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Exploring the Effects of Corruption on Administration of Justice in Uganda

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ABSTRACT

Corruption in Ugandan courts is still a widespread problem that must be aggressively combated before the rule of law could be upheld. It is sad to see the thriving nature of corruption in the Ugandan judiciary despite the provisions of the Anti-Corruption Act. This article explore the effects of corruption on the administration of justice in Uganda. Data for the article were secondarily sourced from journal articles, technological blogs, policy briefs, statutory provisions, case laws, newspaper publications and textbooks. At the end, the article recommends for the Inspector General of Government's office to create an independent spy network that can discover corruption in courts. More so, the provisions of the Anti-Corruption Act should be enforced without favouritism, and the Ministry of Justice should support whistleblowers policy, who should always be on ground to reveal corruption incidences. Furthermore, CCTV cameras should be effectively and efficiently deployed in various judicial offices. Finally, justice dispensation processes should be sped up in Uganda.

Keywords: Administration of justice, Anti-Corruption Act, Corruption, Court, Whistleblower.

INTRODUCTION

Justice administration is essential for the development of the society[1]. Though it faces challenges like corruption and technicalities, administration of justice brings uniformity and consistency to the law, causing it to develop systematically. The rules of law as laid down in administration of justice represent the collective wisdom of the community, and following them reduces the likelihood of mistakes. As the rules are fixed, judges and other officials in the courts are guided to apply them[2].

Public trust in our courts has been eroded due to corruption, as reported by court users, including judicial officers and litigants. A corrupted judicial officer may grant bail to an accused person for a fee without considering the risk, violating public trust and legal duty. This can lead to unfair decisions and hinder justice administration[3]. Due to Uganda's economic meltdown and court officials' desire to emulate Britain, the US, and Japan, corruption in the court system has been linked to the desire for luxurious living and low pay.

Corruption is a long-standing issue in society, where individuals often seek quick favours without following proper procedures. It can be argued that corruption has been around since the beginning of modern governance[4]. The number of corruption allegations in the Ugandan judiciary is increasing, affecting government, public services, private firms, companies, and even households. This has eroded public trust in the Ugandan judiciary, which relies on public support to function effectively. Without it, the system will collapse owing to inability to administer justice due to corruption. Police, state prosecutors, court personnel, and most judicial officers are despised by the victims and the public. This necessitated the present study that examines the effect of corruption on the administration of justice in Uganda.

Abuse of Office

In section 11(1) of the Uganda's Anti-Corruption Act[5], "A person who being employed in a public body or a company in which government has shares, does or directs to be done an arbitrary act prejudicial to the interest of his or her employer or of any other person, in abuse of the authority of his or her office, commits an offence and is liable on conviction to a term of imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty-eight currency points or both".

In Uganda Vs Godfrey Kazinda[6], Justice David K. Wangutusi ruled that abuse of office occurs when an office holder breaches their duties. And for that breach to be proved, the prosecution must prove;

- a. The accused worked for a public body.
- b. The accused committed an arbitrary act.
- c. The act constituted an abuse of authority.

- d. That the arbitrary act hurts his employer.

The Honourable Judge quoted Lord Mansfield in *RVs Bembridge*^[7] to define a public official as "Having an office of trust, concerning the public, especially if attended with profit by whomever and in whatever way the officer is appointed". Thus, a public officer is "Any public office holder who performs a public obligation, especially if compensated from public funds"^[8]. In a decided case, the court ruled that abuse of office requires acts that harm another's rights, which are protected by law^[9]. In *Uganda Vs. Atugonza*^[10], where the defendant was charged for abuse of office, for violating section 11(1) of the Anti-Corruption Act, the court held that the prosecution must prove their charge beyond reasonable doubt. The court held that the accused held a public post under section 11(1) of the Anti-Corruption Act, but acted as a person, not in his official role, preventing abuse of authority or arbitrariness. Thus, for a person to be held liable for abuse of office, the accused must be proven to have acted in his official capacity.

