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**UPDATE: Uganda’s Legal System and Legal Sector**

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**Introduction**

*General knowledge*

Uganda is a landlocked country located in East Africa. The country is a republic, and achieved this status on October 9, 1962 when the country attained independence from British colonial rule. Uganda had been a protectorate of the United Kingdom from 1894 to 1962. Since 1962, Uganda has had 6 presidents and suffered political instability and turmoil. Currently, President Yoweri Kaguta Museveni is the President of Uganda. He came into power in 1986 after an armed struggle against the regime of the late Gen. Tito Okello. In 1996, presidential elections were
held and Museveni was elected as president. He won the subsequent elections held in 2001, and the recent elections held in 2011.

Structure of the Government

The 1995 Constitution established Uganda as a republic with an executive, legislative, and judicial branch. The three branches operate as follow:

• The Executive branch Cabinet. The Executive branch is headed by the President and is deputized by the Vice President as and when need arises.[[1]] The Prime Minister and Cabinet Ministers are also members of the Executive.

• The Judiciary. This arm of government is responsible for interpreting the law and applying it to particular cases and is formed by the various courts of judicature, which are independent of the other arms of government. They include the magisterial courts, High Court, Court of Appeal and the Supreme Court. The Judiciary is headed by the Chief Justice and deputized by the Deputy Chief Justice.

• The Parliament: This is the legislative arm of the government. It currently reserves a total of three hundred eighty eight (388) seats for members mostly elected through the ballot box except a few special interest groups like the army, women, youth and the disabled whose representatives are elected by Electoral Colleges.

The roles and powers of each of the Government arms are enshrined and spelt out in the Constitution of the Republic of Uganda.

Applicable Law

Given that Uganda was a British colony, the English legal system and law are predominant in Uganda; its legal system is based on English Common Law and customary law. However, customary law is in effect only when it does not conflict with statutory law. The laws applicable in Uganda are statutory law, common law; doctrines of equity and customary law are applicable in Uganda. These laws are stipulated by the Judicature Act.[2]

The Constitution is the supreme law in Uganda and any law or custom that is in conflict with it is null and void to the extent of the inconsistency. Uganda has adopted 3 constitutions since her independence. The first was the 1962 constitution, which was replaced by the 1967 Constitution. In 1995, a new Constitution was adopted and promulgated on October 8, 1995. The Constitution provides for an executive president, to be elected every 5 years. Parliament and the judiciary have significant amounts of independence and wield significant power. Formerly, the Constitution limited the president to two terms. However, in August 2005, the Constitution was
revised to allow an incumbent to hold office for more than two terms. The Constitution since its promulgation has been amended three times with the latest being the Constitution (Amendment) Act, 2005, Act No. 21 that commenced on 30th December 2005.

The other written law comprises statutes, Acts of Parliament and Statutory Instruments. These are published in the national Gazette.

**Legal Sector**

The legal sector in Uganda comprises of various institutions concerned with the provision of legal services, the administration of Justice and the enforcement of legal instruments or orders. The main institutions as established by the 1995 Constitution of the Republic of Uganda include the Ministry of Justice and Constitutional Affairs, the Judiciary, the Parliament, the Uganda Police Force, the Uganda Law Reform Commission, the Uganda Human Rights Commission. Furthermore, there are the legal education institutions such as faculty of law – Makerere University, the Law Development Center, professional bodies such as the Uganda Law Society, the Judicial Service Commission, and other organizations involved in legal sensitization, and advocacy.

The general the structure of Uganda’s legal sector appears as follows:

- Ministry of Justice and Constitutional Affairs
- The Judiciary
- Judicial Service Commission
- The Law Reform Commission
- The Electoral Commission
- The Uganda Land Commission
- Uganda Registration Services Bureau
- Uganda Human Rights Commission
- The Law Council
- The Law Development Centre

The following institutions and departments are key players in the implementation of legal provisions and administration of Justice.

- Uganda Police Force
- Uganda Prison Service
- The office of the Director public prosecution
- Inspector General of Government
- Parliamentary Commission
The Ministry of Justice and Constitutional Affairs

The mandate of the ministry is:

“To promote and facilitate effective and efficient machinery capable of providing a legal framework for good governance and delivering legal advice and services to the Government, its allied institutions and the general public”.

Some of the roles of the Ministry include initiating and facilitating the revision and reform of Ugandan laws, providing an effective mechanism for their change, Advising the government on all legal matters; Drafting all proposed laws and legal documents; Instituting or defending civil suits in which Government and/or its allied institutions are party and ensuring that court decisions are satisfied; Overseeing the training of Lawyers; Promoting legal advice of the constitution, and Disseminating legal information to the public.

These are carried out through various directorates and departments of the Ministry such as the Directorate of Civil Litigation, the Directorate of Public Prosecution, Office of the First Parliamentary Counsel, the Administrator General’s office, and the Office of Legal Advisory Services.

The Judiciary

The Judiciary is an independent legal organ comprised of Courts of Judicature as provided for by the Constitution. The Judiciary is entrusted to administer justice in both civil and criminal matters through courts of judicature including the Supreme Court, the Court of Appeal, the High Court and other courts or tribunals established by Parliament. The highest court in Uganda is the Supreme Court. The Court of Appeal is next in hierarchy and it handles appeals from the High Court but it also sits as the Constitutional Court in determining matters that require Constitutional interpretation. The High Court of Uganda has unlimited original jurisdiction.

Subordinate Courts include Magistrates Courts, and Local Council Courts, Qadhis' courts for marriage, divorce, inheritance of property and guardianship, and tribunals such as those established under the Land Act (Cap 227), Communications Act (Cap 106) and Electricity Act (Cap 145), and Tax Appeals Tribunal Act.

Supreme Court
The Supreme Court is the highest Court in Uganda, and is the final court of Appeal. The Supreme Court only decides cases on appeal from lower courts save for presidential election petitions, where the Supreme Court has original jurisdiction, which means that any aggrieved candidate in a presidential election has to petition the Supreme Court directly. The decisions of the Supreme Court form precedents, which all lower courts are required to follow.

The Supreme Court bench is constituted by the Chief Justice and not less than six Justices. However, when sitting as a constitutional court, the Supreme Court shall consist of a full bench of seven justices has to be present.[3] The president can for that purpose appoint an acting Justice in the event that any of the justices are unable to attend. The decisions of the Supreme Court form precedents that all lower courts are required to follow.

**Court of Appeal / Constitutional Court**

The Court Appeal was established by the 1995 Constitution.[4] It is an intermediary between the Supreme Court and the High Court and has appellate jurisdiction over the High Court. It is not a Court of first instance and has no original jurisdiction, except when it sits as a Constitutional Court to hear constitutional cases.

The Court of Appeal consists of: the Deputy Chief Justice and such number of Justices of Appeal not being less than seven as Parliament may by law prescribe. The Court of Appeal shall be duly constituted if it consists of an uneven number not being less than three members of the Court.

Cases coming before the Court of Appeal may be decided by a single Justice. Any person dissatisfied with the decision of a single Justice of Appeal is, however, entitled to have the matter determined by a bench of three Justices of Appeal, which may confirm, vary or reverse the decision. Cases decided by the Court of Appeal can be appealed to the Supreme Court, but the Court of Appeal is the final court in election petitions filed after Parliamentary elections or elections provided for by the Local Government Act.

**The Constitutional Court**

This Court is established by the Constitution[5] to interpret any question of the Constitution. When deciding cases as a Constitutional Court it sits with a bench of five judges. This Court may if there is need for redress grant an order for redress or refer the matter to the High Court to investigate and determine the appropriate redress.

**High Court**
The High Court of Uganda is the third court of record in order of hierarchy and has unlimited original jurisdiction, which means that it can try any matter as conferred on it by the Constitution and other law.[6] Appeals from all Magistrates Courts go to the High Court.

The High Court consists of the Principal Judge and twenty-five judges or such higher number as prescribed by Parliament by resolution.[7] The High Court is headed by the Principal Judge who is responsible for the administration of the court and has supervisory powers over Magistrate's courts.

The High Court has seven Divisions: the Civil Division, the Commercial Division, the Family Division, the Land Division and the Criminal Division, the anti-corruption Division and the war crimes division

Subordinate Courts include the Chief Magistrates Court, Industrial Court Magistrates Grade I and II Local Council Courts levels 3-1 (sub county, parish, and village).

**Magistrate Courts**

Magistrate's Courts handle the bulk of civil and criminal cases in Uganda. There are three levels of Magistrates courts: Chief Magistrates, Magistrates Grade I and Magistrates Grade II.[8]

A chief magistrate has jurisdiction where the value of the subject matter is less than fifty million Uganda Shillings.

These are subordinate courts whose decisions are subject to review by the High Court. Presently the country is divided into 26 Chief Magisterial areas administered by Chief Magistrates who have general powers of supervision over all magisterial courts within the area of their jurisdiction.

A magistrate’s court is deemed duly constituted when presided over by any one magistrate lawfully empowered to adjudicate in the court.[9]

**Tribunals**

Specialized courts or tribunals form part of the judicial structure e.g. Industrial Court, Tax Appeals Tribunal, NPART Tribunal, Land Tribunals, Tax Appeal Tribunal and the Human Rights Tribunal. A parallel judicial system exists for the military with a hierarchy of courts established under the NRA Act and Regulations. The only link from the military system to the mainstream judicial system arises from an appeal from the Court Martial Appeal Court (the highest appeal court in the military system) to the Supreme Court where a death sentence or life imprisonment has been meted.
Appointment of Judges

The judges are appointed by the President on recommendation of the Judicial Service Commission and with the approval of Parliament.

More information about the Courts of Judicature of Uganda can be obtained at the official website.

Sources of Legislation

All Acts of parliament, statutes, legal amendments and practice directions is first published in the Uganda Gazette, which is published every week. Other information published in the Gazette includes rules, draft bills, proclamations and legal notices. The Uganda Gazette is published and printed by the Uganda Government Printers. Ugandan legislation is available in print in the set of Uganda Laws Volume. The Uganda Law Reform Commission[10] in 2003 published a Revised Edition of the Laws of Uganda, containing 350 revised Acts from 1964 to 2000, with the subsidiary legislation. You may find the statutes, laws and important cases at Uganda’s Online Law Library and also on the Uganda legal information institute (ULII).

Sources of Case Law

Law reporting in Uganda has been very weak and thus very few law reports have been published in Uganda since 1958. The Law Development Center in Uganda is mandated to prepare and publish law reports and other legal material but so far have published only High Court Bulletins. As a result, there has been a void in the availability of published judgments as lawyers and other stakeholders are forced to depend on photocopies of judgments, which they request from the Courts.

Ugandan judgments are reported in the following law report series:

- East Africa Law Reports – The reports covered decisions of the Court of Appeal for East Africa and the superior courts of the constituent territories, namely, Kenya, Uganda, Tanzania, Aden, Seychelles and Somali-land. The East Africa Law Reports were published from 1957 to 1975 when they collapsed following the dissolution of the East African Community. They have been reintroduced by Law Africa with the launch of EA 2000 and EA 2001[11].

- Uganda Commercial Law Reports – The reports cover decisions of the Commercial Division of the High Court of Uganda since its establishment in 1996. The first in series of the
law reports, 1997 – 1998 UCL was launched in November 2005 by the Chief Justice, Justice Benjamin Odoki.

- Tax Appeals Tribunal Compendium of Judgments and Rulings – Covers decisions of the Tax Appeals Tribunal.
- Kampala Law Reports – Published by a private practicing lawyer
- High Court Bulletin – Published by the Law Development Centre.
- Uganda Law Reports – Last published in 1973
- Law Reports of the Court of Appeal of Eastern Africa – Reporting decisions of the defunct Court of Appeal of Eastern Africa

**Law Libraries**

The following are some of the useful law libraries in Uganda:

- High Court library in Kampala
- Ministry of Justice and Constitutional Affairs Reference library
- The Court of Appeal library
- Makerere University Law library
- Legal Informatics Centre at Faculty of Law Makerere University
- Law Development Centre library

**Online legal resources**

- The Uganda online law library
- The Uganda legal information institute (ULII)
- The Uganda Constitution 1995 is available online (also here).
- Law Africa produces electronic versions the East Africa Law Reports that contain Ugandan precedent.

**Present Structure of Legal Education in Uganda**
To pursue a legal career in Uganda, one must first obtain a Bachelors degree in law, followed by a Post Graduate Diploma in Legal in Practice from the Law Development Centre which is in essence the bar course. After passing the bar, one has to apply to be enrolled as an advocate of the bar and can appear in all Courts of Judicature in Uganda.

Since 1968, Makerere University has been the only Government University in Uganda where a degree in law could be obtained. Currently other private universities such as Uganda Christian university Mukono, Kampala International University, Nkozi University, Nkumba University, Kampala International University, Islamic University in Uganda, Uganda pentecoastal university and Busoga University.

The requirements for joining the faculty of law and the Law Development Center are highlighted below.

(a) Entry into Faculty/ School of Law

To be admitted to the Law program a candidate must score at least two (2) Principal Passes at the Advanced Level Examination conducted by the Uganda National Examination Board (UNEB) leading to the award of a Uganda Advanced Certificate of Examination.

The entry scores for students applying for Private sponsorship and the evening program are not as high as students applying to the government sponsorship day program. Admission to the Law Program is open to; Uganda Advanced Level Certificate Holders,[12] Holders of a Diploma in Law from the Law Development Centre with or without working experience and other diploma holders with at least a Second Class Diploma, Graduates of other disciplines, and Mature Age entrants following an examination conducted by the Institute of Adult and Continuing Education of the University.

Pre-entry exams have been adopted by many of these law schools/faculties for example in Makerere university and Uganda Christian university, Mukono, one of the aims being to improve the quality of students admitted to /joining the legal profession.

The LL.B. lasts 4 academic sessions or 8 semesters and should in any case be completed within 6 academic sessions or 12 semesters. Completion of the LLB program takes a minimum of 4 years.

The following are some of the major subjects that are studied in the LL B program

- Civil procedure
- Criminal law
- Constitutional law
- Administrative law
- Equity & trusts
- Land law
- International law
(b) Entry into the Law Development Centre

By regulations made under the Advocates Act[2], to qualify for admission to pursue the Diploma in Legal Practice at the Law Development Centre (a perquisite for practicing Law in Uganda). The Law Development Centre is the only institution in Uganda that offers the bar course leading to the award of a Diploma in legal practice. A candidate must hold the LL.B. Degree from a school/ faculty of law that has been accredited by the Law Council or be admitted as barrister or solicitor in the United Kingdom and must have passed the pre-entry examination. (This examination was introduced in the year 2010 and is conducted by the Law Council).

One of the functions of the Law Council is to exercise general supervision and control over professional education in Uganda and to provide for the conduct of qualifying examinations.

The Diploma in Legal Practice twelve months. Most of the Law Graduates, following completion of the Diploma in Legal Practice, are either absorbed in the public service as State Attorneys, Magistrates, or find outlet in the private sector working with private Law firms, Companies or Non-Governmental Organizations (NGOs) and others have taken into the corporate world.

The Legal Profession

Legal professionals may be in private practice or public practice. Private practitioners are advocates employed in private law firms and they represent individuals in litigation and other legal matters. Information about private law firms may be got from the Uganda Law Society.
Advocates in public service are employed by the Government and serve as state attorneys in the Ministry of Justice and Constitutional Affairs.

All practicing lawyers can subscribe to the Uganda Law Society, which is the main legal professional organization in Uganda. At regional level, one can join the East African Law Society. The main functions of the law society include maintenance and improvement of the standards of conduct and learning of the legal profession, and to facilitate the acquisition of knowledge by the legal profession. More information about the Uganda Law Society can be obtained at the official website.

Other professional bodies which lawyers can subscribe to include; the Uganda Women’s Lawyers Association, Advocates Coalition for Development and Environment, and Uganda Christian Lawyers Association.

**Main legal reference books and legislation**

The list below contains only some of the main legal reference material in Uganda.

*Legislation*

- The Civil Procedure Act
- The Civil Procedure Rules
- The Penal Code Act
- The Land Act
- The Registration of Titles Act
- The Evidence Act
- The Local Government Act
- The Judicature Act and Statute
- The Magistrates’ Court Act
- The Trial on Indictments Decree
- The Companies Act
- The Bills of Exchange Act

*Legal Reference books*

- High Court Bulletin
- Practice Manual Series by Paul Kiapi
- An introduction to Judicial Conduct and Practice by B. J Odoki
- Elements of the law of contract by W.I Tumwine
- Partnership law in Uganda by D.J Bakibinga
- Law of Contract in Uganda by D.J Bakibinga
Essays in African Banking law and Practice by Grace Patrick Tumwine Mukubwa
A guide to Criminal Procedure in Uganda by B. J Odoki
Law of Contract in East Africa by R.W Hodgin
Evidence in East Africa by Morris H
Handbook for Magistrates published by the Law Development Centre

All the above-mentioned legislation and reference books, and many others can be easily obtained at the Law Development Center Publishing House and Book Centre, Uganda Bookshop, Mukono Bookshop and Aristoc Bookshop.

[1] Constitution of the Republic of Uganda; Article 108 (3) (a)


[10] The Uganda Law Reform Commission was established in 1990 by the Uganda Law Reform Commission Statute 1990, replacing the Law Reform/Revision of the Ministry of Justice, which had been set up administratively in 1975. The task of the commission is to reform and revise the laws of Uganda.


[12] Completion of senior six.

Arrangement of the Constitution.

Preliminary matter.
Arrangement of objectives.
Arrangement of chapters and schedules.
Arrangement of articles.
Preamble.
National objectives and directive principles of State policy.
Chapters.
Schedules.
The courts of judicature.

129. The courts of judicature.

(1) The judicial power of Uganda shall be exercised by the courts of judicature which shall consist of—
   (a) the Supreme Court of Uganda;
   (b) the Court of Appeal of Uganda;
   (c) the High Court of Uganda; and
   (d) such subordinate courts as Parliament may by law establish, including qadhis’ courts for marriage, divorce, inheritance of property and guardianship, as may be prescribed by Parliament.

(2) The Supreme Court, the Court of Appeal and the High Court of Uganda shall be superior courts of record and shall each have all the powers of such a court.

(3) Subject to the provisions of this Constitution, Parliament may make provision for the jurisdiction and procedure of the courts.
130. **Supreme Court of Uganda.**

The Supreme Court shall consist of—
(a) the Chief Justice; and
(b) such number of justices of the Supreme Court, not being less than six, as Parliament may by law prescribe.

131. **Composition of the Supreme Court.**

(1) The Supreme Court shall be duly constituted at any sitting if it consists of an uneven number not being less than five members of the court.

(2) When hearing appeals from decisions of the Court of Appeal sitting as a constitutional court, the Supreme Court shall consist of a full bench of all members of the Supreme Court; and where any of them is not able to attend, the President shall, for that purpose, appoint an acting justice under article 142(2) of this Constitution.

(3) The Chief Justice shall preside at each sitting of the Supreme Court, and in the absence of the Chief Justice, the most senior member of the court as constituted shall preside.

132. **Jurisdiction of the Supreme Court.**

(1) The Supreme Court shall be the final court of appeal.

(2) An appeal shall lie to the Supreme Court from such decisions of the Court of Appeal as may be prescribed by law.

(3) Any party aggrieved by a decision of the Court of Appeal sitting as a constitutional court is entitled to appeal to the Supreme Court against the decision; and accordingly, an appeal shall lie to the Supreme Court under clause (2) of this article.

(4) The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so; and all other courts shall be bound to follow the decisions of the Supreme Court on questions of law.
133. Administrative functions of the Chief Justice.

(1) The Chief Justice—
(a) shall be the head of the judiciary and shall be responsible for the administration and supervision of all courts in Uganda; and
(b) may issue orders and directions to the courts necessary for the proper and efficient administration of justice.

(2) Where the office of the Chief Justice is vacant or where the Chief Justice is for any reason unable to perform the functions of his or her office, then until a person has been appointed to and has assumed the functions of that office or until the Chief Justice has resumed the performance of those functions, those functions shall be performed by the Deputy Chief Justice.

The Court of Appeal of Uganda.

134. Court of Appeal of Uganda.

(1) The Court of Appeal of Uganda shall consist of—
(a) the Deputy Chief Justice; and
(b) such number of justices of Appeal not being less than seven as Parliament may by law prescribe.

(2) An appeal shall lie to the Court of Appeal from such decisions of the High Court as may be prescribed by law.

135. Composition of the Court of Appeal.

(1) The Court of Appeal shall be duly constituted at any sitting if it consists of an uneven number not being less than three members of the court.

(2) The Deputy Chief Justice shall preside at each sitting of the court and in the absence of the Deputy Chief Justice, the most senior member of the court as constituted shall preside.

(3) The Chief Justice, in consultation with the Deputy Chief Justice, may create divisions of the Court of Appeal as the Chief Justice may consider necessary—
(a) consisting of such numbers of justices of Appeal as may be assigned to them by the Chief Justice;
(b) sitting at such places in Uganda as the Chief Justice may, after
consultation with the Attorney General, by statutory order, determine.


(1) Subject to the provisions of article 133 of this Constitution, the Deputy Chief Justice shall—
   (a) deputise for the Chief Justice as and when the need arises;
   (b) be the head of the Court of Appeal and in that capacity assist the Chief Justice in the administration of that court; and
   (c) perform such other functions as may be delegated or assigned to him or her by the Chief Justice.

(2) Where—
   (a) the office of the Deputy Chief Justice is vacant;
   (b) the Deputy Chief Justice is acting as Chief Justice; or
   (c) the Deputy Chief Justice is for any reason unable to perform the functions of his or her office,
then, until a person has been appointed to and has assumed the functions of the office of the Deputy Chief Justice, those functions shall be performed by a justice of the Supreme Court or a justice of Appeal designated by the President, after consultation with the Chief Justice, or the acting Chief Justice, as the case may be.

The constitutional court.

137. Questions as to the interpretation of the Constitution.

(1) Any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the constitutional court.

(2) When sitting as a constitutional court, the Court of Appeal shall consist of a bench of five members of that court.

(3) A person who alleges that—
   (a) an Act of Parliament or any other law or anything in or done under the authority of any law; or
   (b) any act or omission by any person or authority, is inconsistent with or in contravention of a provision of this Constitution, may petition the constitutional court for a declaration to that effect, and for redress where appropriate.
(4) Where upon determination of the petition under clause (3) of this article the constitutional court considers that there is need for redress in addition to the declaration sought, the constitutional court may—
   (a) grant an order of redress; or
   (b) refer the matter to the High Court to investigate and determine the appropriate redress.

(5) Where any question as to the interpretation of this Constitution arises in any proceedings in a court of law other than a field court martial, 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 to the proceedings requests it to do so, refer the question to the constitutional court for decision in accordance with clause (1) of this article.

(6) Where any question is referred to the constitutional court under clause (5) of this article, the constitutional court shall give its decision on the question, and the court in which the question arises shall dispose of the case in accordance with that decision.

(7) Upon a petition being made or a question being referred under this article, the Court of Appeal shall proceed to hear and determine the petition as soon as possible and may, for that purpose, suspend any other matter pending before it.

