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# Litigation 2024

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**Uganda: Law & Practice**
Joseph Matsiko, Peter Kabatsi, Elison Karuhanga and Bruce Musinguzi
Kampala Associated Advocates

# UGANDA

## Law and Practice

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**Kampala Associated Advocates** (KAA) is a full-service law firm based in Uganda that advises clients on a range of legal matters, from litigation and arbitration, banking and finance, taxation, oil and gas, intellectual property, telecommunications, media and technology law to corporate and transactional advisory legal services. The firm's 11 partners have varied areas of specialisation, and are assisted by over 16 lawyers and legal consultants. This makes KAA the largest and leading independent law firm in Uganda. Throughout its over 20 years of legal service excellence, the firm has been involved in various legal mandates and projects which have had a positive and lasting impact on Uganda's social, economic and political prosperity. For example, the firm recently won a USD500 million claim relating to a TV licensing dispute, and a USD110 million case against the Central Bank of Uganda in the High Court, Court of Appeal and Supreme Court, which are the biggest monetary values ever litigated in Uganda.

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## 1. General

### 1.1 General Characteristics of the Legal System

Uganda is a former British Protectorate, and her legal system is based on the English common law. Uganda's Judicature Act provides for application of common law and equity as part of the law applicable. The legal system applies the adversarial model.

The legal process is conducted through both written submissions and oral arguments. Where parties file written submissions, they require leave to address court orally in order to highlight their written submissions.

The Civil Procedure Act was amended in 2019 to allow adducing of evidence through witness statements.

### 1.2 Court System

The judiciary is established under Chapter 8, Articles 126 to 150 of the Constitution of the Republic of Uganda. The judiciary is the third arm of government under the doctrine of separation of powers. The judicial power of the Ugandan government is exercised by the Courts of Judicature, consisting of the Supreme Court, the Court of Appeal/Constitutional Court, and the High Court (three courts of record) and other subordinate courts established by Parliament which include: Chief Magistrate's Court, Grade I Magistrate's Court, Grade II Magistrate's Court, Local Council Courts, Court Martial and Family and Children Courts.

The Supreme Court is headed by the Chief Justice and is the final appellate Court, hearing appeals from the Court of Appeal. The Supreme Court has original jurisdiction to handle presidential election petitions.

The Court of Appeal is the second highest in the hierarchy of the Court system in Uganda headed by the Deputy Chief Justice and hears appeals from the High Court. The Court of Appeal also sits as the Constitutional Court with original jurisdiction to interpret the Constitution of Uganda.

The High Court is the third highest in the hierarchy of the court system of Uganda, headed by the Principal Judge. It has unlimited original civil, criminal and territorial jurisdiction. This means it can try any case from Uganda on any subject matter and can impose any penalty conferred by law.

To improve the delivery of justice in all areas of Uganda, 20 High Court circuits have been created across the country. The High Court is divided into administrative divisions based on the subject matter in a suit. Currently, the High Court has the following divisions: Family, Criminal, Civil, Land, Commercial, International Crimes, and Anti-corruption.

The Magistrate's courts are established under Section 2 of the Magistrate's Courts Act. These are important to the delivery of justice in Uganda because they do the bulk of civil and criminal cases.

In Uganda, there are also Local Council Courts established under the Local Council Courts Act of 2006 to bring justice closer to the people and to demystify the idea of justice and the law in the eyes of the average Ugandan. They are supervised by the Chief Magistrate's courts on behalf of the High Court. These courts are established at every village, parish, town, division and sub-county level and these are the jurisdictions within which each respective court at each level may operate.

There is also the process known as the Small Claims Procedure, and there also exists the Court Martial court system. These are courts set up to deal with a specific institution – the military. They are designed to deal with the internal affairs of the military.

### 1.3 Court Filings and Proceedings

In Uganda, court filings and court proceedings are open to the public. Court records are also accessible to the public. Recently, the judiciary adopted electronic filings which allows parties to file pleadings electronically. The pleadings are only accessed by a person who is a party to the case, thereby bringing in an element of confidentiality. However, any member of the public who wishes to obtain copies of the pleadings can still obtain them.

The only way proceedings can be kept confidential is in very limited circumstances to protect identity of parties, particularly in divorce proceedings.

### 1.4 Legal Representation in Court

For a person to appear in court as a legal representative, they must be enrolled as advocates in Uganda and must possess an annual practising certificate.

Foreign lawyers are generally prohibited from practising in Uganda. However, foreign lawyers can be allowed by the Chief Justice to temporarily practice in Uganda upon obtaining a special practising certificate to practise as an advocate for the purpose of appearing or acting in any one case or matter, but any such person shall only be entitled to appear or act in the case or matter for the purpose for which they are admitted. The special practising certificate is issued upon payment of prescribed fees.

## 2. Litigation Funding

### 2.1 Third-Party Litigation Funding

In Uganda, litigation funding is prohibited under the doctrine of champerty. This extends to both third parties and advocates. Third-party litigation funding, sometimes described as trafficking in litigation, is illegal at common law on grounds of public policy.

### 2.2 Third-Party Funding: Lawsuits

There are no law suits that are available for third-party funding.

### 2.3 Third-Party Funding for Plaintiff and Defendant

There is no third-party funding in Uganda.

### 2.4 Minimum and Maximum Amounts of Third-Party Funding

There is no minimum amount for third-party funding.

### 2.5 Types of Costs Considered Under Third-Party Funding

This is not applicable as there is no third-party funding in Uganda.