Diversion of Public Resources

According to section 6 of the Anti-Corruption Act^[5], converting, transferring, or disposing of public monies for purposes unrelated to their intended use is considered corruption. Under Section 26(1) of the same Act, a conviction under section 6 can result in a ten-year imprisonment or a fine of up to two hundred and forty currency points.

In *Uganda Vs Lwamafa & 2 Ors*^[11], diversion elements were stated to include:

- a) The conversion, transfer, or dispossession of public funds by the accused and
- b) When the purpose was unconnected to the intended use of the resources.

Causing Financial Loss

Corruption occurs when a worker does something knowing or having reason to think it will cost his/her employer money^[12]. In *Uganda Vs B.S Okello*^[13], Hon. Justice Paul Mugamba held that Causing Financial Loss is an offence when a public body employee does or omits an act knowing or having reason to believe it will cause financial loss to the public body.

Uganda Vs Abraham Byandala and Ors^[14] established that the prosecution must prove the following criteria to prove pecuniary damage:

- a) The accused are government employees.
- b) Accused performed responsibilities with knowledge of potential financial damage to employer.
- b) Actual loss occurred.

Kassim Mpanga Vs Uganda^[15] defined "loss" as a detriment or disadvantage from deprivation. Loss means losing something one has. He argued that "loss" is a relative and generic concept. It means losing or the object lost and is synonymous with "damage", "damages", deprivation, "detriment", "injury" and "privation". That a thing is lost after a reasonable period has passed to allow serious search and recovery and such search has been unproductive.

Embezzlement

This form of corruption is established under Section 19 of the Anti-Corruption Act^[5] which provides that a person who being: (a) an employee, a servant or an officer of the government or a public body; (b) a director, an officer or an employee of a company or a corporation; (c) a clerk or servant employed by any person, association or religious or other organization; (d) a member of an association or a religious organization or other organization, steals a chattel, money or valuable security- being the property of his or her employer, association, company, corporation, person or religious organization or other organization; received or taken into possession by him or her for or an account of his or her employer, association, company, corporation, person or religious organization or other organization; or to which he or she has access by virtue of his or her office; commits an offence and is liable on conviction to a term of imprisonment not exceeding fourteen years or a fine not exceeding three hundred and thirty six currency points or both.

Embezzlement in government employment involves the following elements, as outlined in *Abahikyeye Moses vs Uganda*^[16]:

- a) Accused is hired by the government;
- b) Stole employer's property, such as money or chattel;
- c) The property came into possession through employment.

False Accounting by a Public Official

Section 22 of the Anti-Corruption Act, 2009 makes it illegal for any public official to knowingly give a false statement of public money or property. The court, in *Uganda Vs Lwamafa & Ors* ^[11], decided that the prosecution must prove that the accused are public personnel involved with receipt, custody, or management of public revenue who willfully gave false statements or returned money entrusted to them.

Corruption

Section 2 of the Anti-Corruption Act[5] defines corruption as the diversion or use of public property, funds, or securities for personal gain or benefit by an official. Any act or omission by a public official to illicitly enrich himself or a third party.

Causes of Corruption in Courts of Judicature

a) *Desire for luxury*

Law courts are regarded high-status, boosting social prestige. Since officials are continuously under pressure to impress the public, they desire fancy cars and to live in Muyenga, Kololo, Munyonyo, and Naguru. The challenge is that Uganda is a poor country and the country cannot provide such luxuries as benefits to its public servants, so these luxurious-minded judicial officers go to work inspired to fulfill their dreams, but when their monthly salary arrives, some of their children cannot even afford first-class schools due to a lack of funds. After years of frustration from their children's inability to afford good schools in the country or abroad, these officials seek an easy way to educate their children in expensive schools and fulfill their dreams, which leads to corruptly serving the public for a fee.