The High Court of Uganda.

138. High Court of Uganda.

(1) The High Court of Uganda shall consist of—
   (a) the Principal Judge; and
   (b) such number of judges of the High Court as may be prescribed by Parliament.

(2) The High Court shall sit in such places as the Chief Justice may, in consultation with the Principal Judge, appoint; and in so doing, the Chief Justice shall, as far as practicable, ensure that the High Court is accessible to all the people.
139. Jurisdiction of the High Court.

(1) The High Court shall, subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law.

(2) Subject to the provisions of this Constitution and any other law, the decisions of any court lower than the High Court shall be appealable to the High Court.

140. Hearing of election cases.

(1) Where any question is before the High Court for determination under article 86(1) of this Constitution, the High Court shall proceed to hear and determine the question expeditiously and may, for that purpose, suspend any other matter pending before it.

(2) This article shall apply in a similar manner to the Court of Appeal and the Supreme Court when hearing and determining appeals on questions referred to in clause (1) of this article.

141. Administrative functions of the Principal Judge.

(1) Subject to the provisions of article 133 of this Constitution, the Principal Judge shall—
   (a) be the head of the High Court, and shall, in that capacity, assist the Chief Justice in the administration of the High Court and subordinate courts; and
   (b) perform such other functions as may be delegated or assigned to him or her by the Chief Justice.

(2) Where—
   (a) the office of Principal Judge is vacant; or
   (b) the Principal Judge is for any reason unable to perform the functions of his or her office,
then, until a person has been appointed to and has assumed the functions of that office, or until the Principal Judge has resumed those functions, those functions shall be performed by a judge of the High Court designated by the President after consultation with the Chief Justice.
THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

HCT-00-CR-SC-0086 OF 2011

UGANDA .............................................................................................. PROSECUTOR

VERSUS

NAMAKULA REHEMA & ANOTHER ............................................ ACCUSED

BEFORE: HON. LADY JUSTICE MONICA K. MUGENYI

JUDGMENT

Rehema Namakula (A1) and Florence Kyomuhangi (A2), were indicted for the offence of murder c/s 188 and 189 of the Penal Code Act. The prosecution case was that on or about the 25th May 2010, at Kifumbira Zone – Mulago III parish, Kawempe Division in Kampala district, A1 laced the deceased’s food with a poisonous black powder that was given to her for that purpose by A2 and others still at large. The prosecution alleged that A1 was promised Ushs. 50,000/= in return for her execution of the alleged act. The prosecution further alleged that the deceased died as a result of the poisonous substance administered to the food she consumed, which poison caused her vomiting, diarrhoea and later death. Both accused persons denied the indictments and pleaded not guilty thereto. They maintained their innocence throughout the trial.

To constitute the offence of murder the following ingredients should be proved:

a. Fact of death
b. Death was unlawful
c. Death was caused with malice aforethought

It is well settled law that the burden of proof in criminal proceedings such as the present one lies squarely with the Prosecution and generally, the defences available to an accused person notwithstanding, that burden does not shift to the accused at any stage of the proceedings. The prosecution is required to prove all the ingredients of the alleged offence, as well as the accused’s participation therein beyond reasonable doubt. See *Woolmington vs. DPP (1993) AC 462*, *Okale vs. Republic (1965) EA 55* and *Miller vs. Minister of Pensions [1947] 2 All ER 372 at 373*.

The standard of proof in criminal matters was explicitly clarified in *Miller vs. Minister of Pensions [1947] 2 All ER 372 at 373*, where Lord Denning held as follows:

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond (reasonable) doubt does not mean proof beyond the shadow of a doubt.”

It is trite law that in the event of reasonable doubt, such doubt shall be decided in favour of the accused and a verdict of acquittal returned. Further, inconsistencies or contradictions in the prosecution evidence which are major and go to the root of the case must be resolved in favour of the accused. However, where the inconsistencies or contradictions are minor they should be ignored if they do not affect the main substance of the prosecution’s case; save where there is a perception that they were deliberate untruths, in which case they may lead to the rejection of the offending evidence. See *Alfred Tajar vs Uganda EACA Criminal Appeal No. 167 of 1969* and *Sarapio Tinkamalirwe vs. Uganda Supr. Court Criminal Appeal No. 27 of 1989*.

At the preliminary hearing prior to the trial, the following evidence was agreed to by both parties and duly admitted on the court record as such:
a. PF24 forms in respect of both accused persons.
b. Post mortem report.
c. Analysis report.
d. Request for post mortem report.

The said documents were admitted on the court record as exhibits P1, P2, P3 and P4 respectively. This evidence established for a fact that the accused persons were female adults of sound mind. Furthermore, it underscored the deceased’s death and established that a post mortem performed on the deceased 19 weeks thereafter did not detect any anatomical cause of death. The post mortem did, however, find an abnormal and suspicious black substance in the deceased’s oesophagus (food canal). Finally, the admitted evidence did establish that although no toxins (poison) was detected in the body organs sent for laboratory analysis; it would not have been possible to detect poisonous chemicals with a short life span 19 weeks after the death of the deceased.

On the basis of the findings of the post mortem report, I am satisfied that the prosecution has proved the fact of death in this case beyond reasonable doubt.

On the second ingredient of murder – whether or not the deceased’s death was unlawful – PW1, the deceased’s husband testified that on 22\textsuperscript{nd} May 2010 the deceased had travelled upcountry but prior to her return home that evening he instructed A1 to prepare food for her, and upon eating the said food the deceased experienced vomiting and diarrhoea. The witness further testified that the deceased vomited food and water laced with a black substance. Both accused persons denied responsibility for the deceased’s death. A1 testified that the accused returned home sickly, and often suffered from hypertension and diabetes, and sought to attribute her death to prior ailment or natural causes. A1 also denied preparing food for the deceased, testifying that the deceased had eaten elsewhere before she returned home. A2, on the other hand, simply denied providing any poisonous substance to A1 as alleged by the prosecution.
The legal position on the legality of death (or lack thereof) is that every homicide is presumed to be unlawful unless circumstances make it excusable. This position was laid down in the case of R. Vs. Gusambiza s/o Wesonga 1948 15 EACA 65. The same position was restated in Akol Patrick & Others vs Uganda (2006) HCB (vol. 1) 6, (Court of Appeal) where it was held:

“In homicide cases death is always presumed unlawfully caused unless it was accidentally caused in circumstances which make it excusable.”

In Uganda vs. Aggrey Kiyungi & Others Crim. Session. Case No. 30 of 2006, excusable circumstances were expounded on to include justifiable circumstances like self defence or when authorised by law.

The term ‘homicide’ has been invariably defined as the killing of a human being by another human being. Therefore, in the present case the defences of the accused persons notwithstanding, the present murder indictment would prima facie place the deceased’s death within the category of deaths defined as homicides. It therefore follows that the deceased’s death would have been prima facie unlawful unless the circumstances surrounding the said death are such as would make it excusable or justifiable.

An evaluation of the prevailing circumstances of the present death is instructive. In the instant case, however, there were no circumstances presented to this court that would make the deceased’s death either excusable or justifiable. While A1 contended that the deceased died of natural causes, A2 simply denied any hand in the deceased’s death. Neither of the positions advanced by the accused persons in their defence would amount to circumstances that make the present homicide excusable or justifiable within the precincts of the law. I am therefore satisfied that the deceased’s death was neither excusable nor justifiable, and do find that the said death was unlawful.
Having established that the deceased’s death was unlawful, this court must establish as a fact whether the said death was caused with malice aforethought or, for present purposes, whether or not the accused persons’ alleged actions were such as would infer an intention to cause death rather than accidental death. I propose to address this ingredient of murder concurrently with the question of the accused persons’ participation in the deceased’s death.

To prove the *mens rea* of murder in the present case, the Prosecution sought to rely upon the direct evidence of PW1, PW2, PW3, PW4 and PW5; as well as the documentary evidence contained in Exhibits P2 and P3 (post mortem report and toxicological analysis report). PW1’s evidence on this issue was that on Saturday 22nd May 2010, within 30 minutes of eating food cooked and served by A1, the deceased experienced vomiting accompanied by strong pain in her stomach. The food that was served to the deceased was matooke and groundnut sauce. It was his evidence that the deceased initially vomited all the food she had eaten then, when she started taking water, started vomiting watery fluid. He further testified that on Monday 24th May 2010 the deceased was vomiting blood and black substance. Under cross examination, PW1 testified that the deceased told him that she had not eaten anything before she returned to her home; that she had last eaten in the night of the previous day – 21st May 2010, and that it was the deceased who asked him to instruct A1 to prepare food for her. He further testified that given that the deceased did not eat meat, her sauce was cooked separately from the meat sauce that the rest of the household had eaten. The witness testified that no tests were undertaken on what the deceased vomited.

On the same issue, PW2 told this court that his father (PW1) rung him on 23rd May 2010 and informed him that the deceased had been taken ill and was vomiting a black substance, as well as diarrhoea of the same substance. He further testified that following rumours that the accused persons were seen rejoicing at news of the deceased’s death, he initiated investigations into the matter pursuant to which A1 voluntarily admitted being given black
powder by A2 with instructions that she should put the same only in
groundnut sauce not meat or fish sauce.

PW3 testified to having heard A1 asking a one Mama Faith for ‘the rest of her money’ but when she (A1) noticed that PW3 was watching her she ‘panicked’ and changed the topic. She further testified to having observed A1 as having been restless on the day of burial. Under cross examination PW3 stated that given that she had overheard A1 asking for her things the previous day she found her restlessness suspicious. It would appear that it was on the basis of this information which this witness relayed to her husband (PW2) that investigations into the possibility of the deceased’s poisoning commenced.

PW4 corroborated the evidence of PW2 and PW3 in so far as he attested to A1’s admission to the poisoning of the deceased. He testified that A1 told him that A2 and others still at large gave her a black powder to put in the deceased’s groundnut sauce, and promised her Ushs. 50,000/= in return of which they had paid her Ushs. 5,000/=. PW4’s evidence thus explains the ‘things’ that A1 sought from a one Mama Faith as testified by PW3. This would appear to have been her outstanding payment. The witness further testified that A1 claimed not to have known at the time she administered the black substance to the deceased’s food that it was poisonous, but only realised it was poisonous upon seeing the deceased deteriorating in hospital. Under cross examination, PW4 testified that both accused persons declined to record a charge and caution statement upon realising that they were being charged for murder.

PW5 testified to the circumstances under which A1 was arrested, stating that when she saw PW2 she tried to flee but fell. He also attested to A1 having made an admission of guilt to poisoning the deceased on the promise of payment of Ushs. 50,000/= thus corroborating the evidence of PW2 and PW4.

On their part, as stated earlier herein, both accused persons denied responsibility for the deceased’s death. A1 sought to attribute the deceased’s death to an ailment the deceased returned from the village suffering from or
the chronic ailments of hypertension and diabetes that she alleged the deceased to have suffered from. She testified that PW1 called a doctor to treat the deceased, and it was upon being given an injection by the said doctor that the deceased begun vomiting. She further denied giving any food to the deceased contending that the deceased ate elsewhere before she returned home. Under cross examination A1 sought to deny that the accused vomited any food or black substance but subsequently conceded that the deceased did vomit food. A2 simply denied giving any poison to A1.

Section 191 of the Penal Code Act provides as follows on malice aforethought:

“Malice aforethought may be established by evidence providing either of the following circumstances:

(a) an intention to cause death....
(b) Knowledge that the act ... causing death will probably cause the death of some person, although such act is accompanied by indifference whether death is caused or not ...”

The courts are cognisant of the difficulty of proving an accused person’s mental disposition and thus agreeable to an inference of such disposition from the circumstances surrounding a homicide. In the case of R. vs Tubere (1945) 12 EACA 63 such circumstances were enunciated upon to inter alia include the conduct of the accused before, during and after the incident.

In the cases of R v Nedrick [1986] 1 WLR. 1025 and R v Hancock [1986] 2 WLR 357, it was the position of the courts that what the judge had to decide, so far as the mental element of murder was concerned, was whether an accused intended to kill; and in order to reach that decision the judge was required to pay regard to all the relevant circumstances, including what the accused said and did. Indeed, in the case of Nandudu Grace & Another vs. Uganda Crim. Appeal No.4 of 2009 (Supreme Court), their Lordships cited with approval their earlier holding in the case of Francis Coke vs. Uganda (1992 -93) HCB 43, where it was held that the existence of malice
aforethought was not a question of opinion but one of fact to be determined from all the available evidence.

In Mureeba & Others vs. Uganda Crim. Appeal No. 13 of 2003 (Supreme Court) it was held:

“Generally, in a criminal case, for circumstantial evidence to sustain a conviction, the circumstantial evidence must point irresistibly to the guilt of the accused.”

In that case, their Lordships also cited with approval the decision in R. vs Kipkering Arap Koske & Another (1949) 16 EACA 135, where it was held that ‘in order to justify, on circumstantial evidence, the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis than that of guilt.’

The Supreme Court has had occasion to discuss the meaning of the term ‘accomplice’ in the case of Nasolo v Uganda [2003] 1 EA 181 (SCU) and held:

“In a criminal trial a witness is said to be an accomplice if, inter alia, he participated, as a principal or an accessory in the commission of the offence, the subject of the trial. One of the clearest cases of an accomplice is where the witness has confessed to the participation in the offence, or has been convicted of the offence either on his own plea of guilty or on the court finding him guilty after a trial. However, even in absence of such confession or conviction, a court may find, on strength of the evidence before it at the trial that a witness participated in the offence in one degree or another. Clearly, where a witness conspired to commit, or incited the commission of the offence under trial, he would be regard as an accomplice.”

In the present case A1’s conduct was attested to by PW1, PW3 and PW5. PW1 testified that PW1 cooked and served food to the deceased; when the
deceased started vomiting, she helped clean up after her, and when the deceased was taken to hospital she accompanied her there. Such conduct does not, in my judgment, portray any malice aforethought. However, PW3 testified that she overheard A1 asking a one Mama Faith for ‘her things’ and the said A1 acted uneasy when she realised that PW3 had overheard her. Further, PW3 testified that on the day of the deceased’s burial she noticed that A1 was restless and overheard her tell her companions that she had no peace. In my view, this conduct would raise some suspicion of possible culpability but would not, in the absence of supporting evidence, be sufficient proof of the mens rea for a murder. Be that as it may, PW4’s evidence did provide such supporting evidence in so far as it clarified that the ‘things’ that A1 sought from the said Mama Faith as testified by PW3 entailed her outstanding payment of Ushs. 45,000/=.

On her part, the gist of A1’s evidence was that the deceased died of an ailment that she had contracted prior to returning home and/ or she ate elsewhere before returning home. This evidence was in direct contrast with that of PW1 who testified quite categorically that his wife left home on the morning of 22nd May 2010; returned the same day and told him that she had not eaten anything since the previous night. Further, under cross examination A1 sought to deny that the accused vomited any food or black substance as had been testified by PW1, but subsequently conceded that the deceased did vomit food. PW1’s evidence that the deceased vomited some black substance was corroborated by the findings of the post mortem report which reported an abnormal black substance in the deceased’s oesophagus (food canal).

This court found PW1’s evidence credible and cogent with no contradiction even under cross examination. In contrast, A1 contradicted herself numerous times during her testimony; did concede under cross examination that PW1 was a truthful witness and only sought to impugn the part of his evidence about what the deceased vomited, but subsequently conceded that PW1 was largely truthful even on that issue. The inconsistencies in A1’s
evidence included her testimony on what the deceased vomited; her averment on the circumstances under which the news of the deceased's death was relayed to PW1; and her contention that the plain statement she made was recorded by numerous people which averment she subsequently contradicted by conceding that it was, after all, in only 1 person's handwriting. While the circumstances under which the news of the deceased's death was relayed may be deemed to be a minor contradiction that could be ignored; the 2 other incidences of inconsistency on A1's part are major and do go to the root of this case. The prosecution case is hinged on a plain statement that A1 made admitting to the present offence which statement she subsequently declined to translate into a charge and caution statement. Similarly, a contradiction on what the deceased vomited would go to the root of a case like this premised on murder by food poisoning. Therefore flagrant inconsistencies on such critical issues are viewed with extreme disdain by this court. In view of A1's untruthful demeanour as observed by this court, I find that the numerous inconsistencies in her evidence represented afterthoughts and deliberate untruths that were intended to mislead this court.

The question is why would an accused person peddle such untruths before a court of law? In my view peddling of untruths in evidence would point to the culpability of such an accused person who seeks to avert the course of justice. I therefore reject the offending pieces of A1's evidence and accept PW1's evidence that the deceased ate food prepared by A1 and thereupon experienced vomiting of food, water and a black substance, a fact that was supported by independent medical evidence. With regard to the plain statement attested to by PW4, which statement A1 sought to deny, I did find corroboration of PW4's evidence by that of PW3 as highlighted earlier in this judgment. At the time PW3 overheard A1 talking to her accomplices the witness (PW3) did not know what ‘things’ were in reference. The circumstantial evidence stipulated in PW4's testimony supports and clarifies PW3's averment. In my judgment, the net effect of the circumstantial evidence of PW3 and PW4 on the question of A1 having been hired to
administer the black substance to the deceased’s food is incompatible with the innocence of A1 and incapable of explanation on any other reasonable hypothesis than that of A1’s guilt. I am therefore satisfied that A1 made the admissions stipulated in PW4’s oral evidence. Her attempted denial of the same was not credible and would appear to have been an afterthought. I therefore find that A1 did administer a black powder to the deceased’s food and that the said substance had been given to her by A2 and others still at large on the promise of Ushs. 50,000/= of which a part payment of Ushs. 5,000/= had been made to A1.

The question then is whether or not the black powder administered to the deceased’s food was the cause of her death so as to prove the mens rea of murder.

The Post Mortem report (Exh. P2) found no anatomical cause of death and the Analysis Report (Exh. P3) did not detect toxins or poison in the deceased’s body organs that were sent for toxicological analysis. The latter report, however, provided possible reasons for the non-detection of toxins in the deceased’s body organs. An expert witness called by court (the doctor that performed the post mortem) clarified that the finding in the post mortem report that no anatomical cause of death was seen meant that no cause of death that could be detected by the naked eye or on the deceased’s physical body (anatomy) was seen. He further clarified that the black substance observed in the deceased’s oesophagus was not a normal finding hence prompting him to send selected body organs for laboratory analysis to determine whether or not there were toxins (poisonous substance) therein. The doctor testified that having found the black substance in the oesophagus he could not rule out poisoning as the cause of death. He further opined that the passage of time, as well as the formalin used to treat the body was bound to affect the findings of the analysis.

It is well settled law that the onus is on the prosecution to prove that an accused person with malice aforethought killed the deceased and such
accused person is entitled to be acquitted even though the court is not satisfied that his story is true, so long as the court is of the view that his story might reasonably be true. See *Paulo Omale vs Uganda Criminal Appeal No. 6 of 1977* (Court of Appeal).

In the case of *Nanyonjo Harriet & Another vs. Uganda Criminal Appeal No. 24 of 2002* (Supreme Court) it was held:

“For a court to infer that an accused killed with malice aforethought it must consider if death was a natural consequence of the act that caused the death, and if the accused foresaw death as a natural consequence of the act.” *(emphasis mine)*

With regard to accomplice evidence, it is trite law that such evidence is deemed to be untrustworthy and unreliable *inter alia* because an accomplice is likely to swear falsely in order to shift guilt from himself or, being a participant in crime and consequently an immoral person, is likely to disregard the sanctity of an oath. See *Uganda v Kato Kajubi Godfrey Cr.Appeal No.39 Of 2010* and *Sarkar on Evidence, 14th Ed, 1993 at p.1924*.

In the present case, owing to the passage of time and the treatment of the body with formalin, the medical evidence adduced by the prosecution was not conclusive on whether or not the black substance found in the deceased’s oesophagus was toxic or poisonous. Be that as it may, the expert witness called by court clearly testified that he found the presence of the black substance in the deceased’s food canal abnormal and stated that he could not rule out poisoning as the deceased’s cause of death. The toxicological analysis report also highlighted the reasons why its findings were not conclusive, attributing this to passage of time and a formalin-treated body that rendered analysis of some tissues ineffective.

In my judgment, faced with medical evidence that whilst not conclusive did unearth an abnormal finding of black substance in the deceased's food canal;
the circumstantial evidence on record would be instructive on this issue. PW1 testified quite categorically that 30 minutes after the deceased ate food prepared by A1 she experienced vomiting and diarrhoea. According to the same witness the deceased initially vomited food, and later vomited watery fluid and black substance. The said food has been established by this court to have been laced with a black powder. PW1 testified that the deceased had not eaten anything else since the previous night (21st May 2010). As stated earlier herein, PW3 attested to suspicious behaviour by A1, which evidence was corroborated by PW4’s evidence. PW4 testified that A1 told him that at the time she administered the black substance to the deceased’s food she did not know that it was poisonous, but only realised it was poisonous upon seeing the deceased deteriorating in hospital. This piece of evidence would support PW3’s evidence of having observed A1’s restlessness on the day of the deceased’s burial.

In my view, with recourse to the totality of the prosecution evidence it is reasonable to conclude that the black substance administered to the deceased’s food by A1 did cause the deceased’s vomiting and subsequent death. Having found that A2 and others still at large provided A1 with the black substance in issue, and on the basis of the definition of an accomplice as stated in Nasolo v Uganda (supra), I am satisfied that A2 incited the commission of the offence under trial and duly regard her as an accomplice.

The question then is whether A1 administered the said powder knowing that it would probably cause the deceased’s death or indeed whether or not A2 provided the same powder to A1 for the purpose knowing that it would probably cause death. This begs the question whether or not the 2 accused persons foresaw the deceased’s death as a natural consequence of their respective actions. See Nanyonjo Harriet & Another vs. Uganda (supra).

In my judgment, no evidence was adduced by the prosecution that would answer the foregoing questions in the affirmative. According to PW4’s evidence, A1 told him that she did not know that the black powder was
poisonous at the time she administered it to the deceased’s food. With regard to A2, no evidence whatsoever was adduced by the prosecution to prove that she did know that the powder she supplied to A1 was capable of causing death. I cannot rule out the possibility that the accused persons thought the powder could cause any other result other than death. Particularly so given their low levels of literacy. I therefore find that the prosecution has not proved to the required standard that either of the accused persons acted as they did with malice aforethought.

For that reason, I do hereby depart from the joint opinion of the gentlemen assessors and acquit A1 and A2 of the offence of murder contrary to sections 188 and 189 of the Penal Code Act. I do however find both accused persons guilty of the offence of manslaughter contrary to sections 187(1) and 190 of the Penal Code Act and hereby convict them of the said offence.

