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The right to an order of habeas corpus in Uganda

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Summary: 1. Introduction. 2. Habeas corpus before the 1995 Constitution. 3. The drafting of Article 23(9). 4. Proceedings/debates of the Constituent Assembly. 5. Article 23(9) in practice. 6. The right to the order of habeas corpus or the right to habeas corpus. 7. Circumstances in which the order of habeas corpus has to be made. 8. Standard and burden of proof. 9. Ensuring compliance with habeas corpus orders. 10. Broader application of Article 23(9). 11. The right of appeal. 12. Conclusion. 13. References.

Abstract: Article 23(9) of the Constitution of Uganda (1995) provides for the right to an order of habeas corpus which is inviolable and cannot be suspended. It is thus one of the few absolute (non-derogable) rights under Article 44 even during a state of emergency. Article 23(9) is operationalized by section 34 of the Judicature Act (1996) which stipulates the conditions that have to be fulfilled for a court to make an order of habeas corpus. The author demonstrates ways in which the right to an order of habeas corpus has been protected in Uganda before and after independence. The drafting history of Article 23(9) of the Constitution is also discussed and it is argued that the right to an order of habeas corpus is applicable in every situation where a person's movement has been restrained by the government or private individuals. The author also deals with the applicable standard and burden of proof in habeas corpus applications.

Keywords: Habeas Corpus, Uganda, Judicature Act, 1995 Constitution, Article 23(9) of the Constitution

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1. Introduction

Article 23(9) of the Uganda's Constitution states as follows: '[t]he right to an order of habeas corpus shall be inviolable and shall not be suspended.' Article 44 of the Constitution states that 'there shall be no derogation from the enjoyment of ... the right to an order of habeas corpus.' Thus, the right to an order of habeas corpus is an absolute right. It is absolute in the sense that it is not subject to the limitations under Article 43[2] and cannot be derogated from even during the state of emergency. In addition, section 38 of the Judicature Act (1996) provides for the circumstances in which the court can make an order of habeas corpus. In this article, the author illustrates the manner in which the right to an order of habeas corpus has been protected in Uganda during colonialism and after independence. The author also demonstrates the drafting history of Article 23(6). The author also analyses cases in which Article 23(9) has been invoked. These cases show, amongst other things, that some judges have held that the right to an order of habeas corpus is only available in instances where the applicant has been detained or imprisoned. It is argued, relying on the drafting history of Article 23(9), that the right to an order of habeas corpus is applicable in every situation where a person's movement has been restrained. It is also argued that the standard of proof on the part of the applicant for an order of habeas corpus should be that of balance of properties. Where the state informs court that they are detaining the applicant, they should prove, with clear and convincing evidence, that the detention is lawful. However, if there is evidence to suggest that the person on whose behalf the application is being made is in state custody but the state denies having him/her in custody, the state should prove, beyond reasonable doubt, that the person is not in its custody. Mere denial is not sufficient as there are instances in which the government has lied to court that it does not have the applicants in custody. It is also argued by the current author that courts should stop making vague orders of habeas corpus, that in cases where the state does not obey orders of habeas corpus, courts should hold the relevant officials in contempt. It is further argued by the current author that it is wrong for the high court to declare people who have been detained incommunicado missing persons simply because the state argues that it does not have them in its custody when there is circumstantial evidence to show that those people were arrested by state agents. The discussion will start with the issue of habeas corpus before the 1995 Constitution.

2. Habeas corpus before the 1995 Constitution

In Uganda, the right to an order of habeas corpus has its origin in English common law and the Habeas Corpus Acts.[3] Case law shows that at least as early

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[2] Article 43 of the Constitution provides for the circumstances in which some of the rights in the Bill of Rights may be limited. It states that '(1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest. (2) Public interest under this article shall not permit- (a) political persecution; (b) detention without trial; (c) any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.' A copy of the Constitution of Uganda. Available at: https://www.constituteproject.org/constitution/Uganda_2017 (accessed on 11 February 2026).

[3] Ibingira v Uganda [1966] EA 445 at 450. For the brief discussion of the history of the writ of habeas corpus in the United Kingdom, see for example, Diane P. Wood, 'The Enduring Challenges for Habeas Corpus' (2020) 95(5) Notre Dame Law Review 1809. For the different models of habeas corpus, see for example, Richard H. Fallon Jr. and Daniel J. Meltzer, 'Habeas Corpus Jurisdiction, Substantive Rights, and the War on Terror' (2007) 120(8)

1931, courts handled cases dealing with the writ of habeas corpus. For example, in *Rex v Bamuta*,[4] the Court of Appeal for Eastern Africa held that it did not have jurisdiction over an appeal against the order of the High Court of Uganda refusing to issue a writ of habeas corpus for the release of the accused from custody pending retrial pursuant to being imprisoned following a wrongful conviction. The writ of habeas corpus, however important it was as a 'bulwark of liberty', could be abrogated or suspended by the colonial government 'either generally or in respect of a particular individual.'[5] It was available whether the person was being detained in criminal or civil matters (for example, for deportation purposes). As the East African Court of Appeal held, '[t]he true distinction is not whether the proceedings are criminal or civil, but whether the liberty of the subject is involved.'[6] An application for habeas corpus was 'impossible' if the applicable was released on bail.[7] The writ of habeas corpus was not only applicable against the state for detaining a person unlawfully.[8] It could also be filed against private individuals. For example, a parent could bring a writ of habeas corpus against a fellow parent for the child to be taken out of the custody of the respondent parent and be committed in the custody of the applicant parent.[9] As the East African Court of Appeal held in *Krishan v Kumari:*[10]

At common law, a father has a natural jurisdiction over the infant's welfare and a right to the custody of his child during infancy. The right exists even against the mother ... The father may apply, by writ of *habeas corpus*, for an order to remove an infant of tender years from the custody of its mother.[11]

The court did not have the jurisdiction to issue an order of habeas corpus against a man who had married the applicant's adult daughter against the wish of the applicant since there was no evidence that the man was restraining or detaining the daughter unlawfully.[12] Likewise, a court did not have the power to issue the writ of habeas corpus where the applicant was being detained in accordance with the relevant deportation legislation.[13] After independence, the constitutions did not provide for the right to habeas corpus. Although the 1962,[14] 1966[15] and 1967[16] constitutions provided for the right to liberty, they were silent on the right to an

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Harvard Law Review 2029. For the discussion of habeas corpus in international human rights law, see Vicki C. Jackson, 'World Habeas Corpus' (2006) 91(2) Cornell Law Review 303.

[4] Rex v Bamuta [1931] EACA 19. See also Strobino v Balletto [1950] EACA 47 at 49.

[5] Right Honourable Jocelyn Victor Hay, Earl of Erroll v Commissioner of Income Tax [1940] EACA 4 at 22.

[6] In Re: of an Application For Directions; In Re: of the Nature of Habeas Corpus By Keshavlal Punja Parbat Shah [1955] EACA 323 at 384. See also Shah v Attorney General of Kenya [1955] EACA 289

[7] Shah v Attorney General for Kenya and Another [1955] EACA 291.

[8] In the matter of Patel and in the matter of an application for the issue of directions in the nature of habeas corpus, Section 387 of the Criminal Procedure Code (Miscellaneous Criminal Application No. 17 of 1948) [1948] EACA 91 (1 January 1948) (the applicant was being detained unlawfully in prison and on the basis of the writ of habeas corpus, the court ordered his release). See also *Re: An Application By Ali Rehman* [1960] E.A 302 (EACA) (the court order the government to release the applicant from prison because the sentence he was supposed to serve has expired but the government insisted on imprisoning him because it had misunderstood the duration of the sentence). See also Bhagubhai Bhanabhai [1954] EACA 134.

[9] Solamalay v Solamalay [1940] EACA 47

[10] Krishan v Kumari [1955] EACA 9.

[11] Krishan v Kumari [1955] EACA 9.

[12] Re: An Application by Barbara Simpson Howison [1959] E.A 568 (EACA).

[13] Re: G.L. Binaisa [1959] E.A. 997 (EACA)

[14] Article 19 of the 1962 Constitution.

[15] Article 19.

[16] Article 10.

order of habeas corpus. However, habeas corpus was governed by common law and the Criminal Procedure Code.[17] Section 349(1)(b) of the 1964 Criminal Procedure Code specifically provided that the High Court had the power to order 'that any person illegally or improperly detained in public or private custody within such limits be set at liberty.' It also had the power to order that a person who is detained be brought before a court martial. Although the writ of habeas corpus was governed by the Criminal Procedure Code, in 1966, the Court of Appeal held that 'the application for the writ [of habeas corpus] and the subsequent proceedings would normally be civil proceedings; indeed they would only be criminal proceeding if, should the applicant not be released, the immediate result would be either his trial on a criminal charge or his return to prison to serve as sentence of imprisonment.'[18] In 1967, the issue of habeas corpus was included in the Judicature Act. Section 33 (a) of the 1967 Judicature Act[19] provided that:

The High Court—may, at any time, where a person is deprived of his personal liberty otherwise than in execution of a lawful sentence (or order) imposed him person by a competent by a competent court, upon complaint being made to the High Court by or on behalf of that person and if it appears by affidavit made in that behalf that there is a reasonable ground for such complaint, award under the seal of the court, a writ of habeas corpus ad subjiciendum directed to the person in whose custody the person deprived of his liberty is; and when the return is made the judge, before whom such writ is returnable, shall inquire into the truth of the facts set out in the affidavit and may make any order as the justice of the case requires.