b) *Government Reforms*

The Ugandan government gives all public service sectors cash money without scholarships, which has influenced the Judiciary and lower courts. Due to government reforms, Ugandan court officials are paid cash, which is insufficient to cover their necessities, such as housing. Medical and daily allowances, among other advantages. Additionally, Kampala's standard of living is too high compared to other areas of the country. This is why people, including judges, seek survival options, including corruption.

c) *Job Insecurity*

Job insecurity threatens Kampala's magistrates' courts. Most Magistrates, especially ineffective ones, feel uneasy around retirement. After serving for the number of years, they realise that their chances of promotion are slim and that they could be laid off at any time due to inefficiency and ineptitude, and they have not saved enough to support themselves and their families for life. After realising this, they engage in corrupt acts.

d) *Ineffective Leadership*

Leadership of the Ugandan Justice System and Judiciary is lacking. A strong rule of behaviour for judges is lacking. Discipline committees are incompetent and ineffective. This partly explains why few corrupt judicial officials have been prosecuted despite taking bribes[17].

e) *Poor or low salary*

Junior court officers, especially in magistrates' courts, were unsatisfied with their pay. The officials believe they are overworked like 'donkeys' from Monday to Friday and feel underpaid for the amount of work they do. This believe lures some of them to corrupt acts.

f) *Moral decay*

The Ugandan judiciary, like other public service departments, lacks morality. Ugandans no longer take pride in themselves and respect their work or professions to the required moral standard[18]. Legal professions, like any business, attract selfish individuals without regard for conduct. Criminals, thieves, and those lacking self-respect often end up as judges, lawyers, state prosecutors, and other court officials[19]. The absence of government apparatus to check significant persons' morals leads to unethical practices and massive corruption in the judiciary, which has harmed Kampala magistrates' courts. Moral degradation in magistrates' courts explains tardiness or absence.

The Central Government

The president leads the executive branch, which protects citizens under Chapter Eight of the constitution[20]. The Constitution of the Republic of Uganda[21] requires the executive, through the president, to execute and maintain the Constitution and all laws made under or continued in force by the Constitution and to promote the welfare of Ugandans and protect the country's territorial integrity. The state must promote justice, particularly justice for accused persons under the Anti-Corruption Act and justice for victims of corrupt authorities, to uphold the Constitutional vision of justice. The executive is responsible for overseeing the efforts of various institutions to combat corruption in the country and curtail it. Corruption hurts the state economically, but the state's main goal is to ensure national progress and protect its citizens, so the state house created an Anti-Corruption Unit to protect its resources.

The judiciary

The judiciary is created under chapter eight of the 1995 Ugandan Constitution. It decides if the legislature and government are following the Constitution and enforcing laws[22]. The judiciary administers justice on behalf of the people, applying justice principles in civil and criminal cases, in accordance with the law and the values, norms, and aspirations of the people.

The Constitution establishes the Supreme Court of Uganda, the Court of Appeal of Uganda, the High Court of Uganda, and other subordinate courts the Ugandan Parliament may establish, including Magistrates' courts across

the country[23]. These are crucial in determining criminal cases and ensuring justice for all parties involved. So when these court officials commit wrongdoing, they lose credibility from those seeking justice. To foster "a just, free and democratic society," the judge must sanction excesses committed by the legislative and government[21]. The Constitution grants judicial power to be exercised "in the name of the people and in conformity with the law and with the values, norms and aspirations of the people." This is especially true for judges in higher courts. The Constitution empowers courts to protect citizens from oppressive laws and practices, allowing anyone to seek redress for human rights or freedom from violations[21].

Thus, the courts of judicature must see their role as securing a better society for all people, even if this means crossing the traditional line between the political branches of government and the judiciary; the courts must keep the government faithful to democracy's goals. Hence, judges and magistrates should embrace judicial activism by abandoning limited, technical definitions. Judges shall interpret the Constitution and other applicable laws to promote democracy that protects people and property, including accused persons, and discourage corruption in the judiciary. The Constitution establishes an independent, impartial judiciary to interpret, protect, and enforce the Constitution and its laws, which is essential to democracy. The Constitution requires the courts to use judicial power independently and not be influenced by any authority[21]. With all these tasks and society's hope and faith, corruption should not define the courts.