Monica K. Mugenyi
Judge

4th April, 2012
JUDGMENT

(Arising out of the Judgment of Mrs Sarah Langa Siu Magistrate Grade
One sitting at Anti-Corruption Division Kololo on 20.07.2011)

The State lodged an appeal against the Judgment of the Magistrate Grade
One sitting at Anti-Corruption Division. The learned trial Magistrate, Mrs.
Sarah Langa acquitted the Respondent, Ekungu Simon Peter of two counts
of bribery. In Count No.1 he was acquitted of Corruptly Soliciting a
Gratification Contrary to S.2 (a) and 26 (i) of the Anti-Corruption Act of
2009 hereinafter referred to as the (ACA). Similarly, in the 2nd Count the
Respondent was acquitted of Corruptly Accepting a Gratification contrary
to the same law stated above. I shall start by setting out section 2(a) of the
ACA verbatim. The sentence is spelt out under S. 26(i).

2. A person commits an offence of corruption when he or she does any
of the following acts:

(a) The solicitation or acceptance directly or indirectly, by a public
official, of any good of monetary value or benefits such as a gift,
favour, promise, advantage, or any other form of gratification for
himself or herself of for any another person or entity, in exchange
for any act or omission in the performance of his or her public
functions;
The facts which gave rise to this case were that the Respondent, who is the Sub County Chief of Ngora Sub County, ordered for the detention of the herdsman and 8 cows found grazing in the first payment of UGX 100,000 Sub County compound. Odikor Gilfasio, the Complainant (PW1) stated that his son and the 8 cows were detained until compensation was agreed. It is alleged that Respondent demanded for UGX 50,000 per cow and would not release the said cows till money was paid. Following a heated negotiation, the owner of the cows agreed to make a down payment of UGX 90,000. As a consequence Odikor borrowed UGX 10,000 to make the UGX 100,000. The Respondent then ordered Odikor to find the outstanding balance of UGX 60,000. Apparently following heated negotiations, the Sub County Chief (Respondent) had agreed to a lesser fine of UGX 20,000 per cow which translated into UGX 160,000 for the 8 cows. The Respondent allegedly imposed the fine on the Complainant for grazing cattle on the Sub County land. There is a dispute as to whether a civil agreement involving destruction of cassava stems was entered. The prosecution contended that the Agreement exhibited as “D1” was an afterthought. But the learned trial Magistrate expressed the view that the said Agreement was genuine and used it as a basis for her decision.

Having failed to produce the outstanding balance of UGX 60,000 and fearing arrest by the Sub County Chief, the Complainant, Odikor Gilfasio, sought the intervention of the office of the Inspector General of Government. In response to his complaint, a trap was laid for the Respondent. The Respondent Ekungu Simon Peter was subsequently charged and acquitted of Soliciting and Receiving UGX 60,000 from Odikor Gilfasio.

My understanding of the facts is that this was not a straight forward dispute between two civilians squabbling over grazing rights but rather a contest
between a public official and an ordinary citizen over perceived violation of grazing rights. The case raises the question regarding the Respondent’s status at the material time and whether the actions he took were exercised in his official capacity. If indeed the Respondent levied a fine on the Complainant as alleged, did he do so in his private capacity or not? If he acted in his capacity as a Sub County Chief then he wouldn’t this be a clear case in which the dominant party plays the role of investigator, prosecutor and executor in his own cause? We will therefore briefly examine how this conduct relates to the offence of abuse of office. We will also inquire into the issue as to whether there are established channels through which offending citizens are dealt with within the confines of the law. Further, we will examine whether the Complainant was justified in reporting the Sub County Chief to the IGG for imposing a fine on him outside the standard procedure. The course of action the Complainant took needs to be examined in comparison to his immediate employer who chose to reach a compromise so as to avoid offending the Sub County Chief.

As a first Appellate Court, it is my duty to subject the entire evidence and record to a thorough and rigorous scrutiny with a view to arriving at my own conclusion based on the evidence on record. In examining the lower Court record I take cognisance of the fact that I did not have the opportunity to see the witnesses testify first hand. I am therefore aware of this limitation. See the cases of Pandya v R 1957 EA 336 and Kifamunte Henry v Uganda (Supreme Court) Appeal No.10 of 1997.

In my view grounds No.1, 2 and 4 can be combined and summarized into one – whether the learned trial Magistrate failed to properly evaluate the evidence and thus came to a wrong conclusion?

Further grounds No.5 and 6 can be merged into one - whether the standard and burden of proof prescribed by law were properly discharged?
Ground No.3 raises a point of law that is not only central to criminal proceedings but is particularly important in corruption cases. Does all evidence require sufficient corroboration?

From the outset, let me point out that with regard to grounds No.1, 2 and 4, having carefully perused the evidence on record, it is reasonable to infer that the learned trial Magistrate was faced with two sets of facts and chose to believe the evidence of the defence. Two main pieces of evidence appeared to have swayed the learned trial Magistrate. The first being defence exhibit D1 which was an agreement relating to destruction of cassava plants. The learned trial Magistrate appears to have believed DW2 who testified that Odikor informed her that her cows had been confined because they destroyed the Sub County Chief's cassava garden and that the latter had imposed a substantial fine. DW2 also stated in her evidence that the Sub County Chief was extremely angry and she had to accept the penalty imposed in order to keep the bad situation from getting worse.

In his defence, the Appellant stated that he ordered his policemen to find (PW1) and present him to the Sub County Headquarters for having grazed his cows on Sub County land. Clearly the appellant used the instruments of power at his disposal to resolve a personal conflict. Having realised the immense power the Sub County Chief held, DW2 caved in and quickly agreed to a monetary settlement. However, PW1 stood up to the Sub County Chief and refused to be compromised despite the strongman tactics that the latter had subjected him to.

There is no doubt in my mind that a Sub County Chief is one of the frontline faces of government in local communities and they wield a lot of power that may be subject to abuse. Aware that the Sub County Chief had the power to confiscate her property, DW2 decided to reach a quick compromise. In my view, DW2’s conduct should not have been treated as a
weakness in the prosecution case but rather proof of the immense power that the Appellant wielded over his community. Is it any wonder that the complainants entered an agreement in which they did not contest the claim that the subject matter of the dispute was a couple of stems of cassava? In my view the learned trial Magistrate ought to have dug deeper into the facts and the law before reaching a verdict.

By not looking beyond the literal interpretation of the letter of the agreement (Exh."D1"), the learned Trial Magistrate lost a vital window of opportunity to put the facts of the case in their proper perspective. It was erroneous for the Trial Court to treat Exh.D1 as water-tight proof of the intentions of the parties.

In my view the Sub County Chief used the agreement as a pretext to extort money from his community. One would suppose that for an agreement to be enforceable it should be entered into freely by consenting parties. But the circumstances of this case paint a completely different picture. The Sub County Chief ordered police to produce before him a party to sign an agreement which was largely tilted in favour of the former. At the material time the parties were clearly not two consenting adults. The special position of power which the Sub County Chief enjoyed over his community created an environment conducive to extortion. Indeed the Respondent (DW1) in his defence conceded that he ordered his policemen to bring the complainant to the Sub County Headquarters where presumably the child and/or the cows were already detained. Clearly, the Sub County Chief has the power to arrest and detain a person, and as we have just learnt, even cattle can be remanded. It is for this reason that PW1 ran to the office of the Inspector General of Government for help. It must have taken a lot of courage for PW1 to contact a State authority, especially when his own boss (DW2) did not believe him. I therefore find that the learned trial magistrate
failed to properly evaluate the evidence and thereby gave insufficient attention to the impact of the Sub County Chief’s power over the parties to the agreement. Consequently, Grounds No. 1, 2 and 4 succeed.

I now turn to Ground No. 3. In Ground No.3 the learned trial Magistrate is alleged to have erred in law and in fact when she came to a conclusion that the Complainant’s evidence was not corroborated thus leading to a wrong conclusion.

At page 5 of the Judgment the learned Trial Magistrate stated as follows,

“This means Abwotu and Ogellan were aware that the accused was soliciting for money from the Complainant. It is worth noting however, that the Complainant’s evidence as far as soliciting for one hundred sixty thousand shillings was not corroborated. Mrs. Ogellan instead testified for the defence confirming that her cows that were being looked after by Odikor, the Complainant, damaged the accused’s cassava garden and she paid Ninety thousand shillings after negotiating and agreeing on one hundred and sixty thousand shillings... Hence in the light of the foregoing and with the Complainant’s uncorroborated evidence, I ... find that the accused did not solicit for one hundred and sixty thousand shillings...”

Learned State Counsel (for the IGG) submitted that the learned Trial magistrate erred in law to require corroboration for PW1’s evidence. This submission was in reference to page 7 of the Judgment in which the learned Trial magistrate remarked in her conclusion that given the lack of corroboration of PW1’s evidence, she had no option but to acquit the Appellant. To this submission Mr. Isodo for the Respondent contended that
PW1 should have produced his son or the other detainee to corroborate the allegation of illegal detention. He prayed that Court agrees with the finding of the learned Trial Magistrate that PW1’s evidence needed corroboration.

In Uganda the law relating to corroboration is quite clear. Corroboration is required under; *inter alia*, the following circumstances.

1. Where there is a single identifying witness in circumstances that are less than optimal for proper identification: See the case of *Tuwamoi v R 196 EA* See also *Ug. V Turyamureeba Silvano 125/08*, *Leuta s/o Mkitila vs R 1963 EA*, *Uganda v Kasigaire Apollo UGHC 124 of 2009*.

2. Where the witness is a child of tender years; see the cases of *Kibagenyi Arab Kabili v R 1959 EA 92*, *Sabila v R 1967 EA 403*, *Solomon Oumo Mgele v R 1958 EA 53*, *Chila v R 1967 EA 722*.

3. And until recently victim’s evidence of rape required corroboration.

4. Where the evidence of an accomplice is admitted.

5. Where the charge and caution statement of an accomplice is admitted and used against an accused.

In requiring corroboration of the prosecution evidence the learned Trial Magistrate should have explained the reasons for demanding the extra layer of proof. Prosecution witness No.1, Odikor, was the prime witness, no doubt. In my thorough examination of the evidence I did not come across a situation where the identity of the respondent was in issue or where the conditions for identification were not favourable. In his own defence, the Respondent did not deny that he demanded the said amounts of money from the Complainant. Given the fact that the Respondent did not deny asking for UGX 60,000 and that the Complainant (PW1) positively
identified the Respondent in broad daylight, there was absolutely no need to demand corroboration of the evidence of the eye witness in this case.

The Court takes Judicial Notice of the fact that corruption is a silent offence which is practiced in a covert manner. It is only in exceptional cases such as this one that a Complainant acts as a whistle blower. The conduct of DW2 (Ogellan) is not entirely uncommon in cases involving parties in an unequal power balance. In determining a case such as this, the trial Court is required to take a call as to which witness to believe, based on the evidence adduced before it. Whilst it is entirely the trial Magistrate’s call to take a position on the propriety of the evidence adduced in court, in so doing, it is incumbent upon the magistrate to ensure that the decision is founded in the law and the evidence as adduced in the respective case.

In the instant case, the Trial Magistrate elected to believe the defence, and made her position clear quite early in her Judgment. I find that having done so, it was misdirection for her to make the unnecessary demand of corroboration from the prosecution. As earlier noted the circumstances of this case did not warrant corroboration of the prime witness’ evidence. The requirement for corroboration was therefore an unnecessary legal burden. Complainants in corruption and rape cases are particularly susceptible to disbelief. There is often a tendency to regard the victims as liars. This is a stereotype which courts need to watch against – as it can lead to gross injustice. My reading of the Anti-Corruption Act 2009 regarding the evidence of the accomplices is that lack of corroboration should not be used as a blocker in Anti-Corruption cases. I therefore find that the learned Trial Magistrate misdirected herself by requiring corroboration in a non-deserving case. For these reasons ground No.3 of the Appeal succeeds.

Concerning grounds No.5 and No.6 I find that the learned Trial Magistrate did not evaluate the evidence as a whole. Having been inclined to believe
one side over the other, it was clear the prosecution evidence was not given
due consideration. I therefore agree with the Counsel for the Appellant that
had the learned trial Magistrate considered the evidence as a whole, she
might have come to a different conclusion. I do not necessarily mean that
the learned Trial magistrate should have convicted, as charged but there is
a probability that she might have found that the evidence disclosed a lesser
or another offence. I am particularly of the view that ingredients of the
offence of abuse of office were disclosed.

Before I take leave of this case, I would like to take issue with the methods
used in police traps. The mode of arrest and the requirements for search
certificates during this type of arrest need to be re-examined. In this case
the Accused person’s officemates were ordered by the arresting officers to
sign search certificates as witnesses. Clearly, they were not in the room
when the money was found. They seem to have been coerced unreasonably
to sign the documents.

Entrapment as a defence has been defined as a ‘method of inducing a
person to commit a crime he or she is not previously disposed to commit.
Entrapment tends to turn villains into victims’.1 In spite of this defence,
where a person was ready, willing and able to commit the crime as charged
whenever an opportunity presented itself, and was offered this opportunity
by government officers, such a person cannot claim that he was entrapped.
In using this method the state must prove that the following were not their
motives2.

1. That they did not create the idea of committing the crime

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1 See the case of United States v Russell 356 U.S 369. This is United States Supreme Court’s first case on the
defence of entrapment.
2 See Jacobson v United States 503 U.S 540 (1992); Sorrells v United States 287 U.S 435; Sherman v United States
356 U.S 369; Hampton v United States 452 U.S 484. As noted earlier entrapment not a defence in Uganda but
these cases throw light on why police traps can be a huge human rights issue.
2. That the State officials did not persuade and talk the person into such a crime.
3. That the person was ready and willing to commit the crime before interaction with State agents.

This case and particularly the narration of the appellant’s arrest, highlights the challenge of using police traps as a method of proving corruption in public office. The awkwardness and confusion caused by this rather archaic and crude manner of a Sub County Chief’s arrest and indeed the arrest of many other high profile popular officers means that this method requires a review and needs to be revisited. Should such an officer be handcuffed? The question also arises what to do with a search certificate during such an arrest. Clearly this method of arrest leaves the arresting officers looking bad in the eyes of the unsuspecting public and could lead to dire consequences on such officers.

The learned Trial Magistrate also referred to the cases of Wanyama v R 1975 EA 120, Amuge Angella v Uganda Criminal Appeal No.15 of 2010 (Anti-Corruption Division) and Erisa Bukenya & 2 Others v Uganda EACA Criminal Appeal No.68 of 1972.

Each of these cases when considered carefully is clearly distinguishable from the given facts and this distinction needs to be made so no confusion is caused. In my view Wanyama v R (supra) is a precedent that should be regarded with care given that the new Anti-Corruption Act (2009) has overwritten some of the considerations such as the definition of a public officer which formed the basis for that decision. Indeed the spirit of the Anti Corruption Act 2009 under s.32 reflects the need to uphold witness evidence which would have otherwise needed corroboration.

In conclusion I find that by not evaluating the evidence as a whole the learned Trial Magistrate arrived at erroneous conclusions.
The appeal is allowed. The acquittals are set aside. This Court orders that a fresh trial be instituted against the appellant before a different Magistrate.

It is so ordered.

SGD: HON LADY JUSTICE CATHERINE BAMUGEMEREIRE
JUDGE OF THE HIGH COURT
5TH JANUARY 2012
CONSTITUTIONAL PETITION NO.036/11 (REFERENCE)

[Arising out of HCT-00-ICD- Case No. 02/10]

BETWEEN

THOMAS KWOYELO ALIAS LATONI……………………………………………………APPLICANT

AND

UGANDA ……………………………………………………………………RESPONDENT

RULING OF THE COURT

The constitutional reference before us was sent by the International Crimes Division of the High Court sitting at Gulu. It was sent under the provisions of Article 137 (5) of the Constitutional Court (Petitions and References) Rules, SI No.91/05. Three issues were framed for our determination.

1. Whether the failure by the Director of Public Prosecutions (DPP) and the Amnesty Commission to act on the application by the accused person for grant of a certificate of Amnesty, whereas such certificates were granted to other persons in circumstances similar to that of the accused person, is discriminatory, in contravention of, and inconsistent with Articles 1, 2, 20(2), 21(1) and (3) of the Constitution of the Republic of Uganda.
2. Whether indicting the accused person under Article 147 of the Fourth Geneva Convention of 12th August 1949 and section 2(1)(d) and (e) of the Geneva Convention Act, Cap 363 (Laws of Uganda) of offences allegedly committed in Uganda between 1993 and 2005 is inconsistent with and in contravention of Articles 1, 2, 8, and 287 of the Constitution of the Republic of Uganda, and Directives of 111 and xxviii(b) of the National objectives and Directives Principles of State Policy, contained in the 1995 Constitution of the Republic of Uganda.

3. Whether the alleged detention of the accused in a private residence of an unnamed official of the Chieftaincy of Military Intelligence (CMI) is in contravention of and inconsistent with Articles 1, 2, 23(2), (3), 4(b), 24 and 44(a) of the Constitution of the Republic of Uganda.

When the parties before the Registrar of this Court for directions on 12th August 2011, counsel for the applicant, Mr. Alaka informed him that the applicant had abandoned the second issue which deals with the Geneva Conventions. He suggested some slight amendments to the first issue but it remained basically the same.

Ms Patricia Muteesi Senior Principal State Attorney had no objection to the proposed amendments but raised another issue which had not been framed for our determination. The issue in question is “WHETHER SECTIONS 2, 3, AND 4 OF THE AMNESTY ACT ARE INCONSISTENT WITH ARTICLES 120 (3) (b) (c) AND (5) (6), 126 (2) (a), 128 (1) AND 287 OF THE CONSTITUTION.

The applicant filed an affidavit in support of his case. There was no affidavit in reply, although Ms Muteesi applied and she was granted an adjournment for the purpose.
The background to this reference as we could gather it from the record is that for a period of almost twenty years, there was a rebellion in the northern part of this Country. The rebellion was led by an organization called the Lord’s Resistance Army (LRA). During the period in question, people lost their lives property was destroyed and children were abducted.

The applicant in his affidavit states that he was abducted by LRA in 1987 at the age of 13 years while on his way to Pabbo Primary School. He remained in captivity and became one of the commanders of LRA until he was captured in Garamba in the Democratic Republic of Congo by the Uganda Peoples’ Defence Forces in 2008.

On the 12th January 2010, the applicant, while in detention at Upper Prison Luzira made a declaration renouncing rebellion and seeking amnesty. The declaration was made before one Robert Munanura, the Officer in charge of the prison. The declaration was submitted to the Amnesty Commission for amnesty under the Amnesty Act (Cap 294, Laws of Uganda).

On the 19th March 2010 the Commission forwarded the applicant’s application to the Director of the Public Prosecution (DPP) for consideration in accordance with the provisions of the Amnesty Act. The Commission stated that it considered the applicant as one who qualifies to benefit from the amnesty process. To date the DPP has not responded to the letter of the commission.

On 6th September 2010, the DPP charged the applicant before Buganda Road Court with various offences under Article 147 of the 4th Geneva Conventions Act. He was later committed for trial to the International Crimes Division of the High Court.

On 11th July the applicant appeared before the said division on an amended indictment containing over 50 counts. The offences arose out of the applicant’s alleged activities during the rebellion.

The applicant through his counsel requested for a constitutional reference contending that he was indicated for offences for which he qualified for amnesty under the Amnesty Act. It was also his contention that other LRA commanders like Kenneth Banya, Sam Kolo and over 26,000 other rebels, who were captured in similar circumstances, were granted certificated of amnesty by the DPP and the Amnesty Commission.
The main thrust of his complaint as we understand it is that he is being discriminated against and is being deprived of equal protection of the law under Article 21 of the Constitution with people in similar circumstances.

We shall now comment briefly on our decision in allowing the respondent to argue an issue which was not sent to this court for determination. The issue in question is whether the provisions of the Amnesty Act under which the applicant was seeking amnesty were inconsistent with Articles 120, 126, 128 and 287 of the Constitution.

This court in its ruling in the case of Akankwasa Damian v Uganda Constitutional Reference No.05/11 declined to entertain an additional issue which was framed by counsel for the applicant, outside the issues which were framed by the court which sent the reference. In declining to entertain the additional issues this court said:

“Rule 20 (supra) allows amendment on issues that had been framed by the lower court for determination. When the Constitutional court is determining a reference, it is exercising special and limited jurisdiction on matters and issues that have arisen in the proceedings before the court which sent the reference. The additional issues which were framed by counsel for the applicant are outside the scope of the reference which was sent to us by lower court. We shall not consider them in this ruling”.

In the matter now before us, we allowed the respondent to raise an issue which was not framed for our determination by the lower court, because it touched on the legality and constitutionality of an Act of Parliament, under which the applicant was claiming that he had acquired a right to be granted amnesty.

A law which is alleged to be inconsistent with the constitution is null and void to the extent of the inconsistency See Article 2 (2) of the constitution. The court could not close its eyes to an alleged illegality and has a duty to investigate the allegation.

Before considering the submissions made by counsel on both sides and the merits of the reference, it is necessary to remind ourselves of some of the principles of constitutional
interpretation which have been laid down over the years in a wealth of authorities by courts of
judicature in this country and other jurisdictions which have similar or identical constitutions.

1. The Constitution is the supreme law of the land and forms the standard upon
which all other laws are judged. Any law that is inconsistent with or in
contravention of the Constitution is null and void to the extent of the inconsistency
– see Article 2 (2) of the constitution.

2. In determining the constitutionality of legislation, its purpose and effect must be
taken into consideration. Both purpose and effect are relevant in determining
constitutionality of either an unconstitutional purpose or unconstitutional effect
animated by an object the legislation intends to achieve: see Attorney General V
Silvatori Abuki – Constitutional Appeal No. 1/98 (SC).

3. A constitutional provision containing a fundamental right is a permanent provision
intended to cater for all times to come and therefore, should be given a dynamic,
progressive and liberal interpretation and culture values so as to extend fully the
benefit of the rights which have been guaranteed. See South Dakota v South
Carolina 192, US 268, 1940.

4. The entire constitution has to be read together as an integral whole and no
particular provision destroying the other, but each sustaining the other. This is the
rule of harmony, the rule of completeness and exhaustiveness and the rule of
paramountancy of the Constitution See P. K. Ssemwogerere & another v Attorney
General – Constitution Appeal No. 1/02(SC).

5. The words of a written Constitution prevail over all unwritten conventions,
precedents and practice.

6. No one provision of the Constitution is to be segregated from the other and be
considered alone but all the provisions bearing on a particular subject are to be
brought into view and be interpreted to effectuate the greater purpose of the
instrument.

7. There is a presumption that every legislation is constitutional and the onus of
rebutting the presumption rests on the person who is challenging the legislation’s
status.
We shall now set out the articles of the constitution which require consideration and the provisions of the impugned sections of the Amnesty Act.

**Articles 20 and 21** of the Constitution are found in Chapter four which deals with the protection and promotion of fundamental and other rights and freedoms.

Some of the freedoms under this chapter are absolute while others are subject to some limitations and qualifications. The rights created under articles 20 and 21 are not absolute. They are subject to limitations and modifications which must be demonstrably justifiable under a free and democratic society.

To justify unequal treatment under the law, there must exist reasonable and objective criteria for such unequal treatment or discrimination. The burden is on the party who is discriminating to explain the reasons for the unequal treatment or discrimination.