Section 33(b) provided for the writ of *habeas corpus ad test testificandum* or habeas corpus *ad respondendum* whose discussion falls outside the scope of this article. A few observations should be made about section 33(a). Unlike section 349 of the 1964 Criminal Procedure Code, section 33 did not expressly draw a distinction between those who were being detained or restrained in public or private facilities. For section 33(a) to be applicable, there had to be unlawful deprivation of liberty and a complaint had to be made to the High Court by the person deprived of his/her liberty or by another person on behalf of the one deprived of his/her liberty. Once the High Court was satisfied that there was 'a reasonable ground for the complaint', it 'may… award under the seal of the court a writ of *habeas corpus ad subjiciendum* directed to the person in whose custody the person deprived of liberty is.' The section also imposed a duty on the judge who made the order to the effect that 'when the return is made the judge, before whom such writ is returnable, shall inquire into the truth of the facts set out in the affidavit and may make any order as the justice of the case requires.' The use of the word 'may' suggested that the

[17] Section 349 of the Criminal Procedure Act, Cap 107 (1964) provided that '(1) The High Court may whenever it thinks fit direct–(a) that any person within the limits of Uganda be brought up before the court to be dealt with according to law; (b) that any person illegally or improperly detained in public or private custody within such limits be set at liberty; (c) that any prisoner detained in any prison situated within such limits be brought before the court to be examined as a witness in any matter pending or to be inquired into in such court; (d) that any prisoner detained as aforesaid be brought before a court-martial or any commissioners acting under the authority of any commission from the President for trial or to be examined touching any matter pending before such court martial or commissioners respectively; (e) that any prisoner within such limits be removed from one custody to another for the purpose of trial; (f) that the body of a defendant within such limits be brought in on return of *cepi corpus* to a writ of attachment. (2) The Chief Justice may from time to time frame rules to regulate the procedure in cases under this section.' Cases in which section 349 was invoked include, Ibingira v Uganda [1966] EA 445 at 450; Uganda v Commissioner of Prisons, Ex Parte Matovu [1966] EA 514.

[18] Ibingira v Uganda [1966] EA 445 at 452.

[19] Judicature Act 11 of 1967.

judge had the discretion to decide whether or not to issue a writ of habeas corpus even if there were reasonable grounds to suggest that the person was being deprived of his/her liberty unlawfully. The use of the word 'shall' suggested that once the affidavit from the person who was alleged to be illegally detaining the complainant was returned to the judge, he/she was obliged to 'inquire into the truth of the facts set out in the affidavit.' He/she did not have the discretion whether or not to conduct such an inquiry. However, once the inquiry was completed, the judge had the discretion to 'make any order as the justice of the case requires.' This is inferred from the use of the word 'may.' The 1967 Judicature Act was silent on the right of appeal in case the person who applied for the writ of habeas corpus was not satisfied with the court's ruling. In *Captain Mike Komakech Mwaka v Military Police*,[20] the High Court referred to section 33(a) and held that:

this court is empowered on the return of the writ of Habeas Corpus and on the production of the applicant who claims to be unlawfully detained to find out whether the said person is being unlawfully detained and if so to ensure his immediate release as the court nay deem fit in the circumstances.[21]

The 1967 Judicature Act was in force until 1996 when it was repealed by the 1996 Judicature Act.[22] Statistics show that between 1939 and 1988, hundreds of habeas corpus applications were filed before the High Court. The majority of them dealt with cases of unlawful detention or imprisonment by the police and the army. However, a few dealt with cases of custody of children.[23] Case law also shows that section 33 was invoked in cases where a parent wanted to have custody of the child[24] and where the applicant was in military detention.[25] In 1995, Uganda promulgated a new constitution which expressly includes the right to the order of habeas corpus under Article 23(9). Before discussing Article 23(9), it is important to briefly illustrate its drafting history.

3. The drafting of Article 23(9)

As mentioned above, the right to an order of *habeas corpus* was not expressly provided for in the 1962, 1966 and 1967 Constitutions. Uganda has experienced unconstitutional changes of government several times. It is beyond the scope of this article to discuss the political or constitutional history of Uganda, including the differences between the 1962, 1966 and 1967 constitutions as there are several scholars who have dealt with these issues extensively. For example, Kanyehaimba referred to the period between 1962 and 1966 as 'the dramatic years.'[26] However,

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[20] Captain Mike Komakech Mwaka v Military Police (J-S Case No. 1994) [1994] UGHC 114 (15 November 1994)

[21] Captain Mike Komakech Mwaka v Military Police (J-S Case No. 1994) [1994] UGHC 114 (15 November 1994).

[22] Judicature Act, Chapter 16 (Commenced on 17 May 1996) at 6.

[23] See Archives of the Judiciary, Republic of Uganda. Most of the habeas corpus cases in the archives were in the 1980s. Available at: https://derekrpeterson.com/wp-content/uploads/2021/09/high-court-of-uganda-archive-catalgue.pdf (accessed on 31 December 2025).

[24] See for example, In the Matter of a Writ of Habeas Corpus for an Infant Zono Taryeba (Miscellaneous Cause 1 of 1992) [1992] UGHC 97 (13 April 1992) (the court held that the welfare of the child would have been better protected if she stayed with the father–the respondent).

[25] Captain Mike Komakech Mwaka v Military Police (J-S Case No. 1994) [1994] UGHC 114 (15 November 1994) (the court held that the applicant was being lawfully detained in the military facility and his trial for service offences had commenced by a military court).

[26] George Kanyeihamba, Constitutional and Political History of Uganda: from 1894 to Present (2010) 65–104. See also Ovonji, I.C., 'Constitutional government and human rights in Uganda' (1990) 6(1) Lesotho Law Journal: A Journal of Law and Development 207–250; Joe

it is important to refer to the Constitutional Commission's summary of this constitutional history. In its report, the Constitutional Commission highlighted the political arrangements under the 1962 Constitution:[27]

But within a space of less than two years [after 1962], another actor who had never been part of the political calculations leading to independence mounted the stage. This was the Uganda Army. On the 25th January, 1964, there was an army mutiny whose objectives were apparently limited. The mutiny was suppressed but was a foretaste of the important role the military were to play in the future. In 1966, following a confrontation between the then Prime Minister Milton Obote and Sir Edward Mutesa, President of Uganda and Kabaka of Buganda, the 1962 Constitution was abrogated and replaced by the Interim Constitution which was soon replaced by the 1967 Constitution. Milton Obote ruled basically with army support until he was overthrown by Idi Amin in the January 1971 Coup d'etat. From 1971 to 1979, ldi Amin used the army as the main instrument of government until he, too, was overthrown by a combination of Ugandan and Tanzanian military forces.[28]

After a five-year civil war, the National Resistance Army (NRA) overthrew the government. The NRA government established the Constitutional Commission in 1988 with the mandate to collect views from citizens relating to the promulgation of a constitution to replace the 1967 one. The Constitutional Commission received submissions from Ugandans of all backgrounds suggesting what should be included in the new constitution.[29] Based on those submissions, the Constitutional Commission wrote a report highlighting the gist of those submissions and also the recommendations. In its report, the Constitutional Commission indicated that Ugandans made submissions on, inter alia, the right to freedom of liberty. In particular, it recorded that the right to bail had been violated and that '[t]he constitutional right of *habeas corpus* has rarely been respected. People are known to have remained on remand for years some without even being informed of charges against them.'[30] The Constitutional Commission recommended that in the new Constitution, '[t]he right of *habeas corpus*, which requires the law enforcement authority to produce the prisoner and show reason why he or she is detained should always be protected and respected.'[31] The Constitutional Commission prepared the Draft Constitution, to be considered by the Constituent Assembly, and attached it to its report. Clause 53(7) of the Draft Constitution (1993) provided that:

The right to an order of habeas corpus, that is, the right to an order requiring a person to be brought before a judge or court to investigate the lawfulness of restraining or the detention of a person shall be inviolable, and shall not be suspended except in the case of a state of emergency as provided by this Constitution.

A few observations should be made about Constitutional Commission's recommendations above. First, in its report, the Commission referred to *habeas corpus* as a constitutional right. It is not clear on what basis it made that observation in light of the fact that the 1967 Constitution did not include the right of *habeas corpus*. Two, in its report, the Commission explained that the right to the

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Oloka-Onyango, 'Constitutional Transition in Museveni's Uganda: New Horizons or Another False Start?' (1995) 39(2) Journal of African Law 156–172.

[27] Report of the Uganda Constitutional Commission: Analysis and Recommendations (1993) paragraph 0.8.

[28] Ibid, paragraph 0.9.

[29] Benjamin Odoki, 'The Challenges of Constitution-making and Implementation in Uganda' in Joe Oloka-Onyango (ed), Constitutionalism in Africa: Creating Opportunities, Facing Challenges (Fountain Publishers, 2011) 264–286 at 271–272.

[30] Report of the Uganda Constitutional Commission: Analysis and Recommendations (1993) paragraph 7.55.

[31] Ibid, para 7.152(d).

order of habeas corpus which 'requires the law enforcement authority to produce the prisoner and show reason why he or she is detained should always be protected and respected.' In other words, it was silent on instances in which the person in question could be detained or restrained by private individuals. However, in Clause 53(7) of the Draft Constitution, it removed that limitation. This implied that the right to an order of habeas corpus was not limited to those being detained or restrained by law enforcement officers. Three, and related to the above, in the report, the Commission referred to the right of habeas corpus as opposed to the right of the order of habeas corpus. However, in Clause 53(7) of the Draft Constitution, it referred to it as the right to an order of habeas corpus. In Clause 53(7), it also explained the meaning of the right to an order of habeas corpus. However, it did not explain the distinction, if any, between the right to habeas corpus and the right to an order of habeas corpus. Four, Clause 53(7) was to the effect that the right to an order of habeas corpus could be suspended during a state of emergency. In other words, it was not an absolute right. However, its suspension could only take place in extreme circumstances. That is, during the state of emergency. The Draft Constitution was debated by the Constituent Assembly. Our attention now shifts to the illustrating how the Constituent Assembly dealt with the right of habeas corpus.