The Parliament

Article 77 of the 1995 Constitution[21] gives Uganda's parliament the ability to adopt legislation for peace, order, development, and good governance. Parliament is one of the main institutions that promotes human rights, particularly accused persons' rights and justice. To combat corruption, Parliament passed the Anti-Corruption Act in 2009 to establish offences and give punishments. The Anti-Corruption (Amendment) Act, 2015, filled the inadequacies in the previous Act.

Ministry of Justice and Constitutional Affairs

The Ministry of Justice and Constitutional Affairs, a cabinet-level government ministry in Uganda, provides legal advice and services to the government, institutions, and the public, as well as supporting the related machinery. The ministry promotes good governance and provide legal advice to government bodies and the public, ensuring rule of law and due process for all citizens and residents[24]. In Uganda's criminal law, the Ministry of Justice ensures a good judiciary and judicial system that administers justice for all. To promote good governance, the organization has often recommended against corruption, citing it as a sign of inadequate governance and a violation of the rule of law.

Inspectorate of Government

Chapter thirteen of the Constitution establishes the Inspectorate of Government, which includes the Inspector General of Government (IGG) and Deputy Inspector Generals appointed by the President with parliamentary approval[25]. Article 225 of the Constitution gives the government inspectorate the power to combat corruption in Uganda. Under the Constitution, the authority oversees the enforcement of the Leadership Code of Conduct, investigates administrative functions, and promotes constitutional values and office activities through media. The Inspectorate of Government can investigate matters related to promoting the rule of law and natural justice in administration, either on its own initiative or upon public complaint, regardless of personal injustice[21]. The inspectorate has jurisdiction over public servants and such other institutions, organisations, and corporations as Parliament may mandate. If tight operations are done by the Inspector General of Government, its jurisdiction and functions can effectively curtail corruption in the courts.

The Directorate of Public Prosecutions (DPP)

Under Article 120 of the Constitution of the Republic of Uganda, 1995, as Amended, the DPP is appointed by the President on the Public Service Commission's recommendation and Parliament's assent. The DPP represents the government in criminal proceedings, including directing police investigations, initiating criminal proceedings, and taking over pending proceedings[26]. The DPP plays a crucial role in guaranteeing justice in criminal cases without allowing for judicial official corruption.

The Uganda Police Force

The Uganda Police Force is established under Article 211 (1) of the Constitution of the Republic of Uganda, 1995, to protect life and property, prevent and detect crime, and cooperate with civilian authority and other security organs[26]. Police are involved in nearly all criminal matters in Uganda because they report them before the DPP. Police also arrest corrupt judicial officers and forward their files to the DPP for prosecution.

CONCLUSION

Corruption in courts is still a widespread problem that must be aggressively combated to uphold the rule of law. The Ugandan Anti-Corruption Act, as amended, is a good law that clearly provides for corruption offences and their punishments. Policies like the establishment of the IGG and the State House Anti-Corruption Unit are good enough to curb corruption in the country; however, the study found that the impacts of corruption on the courts are increasing and extending to social, economic, and political facets of life. More so, corruption reduces access to

health, education, and justice for the poor and disadvantaged. In the light of the above observations, the study calls for the IGG's office to create an independent spy network that can discover corruption in courts. Similarly, the provisions of the Anti-Corruption Act should be enforced without favouritism. And the Ministry of Justice should support whistleblowers, who should always be on the ground to reveal corruption incidences. Furthermore, there is need for constant review of salaries of the judicial officers. And CCTV cameras should be effectively and efficiently deployed in various judicial offices. Finally, justice dispensation processes should be sped up in Uganda.

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