**Article 20 states:**

“(2) The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons”.

**Article 21 reads:**

“(1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

(2) Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, ethnic origin, tribe, birth, creed or religion or social or economic standing, political opinion or disability.

(3) For the purpose of this article, “discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin tribe, birth, creed or religion or social or economic standing, political opinion or disability.”

**Article 120 (3)** deals with the functions of the Director of Public Prosecutions. It says:
“(a) to direct the police to investigate any information of a criminal nature and to report to him or her expeditiously;

(b) to institute criminal proceedings against any persons or authority in any court with competent jurisdiction other than a court martial.”

“(5) In exercising his or her powers under this Article, the Director of Public Prosecutions shall have regard to the public interest, the interest of the administration of justice and the need to prevent abuse of legal process”.

“(6) In the exercise of the functions conferred on him or her under this article, the Director of Public prosecutions shall not be subject to the direction or control of any person or authority.”

Article 126 (1) protects the exercise of judicial power. It states:

“Judicial power is derived from the people and shall be exercised by the courts established under this constitution in the name of the people and in conformity with the law and with values, norms and aspirations of the people”

Article 128 protects the independence of the judiciary. It provides:

“(1) In the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority.

(2) No person or authority shall interfere with the courts or judicial officers in the exercise of their judicial functions.”

Article 287 which govern international agreements, treaties and conventions provides:

“Where –

(a) Any treaty, agreement or convention with any country or international organization was made or affirmed by Uganda or the Government on or after the ninth day of October, 1962 and was still in force immediately before the coming into force of this constitution; or

(b) Uganda or the Government was otherwise a party immediately before the coming into force of this Constitution to any such treaty, agreement or convention, the
treaty, agreement or convention shall not be affected by the coming into force of this Constitution and Uganda or the Government as the case may be, shall continue to be party to it.”

Section 2 of the Amnesty Act (Cap 294) states:

“(1) An Amnesty is declared in respect of any Ugandan who has at any time since the 26th day of January, 1986, engaged in or is engaging in war or armed rebellion against the government of the Republic of Uganda by –

(a) Actual participation in combat
(b) Collaborating with the perpetrators of the war or armed rebellion;
(c) Committing any other crime in furtherance of the war or armed rebellion.

(2) A person referred to under subsection (1) shall not be prosecuted or subjected to any form of punishment for the participation in the war or rebellion for any crime committed in the cause of the war or armed rebellion.

Section 3 governs the grant of amnesty. It states:

(1) A reporter shall be taken to be granted amnesty declared under section 2 if the reporter-

a) Reports to the nearest army or police unit, a chief, a member of the executive committee of a local government, a magistrate or religious leader within the locality;

b) Renounces and abandons involvement in the war or armed rebellion,

c) Surrenders at any such place or to any such authority or person any weapons in his or her possession; and

d) Is issued with a certificated of amnesty as shall be prescribed in regulations to be made by the minister.

(2) Where a reporter is a person charged with or is under lawful detention in relation to any offence mentioned in section 2, the reporter shall also be deemed to be granted the amnesty if the reporter-
(a) declares to a prison officer or to a judge or a magistrate before whom he or she is being tried that he or she renounced the activity referred to in section 2; and

(b) declares his or her intention to apply for the amnesty under this Act.

(3) A reporter to whom subsection (2) applies shall not be released from custody until the Director of Public Prosecution has certified that he or she satisfied that –

(a) the person falls within the provisions of section 2; and

(b) he or she is not charged or detained to be prosecuted for any offence not falling under section 2.”

Counsel for the applicant made oral submissions while counsel for the respondent filed a written submission. She also made some oral arguments. Mr. Caleb Alaka went through the history of his client before he was captured in Garamba after the failure of the peace talks. He pointed out that other officers of LRA like Banya and Kolo who were captured, applied for amnesty and it was granted. He submitted that top commanders of LRA were indicted by the International Criminal Court and the applicant is not one of them. He pointed out that the Amnesty Act provides for exclusion by the issuance of a statutory instrument of persons the Government deems ineligible to be granted amnesty under the Act. The applicant is not one of them and therefore he is eligible for grant of amnesty.

Learned counsel submitted that the applicant had fulfilled the requirements of the law and the DPP had a duty to notify the Amnesty Commission that the applicant had other charges not related to the rebellion. The DPP did not. Instead he went ahead to charge him with offence related to the rebellion.

Counsel further submitted that the Amnesty Act was enacted in public interest and laws are made to address social, economic, political and other issues. He pointed out that the Amnesty Act was enacted to address the war in the northern part of Uganda. He complained that the applicant is being discriminated against. He cited the case of Muller & another v Namibia (2002) AHRLR 8 (HRC 2002) for his contention.
Learned counsel ended his submission stating that the act of the DPP and the Amnesty Commission is discriminative and amounts to unequal treatment under the law.

Ms Muteesi did not agree. She stated that the applicant cannot derive any legal right to amnesty because the Amnesty Act is unconstitutional and therefore null and void under Article 2 of the Constitution. She stated that this court cannot validly order the Amnesty Commission to act under the Act once it has been brought to its attention that the Act itself is inconsistent with the Constitution.

Learned counsel contended that the Amnesty Act infringes on the constitutional independence of the DPP guaranteed in Article 120 (3) (b) (c) (d), (5) and (6) of the Constitution.

She contended that in exercising his or her powers whether to prosecute or to discontinue criminal prosecution, the DPP “shall not be subject to the control of any person or authority” including Parliament. She claimed that the Amnesty Act subjects the independence of the DPP to the control of Parliament in the performance of his duties. She further stated that Article 120 (5) provides that the DPP in exercising his / her powers shall have regard to public interest, the administration of justice and the need to prevent the abuse of legal process.

She stated that the DPP has discretion which must be guided by these considerations. Learned counsel complained that the Amnesty Act granted blanket amnesty without provision for DPP’s consent, denied him the opportunity to consider the facts, circumstances of individual cases, the available evidence and then make an independent decision whether to prosecute or not to prosecute. She pointed out a number of instances which claimed interfered with the discretion of the DPP to determine the prosecution of offences under the Amnesty Act. She mentioned the following instances:

- Whether it was in public interest to consent to an amnesty which Parliament intended to have duration of 6 months, but was still in effect after ten years, in effect allowing amnesty of unlimited duration.
- What were the circumstances of a rebel’s renunciation e.g. was it made before or after he was captured in battle with Government troops?
What level of control and direction the suspect exercised in rebel forces and its actions?

Who was most responsible for such actions?

Whether the offences are primarily against the State (e.g. waging war) or offences against civilians, including gross violations of their human rights, and if it is in public interest to prosecute the latter.

Whether the offences constitute violations for international humanitarian law and whether the suspect was individually responsible for such violations?

Whether Uganda has any international obligation to prosecute the offences? Is there universal jurisdiction by other states or international tribunals over these offences?

Uganda’s foreign policy supporting the prosecution of international crimes as illustrated by its enactment of the ICC Statute and the establishment of an International Criminal Division of the High Court.

Learned counsel complained that Parliament through the Amnesty Act substituted its discretion for that of the DPP’S in determining that the offences under the Act should be prosecuted.

She cited to us the decision of the Supreme Court in the case of Attorney General v Susan Kigula & 417 others – Constitutional Appeal No. 3/06 (SC) regarding the constitutionality of the mandatory death penalty. The Supreme Court held that section 98 of the Trail on Indictments Act and other laws which create mandatory death penalty and prevented the judges from considering mitigating factors in the sentencing process, interfered with the sentencing powers of the court. The said legislations were declared unconstitutional.

The second aspect of Ms Muteesi’s submission was that the Amnesty Act infringes on the constitutional independence of the judiciary guaranteed under Articles 126 (2) (a), 128 (1) and (2) (supra). She stated that the law permits private persons to initiate a private prosecution but the DPP has powers to take over such prosecution. However, she pointed out the Amnesty Act
prevents him from continuing such prosecution as long as the person qualifies for amnesty under the Act. In the same way the judge is compelled by law to discontinue the trial since no prosecution can legally proceed.

The third limb of the prosecution’s case as presented by the learned Principal State Attorney, was that the Amnesty Act is inconsistent with Article 287 of the Constitution because it grants amnesty to perpetrators of any war crimes including grave breaches of the Geneva Conventions on the law of war, violates principles of international law which are reflected in treaties assented to by Uganda.

She submitted that Article 287 recognizes the validity of ratified treaties under Ugandan laws like the Geneva Conventions Act, which creates criminal offences and prescribes maximum sentences for grave breaches of such conventions. She claimed that the applicant is being prosecuted for such grave breaches. She further submitted that international law principle obliges any country which is a party to a treaty to observe its obligations. She cited article 26 of the 1969 Vienna Convention on the law of treaties which Uganda ratified. It was also her submission that under Article 27 of the same convention municipal law cannot be used to justify violation of international obligations. She cited the case of *Barrios Altos v Peru [Inter- American Court of Human Rights] 2001*, to support her argument.

In this case it was held that self amnesty laws of Peru which prevented the investigations and prosecution of state agents who were responsible for the assassination of 15 people and injuring 4 others made Peru violate its obligation under the Inter – American Convention on Human Rights to legislate against such violations.

Another case which Ms Muteesi cited was *Prosecutor v Morris Kallon & Brima Bazzy Kamara [Special Court of Sierra Leone Cases No. SCSL 2004- 15 AR72 (E) AND SCSL 2004 – 16 AR 72(E)*. It was noted that insurgents are subject to international humanitarian law and are bound to observe the Geneva Conventions.

Learned counsel cited the case of *Prosecutor v Auto Furundajia [IT- 95-17/1-T]*, a decision of the International Criminal Tribunal for former Yugoslavia, in which the court held that the international community and a state cannot take measures to absolve its perpetrators through amnesty.
She concluded her submission stating that the blanket amnesty which is granted under the Amnesty Act is in violation of Uganda’s international law obligations, and the applicant cannot claim an entitlement to amnesty under sections 2 and 3 since the two sections are null and void under Article 2 of the Constitution.

She invited court to order the trial of the applicant to proceed.

Mr. Alaka made a reply. He submitted that under Article 21 (1) of the Constitution, all persons are equal before the law and the Amnesty Act granted rights which should be enjoyed equally.

He pointed out that the Act is not unconstitutional because the framers of the Constitution had the turbulent history of this country in mind when enacting it. The Constitution according to counsel was supposed to establish national unity and stability.

He supported the enactment of the Amnesty Act by Parliament because there was a civil war in Northern Uganda and the blanket amnesty was meant to solve the problem which was facing the country. He cited a passage from a case by Supreme Court of India – *Hamdard Dawakhana (Wakf) Lal Delhi & another v Union of India and others* (1960) AIR 554 where the court said:

“*Therefore, when the constitutionality of an enactment is challenged on ground of violation of any articles in Part III of the Constitution, the ascertainment of its true nature and character becomes necessary, i.e.; its subject matter, the area in which it is intended to operate, its purpose and intent have to be determined. In order to do so it is legitimate to take into consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy…”*

Learned counsel submitted that the Amnesty Act does not take away the powers of the courts or the DPP. He pointed out that in 2006 the Amnesty Act was amended and the Minister was given powers to declare rebels who were ineligible for amnesty.

Mr. Onyango who also represented the applicant supported the constitutionality of the Amnesty Act. He cited the case of *Azanian Peoples Organization & 7 others v President of South Africa & others* (CCT 17/96) [1996] ZACC 16. This decision discussed the constitutionality of certain
provisions of the South African Truth and Reconciliation Act which established a commission whose main objective was to promote national unity and reconciliation and to facilitate the granting of amnesty to persons who made full disclosure of all relevant facts relating to acts associated with political objective. The constitutional court of South Africa found that the impugned section of the Truth and Reconciliation Act were constitutional.

Pardon as a plea in criminal prosecution is a creature of the constitution Article 28 (10) provides:

“No person shall be tried for a criminal offence if the person shows that he or she has been pardoned in respect of that offence”.

Pardon is therefore a constitutional protected right which the DPP has not complained about in respect of his independent powers to determine whom to prosecute or not prosecute. This pardon is general in nature and it applies to all criminal offences under the statute books. It operates as a bar in criminal prosecution. It is a constitutional command which has to be obeyed by everyone the DPP and the courts inclusive. The article does not state who can grant a pardon or under what circumstances the pardon may be granted.

There is no dispute that under Article 79 (1) of the Constitution Parliament is clothed with powers “to make laws of any matter for the peace, order, development and good governance of Uganda.”

When Parliament enacted the Amnesty Act which came into force on 21st January 2000, it was exercising the powers conferred by the article.

The purpose of the Act, according to its preamble, was to provide “for amnesty for Ugandans involved in acts of a war like nature in various parts of the country and for other connected purposes”.

The word amnesty is defined in section 1 (a) to mean

“a pardon, forgiveness, exemption or discharge from criminal prosecution or any other form of punishment by the state.”

At the time when the Act was enacted, this country was faced with political rebellion in Northern Uganda. The Act was meant to be used as one of the many possible ways of bringing the
rebellion to come to an end by granting amnesty to those who renounced their activities. There is nothing unconstitutional in our view in the purpose of the Act. The mischief which it was supposed to cure was within the framework of the constitution.

The Act is also in line with national objectives and principles of State policy and our historical past which was characterized by political and constitutional instability. Clause 111 of the national objectives and state policy the framers of the Constitution stated the following:

“(i) All organs of the state and the people of Uganda shall work towards the promotion of national unity, peace and stability.

  ii) Every effort shall be made to integrate all peoples of Uganda while at the same time recognizing the existence of their ethnic, religious, ideological political and cultural diversity.

  iii) Everything shall be done in order to promote the culture of co-operation understanding, appreciation, tolerance and respect for each other’s customs traditions and beliefs.

  iv) There shall be established and nurtured institutions and procedures for the resolution of conflicts fairly and peacefully.

  v) The State shall provide a peaceful, secure and stable political environment which is necessary for economic development.”

We would like to point out that the Act did not grant amnesty to any government official or the Uganda Peoples Defence Forces personnel who were directly or indirectly involved in fighting the rebellion and who might have committed criminal offences under the laws of Uganda or international conventions and treaties which Uganda is a party to. The Act as a whole and the institutions that were step up to implement it brings this out. The resettlement packages, demobilization and reintegration programmes were all aimed at reporters or former rebels who renounced rebellion. The Act is not like the South Africa Truth and Reconciliation Act which granted amnesty to all wrong doers within the apartheid government and within the rebel ranks.

In order to implement the provisions of the Act, certain organs like the Amnesty Commission were created. The functions of the Commission are set out in section 8. They are:
(a) To monitor the programmes of-
(i) Demobilization;
(ii) Reintegration; and resettlement of reporters;
(b) To coordinate a programme of sensitization of the general public on the
    amnesty law;
(c) To consider and promote appropriate reconciliation mechanisms in the affected
    areas;
(d) To promote dialogue and reconciliation with in the spirit of this Act
(e) To perform any other function that is associated or connected with the execution
    of the functions stipulated in this Act.”

What is the role of the DPP under the Act? We have already set out the provisions of the
Act spelling out the role of the DPP in the process of granting amnesty to those who
renounce rebellion. The first role is to certify that the person who has applied for amnesty
fall with in the ambit of section 2 i.e. that he/she is not facing any other criminal charges
unrelated to the rebellion.

The third role under subsection (4) is to investigate cases of all persons charged with or
held in custody for criminal offences and to cause such persons who qualify for amnesty
to be released.

We think it is the implementation of this subsection that the learned DPP claims,
infingeres on his independence under the constitution although he did not swear any
affidavit stating so.

We do not think that the Act was enacted to whittle down the prosecutorial powers of the
DPP or to interfere with his independence as Ms Muteesi submitted.

The DPP can still prosecute persons who are declared ineligible for amnesty by the
minister responsible for Internal Affairs or those who refuse to renounce rebellion. He
can also prosecute any government agents who might have committed grave breaches of
the Geneva Conventions Act, if any. The Amnesty Act unlike the South African Truth
and Reconciliation Act did not immunize all wrong doers. The powers of the DPP to
prosecute in our view were not infringed upon by the impugned sections. They are valid.
The decision of the Supreme Court in the case of the Attorney General v Susan Kigula & others which Ms Muteesi cited is therefore distinguishable from the facts of this reference.

The other concerns raised by Ms Muteesi about Uganda’s obligation under international treaties and conventions which it has ratified and domesticate, we think, her concerns were addressed by the provisions of the Act, in that not all rebels were granted amnesty, since the Minister can declare some ineligible for amnesty.

There is evidence on record contained in the affidavit of the applicant to the effect that top commanders of the LRA were indicted by the International Criminal Court under the Rome Statute. Their indictment clearly shows that Uganda is aware of its international obligations, while at the same time it can use the law of amnesty to solve a domestic problem. We have not come across any uniform international standards or practices which prohibit states from granting amnesty. The learned State Attorney did not cite any either. We accept the submission of Ms Muteesi that insurgents are subject to international law and can be prosecuted for crimes against humanity or genocide.

The record which is before us shows that since 2000, when the Amnesty Act came into force, the DPP has sanctioned the grant of amnesty to 24,066 people.

This number includes 29 people who have been granted amnesty this year (2011).

The applicant applied for amnesty in 2010. In that year 274 people were granted amnesty which was apparently sanctioned by the DPP.

The DPP did not give any objective and reasonable explanation why he did not sanction the application of the applicant for amnesty or pardon under the Amnesty Act, like every one else who renounced rebellion. Indeed in terms of section 3(2) of the Act, the applicant, as a reporter “shall also be deemed to be granted amnesty...” Once he declared to the prison officer that he had renounced rebellion and declared his intention to apply for amnesty under the Act. The DPP on his part shirked his obligations under the Act. We think it is rather late in the day for the learned DPP to claim his constitutional
independence using the applicant. He has failed to furnish any reasonable or objective explanation why the applicant should be denied equal treatment under the Amnesty Act.

We are satisfied that the applicant has made out a case showing that the Amnesty Commission and Director of Public Prosecutions have not accorded him equal treatment under the Amnesty Act. He is entitled to a declaration that their acts are inconsistent with Article 21 (1) (2) of the Constitution and thus null and void. We so find.

We order that the file be returned to the court which sent it with a direction that it must cease the trial of the applicant forthwith.

Dated at Kampala this 22nd day of September, 2011

A. Twinomujuni
   Justice of Appeal

C.K. Byamugisha
   Justice of Appeal

A.S. Nshimye
   Justice of Appeal

S.M. Arach- Amoko
   Justice of Appeal
Remmy K. Kasule

Justice of Appeal
REASONS FOR THE JUDGMENT OF COURT:

This second appeal arises from the decision of the Court of Appeal dismissing an appeal by the appellant [Teddy Sseezi Cheeye] who was convicted by the Anti-Corruption Division of the High Court of the offences of embezzlement and forgery. He was sentenced to certain terms of imprisonment and was also ordered to pay a sum of 8hs.100,000,000/= as compensation to the Global Fund.

On 26th September, 2011, we heard the appeal and dismissed it because it lacked merit. We reserved our reasons and promised to give the reasons on notice to parties. We now give those reasons.
The facts of the case as accepted by both the trial judge and the Court of Appeal are as follows:-

An International Organization called Global Fund based in Geneva set up a fund to fight diseases such as TB, Malaria and AIDS. The Global Fund granted to the Uganda Government a sum of Shs.120,000,000/= after an agreement setting out the terms of the grant was signed between the Uganda Government and the Global Fund. It was the Ministry of Finance which signed the agreement on behalf of the Uganda Government. However, it was the Ministry of Health which was charged with the responsibility of the administration of the Fund. The Global Fund wanted the money to be channeled to Ugandans through Non-Government Organization [NGOS] like TASO, Community Based Organizations, Private Organizations and Government Departments. The Global Fund required all such organizations to enter into partnerships or agreements with the Ministry of Health [MOH], obviously setting out terms under which the organizations would spend the money. The MOH set up a Project Management Committee [PMC] to manage the day to day work of the Global Fund work.

Apparently the appellant saw an opportunity to make money. So he floated a company called Uganda Centre for Accountability [UCA]. It was a Company Limited by guarantee. The appellant was the sole Managing Director of the company and the sole signatory of the company Bank Account. He was also the sole operator of the Company account No. 500371005, kept at the Crane Bank Ltd. His wife Annet Kairaba and Geoffrey Nkurunziza Banga [PW2] were the other ordinary
directors of UCA. In addition, the wife was also the Company Secretary.

UCA through Annet Kairaba and Geoffrey Nkurunziza Banga [PW2] applied for funds from Global Fund for AIDS, TB and Malaria Project for monitoring HIV/AIDS activities in the Western Uganda Districts of Rakai, Kabale, Mbarara and Ntungamo. The Company was granted the award in the sum of Ug. Shs. 120,000,000/= and on 10th February, 2005 signed the required contract [Exh. PI]. The grant was for duration of twelve months. The purpose of the money was to implement the following activities:

- a) Develop monitoring mechanism in Rakai, Kabale, Mbarara and Ntungamo Districts.
- b) Train identified personnel
- c) Carry out visits to the Districts and delivery sites.
- d) Hold fact finding workshops.
- e) Carry out field monitoring exercises.
- f) Write reports.

The money was deposited in the Company account on 13th March, 2005. On 19th March, 2005 barely six days after that deposit, the appellant withdrew the bulk of the money, namely, Ug. Shs. 96,000,000/= Within the next nineteen days the account was virtually empty. All the funds were withdrawn by the appellant personally from the account. PW2 who was supervised by the appellant to prepare false documents relating to false accountability testified about falsehoods and forgeries.

Apparently, many other entities and individuals who got the money mismanaged that
money. Therefore, in 2008, at the behest of grantee of the money (the Global Fund), the Government set up a commission of inquiry led by Hon. Mr. Justice Ogoola, the retired Principal Judge of the High Court. The Commission's recommendations included prosecution of those entities and individuals [such as the appellant] found to have mismanaged the money granted to them. The appellant was accordingly charged. During his trial, the prosecution adduced evidence showing that the appellant or his Company did not carry out even a single activity that they had contracted to carry out. Instead the appellant instructed the 3rd Company Director, Geoffrey Nkurunziza [PW2] to prepare forged documents in an attempt to account for the funds. Although the prosecution adduced necessary evidence proving, \textit{inter alia}, that the documents were false and forged, the appellant decided to remain silent at the conclusion of the prosecution case. Naturally, the trial judge believed the prosecution case and convicted the appellant of the offences of embezzlement and forgery and sentenced him to terms of 10 years for embezzlement and 3 years for forgery. The appellant was not satisfied with the convictions and sentences. He appealed to the Court of Appeal on eight grounds challenging his convictions and sentences.

The Court of Appeal dismissed his appeal, upheld the convictions, sentences and the compensation order. Hence this appeal which is based on five grounds. At our prompting Mr. Kakuru sought leave which we granted to amend those grounds.

During the hearing of the appeal, the appellant was represented by Mr. Kenneth Kakuru of Kakuru & Co. Advocates assisted by Mr. Lumonya A. while the
respondent was represented by Mr. Odumbi James Owere, Senior Principal State Attorney [SPSA].