4. Proceedings/debates of the Constituent Assembly

The debates of the Constituent Assembly can be divided into two categories: general debates (when delegates informed their colleagues of the issues that the people they represented wanted to be addressed in the Constitution) and specific debates (where delegates discussed the specific provisions of the draft constitution). Each of these categories will be discussed separately. During the general debates, some delegates made submissions on the right to *habeas corpus*. For example, it was argued that Uganda had a history of human rights violations and that '[t]here were times when court orders were not respected, especially with *habeas corpus* orders.'[32] It was also argued that the 'right to order of *habeas corpus* should be absolute',[33] that is, non-derogable[34] even during the state of emergency because '[i]t is in fact precisely during such a situation of emergency that a person is in most need of the right to speak, to be brought before a court to determine whether or not, he or she is being lawfully detained.'[35] It was also argued that the provision that the right to habeas corpus should be suspended during the state of emergency 'should be examined critically during the consideration stage.'[36] It was submitted further that suspending the right to habeas corpus during the state of emergency would amount to 'clear death blow' to 'the institution of the judiciary' and was meant to 'consolidate' poor governance by giving it a 'constitutional legitimacy.'[37] It was also argued that the writ of habeas corpus should not be suspended under all circumstances because it was 'so integral' to the right to personal liberty.[38] The general debate shows that every delegate who expressed an opinion on the writ of habeas corpus was of the view that it should be absolute.

As mentioned above, Clause 53(7) stated that the right to an order of *habeas corpus* could be suspended during a state of emergency. This was rejected by the delegates in the general debates. It is thus not surprising that when Clause 53(7) was tabled for debate, there was consensus that the right to an order of *habeas*

[32] Proceedings of the Constituent Assembly (1994/1995) at 782 (Mr. Ssekandi).
[33] Ibid, at 1427 (Mr Atubo).
[34] Ibid, at 1612 (Ms Egunyu).
[35] Ibid, at 1483 (Ms. Byanima).
[36] Ibid, at 675 (Mr. Maliro).
[37] Ibid, at 1055 (Mr. Lule).
[38] Ibid, at 1230 (Mr. Abu Mayanja).

corpus had to be absolute. Thus, Clause 53(7) was amended to delete the exception to the absolute nature of this right.[39] Some delegates suggested ways in which Clause 53(7) could be amended. For example, one of them argued that it should be amended to provide that for the person to arrest another, he/she should be authorised by law. Likewise, the place of detention after arrest should also be authorised by law. This is because '[i]t makes it easier for a citizen or a relative of an illegally arrested citizen to know the place where he can deliver the writ of *habeas corpus* for the production of that person.'[40] In other words, failure by the security agencies to detain arrested persons in gazetted (lawful) places would result into 'the issue of habeas corpus … [being] greatly abused.'[41] The places of detention should not only be lawful but should also be 'known' to the public.[42] Detaining a person in a gazetted place also ensured the protection of other rights. As one delegate argued:

> We are putting in provisions intended to protect society ... Here the Amendment sought-really goes to say feat when you detain a person, he should be detained in known place, legally authorised for detention. We have known of instances where a person is arrested and he is just hidden away by those who arrest him or her. When you want to effect a law by asking production of this man or this person by means of habeas corpus you send it to a place where he is supposed to be and you will only get a reply that he is not there. Why hide this person, if it is not just to keep him away for the sake of keeping? People should be detained in the places where they can be visited by their relatives, by lawyers and by those who would like to know about them: even to know how then health is when they are in such places.[43]

It was argued further that the law enforcement authorities had a duty to inform the relatives of the arrested person of his/her arrest and place of detention 'so that they can bring and test the legality of the detention in a court of law by bringing in an application for a right of *habeas corpus*.'[44] This is because if the arrested person's friends or relatives are not informed of his/her arrest, 'even the *habeas corpus* will not come into effect.'[45] One of the delegates suggested that Clause 53(7) should be amended to read as follows that '[t]he right to an order of *habeas corpus*, that is, the right to an order requiring a person to be brought before a judge or court to investigate the lawfulness of restraining or the detention of a person shall be inviolable, and shall not be suspended.'[46] He added that his amendment was meant to emphasis the absolute nature of the right to an order of *habeas corpus*.[47] The delegates agreed to this amendment and adopted it to be part of the Constitution.[48] It was also emphasised that the 'general derogation clause' in the Constitution was not applicable to the right to order of *habeas corpus* and that it expressly prohibited Parliament from enacting legislation authorising the detention of people without trial.[49] It was added that Clause 53(7) 'gives the [absolute] right of *habeas corpus* to any person.'[50] Thus, if a person detaining an arrested person

[39] Ibid, at 1932.
[40] Ibid, at 1906 (Prof. Wadada Nabudere).
[41] Ibid, at 1913 (Mr. Omara Atubo).
[42] Ibid, at 1915 (Mr. Okalebo Hensley).
[43] Ibid, at 1915 (Mr. Okalebo Hensley).
[44] Ibid, at 2159 (Mr. Abu Mayanja).
[45] Ibid, at 2167 (Dr. Higiro Semajege).
[46] Ibid, at 1944 (Mr. Odur).
[47] Ibid, at 1944 (Mr. Odur).
[48] Ibid, at 1944.
[49] Ibid, at 2158 (Prof. Nabudere).
[50] Ibid, at 2183 (Prof. Nabudere).

cannot justify the reason for his/her continued detention, the court was empowered to order his immediate release.[51]

As mentioned earlier, Clause 53(7) of the Draft Constitution provided that the right to the order of *habeas corpus* could be suspended during a state of emergency. Thus, Clause 72 of the Draft Constitution, which provided for absolute rights, was silent on the right to the order of habeas corpus. It stated that '[t]he existence of a state of emergency shall not affect the enjoyment of the right to human dignity, life or fair trial as guaranteed by this Constitution.' Since the delegates had agreed that the right to an order of *habeas corpus* was to be absolute, the chairperson of the Constituent Assembly's Legal and Drafting Committee suggested that Clause 72 (which had been renamed Clause 70), should be amended to specifically mention *habeas corpus*. As he put it:

We are recommending ... that on the same Article, we add a reference to *habeas corpus* in Article 70 relating to articles from which there should be no derogation. We are saying ... that the right to *habeas corpus* application should never be affected under any circumstances, that whoever is detained should always have the freedom to apply—or a lawyer to apply on his behalf—so that he is produced in court for those who are detaining him to show cause why he should not be released. This should be an absolute right and, therefore, it should be added to article 70 ...[52]

One delegate argued that although he was not opposed to enumerating the right to the order of *habeas corpus* under Clause 70, it would have been better to define it in another constitutional provision as had been the case with other absolute rights mentioned in Clause 70.[53] Several delegates agreed that 'the right to *habeas corpus*' should expressly be enumerated in the provision dealing with other absolute rights because it was in the same category as the right to freedom from torture, the right to a fair trial and the right not to be subjected to slavery.[54] It was also argued that if the *habeas corpus* application is 'successful', the person must be released unless he/she is being detained on another legal ground.[55] It was also argued that the reason why the Constitution provides that an arrested person should be brought to court within 48 hours is to ensure that people do not resort to *habeas corpus* applications.[56] The Chairperson of the Legal and Drafting Committee thought that some of his 'colleagues' conflated the right to *habeas corpus* and the right to a fair hearing both of which were absolute. Thus, he explained the relationship between the right to a fair hearing and the right to the order of *habeas corpus* in the following terms:

Habeas corpus literally means produce the body and what the law says is that the detaining authority should bring that person to court and then explain to court why they are being detained and the emergency. If the detaining authority convinces the court that there are valid and constitutional reasons for doing so, then the person is taken back and detained. So, it is not a requirement for fair hearing, it is simply a requirement to say, you must justify why you are detaining this person and in many cases, when *habeas corpus* [applications] have come to court, the courts have been satisfied with the explanation given by the Ministry of Internal Affairs or whoever that the detention was lawful and constitutional. So, it has nothing to do with fair hearing.[57]

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[51] Ibid, at 2184 (Prof. Nabudere).
[52] Ibid, at 5825 (Prof. Kanyeihamba).
[53] Ibid, at 5825 (Mr. Malinga).
[54] Ibid, at 5825-5826 (Mr. Malinga; Chairman of the Constituent Assembly; and Mr. Mulenga).
[55] Ibid, at 5848 (Mr. Malinga).
[56] Ibid, at 4373 (Mr. Omara Atubo).
[57] Ibid, at 4389 (Prof. Kanyeihamba).