### 2.6 Contingency Fees

In Uganda, contingency fees are also prohibited under the principle of champerty. In particular to advocates, Regulation 26 of The Advocates (Professional Conduct) Regulations prohibits advocates from entering into any agreement for the sharing of a portion of the proceeds of a judgment whether by way of percentage or otherwise. Similarly, Section 55 (1) (b) of The Advocates Act invalidates any agreement by which an advocate retained or employed to prosecute any suit or other contentious proceeding stipulates for payment only in the event of success of that suit or proceeding.

Courts in Uganda have held that champerty agreements are illegal and unenforceable.

### 2.7 Time Limit for Obtaining Third-Party Funding

This is not applicable as third-party funding is not allowed.

## 3. Initiating a Lawsuit

### 3.1 Rules on Pre-action Conduct

In Uganda, where the suit is between private persons, it is not mandatory to issue a pre-action letter or "notice of intention to sue". However, where the suit is brought without notice to the defendant, Regulation of Advocates (Remuneration and Taxation of Costs) Regulations provide that where the defendant pays the amount claimed or found due at or before the first hearing, no advocate's costs shall be allowed except on an order of the judge or magistrate.

Where a suit is between a private person and Government, Section 2 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act requires that a 45-day statutory notice be served on government entities and/or the Attorney General before a suit is filed in court. This provision was declared as directory and not mandatory by the Supreme Court.

### 3.2 Statutes of Limitations

Any suit filed upon expiry of the limitation period is bad in law and liable to be dismissed as per Order 7 Rule 11 of the Civil Procedure Rules.

The Limitation Act is the principal legislation on limitation of causes of action save that it does not apply to actions commenced under a specific legislation which provides for limitation under that legislation. The time limit within which to institute a suit is six years for: (i) actions founded on contract or on tort; (ii) actions to enforce a recognisance; (iii) actions to enforce an award; (iv) actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture. However, in the case of actions for damages for negligence, nuisance or breach of duty in respect of personal injuries to any person, the limitation period is three years instead of six years. The limitation accrues from the date on which the cause of action arose.

In land matters, the limitation period for recovery of land is 12 years.

The trigger for limitation period is when the cause of action occurs. Time is counted from the date of the occurrence of the cause of action.

### 3.3 Jurisdictional Requirements for a Defendant

#### Instituting a Suit Against a Defendant

To institute suits in Uganda concerning property, the subject matter must be situate in Uganda as per Section 12 of the Civil Procedure Act. Further, with suits related to immovable property, they must be instituted in the court within the local limits of whose jurisdiction the property is situate; or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

With regard to suits involving compensation for moveable property, if the wrong was done within the local limits of the jurisdiction of one court and the defendant resides, or carries on business, or personally works for gain within the local limits of the jurisdiction of another court, the suit may be instituted at the option of the plaintiff in either

of the courts as per Section 14 of the Civil Procedure Act.

Other suits are to be instituted where a defendant resides or where the cause of action arose, as per Section 15 of the Civil Procedure Act.

## 3.4 Initial Complaint

### Filing and Amendment of Pleadings

Depending on the claim, suits in Uganda are usually instituted by way of an ordinary plaint/statement of claim (where the claim is not a liquidated demand) or by way of a specially endorsed plaint (where the claim is a liquidated demand).

After filing pleadings, the court may, at any stage of the proceedings, allow either party to alter or amend pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. The plaintiff may amend with or without leave of court. Amendment without leave of court can be done at any time within 21 days from the date of issue of the summons to the defendant or, where a written statement of defence is filed, then within 14 days from the filing of the written statement of defence or the last of such written statements as per Order 6 Rules 19-21 of the Civil Procedure Rules.

## 3.5 Rules of Service

When pleadings are filed, summons to file a defence must be extracted for service on the defendant as per Section 20 of the Civil Procedure Act and Order 5 Rule 1 of the Civil Procedure Rules which provides for the mode of service of summons on the defendant.

Summons issued must be served on the defendant within 21 days from the date of issue. The time may be extended on application to court made within 15 days after the expiration of 21 days showing the reasons for extension. If summons is not served within 21 days and there is no application for extension of time or when the application is dismissed without notice, the suit shall be dismissed without notice.

When court has issued the summons, it may be delivered for service (i) to any person for the time being duly authorised by the court; (ii) to an advocate or an advocate's clerk who may be approved by the court generally to effect service of process; or (iii) it may be sent by post or messenger to any magistrate's court having jurisdiction in the place where the defendant resides.

Service of summons is by delivering and tendering a duplicate copy signed by the judge or an officer (a Registrar of the Court) on his behalf. The requirement that a duplicate be delivered or tendered is mandatory and if not complied with, the service is bad.

Summons must be accompanied by a copy of the plaint and served on the defendant.

Service must be effected on the person upon whom the summons is directed unless they have an authorised agent.

Where a defendant cannot be found after proper search, or where the defendant is acting in a manner intended to frustrate the process, Rule 18 of Order 5 allows for one to apply for and effect service using a method other than personal service (substituted service). Some of the common methods of substituted service include advertising in a newspaper of a wide circulation with an expectation that the defendant will be notified.

Service out of jurisdiction may be allowed where the subject matter relates to something within the jurisdiction or where the relief is sought against somebody outside the jurisdiction, or where the breach complained of occurred outside but affects a matter within the jurisdiction, etc, as per Order 5 Rule 22-30. Service outside jurisdiction is preceded by application for that purpose, which application must show that the plaintiff has a good cause of action and that the defendant or respondent resides outside the jurisdiction. The remedy is discretionary on the court as it must be convinced that this is a proper case for service outside jurisdiction.

### 3.6 Failure to Respond

Summons is issued requiring the defendant to file a defence within 15 days of service. Where the defendant does not respond, the plaintiff can obtain a default judgment for liquidated demands/damages, or an interlocutory judgment for damages that require formal proof (unliquidated damages), or the suit can set down for hearing ex parte and proceed as if the defendant had filed a defence (as per Order 9 rules 6, 8 and 1o of the Civil Procedure Rules).

