed. The appellant's actors have contravened the above provisions of the law"

However, the current legal position is that it is not amendatory required to extract a decree before preferring an appeal to the High Court.

Tumuhae Luck v the electoral commission.[157] It was

Held;

After due consideration of the arguments on the point, this court's take the view that, indeed, the duty to extract a decree in the Magistrate's Court lies with the court in accordance with 0.12 2.7(3) CPR. It provides as follows: "**in a magistrates Court, the decree shall be drawn up and signed by the magistrate who pronounced it or by his or her successor"**

This position is well supported in ***Mbakana Mumbere v Maimuna Mbabazi***[158] per Lameck N Mukasa J. where leaned judge; citing the decision in Baco Aspanol v Bank of Uganda (1996) HCJ 12, in which the court after holding that the decree was not properly extracted as required by law, reiterated the position in Kibuula Musoke Wiliam & Another v Dr. Apollo Kaggwa App No.46/1992 that;

".....**it is clear from the above provisions that the extraction of a formal decree embodying the decision complained of is no longer a legal requirement in the Institution of** an Appeal. An Appeal by its very nature is against the judgment or a reasoned order. The extraction of the decree was therefore a mere technicality which the old municipal law put in the way if intending appellants and which them from having their cases heard on merits such a law cannot co-exist in the context of the 1995 constitution A. 126(2) (c) where the courts are enjoyed to administer "substantive justice without undue regard to technicalities.

William Kisembo & Anor v Kiiza Rwakakara HCCA No.07/2013

Held; this court is alise to the previously strict view that required an appellant to extract a decree before appealing. However, this is done row as a matter of prudence because the court of Appeal in the case of ***standard chartered Bank (U) Ltd vs Grand Hotel (U) Ltd***[159] held that it is no longer a requirement to accompany the appeal with a formal order or extracted decree.

[157] *HC EPA NO . 02 OF 2011*

[158] HCJ –ol-CV-CA-003/ 2003

[159] [1999] KAGX 577

The High court echoed the same legal proposition in the case of ***Patrick Nkoba vs Ruwenzori Highlands Tea Co & Another***[160], for the above reasons I over rule the objection raised by the respondent for lack of merit.

The same position was held in ***Henry Kasambwa v Vakoba Rutantamba***[161] and ***Namemba Suleiman v Bwekwaso Magenda***[162]. The extraction of decree is aged practice but not a mandatory requirement. That as long as you have a judgment you may not need to extract a decree to appeal.

1. An Appeal to the High Court is preferred by a memorandum of appeal containing the grounds of Appeal and duly signed by counsel for the appellant S.79 CPX.

0.43 r.1, every appeal to the High Court shall be preferred in the form of a memorandum signed by the Appellant or his or her advocate and presented to the court.

2. It is not a requirement to lodge a notice of appeal either in the Magistrates Court or to the High Court as a notice of appeal does not commence an appeal from the magistrates court to the High Court. However, a notice of appeal required when it is from the High Court to the court of Appeal.

Buso foundation Ltd v Mate Bob Phillips HCCA No. 40.2009

Held; an appeal is by killing a memorandum of appeal not by a notice of appeal in a magistrate court.

In ***Sekyali v Kyakwambala***[163], it was held that an Appeal in the High Court is instituted by a Memorandum and not notice of appeal

3. The intending appellant normally files request of the proceedings indecisive of judgment by formal letter to the trial court to enable him or her prepare for the grounds for appeal.

In Nawemba Sulaiman v Byekwaso (1989) HCJ 140, It was held that it would be anomalous for a party to be required to file a memorandum of appeal before obtaining or having access to the lower record.

The question that arises is whether is amendatory requirement to serve the letter requesting for the proceedings on the opposite party or counsel. In the context of an appeal from magistrate court to the High court service of such a letter is not a mandatory requirement but a rule of courtesy and prudent practice and failure to do so does not render he appeal totally defective. (it is a mandatory requirement for appeal from High Court to court of Appeal and court of Appeal to supreme Court.

[160] High Court Civil Appeal No. 5/1999 reported in [1999] KAG 762
[161] HCCT No. 10 (1989)
[162] (1989) HCJ No
[163] **HCCA No.** 07/2010

Buso foundation Ltd V Mate Bob Phillips

Held; that appeal to the (High Court, are governed by the clear provisions of 0.43 CPR and S.79 of CPX. In the premises there is no legal requirement for the appellant to copy and serve his request to the lower courts for the decreed order and proceedings to the respondent in appeal to the High Court. He could however as a matter of Country copy the same to the respondent.