A few observations should be made about the drafting history of Article 23(9) of the Constitution. First, the provision that was adopted by the Constituent Assembly delegates for inclusion in the Constitution provided that '[t]he right to an order of *habeas corpus*, that is, the right to an order requiring a person to be brought before a judge or court to investigate the lawfulness of restraining or the detention of a person shall he inviolable, and shall not be suspended.'[58] This provision defined the right to an order of *habeas corpus* and also the fact that the right was absolute. However, the final provision that was included in the Constitution as Article 23(9) provides that 'the right to an order of habeas corpus shall be inviolable and shall not be suspended.' It is not clear at what stage the changes were made before the final provision was included in the Constitution. It could be that the changes were made by the Technical Committee. However, what is evident is that Article 23(9) does not include the definition of the right to the order of *habeas corpus*. This means, amongst other things, that in defining the meaning of the right under Article 23(9), courts should refer to its drafting history. Second, the Constituent Assembly delegates used the phrase the 'right to an order of *habeas corpus*' and the 'right to *habeas corpus*' interchangeably. However, they meant the former. Three, the right to an order of *habeas corpus* was understood as applicable in cases where the person in question had been arrested and detained by law enforcement officers. That is, by the government. Thus, strictly interpreted, Article 26(9) does not apply to instances in which the person is being detained by a private individual. This is inferred from the fact that neither the Constitutional Commission nor the Constituent Assembly delegates indicted that the order of habeas corpus could be issued against private individuals for detaining or restraining someone unlawfully. However, as the discussion below illustrates, courts have interpreted Article 23(9) as applicable to instances in which the applicant is detained or retrained by a private individual. It is argued that if Article 23(9) is interpreted strictly to exclude cases where private individuals have allegedly detained or restrained a person unlawfully, such cases are governed by section 38 of the Judicature Act. Four, the right to the order of *habeas corpus* is defeated when the law enforcement officers who are reasonably suspected to have arrested and detained the person deny having him/her in their custody. That is why the delegates argued that law enforcing officers had the duty to inform the relatives and/or friends of the detained person not only of the arrest but also the place of detention. In the next part of the article, the author illustrates how courts have applied Article 23(9) of the Constitution.

5. Article 23(9) in practice

With the coming into force of the 1995, the right to the order of *habeas corpus* became an absolute constitutional right. This means, inter alia, that the state must protect, promote and fulfil it under all circumstances. It is not subject to the general limitations under Article 43 of the Constitution.[59] In order to give effect to

[58] Ibid, at 1944 (Mr. Odur).

[59] Article 43 of the Constitution provides that '(1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.
(2) Public interest under this article shall not permit—(a) political persecution; (b) detention without trial; (c) any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.' For a detailed discussion of Article 43 of the Constitution, see Jamil Ddamulira Mujuzi, 'Freedom of The Press in Uganda in the Light of the Drafting History of Articles 29(1)(a), 43 and 41 of the Constitution.' (2022) 28(2) *Fundamina: A Journal of Legal History* 1-42 at 12-25. In Edwin Asiimwe and Others v Attorney General and Others (Miscellaneous Cause No. 6 of 2026) [2026] UGHCCD 34 (12 February 2026)

this right and some other rights, section 38(a) was included in the 1996 Judicature Act[60] which repealed the 1967 Judicature Act. However, section 38(a) of the 1996 Judicature Act is substantially the same as section 33(a) of the 1967 Judicature Act which has been discussed above. It states that:

The High Court—(a) may, at any time, where a person is deprived of his or her personal liberty otherwise than in execution of a lawful sentence (or order) imposed on that person by a competent court, upon complaint being made to the High Court by or on behalf of that person and if it appears by affidavit made in support of the complaint that there is a reasonable ground for the complaint, award under the seal of the court a writ of *habeas corpus ad subjiciendum* directed to the person in whose custody the person deprived of liberty is; and when the return is made, the judge before whom the writ is returnable shall inquire into the truth of the facts set out in the affidavit and may make any order as the justice of the case requires.

Section 38(a) is operationalised by the Judicature (Habeas Corpus) Rules.[61] These Rules provide, inter alia, that the application for habeas corpus has, as a general rule, to be *ex parte*.[62] However, the court has the discretion to serve the respondent.[63] As the High Court explained in *Rtd. Col. Dr. Kizza Besigye & Another v Attorney General & Another*,[64] '[i]n principle, applications for *habeas corpus* are *ex parte*, although the preference is always that, where necessary, all concerned parties should be notified, albeit with strict timelines set in regard to the serving of such notices.'[65] If the respondent neither files a reply to the applicant's affidavit nor enters appearance, the application will be heard *ex parte*.[66] As mentioned above, section 38 of the 1996 Judicature Act is substantially the same as section 33(a) of the 1967 Judicature Act. The changes are mostly stylistic. For example, the difference between the two sections is that unlike section 33(a) of the 1967 Act, section 38(a) of the 1996 is gender neutral. This was done to ensure that section 38(a) complies with Article 21 of the Constitution which prohibits discrimination on, amongst other grounds, sex and gender. However, nothing much should be attached to this difference because under section 3(2) of the Interpretation Act (which has been in force since 1976),[67] 'words and expressions importing the masculine gender include females.' The rest are minor stylistic changes. Thus, the discussion above on section 33(a) of the 1967 Judicature Act still applies to section 38(a) of the 1996 Judicature Act. Another important question is whether Article 23(9) provides for 'the right to *habeas corpus*' or 'the right to the order of *habeas corpus*.'

6. The right to the order of habeas corpus or the right to habeas corpus

As mentioned above, the Constituent Assembly delegates used the phrases the 'right to *habeas corpus*' and the 'the right to the order of *habeas corpus*'

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para 6, the court held that the right under Article 29(9) is 'one of the few rights that cannot be limited.'

[60] Judicature Act, Chapter 16 (1996).

[61] Judicature (Habeas Corpus) Rules S.I. 13-6.

[62] Rule 3.

[63] Rule 4. For the explanation of the relationship between Rules 3 and 4, see Kiwanuka and 17 Others v The Director General of Internal Security Organisation and Others (Misc Cause No. 9 of 2021) [2021] UGHCCD 225 (7 April 2021) at 2; Kyagulanyi and Another v AG and Others (Misc Cause No. 16 of 2021) [2021] UGHCCD 1 (23 January 2021).

[64] Rtd. Col. Dr. Kizza Besigye & Another v Attorney General & Another (Miscellaneous Cause 31 of 2025) [2025] UGHCCD 29 (24 February 2025).

[65] Rtd. Col. Dr. Kizza Besigye & Another v Attorney General & Another (Miscellaneous Cause 31 of 2025) [2025] UGHCCD 29 (24 February 2025) para 3.1.

[66] Robert Lugya Kayingo v Attorney General and Others (Miscellaneous Cause No. 191 of 2025) [2025] UGHCCD 166 (1 August 2025).

[67] Interpretation Act, Chapter 2.

interchangeably. However, they meant the latter and that is why it was included in the Constitution. In most of the cases, courts have quoted Article 23(9) verbatim and observed that it provides for the right to the order of *habeas corpus*. However, in one decision, the High Court referred to Article 23(9) and held that it provided for the 'right to apply for *habeas corpus*.'[68] In other cases, the High Court held that the Constitution provides for 'the right to *habeas corpus*.'[69] The most accurate position is that Article 23(9) provides for the right to an order of *habeas corpus* as opposed to the right to *habeas corpus* or the right to apply for *habeas corpus*. In other words, once the court has concluded that the applicant's detention is unlawful, the court is obligated to order his release. The court does not have a discretion in the matter because the right to this order is absolute. However, for the applicant to enjoy this right, he/she must approach court. Thus, he/she has a right to access court. Although the Constitution does not expressly provide for the right to access court, the Supreme Court held that it is a fundamental right at common law.[70]

7. Circumstances in which the order of habeas corpus has to be made

The drafting history of Article 23(9) shows that the right to an order of habeas corpus is only available where a person has been detained or restrained unlawfully. This is also how courts have interpreted Article 23(9). Thus, the Constitutional Court explained that '[t]he right to be tried according to law or to be released is really the Constitutional right that *habeas corpus* is supposed to secure. The writ is considered to provide an assurance that personal freedom will always be protected. The writ is used to question the legality of restraint.'[71] It is only available where there is unlawful deprivation of liberty.[72] The right to an order of habeas corpus 'ceases to exist' when the applicant is released from 'unlawful detention.'[73] Deprivation of liberty, for example, detention, can be unlawful even if the arrest was lawful. Likewise, detention that was initially lawful can become unlawful. For example, when the person is detained beyond the period permissible under the law. The High Court has also explained in detail the purpose(s) of *habeas corpus*. For example, in *Lujila v O/C Kigo Prison & Others*, the Court stated that:

The purpose for filing the application for *Habeas Corpus* is to challenge the authority of the prison or jail warden to continue holding the applicant. The application is used when a person is held without charges or is denied due process. It ensures that a prisoner can be released from unlawful detention i.e detention lacking sufficient cause or evidence or detention incommunicado. The detention

[68] Turyamuhika Geofrey Tumwine v Attorney General (Miscellaneous Cause 308 of 2019) [2023] UGHCCD 383 (22 September 2023) para 17. Edwin Asiimwe and Others v Attorney General and Others (Miscellaneous Cause No. 6 of 2026) [2026] UGHCCD 34 (12 February 2026) para 6, the court held that Constitution provides for "the right to habeas corpus".

[69] Edwin Asiimwe and Others v Attorney General and Others (Miscellaneous Cause No. 6 of 2026) [2026] UGHCCD 34 (12 February 2026) para 6. See also Samiir Mohamed Ahmed v Chief Citizenship and Immigration Control and Others (Miscellaneous Cause 346 of 2025) [2026] UGHCCD 53 (10 March 2026) at 6.

[70] Uganda Projects Implementation and Management Centre v Uganda Revenue Authority [2010] UGSC 17 (28 October 2010).

[71] In the matter of a reference from High Court of Uganda and In the matter of Sheik Abdul Karim Sentamu and Another (Constitutional Reference 7 of 1998) [1998] UGCC 5 (25 November 1998) at 8.

[72] Rwaheiguru v Nyebare & Others (Miscellaneous No. 259 of 2013) [2013] UGHCCD 82 (10 June 2013).