### 3.7 Representative or Collective Actions

In Uganda, class actions or representative suits are allowed as they are provided for under Order 1 Rule 8 of the Civil Procedure Rules, for cases where there are numerous persons having the same interest. Any person on whose behalf or benefit a suit is defended under the rule may apply to be a party.

Representative suits are common in proceedings involving associations, clubs or other unincorporated entities that have no capacity to sue as such. These are suits brought against a person in a representative capacity and those other members.

When instituting representative suits, there are a number of conditions that must be fulfilled, both as a matter of law and procedure.

- The representatives must have capacity to sue on behalf of others.
- The parties must have a common interest.
- The interested party must first apply for and should obtain leave of court to sue in a representative capacity. The leave must be obtained before the filing of the suit in a representative capacity.
- The applicant is required to attach a list of those sought to be represented to the application for leave. Those represented must have signed against their respective names as a sign of consent to be represented.
- The representative order and the list of those represented together with the notice of advertisement must be annexed to the plaint.
- Where a suit is filed in a representative capacity without prior leave of court, the suit is a nullity and should be struck out.
- The requirement to obtain prior leave of court cannot be waived.
- Representative suits are inapplicable to public interest litigation suits.

Public interest suits are also permissible, where a person or entity is allowed to file a suit that concerns the breach of fundamental human rights of another person or group of persons, or where the matter relates to the public interest.

### 3.8 Requirements for Cost Estimate

There is no legal requirement for providing clients with a cost estimate of the potential litigation at the outset.

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## 4. Pre-trial Proceedings

### 4.1 Interim Applications/Motions

It is possible for parties to file interim applications/motions apart from motions relating to case management. Examples are applications for temporary injunctions pending the hearing of the main suit, where parties can obtain an order to maintain the status quo upon proof that there is imminent danger to the property or the subject matter that would render a suit nugatory unless the order is granted.

A number of other applications are also allowed, under the Civil Procedure Rules – eg, discovery, inspection and production of documents, attachment before judgment, security for costs.

### 4.2 Early Judgment Applications

It is possible for a party to apply for early judgment depending on the claim and the pleadings filed by both parties.

The plaintiff can obtain a default or interlocutory judgement where the defendant does not file a defence.

The plaintiff can also apply for judgment on admission where the defendant, through pleadings or other documents, appears to admit to the whole or part of the claim.

Usually, pleadings are struck out on a point of law which can be raised at any time during the proceedings, though in practice parties are required to raise preliminary objections at an early stage.

Order 6 Rule 29 of the Civil Procedure Rules provides for dismissal of a suit where, in the opinion of the court, the decision of the point of law substantially disposes of the whole suit, or of any distinct cause of action, ground of defence, set-off, counterclaim, or reply therein.

Under Order 6 Rule 30, either party can apply for striking out of the pleadings on grounds that such pleading discloses no reasonable cause of action or answer, it is frivolous or vexatious. In such case, the court may order the suit to be stayed or dismissed, or judgment to be entered accordingly, as may be just.

Where a preliminary objection is raised, the court only looks at the pleadings to determine whether objection is meritorious or not. Preliminary objections do not require evaluation of evidence which is reserved for trial.

### 4.3 Dispositive Motions

The common dispositive motions are provided for under Order 7 Rule 11 of the Civil Procedure Rules. A defendant can apply to strike out the plaint on the following grounds:

- where it does not disclose a cause of action;
- where the relief claimed is undervalued and the plaintiff, on being required by the court to correct the valuation within a time fixed by the court, fails to do so;
- where the relief claimed is properly valued but an insufficient fee has been paid, and the plaintiff, on being required by the court to pay the requisite fee within a time fixed by the court, fails to do so;
- where the suit appears from the statement in the plaint to be barred by any law; or
- where the suit is shown by the plaint to be frivolous or vexatious.

Examples of suits barred by law include suits which are res judicata, suits which are barred by time limitation, suits that offend the lis pendens

rule, suits that are an abuse of court process and where there is no locus standi.

### 4.4 Requirements for Interested Parties to Join a Lawsuit

Under Order 1 Rule 10 (2) of the Civil Procedure Rules, it may be possible for the parties to apply to add a party, or at the instance of the court to add a party, in case the presence of such a person is necessary to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.

The application to add such a party could be by any of the parties to a suit or done by the court on its own motion. The application could even be made by any person whose legal right is, or who claims that their legal right will be, directly affected by the granting of the relief claimed in the action and can show that their presence is necessary to enable court effectually and completely to adjudicate and settle the suit before it.

Where a person seeks to be joined as a party, the court must be satisfied:

- that such a party is one that ought to have sued or been sued but was left out;
- that the presence of such a party is relevant for a conclusive and effectual determination of a suit;
- that in the absence of such a party, the orders of court may not be easily implemented; and
- a party has an interest in the subject matter of the suit to the extent that orders made by the court are likely to affect that party's interests.

A defendant can also apply to add a third party to the suit under third-party proceedings.

Order 1 Rule 14 (1) Civil Procedure Rules empowers the court to grant leave to a defendant, who claims to be entitled to contribution or indemnity against any person not a party to the suit, to issue a third-party notice to that person. The defendant must show that the subject matter between the third party and the defendant is the same as the subject matter between the plaintiff and the defendant and the original cause of action must be the same. The application can only be commenced by a defendant to a suit. The defendant/applicant should ordinarily in the defence plead liability against the third party.

### 4.5 Applications for Security for Defendant's Costs

Security for costs is provided for under Order 26 of the Civil Procedure Rules which provides that the court may, if it deems fit, order a plaintiff to give security for payment of all costs incurred by any defendant.