In Sekyali v Kyakwambala, it was held that there is no requirement for an appellant to serve a respondent with the letter seeking a record of proceedings.

The purpose of the request for proceedings is to enable the intended appellant to obtain satisfied copies of the proceedings and judgment and prepare a memorandum of appeal. A memorandum of appeal must be lodged in the High Court (the relevant Registry). A memorandum of appeal must be lodged within 30days from the date of decision of the trial court S.79.

Section "79. CPA (1)

Except as otherwise specifically provided in any other law every appeal shall be entered within thirty days of the date of the decree or other of the court as the case may be appealed against; but the appellant court may for good cause admit an appeal throughout the period of limitation prescribed by this section has elapsed.

In **Buso foundation Ltd V Bob Mate Philip,** it was held that an appeal which was filed 3 months from the date of the lower court's decree prima facre offended the 30 days rules prescribed by S.79 (1) of CPA.

Sarah Kintu v Jjombwe Ssebaduka (HCCA No. 025 of 2011)

Held; The laws governing/ concerning lodging of appeals from the lower courts of the Magistrate Courts to the High Court are 0.43. Rule of CPR which provides that an appeal shall be commenced by a memorandum of appeal; and section 79 (i) (a) CPA, which provides that an appeal shall be entered within 30 days of the date of the decree or order of the court.

In the instant appeal, the appellant commenced the appeal with a notice of appeal; and filed the memorandum of appeal on 5th August 2011 which is far beyond the prescribed time by law within which to file an appeal. Thus, this appeal was filed out of time.

MCA provides that the appeal lies from a decree or order and S.79 suggest that the time starts running from the date of the decree or order.

Buso foundation v Mate Bob; Section 79 appeal must be lodged within 30days of the date of the decree or order of the order. In the instant case, judgment was delivered on 22nd July2022 and today is 12th July 2022 which means that BCJ Bank is still within time to appeal.

However, the 30 days within which the appeal must be lodged do not start running until such a record of proceedings has been availed S.79(2). In the case of **Godfrey Tuwangye Kazzora v Georgina Kitari Kwenda (1992 -9(3) HCB 1215**, it was held that "The time for lodging an appeal does not begin to run until the appellant receives a copy of proceedings against which intends to appeal.

In **Buso foundation case;** S.79(2) CPA excludes the time taken by the court to supply the lower courts proceedings and order/ decree sought to be appealed from. Where the proceedings are availed the appeal is lodged in the High Court in form of a memorandum of appeal under 0.43 R.1.

In ***Okia Joseph v Igira Lawrence***[164], it was held that appeals are originated by filing a memorandum of appeal under 0.43 R.1 OF CPR. That it would be anomalous for a party to be required to file a memorandum of appeal before obtaining or having access to lower court record. The memorandum of appeal must be signed by the appellant or counsel for the appellant and should be lodged in the registry of the relevant division of the High Court order 43 R.1 and it must be signed and sealed by the registrar of the High Court 0.43 R-8. Where a memorandum of appeal is lodge, the High Court shall send a notice of the appeal to the final court requiring i.e. to dispatch all material papers in the suit 0.43 R.10.

William Kisembo v Kiiza Rwakaipara.

Hellen Obura J; I have perused with entire 0.43 CPR which govern appeals to this court.

- 0.43 2.10(2) puts the responsibility of giving notice of appeal with a view of calling for the records from the trial court onto the High Court. There is no mention of the appellant's role beyond filing the memorandum of appeal.
- The memorandum of appeal should be served on the respondents within 21days from the date of filing 0.43 R.11.

[164] **HCOA No.114 of 2012**

- When the proceedings are duly typed, satisfied and the original file forwarded to the High Court, Counsel for the appellant normally prepares a record of proceedings upon which the appeal is lodged. This is not a mandatory requirement but prudent practice 0.43 R.10(3) allows the parties to apply in writing to the trial court for copies of the necessary papers and such copies shall be availed at the expense of the applicant.

Kazina v Samalie Nasali HCCA No. 34/2017

Held; There is no statutory requirement to attach the record of proceedings, the orders, taxation certificate etc. to the affidavit in support of the chamber Summons.

