

Volume 17 Issue 2

**TO GRANT OR NOT TO GRANT BAIL PENDING APPEAL: A REVIEW OF THE SUPREME COURT'S
DECISION IN *MAGOMBE JOSHUA V. UGANDA***

Gerald Ndobyia and Bruno E. Amanyia

RECOMMENDED CITATION:

Gerald Ndobyia and Bruno E Amanyia (2021), "To Grant or Not to Grant Bail Pending Appeal: A Review of the Supreme Court's Decision in Magombe Joshua v. Uganda," Volume 17 Issue 2, Makerere Law Journal, pp. 30-46.

**TO GRANT OR NOT TO GRANT BAIL PENDING APPEAL:
A REVIEW OF THE SUPREME COURT’S DECISION IN *MAGOMBE JOSHUA
v. UGANDA***

Gerald Ndobyia and Bruno E. Amanyanya*

‘Liberty is the very essence of freedom and democracy. In our constitutional matrix here in Uganda, liberty looms large. The liberty of one is the liberty of all. The liberty of one must never be curtailed lightly, wantonly or even worse arbitrarily.’¹

ABSTRACT

*The recently decided case of *Magombe Joshua v Uganda* declared the concept of bail pending appeal nonexistent in the Ugandan Human rights regime on ground that there is no constitutional basis upon which the Supreme Court or lower appellate court could grant the same. This decision departs from earlier decisions of the Supreme Court that had allowed bail applications pending appeal. This paper elucidates that the decision in *Magombe v. Uganda* upsets the constitutionally recognized law on right to apply for bail. The paper also highlights the various factors left in issue by the decision, paying particular interest to the scope of the presumption of innocence and the need for a liberal and general approach to constitutional interpretation.*

I. INTRODUCTION

In the recently decided case of *Magombe Joshua v. Uganda*,² the appellant filed an application seeking an order to be granted bail pending appeal in the Supreme Court. Sitting as a single justice, Lady Justice Esther Kisaakye, in her decision, made a critical review of Article 23(6)(a) of the constitution which provides for the right to apply for bail, in light of Article 28(3)(a) which accords the presumption of innocence to a person charged with an offence. In holding bail pending appeal unconstitutional, she took a literal understanding of Article 137 in regards to the constitutionality of the right to bail pending appeal, asserting that at appeal level, a person is

* LLB IV students, Makerere University School of Law. Special thanks to Ms. Julianne Mwebaze and her team at the Makerere Law Journal Editorial Board for the insights provided in preparation of this paper. All errors and omissions remain our sole responsibility.

¹ Hon Justice Ogoola PJ (as he then was) in *Besigye v. Uganda* Criminal Misc. Application No. 228 of 2005 and Criminal Misc. Application No. 229 of 200

² Miscellaneous Application No. 11 of 2019. Herein referred to as the ‘case under review’.

To Grant or not to Grant Bail Pending Appeal: A Review of the Supreme Court's
Decision in *Magombe Joshua v. Uganda*

already a convict and does not enjoy the presumption of innocence.³ She ultimately held that the whole concept of courts granting bail-pending appeal is unknown to the human rights regime in the Constitution of Uganda.⁴

This decision has created uncertainty as to whether the court has the jurisdiction to grant bail-pending appeal. This paper will firstly show that whereas the law on bail is still intact, the facet of bail pending appeal is in jeopardy. In the second section, the paper appraises the law on bail and lastly points to particular jurisprudential aspects that were left out by the justice in her decision to the effect that the decision is not a threat to the bail jurisprudence.

II. BAIL

Bail is a security such as cash or a bond required by a court for the release of a prisoner who must appear in court at a future time.⁵ It has also been defined to mean an agreement between the accused and his sureties with the court that the accused will appear and attend his trial whenever summoned to do so and the surety gives security to the court that the accused will attend his trial on the hearing date.⁶ Bail is granted to an accused person to ensure that he appears for trial without the necessity of his being detained in custody in the meantime.⁷ Bail in Uganda is regulated by the provisions of the constitution, Trial on Indictments Act,⁸ Magistrates Court Act,⁹ and the Penal Code Act.¹⁰

³ *ibid*,14

⁴ *ibid*.