The main considerations in such applications are whether the defendant is being put to undue expense of defending a frivolous and vexatious action, whether the defendant has a good defence to the suit, and whether such a defence is likely to succeed. Some of the reasons which might prompt a defendant to apply for security for costs include where the plaintiff is resident abroad and does not have substantial property within the jurisdiction of the court.

### 4.6 Costs of Interim Applications/Motions

Courts have the discretion to award costs to an applicant who succeeds on an Application for Interim Orders. Sometimes courts order that costs of the application shall abide the outcome of the main suit.

### 4.7 Application/Motion Timeframe

Applications are usually given short timelines and the conclusion of the same depend on how

the parties have handled the matter. Usually, applications do not go beyond three months. Most interim orders are handled as a matter of urgency and are usually disposed of very fast, unlike applications for temporary injunctions.

In the event that the matter is so urgent, the court can grant an ex parte interim order or administrative interim orders so that the status quo is preserved pending the hearing of the main application.

The amendment of the Civil Procedure Rules in 2019 provided for ex parte interim orders which last for three days unless extended by the court.

## 5. Discovery

### 5.1 Discovery and Civil Cases

The Civil Procedure Rules provide for discovery and production of documents under Order 10.

Order 10 Rule 12 provides for discovery on oath of documents which are in possession of another party relating to any matter in question in the suit. Any party can apply for discovery without filing any affidavit. This rule allows for discovery of any document relevant to the suit whether it was disclosed in pleadings or not.

Order 10 Rule 14 provides for production of documents during the pendency of a suit. The court may order that documents relating to a matter in a suit be produced by any party to a suit upon oath.

Therefore, the court can, on its own order for production of documents, and any party to a suit, can apply for discovery of documents.

The principles governing discovery of documents are that: a party seeking the production of documents from the other party must be before the court to which the application is made and the suit must have pending issues for determination by that court. The documents must be relevant to the determination of the suit. The documents must be in the possession of, or under the control or power of, the adversary party. The application should not amount to a fishing expedition.

Order 10 Rule 15 also provides for inspection of documents referred to in pleadings or affidavits. Every party to a suit is entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce the document for the inspection of the party giving the notice. Unlike Rule 12, this rule is restrictive in that it only applies to documents referred to in pleadings, while Rule 12 applies to any document relevant to the suit in possession of another party.

Where the court makes an order for discovery, delivery/production and inspection, and the party so ordered fails to comply with the court order, Order 10 Rule 21 allows Court to strike out the pleadings of the party in default.

The law permits production of documents and the taking of witness testimony. Order 10 Rule 1 & 2 provides for interrogatories. In the process of presenting interrogatories, the party interrogating may put questions for the purpose of extracting from their opponent information as to the facts material to the questions between them when they have to prove any issue raised or for purposes of securing admissions as to those facts in order that the expense and delay may be saved. In deciding whether the order should be made, the court is to be guided by: (i) whether

the interrogatories are necessary for disposing of the suit fairly, or (ii) for saving costs. Under Order 10 Rule 22 the answers obtained through interrogatories can used in evidence.

The available mechanisms for curbing the scope and/or costs of the discovery process are that the document must be relevant to the suit and/or referred to in the pleadings. Under Order 10 Rule 3, if it is the opinion of the taxing officer or of the court, either with or without an application for inquiry, that the interrogatories have been exhibited unreasonably, vexatiously or at improper length, the cost occasioned by the interrogatories and the answers to them shall be paid in any event by the party at fault.

### 5.2 Discovery and Third Parties

It is not possible to obtain discovery from a third party not named as a plaintiff/claimant or defendant. It is however possible that any person who is compelled to appear as a witness may be ordered to produce documents which may be proven to be in their possession.

### 5.3 Discovery in This Jurisdiction

The general approach is that parties intending to rely on documents should attach them to their pleadings. Order 6 Rule 2 requires parties to file a summary of evidence detailing the documents they intend to rely on. Therefore, any document to be relied on must be annexed to the pleading, or mentioned in a list of documents to be relied on.

A party who has in their possession a document relevant to the suit must produce it. There are no detailed rules on disclosure, apart from the guiding principle being that the document must be shown to be relevant and that it is in the possession of the party against whom discovery is sought.

### 5.4 Alternatives to Discovery Mechanisms

The system provides for discovery mechanisms.

### 5.5 Legal Privilege

The Evidence Act Chapter 6, provides for advocate-client confidentiality. Section 125 of the Act prohibits advocates from disclosing any client information without the client's consent.

Further, Section 128 provides that no one shall be compelled to disclose to the court any confidential communication which has taken place between them and their legal professional adviser. The prohibition relates to any person who is a licensed advocate and to the extent that in-house counsel are professional advisers, the prohibition extends to them as much as to external counsel.

### 5.6 Rules Disallowing Disclosure of a Document

Other rules extend to communications made to public officers during the course of their duty, when they consider that the public interest would suffer by the disclosure as per Section 123 of the Evidence Act. Other documents that cannot be disclosed include unpublished official records relating to any affairs of state, as per Section 122 of the Evidence Act.

## 6. Injunctive Relief

### 6.1 Circumstances of Injunctive Relief

Injunctions are provided for under Order 41 of the Civil Procedure Rules.

The conditions for the grant of an interlocutory injunction include:

- the applicant must show a prima facie case with a probability of success;
- such injunction is only granted where the applicant might otherwise suffer irreparable injury which will not be adequately compensated by the award of damages; and
- If the court is in doubt, it will decide the application on a balance of probability.

The above rules are in relation to temporary injunction orders pending the disposal of the main suit.