The contention that it necessary to include the order, decree, taxation certificate or ruling has no basis under the rules which are applicable to appeals from taxation decisions

The record of appeal should as a matter of prudent practice be served on the respondent or counsel for the respondent.

There after the intending appellant should apply to have the appeal fixed for fearing (extract notices to be served on the other party 0.43 R.11)

POWERS OF THE HIGH COURT AS AN APPELLATE COURT.

1. It has the discretion to admit additional evidence where the lower court refused to admit evidence which it ought to have admitted or where such evidence is necessary to enable the high court pronounce its judgement.

ORDER 43 R 22 of CPR. ANIFA KAWOOYA V NCHE SCCA APPN0.8/2013

2. Determine the appeal. ORDER 43 R 20 of CPR.
3. To allow the appeal and set aside the lower court judgement and or orders.
4. To order a retrial .ORDER 43 R 21 of CPR.
5. To vary the orders of the lower court or substitute the same with any appropriate order.
6. To pass any decree and make any order which ought to have been passed by the lower court. ORDER 43 R 27 CPR.
7. To dismiss the appeal and affirm the decision and orders of the lower court.

STAY OF EXECUTION PENDING AN APPEAL.

One may stay execution pending an appeal under order O.43 r 4(2) upon proof of sufficient cause.

CONDITIONS FOR STAY.

1. Existence of a pending appeal (MOA) with a high probability of success.
2. Application is made within a reasonable time.
3. Threats to execute the order/decree
4. Likelihood to suffer substantial loss if a stay is not granted.
5. Furnishing of security for due performance of the order/decree; making an order taking to pay such security. No security is required from government under O.43 R 6 of CPR.

PROCEDURE, FORUM AND DOCUMENTS.

Procedure

1. Lodging a formal application to court.

2. Payment of filing fees

3. Deposit in court of security for due performance of the order/decree

4. Serving opposite party with the application.

Forum

High court.

Documents O.43 R 4(5) of CPR.

1. Notice of motion
2. Affidavit in support.

THE PROCEDURE FOLLOWED IN APPEALS GENERALLY

LEAVE TO APPEAL;

It must be noted that where any decision has been made by the High Court, or any other court, one ought to ascertain whether the right of appeal exists; if not one has to ascertain whether he or she has to obtain leave to appeal. It must be noted that if leave is required before one appeals, and he or she does so without obtaining the leave; the appeal is incompetent and should be struck out as such. This principle is fortified by the case of **EAGEN Vs EAGEN Civil Application 22 of 2001 [court of appeal].**

NOTICE OF APPEAL

An intended appellant to the High court, Court of Appeal and the Supreme Court is enjoined by law to give notice of appeal to the appellate court within 14 days from the date of judgment. This is provided for under order ..... of the Civil Procedure Rules, rule 75[2] of the **Judicature (Court of Appeal) Rules Directions SI 13-8** and **rule 71[2] of the Judicature (Supreme Court) Rules Directions SI 13-10.**

It must be noted that even when leave to appeal is not granted, an intended appellant may lodge a notice of appeal. This is evident in sub rule 4 of rule 75 of the **Judicature (Court of Appeal) Rules Directions SI 13-8** and **rule 71 of the Judicature (Supreme Court) Rules Directions SI 13-10.**

Rules 77[1] of the **Judicature (Court of Appeal) Rules Directions SI 13-8** and **73[1] of the Judicature (Supreme Court) Rules Directions SI 13-10** provide that a notice of appeal must be served upon the respondent within 7 days from the date of lodging. The notice should be served on all persons directly affected by the appeal. This is fortified by the case of **Francis Nyansio Vs Nuwah Walakira SCCA 24 of 1994**.

Rules 79 of the **Judicature (Court of Appeal) Rules Directions SI 13-8** and **75 of the Judicature (Supreme Court) Rules Directions SI 13-10** provide that a respondent served with a notice of appeal must within 14 days file an address of service. A respondent who defaults to do this should not be seen to complain that the record of appeal was not served upon him in time. This was held in **Hussein Mohamed Vs Augustine Kyeyune SCCA 7 of 1990.**

APPLICATION FOR RECORD OF PROCEEDINGS

An appellant must make an application for a record of proceedings of the decision he or she intends to appeal against, within 30 days from the date of such decision, under the provisions ofRules 82[2] of the **Judicature (Court of Appeal) Rules Directions SI 13-8** and **78[2] of the Judicature (Supreme Court) Rules Directions SI 13-10** respectively**.**

The application must be writing and must be served and evidence of service upon the Respondent must be proved or obtained. It must be noted that the provision of the rules above are mandatory and the appellant cannot rely on the record of proceedings unless a copy of the letter requesting for the record is served on the Respondent and proof of service obtained. This was upheld in ***Kasirye Byaruhanga Vs UDB.***[165]

PREPARATION OF RECORD OF APPEAL

When the record of proceedings is ready, the registrar writes to the intended appellant forwarding the certified copy of the record of proceedings.