⁵ *Blacks Law Dictionary* (9th edition).

⁶ *Charles Onyango Obbo& Andrew Mwenda v Uganda* (1997)5 KALR 25.

⁷ Justice Musalu Musene, *Col (rtd) Dr. Kizza Besigye v Uganda* Criminal Application no. 83 OF 2016.

⁸ Cap 23.(‘TIA’)

⁹ Cap 16.(‘MCA’)

Bail is founded on two fundamental concepts. Firstly, that the accused is not guilty until proven so and it would therefore be unfair in certain circumstances to keep him/her in prison without trial.¹¹ Secondly, that the only person capable of building up his/her defense may be the accused and so if released on bail, it must be on the understanding he will turn up for his trial.¹² Therefore, bail symbolizes the country's bedrock concern for personal freedom and the idea incorporated from English common law that "only those incarcerations which arise from absolute necessity are just."¹³

Bail is granted on conditions that the court deems as reasonable.¹⁴ As per case law, some of these include an accused being gravely ill and cannot be treated by the prisons service,¹⁵ cannot interfere with witnesses,¹⁶ a person of advanced age,¹⁷ a bread winner,¹⁸ a single parent, a person with no past criminal record, a breast feeding mother among others.

A. The right to apply for bail

Article 23(6)(a) recognizes the right to apply to a competent court of law for the grant of bail.¹⁹ Ordinarily, the power to grant or refuse bail in a court of law is discretionary as the accused person has no automatic right to the same. Article 23(6) confers discretion on Court to decide

¹⁰ Cap 120. ('PCA')

¹¹ Justice Musalu Musene, *ibid*(n5).

¹² Francis Ayume, *Criminal Procedure and Law in Uganda*, (Latest Edition, Longman 1986, 2010) 54.

¹³ William F. Duker, 'The Right to Bail: A Historical Inquiry', [1978] 42 ALB. L. REV. 33, 33-34.

¹⁴ S. 77 of the MCA and S.15 of the TIA.

¹⁵ *Capt. Wilberforce Serunkuma v Uganda* [1995] I KALR 32. The accused had Aids and had to get medicine from TASO there was no report showing that he had been treated while at the hospital and hence bail was granted.

¹⁶ *Hon. Godi H. Akbar v Uganda*. Bail was denied because there was capability of him tampering with witnesses.

¹⁷ *Dennis Obua Otima v Uganda* HCCrim. Application No. 18 of 2005 See Also *Dr. Alex Kamugisha v Uganda* High court Kampala Misc. Cause No. 94 of 2007 in which it was held that any age above 50 may be considered as advanced age.

¹⁸ *Tolit James v Rep. Of Uganda* (M.A 54 Of 2008) He asserted that he had a child of tender years. 4

¹⁹ Constitution of Uganda, 1995

To Grant or not to Grant Bail Pending Appeal: A Review of the Supreme Court's
Decision in *Magombe Joshua v. Uganda*

whether to grant the bail or not.²⁰ This discretion is exercised to determine whether the foregoing conditions have been fulfilled and hence grant bail.²¹ Bail is enjoyed in the light of the presumption of innocence. The power to grant bail also clothes the courts with the capacity to set conditions to ensure that the accused person attends court whenever required.

B. Bail pending Appeal.

According to the Criminal Procedure Code Act,²² Trial on Indictment Act,²³ and Supreme Court rules,²⁴ an appellate court may, if it sees fit, grant an appellant bail pending the determination of their appeal.

However this post-conviction bail is granted only when exceptional circumstances have been fulfilled. The late Arthur Oder JSC in the bail pending appeal *locus classicus* case of *Arvind Patel v. Uganda*,²⁵ set out the conditions to be considered to grant bail to the applicant as follows;

In my view, considerations which should generally apply to an application for bail pending appeal as indicated by the cases above referred to may be summarized as follows: the character of the applicant; whether he/she is a first offender or not; whether the offence of which the applicant was convicted involved personal violence; the appeal is not frivolous and has a reasonable possibility of success; the possibility of substantial delay in the determination of the appeal. Whether the applicant has complied with bail

²⁰ *Florence Byabazaire v Uganda* H.C. Misc. Criminal Application No.284 of 2006

²¹ *ibid*(n19) Article 23(6)(b) and (c)

²² S. 40(2).