Although Mr. Kakuru indicated at the beginning of his oral submissions that he wanted to argue grounds 1 and 2 together followed by grounds 3 and 4 also together and ground 5 separately, he essentially argued grounds 1 to 4 together and ground 5 separately. Mr. Lumonya argued the forgery aspect of the appeal which is part of the 1st ground of appeal. This is not surprising because the first four grounds refer basically to the same thing.

**PRELIMINARY OBJECTION:**

Before Mr. Kakuru and his colleague could make submissions, Mr. Odumbi, SPSA, objected to the inclusion of grounds 3, 4 and 5 in the memorandum of appeal on the basis that they were not raised in the Court of Appeal and, therefore, there was no basis for including and arguing them in this Court because the appellant would be criticizing the Court of Appeal on matters upon which the Court of Appeal did not have opportunity to pronounce itself. He relied on the cases of Twinomugisha A and 2 Others vs. Uganda [Supreme Court Criminal Appeal No. 35 of 2002] and Tarinyebwa Mubarak And Another Vs Uganda [Supreme Court Criminal No. 07 of 2000] Mr. Kakuru in response contended that the points raised in grounds 3, 4 and 5 were considered by the Court of Appeal at pages 4 and 6 and 7 of its judgment. He also contended that the order for compensation of Shs.100,000,000/= was not illegal.
We overruled the objection because we were satisfied that the Court of Appeal had decided on the points forming the basis of the last three grounds of Appeal. For instance, at page 6 of its judgment, the Court of Appeal upheld the trial judge when the court stated that:-

1) The appellant was the Managing Director and Sole Bank account signatory for the Company called Uganda Centre for Accountability [UCA].

2) The Company solicited and obtained from Uganda Government Ug.Shs.12D,00D,000/= to carry out HIV/AIDS, TB and Malaria related activities on behalf of the Government.

3) The money was deposited on the Company account No.500371005 to which only the appellant was the sole signatory.

4) The money was withdrawn by the appellant during the month of March and April, 2005.

5) The appellant and his Company did not do anything whatever in Rakai, Mbarara, Kabale and Ntungamo Districts towards the fulfillment of his contractual obligation entered into by the Company with the Ministry of Health on 10th February, 2005.

6) It is only the appellant who withdrew the money from the bank who is in position to tell us what happened to the money. At the trial in the High Court, the appellant was given opportunity to tell the people of Uganda what happened to the money. He chose to keep quiet. That of course) was his constitutional right but the right is not absolute as it is fettered by section 105 of the Evidence Act which provides.

   “When a person is accused of any offence ................................the burden of proving any fact especially within the knowledge of that person is upon him or her, ...............”

Again at page 7 of the same judgment, the Court of Appeal expressed itself this way:-

   In the instant case) the prosecution proved beyond reasonable doubt that the appellant withdrew the money in question from his Company’s account. It is incumbent upon him to tell us where the money went since the matter is especially within his knowledge. After the appellant missed
the opportunity in the High Court to explain what happened to the money/, his Lordship Justice John Bosco Katutsi wondered:-

(Wow the question is: where is money? Is it reasonable to suppose that the accused who was the sole operator of UCA account does not know where the money went.

The learned judge concluded:-  
In my humble judgment, it is not only unreasonable, but it is also ridiculous to suggest that the accused does not know where the money went.

It went into his own stomach and to use the language of section 268(b) of the Penal Code Act) he embezzled it. The evidence may well be said to be circumstantial It is no derogation of evidence to say that it is circumstantial witnesses may tell Lies, circumstances well interpreted cannot. In full agreement with the opinion of the gentlemen assessors; I have no hesitation in finding the accused guilty and convict him on count 1.”

The trial judge made the compensation order which was upheld by the Court of Appeal. From the foregoing quotations, we were satisfied that the three grounds arise from matters upon which the Court of Appeal had pronounced itself. It was because of these reasons that we overruled the objection to the three grounds.

COUNSEL’S ARGUMENT ON GROUNDS 1, 2, 3 AND 4:
We note that grounds 1 to 4 are about the conviction of the appellant for embezzlement 'and forgery. We propose to consider them together. They are worded as follows-

1) The learned Judges of Appeal erred in law and fact when they upheld a judgment based on insufficient evidence and found that the charge of embezzlement and forgery had been proved against the appellant.

2) The learned Judges of Appeal erred in law and fact when they
upheld the trial finding that the appellant was guilty of embezzlement of money belonging to a company without evidence that the said company ever lost any money or incurred any loss.

3) The learned Judges of Appeal erred in law and fact when they failed to find that the trial judge had erred when he found that the company was Sham without any evidence to that effect, and having found so went ahead to convict the appellant of embezzling money from a Sham non-functional none existent company.

4) The learned Judges of Appeal erred in law and fact when they failed to find that the trial Judge had erred when he found that the appellant had embezzled Global Fund money but went ahead to convict him of embezzling, Uganda Centre for Accountability money as Director.

When arguing grounds 1 and 2, Mr. Kakuru actually submitted on all the four grounds. Learned counsel begun by submitting that the prosecution did not prove embezzlement. He contended that the 1st count of the indictment did not state that Shs.120m/= belonged to UCA Company and therefore the ownership of the money was not set out in the indictment in terms of s.268 of the Penal Code Act. He referred to page 8 of the judgment of the Court of Appeal and argued that if UCA was a sham Company as described by the two Courts below, then the prosecution failed to prove that the appellant embezzled money from himself. Learned counsel argued that the trial judge shifted the burden of proof to the appellant by relying on the provisions of s.105 of the Evidence Act.

Mr. Lumonya made submissions as regards the forgery aspects of the appeal. This is part of the first ground in the memorandum of appeal. Learned counsel in effect criticized the trial judge and Court of Appeal for holding that the appellant procured the commission of the offence of forgery. He contends [we think erroneously] that
the appellant was never charged with forgery nor did the appellant procure the commission of the offence of forgery in terms of section **19(2)** of the Penal Code Act.

In reply Mr. Odumbi opposed the appeal. He submitted in effect that counsel for the appellant failed to appreciate the import of S.268 (g), and S.254 (2) (C) of the Penal Code Act which refer to a special owner. He submitted that there was sufficient evidence before the trial judge and the Court of Appeal proving that as the Managing Director of UCA, the appellant through UCA had access to money belonging to the Global Fund and MOH. That the description by the two courts of UCA as sham Company was used during sentencing. On forgery, Mr. Odumbi argued that there was sufficient evidence proving that the appellant procured another person to commit forgery. He relied on S.19 (2) of the Penal Code Act.

**COURTS CONSIDERATION:**
The excerpts we quoted earlier show the two Courts considered evidence on embezzlement. The first count in the indictment was framed this way

**COUNT 1:**

**STATEMENT OF OFFENCE:**

**EMBEZZLEMENT CIS 268 (b) and (g) of the PENAL CODE ACT:**

**PARTICULARS OF OFFENCE**
TEDDY SSEZI CHEEYE during the period from March to December, 2005 in Kampala District being a Director in a company known as "Uganda Centre for Accountability" stole Ushs.100,494,300/= [One Hundred Million Four Hundred and Ninety Four Thousand, Three Hundred Eighthillings Only] to which he had access by virtue of his office.

S. 268 in so far as relevant states as follows-
"Any person who being-

(a) ......................................................
(b) a director, officer or employee of a company or corporation;
steals any chattel, money or valuable security-
(c) .............................................................................................................
(g) to which he or she has access by virtue of his office,

Commits the offence of embezzlement and shall on conviction be sentenced to
imprisonment for not less than fourteen years.

With respect, we think that Mr. Kakuru addressed us on the basis of the old law of
embezzlement. We agree with the learned SPSA that the manner in which the appellant got
the money for which he never accounted, brings him within the ambit of S.268 (b). We are
not persuaded by the arguments of learned counsel for the appellant. 8.254 defines theft. For
instance S.254 (2) (C) states-

A person who takes or converts anything capable of being stolen is deemed to do so
fraudulently if he or she does so with any of the following intents:

(c) an intent to part with it on a condition as to its return which the person taking or
converting may be unable to perform, and "Special Owner" includes any person who
has any charge or lien upon the thing in question or any right arising from or
dependent upon holding possession of the thing in question.

We are satisfied that the appellant was correctly convicted of the offence of embezzlement.
We are equally satisfied that on the facts of this case, both the learned trial judge and the
learned Justices of Appeal correctly relied on S.105 of the Evidence Act for the view that
the appellant was the only person who knew how the money put on UCA account of which
he was the only and sole signatory was spent. The fact that the appellant supervised PW2
to make false vouchers and other false reports about accountability of money certainly
shows he knew where the money was or went. It was upon him to explain. When he exercised his right wrongly not to testify, he took risk. There was no shifting of the burden of proof in the circumstances of this case.

Further we are of the considered opinion that the arguments by appellant's counsel about what he appears to refer to as a defective indictment on first count are technical and have not been shown to have occasioned any injustice to the appellant.

**FORGERY:**

In the High Court the appellant was charged with forgery in counts 11, 13, 15, 17, 19, 21, 23 and 25. The learn trial judge considered these at pages 13 to 14 in the following words-

*I now turn to the group of counts charging the accused with forgery C/s 342, 347 and 19(2) of the Penal Code Act. Section 342 defines the offence of forgery as the making of a false document with intent to defraud or deceive. Section 345 (a) provides that a person makes a false document who makes a document purporting to be what in fact it is not.*

*To defraud is to deceive by deceit and to deceive is to induce a man or woman to believe that a thing is true which is false. Shortly put, to deceive is falsehood to induce a state of mind; to defraud is by deceit to induce a course of action. R.V. WINES [1953]2ALL E.R ER.1497. Hereinabove I have given a graphic account of how exhibit P5 was false. Those documents told lies about themselves and were intended to defraud and deceive PMU (Programme Management Unit). I have here in above commented on the involvement of PW2 Nkurunziza Jeffrey. He testified that he prepared those documents on the instructions of the accused.*

*Here in above I have said why I believe his evidence without an iota of hesitation Section 19(2) of the Penal Code Act enacts as here under the following:*
Any person who procures another to do any act of such a nature that if he or she had done the act or made the omission would have constituted all offence on his or part is guilty of an offence of the same kind..............”

A procurer uses the hands and eyes of the person procured to commit a crime as his own. The actions of the person procured become the action of the procurer. In fact the section says, not merely that a person who procures another to commit an offence may be convicted of the offence but that (’l1e or she may be charged with doing the act or making the omission. In my humble opinion citing Section 19(2) of the Penal Code Act in the indictment was superfluous. Mentioning the act of procuring in the particulars of the offence in my opinion would suffice. In complete agreement with the gentlemen assessors I find the accused guilty on each and every count charging him with forgery C/s 342 and punishable under section 347 of the Penal Code Act. And convict him.

The Court of Appeal [pages9 to 13] evaluated the evidence on record after assessing the consideration of that evidence by the learned trial judge before the court upheld his conclusions. We agree with the two courts that the appellant committed the offence of forgery.

It is true in counts 11, 13, 15, 17, 19, 21 and 23, the appellant was indicted for forgery. In their respective evidence PW2 and Kiberu Samuel [PW3] testified that the appellant instructed them to write out relevant documents. Those documents were forged. Indeed PW3 testified that he could not identify some of the signatures on those documents. It is our considered opinion that the evidence of PW2 and PW3 which was believed by the trial judge places the appellant squarely within the ambit of S.19 (2) of the Penal Code Act. That subsection (2) reads as follows-

Any person who procures another to do or omit to do any act of such nature that
If he or she had done that act or made the omission, the act or omission would have constituted an offence on his or her part is guilty of an offence of the same kind and is liable to the same punishment as if he or she had done the act or made the omission; and he or she may be charged with doing the act or making the omission.

There is no doubt in our minds that the evidence on the record proved that the appellant procured PW2 to commit the forgery. Grounds 1 to 4 must fail.

GROUND 5:

The learned Judges of Appeal erred in law and fact when they failed to find that the trial judge erred when he ordered the appellant to refund money to the Global Fund having convicted him of embezzling money from a Private Limited Company the Uganda Centre of Accountability Limited

Mr. Kakuru submitted that the Global Fund was not an aggrieved party and, therefore, it was wrong for the trial judge to order the appellant to compensate money to the Global Fund. On the other hand Mr. Odumbi, SPSA, submitted that the appellant was not convicted of embezzling UCA money but of accessing Global Fund.

The evidence of Muhamed Kezala [PW1] the former Permanent Secretary in the Ministry of Health at the time Government received the money from Global Fund clearly shows that the Global Fund had great interest in the proper use of its money. Thus, according to him, Global Fund caused the Uganda Government to create the Project Management Unit [PMU] to manage the day-to-day work of the Fund in Uganda. When the Global Fund discovered that its money in Uganda was being mismanaged, it requested the Government of Uganda to disband PMU which was done after the Ogoola Commission was established. It is the Global Fund which set out methodology for management of the money. In these circumstances it is very clear that the Global Fund is the aggrieved party envisaged by S.270 of the Penal Code.

On the evidence of PW1, therefore, there is no doubt in our minds that the order to compensate the Global Fund was proper. Ground five must, therefore, fail.

It was because of the foregoing reasons that we dismissed the appeal.
Delivered at Kampala this 21st............................day of December..2011.

BJ Doki,
Chief Justice

JWN Tsekooko,
Justice of the Supreme Court.

CNB Kitumba,
Justice of the Supreme Court,

J. Tumwesigye,
Justice of the Supreme Court.

Dr. EM Kisaakye,
Justice of the Supreme Court
Area 235,796km² (91,041 square miles), similar to Great Britain or the state of Oregon.

Location Equatorial Africa between latitudes 4°12’N and 1°29’S and longitudes 29°23’W and 25°E. Bordered by Rwanda (1,469km) and Tanzania (396km) to the south, Kenya (933km) to the east, Sudan (435km) to the north, and the Democratic Republic of Congo (DRC) for 765km to the west.

Altitude 85% of the country lies between 900m and 1,500m above sea level. The lowest region is the Lake Albert basin (612m) and the Albert Nile. The highest point is Mount Stanley (Rwenzori) at 5,109m.

Population 28.2 million (September 2006), 13% urban. Previous results were 16.7 million (1991), 12.6 million (1980), 9.5 million (1969), 6.5 million (1959), 5 million (1940), 3.3 million (1931), 2.9 million (1921) and 2.5 million (1911).  

Capital Kampala (population 1.2 million in 2002)

Other major towns Gulu, Lira, Jinja. Other towns with populations of more than 50,000 are Mbale, Mbarara, Masaka, Entebbe, Kasese and Njeru in descending order.

Language English, the official language, is spoken by most reasonably educated Ugandans. Among the country’s 33 indigenous languages, Luganda is the closest to being a lingua franca.

Religion Christian (85%), Islam (11%), also some Hindu and Jewish, while tribes such as the Karimojong adhere to a traditional animist faith.

Currency Uganda shilling (Ush) 2,000–2,200 = US$1 in 2009 (NB: A rate of Ush2,000/US$1 was used when updating this book)

Head of State President Yoweri Museveni (since 1986)

Time zone GMT+3

International dial code +256 (Kampala: +256)

Electricity 240 volts at 50Hz

Mineral resources Copper, cobalt, limestone, salt, alluvial gold. In July 2006, significant oil reserves were discovered below the shores of Lake Albert at Kaiso-Tonya.

Major exports Coffee (55%), fish (7.5%), tea (5%), tobacco (4%)

Other crops Bananas, maize, millet, sorghum, cotton, rice, cassava, groundnuts, potatoes

GDP US$7 million per annum (US$1,800 per capita, annual growth rate 3.4% in 2009)

Human development Average life expectancy 45.7 years; under-five mortality rate 13.7%; rate of HIV infection 8–10%; primary school completion 38%; secondary school enrolment 13%; adult literacy 65%; access to safe water 45%; access to electricity 4%

Land use Arable land 25%; agriculture 9%; pasture 9%; forest and woodland 26%; open water 18%; marsh 4%; other 7%

National flag Two sets of black, yellow and red horizontal stripes, with a white central circle around the national bird, the grey crowned crane

National anthem Oh! Uganda, May God uphold thee, We lay our future in thy hand, United, free, for liberty, Together, We always stand.

Oh! Uganda the land of freedom, Our love and labour we give, And with neighbours all at our country’s call, In peace and friendship we'll live.

Oh! Uganda the land that feeds us, By sun and fertile soil grown, For our own dear land we'll always stand, The Pearl of Africa’s crown.

Uganda lies on the elevated basin which rises between the eastern and western branches of the Great Rift Valley. Most of the country is over 1,000m in altitude, and the topography is generally quite flat. The most mountainous part of Uganda is the Kigezi region in the southwest. North of Kigezi, on the Congolese border, the 70km-long and 30km-wide Rwenzori Mountains forms the highest mountain range in Africa; Margherita Peak (5,109m) on Mount Stanley, the highest point in the Rwenzi, is exceeded in altitude on the African continent only by the free-standing Mount Kenya and Mount Kilimanjaro. Other large mountains in Uganda include the volcanic Virunga range on the border with Rwanda and the DRC, and Mount Elgon, a vast extinct volcano straddling the Kenyan border. There are several smaller volcanic mountains in the north and east.

With the exception of the semi-desert in the extreme northeast, most of Uganda is well watered and fertile. Almost 25% of the country’s surface area is covered by water. Lake Victoria, the largest lake in Africa and second-largest freshwater body in the world, is shared by Uganda with Tanzania and Kenya. Lakes Albert, Edward and George lie on or close to the Congolese border, while the marshy and ill-defined Lake Kyoga lies in the centre of Uganda. At Jinja, on the Lake Victoria shore, Owen Falls (now submerged by the Owen Falls Dam) is regarded as the official source of the Nile, the world’s longest river. The Nile also passes through lakes Kyoga and Albert.

Uganda’s equatorial climate is tempered by its elevated altitude. In most parts of the country, the daily maximum is between 20°C and 27°C and the minimum is between 12°C and 18°C. The highest temperatures in Uganda occur on the plains immediately east of Lake Albert, while the lowest have been recorded on the glacial peaks of the Rwenzori. Except in the dry north, where in some areas the average annual rainfall is as low as 100mm, most parts of Uganda receive an annual rainfall of between 1,000mm and 2,000mm. There is widespread variation in rainfall patterns. In western Uganda and the Lake Victoria region it can rain at almost any time of year. As a rough guide, however, the wet seasons are from mid-September to November and from March to May (see the Climate chart box overleaf).

Africa is popularly portrayed as a continent without history. Strictly speaking, this is true, as history by definition relies upon written records, and there are no written records of events in central Africa prior to the mid 19th century. All the same, it would be foolish to mistake an absence of documentation for an absence of incident, as do those historical accounts of African countries which leap in the space of a paragraph from the Stone Age to the advent of colonialism.
which are to be expected in any folk history, the oral traditions of Uganda seem to me to be a reasonably accurate and consistent account of actual events.

**A NOTE ON TERMINOLOGY** Most Bantu languages use a variety of prefixes to form words so that several similar words are made from a common root. When discussing the various peoples and kingdoms of Uganda, this can be somewhat confusing.

The most common prefixes are *mu-*-, *ba-* and *bu-*-, the first referring to an individual, the second to the people collectively, and the third to the land they occupy. In other words, a Muganda is a member of the Baganda, the people who live in Buganda. The language of the Baganda is Luganda and their religion and customs are Kironga. To use another example, the Banyoro live in Bunyoro, where they speak Runyoro and follow Kinyoro customs.

There is not a great deal of consistency in the use of these terms in the English-language books. Some use the adjective Ganda to describe, for instance, the Ganda kabaka (King of Buganda). Others will call him the Muganda or Buganda kabaka. Standards are more flexible when dealing with ethnic groups other than the Baganda: the Ankole people are usually referred to as the Banyankole but I have never seen the kingdom referred to as Banyankole; the people of Toro are often referred to as the Batoro but I have not come across the term Butoro. In this following historical account, I’ve generally stuck with what seems to be the most common usage: prefixes for -ganda, -nyoro and -soga; no prefixes for Ankole and Toro.

The name Uganda of course derives from the word Buganda. The most probable reason why the British protectorate came to be known by this abbreviated name is that most Europeans had their initial contact with Buganda through KiSwahili-speaking guides and translators. In KiSwahili, the prefix *u-* is the equivalent of the Luganda *bu-* so that the Swahili speakers would almost certainly have referred to the Ganda kingdom as Uganda. Although many Baganda writers evidently find it annoying that their country has been misnamed in this way, it does simplify my task that there is a clear distinction between the name of Uganda the country and that of Buganda the kingdom.

When referring to the leaders of the various Ugandan groups, the title *kabaka* is bestowed on the Buganda king, the title *omakuna* on the Banyoro king, and *omogabe* on the Ankole king.

**EARLY PREHISTORY** It is widely agreed that the entire drama of human evolution was enacted in the Rift Valley and plains of east Africa. The details of this evolution are obscured by the patchy nature of the fossil record, but the combination of DNA evidence and two recent ‘missing link’ discoveries (the fossils of a 4.4-million-year-old hominid in the Ethiopian Rift Valley and a 5.6-million-year-old jawbone unearthed in the Turkana Basin in northern Kenya) suggests that the ancestors of modern humans and modern chimpanzees diverged roughly five to six million years ago.

Uganda has not thrown up hominid remains of comparable antiquity to those unearthed in Kenya, Tanzania and Ethiopia, largely because there are few places in the country where fossils of a suitable age might be sought. Nevertheless, it is reasonable to assume that Uganda has supported hominid life for as long as any other part of east Africa, an assumption supported by the discovery in Moroto district of fossils belonging to the semi-bipedal proto-hominid *Morotopithecus*, which is thought to have lived about 15 million years ago.

Stone-Age implements dating to over one million years ago have been discovered throughout east Africa, and it is highly probable that this earliest of human
Gulu, the creator, sent his daughter Nambi and her siblings on a day trip to earth, where they chanced upon its only human inhabitant: poor lonely Kintu, who lived in the vicinity of Lake Wamala, west of present-day Kampala, his sole companion a beloved cow. Nambi was at once attracted to Kintu and upset at his enforced solitude, and she determined there and then to marry and keep him company on earth.

Nambi’s brothers were appalled at her reckless decision, and attempted to dissuade her, eventually reaching the compromise that she and Kintu would return to heaven to ask Gulu’s permission to marry. Gulu reluctantly blessed the union, but he did advise the couple to descend to earth lightly packed and in secret, to avoid being noticed and followed by Nambi’s brother Walumbe, the spirit of disease and death.

The next morning, before dawn, the delighted newlyweds set off for earth, carrying little other than Nambi’s favourite chicken. When they arrived, however, Nambi realised that she had forgotten to bring millet to feed the chicken and decided to return to heaven to fetch it. Kintu implored Nambi to stay, fearing that she might encounter Walumbe, and suggested that a substitute chicken feed would surely be available on earth. But Nambi ignored Kintu’s pleadings and returned to heaven, where sure enough she bumped into Walumbe, who — curious as to where his sister might be headed so early in the morning — followed her all the way back to join Kintu.