In case of the court of appeal, the appellant then prepares 6 copies of the record of appeal whereby, three copies are retained by the court for the justices, a copy for the Respondent, a copy for the court record, and a copy for the appellant.

In case of the supreme court, the appellant then prepares 8 copies of the record of appeal whereby, five copies are retained by the court for the justices, a copy for the Respondent, a copy for the court record, and a copy for the appellant.

BASIC DOCUMENTS IN APPEALS

Judgment

Order giving leave to appeal [if necessary]

Notice of Appeal

Memorandum of appeal

Record of Proceedings

[165] **SCCA 2 of 1997.**

Supplementary Record [under Rules 89 of the **Judicature (Court of Appeal) Rules Directions SI 13-8** and85 of the **Judicature (Supreme Court) Rules Directions SI 13-10** respectively].

It must be noted that an appeal is incompetent where a basic document is not filed with the original record on the strength of the holding in Execution of the Estate of the late Namatovu Tebajukira vs Mary Namatovu SCCA 8 of 1988.

Filing A Record Of Appeal

On the apogee of preparation of the record of appeal, it must be filed in the Court of Appeal or supreme Court within sixty days from the date when the record of proceedings was forwarded to the appellant. It must be noted further that the record of appeal filed in court must be served upon all the respondents within seven days from the date of filing, under rules 87 and 83 of the **Judicature (Court of Appeal) Rules Directions SI 13-8** and the **Judicature (Supreme Court) Rules Directions SI 13-10** respectively].

RIGHTS OF THE RESPONDENT

A] CROSS APPEAL

A respondent has a right to cross appeal. He may cross appeal within thirty days from the date of service of record of appeal, under rules 90 and 86 of the **Judicature (Court of Appeal) Rules Directions SI 13-8** and the **Judicature (Supreme Court) Rules Directions SI 13-10** respectively. It must be noted that a respondent who does not cross appeal against particular matters, for instance damages and interest cannot be seen seeking courts' indulgence for their modification or for any other reason whatsoever. This was upheld in the case of ***Fortunato Frederick Vs Irene Nabwire***[166]

B] AFFIRMING A DECISION

A respondent has a right to ask court to a decision passed by the lower court in his favor on grounds that other additional evidence to what was relied on by the lower court, the appellant's appeal has no merit. He is enjoined to give notice to the court within thirty days from the date of service of the record of appeal upon him or her, under rules 91 and 87 of the **Judicature (Court of Appeal) Rules Directions SI 13-8** and the **Judicature (Supreme Court) Rules Directions SI 13-10** respectively.

[166] Civil Appeal 3 of 2000.

C] APPLICATION FOR FURTHER SECURITY

A respondent has a right to apply to court for further security., the appellate court shall if it deems fit, direct that further security for costs be given, under rules 104[3] and 100[3] of the **Judicature (Court of Appeal) Rules Directions SI 13-8** and the **Judicature (Supreme Court) Rules Directions SI 13-10** respectively. This power is discretionary. A case in point where this point was observed is **UCB Vs Multi Constructors Ltd SCCA 29 of 1994.**

D] APPLICATION TO STRIKE OUT NOTICE OF APPEAL OR APPEAL

This application may be made on any of the following grounds:

- The appeal is barred by statute.
- An essential step has been omitted, e.g., failure to obtain leave of appeal.
- An essential step has been taken out of time

The provision of this right are evident in rules 81 and 77 of the **Judicature (Court of Appeal) Rules Directions SI 13-8** and the **Judicature (Supreme Court) Rules Directions SI 13-10** respectively. In ***Mustaq Abdulah Bhegani Vs Obola Ochola***[167]**,** court held that a respondent named in the notice of appeal is empowered to apply to strike out the Notice of appeal with costs. In **Hannington Wasswa and Anor Vs Maria Ochola and Others**[168] the appellant failed to institute the appeal within 60 days from the date service of the record of proceedings upon him; on application by the respondent, the appeal was struck out on ground that an essential step had not been taken.

