POSITION PAPER

THE INVIOLABLE WRIT

Habeas Corpus, Judicial Timidity and the Constitutional Promise of Liberty in Uganda

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I. EXECUTIVE SUMMARY

Uganda possesses one of the strongest habeas corpus guarantees in the Commonwealth. The Constitution declares the right to an order of habeas corpus inviolable, forbids its suspension, and places it beyond the reach of any state of emergency.[1] The framers wrote those words after decades of detention without trial, safe houses and disappearances. They meant them.

Yet, on the ground, the Great Writ is in trouble in Uganda. This Paper examines five recent files that reveal the pattern: the author's own application from Kitalya Mini Max prison in 2025; the application of Dr Kizza Besigye and Hajji Obeid Lutale; the decided application concerning Christopher Gody, alias King Zale; the two applications for Sam Mugumya, the second of which went unheard on two dates, was brought forward only after counsel complained to the Principal Judge, and, when finally heard on 26 October 2026, was stood over for a further two weeks so that the State could "investigate" his whereabouts; and the application for Muhammad Muwanga Kivumbi, in which the court declined to issue the writ until a custodian was identified and the State answered nineteen days later with a charge sheet. In each case the court sent the applicant elsewhere, waited for the State to produce a charge, accepted a bare denial of custody, withheld the writ, or issued an order that the State then ignored.

The pattern is a failure of judicial will—whether born of fear, deference or caution. The State learns that it can hold a body without answering for it.

One habit underlies all five files. Many judges still treat a habeas application as an ordinary motion: fixed for mention, served on every respondent, answered by affidavits in reply, met with preliminary objections, argued on written submissions and reserved for ruling. The common law designed the writ as a summary inquiry in which the court issues the writ on a credible affidavit and the jailer answers on the return with the body before the court. Every step borrowed from ordinary litigation is a step that favours the only party who is not waiting.

Blackstone warned two and a half centuries ago that confinement "by secretly hurrying him to gaol, where his sufferings are unknown or forgotten" is "a less public, a less striking, and therefore a more dangerous engine of arbitrary government" than open violence.[2] The safe houses, the unmarked vans and the sworn denials of custody described in this Paper prove him right.

Part II explains what the writ is, where it comes from, what it is for and how Ugandan courts have defined its nature. Parts III to V set out the constitutional, statutory and international law. Part VI states the case law, including the five files. Part VII analyses the gap between that law and current practice. Part VIII sets out the remedies, a working procedure for young practitioners, and recommendations. Part IX lists the authorities, and Part X provides the court templates for a habeas corpus application.

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[1] The Constitution, Articles 23(9) and 44(d).

[2] William Blackstone, *Commentaries on the Laws of England*, Book I (Clarendon Press, 1765), 131–132; quoted by Alexander Hamilton in *The Federalist* No. 84 (1788).

The key recommendations are these:

(a) Hear every habeas application within forty-eight hours of filing, with duty judges rostered for vacations and for judges engaged on other business.

(b) Treat every habeas application as a summary inquiry, not an ordinary motion: issue the writ on a credible affidavit, and decide legality on the return, without mention dates, affidavits in reply or written submissions before the detainee is produced.

(c) Treat a credible account that State agents took a person as shifting the burden to the State, and reject bare denials of custody.

(d) Declare an earlier unlawful detention unlawful even where the State later produces a charge.

(e) Enforce the writ through contempt, personal summons and personal costs against defaulting officers.

(f) Enact a Habeas Corpus Act, gazette every place of detention, and ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

The Great Writ asks only one question: by what lawful authority do you hold this body? A court that will not press that question has already answered it to the prejudice of the detainee.

II. INTRODUCTION

A. The Question

Habeas corpus asks the State one question: *by what lawful authority do you hold this body*? It does not ask whether the detainee is guilty or innocent. It asks only whether the State can justify the detention in law, before an independent judge, promptly.

The Constitutional Court has had its say. The right that habeas corpus secures is the right to be tried according to law or to be released, and the writ is the means by which the legality of a restraint is questioned.[3]

That question is the oldest test of whether a government lives under law. A State that must answer it is a constitutional State. A State that can ignore it—or can rely on judges not to press it—is not.

The writ's "root principle", in the words of Brennan J, "is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if

[3] *In the Matter of a Reference from the High Court of Uganda and In the Matter of Sheik Abdul Karim Sentamu and Another*, Constitutional Reference No. 7 of 1998 (Constitutional Court: Manyindo DCJ, Okello, Berko, Twinomujuni and Kitumba JJA), arising from High Court Miscellaneous Cause No. 495 of 1998 (Tabaro J).

the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release."[4]

My colleagues and I have filed countless habeas applications. I have sat in prison waiting for a court to decide my own habeas application.