A few years later, Kintu, by then the head of a happy family, received a visit from Walumbe, who insisted that he be given one of their children to help with his household chores. Heedful of his father-in-law’s warning, Kintu refused Walumbe, who was deeply angered and avenged himself by killing Kintu’s eldest son. When Kintu left, Walumbe returned to heaven to ask for assistance. Gulu chastised him for ignoring the warning, but he agreed nevertheless to send another son Kayikuzu to bring Walumbe back to heaven. Walumbe refused to leave earth, however, so that Kayikuzu was forced to try and evict him against his will. The brothers fought violently, but the moment Kayikuzu gained an upper hand, Walumbe vanished underground. Kayikuzu dug several large holes, found Walumbe’s hiding place, and the two resumed their fight, but soon Walumbe fled into the ground once again, and so the pattern repeated itself.

After several days, Kayikuzu, now nearing exhaustion, told Kintu and Nambi he would try one last time to catch Walumbe, at the same time instructing them to ensure that their children stayed indoors and remained silent until his task was done. Kayikuzu chased Walumbe out of hiding, but some of Kintu’s children, who had disobeyed the instruction, saw the sprawling brothers emerge from underground and they started screaming, giving Walumbe the opportunity to duck back into his subterranean refuge. Kayikuzu, angry that his earthly charges had ignored his instructions, told them he was giving up the chase, and the embarrassed Kintu did not argue. He told Kayikuzu to return to heaven and said ‘if Walumbe wishes to kill my children, so be it. I will keep having more and the more he kills, the more I will have. He will not be able remove them all from the face of the earth.’

And so ends the Kiganda creation myth, with its Old Testament association between human disobedience and the arrival of death and disease on earth. And one question raised by this story is the connection between Kintu the first man and Kintu the founding Kabaka of Buganda. It is often assumed that these two seminal Kintus of Kiganda lore are one and the same figure, a mythical embodiment of the creation of both mankind and Buganda. But certain Mbuganda traditionalists assert otherwise. Kintu, the first person on earth, they concede, is clearly an allegorical figure whose story has no basis in historical fact. But Kintu the founder of Buganda is a wholly separate person, and quite possibly a genuine historical figure.

The ‘two Kintus’ claim is legitimised by the contrast between the unambiguous absence of other humans in the creation myth, and the presence of humanity explicit in any foundation legend in which one king defeats another king and rules over his former subjects. There is a popular Kiganda saying, derived from the mythical Kintu’s last words, that translates as ‘Kintu’s children will never be removed from the face of the earth’. And if this saying does pre-date the foundation of Buganda, then it is plausible — even likely — that the founder of Buganda would have adopted Kintu as his throne name, with the deliberate intention of legitimising his rule by association with the mythical father of mankind.

Technologies arose in the region. For a quarter of a million years prior to around 8000BC, Stone-Age technology was spread throughout Africa, Europe and Asia, and the design of common implements such as the stone axe was identical throughout this area. The oldest Stone-Age sites in Uganda, Nsongezi on the Kigezi River and Sango Bay on Lake Victoria, were occupied between 150,000 and 50,000 years ago.

The absence of written records means that the origin and classification of the modern peoples of east and southern Africa are a subject of some academic debate. Broadly speaking, it is probable that east Africa has incurred two major human influxes since 10000BC, on both occasions, by people from west Africa.

The first of these influxes probably originated somewhere in modern-day DR Congo about 3,000 years ago. The descendents of these invaders, known locally as the Bambuti or Batwa, were slightly built hunter-gatherers similar in culture and physique to the Khoisan of southern Africa and the pygmy people who still live in certain rainforests near the Congolese border. The rock paintings on several shelters near Mbale in eastern Uganda show strong affinities with Khoisan rock art, suggesting that at one time these people occupied most of Uganda, as did they most of east and southern Africa at the beginning of the 1st millennium AD.

The second human influx, which reached the Lake Victoria hinterland in roughly 2000BC, apparently coincided with the spread of Iron-Age technology in the region. There is good reason to suppose that the people who brought iron-working techniques into the region were the ancestors of the Bantu speakers who probably occupied most of sub-equatorial Africa by AD500. Few conclusive facts are known about the political and social structures of the early Bantu-speaking peoples who inhabited Uganda, but it is reasonable to assume that they lived in loosely assembled chiefdoms similar to the pre-colonial ntemi structures which existed in the Tanzania interior until colonial times.

It has been established beyond doubt that relatively centralised political systems made an early appearance in Uganda. The origin of the first of these kingdoms, Bunyoro-Kitara, is shrouded in legend, and the rough date of its foundation has yet to be determined by scholars. Nevertheless, a number of archaeological sites in the Mubende and Ntusi districts of central Uganda suggest that Bunyoro-Kitara was established long before AD1500.

**THE BATEMBUZI AND BACWEZI (AD1000–1500)** Kinyoro and several other local oral traditions assert that the first dynasty to rule over Bunyoro-Kitara was the Batembuzi. These traditions place the Batembuzi as having ruled between AD1100 and AD1350, and there is ample physical evidence at Ntusi to confirm that a highly centralised society existed in this area as early as the 11th century.

The origin of the Batembuzi is obscured by legend and myth, but they must have ruled for several generations, as various local traditions list between ten and
22 dynastic kings. Oral traditions name Ruhanga, the King of the Underworld, as the founder of the dynasty (the Kinyoro Underworld is evidently closer to the Christian notion of heaven than to that of hell) and they consider the Batembuti to have been deities with supernatural powers. Descriptions of the Batembuti's physical appearance suggest that they may have migrated to the area from modern-day Sudan or Ethiopia. Whatever their origins, they evidently became culturally and linguistically integrated into the established Bantu-speaking culture of Bunyoro-Kitara.

Most traditions identify Isuzu as the last Batembuti ruler. Isuzu is said to have fallen in love with a princess of the Underworld, and to have followed her into her homeland, from where he couldn't find his way back to Bunyoro-Kitara. Later, Isuzu's son Simbwa visited Bunyoro-Kitara, and he impregnated the daughter of the unpopular stand-in king, Bukuku. Their child, Ndahura, was thrown into a river shortly after his birth at the order of Bukuku, who had been told by diviners that he should fear any child born by his daughter; but his umbilical cord stuck in a tree, keeping him afloat, and he was rescued by a royal porter. Ndahura was raised by the porter and, after he reached adulthood, he drove Bukuku's cattle from his home, stabbed the king in the back, and claimed the throne as his own. His claim was supported by the people of Bunyoro-Kitara, who accepted that the true royal lineage was being restored because of Ndahura's striking physical resemblance to his grandfather Isuzu.

Ndahura – 'the uprooter' – is remembered as the founder of the Bacwezi dynasty. The Bacwezi were most probably migrants from Ethiopia or Sudan (hence the physical resemblance between Ndahura and Isuzu?), who, like the Batembuti before them, adopted the language and culture of the peoples they encountered. They assumed rule. Ndahura was almost certainly a genuine historical figure, and he probably came to power in the second half of the 14th century. In addition to having supernatural powers, Ndahura is traditionally credited with introducing Ankole cattle and coffee cultivation to Uganda.

The Mubende and Ntusi areas are identified by all traditional accounts as lying at the heart of Bunyoro-Kitara during the Bacwezi era, an assertion which is supported by a mass of archaeological evidence, notably the extensive earthworks at Bigo bya Mugyenyi and Muns. This suggests that the Bacwezi Empire covered most of Uganda south and west of the Nile River. Traditional accounts claim that it covered a much larger area, and that Ndahura was a militant expansionist who led successful raids into parts of western Kenya, northern Tanzania and Rwanda.

Ndahura was captured during a raid into what is now northern Tanzania. He eventually escaped, but he refused to reclaim the throne, instead dedicating his life in favour of his son Wamala. Ndahura then disappeared, some claim to the Fort Portal region. He abandoned his capital at Mubende Hill to his senior wife, Nakayima, who founded a hereditary matriarchy that survived into the colonial era. Wamala moved his capital to an unidentified site before eventually relocating it to Bigo bya Mugyenyi.

Considering the immense Bacwezi influence over modern Uganda – almost all the royal dynasties in the region claim to be of direct or indirect Bacwezi descent – it is remarkable that they ruled for only two generations. Tradition has it that Wamala simply disappeared, just like his father before him, thereby reinforcing the claim that the Bacwezi were immortal. It is more likely that the collapse of the dynasty was linked to the arrival of the Luo in Bunyoro-Kitara towards the end of the 15th century. Whatever their fate, the Bacwezi remain the focus of several religious cults, and places like the Nakayima Tree on Mubende Hill and the vast earthworks at Bigo bya Mugyenyi near Ntusi are active sites of Bacwezi worship to this day.

**BUNYORO, BUGANDA AND ANKOLE (1500–1650)**

In the second half of the 15th century, the Nilotic-speaking Luo left their homeland on the plains of southeastern Sudan, and migrated southwards along the course of the Nile River into what is now Uganda. After settling for a period on the northern verge of Bunyoro-Kitara at a place remembered as Pubungu (probably nearly modern-day Pakwach), they evidently splintered into three groups. The first of these groups remained at Pubungu, the second colonised the part of Uganda west of the Nile, and the third continued southwards into the heart of Bunyoro-Kitara.

It was probably the Luo invasion which ended Bacwezi rule over Bunyoro-Kitara. The Bacwezi were succeeded by the Babito dynasty, whose founder Rukidi came to Bunyoro from Bukidi (a Bunyoro name for anywhere north of Bunyoro). The tradition is that Rukidi was the son of Ndahura and a Mubidi woman, and that he was invited to rule Bunyoro by the Bacwezi nobles before they disappeared. Many modern scholars believe that the Luo captured Bunyoro by force, and that they integrated themselves into the local culture by claiming a genetic link with the Bacwezi, adopting several Bacwezi customs and rapidly localising the L mutu tongue.

The arrival of the Luo coincided with the emergence of several other kingdoms to the south and east of Bunyoro, notably Buganda and Ankole in modern-day Uganda, as well as Rwanda, Burundi and the Karagwe kingdom in what is now central Tanzania. All these kingdoms share a common Bacwezi heritage. Kinyoro and Karagwe traditions agree that Buganda was founded by an offshoot of the Babito dynasty, while Ankole traditions claim that Ruhinda, the founder of the kingdom, was another son of Ndahura. Ankole retained the strongest Bacwezi traditions, and its most important symbol of national unity was a royal drum or Bogendeza said to have been owned by Wamala.

Buganda was the largest and most influential of these kingdoms until the end of the 17th century. It had a mixed economy, a loose political structure, and a central trade position on account of its exclusive control of the region's salt mines. Buganda was presided over by an omakuma, who was advised by a group of special counsellors. The omakuma was supported at a local level by several grades of semi-autonomous chiefs, most of whom were royally appointed loyalists of aristocratic descent.

Prior to 1650, Buganda was a small kingdom ruled over by a kabaka. Unlike those in Bunyoro, the local chiefs in Buganda were hereditary clan leaders and not normally of aristocratic descent. Buganda was the most fertile of the Ugandan kingdoms, for which reason its economy was primarily agricultural. Ankole, by contrast, placed great importance on cattle, and its citizens were stratified into three classes: the cattle-owning Bahima, who claimed to be descendants of Ruhinda, and the agriculturist Baire. Ankole was ruled by an omuga. As with the Omukama of Bunyoro and the Kabaka of Buganda, this was a hereditary title normally reserved for the eldest son of the previous ruler. Positions of local importance were generally reserved for Bahima aristocrats.

Another identifiable polity to take shape at around this time was the Busoga, which lies to the east of Buganda and is bordered by Lake Kyoga to the north and Lake Victoria to the south. The Basoga show strong linguistic and cultural affiliations to the Buganda, but their oral traditions suggest that their founder, remembered by the name of Makama, came from the Mount Elgon region and had no Bacwezi or Babito links. Busoga has apparently assimilated a large number of cultural influences over a few centuries, and it seems to have remained curiously detached from the mainstream of Ugandan history, probably by allying itself to the dominant power of the time.

An indication of Bunyoro's regional dominance in the 16th century comes from...
 additional accounts of the wars fought by Olumi I, the fifth omakuma. Olumi is said to have attacked Buganda and killed the kabaka in battle, but he declined to occupy the conquered territory, opting instead to attack Ankole (of the several explanations put forward for this superficially peculiar course of action, the only one that rings true is that Olumi was after cattle, which were scarce in Buganda but plentiful in Ankole). Olumi occupied Ankole for some years, and according to Kinyoro traditions he withdrew only because of a full solar eclipse, an event which Banyoro traditionalists still consider to be portentous. If this tradition is true (and there is no reason to doubt it), Olumi must have been ruling Bunyoro at the time of the solar eclipse of 1520. Assuming that the four Babito rulers who preceded Olumi would together have ruled for at least 30 or 40 years, this suggests that the Babito dynasty and the Buganda and Ankole kingdoms were founded between 1450 and 1500.

**BUNYORO, BUGANDA AND ANKOLE (1650–1850)**

At its peak in the 17th century, Bunyoro covered an area of roughly 80,000km² south and west of the Nile and Lake Victoria. Buganda was at this time no more than 15,000km² in area, and Ankole covered a mere 2,500km² north of the Kagera River. Similar in size to Buganda, the relatively short-lived Kingdom of Mpororo, founded in about 1650, covered much of the Kigezi region of Uganda, as well as parts of what is now northern Rwanda, until its dissolution in the mid 17th century.

The period between 1650 and 1850 saw Bunyoro shrink to a fraction of its former area and relinquish its regional dominance to Buganda. The start of this decline can be traced to the rule of Omakuma Cwa I (or Gwamail) in the late 17th or early 18th century. While his reign, Bunyoro suffered an epidemic of cattle disease. Cwa ordered all the cattle in the kingdom to be killed, and he then raided Ankole to seize replacements. Cwa occupied Ankole for three years, after which he attempted to extend his kingdom into Buganda. He was killed in Rwanda and his returning troops were evicted from Ankole by Omugabe Ntare IV, who thereby earned himself the nickname Kibabunyoro – ‘the scourge of Bunyoro’. After chasing out the Banyoro, Ntare IV extended Ankole’s territory north to the Karonga River.

Bunyoro descended into temporary disarray as the aristocracy tried to cover up the omakuma’s death, and the empty throne was seized by one of his sisters, stimulating a succession war that lasted for several years. Buganda took advantage of Bunyoro’s weakness by taking control of several of its allied territories, so that in the years following Cwa’s death it doubled in area. It is unclear whether Buganda acquired these territories by conquest or merely by exploiting the fracturing loyalty of chiefs who were traditionally allied with Bunyoro.

Also linked to the upheavals following Cwa’s death was the migration of the Palwo, the name given to the Luo speakers who had settled in the north of Bunyoro two centuries earlier. Some of the Palwo settled in Achioli, the part of northern Uganda east of the Albert Nile, where they founded several small Luo-speaking kingdoms modelled along the traditions of Bunyoro. Others migrated through Busoga in eastern Uganda to the Kismu region of what is now western Kenya, where they are still the dominant group. A few groups settled in Busoga, south of modern-day Tororo, to found a group of small kingdoms known collectively as Jopodiola.

In 1731, Omakuma Duhaga took the Bunyoro throne. Kinyoro traditions remember him as being small, light-skinned, hairy and difficult, and as having had the second-greatest number of children of any omakuma (the third omakuma, Oyo I, reputedly had 2,000 children, a record which will take some beating). During Duhaga’s 50-year reign, Buganda annexed the area around Lake Wamala, as well as the land immediately west of the Victoria Nile, from where it plundered large parts of Busoga. Duhaga died in battle along with 70 of his sons, attempting to protect Bunyoro from Buganda expansionists.

By the reign of Omakuma Kyebambe III (1786–1835), Buganda was firmly entrenched as the major regional power. During the late 17th century, Kabaka Mutebi consolidated his power by dismissing some traditional clan leaders and replacing them with confirmed loyalists; by the end of the 18th century, practically every local chief in Buganda was one of the so-called ‘king’s men’. Buganda forged loose alliances with Busoga and Karagwe (in northern Tanzania), and they maintained a peaceful equilibrium with Ankole, which had in the meantime further expanded its territory by absorbing several parts of the former Mpororo kingdom. Towards the end of Kyebambe III’s rule, Bunyoro was dealt a further blow as several local princes decided to rebel against the ageing omakuma. The most significant rebellion was in Toro, where a prince called Kaboyo declared autonomous rule in 1830, depriving Bunyoro of its important salt resources at Katwe.

By the mid 19th century, Buganda stretched west from the Victoria Nile almost as far as Mubende and over the entire Lake Victoria hinterland as far south as the Kagera River. Ankole covered an area of roughly 10,000km² between the Karonga and Kagera rivers, and the newly founded Toro kingdom occupied a similar area north of the Karonga. Bunyoro had been reduced to a quarter of its former size; although it had retained the Nile as its northern boundary, there was now no point at which it stretched further than 50km south of the Kafu River.

**BUNYORO AND EGYPT (1850–89)**

The death of Omakuma Kyebambe III was followed by a period of internal instability in Bunyoro, during which two weak omakumas ruled in succession. In 1852, the throne was seized by Kamurasi, who did much to stop the rot, notably by killing a number of rebellious princes at the Battle of Kokoita. Kamurasi’s rule coincided with the arrival of Arab traders from the north, who were admitted into Bunyoro in the recognition that their support could only strengthen the ailing kingdom. The Arabs based themselves at Gondoroko, from where they led many brutal raids into the small and relatively defenceless Luo kingdoms of Acholi.

In 1862, Kamurasi’s court welcomed Speke and Grant, the first Europeans to reach Bunyoro. Two years later, Bunyoro was entered from the north by Samuel Baker, a wealthy big-game hunter and incidental explorer who travelled everywhere with his wife. The Bakers spent a year in Bunyoro, during which time they became the first Europeans to see Lake Muyenzige, which they renamed Lake Albert. Baker also developed an apparently irrational antipathy towards his royal host, which almost certainly clouded his judgement when he returned to the region eight years later.

The years following the Bakers’ departure from Bunyoro saw radical changes in the kingdom. Omakuma Kamurasi died in 1869, prompting a six-month succession battle that resulted in the populist Kabalega ascending to the throne. Omakuma Kabalega is regarded by many as the greatest of all Bunyoro rulers who, were it not for British intervention, would surely have achieved his goal of restoring the kingdom to its full former glory. Kabalega introduced a set of military and political reforms which have been compared to those of Shaka in Zululand: he divided the army into battalions of 1,500 men, each of which was led by a trained soldier chosen on merit to be opposed to birth, and he minimised the influence of the eternally squabbling Bunyoro aristocracy by deposing them as local chiefs in favour of capable commoners with a sound military background.

In 1871, the imperialist Khedive Ismail of Egypt appointed the recently knighted Sir Samuel Baker to the newly created post of Governor General of Equatoria, a
In 1862, Speke spent weeks kicking his heels in the royal capital of Buganda, awaiting permission to travel to the river he suspected might be the source of the Nile. His sojourn is described in four long and fascinating chapters in The Journal of the Discovery of the Source of the Nile, the earliest and most copious document of courtly life in the kingdom. The following extracts provide some idea of the everyday life of the subjects of Kabaka Mutesa — who is remembered as a more benevolent ruler than his predecessor Siuna or successor Mwanga. The quotes are edited to modernise spellings and cut extraneous detail.

A more theatrical sight I never saw. The king, a good-looking, well-figured, tall young man of 25, was sitting on a red blanket spread upon a platform of royal grass, sumptuously well dressed in a new mbugu. His hair was cut short, excepting on the top, where it was combed up into a high ridge, running from stem to stem like a cockcomb. On his neck was a large ring of beautifully worked small beads, forming elegant patterns by their various colours. On one arm was another bead ornament, prettily devised and on the other a wooden charm, tied by a string covered with snakeskin. On every finger and every toe, he had alternate brass and copper rings; and above the ankles, halfway up to the calf, a stock of very pretty beads. Everything was light, neat, and elegant in its way; not a fault could be found with the taste of his ‘getting up’.

Both men, as is the custom in Uganda, thanked Mutesa in a very enthusiastic manner, kneeling on the ground — for no-one can stand in the presence of his majesty — in an attitude of prayer, and throwing out their hands as they repeated the words Nyaruzi, Nyaruza, a Nyanzingi, Amahama wangi, etc., etc., for a considerable time; when, thinking they had done enough of this, and having the exhibition, they threw themselves flat upon their stomachs, and, floundering about like fish on land, repeated the same words over again and again, and rose doing the same, with their faces covered with earth; for majesty in Uganda is never satisfied till subjects have grovelled before it like the most abject worms.

The king loaded one of the carabines I had given him with his own hands, and giving it full-cock to a page, told him to go out and shoot a man in the outer court; which was no sooner accomplished than the little urchin returned to announce his success, with a look of glee such as one would see in the face of a boy who had robbed a bird's nest, caught a trout, or done any other boyish trick. I never heard and there appeared no curiosity to know what individual human being the urchin had deprived of life...

The Namasele entered on a long explanation, to the following effect. There are no such things as marriages in Uganda; there are no ceremonies attached to it. If any man possessed of a pretty daughter committed an offence, he might give her to the king as a peace offering; if any neighbouring king had a pretty daughter, and the King of Buganda wanted her, she might be demanded as a fitting tribute. The men in Uganda are supplied with women by the king, according to their merits, from seizures in battle abroad, or seizures from refectory officers at home. The women are not regarded as property, though many exchange their daughters; and some women, for misdemeanours, are sold into slavery; whilst others are flogged, or are degraded to do all the menial services of the house.

The king was much delighted with my coming, produced pombe; and asked me what I thought of his women, stripping them to the waist. I asked him what use he had for so many women? To which he replied, 'None whatever; the king gives them to us to keep up our rank, sometimes as many as one hundred together; and we either turn them into wives, or make servants of them, as we please...'

The king was giving appointments, plantations, and women, according to merit, to his officers. As one officer, to whom only one woman was given, asked for more, the king called him an ingrate, and ordered him to be cut to pieces on the spot; and the sentence was carried into effect — not with knives, for they are prohibited, but with strips of sharp-edged grass, after the executioners had first dislocated his neck by a blow delivered behind the head.

Nearly every day I have seen one, two, or three of the wretched palace women led away to execution, tied by the hand, and dragged along by one of the body-guard, crying out, as she went to premature death, at the top of her voice, in the utmost despair and lamentation; and yet there was not a soul who dared lift hand to save any of them, though many might be heard privately commenting on their beauty. One day, one of the king's favourite women overtook us, walking, with her hands clasped at the back of her head, to execution, crying in the most pitiful manner. A man was preceding her, but did not touch her: for she loved to obey the orders of her king voluntarily, and in consequence of previous attachment, was permitted, as a mark of distinction, to walk free. Wondrous world...