[73] Samiir Mohamed Ahmed v Chief Citizenship and Immigration Control and Others (Miscellaneous Cause 346 of 2025) [2026] UGHCCD 53 (10 March 2026) at 4.

must therefore be forbidden by the law. An application of this nature does not necessarily protect other rights such as entitlement to a fair trial.[74]

Likewise, in *Karuhanga v Inspector General of Police & Others*, the Court was of the view that '[t]he purpose for a writ of *habeas corpus ad subjiciendum* is to review the legality of the applicant's arrest, imprisonment and detention and challenge the authority of the prison or jail warden to continue holding the applicant.'[75] The same reasoning was adopted in subsequent cases.[76] It was also held that:

A prisoner may apply for the writ of habeas corpus at the moment of arrest challenging the legality of his/her arrest. However, where there have been valid proceedings subsequent to the arrest, which are offered in justification of the detention, the prisoner will not get redress under habeas corpus.[77]

The Court's view that the writ of habeas is also meant to review the legality of the applicant's 'arrest' stretches the ambit of *habeas corpus* beyond its true objective. *Habeas corpus* does not deal with the lawfulness or otherwise of a person's arrest. It is limited to examining the lawfulness of the person's detention. During a state of emergency, the government must ensure that the regulations put in place do not make it impossible for the lawyers to approach courts to protect their clients' right to an order of *habeas corpus*.[78] A person can only go to court for the order of habeas corpus after being detained for more than 48 hours without being brought to court.[79] This is so because of the 48-hour rule under Article 23(4)(b) of the Constitution.[80] The High Court held that 'people are allowed to file an action or application for a writ of habeas corpus on behalf of persons other than themselves even without express authority and permission.'[81] There have been instances in which courts have invoked their powers under Article 23(9) to order the release of those who are unlawfully being detained. These have been instances

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[74] Lujila v O/C Kigo Prison & Others (Misc Cause No. 86 of 2013) [2013] UGHCCD 134 (7 October 2013) at 6.

[75] Karuhanga v Inspector General of Police & Ors (Misc Cause No. 86 of 2013) [2013] UGHCCD 143 (28 October 2013) at 3.

[76] Hon. Kipoi Tonny Nsubuga v Attorney General and 3 Others (Miscellaneous Cause No.124 of 2018) [2018] UGHCCD 292 (9 July 2018) at 4; Kiwanuka and 17 Others v The Director General of Internal Security Organisation and Others (Misc Cause No. 9 of 2021) [2021] UGHCCD 225 (7 April 2021); Kalanzi v The Attorney General & 3 Others (Miscellaneous Cause 276 of 2022) [2023] UGHCCD 391 (15 November 2023); Ndyomugyenyi Pius v Attorney General and Others (Miscellaneous Cause No. 235 of 2025) [2025] UGHCCD 171 (8 October 2025); Lokwii Charles Ilungole v Attorney General and Others (Miscellaneous Cause No. 351 of 2025) [2026] UGHCCD 32 (12 February 2026) para 11; Rwangomani Amos v Uganda Peoples Defence Forces (UPDF) and Others (Miscellaneous Cause No 299 of 2025) [2026] UGHCCD 46 (26 February 2026) para 19.

[77] Hon. Kipoi Tonny Nsubuga v Attorney General and 3 Others (Miscellaneous Cause No.124 of 2018) [2018] UGHCCD 292 (9 July 2018) at 6.

[78] Turyamusiima v Attorney General & Another (Miscellaneous Application 64 of 2020) [2020] UGHCCD 230 (5 May 2020) (in this case, the court held that the public health regulations that were adopted during the Covid-19 pandemic failed to provide for circumstances in which lawyers could work and apply for the orders of habeas corpus).

[79] Foundation for Human Rights Initiative v Attorney General (Constitutional Petition No. 53 of 2011) [2020] UGCC 7 (3 July 2020) (Judgement of Owiny-Dollo) at 9. See also Lokwii Charles Ilungole v Attorney General and Others (Miscellaneous Cause No. 351 of 2025) [2026] UGHCCD 32 (12 February 2026) para 8.

[80] Article 23(4)(b) of the Constitution provides that 'A person arrested or detained ... upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the laws of Uganda, shall, if not earlier released, be brought to court as soon as possible but in any case not later than forty-eight hours from the time of his or her arrest.'

[81] Byaruhanga Mohammed Selabira v Alkareb Limited and Another (Miscellaneous Cause No 227 of 2024) [2025] UGHCCD 227 (15 December 2025) at 13–14.

in which, for example, the applicant is detained pending trial in a court that does not have jurisdiction over him.[82] An application for habeas corpus will be successful if the trial before the military court is used to prolong the applicant's detention awaiting trial. For example, where the applicants, after being charged with an offence before the court martial, spent over a year in military detention without a clear 'plan' of when their trial will resume.[83] It will also be successful where the applicant was sentenced to imprisonment by a court which did not have jurisdiction.[84] However, in this case, the court granting the order of habeas corpus should have jurisdiction to review the sentence of the court that imposed the questionable sentence. Thus, an application for habeas corpus cannot be used to challenge the lawfulness of the applicant's conviction by a military court in case where the High Court does not have the jurisdiction to review such a conviction.[85] An application for habeas corpus will also be successful where the applicant's constitutional rights were seriously violated. For example, in *In the Matter of Evert Arinaitwe*,[86] the army detained the applicant in an ungazetted place for several months without trial. When the order of habeas corpus was made against them, they refused to bring the applicant to court even after the court had given them more time. In ordering the immediate release of the applicant from custody, the court held that:

The flagrant disregard of the writ of habeas corpus by concerned authorities; the detention of the applicant in an ungazetted detention facility; the unlawful detention beyond [the] 48-hour rule and the unknown detention facility that he was remanded following the committal on 13th September 2016 are violations of the applicant's fundamental human rights which this court has a duty to put a stop.[87]

It is not clear why the court did not hold the relevant officers in contempt. In instances where courts have ordered the production of the applicants to court, they have adopted four different approaches. The first approach is for the court to issue an order of *habeas corpus* against the law enforcement officers directing them to produce the detainee 'before a competent court.' The order is silent on the court in which, the date on which, and that time at which the detainee should be produced.[88] The second approach is to mention the date, time and name of the court in which the applicant should be produced.[89] The third approach is to order the respondents to produce the applicant before 'a competent court' in a given

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[82] Kishaija Steven v Attorney General (Misc.Cause No.15 Of 2010) (Misc.Cause No.15 of 2010) [2010] UGHC 22 (21 February 2010) (the applicant, a civilian, was being detained in a civil prison pending trial before a military court).

[83] In Re Muhindo Herbert & 6 Ors (HCT) [2012] UGHC 96 (29 May 2012).

[84] Kopia v Kintu & Anor (HCT-04-CV-MC-0016-2013) [2014] UGHCCD 5 (14 January 2014) (the magistrate sentenced the applicant to civil imprisonment when he did not have the jurisdiction to do so).

[85] Kiiza v Attorney General & Another (Miscellaneous Cause 37 of 2025) [2025] UGHCCD 50 (3 March 2025).

[86] In the Matter of Evert Arinaitwe (Misc. Cause No. 229 of 2016) [2016] UGHCCD 60 (23 September 2016).

[87] In the Matter of Evert Arinaitwe (Misc. Cause No. 229 of 2016) [2016] UGHCCD 60 (23 September 2016) at 3.

[88] Kiwanuka and 17 Others v The Director General of Internal Security Organisation and Others (Misc Cause No. 9 of 2021) [2021] UGHCCD 225 (7 April 2021).

[89] Kaggwa Augustine v Attorney General (Miscellaneous Cause 256 of 2025) [2025] UGHCCD 164 (2 October 2025) para 9; John Ongimu Omeke v Focus on Recovery Uganda Limited (Miscellaneous Cause No. 219 of 2025) [2025] UGHCCD 157 (9 September 2025); In Re: Mudondo & Achipa (Both infants) (Miscellaneous Cause No. 06 of 2014) [2014] UGHCFD 38 (3 July 2014); Edwin Asiimwe and Others v Attorney General and Others (Miscellaneous Cause No. 6 of 2026) [2026] UGHCCD 34 (12 February 2026).

number of days. The order is silent on the name of the court and the time.[90] The fourth approach is to order the respondents to bring the applicant before the court making the order. However, the order is silent on the date and time on/at which the applicant should be produced.[91] In the author's view, the best approach is for the court to include as much details as possible in the order. That is, the name of the court, the date and the time. This would be in compliance with Rule 7 of the Judicature (Habeas Corpus) Rules which states that 'where a writ of habeas corpus ad subjiciendum is ordered to issue, the court making the order shall give directions as to the court before which, and the date on which, the writ is returnable.'

As mentioned above, an order of habeas corpus to be only be made if the applicant proves that there is a reasonable ground for a court to make it. Thus, in *Okoth v Attorney General*, the High Court held that:

It should be noted that a right of habeas corpus is not automatic and that whoever applies for it is given the order. The applicants have to prove the purpose for the application i.e production of a person in an unlawful detention to courts of law. Habeas corpus is not meant to challenge the proceedings from which the applications originate.[92]

Hence, there are instances in which an application for an order of habeas corpus can be dismissed. For example, an application for habeas corpus will be dismissed if the person in detention has been convicted by a court of competent jurisdiction,[93] where the person is not yet convicted but he/she is being lawfully detained awaiting trial before a court with competent jurisdiction,[94] or when he/she was convicted by a competent court and is serving a sentence.[95] When a person is being detained in a military facility petitions the High Court for an order of habeas corpus, the court will make such an order and the person will be brought before it. However, it will not order his/her release when his trial is taking place before a military court even if the trial has been delayed on reasonable grounds.[96] It is thus unnecessary for the detainee to file an application for habeas corpus when his trial has commenced before a military court[97] or any other court with competent jurisdiction.

