

Judicial Independence: A Continued Political Interference in Recent Judicial Proceedings in Uganda

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Abstract

Chapter eight of Uganda's constitution highlights the judiciary's crucial role as the protector of the constitution, with the authority to exercise judicial powers bestowed upon them by the people. The judiciary is essential to upholding the constitutionality of laws, acts of parliament and customs and identifying and addressing inconsistencies. Article 128 Clause 1 of Uganda's 1995 Constitution emphasizes the importance of maintaining the judiciary's independence, ensuring it remains a bastion of integrity and fairness. However, recent cases shed light on the consequences of political interference, which is becoming an increasingly worrisome issue in Uganda. Thus, the research focuses on some sources of political interference in Uganda's judicial proceedings and its persistence, including an opaque and politicized process of appointments, pressure applied to judges by the executive branch and powerful interests, and disrespect for court orders by the executive and legislature. The consequences of such interference in the democratic justice system are discussed, and they have led to a decline in the independence of the judiciary, covering the breakdown of public trust in the judiciary, unfair legal judgements, and weakened constitutional principles. The findings highlight Uganda's urgent need for action and an independent judiciary. This study applies doctrinal legal research methodology to discuss the continued political interference in the recent judicial proceedings in Uganda since 2006. The study recommends constitutional reforms to curb the overgrowing political interference in courts' judicial independence and preserve constitutionalism principles by examining this theme.

Keywords: Constitution Of Uganda, Constitutionalism Principles, Courts Of Judicature, Judicial Independence, Judicial Powers, Judicial Role, Political Interference.

1. Introduction

Independence of the judiciary is necessary for the justice system to remain true to its values, notably respecting the rule of law and ensuring the application of constitutionalism principles in a well-functioning democratic society. The judiciary is independently regarded because the system provides that judges do not give judgment with any political mind. On the other hand, concerns about high levels of political interference in matters pertaining to the court's justice have been raised lately. The focus of this study, however, is the challenges to judicial independence in Uganda, which includes constant political influence that is majorly observed in recent court adjudications.

Meanwhile, the hierarchy of the justice system in Uganda extends from the highest level, the Supreme Court, to local council courts. Importantly, respecting the Constitution as a supreme guide is highlighted in Article 2¹ of the 1995 Constitution. This highlights the importance of courts deciding cases on constitutional principles that ensure a commitment to constitutionalism. Abdurashed² noted that constitutionalism principles can only work effectively if the judiciary's separation of powers and independence are successfully put in place, respected, and protected.

The court's most critical responsibility is stated in Chapter Eight of the Constitution, which is to ensure that justice is administered fully and fairly. Several courts of judicature, including the High Court, the Court of Appeals (a Constitutional court), and the Supreme Court, are described under Article 126.³ The Supreme Court of Appeals is at the apex of the courts of Judicature in Uganda's justice system.⁴ As mentioned in Article 130, it is responsible for hearing appeals and constitutional interpretation. However, the second tier of courts, the Court of Appeal, is within its ambit to hear appeals from subordinate courts such as the High Court.⁵ Having enormous jurisdiction over various cases, the High Court is an important institution in the justice system.⁶ It is broad enough to include fields such as the law, families, lands and business. Courts called magistrates are also the subject of the Magistrates Courts Act.⁷ Article 133 of the Ugandan Constitution defines the position of chief justice and ensures that all courts fall within their mandates.⁸

Notably, the judiciary's operations in Uganda have been affected by the country's unstable political history and several governance issues. The basic structure of the country's legal system is a mix of common law, customary law, and the Constitution of 1995. This constitution clearly defines the separation of powers between the legislative, executive and judicial departments. The court's independence and neutrality have been challenged by persistent accusations of political interference despite the constitutional protections that should be in place. For example, it has come to light that the executive branch has ignored or failed to implement court rulings, casting doubt on the judiciary's power, the rule of law, and the constant attacks and threats to the judiciary. These acts make people question the impartiality of the judges and damage public faith in the judicial system. For Uganda's democratic government and legal system to function well, the study intends to thoroughly examine this matter and stress the prerequisite of safeguarding the independence of the judiciary.

2. Uganda's court system

Chapter eight of Uganda's 1995 Constitution outlines the process of dispensing justice. The judiciary has an essential role in adjudicating citizen contentions, intervening and resolving conflicts between individuals on the one hand with the state on another for upholding the law. The two other significant

¹ Uganda's Constitution of 1995 (revised 2018) by Act 1, Article 2

² Abdurashed, Abdulyakeen. "An Appraisal of Charles De Montesquieu's Theory of Separation of Power within the Prisms of Power Relations among Structures of Government in Nigeria's Presidential System: The Dilemma and Critical Issues." *FUDMA Journal of Management Sciences* 3, no. 2 (2021).