Besides a temporary injunction order, the court can also issue an arrest and attachment of property before judgment as provided for under Order 40 of the Civil Procedure Rules, in circumstances where the defendant has the intention of obstructing execution of any decree, has absconded/is about to abscond or left the local limits of the jurisdiction of the court, or has disposed of or removed from the local limits of the jurisdiction of the court their property or any part of it, or is about to leave Uganda.

The sole purpose of the attachment before judgment is therefore to give an assurance to the plaintiff that their decree, if made, would be satisfied. This injunction is similar to a mareva injunction/freezing order.

There are no specific rules for injunctions relating to parallel proceedings in another jurisdiction, but the High Court has wide discretion to grant any orders in the interests of justice, including preventing abuse of court process. This may include where a good case is made for prevention of parallel proceedings in Uganda, where there are similar proceedings in another jurisdiction.

## 6.2 Arrangements for Obtaining Urgent Injunctive Relief

Where the application is very urgent, interim injunctive relief may be obtained at filing, or at very short notice, and this relief may be obtained ex parte, pending a hearing for a substantive application for a temporary injunction. The interim relief is usually granted by a registrar, pending determination of the application of a temporary injunction by a judge.

In instances where the court is on vacation, the court can be moved by obtaining a certificate of urgency which enables it to sit as a matter of urgency, in spite of the vacation.

## 6.3 Availability of Injunctive Relief on an Ex Parte Basis

Only interim orders can be granted without notice to the respondent, in deserving circumstances. Temporary injunction orders can only be obtained ex parte upon proof of service of the application and failure to file a reply by the party served. Order 41 Rule 3 of the Civil Procedure Rules requires the court, in all cases before granting an injunction, to direct notice of the application for the injunction to be given to the opposite party. An interim order obtained ex parte usually only lasts for three days unless extended.

## 6.4 Liability for Damages for the Applicant

Under Order 41 Rule 4 of the Civil Procedure Rules, an order for injunction may be discharged, varied or set aside by the court on application made to the court by any party dissatisfied with the order. Generally, the party so harmed will most likely be awarded costs and not damages, but the court has discretion to award damages for the injury suffered, especially in a separate or

counter claim. Security for such damages would be a rare occurrence.

### 6.5 Respondent's Worldwide Assets and Injunctive Relief

The court's jurisdiction does not extend to properties outside Uganda. An injunction can not be granted by a Ugandan court over assets that are not in Uganda.

### 6.6 Third Parties and Injunctive Relief

Injunctive relief can be obtained affecting interests of third parties especially for orders issued in rem such as orders concerning land. However, generally speaking, the courts will not issue orders against a third party who has not been given an opportunity to be heard.

### 6.7 Consequences of a Respondent's Non-compliance

An injunctive relief order is a court order, and while it subsists must be obeyed. Failure to obey such an order amounts to contempt of court and the party at default can be penalised accordingly. An order for an award of damages can be made, as well an award for the contemnor to be committed to civil prison.

## 7. Trials and Hearings

### 7.1 Trial Proceedings

Trials are conducted both orally and in written form. Witnesses are permitted to testify in chief orally or by filing witness statements. However, cross examination and re-examination are done orally. After hearing, parties can argue orally or file written submissions. Where a party files written submissions, they are not allowed to argue orally except with leave of the court to make oral highlights of their submissions.

The rules require that all judgments be delivered in written form.

### 7.2 Case Management Hearings

After closure of pleadings, parties are required to extract summons for directions whereby both the court and parties agree on how the trial will proceed.

- When filing applications, the process usually begins with the applicant filing a motion or application with the court. This application outlines the relief sought and provides the legal grounds for the request. The applicant must serve notice to the respondent and provide them with a copy of the application within 15 days of filing the application. The respondent is required to file a reply within 15 days. This period can vary depending on the urgency and nature of the matter.
- Once the application and responses have been filed, the court will schedule a hearing date. Shorter hearings are often prioritised for prompt resolution, especially if they involve urgent matters like injunctions or interim orders.
- For these applications, evidence is adduced by way of affidavit evidence. The hearing is conducted through submissions and there is (generally) no examination of witnesses. Therefore, hearings of applications are usually shorter and take around two to three hours. Sometimes judges require parties to file submissions and rulings are delivered thereafter, which shortens the time for hearing.
- Before full detailed hearing of civil cases, parties hold a scheduling conference where they come up with agreed facts and uncontested documents which then become exhibits. They also identify witnesses and the issues for trial. This quickens the trial, as agreed facts and

documents will not require to be proved or adduced.

## 7.3 Jury Trials in Civil Cases

There are no jury trials in Uganda except for criminal trials.

## 7.4 Rules That Govern Admission of Evidence

According to the Evidence Act Chapter 6, evidence is admissible if it is relevant to the facts in issue. Evidence must not be hearsay and must be direct. The evidence must also be reliable and relevant.

Documents must be adduced either by primary or secondary evidence. Primary evidence means the document itself and secondary is certified copies or copies of the original.

## 7.5 Expert Testimony

The Evidence Act permits expert testimony at trial. Under Section 43 of the Evidence Act where court is called upon to form an opinion upon a point in foreign law or of science or art or as to identity of handwriting or finger impressions, then the opinions upon that point of persons specially skilled in that foreign law, science or art or impressions as to identity of handwriting or finger impressions are relevant facts, and such persons are called experts.

The decision as to whether a witness is qualified to give evidence of opinion as an expert is made by the judges who are thus the expert of experts and the court is not bound by the opinion of experts.

Usually it is the parties who adduce evidence of expert witness or move court to subject certain issues to an expert. Sometimes the court can also move itself to appoint an expert to advise the court on certain points as stated in the aforementioned provision.

## 7.6 Extent to Which Hearings Are Open to the Public

Hearings are open to the public by virtue of Article 28(1) of the Constitution of the Republic of Uganda, 1995. However, the judge can decide to hear matters in chambers or in camera depending on the subject matter, but there must be compelling reasons. Transcripts are open to the public, except where for exceptional reasons the proceedings were held in camera.