²³ S. 132.

²⁴ R. 6(2)(a).

²⁵ S.C.C. A NO.1 of 2003 The above principles have thereafter been applied in hundreds of applications handled by this Court to mention but a few. *Frank Iga v Uganda* Misc. Application NO. 099/2009, *Kifamunte Henry v Uganda* Application NO. 10/197, *Nalukenge Mildred v Uganda* Misc. Cr. Appl. NO. 56/2008, *Angelo Muwanga v Uganda* Misc. Cr. Appl. NO. 41/2008.

conditions granted after the applicant's conviction and during the pendency of the appeal (if any).'

Courts have the jurisdiction to grant bail to any convicted person, who has lodged a criminal appeal to court before the appeal is determined. This, however, is a discretionary jurisdiction, which should be exercised judiciously.²⁶

Rule 6(2)(a) of the Judicature (Supreme Court Rules),²⁷ provides for bail-pending appeal. However, in the case under review, this rule was deemed null and void to the extent that it gives the Supreme Court the power to grant bail pending appeal; yet no such right exists under the Constitution and no power to grant such bail is vested in the Supreme Court under the Constitution.²⁸ Whereas the contextual interpretation tends to support the learned justice's view,²⁹ various factors are left in issue and are the subject of the next section.

III. FACTORS BROUGHT IN ISSUE BY THE DECISION

In her judgment, Lady Justice Esther Kisaakye renders bail pending appeal unconstitutional which brings in issue matters pertaining the presumption of innocence, appeal process, and Article 45 for they are the particular considerations that the lady justice overlooked.

A. Presumption of innocence

²⁶ S.G. Engwau JA *Teddy Sseezi Cheeye v. Uganda* Miscellaneous criminal application no.37 of 2009.

²⁷ Direction SI 13-10.

²⁸ Kisaakye *ibid* (n2)19.

²⁹ Kusasira, 'Do courts have power to grant bail pending appeal?' (Daily Monitor) Available at www.monitor.co.ug/uganda/special-reports/do-courts-have-power-grant-bail-pending-appeal-2727292?view=htmlamp&twitter_impression=true (accessed February 5, 2021).

To Grant or not to Grant Bail Pending Appeal: A Review of the Supreme Court's
Decision in *Magombe Joshua v. Uganda*

Many constitutions that contain bills of rights attempt to provide for some level of protection for those suspected as well as convicted of criminal acts. In this regard, Article 23 of the Ugandan Constitution deals with the protection of personal liberty, which includes rights for arrested, detained or restricted persons. Furthermore, Article 28 deals with the right to a fair hearing which as per Article 44 is non-derogable hence inferring that the presumption of innocence stands as an important component to the right of a fair hearing.³⁰

The presumption of innocence means the burden of proof lies on the prosecution to prove their case beyond reasonable doubt.³¹ The relevance of the same was discussed in the Canadian case of *R v. Oakes*,³² on the constitutional validity of s. 8 of the *Narcotic Control Act*, Court held that

'...the presumption of innocence is a hallowed principle lying at the very heart of criminal law. The presumption of innocence protects the fundamental liberty and human dignity of any and every person accused by the state of criminal conduct. It ensures that until the State proves an accused's guilt beyond all reasonable doubt, he or she is innocent. This is essential in a society committed to fairness and social justice. The presumption of innocence confirms our faith in humankind; it reflects our belief that individuals are decent and law-abiding members of the community until proven otherwise.'

The presumption as enshrined in the constitution, therefore, is a rail guard to the protection of personal liberty and the right to a fair trial

³⁰ John Cantius Mubangizi; 'The Protection of Human Rights in Uganda: Public Awareness and Perceptions' [2005]1 Afr. J. Legal Stud,166 - 186.

³¹ Odoki, Benjamin.J. *A Guide to Criminal Procedure in Uganda*, (latest Edition 2012, L.D.C Publishers) 128.