³ Uganda's Constitution of 1995 (revised 2018) by Act 1, Article 126

⁴ Uganda's Constitution of 1995 (revised 2018) by Act 1, Article 130

⁵ Uganda's Constitution of 1995 (revised 2018) by Act 1, Article 137

⁶ Uganda's Constitution of 1995 (revised 2018) by Act 1, Articles 138 and 139

⁷ Magistrates Courts Act. Cap 16 of the Laws of Uganda Section 3

⁸ Uganda's Constitution of 1995 (revised 2018) by Act 1, Article 133

functions of the court include the protection of the Constitution and promoting democratic values. Aside from interpreting Uganda's Constitution and other legislations, it protects citizens' and organizations' fundamental rights and freedoms. Article 128⁹ provides the courts with jurisdiction to determine cases. The Supreme Court, Court of Appeal, High Court, and lower courts employ these powers. All these courts should fulfil their mandate in a fair and unfettered manner. As provided in the Ugandan constitution, an independent judicial system lays the foundation for constitutionalism in Uganda. It claims that nobody, as an individual entity or group, should have influence or control over what happens in the judiciary. Constitutional guarantees are put in place to ensure that the judicial body works and is unbiased and independent. This is stated verbatim as;

“128. Independence of the judiciary

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.”

Courts established under the Constitution are emphasized by Article 126.¹⁰ These courts yield the power of exercising their powers as representatives of the people, upholding legal principles to reflect the values and norms of society. In this respect, a ‘court’ denotes any person vested with powers to assess evidence as detailed in Section 2 of the Evidence Act.¹¹ It is important to note that this definition does not include arbitrators within the court’s jurisdiction, but section 2 of the interpretation act defines a court as having judicial authority.¹²

The legal framework in Uganda is woven into a pyramid system that starts from the nation’s Constitution, which represents its highest law. This layered system seeks to streamline the judicial process by having separate functions and jurisdictions at each level. Article 129 provides for the courts of Judicature and states that;

- (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 Qadhi’s courts for marriage, divorce, inheritance of property and guardianship, as may be prescribed by Parliament

2.1 Supreme Court: At the apex of this judicial pyramid is the Supreme Court, which mainly performs appellate duties. Its constitutional mandate is to hear appeals and references from the Court of Appeal cases.¹³ In the case of *Ivan Samuel Ssebaduka v. The Chairman Electoral Commission and others*,¹⁴ the court defined how much power a Supreme Court has as per Article 132; the Supreme Court’s authority is confined to only appellate jurisdictions. This limitation is further reinforced by section 59 subsection 1 of

⁹ Uganda’s Constitution of 1995 (revised 2018) by Act 1, Article 128

¹⁰ Uganda’s Constitution of 1995 (revised 2018) by Act 1, Article 126

¹¹ The Evidence Act, chapter 6 of the Laws of Uganda, Section 2

¹² The Interpretation Act, chapter 3 of the Laws of Uganda, Section 2

¹³ <https://www.jsc.go.ug/>

¹⁴ Presidential petition No.1 of 2020

the Presidential Elections Act.¹⁵ However, in the case of a presidential election petition, it's courts of first instance, as illustrated in *Amama Mbabazi v Kaguta Museveni and 2 Others*.¹⁶

2.2 Court of Appeal: Just below the Supreme Court is the Court of Appeal. Tasked with hearing appeals from the lower courts, including the High Court, it turns into a Constitutional Court for all matters related to constitutional interpretation. Ultimately, it deferred to the Constitutional Court on issues of constitutional interpretation. This dual role emphasizes the importance of this official in moulding constitutional jurisprudence.¹⁷

2.3 The High Court: Thus, the High Court becomes one of the main pillars of Ugandan jurisprudence, enjoying broad competence. It controls many issues ranging from civil, criminal, family, land and even commercial cases.¹⁸ Because of its general original jurisdiction, any criminal or civil case that needs to be heard and decided by the High Court can be brought to ensure justice. In addition, it is the appellate authority for appeals arising from cases tried in magistrates' courts.

2.4 Magistrate Courts: Below the High Court, a layer of Magistrate Courts across Chief Magistrate Grade I and II handle most cases in the country. These lower courts have a wide range of judicial powers and are jurisdictions contributing greatly to the speeded development of civil and criminal cases.