APPEALS FROM GRADE II MAGISTRATE'S COURT

Where the appeal is from a Grade II Magistrate's Court, it lies in the Chief Magistrate's Court. This is conversed in section 204(1)(b) of the Magistrates Courts Act. Section 204(2) of the Magistrate Courts Act provides that the scope of this appeal is limited to matters of law, fact or mixed law and fact.

It must be noted that where a person has pleaded guilty, no appeal shall lie therein except against the legality of the plea or sentence as enunciated in section 204(3).

[167] **Civil Appeal 4 of 1987[CA]**
[168] **Supreme Court Civil Application 12 of 1988**

APPEALS FROM CHIEF MAGISTRATE'S COURT

An appeal from a Chief Magistrate's Court lies in the High Court. This is provided for in section 204(1) (a) of the Magistrate Courts Act Cap 16. Subsection 2 provides that the scope of this appeal is on matters of fact, matters of law and matters of mixed law and fact. Section 204(4) provides that an individual cannot appeal from a sentence of one month or fine of less than one hundred shillings.

Documents for appeals from Chief Magistrate to High Court

Order.

OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF LIRA AT LIRA

CIVIL SUIT NO.784 OF 2018

OBWAL OSBERT .....PLAINTIFF

VERSUS

KULAMA BEN.....DEFENDANT.

ORDER.

This suit is coming up for final disposal this 7th day of September 2020 before H/W MUKASA JOHN CHIEF MAGISTRATE in the presence of Mr.Ben kikuma for the plaintiff and Mr. Oguttu Osbert for the defendant.

IT IS HEREBY ORDERED THAT;

1. The plaintiff is entitled to UGX.22,500,000 against the defendant
2. The costs of the suit.

GIVEN UNDER my hand and seal of this honorable court this.....day of September 2020

.....

DEPUTY REGISTRAR

Extracted by:

Memorandum.

THE REPUBLIC OF UGANDA

THE HIGH COURT OF UGANDA AT LIRA

CIVIL APPEAL NO.....OF 2020

(Arising from chief magistrate's court of lira)

Civil suit No. 784 of 2018)

KILAMA BEN .....APPELLANT

VERSUS

OGWAL OSBERT.....RESPONDENT.

MEMORANDUM OF APPEAL

(Appeal from the judgement of H/W Mukasa john in civil suit No.784 of 2018)

The appellant, KILAMA BEN appeals to the H.C at Lira from the decree of H/W Mukasa john in chief magistrate court of lira civil suit No.784 of 2018 dated 7th day of September 2020 and sets forth the following grounds of appeal against the whole order

1. The learned trial magistrate erred in law and facts.....

WHEREFORE the appellant prays that:

1. The appeal is allowed
2. The judgement of the trial court is set aside.
3. The appellants is awarded costs of the appeal and in the court below

Dated at Kampala this .....day of 2020

.....

MS SUI GENERIS ADVOCATES

OBJECTION MY LORD

(COUNSEL FOR THE APPELLANT)

Lodged in this court registry of the H.C at Lira on the day .....of September 2020

.....

REGISTRAR

To be served on:

_____

Drawn by

_____

ISAAC CHRISTOPHER LUBOGO

HEARING NOTICE

THE REPUBLIC OF UGANDA

THE HIGH COURT OF UGANDA AT LIRA

CIVIL APPEAL NO.....OF 2020

(Arising from chief magistrate's court of lira)

Civil suit No. 784 of 2018)

KILAMA BEN .....APPELLANT

VERSUS

OGWAL OSBERT.....RESPONDENT.

HEARING NOTICE.

TO: OGWAL OSBERT

TAKE NOTICE that the hearing of this appeal has been fixed for the day of .....of .....0f 2020 at .....o'clock in the fore/afternoon or soon thereafter as the case may be heard in court.

If no appearance is made by yourself or on your behalf by your advocate or by someone by law authorized to act for you in this appeal, it will be heard and decided in your absence.

Given under my hand and seal of this court this .....day of.....2020

.....