³² [1987]LRC (const) 477(Canada SC).

and is based on the notion that courts can make errors because they are manned by human beings.³³

Various courts have emphasized the fact that an accused person maintains their presumption of innocence and hence a justification for its presence in a bail-pending trial matter. The Supreme Court case of *Kyeyune Mitala Julius v. Uganda*,³⁴ stated that an applicant for bail pending appeal enjoys the presumption of innocence. That it continues as long as someone decides to exercise his right of appeal and does not stop at the trial level. The court then held that the presumption as enshrined in the constitution is a rail guard to fair trial and premised on the notion that courts make errors.

The learned Justice in the case under review concluded that Article 23(6)(a), which provides for the right to apply for bail only refers to a person arrested in respect of a criminal offence and not to a person already convicted of a criminal offence.³⁵ The learned lady Justice founded this assertion on the fact that law abiding citizens should enjoy their liberty which should not be deprived of them while on the other hand, non-law abiding citizens should not enjoy their liberty and that their being locked up while serving a sentence cannot rise to a constitutional violation of Article 23(1) since its in favor of protecting the public or community from such persons for they are dangerous by nature.³⁶ In disqualifying the sureties, she asserted that ‘the focus should be and always remain on the applicant, who is a convict, until he is proved innocent by this court.’³⁷

³³ Honorable Justice Opio–Aweri, *Kyeyune Mitala Julius v. Uganda* Miscellaneous application No 4 of 2017.

³⁴ Miscellaneous application No 4 of 2017.

³⁵ Kisaakye *ibid* (n3).

³⁶ *ibid*,36.

³⁷ *ibid*, 38.

To Grant or not to Grant Bail Pending Appeal: A Review of the Supreme Court's
Decision in *Magombe Joshua v. Uganda*

The foregoing analysis means that on pleading guilty or being convicted the presumption of innocence is extinguished. This paper however disagrees with this stance and asserts that the presumption of innocence requires that he who alleges must prove and it is not the courts duty to render a person innocent for they are from the start. Furthermore, the presumption of innocence must be maintained from the court of first instance to the very last court provided they did not plead guilty to the charges as brought against them. This is based on the law of plea taking.³⁸

It is now a well-established principle of law that the moment an accused person pleads not guilty to a charge, everything in the charge becomes in issue and the prosecution has a burden to prove each element of the offence and the standard of proof is beyond reasonable doubt.³⁹ This therefore a means that a decision to appeal as will be discussed in the next section puts all facts on appeal back in issue including the accused's presumption of innocence.⁴⁰

The presumption of innocence under Article 28(3) of the Constitution only becomes extinguished when an accused person accepts the outcome of court,⁴¹ for as William Blackstone asserted; 'it is better

³⁸ Plea taking is right to accept or deny the charged. To deny the charge means that a plea of not guilty is entered.

³⁹ Rogers Wadada, 'Justice Kisakye Decision on bail pending appeal, if left unchallenged could have far reaching consequences on the criminal system.' (PM Daily) Available at <www.pmeldaily.com/oped/2020/11/rogers-wadada-justice-kisakye-decision-on-bail-pending-appeal-if-left-unchallenged-could-have-far-reaching-consequences-on-the-criminal-system.html>(accessed February 5, 2021)also see Woolmington v DPP.

⁴⁰ A decision to appeal means the person is not satisfied with the verdict of the lower court and as such the accused person still maintains his/her earlier plea of not guilty as if he has just been arrested and therefore must maintain his innocence within the meaning of Article 28(3)(a) of the Constitution from court of first instance to the Supreme Court of the land.