2.5 Specialized courts: Uganda has a legal mosaic that includes specialized courts set up by Parliament to deal with separate realms of law. The Family and Children Court, the Industrial Court, the Anti-Corruption Court, and the Court Martial concentrate on different fields, each showing a varying nature of justice. Combined, these courts play a role in sustaining constitutional principles such as the rule of law on all levels of jurisprudence. Together, this composite court system balances the quest for justice with constitutional tenets while providing a strong foundation upon which lawsuits can be based in Uganda.

3. Judges' independence as guardians of the Constitution

Article 128 of Uganda's constitution shows that the principle of independence of the judiciary is not implemented by any political, social group or individual because no one can influence, direct, control or otherwise muddle with the courts. The principle of inviolability by the right to a court with complete independence was first established in *Miguel Gonzalez del Rio v. Peru*.¹⁹ According to Article 28²⁰, a person shall be provided with the right to a fair hearing while his or her civil rights are being decided by judicial organs of the state established according to the law. Judges can make rulings objectively and without influence from any other factor, political or otherwise, with the assurance of autonomy. The judicial branch relies on this to uphold justice and ensure stability based on a trustworthy legal system. For courts to secure themselves and for equality forwarding, they will require entities such as public authorities, citizens, and organizations. Such a mandate further emphasizes the importance of an

¹⁵The Presidential Elections Act 2005

¹⁶ Presidential Election Petition No. 1 of 2016 [2016] UGSC 4 (26 August 2016)

¹⁷ Adonyo, Henry Peter, acting chief registrar, "Structure and functions of the judiciary." The Judiciary of Uganda (2012).

¹⁸ Brenda Mahoro, Uganda's Legal System and Legal Sector Published March/April 2020

<https://www.nyulawglobal.org/globalex/Uganda.html>

¹⁹ Communication N° 263/1987, Case of Miguel González del Río v. Peru, doc. cit., para. 5.2

²⁰ Uganda's Constitution of 1995 (revised 2018) by Act 1

independent court not subject to political control. The word ‘Judicial independence’ is described briefly in the basic principles of judgment independence of the United Nations.²¹ It is the responsibility of a state to ensure that judicial independence in a constitution or statute can be committed.²² The independence of the judiciary should be honoured by all institutions, especially the government. Within a democratic society, the judiciary must be free to make independent decisions on its own accord based on the rule of law and other ideals, such as that of separation of powers and a system of checks and balances.²³ Several confirmed standards and principles guarantee the judicial system's independence. This group encompasses the procedure of judicial appointment and removal, as well as judges’ remuneration, job security, and implied immunity.

3.1 Appointment Procedure

Protecting judicial independence in Uganda is one of the pillars of its constitution. In the words of Gloppen,²⁴ the autonomy of the judiciary in Uganda is vital because it should be able to discharge its responsibilities of accountability. If the independence of the judiciary is to be maintained, appointed judges should ensure that they are impartial in handling civil or criminal cases. There is no established procedure for the appointment of judges and other members of the judiciary. Regardless of the nomination procedure, the state must always show judgment, independence and impartiality.

In Uganda, the Constitution of 1995 outlines in precise detail the process of appointing judges. The President appoints judges for the Supreme Court, Court of Appeals, High Court, and Deputy Chief Justice after a recommendation from the Judicial Service Commission.²⁵ Section 19 of the Judicial Service Commission Regulations lists the different appointment forms.²⁶ Such categories include substantive, acting, contract, temporary and probationary positions. However, the case of *Dr. Busingye Kabumba and Another v. Attorney General*²⁷ discussed the appointment of acting judges in great detail, where the court held that the appointment of the sixteen justices in an acting capacity is said to have violated several constitutional principles and judicial officer’s tenurial security.

The selection of the judges is, on the other hand, subject to some conditions. Other than their qualifications and skills, these standards value independence, propriety, impartiality, competence and thoroughness.²⁸ In appointing judges, tenure reviews, and dismissals, the Judicial Service Commission followed a range of guidelines on eligibility and selection criteria from what was set out by the Common Wealth Latimer

²¹ Adopted in 1985, <https://www.un.org/ruleoflaw/blog/document/basic-principles-on-the-independence-of-the-judiciary/> accessed on 2.2.2024 at 6:52 pm

²² Commission internationale de juristes. International principles on the independence and accountability of judges, lawyers and prosecutors: a practitioners' guide. International Commission of Jurists, 2007.

United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

²³ Chibbonta, Bubala. "Comparative analysis of judicial independence in Zambia and South Africa: security of tenure, appointment and removal procedures." University of Pretoria, 2010.

²⁴ Gloppen, Siri, and E. Kanyongolo. "Judicial Independence and the Judicialisation of electoral politics in Malawi and Uganda." Chirwa, DM and Nijzink, L.(eds.) (2012): 43-69.