REGISTRAR

Extracted by:

OBJECTION MY LORD

NOTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

XYZ.....APPPELLANT

VERSUS

ABC.....RESPONDENT

NOTICE OF APPEAL

TAKE NOTICE that XYZ the appellant being dissatisfied with the decision by the honorable justice CM Kato of the high court of Uganda (commercial division) intends to appeal to the court of appeal of Uganda against the whole of the said decision

The address of service of the appellant is C/O KLM Advocates, plot 8 kyabube street, P.O BOX 7117, Kampala.

It is intended to serve copies of this notice on:

DFK Advocate, plot 7

Parliament Avenue

P.O box 76, Kampala

(Counsel for respondent)

Dated at Kampala this.....day of.....2020

SUI GENERIS ADVOCATES

COUNSEL FOR THE APPELLANT

ISAAC CHRISTOPHER LUBOGO

TO: Registrar high court

Lodged in the court on this .....day of.....2020

.....

REGISTRAR.

Drawn and filed by.

OBJECTION MY LORD

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISC. APPLICATION NO. .... OF 2022

ARISING FROM MISC APPL. NO ..... OF 2022

ARISING FROM CHIEF MAGISTRATE'S COURT OF KAMPALA OF MENGO C/S NO. 212/2014

BCJ Bank (U) Ltd .....APPLICANT

Vs

KALANGALA FINANCIAL SERVICES .....DEFENDANT

CHAMBER SUMMONS EXPARTE

(under 0.43 R.4(5) CPR)

Let all parties concerned attend the heard judge in Chamber on the .....day of ..... 2022 at ..... O'clock in the forenoon or as soon as Counsel for the Applicant camber heard for orders that;

1. An interim order doth issue staying the execution of the decree in C/S No. 212 of 2022 of Chief Magistrate's Court of Kampala at Mengo pending determination of Misc Application No. .... Of 2022& CA No. .....of 2022
2. Costs of this application he provides for.

THE GROUNDS ON WHICH THE APPLICATION IS BASED ARE IN THE AFFIDAVIT.

TAKE NOTICE THAT this Application is supported by an Affidavit of Janeson Muhurizi managing Director of BCJ (U) Ltd which contains more elaborating grounds and shall be read and relied on at the hearing.

This summons was taken out by Counsel for the Applicant.

Given under my hand and the seal of this court this .... Day of 2022

.....

REGISTRAR

Drawn and filed

SUI GENERIS

APPEALS FROM THE HIGH COURT

Article 134 of the Constitution 1995 provides for the right of appeal from the High Court to lie in the Court of Appeal. It is further provided for in section 10 of the Judicature Act Cap 13 that an appeal from the High Court shall lie in the Court of Appeal.

Each must be strictly complied with or the defaulting party must show cause why the appeal should not be struck out for failure to observe an essential step in the prosecution of the appeal. **UTEX INDUSTIES LTD V ATTORNEY GENERAL SCCA N0.52 OF 1995 and rule 82 of COAR**.

1. Notice of appeal to be filed in the H.C registry within 14 days from the date of the decision. Rule 76(1) and (2)
    - It should state whether the intended appeal is against the whole decision and orders or part thereof.
    - It must state the address of the appellant and the address of the persons intended to be served
    - It is signed by the appellant or his advocate. (RULE 76(3))
2. Service of notice of appeal on the other party within 7 days. rule 78(1)
3. Written application for a certified copy of proceedings of judgment from the registrar of H.C. Must be done within 30 days from the date of judgement and served within those days. (RULE 83(2))
4. Upon service of the notice of appeal, the respondent must within 14 days file a respondents notice of address and serve it on the appellant within 14 days (RULE 80(1) (a) and (b).
5. Within 60 days from the date of filing of the notice of appeal, the appellant must file the MOA with the record of appeal. The 60 days pausing running the moment the letter requesting for certified proceedings is filed and served and resume to run upon receipt of the record and judgement. RULE 83(1), you file 6 copies of memo of appeal,6 copies of record of appeal, evidence of payment of requisite fees, security for the costs of the appeal.
6. Payment of filing fees and a deposit of security for costs of the appeal. R.104 and 105of COAR
7. Serve the MOA and record of appeal within 7 days from the date of filing. R.88 of COAR.

APPLICATIONS FOR EXTENSION OF TIME.

These are brought under Rule 2 (2) and rule 5 of the COAR.

Documents.

1. Notice of motion
2. Affidavit in support

STAY OF EXECUTION.