⁴¹ Wadada ibid (n39).

that ten guilty persons escape than one innocent suffer'.⁴² Thus an accused person must be treated as a non-criminal until he has been duly found to be so.⁴³

B. Appeal Process

The appellate jurisdiction of Courts stems from statute.⁴⁴ This means that there is no such thing as inherent appellate jurisdiction. The possibility of having an erroneous conviction or the punishment being excessive informs the need to have an appeal process.⁴⁵

The learned justice stated that Article 132(2),⁴⁶ vests jurisdiction in the Supreme Court to hear criminal appeals and to deal with matters incidental to hearing of criminal appeals, but does not give powers to the Supreme Court to consider the release of a convicted person before disposal of his or her appeal. By this reasoning the justice found Rule 6(2)(a) of the Supreme Court Rules null and void. This reasoning is however not sound in law because;

Firstly, section 132(2) of the Trial on Indictment Act, applies to the Supreme Court by virtue of section 5(11) of the Judicature Act,⁴⁷ which was enacted by Parliament to prescribe how the Supreme Court will exercise the jurisdiction vested in it, under Article 132(2).⁴⁸ Through this power, Rule 6(2) of the Supreme Court rules was enacted to operationalize Section 5(11) of the Judicature Act. Therefore, reading Article 132(2) together with Section 5(11) would

⁴² William BlackStone, *Commentaries on the Laws of England* in Four Books, Vol.2 (Philadelphia J.B. Lippincott Co.,1893).

⁴³ Professor A.A. Adeyemi, 'The Contribution of the Court to the Development of Penal Policy' in *The Supreme Court of Nigeria, 1956-1979*, Kasumu A.B. (ed),166.

⁴⁴ *Uganda v Lule* [1973] 1 EA 362 Also see *Shah v Ag*.

⁴⁵ *Chimambhai v Republic (No. 2)*[1971] 1 EA 343 (HCK).

⁴⁶ *ibid* (n19).

⁴⁷ Cap13. This section provides that Section 132(4) and (5) of the Trial on Indictments Act shall, with necessary modifications, apply to the Supreme Court.

⁴⁸ *Kusasira ibid* (n29).

To Grant or not to Grant Bail Pending Appeal: A Review of the Supreme Court's
Decision in *Magombe Joshua v. Uganda*

lead to a conclusion that the Supreme Court may, while exercising the jurisdiction vested in it under the Constitution, grant bail to the appellant, pending the determination of his or her appeal.

Secondly, at appeal, court has a duty to evaluate the evidence and come to its own conclusions independent of the trial court. The court is obliged to rehear the case by subjecting the evidence to a fresh and exhaustive scrutiny, weighing conflicting evidence and drawing its own inferences and conclusions from it. Of course an appellate court should bear in mind that it has neither seen nor heard the witnesses and should therefore make due allowances in this respect.⁴⁹

Thirdly, whereas the lady Justice goes at length to discuss why possible delay in hearing the matter as a ground for bail pending appeal is an entitlement mindset by convicts seeking to jump the queue,⁵⁰ it is the practice of appellate courts in Uganda to organize sessions in which appeals are cause listed for trial.⁵¹ Depending on a given backlog and the shortage of judges, some appeals remain pending until an accused person completes his sentences and a decision is made posthumously which occasions an injustice especially in circumstances where the decision of the lower court is overturned.⁵²

C. Article 45

Article 45 of The Constitution provides that rights, duties, declarations and guarantees relating to the fundamental and other

⁴⁹ *Pandya v. R* [1957] 1 EA 336, also see *Bogere and Another v. Uganda*, Uganda Supreme Court Criminal Appeal No.1 of 1997: [1998] KALR 1.

⁵⁰ Kisaakye *ibid*(n2)33.

⁵¹ Wadada *ibid* (n39).

⁵² *ibid*.

human rights and freedoms specifically mentioned in the bill of rights under Chapter Four shall not be regarded as excluding others not specifically mentioned. In essence, the Article mandates that the Bill of Rights should not be regarded as a conclusive statement on the rights and freedoms to be enjoyed by the individual.⁵³

The constitution is not meant to be a 'lifeless museum piece'.⁵⁴ It is an elementary rule of constitutional construction that no one provision of the constitution should be segregated from all the others and to be considered alone but all the provisions bearing upon a particular subject are to be brought into view and interpreted as to effectuate the great purposes of the instrument.⁵⁵ The broad and purposive interpretation of the constitution is to give effect to its spirit,⁵⁶ and to enable it to grow and embrace new values and aspirations that emerge with the changing times.⁵⁷

Article 45 is henceforth crucial in the enforcement of people's rights as it guarantees the individual all the rights they are entitled to regardless of whether or not they are mentioned in the Constitution. This comports with the declaration in Article 20(1) to the effect that the fundamental rights and freedoms of the individual are inherent and not granted by the state.⁵⁸ This provision has therefore been widely used by the constitutional court exercising its interpretive mandate to read in new rights into the constitutional discourse of Uganda as well as ensuring that the laws in Uganda conform to international standards as set out in international treaties.