²⁵ Uganda’s Constitution of 1995 (revised 2018) by Act 1, Article 142

²⁶ The Judicial Service Commission Regulations No 87 of 2005 of Laws of Uganda, Regulation 19

²⁷ Constitutional Petition No. 15 of 2022

²⁸ The Judicial Service Commission Regulations No 87 of 2005 of Laws of Uganda, Regulation 11 (1)

Commission. Such judges must be appointed subject to the follow-up of ethical standards. Kimuraheebwe's²⁹ statement on the appointment has revealed that police officers have been discriminating. A case in point is arbitrarily denying the public service positions to people without connection with the person in question. This exclusion may lead to the compromise of security of tenure for some affected.

3.2 The security of tenure

Tenurial security is a way of ensuring that judges retain autonomy. This essential element is part of the appointment process. Everyone agrees that a permanent position, or the least-renewable one, is to secure the financial independence of judges and ensure a safe working environment for judges. This practice helps especially those working in an acting/temporary capacity since it gives them the confidence to work without fear of being dismissed. Article 144 of the Constitution of Uganda creates specific age limits for judicial officials. For instance, the age of retirement for the judges in the High Court and the principal judges is sixty-five years, except for the chief justice, deputy chief justice, justices of the Supreme Court, and courts of appeal, which is seventy years.³⁰

Chief Justice Benjamin Odoki's need for reappointment in 2013 beyond retirement was seen as a threat to judicial independence and constitutionalism. In 1988, Odoki, under the "Odoki Commission," helped guide the constitution-making process of the 1995 Constitution and is regarded as the father of the constitution." However, someone should ask why the president appointed some retired justices like Chief Justice Benjamin Odoki.³¹ The power to re-appoint a justice or judge after the statutory retirement age is vested under Article 142 Clause I(c) of the 1995 Constitution. However, some critics argue that this calls into question the objectivity and independence of the court system. Additionally, this verdict has fuelled debates on interpreting Constitutional Articles 143 and 253 of the Uganda Constitution. In the case of *Hon. Gerald Kafureeka Karuhanga v Attorney General*,³² judges did not reassume Benjamin Odoki to become chief judge. In the meantime, the African guideline reduces judges' tenure security because Judges are never appointed for a fixed term.³³ This may threaten their tenured status given that they are appointed intermittently; hence, they can be removed at any time.

3.4 Removal of Judges and Disciplinary Actions

The head of state of Uganda may dismiss a judge from the bench before he/she attains retirement age. This power is given through Article 144 Clause 2 of the 1995 Republic of Uganda's Constitution. Grounds for impeachment include a judge's incompetence, misconduct, inability to carry out his or her duties due to mental or physical disability and other such factors. The president appoints the tribunal, which hears the case before any action, such as suspension or dismissal. Their results support the argument that the judge or justice may be dismissed for the above reasons. In *Fox Odoi and another v Attorney General*,³⁴ the constitutional court decided on section 144(2) on a judge's dismissal. The court must first direct a

²⁹ Kimuraheebwe, John Mary Vianney, Dennis Zami Atibuni and Deborah Manyiraho. "Security and Fragility of Tenure of Public Servants within the Legal Framework in Uganda." *East African Journal of Law and Ethics* (2022).

³⁰ Uganda's Constitution of 1995 (revised 2018) by Act 1, Article 143

³¹ <https://www.independent.co.ug/odoki-speaks-re-appointment/>

³² Constitutional Petition No. 0039 of 2013

³³ Principle and guideline, paragraphs 4 (l) and (m) of the Rights to a Fair Trial and Legal Assistance in Africa. Principle A

³⁴ Constitutional Petition No. 08 of 2003

committee to conduct a comprehensive investigation to remove the judge from office. This decision highlights the importance of having a transparent and impartial process for terminating court employees, which includes judges.

The designated institution must present an investigating tribunal to the President per the conditions. Their nomination has raised questions regarding the decision-making and selection processes, as well as the legitimacy of the tribunals. The importance of an unbiased organisation in ensuring transparency and accountability in the recruitment process is highlighted. No judge or other official shall remain on the bench without the tribunal's recommendation and the president's action. However, this approach ensures a full review and all necessary procedures to dismiss a judge. This heightens anxieties since such a procedure may give too much weight to the tribunal's decision. The independence, objectivity, and lack of bias or undue influence are issues about the tribunal members. The president might remove the judge for no justifiable reason because there are no checks and balances. This approach is consistent with the principles of checks and balances and separation of powers that emphasize the need to keep the judiciary and executive branches apart. Under the tribunal's recommendation, the removal procedure is now held even more under the system of control and responsibility. This procedure should be followed strictly because no other approaches will be considered valid. With the possibility of the president appointing the panel that would investigate the judge, an opportunity arises through which they will misuse their power to eliminate judicial officials. Even more ominous is the lack of legislative oversight following a tribunal's ruling on a judge or justice, mainly when a potential conflict of interest is present. This process of appointing and dismissing the judicial authorities should be outlined for objectivity.