## 7.7 Level of Intervention by a Judge

Uganda adopts the adversarial system of hearings and there is minimal intervention by a judge during the hearing. However, under Section 164 of The Evidence Act, a judicial officer may, in order to discover or to obtain proper proof of relevant facts, ask any question they please, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant.

Judgment is to be pronounced in open court either at once or at a future date and due notice of such shall be given to the parties under Order 21 Rule 1 of the Civil Procedure Rules of Uganda. Some decisions can be given at the hearing including judgment on admission, orders by consent, amendments, and adjournments among others.

After hearing the parties on interlocutory applications, and after closing submissions, the presiding judge has the discretion to reserve a ruling in an application or judgment in the suit, to a later date.

### 7.8 General Timeframes for Proceedings

The time frame depends on how parties expedite the hearing of their case, the availability of judges and their diaries.

Upon filing a plaint, the plaintiff has 21 days within which to serve. Upon being served, the defendant has 15 days to file a defence and the plaintiff has another 15 days to make a reply to the defence. Thereafter pleadings are considered closed.

After 28 days of closure of pleadings, the plaintiff has the duty to extract summons for directions.

The matter is thereafter referred to the judge and depending on the judge's calendar, the matter can be set down for a scheduling conference within six months. The court will then hold a scheduling conference to sort out points of agreement and disagreement, and to schedule the matter for trial. The trial date varies depending on the court's availability.

Commercial trials can vary widely in duration. Some cases may be resolved in a few days, while complex cases may take several weeks or even months and years to conclude.

Therefore, the minimum time for concluding a hearing from commencement of claim is around one-and-a-half years. Usually, judges take up to six months to deliver judgment.

A suit in the Commercial Court is supposed to be concluded within two years but by experience, some suits go on for as long as four years and exceptionally, longer.

## 8. Settlement

### 8.1 Court Approval

Parties may arrive at a consent to settle the claim at any time when a suit has been set down for hearing and before a judgment is given. A plaintiff may also withdraw the claim, with the consent of the defendant. It is complete upon filing a consent signed by all the parties. The role of the court in settlements is to endorse the consent as agreed between the parties.

Usually, the court will not interfere with a consent judgment filed by the parties unless the consent judgment is against public policy.

### 8.2 Settlement of Lawsuits and Confidentiality

Once recorded or endorsed by the court, the consent judgment becomes the judgment of the court and binding upon the parties. A consent judgment is a judgment of court and is thus a public document that can be accessed by anyone. Therefore, the settlement terms included in a consent judgment will not remain secret.

It is, however possible through mediation proceedings to have a suit settled through mediation and the terms of a mediation settlement kept confidential. In that case, the court will record the consent judgment by making reference to the mediation settlement agreement but not divulge the content of the agreement.

### 8.3 Enforcement of Settlement Agreements

Since a consent judgment is a judgment of court, it is enforced in the same manner as any other order of court, through attachments, execution of decree, etc. However, the terms of the settlement must be made part of the consent judgment for them to become enforceable as part of

the decree. To ensure enforcement by court, the parties must actually put the settlement terms into a consent judgment that directs the parties to perform obligations under the consent judgment.

### 8.4 Setting Aside Settlement Agreements

Consent judgments can be set aside on very limited grounds and cannot be varied or discharged by courts unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court; or if the consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable the court to set aside an agreement.

## 9. Damages and Judgment

### 9.1 Awards Available to the Successful Litigant

The relief granted by the court at end of a trial depends on the subject matter of a suit. The court can give declaratory orders relating to the cause of action. Courts can also make orders for the doing or refraining from doing, of certain things. Courts can award damages which include general, special and exemplary damages. Other orders may include permanent injunctions and orders for payment of costs.

### 9.2 Rules Regarding Damages

Damages are the pecuniary recompense given by process of law to a person for the actionable wrong that another has done them. There are different categories of damages which include the following.

- General damages – these are awarded as the law will presume to be the direct natural or probable consequence of the act complained of.
- Special Damages – these are such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character and, therefore, they must be claimed specially and proved strictly.
- Exemplary/punitive damages – these may only be awarded in two classes of case; first, where there is oppressive, arbitrary or unconstitutional action by servants of the government and secondly, where the defendant's action was calculated to procure them some benefit, not necessarily financial, at the expense of the plaintiff.

There is no limitation as to maximum damages by law. Damages are awarded depending on the judge's discretion and the quantum will depend on the nature of the claim and past precedents. However, special damages must be proved and hence the court cannot allow a higher figure than has been pleaded and proved at trial.

### 9.3 Pre-judgment and Post-judgment Interest

The court has discretion to award pre-judgment interest in cases where there was a monetary claim. In cases for recovery of money, the court usually awards interest to the successful litigant. The interest is awarded from the date of cause of action or date of filing until payment in full. Section 26 of the Civil Procedure Act, particularly Section 26 (2) provides that where the decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum.

Pos-judgment interest is commonly awarded as usually the judgment will order payment of interest, until full payment of the judgment sum.

### 9.4 Enforcement Mechanisms of a Domestic Judgment

There are various modes of execution of decrees issued from court judgments in Uganda. Section 38 of the Civil Procedure Act Chapter 71 provides the modes of execution:

- delivery of any property specifically decreed;
- by attachment and sale or by sale without attachment;
- by attachment of debts (garnishee order);
- by arrest and detention in civil prison; and
- by appointing a receiver.