⁵³ J.Oloka-Onyango, 'REVIEWING CHAPTER FOUR OF THE 1995 CONSTITUTION: Towards the Progressive Reform of Human Rights and Democratic Freedoms in Uganda', February 2013.

⁵⁴ *Unity Dow v. AG*, [1992] LRC (Const.) 623.

⁵⁵ *Dakota v. North Carolina*, US 268(1940) L.E.D.448.

⁵⁶ Walubiri, P.M., (ed.) *Uganda: Constitutionalism at Crossroads*, Uganda Law Watch, Kampala, 1998.

⁵⁷ J.Oloka-Onyango, 'Judicial Power and Constitutionalism in Uganda' in M.Mamdani & J Oloka-Onyango, *Uganda: Studies in Constitutionalism*.

⁵⁸ *ibid.*

To Grant or not to Grant Bail Pending Appeal: A Review of the Supreme Court's
Decision in *Magombe Joshua v. Uganda*

Article 28 was never intended to be an exhaustive definition of the right to fair hearing,⁵⁹ hence making room for other aspects of the right to a fair hearing that were not covered in the article.

This informs why an analysis of the constitutional or legal basis of the right to bail pending appeal cannot be complete without considering, firstly, Section 40 of the Criminal Procedure Code Act,⁶⁰ that allows a person to apply to an appellate court in case a magistrate court refuses to grant the same. Secondly, Section 132(4) of the TIA that provides for bail pending appeal granted by the Court of Appeal if the high court refuses to do so.⁶¹ These provisions have the same effect as Section 5(11) of the Judicature Act operationalized by Rule (6)(2)(a) of the Judicature (Supreme Court) rules.

The two provisions therefore, discuss the import of bail pending appeal as granted by appellate courts, a circumstance that differs with Justice Kisakye's finding,⁶² to the effect that indeed granting bail pending appeal is founded in law.

In any case the fact that the right to apply for bail pending appeal is not specifically mentioned in the Bill of Rights of the Constitution does not mean such a right is excluded.⁶³

IV. CONCLUSION

We have traced the fact that the grant, or not, of bail is a discretionary right exercised by a judicial officer handling a given

⁵⁹ *Uganda Law Society and Anor v. Attorney General* Constitutional Petitions Nos.02 Of 2002 And 08 Of 2002.

⁶⁰ Cap 116 (the "CPCA").

⁶¹ Obviously, neither the CPCA nor the TIA makes reference to the jurisdiction of the Supreme Court to grant bail pending appeal. This is due to the fact that the Supreme Court was established in 1995 by Article 130 of the Constitution, yet the CPCA was enacted in 1951 and the TIA was enacted in 1971.

⁶² Kisaakye *ibid* (n28).

⁶³ *ibid*(n24).

matter. We have illuminated on the fact that bail breathes life into the freedom of liberty that is a cornerstone of any democratic state regardless of the limitation that is placed on to it by law. We then showed the judicial precedent strides made in granting bail pending appeal for persons that had been convicted at courts of first instance which in essence affirmed the presumption of innocence persons even though convicted that seek appeals.

We conclude by highlighting, that the case under review puts the law on bail pending appeal in jeopardy for it renders the same unconstitutional since the rationale behind which the learned justice reaches her decision falls short of the intended understanding of the presumption of innocence and the appeal processes as is followed in Uganda.