3.5 Impartiality

There are alternative approaches to judicial independence, and everyone gives a slightly different version of what it can involve. However, two concepts pop out and encapsulate the entire methodology. Judges and other court employees, in the exercise of their mandates, should be allowed to apply their professional judgment based on their knowledge of the correct facts and the applicable laws. It is also essential to ensure that this freedom is accompanied by objectivity so that people can make rational and impartial decisions, as in the case of *Arvo O. Karttunen v. Finland*.³⁵ For the judicial system to work, judges must settle disputes and impartially. Impartiality is required in civil and criminal cases, whereby judges should not be biased when ruling. This principle of impartiality guarantees justice and fairness in the judiciary.

The right to a fair hearing, as stated in the Uganda Constitution of 1995, includes the right to a speedy hearing in an open court before an impartial tribunal.³⁶ This concept embodies the rule of law and other fundamental principles of constitutionalism. Also, it guarantees the autonomy of the judiciary and its justice by introducing strict regulations for various branches of government, such as the executive branch. The concerns raised regarding the impartiality and justice of its decisions have been addressed by the African Commission on Human and Peoples' Rights. In the Constitutional Rights Project case, the Commission concluded that a tribunal with a single judge and military members raises issues regarding

³⁵ Communication 387/1989

³⁶ Uganda's Constitution of 1995 (revised 2018) by Act 1, Article 28 (1)

the lack of impartiality. The mere fact that there are such tribunals, even if they are staffed with people of doubtful character, casts the image of objectivity, if not the actuality.³⁷

3.6 Judicial Immunity

Across the globe, judges are highly appreciative of debates concerning judicial immunity. According to Principle 16 of the United Nations Basic Principles on the Independence of the Judiciary, judges should be protected from civil processes in their work.³⁸ This idea acknowledges the necessity of preserving the judges from the legal implications of their acts or omissions in the capacity of judges to uphold the judiciary's reputation.³⁹ The goal is to maintain an independent and trustworthy judiciary while ensuring everyone is answerable to the law. The Beijing Principles, Paragraph 32 and the Universal Charter of the Judge, Article 10 discuss judicial immunity. The cases of *Ernst v. Alberta Energy Regulator*⁴⁰ and *Kintu Samuel and Another v. Registrar of Companies and two others*⁴¹ clearly show why the independence of the judiciary should be upheld, and judgment should not be contested beyond justification. Nevertheless, it must be emphasized that court officials may be held accountable for their actions despite the assumptions of the absolute immunity given to them by judicial independence. *H/W Aggrey Bwire v The Judicial Service Commission*⁴² was an appeals court case highlighting the need for judicial immunity. It did not have any doubt that every judge and justice was under a duty and not a liberty to safeguard this immunity. To perform their duty well, they should do their work honestly and fairly. It is important to note that this idea does not apply in all cases. Pursuant to Article 147 Clause 1(d), a person can complain to the Commission on Judicial Service about the actions of a judge. Article 148 states that the Judicial Service Commission may take disciplinary action against judges.

In Uganda, some recent developments have raised concerns about the principle of judicial immunity. The Supreme Court has challenged the 1995 Uganda Constitution over the quality of judicial independence and immunity. This was illustrated in the case of *Attorney General v. Nakibuule Gladys Kisekka*.⁴³ Court-held judicial immunity does not apply when the Constitution has designated a particular entity to remain insulated from the public gaze. It is almost impossible to conceive a situation where an individual or ruling power could wield power without being held responsible for their actions in a democratic political system. Judicial accountability is, like judicial immunity, an indispensable component of constitutionalism and is generally accepted as such.

4. Political Influence on Court Decisions

The Constitution ensures that the court maintains justice and performs its functions, and it is the court's responsibility to uphold justice and perform its duties. However, the courts' independence and equal status depend on public institutions protecting and supporting them. Courts are critical in securing people's

³⁷ The Constitutional Rights Project v. Nigeria, African Commission on Human and Peoples' Rights, Communication No. 87/93 (1995), paras. 13-14.

³⁸ Commission internationale de juristes. International principles on the independence and accountability of judges, lawyers and prosecutors: a practitioners' guide. International Commission of Jurists, 2007.