A large body of officers came in with an old man, with his two ears shorn off for having been too handsome in his youth, and a young woman who had been discovered in his house. Nothing was listened to but the plaintiff's statement, who said he had lost the woman for four days; and, after considerable search, had found her concealed by the old man. Voices in defence were never heard. The king instantly sentenced both to death; and, to make the example more severe, decreed that, being fed to preserve life as long as possible, they were to be disembowelled bit by bit, as rations for the vultures, every day until life was extinct. The dismembered criminals, struggling to be heard, in utter despair, were dragged away boisterously in the most barbarous manner, to the drowning music of drums...

A boy, finding the king alone, threatened to kill him, because he took the lives of men unjustly. The king showed us, holding the pistol to his cheek, how he had presented the muzzle to the boy, which so frightened him that he ran away... The culprit, a good-looking young fellow of 16 or 17, brought in a goat, made his nyaruzi, stroked the goat and his own face with his hands, nyaruzi again with prostrations, and retired... There must have been some special reason why, in a court where trifling breaches of etiquette were punished with a cruel death, so grave a crime should have been so leniently dealt with; but I could not get at the bottom of the affair.

loosely defined province in the south of Egyptian-ruled Sudan. When Baker assumed his post in 1872, he almost immediately overstepped his instructions by declaring Bunyoro to be an annexe of Equatoria. Kabalega responded to Baker's pettiness by attacking the Egyptian paxton at Masindi. Baker was forced to retreat to Patiko in Acholi, and he defended his humiliating defeat by characterising Kabalega as a treacherous coward, thereby poisoning the omakuma's name in Europe in a way that was to have deep repercussions on future events in Uganda.

The second Governor General of Equatoria, General Gordon, knew of Kabalega only what his biased predecessor had told him. Gordon further antagonised the omakuma by erecting several forts in northern Bunyoro without first asking permission. Kabalega refrained from attacking the forts, but relations between Bunyoro and the Egyptian representative became increasingly uneasy. Outright war was probably averted only by the appointment of Emin Pasha as governor general in 1878. Sensibly, Emin Pasha withdrew from Bunyoro; and, instead of using his position to enact a petty vendetta against Kabalega, he focused his energy on the altogether more significant task of wresting control of the West Nile and Acholi regions from Arab slave traders. In 1883, following the Mahdist rebellion in Sudan, Emin Pasha and his troops were stranded in Wadelai. In 1889, they withdrew to the east African coast, effectively ending foreign attempts to control Uganda from the north.
The combined efforts of Baker and Gordon did little to curb Kabalega's empire-building efforts. In 1875, the Bunyoro army overthrew Nyaika, the King of Toro, and the breakaway kingdom was reunited with Bunyoro. Kabalega also reclaimed several former parts of Bunyoro which had been annexed to Buganda, so that Bunyoro doubled in area under the first 20 years of his rule. Even more remarkably, Kabalega's was the first lengthy reign in centuries during which Bunyoro was free of internal rebellions. Following the Emin Pasha's withdrawal from Equatoria in 1889, the continued expansion, stability and sovereignty of Bunyoro under Kabalega must have seemed assured.

EUROPEANS IN BUGANDA (1884–92) In the mid 19th century, when the first Swahili slave traders arrived in central Africa from the east coast, the dominant regional power was Buganda, ruled over by Kabaka Mutesa from his capital at Kampala. Mutesa allowed the slave traders to operate from his capital, and he collaborated in slave-raiding parties into neighboring territories. The Swahili converted several Baganda clan chiefs to their Islamic faith, and later, when Kampala was descended upon by the rival French Catholics and British Protestants, even more chiefs were attracted from traditional Kiganda beliefs. Mutesa's court rapidly descended into a hothouse of religious rivalry.

Mutesa died in 1884. His son and successor, Mwanga, was a volatile and headstrong teenager who took the throne as religious rivals in Buganda were building to a climax. Mwanga attempted to play off the various factions; he succeeded in alienating them all. In 1885, under the influence of a Muslim adviser, Mwanga ordered the execution of Bishop Hannington and 50 Christian converts (many of whom were roasted to death on a spit). In 1887, Mwanga switched allegiance to the traditionalist Kiganda chiefs, who in return offered to help him expel converts of all persuasions from Buganda. Threatened with expulsion, Muslims and Christians combined forces to launch an attack on the throne. Mwanga was overthrown in 1888. His Muslim-appointed replacement, Kiwewa, persecuted Christians with even greater fervor than Mwanga had in 1885–86, but when Kiwewa's Kiganda leanings became apparent the Muslims rebelled and installed yet another leader. Events came to a head in 1889, when a civil war erupted between the Christian and Muslim factions, the result of which was that all Muslims were driven from the capital, later to join forces with Kabalega in Bunyoro. Mwanga was re-installed as kabaka.

The rival European powers were all eager to get their hands on the well-watered and fertile kingdom of Buganda, where, with the Muslims safely out of the way, rivalry between Francophile Catholics and Anglophilie Protestants was increasingly open. In February 1890, Carl Peters arrived at Mengo clutching a treaty with the German East Africa Company. Mwanga signed it readily, possibly in the hope that German involvement would put an end to the Anglo-French religious intrigues which had persistently undermined his throne. Unfortunately for Mwanga, German deliverance was not to be; a few months after Peters' arrival, Germany handed Buganda and several other African territories to Britain in exchange for Heligoland, a tiny but strategic North Sea island.

In December 1890, Captain Lugard, the representative of the British East Africa Company, arrived at Kampala hoping to sign a treaty with an unimpressed Mwanga. The ensuing religious and political tensions sparked a crisis in January 1892, when a Catholic accused of killing a Protestant was acquitted by Mwanga on a plea of self-defense. Lugard demanded that the freed man be handed to him for a retrial and possible execution. Mwanga refused, on the rightful grounds that he was still the kabaka. Lugard decided it was time for a show of strength, and with the support of the Protestants he drove Mwanga and his Catholic supporters to an island on Lake Victoria. He then sent troops to rout Mwanga from the island; the kabaka fled to Bukoba in Karagwe (northern Tanzania) before returning in March to his kingdom, which was by then on the verge of civil war. Mwanga was left with no real option but to sign a treaty recognizing the Company's authority in Buganda.

Lugard returned to Britain in October 1892, where he rallied public support for the colonisation of Buganda, and was instrumental in swaying a Liberal government which under Gladstone was opposed to the acquisition of further territories. In November, the British government appointed Sir Gerald Portal as the commissioner to advise on future policy towards Buganda. Portal arrived in Kampala in March 1893, to be greeted by a flood of petitions from all quarters, swayed by the fact that missionaries of both persuasions felt colonisation would further their goals in the kingdom, Portal raised the Union Jack over Kampala in April; a month later he signed a formal treaty with the unwilling but resigned Mwanga, offering British protectorateship over Buganda in exchange for the right to collect and spend taxes.

THE CREATION OF UGANDA (1892–99) The protectorate of Uganda initially had rather vague boundaries, mirroring those of the indigenous kingdom to which it nominally offered protection. It is not at all clear to what extent the early British administrators conceived of their protectorate extending beyond the boundaries of the kingdom, but all accounts suggest that Uganda was as chaotic an assemblage as can be imagined. Captain Lugard had done a fair bit of tentative territorial expansion even before he signed a treaty with Buganda. It was evidently his intention to quell Bunyoro's rampant Omakuma Kabalega, against whom he had been prejudiced by the combination of Baker's poisonous reports, and the not entirely unpredictable antipathy held for the Bunyoro in Buganda. In August 1891, Lugard signed a treaty with the Omugabe of Ankole in a vain attempt to block arms reaching Bunyoro from the south. Lugard drove the Bunyoro army out of Toro and installed Kasagama, an exiled prince of Toro, to the throne. He then built a line of forts along the southern boundary of Bunyoro, effectively preventing Kabalega from invading Toro. The grateful Kasagama was happy enough to reward Lugard's efforts by signing a treaty of friendship between Britain and Toro.

Britain's predisposition to regard Kabalega as a villain became something close to a legal obligation following the treaty of protectorateship over Buganda, and it was certainly paralleled by the residual suspicion of foreigners held by Kabalega after the Equatoria debacle. Elements opposing British rule over Buganda fled to Kabalega's court at Mparo (near Hoima), notably a group of Muslim Buganda and Sudanese soldiers whose leader Selim Bey was deported in 1893 following a skirmish with the imperial authorities in Entebbe. With the assistance of the Baganda exiles, Kabalega re-invaded Toro in late 1893, driving Kasagama into the Rwenzorí Mountains and the only British officer present back to Buganda.

In December 1893, Colonel Colville led a party of eight British officers, 450 Sudanese troops and at least 20,000 Baganda infantrymen on to Mparo. Kabalega was too crafty to risk confrontation with this impressive force: he burnt his capital and fled with his troops to the Budongo Forest. During 1894, Kabalega led several successful attacks on British forts, but as he lost more men and his supplies ran low, his guerrilla tactics became increasingly ineffective. In August 1894, on the very same day that the formal protectorateship of Uganda was announced by Colville, Kabalega launched his biggest assault yet on the fort at Hoima. The fort was razed, but Kabalega lost thousands of men. He was forced to leave Bunyoro to go into hiding in Acholi and Lango, from where he continued a sporadic and increasingly unsuccessful series of attacks on British targets. Kabalega's kingdom was
unilaterally appended to the British protectorate on 30 June 1896; the first formal agreement between Britain and Bunyoro was signed only in 1933.

Meanwhile, back in Kampala, Kabaka Mwanga and his traditionalist chiefs were becoming frustrated at the power which the British had invested in Christian converts in general and Protestants in particular. In July 1897, Mwanga left Kampala and raised a few loyalist troops to launch a feeble attack on the British forces. Swiftly defeated, Mwanga fled to Bokobora where he was captured by the German authorities. The British administration officially deposed Mwanga and installed his one-year-old son Chwa as kabaka under the regency of three Protestant chiefs led by Apollo Kaggwa. The administration adopted the same tactic in Bunyoro, where a blameless 12-year-old son of Kabalega was installed as omakumuna in 1898 – only to be removed four years later for what the administration termed incompetence!

Mwanga escaped from his German captors in late 1897, after which he joined forces with his former rival Kabalega. After two years on the run, Mwanga and Kabalega were cornered in a swamp in Lango. Following a long battle, Kabalega was shot (a wound which later necessitated the amputation of his arm) and the two former kings were captured and exiled to the Seychelles, where Mwanga died in 1903 and Kabalega died 20 years later. Kabalega remained the spiritual leader of Bunyoro until his death; it is widely held that the unpopular Omakumuna Duha II, installed by Britain in place of his 'incompetent' teenage brother, was tolerated by the Bunyoro only because he was Kabalega's son.

Ankole succumbed more easily to British rule. Weakened by smallpox and rinderpest epidemics in the 1870s, the kingdom then suffered epidemics of tetanus and jiggers in the early 1890s, and it only just managed to repel a Rwandan invasion in 1895. Omugabe Ntare died later in the same year, by which time all the natural heirs to the throne had died in one or other epidemic. Following a brief succession war, a youthful nephew of the Ntare was installed on the throne. In 1898, Britain occupied the Ankole capital at Mbarara; the battered kingdom offered no resistance.

The southeast also fell under British rule without great fuss, because of the lack of cohesive political systems in the region. Much of the area was brought into the protectorate through the efforts of a Mугуга collaborator called Semei Kukungulu who, incidentally, had assisted in the capture of Kabalega and Mwanga in the southern regions set up in the Lake Kyoga region, where he installed a rudimentary administrative system over much of the area west of what is now the Kenyan border and south of Mount Elgon. Characteristically, the British administration eventually demoted Kukungulu to a subordinate role in the very system which he had implemented for them. Kukungulu's life story, as recounted in Michael Twaddle's excellent biography (see Appendix 3, Further Information, page 511), is as illuminating an account as any of the formative days of the protectorate.

By the end of the 19th century, the Uganda protectorate formally included the kingdoms of Buganda, Bunyoro, Ankole and Toro. Three of them were ruled by juveniles, while Toro was under the rule of the British-installed Kasagama. Whether through incompetence or malicious intent, the British administration was in the process of creating a nation divided against itself: firstly by favouring Protestant over Buganda of Catholic, Muslim or traditionalist persuasion, and secondly by replacing traditional clan leaders in other kingdoms with Baganda officials.

It is often asked whether colonialism was a good or a bad thing for Africa. There is no straightforward answer to this question. When writing about Malawi in 1995, I was forced to the conclusion that British intervention was the best thing to happen to that country in the troubled 19th century. By contrast, the arrogant, myopic and partial British administrators who were imposed on Uganda in the late 19th century unwittingly but surely sowed the seeds of future tragedy.

BRITISH RULE (1900–52) Ironically, the first governor of Uganda was none other than Sir Harry Johnston, whose vigorous anti-slaving campaign in the 1890s was as much as anything responsible for Britain's largely positive influence over Malawi. Johnston's instructions were to place the administration of the haphazardly assembled Uganda protectorate under what the Marquis of Salisbury termed 'a permanently satisfactory footing'. In March 1900, the newly appointed Governor of Uganda signed the so-called Buganda Agreement with the four-year-old kabaka. This document formally made Buganda a federal province of the protectorate, and it recognized the kabaka and his federal government conditional upon their loyalty to Britain. It divided Buganda into 20 counties, each of which had to pass the hut and gun taxes collected in their region to the central administration, and it forbade further attempts to extend the kingdom, a clause inserted mostly to protect neighbouring Busoga.

The Buganda Agreement also formalized a deal which had been made in 1898, in recognition of Buganda's aid in quelling Kabalega. Six former counties of Bunyoro were transferred to Buganda and placed under the federal rule of the kabaka, a decision described by a later district commissioner of Bunyoro as 'one of the greatest blunders' ever made by the administration of the protectorate. For lying within the Lost Counties (as the six annexed territories came to be called), the burial sites of several former omakumunas, as well as Mubende, a town which is steeped in Kyoro traditions and the normal coronation site of an incoming omakumuna. In 1921, the Bunyoro who lived in the Lost Counties formed the Mubende Bunyoro Committee to petition for their return to Bunyoro. This, and at least three subsequent petitions, as well as five petitions made by the omakumuna between 1943 and 1955, were all refused by the British administration on the basis that 'the boundaries laid down in 1900 could not be changed in favour of Bunyoro'. The issue of the Lost Counties caused Bunyoro resentment throughout the colonial era, and it is arguably the trigger which set in motion the tragic events which followed Uganda's independence.

When Johnston arrived in Kampala in 1900, Uganda's borders were ill-defined. The first 15 years of the 20th century saw the protectorate expand further to incorporate yet more disparate cultural and linguistic groups, a growth which was motivated as much by the desire to prevent previously unclaimed territories from falling into the hands of other European powers. The Kigezi region, a mishmash of small kingdoms which bordered German and Belgian territories to the south and west, was formally appended to Uganda in 1911. Buganda chiefs were installed throughout Kigezi, causing several uprisings and riots until the traditional chiefs were restored in 1929.

In the first decade of protectorate ship, Britain had an inconsistent and ambiguous policy towards the territories north of the Nile. In 1906, it was decided not to incorporate them into Uganda, since they were not considered to be appropriate for the Kiganda system of government which was being imposed on other appended territories. More probably the administration was daunted by the cost and effort that would be required to subdue the dispersed and decentralised northern societies on an individual basis. In any event, the policy on the north was reversed in 1911, when the acting governor extended the protectorate to include Lango, and again in 1913, when Acholi and Karamoja were placed under British administration. The final piece in the Ugandan jigsaw was West Nile province: leased to the Belgian Congo until 1910, after which it was placed under the administration of the Sudan, West Nile was found a permanent home as part of Uganda in 1914.

Obsessed with the idea of running the protectorate along what it termed a Kiganda system of indirect rule, the British administration insisted not on
Alexander Calder and Dr Joseph Kavubro

Since its foundation in 1937, the School of Fine Art at Kampala’s Makerere University has been the nucleus for east Africa’s most influential and widespread contemporary art movement. While indigenous arts have flourished and evolved for centuries throughout east Africa, Makerere provided the region’s first formal instruction in modern fine-art techniques, including drawing, painting and modern sculpture. Over the years, many students and graduates of this school became recognised innovators of striking new techniques and original styles.

During the particularly active 1950s and 1960s, artists held solo and group exhibitions at numerous locations. Growing interest in exhibitions by local artists led to the establishment of sizeable art collections by public museums, corporations and government institutions throughout the country. Further stimulating Uganda’s environment for advancing local art during this time, Esso and Caltex held widely publicised annual art competitions, publishing work by awarded artists on calendars distributed locally and abroad.

Until 1961, Makerere generally emphasised representational art, using drawing perspective and shading in compositions inspired from local imagery. Following independence, however, a cadre of leading artists embraced a new role as visual cultural historians, producing interpretative works that document the early post-independence era – often using representational forms and figures to symbolise uncertainties and ideals within a rapidly changing society.

In 1966, artist Norbert Kagwa underscored the importance of representational art in Uganda’s rapidly evolving culture: “Wedged into a single generation, my own, is a double vision: we are the beginning of an industrialised, urban society and we are probably – to be realistic – the end of the nomadic and village ways of life. The two eras are usually separated by hundreds of years. Here they are separated by a few dozen miles. I am personally very moved by this phenomenon and feel some special responsibility towards it. This is at least one of the reasons why I am a realistic and not an abstract painter. In one way, I suppose, I consider myself as much a cultural historian as an artist... or rather, in my case, they are one and the same thing.”

Artists debated their perceived role and the purpose of their works against the backdrop of independence. Art of this period consequently benefited from rich cross-fertilisation: several artists embraced both idioms to find unique and expressive visual forms that drew from abstract as well as representational influences. The late Henry Lumu, Augustine Mugululu Mukibi, Teresa Musoke and Elly Kuye were early leaders of Uganda’s emerging Modernist school, spawning the distinctive semi-abstract styles that characterised much art of this era.

In 1968, Makerere graduate Henry Lumu was hired as art director by Uganda National Television, initiating regular broadcasts of televised art instruction classes. Exposure through this new medium further stimulated Kampala’s burgeoning art community, which by that time extended well beyond the campus. The Uganda Art Club organised exhibitions throughout Kampala in the early to mid-1970s, prompting prominent hotels, banks and commercial buildings to amass and display collections of outstanding original works. During this period, artists attained unprecedented standing within Kampala’s thriving cosmopolitan circle and among the country’s élite.

By the late 1970s, political unrest had taken a dreadful toll among Uganda’s artistic community. Professionals and intellectuals were targeted by the Obote and Amin regimes, and museums and galleries were looted or reoccupied – destroying numerous significant art collections. Forced to choose between seclusion, alternative occupations or self-imposed exile, many Ugandan artists emigrated to Kenya, South Africa, Europe or North America. The expatriate artists incorporated visual elements from their new surroundings into mediums, styles and colour palettes that still remained faithful to their Ugandan experience.

A large number of artists, including Henry Lumu, Joseph Mungaya, Dan Sekanwagi, Emmy Lubega, David Kibuku, Jak Kitakwawa, David Wasswa Katongole and James Klatimire, left for neighbouring Kenya. The colourful, innovative and uniquely stylised works of the Ugandan painters transformed Nairobi’s art scene. Kenyan artist Nuwa Nyanzu reflected recently: “The impact of Ugandan artists in Kenya in the seventies and eighties was so great that it is still felt and highly visible today.”

Restored political stability in the late 1980s encouraged the homecoming or resurfacing of many Ugandan artists. Expressing rediscovered peacetime ideals through their art, many artists also reminded their audience of struggles and horrors endured during the troubled years. Exhibitions by Ugandan artists were held regularly at London’s Commonwealth Institute, while other shows opened in Paris and Vienna. In 1992, President Museveni marked the opening of a Vienna show featuring Geoffrey Mukasa and Fabian Mpangi with these remarks:

As those destructive years have regrettably shown, art cannot flourish in a situation plagued with terror and human indifference. Peace and security has returned to our country. We have gone a long way to encourage the revival of arts. The fine works exhibited are a vivid testimony that art has come to life again in Uganda. Certainly, both the public and the critics will recognise that Uganda has taken up her place in the world of modern art. It is an opportune moment for us to portray through these paintings a promising new picture of the ‘New Uganda’.

Exhibitions by and for Ugandan artists have also been held in Stockholm, Amsterdam, Berlin, Frankfurt, Rome, Johannesburg and seven cities in the USA. In North America, expatriate artists such as James Kitimire, David Kibuku, Dan Sekanwagi and Fred Makubuya have united to spearhead renewed interest in their art through the Fine Arts Center for East Africa, which opened in San Francisco in 1998. Organising group exhibitions in the USA and Canada, this active contingent of artists continues to garner recognition for their innovative styles, mediums and potent individual voices within Uganda’s art movement.

In Kampala today, Uganda’s renewed art scene embodies a vibrant and vital country redefining its past yet also reaching for a hopeful future. Sharing their unique visual arts legacy, Uganda’s fine-art pioneers have become the country’s cultural ambassadors, creating global awareness of its homeland’s unique colours, cultures, peoples and art. Locations to view art in Kampala include the Uganda Museum, Nonomo Gallery, Fuli Fanya Gallery, Gallery Café, Okapi Gallery, Cassava Republic and Nyanzu Art Studio. For relevant websites, see Appendix 3, Further Information, page 515.

Reprinted with minor edits from the website of the Fine Arts Center for East Africa in San Francisco, with permission from Alexander Calder (©. 415 333 9363; gadart@aol.com; www.theartroom-sf.com).
This divisive arrangement worked only because the administration had the legal and military clout to enforce it — even then, following regular uprisings in Bunyoro and Rigezi, traditional chiefs were gradually reinstated in most parts of the country. The 1919 Native Authority Ordinance delineated the powers of local chiefs, which were wide-ranging but subject always to the intervention of British officials. The Kiganda system was inappropriate to anywhere but Buganda, and it was absolutely absurd in somewhere like Karamoja, where there were no traditional chiefs, and decisions were made on a consensual basis by committees of recognised elders.

For all its faults, the administrative system which was imposed on Uganda probably gave indigenous Ugandans far greater autonomy than was found elsewhere in British-ruled Africa. The administration discouraged alien settlement and, with the introduction of cotton, it helped many regions attain a high degree of economic self-sufficiency. Remarkably, cotton growing was left almost entirely to indigenous farmers — in 1920, a mere 500km² of Uganda was covered in European-run plantations, most of which collapsed following the global economic slump of the 1920s and the resultant drop in cotton prices. Political decentralisation was increased by the Local Government Ordinance of 1949, which divided Uganda along largely ethnic lines into 18 districts, each of which had a district council with a high degree of federal autonomy. This ordinance gave even greater power to African administrators, but it also contributed to the climate of regional unity and national disunity which characterised the decades immediately preceding and following Uganda's independence.

The area that suffered most from this federalist policy was the 'backward' north. Neglected in terms of education, and never provided with reliable transport links whereby farmers could export their product to other parts of the country, the people of the north were forced to send their youngsters south to find work. There is some reason to suppose it was deliberate British policy to underdevelop an area which had become a reliable source of cheap labour and of recruits to the police and army. This impression is reinforced by the fact that when Africans were first admitted to the Central Legislative Council, only Buganda, the east and the west were allowed representation — the administrative systems which had been imposed on the north were 'not yet in all districts advanced to the stage requiring the creation of centralised native executives'. In other words, instead of trying to develop the north and bring it in line with other regions in Uganda, the British administration chose to neglect it.