### 9.5 Enforcement of a Judgment From a Foreign Country

Foreign judgments can be enforced in Uganda under the Foreign Judgments (Reciprocal Enforcement) Act Chapter 9, which provides for the enforcement in Uganda of judgments given in foreign countries which accord reciprocal treatment to judgements given in Uganda. The procedure to enforce a foreign judgment is by applying to have the judgment registered in Uganda. Once the judgment is registered in Uganda, it then becomes enforceable in the ordinary way a judgment from the courts of Uganda is executed.

The time within which to apply for registration of the foreign judgment is six years after the date of the judgment.

## 10. Appeal

### 10.1 Levels of Appeal or Review to a Litigation

In Uganda, there are three levels of appeals.

- Appeals from decisions of the Magistrate's Court lie to the High Court as per Section 220 (1) (a) of the Magistrate's Courts Act.
- Appeals from decisions of the High Court lie to the Court of Appeal as per Article 134 (2) of the 1995 Constitution.
- Appeals from decisions of the Court of Appeal lie to the Supreme Court as per Article 132 (2) of the Constitutions

Other than appeals, there are two other review mechanisms.

Section 82 of the Civil Procedure Act Chapter 71 and Order 46 of the Civil Procedure Rules allow the court to review its own decisions where there is a mistake or manifest error apparent on face of the record or where there is discovery of new and important evidence. This relief is only available where there is no right of appeal or no appeal has been preferred.

Also, the High Court is given power to revise decisions of Magistrate's Courts. The power of revision is only exercisable by the High Court of Uganda as a court with original jurisdiction to ensure that there is no abuse of process, that there is no inordinate delay and that substantive justice is administered without due regard to technicalities. This general power is by virtue of Section 17 of the Judicature Act. The grounds for revision are statutory and are set out in Section 83 of the Civil Procedure Act Chapter 71. They relate to a Magistrate's Court (i) exercise of a jurisdiction not vested in it in law; (ii) failure to exercise a jurisdiction so vested; or (iii) acting

in the exercise of its jurisdiction illegally or with material irregularity or injustice.

### 10.2 Rules Concerning Appeals of Judgments

An appeal is preferred by a party to a judgment, decree or order. An appeal can be granted by the appellate court where there are substantial grounds showing that the trial judge erred in handling the matter. For first appeals, the first appellate court has a duty to properly evaluate the evidence on record and come to its own conclusion. The duty of the second appellate court is to first consider whether the first appellate court exercised its duty and thereafter it can re-evaluate the evidence. However, second appeals are required to be on points of law. Third appeals are required to be on points of law of great public importance.

Appeals before the High Court are handled by one judge; appeals before the Court of Appeal are heard by three justices; appeals in the Supreme Court are heard by five justices. Constitutional appeals in the Supreme Court are heard by seven justices.

### 10.3 Procedure for Taking an Appeal

A party intending to appeal from a Magistrate's Court to a High Court is required to file a memorandum of appeal within 30 days of delivery of judgment. For appeals to the Court of Appeal and Supreme Court, the aggrieved party files a notice of appeal within 14 days of delivery of judgment and then a memorandum of appeal detailing grounds of appeal within 60 days upon receipt of a certified record of appeal.

### 10.4 Issues Considered by the Appeal Court at an Appeal

The first Appellate Court has a duty to properly evaluate the evidence on record and come to its own conclusions. Therefore, on first appeal, there is a review of the first instance decision but not a rehearing of the witnesses. The Appellate Court only takes caution that it never observed the witness and their demeanour.

The second Appellate Court first considers whether the first Appellate Court carried out its duty. If the first Appellate Court is found to have failed in its duty, the second Appellate Court has a duty to re-evaluate the evidence on record.

The general rule is that the Appellate Court does not entertain issues not canvassed at the trial stage. However, where the issue being raised is a point of law, the court can grant leave and consider a new point not explored at first instance.

In very exceptional cases, the Court of Appeal may allow new evidence to be taken in the Court of Appeal, and the new evidence may then form a basis of new points that were not considered at the trial.

### 10.5 Court-Imposed Conditions on Granting an Appeal

The law does not provide for imposing of conditions upon granting an appeal. However, the Appellate Courts have the power in deserving cases to impose any conditions on granting an appeal.

### 10.6 Powers of the Appellate Court After an Appeal Hearing

As per the Rules, on any appeal, the Court of Appeal may, so far as its jurisdiction permits, confirm, reverse or vary the decision of the High Court, or remit the proceedings to the High Court with such directions as may be appropriate, or order a new trial, and make any necessary, incidental or consequential orders, including orders as to costs. The same power is vested in the

Supreme Court, over decisions of the Court of Appeal.

## 11. Costs

### 11.1 Responsibility for Paying the Costs of Litigation

A losing party is required to pay costs of litigation where a court awards costs in a suit. Section 27 of the Civil Procedure Act provides that a successful party should be awarded costs unless the judge for good reason otherwise orders.

The calculation of costs is governed by the Advocates (Remuneration and Taxation of Costs) Rules. The object of costs is to indemnify the successful party for having to pursue or defend their rights in court ("the indemnity principle") – ie, all costs other than those which appear to have been unreasonably incurred or are unreasonable in amount.

Once costs are taxed by the taxing master, an aggrieved party can apply to court to set aside the taxed costs for being illegal or unreasonably high.

### 11.2 Factors Considered When Awarding Costs

A court usually awards costs to the successful party under the principle that "costs follow the event". Costs must be taxed to determine the actual amount to be awarded to the successful litigant. While taxing costs, the court considers the following: the instruction fee should cover the advocates' work, costs are taxed according to the Six Schedule to the Rules, the amount of the subject matter involved will have a bearing, a successful litigant should be fairly reimbursed the costs they have incurred, costs should not rise above a reasonable level so as to deny the poor access to court, the level of remuneration must be such as to attract recruits to the profession, and there should be consistency in the awards made.