³⁹ Professor Tibatemwa-Ekirkubinza, A Ugandan Supreme Court justice, discusses judicial immunity, responsibility, and independence.

⁴⁰ [2017] 1 SCR 3

⁴¹ Misc. Cause No. 58/2021

⁴² Civil Appeal No. 09 of 2009

⁴³ Constitution Appeal No. 02 of /2016

rights, which needs to be focused upon. This view considers the basic significance of a court that remains impartial in preserving a society of justice and justice all over. As Alaidarov⁴⁴ states that;

“An independent judiciary becomes the core of the rule of law and constitutionalism, the main guarantee of the freedom of the people.”

Article 128 of the Ugandan Constitution emphasizes an independent judiciary as very important. It guarantees fair wages, salary, allowances and pension and prohibits any form of interference. Nevertheless, issues of the court's autonomy and allegations of abuse of power and manipulation are intensified by the government's speedy monitoring of the court activities. For instance, recently, the president requested the chief justice to reconsider the judgment on the sale of the National Mosque (Gaddafi Mosque). The president's letter concerned the judge's reasoning to make such a decision.⁴⁵ In addition, Assimwe⁴⁶ outlines how the judiciary's independence might be influenced by aspects such as compensation, promotion opportunities, and rewards offered by the executive branch. This clause entails a lot of challenges and exposure. In their midst, we observe appalling acts of violence by court security guards, continued attacks and threats against the autonomy and safety of the judiciary, and blatant contempt for court orders by other branches of government, such as the legislature and the executive.

4.1 Disregard for Court Orders with impunity

The problem of disrespect for court orders is so grave in Uganda that constitutional intervention, compromised enforcement mechanisms and systemic corruption are all deep-seated.⁴⁷ The current trend is worrying because it gradually erodes the fundamental ideals of constitutionalism. Ignoring court orders in Uganda erodes the judiciary's power and the constitutionalism principle as it does in other countries. As a result, people no longer trust the justice system and think of themselves as victims of injustice, as in the case of Rukirabashaija Kakwenza, a Ugandan novelist who was again arrested despite having secured a release order after being accused of insulting President Museveni and his son on the social media site Twitter.⁴⁸ Therefore, the judiciary is weak because public officials, office bearers and government agencies shun them. This leads to a distinct violation of the doctrine of separation powers.⁴⁹

It should be highlighted that an instance of such a thing happened when Kizza Besigye was under house arrest for over five years; this occurred after the court orders. During this period, he was often homebound.⁵⁰ In September 2021, the National Unity Platform (NUP) Parliamentarians, MP Muhammad Ssegirinya and Allan Ssewanyana, were arrested. Their arrest was associated with the deaths of thirty old

⁴⁴ Alaidarov, Ak-Adil. “*Judiciary and Its Role in Improving and Developing National Legislation.*” (2021).

⁴⁵ <https://chimpreports.com/museveni-directs-cj-owinyi-dolo-to-save-muslim-property/> (accessed on the 2. February 2024 at 2:09)

⁴⁶ Jackline-Bainipai, Asiimwe. “Civil Judge in Uganda: Remuneration Systems and Promotion Possibilities. How to Reward Efficient and Independent Decisions.” *KAS African Law Study Library - Librairie Africaine d'Etudes Juridiques* (2019)

⁴⁷ <https://blackstarnews.com/uganda-judges-on-strike-html/> (accessed on 2. February 2024)

⁴⁸ <https://www.aljazeera.com/news/2022/1/25/ugandan-novelist-detained-again-despite-release-order-lawyer> (accessed on 2. February 2024 at 7:29 pm)

⁴⁹ Tapscott, Rebecca. “Arbitrary states: *social control and modern authoritarianism in Museveni's Uganda.*” Oxford University Press, 2021.

⁵⁰ <https://www.aljazeera.com/news/2016/5/14/uganda-oppositions-kizza-besigye-charged-with-treason> (accessed on the 2. February 2024)

people in Masaka District. The public prosecutor has brought a severe case against lawmakers, charging the members with terrorism, murder and attempted murder. They discovered that they were imprisoned at Kitalya under the watch of a magistrate. In September 2021, the court released two of the legislatures on bail. Yet, their liberty was brief, and they were arrested soon after discharge from Kitalya prison by undercover army officers.⁵¹

Nevertheless, the Constitutional Court deemed the Referendum (Political Systems) Act 2000 unconstitutional on June 25, 2004. This ruling led the president to attack the courts and judicial system aggressively. In his speech on the 27th of June 2004, Museveni said that the judges' primary work should be a judgment of chicken and goat thieves and not address the country's destiny.⁵² On the other hand, in a democratic and constitutional system, it is essential to respect the judiciary and its decisions,⁵³ not to undermine the rule of law. Recently, allegations about the Uganda Parliament ignoring court orders have raised huge concerns about the balance of powers and the principles of constitutionalism. In this case, Zaake, the opposition member of parliament, was denied access to the office one month after the Constitutional Court ruled that his removal from commissionership without a quorum was justifiable as an act of contempt of court.