8. Standard and burden of proof

Another important issue relates to the burden of proving whether the applicant's detention is lawful or whether the state has the applicant in its custody.

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[90] Mugumya Sam v Chief of Defence Forces and Others (Miscellaneous Cause No. 227 of 2025) [2025] UGHCCD 147 (5 September 2025)

[91] Robert Lugya Kayingo v Attorney General and Others (Miscellaneous Cause No. 191 of 2025) [2025] UGHCCD 166 (1 August 2025)

[92] Okoth v Attorney General [2014] UGHCCD 131 (3 July 2014) at 2. See also Okumu v Attorney General [2014] UGHCCD 89 (3 July 2014) at 2.

[93] Semakula v Officer in Charge Luzira Upper Prison and Others (Misc Cause No. 183 of 2011) [2012] UGHC 477 (27 January 2012) (a civilian, subject to military law, had been convicted by a military court).

[94] Rwaheiguru v Nyebare & Ors (Miscellaneous No. 259 of 2013) [2013] UGHCCD 82 (10 June 2013); Hon. Kipoi Tonny Nsubuga v Attorney General and 3 Others (Miscellaneous Cause No.124 of 2018) [2018] UGHCCD 292 (9 July 2018) (trial before a military court).

[95] Obote William v Attorney General (Miscellaneous Application 330 of 2021) [2023] UGHCCD 191 (30 June 2023) at 3.

[96] Re:Olanya John Bosco (HCT-05-CV-MA-0045-2005) (HCT-05-CV-MA-0045-2005) [2005] UGHC 92 (14 July 2005).

[97] In Re: Mulema Joseph & In Re: Application for the Writ of Habeus Corpus Ad Subjiciendum (Misc. Cause No. 230 of 2006) (Misc. Cause No. 230 of 2006) [2006] UGHC 66 (17 December 2006); Mulebi v Officer in Charge Kigo & Ors (Misc Cause No. 125 of 2013) [2013] UGHCCD 867 (20 December 2013); Balidawa v Officer in Charge Kigo Prison & Ors (Misc Cause No. 022 of 2013) [2013] UGHCCD 166 (20 December 2013)

Under section 38(a) of the Judicature Act, the complaint to the effect that a person is being detained unlawfully has to be accompanied by an affidavit. Section 38(a) is only triggered when 'there is a reasonable ground for the complaint.' This implies that if there is no reasonable ground for the compliant, the judge will not make an order of *habeas corpus*. Thus, at the time of the application, the duty is on the applicant to prove, on a balance of probabilities, that there is a reasonable ground to believe that the person in question is being detained unlawfully. The use of the words 'reasonable ground' means that only one ground is enough to meet the threshold under section 38(a).[98] It is the court to determine whether or not the threshold of reasonableness has been met. This is an objective test which entirely depends on the content of the affidavit.

Thus, it is not necessary for the applicant to adduce 'cogent evidence that the respondents [the state] has the applicant [in detention].'[99] It is enough that the evidence before court shows that the 'whereabouts [of the applicant] are unknown but suspectedly being detained by a government Security Agency.'[100] Once the applicant has discharged the burden of proving that there is a reasonable ground that the person in question is being detained unlawfully, the court will order the government to come to court and explain the basis on which the person is being detained. In *Ndyomugyenyi Pius v Attorney General and Others*,[101] the affidavit detailed the circumstances in which the person on whose behalf the application for the order of *habeas corpus* was being made was arrested by people in military uniforms, his relatives could not find him at the local police station and that he was allegedly being held at the military headquarters. However, the security agencies argued that they did not have him in their custody. The Court held that:

These averments taken together constitute reasonable grounds within the meaning of section 38. They are not mere speculation but particularised facts i.e. date, place, description of abductors and a positive lead as to a detention location which call for judicial scrutiny by way of *Habeaus* [sic] *Corpus*. The court is

[98] However, in Kaggwa Augustine v Attorney General [2025] UGHCCD 164 (2 October 2025) para 4, the court created the impression that the applicant has to prove more than one ground when it held that 'The main issue for determination is whether the applicant has satisfied the conditions for the grant of an order of habeas corpus ad subjiciendum to produce' the detainee. The applicant must rely on admissible evidence, Rwangomani Amos v Uganda Peoples Defence Forces (UPDF) and Others (Miscellaneous Cause No 299 of 2025) [2026] UGHCCD 46 (26 February 2026) paras 17 – 18.

[99] In Nicholas Oyoo and Bob Njagi v Chief of Defence Forces and Another (Miscellaneous Cause No. 281 of 2025) [2025] UGHCCD 185 (22 October 2025) para 12, the Court, in declining to order the respondents to produce the applicants they had allegedly arrested, held that 'I also note from the pleadings that there is no cogent evidence that the respondents actually have the applicants. An attempt at interacting with the deponents of the affidavits in support was futile.' In Lokwii Charles Ilungole v Attorney General and Others (Miscellaneous Cause No. 351 of 2025) [2026] UGHCCD 32 (12 February 2026) the evidence showed that the applicant was being detained by the army because his relatives had visited him in detention. However, the army argued that they did know where he was being detained and that the applicant's lawyer failed to adduce evidence to prove that the applicant was in military custody. In making an order of habeas corpus, the court held that '…although there is no documentary evidence, it would be stretching the traditional requirements for a writ of habeas corpus too far to require the deponent to provide evidence in terms of registers and visitor logs details from DIS [military intelligence] headquarters which information is in the hands of the respondents. It is an equivalent of asking the applicant to prove a negative assertion which is intrinsically difficult. Further, it is in rare circumstances for those holding the applicant to voluntarily provide any information in such circumstances especially where they are denying having custody of the applicant.' See para 17.

[100] Robert Lugya Kayingo v Attorney General and Others (Miscellaneous Cause No. 191 of 2025) [2025] UGHCCD 166 (1 August 2025) at 4.

[101] Ndyomugyenyi Pius v Attorney General and Others (Miscellaneous Cause No. 235 of 2025) [2025] UGHCCD 171 (8 October 2025)

therefore satisfied that the affidavit crosses the low but real threshold required to trigger the extraordinary protective remedy of *habeus* [sic] *corpus*.[102]

The Court added that '[t]he Threshold to obtain a writ of *habeas corpus* under section 34 [now section 38] is not proof beyond reasonable doubt but a showing by affidavit of reasonable ground for the complaint that the person has been deprived of personal liberty unlawfully.'[103] In other words, the court has to be convinced that 'the applicant has satisfied the conditions for the grant of an order of *habeas corpus ad subjiciendum*.'[104] Although the court held that the threshold is 'low', it does not expressly mention that it is on a balance of probabilities. In the author's view, the threshold should be one on the balance of probabilities. However, the court did not explain whether the standard of proof on the part of the state is that on a balance of probabilities or slightly above the balance of probabilities but below beyond reasonable doubt as in the case of fraud in civil matters[105] or beyond reasonable doubt. It made the order of *habeas corpus* because 'no evidence has been produced as to whether the Applicant is legally detained and was arraigned before a competent court.'[106] In the current author's view, the standard of proof should depend on the facts of the case. In Uganda, habeas corpus applications against the government are made in two instances. In the first instance, the government admits that they are detaining the applicant in custody but argue that the detention is lawful. Thus, once the government is ordered to come court, it must explain that the person's detention or imprisonment is lawful. Imprisonment or detention is either lawful or unlawful. There is no middle-ground. In the United States of America, courts have held that in instances of 'substantial deprivation of liberty', the government has to adduce 'clear and convincing' evidence to justify the continued detention of a person making an application for habeas corpus or on whose behalf an application for habeas corpus is made.[107] Waxman argued that:

A higher standard may be used in exceptional civil trials, when the imperative rights of the person need to be considered. Such cases might relate to immigration, parental access to children, habeas corpus or psychiatric placement. The criterion used in such cases is one of "clear and convincing evidence". Although no single definition of this standard is generally adopted, it could be summarised as "much more likely than not". The term has been formulated in many ways but one can agree that it falls between the "beyond a reasonable doubt" and "preponderance of evidence" standards.[108]

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[102] Ndyomugyenyi Pius v Attorney General and Others (Miscellaneous Cause No. 235 of 2025) [2025] UGHCCD 171 (8 October 2025) at 4.

[103] Ndyomugyenyi Pius v Attorney General and Others (Miscellaneous Cause No. 235 of 2025) [2025] UGHCCD 171 (8 October 2025) at 4.

[104] Kaggwa Augustine v Attorney General (Miscellaneous Cause 256 of 2025) [2025] UGHCCD 164 (2 October 2025) para 4.

[105] Lubega Matovu v Mikwano Investment Ltd (Misc. Application No. 156 of 2012) [2012] UGCOMMC 81 (11 July 2012); Nile Energy Ltd v Phoenix Petroleum Ltd & 2 Ors (Miscellaneous Application No. 596 of 2015) [2017] UGCOMMC 147 (25 July 2017).

[106] Ndyomugyenyi Pius v Attorney General and Others (Miscellaneous Cause No. 235 of 2025) [2025] UGHCCD 171 (8 October 2025) at 5. See also Mugumya Sam v Chief of Defence Forces and Others (Miscellaneous Cause No. 227 of 2025) [2025] UGHCCD 147 (5 September 2025) at 3.

[107] Matthew C. Waxman, 'Guantánamo, Habeas Corpus, and Standards of Proof: Viewing the Law Through Multiple Lenses' (2009) 42 Case Western Reserve Journal of International Law 245-266. Available at: https://scholarship.law.columbia.edu/faculty_scholarship/1615 (accessed on 28 December 2025).