### 11.3 Interest Awarded on Costs

There is no provision in the law for award of interest on costs. Thus, costs do not attract interest.

## 12. Alternative Dispute Resolution (ADR)

### 12.1 Views of ADR Within the Country

ADR, including mediation, is viewed as an important and increasingly popular method for resolving disputes in Uganda and is recommended as a way of dealing with the problem of case backlog. Many cases are increasingly being settled through mediation. Another mode of ADR is arbitration, and an increasing number of disputes are being determined through arbitration.

The most popular ADR methods in Uganda include mediation and arbitration.

### 12.2 ADR Within the Legal System

The legal system in Uganda promotes ADR to a significant extent, but it is generally not compulsory in all cases. Parties are encouraged but not compelled to pursue ADR methods before or during litigation.

The legal system promotes ADR in Uganda as courts usually advise parties to first go for mediation, before the cases proceed to hearing.

This is typically done for certain types of cases, such as family disputes and civil cases. Parties can voluntarily agree to participate in mediation, or the court may order mediation in appropriate cases.

In the Commercial Court, judges commonly refer matters to court-annexed mediation before they are set down for hearing.

Courts also recognise and enforce Mediation Agreements and Arbitral Awards. If parties agree to resolve their disputes through arbitration or mediation, the resulting agreements are legally binding and can be enforced in court. The Arbitration and Conciliation Act, 2000, which is based on the UNCITRAL model law on arbitration, provides a legal framework for enforcing arbitration awards, which are final.

### Sanctions for Unreasonable Refusal

While there is a push for ADR in Uganda, there are no specific legal sanctions for unreasonably refusing ADR.

### 12.3 ADR Institutions

In Uganda, there are institutions offering and promoting ADR. These include:

- Center For Arbitration & Dispute Resolution (CADER) – this is established under the Arbitration and Conciliation Act and has several functions it performs to facilitate Arbitration in Uganda.
- Uganda Law Society Arbitration and Mediation Center – the Uganda Law Society has established an arbitration and mediation centre that offers ADR services, including mediation, to the legal community. The centre provides training for mediators and arbitrators, and it is organised in its approach to ADR.
- ICAMEK – the International Centre for Arbitration & Mediation in Kampala (ICAMEK) is an independent, not-for-profit organisation, private sector-led institution dedicated to advancing ADR in Uganda and across East Africa.
- The Ministry of Justice and Constitutional Affairs has established the Justice Law and Order Sector (JLOS) to improve access to justice, and it includes support for ADR mechanisms.

There is generally good organisation mainly at ICAMEK, for the promotion of ADR and putting in place organisational capacity to promote, facilitate and conduct ADR in Uganda.

## 13. Arbitration

### 13.1 Laws Regarding the Conduct of Arbitration

In Uganda, the conduct of arbitration and the recognition or enforcement of arbitral awards are governed by the Arbitration and Conciliation Act, 2000, which has all the tenets of the UNCITRAL model law on Arbitration. The Act recognises the principle of party autonomy, allowing parties to agree on arbitration to resolve their disputes. It provides for appointment of arbitrators, conduct of arbitral proceedings, enforcement of arbitral awards, foreign awards and setting aside arbitral awards, among others.

The Act provides for the enforcement in Uganda, of the New York Convention for enforcement of foreign arbitral awards as well as for the enforcement of ICSID Convention awards in Uganda.

### 13.2 Subject Matters Not Referred to Arbitration

While arbitration is a flexible and widely used method for resolving various types of disputes in Uganda, there are certain subject matters that may not be referred to arbitration, or they may be subject to restrictions. These include: family law disputes like divorce, custody adoption, guardianship, etc, criminal matters, public law

disputes, some regulatory matters like licensing and human rights violations, among others.

### 13.3 Circumstances to Challenge an Arbitral Award

In Uganda, parties can challenge an arbitral award in court, but the grounds for challenging are limited and specified in the Arbitration and Conciliation Act, 2000 and they include proof that:

- a party to the arbitration agreement was under some incapacity;
- the arbitration agreement is not valid under the law to which the parties have subjected it or, if there is no indication of that law, the law of Uganda;
- the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was unable to present their case;
- the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration;
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties;
- the arbitral award was procured by corruption, fraud or undue means or there was evident partiality or corruption by one or more of the arbitrators; or
- the arbitral award is not in accordance with the Arbitration and Conciliation Act.

### 13.4 Procedure for Enforcing Domestic and Foreign Arbitration

The procedure for enforcing domestic and foreign arbitration awards in Uganda is governed by the Arbitration and Conciliation Act, 2000. The Act provides a clear framework for the enforcement of both domestic and foreign arbitration awards, and also specifically provides for enforcement of the New York Convention and ICSID Awards, which is as follows.

- The first step in enforcing a domestic arbitration award is to file the award with the High Court of Uganda. The award should be accompanied by the arbitration agreement and any relevant court order referring the dispute to arbitration.
- The party seeking enforcement of a foreign arbitral award should file an application with the High Court for the recognition and registration of the foreign award.
- After registration and recognition of the award, the party seeking enforcement must then file an application with the High Court, specifically requesting the enforcement of the arbitration award and must notify the other party.
- If the court is satisfied that there are no valid grounds for refusing enforcement, it will issue an order for the enforcement of the award.
- Once the High Court issues an order for enforcement, the arbitration award is treated as a decree of the court. The prevailing party can then use the court's order to execute and enforce the award through ordinary court processes.

## 14. Outlook

### 14.1 Proposals for Dispute Resolution Reform

There is an ongoing process for review of ADR policies and laws, to make ADR more acceptable and more efficient and cost-effective, as a means of dispute resolution. The proposals for reform may culminate into legislation in about two to three years.

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