Brought under R.2 (2) of COAR.

Grounds.

1. Pending appeal. A notice of appeal is a sufficient document upon which stay of execution can be obtained. **ALCON INTERNATIONALLTD V KASIRYE BYARUHANGA AND CO ADVOCATES (1996) HCB 61**. Further R.3 OF COAR defines an appeal to include an intended appeal.
2. High chances of the appeal succeeding
3. Failure to obtain a stay will render her rights in the pending appeal nugatory.

PROCEDURE FOR GETTING A CERTIFICATE OF GENERAL IMPORTANCE

This is covered in both the Judicature (Court of Appeal) Rules Directions and the Judicature (Supreme Court) Rules Directions, depending in what court an individual is applying to:

IN CASE IT IS THE COURT OF APPEAL;

Rule 39 (1)(a) of the Judicature(Court of Appeal) Rules Directions (herein after referred to as the court of appeal rules) provides that an application is made to the High Court where the Applicant prays for a Certificate general importance.

Rule 2 of the Court of Appeal Rules provides that applications to the High Court should be by Notice of Motion supported by an affidavit.

Rule 4 places a mandate on the Applicant (usually the convict) to give Notice to the Police. This is fortified by **Namudu Vs Uganda SCCA 3 0f 1999**, which lays down the considerations for the certificate of general importance.

IN CASE IT IS THE SUPREME COURT ;

Rule 38(1) (a) of the Judicature(Supreme Court) Rules Directions (herein after referred to as the supreme court rules) provides that where an appeal lies if the court of appeal certifies that a question or questions of public importance arise, applications to the court of appeal shall be made informally at the time the decision of the Court of Appeal is given against which the intended appeal is to be taken. Rule 38(1) (b) provides that where the court of appeal declines to grant a certificate referred to in para a, then an application may be lodged in the Court within fourteen days after the refusal to grant the certificate by the Court of Appeal.

APPEALS FROM THE COURT OF APPEAL.

Article 132(2) of the Constitution provides that a right of appeal from the court of appeal shall lie in the Supreme Court. This is further fortified by section 5(1) of the Judicature Act Cap 13.

Section 6 of the judicature act provides for civil appeals to the Supreme Court it stats that

(9) An appeal shall lie as the right to the supreme court where the court of appeal confirms, various or recover on judgment or order, including an introductory order given by the high court in the exercise of its original jurisdiction and either confirmed, respond or reversed by the court of appeal.

(10) Where an appeal amounts from a judgment as order of a chief magistrate or a magistrate grade in the exercise of his or her original jurisdiction but not including an interlocutory matter a party aggrieved may lodger a third appeal to the supreme court on the certificate of the court of appeal that the appeal concerns a matter of law of great public or general importance or if the supreme court considers, in its overall duty to see that justice is done that the appeal should be heard.

The judicature act supplement content directions have good provisions similar to that of the court of appeal.

Civil appeals are dealt with from R.71 to 98 securities for costs is provided for in R.101 which sets out that:-

(1) Subject to rule 109 of the rules, there shall be lodged in court on the institution of a civil appeal as security of the courts of the appeal the sum of 400,000shs.

(2) Where an appeal has been withdrawn under rule 9 of these rules, after notice of appeal has been given, the court may on the application of any person is a respondent the cross appeal directs the cross appeal direct the cross appellant to engage the court as security for costs the sum of 400,000 shillings, or any specified sum loss than 400,000 shillings, or may direct that a cross appeal be heard without security for costs being engaged

(3) The court may at any time if the court thinks fit direct that further security to costs be given and may direct that security be given for the payment of facts costs relationship the mater in question in the appeal.

(4) Where security for courts has been indeed the register may payment and with the consent of the parties as in infirmity with the decision of a court and having a regard the rights of the parties under it.

Scope of appeals to Supreme Court:

If it is a conviction from the High Court, or court of appeal, the scope of the appeal in the Supreme Court is limited to matters of law, or mixed law and fact, per section 5(1) (a) of the Judicature Act.

If it is an acquittal from the High Court; and a subsequent conviction in the Court of Appeal, the scope of appeal in the Supreme Court is limited to matters of law, fact or mixed law and fact, section 5(1) (b) of the Judicature Act.

If there is a conviction in the High Court; followed by an acquittal in the court of appeal, the DPP's appeal in the supreme court is limited on matters of law or mixed law and fact for a declaratory judgment, section 5(1) (c) of the Judicature Act.

