

Judges, prosecutors must pay fidelity to the law

Recent developments suggest a troubling pattern. Accused persons, particularly those perceived to be critical of government, have increasingly encountered a justice system that appears less anchored in principle and more in expediency. The denial of bail in circumstances where the law clearly provides for it, the raising of tenuous and often speculative objections by prosecutors, and the selective vigour in pursuing certain categories of accused persons all point to a deeper institutional malaise.

Consider the treatment of Opposition figure Kizza Besigye, whose repeated engagements with the criminal justice system have often raised more questions than answers. Equally, supporters of the National Unity Platform and leaders of civil society organisations have, in various instances, faced prosecutorial conduct that appears designed less to secure justice and more to secure detention. While each case must be assessed on its own facts, the broader pattern cannot be ignored.

At the heart of the matter lies the principle of legality. Judges swear oaths to administer justice in accordance with the Constitution and the law,

ly in the wake of the 1966 constitutional crisis. The courts' inability or unwillingness to assert constitutional supremacy during that period contributed to the erosion of institutional checks and balances.

Perhaps one of the most dramatic illustrations occurred in 2005 during the infamous Black Mamba siege of the High Court, when security forces surrounded the High Court and re-arrested suspects who had just been granted bail. While some judges strongly condemned the incident, the broader institutional response exposed the Judiciary's vulnerability and the limits of its authority when confronted with raw state power.

These examples are not cited to diminish the Judiciary, but to underscore a critical point: courts are human institutions, and they can err sometimes with profound consequences. When such errors align with political pressures or public expectations, they risk entrenching injustice rather than correcting it. The right to bail, for instance, is not a privilege bestowed at the whim of a judicial officer. It is a constitutional safeguard rooted in the presumption of innocence. Denial of bail must, therefore, be justified on clear, lawful grounds such as the risk of flight, interference with investigations, or the likelihood of committing further offences. Where such grounds are absent, or where they are stretched beyond recognition, the denial of bail becomes not a legal decision but a punitive measure imposed prior to conviction.

Similarly, prosecutorial discretion must be exercised judiciously. The power to charge, to object to bail, and to guide the course of criminal proceedings is immense. When that power is used to advance weak or unsubstantiated objections, it undermines the credibility of the justice system. Prosecutors are not adversaries of the accused in a political contest; they are officers of the court tasked with upholding justice, even where that may result in the acquittal of the accused.

The theoretical foundation of the rule of law is clear: laws must govern, not individuals. Where the application of the law begins to depend on who the accused is or what they represent politically, the system ceases to function as a neutral arbiter and instead becomes an instrument of control.

This is not merely a legal concern; it is a democratic one. A justice system perceived as partial loses public confidence. Citizens begin to view courts not as forums of fairness, but as extensions of political authority. In such an environment, grievances escalate, legitimacy wanes, and the social contract

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without fear or favour. Prosecutors, too, are bound by a duty not merely to secure convictions, but to ensure that justice is done. These are not ceremonial commitments; they are binding ethical and constitutional imperatives. Fidelity to the law requires more than technical compliance, it demands intellectual honesty, independence of mind, and moral courage.

Uganda's constitutional and political history offers sobering reminders of what happens when that fidelity wavers. During the turbulent years following independence, sections of the judiciary were criticised for failing to robustly check Executive overreach, particular-

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