Similarly, Prime Minister Robinah Nabbanja intervened at the Mwangi II court to facilitate the release of a widow imprisoned for a large sum of money. This intervention by the Prime Minister in this situation brings out her interest in the welfare of people in desperate situations. The prime minister supervised criminal hearings influencing Amon Mugezi, the magistrate. The prime minister did the right thing by protecting the woman's land and protection. However, this step is considered a violation of judicial independence.

The problem of contempt with court orders necessitates proper consideration since it sows doubt upon Uganda's judicial system and constitutional behaviour. This issue highlights an old problem that undermines the judicature and democratic ideals of the nation. Another even bigger problem is that strong people can act without consequences and ignore the principles of legal power, and the vast and uncontrolled rejection of court limits is a more unmistakable sign of this.

4.2 The ongoing threats and attacks to judicial security and autonomy.

The repetitive violations of the security and freedom of court judges diminish the credibility of the rule of law and the basic tenets of any fair and neutral judicial environment. Weiner et al.⁵⁴ state that acts of violence or aggression towards a judge or the building are interpreted as a symbolic attack on the justice system's integrity. There have been times when the government tried to manipulate court verdicts for

⁵¹ <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/uganda#:~:text=The%20public%20prosecutor%20charged%20the,the%20gates%20of%20Kitalya%20prison> (accessed on 2. February 2024) at 5:09 Pm)

⁵² An edited speech version is reprinted in The Monitor, 'Museveni mad with Judges over nullifying 2000 referendum act', 30 June 2004.

⁵³ NTV Uganda News on 1st November 2023. <https://www.youtube.com/watch?v=ImP5oKnuJ1o> (accessed on the 1st of February 2024 at 5:09 Pm.)

⁵⁴ Weiner, Neil Alan, D. A. Harris, Frederick S. Calhoun, Victor E. Flango, Donald Hardenbergh, Charlotte Kirschner, Thomas O'Reilly, Robert Sobolevitch, and Bryan Vossekuil. "Safe and secure: Protecting judicial officials." *Court Review* 36, no. 4 (2000): 26-33.

publicity. Such judges often face the public wrath that affects their reputation and integrity. The High Court, in the case of *Uganda Law Society v Attorney General*,⁵⁵ was explicitly attacked by the notorious Black Mamba, leading to the arrest of those arrested individuals from the People's Redemption Army facing charges of terrorism and treason. These two incidents undoubtedly contravene Article 128 of the Constitution, which gives the Judiciary independence. Several threats to the effectiveness of the provision posed, including the court security's barbaric actions, the continuous infringements on the judiciary's independence and safety, and the flagrant disregard for court orders by other arms of the government.

The rising concerns surrounding judicial autonomy emanate from the drastic influence of the impulsive government on court operations, which might lead to the abuse and manipulation of authority. For example, consider a recent letter in which the president asked the chief justice to review the decision related to the sale of the National Mosque (Gaddafi Mosque), posing a question concerning the judge's wisdom.⁵⁶

4.3 Court martial and independence of the civilian court

The employment of a military court as the best means of resolving political matters has been recommended, albeit with minimal effectiveness, in the sphere of the Judiciary.⁵⁷ The creation and enlargement of the competence of military courts have been tactfully used to fly around the civilian courts. The Ugandan military-executive branch relationship has a noticeable effect on judicial independence and performance.⁵⁸ Kagoro⁵⁹ reveals the convergence of Uganda's military and political leadership, which is revealed by the involvement of military officers in executive functions and how military decisions, in turn, impact political developments.

Military court-martial is alternatively used to control the judicial system instead of the civilian courts. This alternative allows the government to sidestep civilian tribunals because, in theory, these tribunals are intended to protect an individual's right to a fair trial. But jurisdiction has always been an issue. The legitimacy of military tribunals as prosecutorial mechanisms dealing with service-related offences also presents concerns about the effectiveness of such offences in addressing transnational crimes committed by military personnel. Relying on the holding in *Dr. Besigye and others v. Attorney General*,⁶⁰ the court issued an opinion on the appellate jurisdiction of the General Court Martial in terrorism matters. The other significant event includes musician Bobi Wine, who was vehemently acquitted of gun possession in a military court in 2018. Widespread criticism defied that his trial in a military court rather than a civil one was an attempt to destroy the judiciary integrity, thus denying him a fair trial.