[108] Stephen Wilkinson, 'Standards of Proof in International Humanitarian and Human Rights Fact-Finding and Inquiry Missions' (2025) 17–18. Available at: https://geneva-academy.ch/wp-content/uploads/2025/11/Standards-of-Proof-in-Fact-Finding.pdf (accessed on 28 December 2025).

This is a high threshold although the government does not deny that the applicants are in its custody. The second instance deals with cases where the state denies that they are detaining the applicant. It is argued by the current author that in the first instance above, the state should prove, on a standard slightly above a balance of probabilities, that the detention is lawful. This is so because the court is aware of the whereabouts of the applicant. In the second scenario, the standard of proof should be higher. It should be one of beyond reasonable doubt. If the government claims that they do not have the person who is allegedly detained in custody, they must prove that fact beyond reasonable doubt. This is so because there have been instances in which government officials lied to court that they did not have the persons in custody yet the opposite was true and they only released them after external pressure.[109] Thus, mere denial that the applicant is not in government custody is not enough. There are instances in which people who were arrested by security agencies have been missing for several years and the government continues to deny that fact that they in its custody.[110] In effect, the government is involved in the enforced disappearance of citizens, especially opposition politicians.[111] Habeas corpus is the only option available for the relatives or friends of these disappeared persons to know their whereabouts, whether or not they are still alive. Thus, the standard of proof imposed on the government should be higher than that imposed on the applicant. This is so because unlawful detention is a serious violation of the right to liberty and other rights that flow from it and the government has all the necessary means to prove that the person is not in their custody. This could be explained by the fact that it is also an absolute right under the Constitution. The burden is discharged where, for example, the government proves that the person in question was released from custody.[112] Mere denial that the person is not in government custody is not enough when there is evidence that he/she was arrested by security agencies.

9. Ensuring compliance with habeas corpus orders

Case law shows that when an order of *habeas corpus* is made, courts have given the government different days in which to comply with the order. These have included one day,[113] five days,[114] seven days,[115] eight days,[116] nine days,[117] and 11

[109] Tiffany Wertheimer and Damian Zane, 'Uganda president admits Kenyan activists were arrested and held in "the fridge"' 9 November 2025. Available at: https://www.bbc.com/news/articles/cn8v9vkkjm0o (accessed on 27 December 2025).

[110] Uganda Human Rights Commission, Report on the Alleged Cases of Missing NUP Supporters' 10 October 2023. Available at: https://uhrc.ug/report-on-the-alleged-cases-of-missing-nup-supporters/ (accessed on 27 December 2025).

[111] Human Rights Watch, 'Uganda: End Enforced Disappearances of Opponents, Investigate Abuses; Release Those in Arbitrary Detention' 11 March 2021. Available at: https://www.hrw.org/news/2021/03/11/uganda-end-enforced-disappearances-opponents (accessed on 29 December 2025).

[112] Kalanzi v The Attorney General & 3 Others (Miscellaneous Cause 276 of 2022) [2023] UGHCCD 391 (15 November 2023).

[113] John Ongimu Omeke v Focus on Recovery Uganda Limited (Miscellaneous Cause No. 219 of 2025) [2025] UGHCCD 157 (9 September 2025) (the applicant was in a private rehabilitation facility).

[114] In the matter of a reference from High Court of Uganda and In the matter of Sheik Abdul Karim Sentamu and Another (Constitutional Reference 7 of 1998) [1998] UGCC 5 (25 November 1998); Edwin Asiimwe and Others v Attorney General and Others (Miscellaneous Cause No. 6 of 2026) [2026] UGHCCD 34 (12 February 2026).

[115] Kishaija Steven v Attorney General (Misc.Cause No.15 of 2010) (Misc.Cause No.15 of 2010) [2010] UGHC 22 (21 February 2010); Mugumya Sam v Chief of Defence Forces and Others (Miscellaneous Cause No. 227 of 2025) [2025] UGHCCD 147 (5 September 2025); Kaggwa Augustine v Attorney General (Miscellaneous Cause 256 of 2025) [2025] UGHCCD

days.[118] In many cases, the detainee will be brought to court within the stipulated number of days.[119] This has been the case, for example, in instances where the applicant(s) for the order of *habeas corpus* know the facility in which the person is being detained and the state does not deny holding the detainee in custody. However, even in cases where detainees are being held in unknown places, the court will issue an order of habeas corpus against those who are detaining him and they will produce him to court.[120] Thus, for the writ of *habeas corpus* to be effective, the place in which the person is being detained should be known and if the place is not known, the person detaining him/her should be known or there should be evidence to reasonably identify the person or agency which is detaining him/her.

There have been instances in which courts issued orders of *habeas corpus* against the law enforcement officers to bring the detained persons to court but the law enforcement officers claimed that they did not know where such persons were being detained. In such instances, courts have adopted two irreconcilable approaches. The first and conventional approach is to renew the order several times until the persons were brought to court.[121] The High Court held that 'as long as a person is [still] missing, there is no bar to further similar applications, especially in light of new evidence that was not available to the parties at the time of filing.'[122] In the renewed orders, courts have also given different return days. These have included four days,[123] five days[124] or 17 days.[125] Courts do not explain the reason(s) for giving the respondent (the state) a particular number of days in which to make the return. The government official against whom the order of *habeas corpus was issued* must also come to court and explain why the initial order was not complied with. Otherwise, he/she will be held in contempt of court.[126] The second and controversial approach is to declare such a person a missing person if the law enforcement officers return to court within the period stipulated in the order

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164 (2 October 2025); Lokwii Charles Ilungole v Attorney General and Others (Miscellaneous Cause No. 351 of 2025) [2026] UGHCCD 32 (12 February 2026).

116 In Re: Mulema Joseph & In Re: Application for the Writ of Habeus Corpus Ad Subjiciendum (Misc. Cause No. 230 of 2006) (Misc. Cause No. 230 of 2006) [2006] UGHC 66 (17 December 2006).

117 Namugerwa v Attorney General [2013] UGSC 20 (19 June 2013).

118 Nicholas Oyoo and Bob Njagi v Chief of Defence Forces and Another (Miscellaneous Cause No. 281 of 2025) [2025] UGHCCD 185 (22 October 2025) para 9.

119 In Re: Mulema Joseph & In Re: Application for the Writ of Habeus Corpus Ad Subjiciendum (Misc. Cause No. 230 of 2006) (Misc. Cause No. 230 of 2006) [2006] UGHC 66 (17 December 2006); Kishaija Steven v Attorney General (Misc.Cause No.15 Of 2010) (Misc. Cause No.15 of 2010) [2010] UGHC 22 (21 February 2010).

120 Eng. Pascal R. Gakyaro v Civil Aviation Authority (Civil Appeal No. 60 of 2006) [2007] UGCA 4 (14 November 2007).

121 In the matter of a reference from High Court of Uganda and in the matter of Sheik Abdul Karim Sentamu and Another (Constitutional Reference 7 of 1998) [1998] UGCC 5 (25 November 1998) (in this case, the order was issued three times and the detainees were brought to court on the third time. Initially, the Attorney General informed court that he didn't know where the arrestees were being detained).

122 Rwangomani Amos v Uganda Peoples Defence Forces (UPDF) and Others (Miscellaneous Cause No 299 of 2025) [2026] UGHCCD 46 (26 February 2026) para 15.

123 In the Matter of Evert Arinaitwe (Misc. Cause No. 229 of 2016) [2016] UGHCCD 60 (23 September 2016).

124 In the matter of a reference from High Court of Uganda and In the matter of Sheik Abdul Karim Sentamu and Another (Constitutional Reference 7 of 1998) [1998] UGCC 5 (25 November 1998); In Re: Mudondo & Achipa (Both infants) (Miscellaneous Cause No. 06 of 2014) [2014] UGHCFD 38 (3 July 2014).

125 Rwangomani Amos v Uganda Peoples Defence Forces (UPDF) and Others (Miscellaneous Cause No 299 of 2025) [2026] UGHCCD 46 (26 February 2026).

126 In Re: Mudondo & Achipa (Both infants) (Miscellaneous Cause No. 06 of 2014) [2014] UGHCFD 38 (3 July 2014).

and inform court that they could not trace the whereabouts of the person in question.[127] It is argued that if there is circumstantial evidence to prove, on a balance of probabilities, that the person in question was arrested by the law enforcement officers, the court should, instead of declaring him/her a missing person, issue a new order for the relevant authorities to bring the person to court. Failure to do so, they should be held in contempt of court.[128] Declaring someone a missing person means, inter alia, that after seven years, he/she will be presumed dead.[129] Even if security agencies do not file affidavits opposing the application for the order of habeas corpus, the court can make that order if there is evidence that the applicant is being detained unlawfully.[130] In instances where courts have ordered the release of people being detained, the security agencies have either released them immediately[131] or after a short delay. For example, after one day.[132] If a court orders the release of a detainee from unlawful detention, he/she should be released immediately. Detaining him/her for a minute more is disregard of the court's order and a continued violation of his/her right to liberty.

10. Broader application of Article 23(9)

Strictly interpreted, Article 23(9) is only applicable in cases where the person is being detained by law enforcement officers either in a gazetted or an ungazetted place of detention. However, the drafting history of Article 23(9) shows that it is of broader application. It should be recalled that during the drafting of Article 23(9), the Constituent Assembly agreed unanimously on the meaning or definition of the order of habeas corpus. It was agreed that habeas corpus means 'the right to an order requiring a person to be brought before a judge or court to investigate the lawfulness of restraining [him] or the detention.' Thus, the right to the order of habeas corpus is available to any person who is restrained or detained.[133] However, in *Rtd. Col. Dr. Kizza Besigye & Another v Attorney General & Another*, the High Court held that:

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[127] Nicholas Oyoo and Bob Njagi v Chief of Defence Forces and Another (Miscellaneous Cause No. 281 of 2025) [2025] UGHCCD 185 (22 October 2025) para 15.