If there is an acquittal in the High Court, followed by a subsequent acquittal in the Court of Appeal, the DPP's appeal to the supreme court is limited to matters of law of General importance, section 5(1) (d) of the Judicature Act.

It must be noted that appeals in criminal matters arise from final orders for examples convictions, acquittals, special findings, ruling on no case to answer. This principle is fortified in **Charles Twagira vs Uganda.**[169]

GROUNDS OF APPEAL

[169] **SC Crim. Application 3 of 2003 before Tsekoko JSC.**

In ascertaining the grounds of appeal, one should consider the following:

- The conduct of the trial,
- The sufficiency of evidence to sustain the charges; with regard to ingredients of the offence committed.
- The errors of fact and of law by the trial judge or magistrate
- The legality of the sentence
- Mis direction and non-directions the trial magistrate or trial judge relied on.
- Admission of evidence (with particular regard to inadmissibility and irrelevance)
- Reliance on fanciful theories by the trial judge or trial magistrate.
- Material irregularities
- Evaluation of evidence on record. This is fortified by the case of **Kifamunte Vs Uganda SCCA 10 of 1997,** which noted the case of **Pandya vs R (1957) EA 336** with approval and court held the appellate court has a duty to evaluate the evidence while the second appellate court has a duty to re- evaluate the evidence on record.

TIME FRAMES FOR LODGING APPEALS

The general rule is evident in section 28 of the Criminal Procedure Code Act; thus, an appeal is commenced by a notice of appeal lodged with the Registrar of the Court in which the decision was passed.

Section 31 of the Criminal Procedure Code Act provides that one can apply to the High Court for extension of time, if he or she wishes to file the appeal out of time.

IF IT'S THE COURT OF APPEAL;

Rule 59 of the court of appeal rules provides that in capital cases, notice of appeal is presumed to have been given at the time of passing the judgment. In addition, rule 59(3) provides that there is no need for a application for leave of court to appeal or for a certificate of general importance. This is premised on the constitutional provision that states that a sentence passed whereby a person is sentenced to death shall not be executed until confirmed by the highest appellate court of the land.

Rule 60 of the Court of appeal rules provides that in non-capital cases, notice may be given informally at the time of passing the decision against which one intends to appeal.

Rule 61 of the court of appeal rules provides that in case of acquittals, the DPP is enjoined to give notice of appeal.

If it's the Supreme Court;

Rule 56 of the Supreme Court rules provides that in capital cases, notice of appeal is presumed to have been given at the time of passing the judgment. In addition,

Rule 57 of the Supreme Court rules provides that in non-capital cases, notice may be given informally at the time of passing the decision against which one intends to appeal.

Rule 58 of the Supreme Court rules provides that in case of acquittals, the DPP is enjoined to give notice of appeal.

Procedure of for application for extension of time:

Application is by notice of motion supported by an affidavit to the court where one seeks to appeal. This is governed by rule 5 of the court of appeal rules in case one is appealing to the court of appeal and rule 5 of the Supreme Court rules in case one is appealing to the Supreme Court.

ABOUT THE BOOK

"Objection My Lord" is a phrase often used in court. This book covers all the nitty-gritty for one to practice law in the best and legal way possible within limits of good conduct and professionalism. Charles Dickens in "The Old Curiosity Shop" has spoken this of lawyers. "If there were no bad people, there would be no good lawyers." I have already listed how the good lawyers conduct themselves in my former book, "Professional Malpractice in Uganda;" this book will thence equip the reader with the practical tools of the legal profession, making them grasp these basic skills in addition to mastering legal professionalism.

This is a package to my Learned Friends, to know the must know and learn to practice within the legal limits and more so, discover the legal exceptions and present such in a legal manner; to distinguish precedents tactically and persuade intellectually where no such exist. It is a summary of legal principles requisite for one to properly establish their case before court. This book is a one stop masterpiece for a reader to grasp the other more practical duties of a lawyer apart from litigation and drawing deeds. By training consistency yet with honest dealings, this book navigates along the professional to the moral and most practical situations encountered by a lawyer while furnishing one with the gist and nothing less. It is a training for every "officer of court" to make use of their greatest tool "the tongue" to not only persuade but also assist court and the state in ensuring justice.

Be blessed to find all you seek and be gifted a package, so much more than you expect in this book.

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