⁵⁵ Constitutional Petition No. 18 Of 2005

⁵⁶ https://www.newvision.co.ug/category/news/museveni-asks-cj-to-review-verdict-on-gaddafi-NV_176938, <https://www.independent.co.ug/c-asks-chief-justice-to-review-decision-allowing-sale-of-muslim-properties/> <https://chimpanreports.com/museveni-directs-cj-owinyi-dolo-to-save-muslim-property/>> (accessed on the 15th January 2024 at 2:09)

⁵⁷ Moses Khisa "The making of the 'informal state' in Uganda,". *Africa Development* 38, 1&2 (2013), 191-226.

⁵⁸ Twinomugisha, Ben Kiromba. "The role of the judiciary in the promotion of democracy in Uganda." *African Human Rights Law Journal* 9, no. 1 (2009): 1-22.

⁵⁹ Kagoro, Jude. "Uganda: A perspective on politico-military fusion." In *Oxford Research Encyclopedia of Politics*. 2020.

⁶⁰ Constitutional Petition No. 7/2007

Notably, *Rtd. Cpt. Amon Byarugaba and three others v. Attorney General*⁶¹ was a landmark Constitutional Court judgement banning military tribunals from trying civilians. Military courts have convicted over 1,000 people since 2002, raising debate. However, despite the verdict by the constitutional court, civilians are being convicted in military courts. This highlights the challenges with the military court system protecting civilians' legal rights and the independence of civilian courts.

4.4 Beset court premises by security personnel who display abhorrent acts of violence.

The country's judicial system supports a democratic framework and determination to keep Uganda peaceful and orderly.⁶² However, there have been acts of violent violence committed by security operatives on the court premises, and this respected institution has witnessed all. The behaviour of security personnel on court premises damaged confidence in the judicial system. Sadly, such apparent conduct undermines confidence in the law system with potentially weighty implications if people start doing justice to themselves. So, the study denounces this inconsiderate disregard for the Judiciary's independence, contradicting Article 128 of the Constitution. For instance, in the case of AIGP Andrew Felix Kaweesi's murder, the police made it clear that they are not barred by law from arresting a suspect who is on court premises. When the advocate represents the defendants or the litigants in a court of law, she or he benefits from specific securities and privileges as a legal practitioner.

This is further confirmed in the Stella Nyanzi case of 2019.⁶³ However, at times when she was in attendance as the audience at the Buganda Road Court hearing, the security officers were blamed for using so much force. When tear gas was sprayed to disperse supporters, it became unbearable close to the court.

Nevertheless, Assimwe⁶⁴ underlines that the executive branch's power might influence the level of compensation, opportunities for advancements, and incentives, which, in turn, may threaten the independence of the judges. A close relationship between this phenomenon and the cadre judge's selection is evident. The ruling government has permanently appointed judges who support the aims of NRM, and this trend has enabled it to assume control over the judiciary for two decades.

5. Conclusion

Conclusively, the study sheds light on the elements affecting judicial independence, particularly political interference. The issues raised in this paper reveal the wide-ranging and intricate effects of the judiciary's role to preserve law and order and guarantee fundamental freedoms. To turn the Ugandan court into a more independent and credible one, it is necessary to draw attention to such issues to insulate the judiciary from outside influence, compliance with court orders and the safety of the judicial personnel. These challenges need to be addressed to maintain the ideals of constitutionalism and ensure that the judicial system in Uganda is not biased. There is a need for constitutional reforms like amending Article 142, which provides for the appointment of judges to reduce the president's appointing powers. Also, Article 128 should be entrenched to appreciate the issue of judicial independence. In addition, it is also necessary

⁶¹ Constitutional Petition No.0044 of 2015

⁶² Centre for Public Interest Litigation, Judicial independence, (Available on <https://cepiluganda.org/our-programmes/judicial-independence/> [Accessed on January 27, 2024])

⁶³ *Uganda v. Stella Nyanzi* Appeal No. 80 of 2019

⁶⁴ Jackline-Bainipai, Asiimwe. "Civil Judge in Uganda: Remuneration Systems and Promotion Possibilities. How to Reward Efficient and Independent Decisions." *KAS African Law Study Library - Librairie Africaine d'Etudes Juridiques* (2019)

to acknowledge the fact that the judicial power is derived from the people. The courts are responsible for using this power to ensure the law and the values, standards and vision of the Ugandan people. However, the outcome depends upon the willingness and ability of the Ugandan government to undertake the judiciary's independence.

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