[128] In Mugumya Sam v Chief of Defence Forces and Others (Miscellaneous Cause No. 227 of 2025) [2025] UGHCCD 147 (5 September 2025) at 2, it was held that 'If the writ is not obeyed, then it can be enforced by the attachment for contempt of Court of all persons who are responsible for the disobedience of the writ.' See also Robert Lugya Kayingo v Attorney General and Others (Miscellaneous Cause No. 191 of 2025) [2025] UGHCCD 166 (1 August 2025) at 4. In Rwangomani Amos v Uganda Peoples Defence Forces (UPDF) and Others (Miscellaneous Cause No 299 of 2025) [2026] UGHCCD 46 (26 February 2026) paras 26 - 27, the court held that a government official can only be held in contempt of court if there is evidence to prove that the writ of habeas was served on him/her personally.

[129] In terms of section 47 of the Registration of Persons Act No.4 of 2015. Cases in which section 47 has been successfully invoked include In the Matter of an Application for presumption of death of Suliaman (missing person since 1971) [2023] UGHC 184 (18 November 2023); In the Matter of an Application By Kyoma for an Order of Presumption of Death of Mulindwa (missing person since 1990) (Miscellaneous Cause 13 of 2022) [2022] UGHCFD 17 (16 September 2022); In Re: Yekoyasi Nkalubo (Miscellaneous Application No. 006 of 2017) [2018] UGHCFD 15 (8 May 2018).

[130] Kaggwa Augustine v Attorney General (Miscellaneous Cause 256 of 2025) [2025] UGHCCD 164 (2 October 2025).

[131] Col. (Rtd) Dr. Kiiza Besigye and 22 Others v Attorney General (Constitutional Petition 12 of 2006) [2007] UGCC 9 (12 January 2007) at 4; In Re Muhindo Herbert & 6 Ors (HCT) [2012] UGHC 96 (29 May 2012)

[132] Fred Hereri v Attorney General (Civil Suit No.42 Of 1995) (Civil Suit No.42 of 1995) [2001] UGHC 100 (22 February 2001) (released from the military detention after 24 hours of the order).

[133] Ibingira v Uganda [1966] EA 445 at 451.

The courts in many common law countries recognise the changing nature and purpose of *habeas corpus* but emphasise that it is available to all persons without distinction. In Uganda, the writ is considered an essential remedy in case a person's oft-ignored pre-trial detention rights are violated and seeks to discourage arbitrary arrests; it is defined with reference to the judicial power to avail persons before a court in order to ensure that the lawfulness of prisoners' detention or imprisonment is examined.[134]

In this case, the court emphasised that the writ of habeas corpus is meant to examine the 'lawfulness of a prisoner's detention or imprisonment.' Likewise, in *Masereka v Attorney General & Maj. Gen. Kandiho*, the High Court observed that '*habeas corpus* rights are safeguarded, guaranteeing that anyone detained can challenge the legality of their detention in court.'[135] The courts' understanding of *habeas corpus* in these cases is justified in the light of the fact that they were dealing with instances in which the applicants had been detained by security agencies. However, an approach which has the effect of limiting the writ to those who are imprisoned or detained has the effect of narrowing the scope of Article 23(9).[136] Although courts have not referred to the drafting history of Article 23(9), they have interpreted Article 23(9) to also be applicable, for example, where the security agencies have confined the applicant to his home and prevented him/her from leaving it for an indefinite period,[137] where the police were keeping the children in a witness protection programme without allowing their relatives or guardians to contact them,[138] and where the applicant was allegedly being detained in a private substance abuse rehabilitation centre without his consent.[139] Central to these decisions is the court's reasoning that habeas corpus is meant to be invoked in cases where someone is deprived of their liberty or restrained. The place of confinement or restraint does not matter.

11. The right of appeal

Article 139(2) of the Constitution provides that 'Subject to the provisions of this Constitution and any other law, the decisions of any court lower than the High Court shall be appealable to the High Court.' Unlike the 1967 Judicature Act which did not provide for the right of appeal against the order of the High Court in a *habeas corpus* application, the 1996 Judicature Act provides for that right under section 35. This is meant to give effect to Article 139(2) of the Constitution. Section 35 of the Judicature Act states that:

Any person aggrieved by an order made under section 38 may appeal from the decision to the Court of Appeal within thirty days after the making of the order appealed from whether the order has been made in the exercise of the civil or criminal jurisdiction of the High Court.

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[134] Rtd. Col. Dr. Kizza Besigye & Another v Attorney General & Another (Miscellaneous Cause 31 of 2025) [2025] UGHCCD 29 (24 February 2025) para 3.1.

[135] Masereka v Attorney General & Maj. Gen. Kandiho (Miscellaneous Cause 34 of 2022) [2025] UGHCCD 21 (14 February 2025) at 10.

[136] In Robert Lugya Kayingo v Attorney General and Others (Miscellaneous Cause No. 191 of 2025) [2025] UGHCCD 166 (1 August 2025) at 3, the Court held that 'By definition, a Writ of Hobeos [sic] Corpus is defined as a writ employed to bring a person before court, most frequently to ensure that the person's imprisonment or detention is not illegal.' The use of the words 'most frequently' imply that the writ is not limited to challenging unlawful imprisonment or detention.

[137] Kyagulanyi and Another v AG and Others (Misc Cause No. 16 of 2021) [2021] UGHCCD 1 (23 January 2021).

[138] In Re: Mudondo & Achipa (Both infants) (Miscellaneous Cause No. 06 of 2014) [2014] UGHCFD 38 (3 July 2014).

[139] John Ongimu Omeke v Focus on Recovery Uganda Limited (Miscellaneous Cause No. 219 of 2025) [2025] UGHCCD 157 (9 September 2025).

It is the only prerogative remedy in the Judicature Act in which the High Court order can be appealed against to the Court of Appeal.[140] The fact that only the High Court has the power to entertain *habeas corpus* applications means, inter alia, that it is superior to military courts.[141]

Where the High Court dismisses an application for *habeas corpus* on the ground that the court before which the applicant is being prosecuted has jurisdiction over him, the Court of Appeal, if it agrees with the High Court, will also dismiss the appeal.[142] A person dissatisfied with the decision of the Court of Appeal can appeal to the Supreme Court.[143] Thus, the Court of Appeal is not the highest appellant court in *habeas corpus* matters.[144]

12. Conclusion

Article 23(9) of the Constitution of Uganda (1995) provides that '[t]he right to an order of habeas corpus shall be inviolable and shall not be suspended.' The right under Article 23(9) is absolute. Habeas corpus is also governed by section 38 of the Judicature Act (1996). In this article, the author has illustrated the manner in which the right to an order of habeas corpus has been protected in Uganda during colonialism and after independence. The author also demonstrated the drafting history of Article 23(6) and analyzed cases in which Article 23(9) has been invoked. These cases show, amongst other things, that some judges have held that the right to an order of habeas corpus is only available in instances where the applicant has been detained or imprisoned. It is argued, relying on the drafting history of Article 23(9), the right to an order of habeas corpus is applicable in every situation where a person's movement has been restrained. It is also argued that the standard of proof on the part of the applicant for an order of habeas corpus should be that of balance of probabilities. Where the state informs court that they are detaining the applicant, they should prove, with clear and convincing evidence, that the detention is lawful. However, if there is evidence to suggest that the person on whose behalf the application is being made is in state custody but the state denies having him/her in custody, the state should prove, beyond reasonable doubt, that the person is not in its custody. It is also argued that courts should make specific habeas corpus orders indicating, for example, the court before which the detainee should be produced, the date on which he/she should be produced and the time at which he should be produced. It has been demonstrated that there have been instances in which some law enforcement officers have not taken orders of habeas corpus seriously. It is recommended that in cases where the state does not obey orders of habeas corpus, courts should hold the relevant officials in contempt. It is argued further that it is wrong for the high court to declare people who have been

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[140] Kiara Amos Wereba and 3 Others vs Arua Municipal Council and Inspector General of Government (HCT-08-CV-MA-0012-2005) (HCT-08-CV-MA-0012-2005) [2006] UGHC 50 (30 January 2006); Denis Bireje v Attorney General (Civil Application No. 31 of 2005) [2006] UGCA 39 (7 September 2006).

[141] Uganda Law Society v Attorney General (Constitutional Petition 18 of 2005) [2006] UGCC 9 (31 January 2006).

[142] Namugerwa Hadijah v Director of Public Prosecutions and Attorney General (Civil Appeal No. 10 of 2012) [2012] UGCA 60 (14 June 2012); Semakula v Attorney General & DPP (Civil Appeal 9 of 2012) [2015] UGCA 2021 (7 December 2015) (the Court of Appeal held that the trial of the applicants before the military court was lawful).

[143] Namugerwa v Attorney General [2013] UGSC 20 (19 June 2013) (the Supreme Court dismissed the appeal).

[144] For a discussion of the erroneous view that the Court of Appeal is the highest appellate court in some instances, see Jamil Ddamulira Mujuzi, 'Interpreting 'the highest appellate court' in light of the drafting history of Article 22(1) of the Constitution of Uganda: Reconciling 2nd Lt. Ogwang Ambrose v Uganda (2024) with Attorney General v Kabaziguruka (2025)' (2025) 46(2) *Statute Law Review.* https://doi.org/10.1093/slr/hmaf018

detained incommunicado missing persons simply because the state argues that it does not have them in its custody when there is circumstantial evidence to show that those people were arrested by state agents.

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