BIBLIOGRAPHY

1. 1995 Constitution of Uganda

To Grant or not to Grant Bail Pending Appeal: A Review of the Supreme Court's
Decision in *Magombe Joshua v. Uganda*

2. Ayume F, *Criminal Procedure and Law in Uganda*, (Longman, 1986, Latest Edition, 2010)
3. B. William, *Commentaries on the Laws of England* in Four Books, Vol.2 (Philadelphia J.B. Lippincott Co., 1893)
4. *Black's Law Dictionary* (9th edition)
5. *Bogere and Another v Uganda*, Uganda Supreme Court Criminal Appeal No.1 of 1997: [1998] KALR
6. *Capt. Wilberforce Serunkuma v Uganda* [1995] I KALR 32
7. *Charles Onyango Obbo & Andrew Mwenda v Uganda* (1997)5 KALR 25.
8. *Chimambhai v Republic* (No. 2) [1971] 1 EA 343 (HCK).
9. *Col (rtd) Dr. Kizza Besigye v Uganda* Criminal Application no. 83 OF 2016
10. Criminal Procedure Code Act Cap 116
11. *Dakota v. North Carolina, US 268(1940) L.E.D.448*
12. *Dennis Obua Otima v Uganda* HC Crim. Application No. 18 of 2005
13. *Dr. Alex Kamugisha v Uganda* High court Kampala Misc. Cause No. 94 of 2007
14. Duker W.F., 'The Right to Bail: A Historical Inquiry', 42 ALB. L. REV. 33, 33–34 (1978).
15. *Florence Byabazaire v Uganda* H.C. Misc. Criminal Application No.284 of 2006
16. Judicature (Supreme Court Rules) Direction SI 13-10.
17. Judicature Act cap Cap13.
18. Kusasira, 'Do courts have power to grant bail pending appeal?' Available at <www.monitor.co.ug/uganda/special-reports/do-courts-have-power-grant-bail-pending-appeal-2727292?view=htmlamp&twitter_impression=true>(accessed February 5, 2021)
19. *Kyeyune Mitala Julius v Uganda* Miscellaneous application No 4 of 2017.
20. Magistrate Court Act Cap 16.

21. Mubangizi J.C., 'The Protection of Human Rights in Uganda: Public Awareness and Perceptions' 1 Afr. J. Legal Stud. 3 (2005) 166 - 186.
22. Odoki, B.J., *A Guide to Criminal Procedure in Uganda*, (latest Edition 2012, Kampala. L.D.C Publishers 197,)
23. Oloka-Onyango J., 'Judicial Power and Constitutionalism in Uganda' in M.Mamdani & J. Oloka-Onyango , *Uganda: Studies in Constitutionalism*.
24. Oloka-Onyango J., *REVIEWING CHAPTER FOUR OF THE 1995 CONSTITUTION: Towards the Progressive Reform of Human Rights and Democratic Freedoms in Uganda*, February 2013.
25. *Pandya v R* [1957] 1 EA 336,
26. Penal Code Act Cap 120.
27. Professor A.A. Adeyemi, 'The Contribution of the Court to the Development of Penal Policy' in *The Supreme Court of Nigeria, 1956-1979*, Kasumu A.B. (ed)
28. *R v Oakes* [1987] LRC (const) 477(Canada SC).
29. *Teddy Sseezi Cheeye v Uganda* miscellaneous criminal application no.37 of 2009.
30. *Tolit James v Rep. of Uganda* (M.A 54 Of 2008)
31. Trial on Indictment Act Cap 23.
32. *Uganda Law Society and Anor v. Attorney General* Constitutional Petitions Nos.02 Of 2002 And 08 Of 2002.
33. *Uganda v Lule* [1973] 1 EA 362
34. *Unity Dow v. AG* [1992] LRC (Const.) 623.
35. Wadada R,'Justice Kisakye Decision on bail pending appeal, if left unchallenged could have far reaching consequences on the criminal system.' Available at www.pmldaily.com/oped/2020/11/rogers-wadada-justice-kisakye-decision-on-bail-pending-appeal-if-left-unchallenged-could-have-far-reaching-consequences-on-the-criminal-system.html (accessed February 5, 2021)

To Grant or not to Grant Bail Pending Appeal: A Review of the Supreme Court's
Decision in *Magombe Joshua v. Uganda*

36. Walubiri, P.M., (ed.) *Uganda: Constitutionalism at Crossroads*, Uganda
Law Watch, Kampala, 1998.