Writing before Amin ascended to power, the Ugandan historian Samwiri Karugire commented that 'the full cost of this neglect has yet to be paid, not by the colonial officials, but by Ugandans themselves'. More recent writers have suggested that it is no coincidence that Milton Obote and Idi Amin both hailed from north of the Nile.

THE BUILD-UP TO INDEPENDENCE (1952–62) The cries for independence which prevailed in most African colonies following World War II were somewhat muted in Uganda. This can be attributed to several factors: the lack of widespread alien settlement, the high degree of African involvement in public affairs prior to independence, the strongly regional character of the protectorate’s politics, and the strong probability that the status quo rather suited Uganda’s Protestant Buganda elite. Remarkably, Uganda’s first anti-colonial party, the Uganda National Congress (UNC), was founded as late as 1952, and it was some years before it gained any marked support, except, significantly, in parts of the underdeveloped north.

The first serious call for independence came from the most unlikely of sources. In 1953, the unpopular Kabaka Mutesa II defied the British administration by vigorously opposing the mooted federation of Uganda with Kenya and Tanzania.

When the Governor of Uganda refused to give Mutesa any guarantees regarding federation, Mutesa demanded that Buganda — alone — be granted independence. The governor declared Mutesa to be disloyal to Britain, deposed him from the throne, and exiled him to Britain. This won Mutesa immense support, and not only in Buganda, so that when he was returned to his palace in 1955 it was as something of a national hero. Sadly, Mutesa chose not to use his popularity to help unify Uganda, but concentrated instead on parochial Kiganda affairs. A new Buganda Agreement was signed on 18 October 1955, giving the kabaka and his government even greater federal powers — and generating mild alarm among the non-Baganda.

Uganda’s first indigenous party of consequence, the Democratic Party (DP), was founded in 1956 by Matayo Muguwanya after Mutesa had rejected him as a candidate for the Prime Minister of Buganda on the grounds of his Catholicism. The party formed a platform for the legitimate grievances of Catholics, who had always been treated as second-class citizens in Uganda, and it rose to some prominence after party leadership was handed to the lawyer Benedicto Kiwanuka in 1958. However, the DP was rightly or wrongly perceived by most Ugandans as an essentially Catholic party, which meant it was unlikely ever to win mass support.

The formation of the Uganda People’s Union (UPU) came in the wake of the 1958 elections, when for the first time a quota of Africans was elected to national government. The UPU was the first public alliance of non-Buganda leaders, and as such it represented an important step in the polarisation of Ugandan politics: in essence, the Buganda versus everybody else. In 1959, the UNC split along ethnic lines, with the non-Baganda faction combining with the UPU to form the Uganda People’s Congress (UPC), led by Milton Obote. In 1961, the Baganda element of the UNC combined with members of the federal government of Buganda to form the overtly pro-Protestant and pro-Buganda Kabaka Yekka (KY) — which literally means 'The Kabaka Forever' (and was nicknamed 'Kill Yourselves' by opponents).

As the election of October 1961 approached, the DP, UPC and KY were clearly the main contenders. The DP won, largely through a Baganda boycott which gave them 19 of the seats within the kingdom — in East Kyaggwe, for instance, only 188 voters registered out of an estimated constituency of 90,000. The DP’s Benedicto Kiwanuka thus became the first Prime Minister of Uganda when self-government was granted on 1 March 1962 — the first time ever that Catholics had any real say in public matters. Another general election was held in April of that year, in the build-up to the granting of full independence. As a result of the DP’s success the year before, the UPC and KY formed an unlikely coalition, based on nothing but their mutual non-Catholicism. The UPC won 43 seats, the DP 24 seats, and the KY 24 (of which all but three were in Buganda), giving the UPC–KY alliance a clear majority and allowing Milton Obote to lead Uganda to independence on 9 October 1962.

THE FIRST OBOTE GOVERNMENT (1962–71) Obote, perhaps more than any other Commonwealth leader, inherited a nation fragmented along religious and ethnic lines to the point of ungovernability. He was also handed an Independence Constitution of singular peculiarity: Buganda was recognised as having full federal status, the other kingdoms were granted semi-federal status, and the remainder of the country was linked directly to central government. His parliamentary majority was dependent on a marriage of convenience based solely on religious grounds, and he was compelled to recognise Kabaka Mutesa II as head of state. Something, inevitably, was going to have to give.

The Lost Counties of Bunyoro became the pivotal issue almost immediately after independence. In April 1964, Obote decided to settle the question by holding a referendum in the relevant counties, thereby allowing their inhabitants to decide
w. Self they wanted to remain part of Buganda or be reincorporated into Bunyoro. The result of the referendum, almost 80% in favour of the counties being reincorporated into Bunyoro, caused a serious rift between Obote and Mutesa. It also caused the fragile UPC-KY alliance to split; no great loss to Obote since enough DP and KY parliamentarians had already defected to the UPC for him to retain a clear majority.

Tensions between Obote and Mutesa culminated in the so-called Constitutional Crisis of 1966. On 22 February, Obote scrapped the Independence Constitution, thereby stripping Mutesa of his presidency. Mutesa appealed to the UN to intervene. Obote sent the army to the royal palace. Mutesa was forced to jump over the palace walls and into exile in London, where he died, impecunious, three years later. Omously, an estimated 2,000 of the Baganda who had rallied around their king’s palace were loaded on to trucks and driven away. Some were thrown over Murchison Falls. Others were buried in mass graves. Most of them had been alive when they were taken from the palace.

In April 1966, Obote unveiled a new constitution in which he abolished the role of prime minister and made himself ‘Life President of Uganda’. In September 1967, he introduced another new constitution wherein he made Uganda a republic, abolished the kingdoms, divided Buganda into four new districts, and gave the army unlimited powers of detention without trial. In sole control of the country, but faced with smouldering Baganda resentment, Obote became increasingly reliant on force to maintain a semblance of stability. In September 1969, he banned the DP and other political parties. A spate of detentions followed: the DP leader Benedicto Kiwanuka, perceived dissidents within the UPC, the Baganda royal family, Muslim leaders, and any number of lawyers, students, journalists and doctors.

On 11 January 1971, Obote flew out of Entebbe for the Commonwealth Conference in Singapore. He left behind a memorandum to the commander of the Ugandan army, demanding an explanation not only for the disappearance of four million US dollars out of the military coffers, but also for the commander’s alleged role in the murder of a brigadier and his wife in Gulu a year earlier, a dual murder for which he was due to be brought to trial. The commander decided his only option was to strike in Obote’s absence. On 25 January 1971, Kampala was rocked by the news of a military coup, and Uganda had a new president—a killer with the demeanour of a buffoon, and charisma enough to ensure that he would become one of the handful of African presidents who have achieved household-name status in the West.

**THE AIN YEARS (1971–79)**

Idi Amin was born in January 1928 of a Muslim father and Christian mother at Koboko near the border with the DRC and Sudan. As a child, he moved with his mother to Lugazi in Buganda. Poorly educated and barely literate, Amin joined the King’s African Rifles in 1946. He fought for Britain against the Mau-Mau in Kenya, after which he attended a training school in Nakuru. In 1958, he became one of the first two Africans in Uganda to be promoted to the rank of lieutenant. In 1962, he showed something of his true colours when he destroyed a village near Lake Turkana in Kenya, killing three people without provocation; a misdeed for which he only narrowly escaped trial, largely through the intervention of Obote.

By 1966, Amin was second in command of the Ugandan army, and, following the 1966 Constitution Crisis, Obote promoted him to the top spot. It was Amin who led the raid that forced Mutesa into exile, Amin who gave the orders when 2,000 of the kabaka’s Baganda supporters were loaded into trucks and killed, and Amin who co-ordinated the mass detentions that followed the banning of the DP in 1969. For years, Amin was the instrument with which Obote kept a grip on power, yet, for reasons that are unclear, by 1970 the two most powerful men in Uganda were barely talking to each other. It is a measure of Obote’s arrogance that when he wrote that fateful memorandum before flying to Singapore, he failed to grasp not only that its recipient would be better equipped than anybody else to see the real message, but also that Amin was one of the few men in Uganda with the power to react.

Given the role that Amin had played under Obote, it is a little surprising that the reaction to his military takeover was incautious jubilation. Amin’s praises were sung by everybody from the man in the street to the foreign press and the Baganda royals whose leader Amin had helped drive into exile. This, quite simply, was a reflection less of Amin’s popularity than of Obote’s singular unpopularity. Nevertheless, Amin certainly played out the role of a ‘man of peace’, promising a rapid return to civilian rule, and as he sealed his popularity in Buganda by allowing the preserved body of Mutesa to be returned for burial.

On the face of it, the first 18 months of Amin’s rule were innocuous enough. Arguably the first public omen of things to come occurred in mid 1972, when Amin expelled all Asians from the country, ‘Africanised’ their businesses, and commandeered their money and possessions for ‘state’ use. In the long term, this action proved to be an economic disaster, but the sad truth is that it won Amin further support from the majority of Ugandans, who had long resented African dominance in business circles.

Even as Amin consolidated his public popularity, behind the scenes he was reverting to type; this was, after all, a man who had escaped being tried for murder not once but twice. Amin quietly purged the army of its Acholi and Lango majority; by the end of 1973, 13 of the 23 officers who had held a rank of lieutenant-colonel or higher at the time of Amin’s coup had been murdered. By the end of 1972, eight of the 20 members of Obote’s 1971 cabinet were dead, and four more were in exile. Public attention was drawn to Amin’s actions in 1973, when the former prime minister, Benedicto Kiwanuka, was detained and murdered by Amin, as was the Vice-Chancellor of Makerere University.

By 1974, Amin was fully engaged in a reign of terror. During the eight years he was in power, an estimated 300,000 Ugandans were killed by him or his agents (under the guise of the State Research Bureau), many of them tortured to death in horrific ways. His main targets were the northern tribes, intellectuals and rival politicians, but any person or group that he perceived as a threat was dealt with mercilessly. Despite this, African leaders united behind Uganda’s despotic ruler: incredibly, Amin was made President of the Organisation of African Unity (OAU) in 1975. Practically the sole voice of dissent within Africa came from Tanzania’s Julius Nyerere, who asserted that it was hypocritical for African leaders to criticize the white racist regimes of southern Africa while ignoring similarly cruel regimes in ‘black’ Africa. Nyerere granted exile to several of Amin’s opponents, notably Milton Obote and Yoweri Museveni, and he refused to attend the 1975 OAU summit in Kampala.

As Amin’s unpopularity with his own countrymen grew, he attempted to forge national unity by declaring war on Tanzania in 1978. Amin had finally overreached himself; after his troops entered northwest Tanzania, where they bombarded the towns of Bukoba and Musoma, Tanzania and a number of Ugandan exiles retaliated by invading Uganda. In April 1979, Amin was driven out of Kampala into an exile from which he would never return prior to his death of multiple organ failure in a Saudi Arabian hospital in August 2003.

**UGANDA AFTER AMIN (1979–86)**

When Amin departed from Ugandan politics in 1979, it was seen as a fresh start by a brutalised nation. As it transpired, it was
Uganda’s third false dawn in 17 years – most Ugandans now regard the seven years which followed Amin’s exile to have been worse than even the years which preceded it.

In the climate of high political intrigue which followed Amin’s exile, Uganda’s affairs were stage managed by exiled UPC leaders in Arusha (Tanzania), most probably because the UPC’s leader Milton Obote was understandably cautious about announcing his return to Ugandan politics. The semi-exiled UPC installed Professor Lule as a stand-in president, a position which he retained for 68 days. His successor, Godfrey Binaisa, fared little better, lasting about eight months before he was bundled out of office in May 1980. The stand-in presidency was then assumed by two UPC loyalists, Paulo Muwanga and David Oyite-Ojik, who set an election date in December 1980.

The main rivals for the election were the DP, led by Paul Ssemogerere, and the UPC, still led by Milton Obote. A new party, the Uganda Patriotic Movement (UPM), led by Yoweri Museveni, was formed a few months prior to the election. Uganda’s first election since 1962 took place in an atmosphere of corruption and intimidation. Muwanga and Oyite-Ojik used trumped-up charges to prevent several DP candidates from standing, so that the UPC went into the polling with 17 uncontested seats. On the morning of 11 December, it was announced that the DP were on the brink of victory with 63 seats certain, a surprising result that probably reflected a strong anti-Obote vote from the Baganda. In response, Muwanga and Oyite-Ojik quickly drafted a decree ensuring that all results had to be passed to them before they could be announced. The edited result of the election saw the DP take 51 seats, the UPM one seat, and the UPC a triumphant 74. After some debate, the DP decided to claim their seats, despite the overwhelming evidence that the election had been rigged.

When Museveni felt that people had been cheated by the election, and that under Obote’s UPC the past was doomed to repeat itself. In 1982, Museveni formed the National Resistance Movement (NRM), an army largely made up of orphans left behind by the excesses of Amin and Obote. The NRM operated from the Luwero Triangle in Buganda north of Kampala, where they waged a guerrilla war against Obote’s government. Obote’s response was characteristically brutal: his troops waded into the Luwero Triangle killing civilians by their thousands, an ongoing massacre which exceeded even Amin’s. The world turned a blind eye to the atrocities in Luwero, and so it was left to ‘dissident’ members of the UPC and the commander of the army, Tito Okello, to suggest that Obote might negotiate with the NRM in order to stop the slaughter. Obote refused. On 27 July 1985, he was deposed in a bloodless military coup led by Tito Okello. For the second time in his career, Obote was forced into exile by the commander of his own army.

Okello assumed the role of head of state and he appointed as his prime minister Paulo Muwanga, whose role in the 1980 election gave him little credibility. With some misgivings, the DP allied itself with Okello, largely because Ssemogerere hoped he might use his influence to stop the killings in Luwero. In a statement made in Nairobi in August 1985, Museveni announced that the NRM was prepared to co-operate with Okello, provided that the army and the other instruments of oppression used by previous regimes were brought under check. The NRM entered into negotiations with Okello, but after these broke down in December 1985, Museveni returned to the bush. On 26 January 1986, the NRM entered Kampala, Okello surrendered tamely, and Museveni was sworn in as president – Uganda’s seventh head of state in as many years.


In 1986, Museveni took charge of a country that had been beaten and brutalised as few others. There must have been many Ugandans who felt this was yet another false dawn, as they waited for the cycle of killings and detentions to start all over again. Certainly, to the outside world, Uganda’s politics had become so confusing in all but their consistent brutality that the NRM takeover appeared to be merely another instalment in an apparently endless succession of coups and civil wars.

But Museveni was far from being another Amin or Obote. He shied away from the retributive actions which had destroyed the credibility of previous takeovers; he appointed a broad-based government which swept across party and ethnic lines, re-established the rule of law, appointed a much-needed Human Rights Commission, increased the frequency of the press, and encouraged the return of Asians and other exiles. On the economic front, he adopted pragmatic policies and encouraged foreign investment and tourism, the result of which was an average growth rate of 10% in his first decade of rule. Museveni has also tried to tackle corruption, albeit with limited success, by gradually cutting the civil service. Most significantly, Uganda under Museveni has visibly moved away from being a society obsessed with its ethnic and religious divisions. From the most unpromising material, Museveni has, miraculously, forged a real nation.

In 1993, Museveni greatly boosted his popularity (especially with the influential Baganda) by his decision to grant legal recognition to the old kingdoms of Uganda. In July 1993, the Cambridge-educated son of Mutesa II, Ronald Mutebi, returned to Uganda after having spent over 20 years in Britain; in a much-publicised coronation near Kampala, he was made the 36th Kabaka of Buganda. The traditional monarchies of Bunyoro and Toro have also been restored, but not that of Ankole.

In the 1990s, the most widespread criticism of Museveni and the NRM was its tardiness in moving towards a multi-party democracy. At the time, Museveni argued rather convincingly that Uganda needed stability offered by a ‘no party’ system more than it needed a potentially divisive multi-party system that risked igniting the ethnic passions that had caused the country so much misery in its first two decades of independence. As a result, the NRM remained the only legal political party until as recently as 2005, though the country’s first open presidential elections were held in 1996, slightly more than ten years after Museveni had first assumed power. Museveni won with an overwhelming 74% of the vote, as compared with the 23% polled by his main rival, Paul Ssemogerere, a former DP leader who once served as prime minister under Museveni. A similar pattern was registered in the 2001 presidential elections, which returned Museveni to power with 70% of the vote, as compared with the 20% registered by his main rival Kizza Besigye. At the time, and for several years afterwards, Museveni reiterated his commitment to stand down from the presidency in 2006, in accordance with the maximum of two presidential terms specified by a national constitution drawn up years earlier by the NRM constitution.

During the course of 2004, Museveni made two crucial political about faces. In July, during the build-up to holding a national referendum on the question of a return to multi-partyism, he actively travelled the country rallying support for a vote in favour of change. The results of this poll were somewhat ambiguous. On the one hand, an impressive majority of 92.5% of votes cast were in favour of Museveni’s proposed reversion to multi-party politics. On the other, a polling turnout of only 47% suggested that many agreed with the opposition, who claimed that the referendum was a waste of time and money and called upon voters to boycott it. Just weeks after this political landmark, Museveni pushed a constitutional amendment to scrap presidential term limits through parliament, clearing the way for him to seek a third term in the looming elections. In November, barely three months before the election was due, the main oppo...
leader Kizza Besigye, having recently returned from exile, was imprisoned and charged with terrorism, only to be released on bail in January 2006. A month later, Uganda’s first multi-party election in 25 years was largely held to be free and fair by international observers, though this verdict was loudly disputed by Besigye, who polled 37% of the vote as compared with Museveni’s 59%. Once again, this result can be viewed as ambiguous — the gap between the two primary candidates, though by no means insubstantial, had halved since the 2001 presidential election, and it is difficult to say to what extent the vote for Museveni represented overt support for his presidency and to what extent it simply reflected a fear of change.

There is no doubt that under Museveni’s rule, Uganda has made fantastic progress; Kampala in 2009 is unrecognisable from the shattered capital that the NRM took control of in 1986. The turnaround was effectively showcased to the world in November 2007 when Uganda hosted Queen Elizabeth II and 57 heads of state for the Commonwealth Heads of Government Meeting (CHOGM). On the other hand, popular support for the NRM has been damaged by a series of recent corruption scandals; events that fuel a sense that those in senior government increasingly consider themselves above the law and accountable to themselves rather than their electorate. A growing resentment found an outlet during the Mabira Forest affair in 2007 when Museveni ordered the National Forest Authority to de-gazette the eastern part of central Uganda’s largest remaining natural forest for an Asian industrialist to convert the land to a sugarcane plantation. This sparked an unprecedented and, it must be said, unexpectedly passionate, show of public opinion; a hitherto latent civil society united with NGOs, the press, and politicians from all parties to protest: modes of doing so ranged from reasoned letters to the newspapers to a nasty riot in the middle of Kampala. Eventually (possibly because the furore persisted uncomfortably close to the CHOGM) the proposal was dropped.

The next elections are scheduled for 2011, the year that will mark Museveni’s 25th year in power. A quarter-century would seem to a lot of Ugandans – including a growing number of influential members of the ruling NRM – a decent time for him to call it a day and retire to his farm at Rwakitura. However, this seems unlikely. Museveni has expressed no interest in stepping aside, and there is no clear idea of who would step into the gap. No heir has been groomed to take up the reins of the NRM while no obvious candidates are apparent in an opposition riven by the usual infighting. In the absence of anyone better qualified for the job, it should be no surprise if Museveni stands for a fourth term.

While the future remains open to speculation, the most important event in recent Ugandan history is an end to the civil war in northern Uganda that has caused so much death and suffering during the past 20 years. Though protracted negotiations between representatives of the government and the rebel Lord’s Resistance Army failed to result in a formal peace agreement, northern Uganda has been at peace now for four years. The history of Joseph Kony and the Lord’s Resistance Army is described in the box on pages 404-5.

<table>
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The 2002 census showed Uganda to have a population of 24.7 million, of which 87% live rural. This represents an almost 50% increase on the 1991 figure of 16.7 million, an annual growth rate of more than 4% as compared with 2.5% per annum between 1980 and 1991. The majority of Uganda’s people are concentrated in the south and west. The most populous ethnic group are the Bantu-speaking Baganda, who account for about 20% of the population and are centred on Kampala. Other significant Bantu-speaking groups are the Ankole, Toro, Banyoro and Busoga. The east and north of the country are populated by several groups of Nilotic or Cushitic origin, including the Teso, Karimojong, Acholi and Lango.

The most populous city in Uganda is Kampala at 1.2 million in 2002. Jinja is generally cited as the country’s second-largest city, but the 2002 census would suggest that the ongoing instability in the north and associated flood from rural areas into the towns has seen it overtaken by Gulu (population 113,000) and Lira (90,000). Having said that, add the 50,000-plus residents of Njeru, which lies on the opposite bank of the Nile, to Jinja’s 86,500, and it remains comfortably the largest urban centre in Uganda after the capital. The table above, showing the ten largest urban centres in Uganda in 2002 and in earlier censuses, is a good indicator of the dramatic post-independence shifts in urban growth around the country.

Aside from Gulu and Lira, the most rapid growth centre in Uganda in the past decade would appear, somewhat improbably, to be Kasene, which ranked 18th in 1991 with a population of only 18,000. As with Gulu and Lira, this rapid expansion might well be linked to the instability in the Rwenzori area in the late 1990s. If this author’s impressions count for anything, the most visibly expanded town since I first visited Uganda in 1988 is without question Mbarara.

The official language, English, is spoken as a second language by most educated Ugandans. More than 33 local languages are spoken in different parts of the country. Most of these belong to the Bantu language group: for instance, Luganda, Lusoga and Lutoro. Several Nilotic and Cushitic languages are spoken in the north and east, some of them by only a few thousand people. An unusual language of the extreme northeast is Karimojong, which has a vocabulary of only 180 words. Many Ugandans speak a limited amount of Swahili, a coastal language which spread into the east African interior via the 19th-century Arab slave traders. Few Ugandans speak any indigenous language other than their home language, so
KiSwahili and English are the most useful languages for tourists, and they are widely used between Ugandans of different linguistic backgrounds.

Some 85% of Ugandans are Christian, divided roughly equally between the Protestant Church of Uganda (an offshoot of the Church of England) and the Roman Catholic Church. In most rural areas, these exotic religions have not entirely replaced traditional beliefs, so that many people practise both concurrently. Roughly 11% of Uganda is Islamic, a legacy of the Arab trade with Buganda in the late 19th century. There is little or no friction between Christian and Muslim in modern Uganda, though post-independence political conflict did follow Catholic–Protestant lines. Although the country’s Asian population was forced into exile by Amin in 1972, many individuals, both Islamic and Hindu, have been repatriated since 1986. The main centre of animism is the northeast, where the Karimojong – like the affiliated Maasai and other Rift Valley pastoralists – largely shun any exotic faith in favour of their own traditional beliefs.