

Chief Justice Flavian Zeija during a recent judicial function. His tenure comes amid growing public scrutiny of the courts over bail decisions, prolonged remand, and the protection of constitutional rights. PHOTO/FILE

How Judiciary betrayed the presumption of innocence

Once a cornerstone of justice, the presumption of innocence is increasingly under strain as courts routinely deny bail, adjourn habeas corpus applications, and keep political suspects on prolonged remand—raising troubling questions about judicial independence, constitutional fidelity, and the rule of law in Uganda.

BY KAKWENZA RUKIRABASHAIJA

In any functioning legal system, bail is not a privilege, it is a constitutional right rooted in the presumption of innocence.

In our country today, we have witnessed a grotesque inversion of this fundamental principle. Everyday, judges and prosecutors abandon their legal training, judicial oaths and obligations towards Ugandans, to serve as instruments of the ruling National Resistance Movement (NRM) party political repression.

The cases of Dr Kizza Besigye, Sarah Bireete, Fr Deusdedit Ssekabira, and countless other political prisoners expose a Judiciary that has forgotten or deliberately ignored the very basics of criminal jurisprudence.

If this does not worry any sane Ugandan, I do not know how to relate a passive bystander with an insane being. Not my circus, not my monkeys kind of citizenry.

Presumption of innocence turned on its head

I believe I am in a levelled scholarship position to remind those who seem to have misplaced or forgotten about their law degrees: bail exists because the accused is presumed innocent until proven guilty.

This is enshrined in Article 28(3)(a) of our 1995 Constitution and Article 9(3) of the International Covenant on Civil and Political Rights, to which Uganda is a signatory. The Supreme Court in Tumwesigye James Vs Uganda (2004) held unequivocally that "the right to bail is a constitutional right and should not be whimsically denied."

Bail can only be denied on specific, narrow grounds like risk of flight, likelihood of interfering with witnesses or evidence, or probability of committing further offences.

The burden of proving these risks lies with the prosecution and not with the accused to disprove them. But our courts, despite who is the Chief Justice or how many experiences a person has as a judge or prosecutor, have inverted this burden, requiring political prisoners to prove their innocence before courts, effectively gutting the presumption of innocence.

JUSTICE

The presumption of innocence is enshrined in Article 28(3)(a) of the 1995 Constitution and reinforced by international law, including the International Covenant on Civil and Political Rights (ICCPR). It guarantees fair treatment during investigations, trials, and bail decisions.

Habeas corpus reduced to ritual

Habeas corpus is the ancient writ from medieval England (Assize of Clarendon 1166, Magna Carta 1215) and embedded into our legal system to help circumvent arbitrary State or private detention. It is supposed to be the most urgent application in any court, heard immediately, even in the middle of the night.

Judges in functioning democracies have heard habeas corpus applications in their pajamas because liberty cannot wait. It means you can stop a judge while driving to work and s/he rules on it, not adjourn on it. A judge is always available to dispense justice, even at his toilet door. But in our country, habeas corpus has become a cruel and sad joke courtesy of our inept Judiciary.

When the two Kenyan activists were kidnapped and disappeared while in Uganda, their lawyers filed habeas corpus applications. The Attorney General's office, staffed presumably by people who attended law school and with years of work experience which they boast of, brought affidavits from security agencies claiming they had no knowledge of their whereabouts.

Days later, the same agencies released the activists and Gen Yoweri Museveni would admit to having held them in a "refrigerator."

This is not legal practice but unfortunate State-sanctioned perjury. No one was subpoenaed to explain, no one resigned, no one was punished. Impunity.

lic priest, remains in detention on charges that would not survive preliminary examination in any serious legal system. In each case, the Judiciary has abandoned the law in favour of regime preservation.

Remand as the new sentence

Our courts have weaponised remand and what should be an exceptional measure, holding someone before trial, has become the default punishment. Prosecutors know they need not secure convictions because the persecution process itself is the punishment. Keep them on remand long enough, deny bail repeatedly, adjourn hearings indefinitely, and you achieve the regime's goal of silencing dissent without the inconvenience of proving guilt.

This violates Article 28(1) of the Constitution, which guarantees a fair hearing "within a reasonable time." When bail is denied and cases are adjourned for months or years, there is no "reasonable time", there is only indefinite detention without trial, a practice that should have died with colonialism but now Gen Museveni's rule has breathed life into it.

One must genuinely ask if our judges and prosecutors have simply made a calculated decision that career advancement under this regime requires abandoning the law they swore to uphold, shall they tell us that Makerere University is still the best university in the country when what it has produced are a bunch of incompetent judges and prosecutors?

A Judiciary losing public trust

Our country has become a legal backwater, a jurisdiction where the rule of law exists only on paper.

International observers watch in disbelief as our courts make a mockery of due process. When the Attorney General's office lies to court about detainees' whereabouts (case of Sam Mugumya and Dr Lina Zedriga, Jolly Tukamushaba--despite being abducted in daylight by military men), when judges adjourn urgent liberty applications, when bail is denied on fabricated stupid grounds, Uganda signals to the world that it is not a serious legal system.

When I studied my Master of Laws, my professors would wonder what type of dual legal system Uganda follows when they read my books and also my thesis exposing the backwardness and institutional failure.

To the judges, prosecutors and the whole gang of regime supporters reading this, what if it were you in the dock?

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