B. What the Writ Is

The Latin phrase habeas corpus means "you shall have the body". The full form is habeas corpus ad subjiciendum: you shall have the body, to be subjected to the scrutiny of the court.[5] It is a prerogative writ, issued by the High Court, by which the court commands whoever holds a detainee to bring the detainee before it and to state, on oath, the legal cause of the detention. The court then decides whether that cause is lawful. If it is not, the court orders release.

No remedy of the common law has been more celebrated. Blackstone called it "the most celebrated writ in the English law".[6] Chase CJ described it as having "been for centuries esteemed the best and only sufficient defence of personal freedom."[7] Lord Birkenhead called it "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement. It is of immemorial antiquity."[8]

Four features define the writ.

(a) **It is a demand for justification.** The burden lies on the jailer, not the prisoner. Liberty is the rule; detention is the exception that must be explained.

(b) **It is a hearing on legality, not a guaranteed release.** A court may find a detention lawful, for example where a person is held on a valid warrant or after conviction by a competent court. The writ forbids silence and secret custody, not lawful punishment.

(c) **It is summary and urgent.** Liberty lost for a day is lost for good. An application heard in a month is an application partly refused.

(d) **It answers the confinement, not the crime.** The writ acquits no one and punishes no one. It requires the State either to release the prisoner or to show, by due process, why he should be held. It is the ancient right to be charged or released.

The writ is also a shield against torture. A person produced in open court can be seen, and marks on the body can be recorded. A person held in an unknown room cannot be protected by any other right, because every other right needs a body that the law can find.

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[4] *Fay v. Noia*, 372 U.S. 391, 402 (1963), per Brennan J.

[5] Blackstone, *Commentaries on the Laws of England*, Book III (Clarendon Press, 1768), 131.

[6] Blackstone, *Commentaries*, Book III, 129.

[7] *Ex parte Yerger*, 75 U.S. (8 Wall.) 85, 95 (1869), per Chase CJ.

[8] *Secretary of State for Home Affairs v O'Brien* [1923] AC 603 (HL), 609, per Lord Birkenhead LC.

Critics often caricature the writ as a get-out-of-jail-free card for the dangerous. It is nothing of the kind. Like the right to counsel, it exists not to shelter wrongdoers or to stall proceedings, but to protect the innocent—and everyone else—from unlawful imprisonment. Enforced disappearance, incommunicado detention, abduction and every other form of illegal and arbitrary detention are the wrongs it was made to answer. It does not punish those who commit them. It breaks the secrecy and tests the confinement.

C. Historical Roots

The writ grew from a medieval claim that detention needs a legal warrant, not mere will. Clause 39 of Magna Carta (1215) declares:

> "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land."[9]

That was a bargain among armed barons to limit the king's violence, yet it planted the principle.

In *Darnel's Case* (1627), the Crown argued that the king's "special command" was a sufficient answer to the writ. Parliament rejected the idea that power could justify itself merely by naming itself. The Petition of Right (1628) and the Habeas Corpus Act 1679 followed, turning the writ into a routine procedure against executive officers. The 1679 Act even made it an offence to move a prisoner to a place where the writ could not reach him.[10]

Why did the common law fix upon imprisonment, rather than upon the more dramatic abuses of power? Blackstone gave the answer:

> "To bereave a man of life, or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole kingdom: but confinement of the person, by secretly hurrying him to gaol, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a more dangerous engine of arbitrary government."[11]

He hailed the Habeas Corpus Act as a "stable bulwark of our liberties".[12] Enforced disappearance is Blackstone's secret hurrying to gaol perfected: not only are the prisoner's sufferings unknown, his very custody is denied.

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[9]Magna Carta 1215, cl. 39 (British Library translation); renumbered as chapter 29 in the 1225 reissue.

[10]R. J. Sharpe, *The Law of Habeas Corpus* (2nd edn., Oxford University Press, 1989), ch. 1.

[11]Blackstone, *Commentaries*, Book I, 131–132.

[12]Blackstone, *Commentaries*, Book I, 133.

In *Somerset v Stewart* (1772), the writ freed James Somerset, an enslaved African man held in irons aboard a ship in the Thames bound for Jamaica, where he was to be sold. On the return to the writ, Lord Mansfield did not rule on slavery in the abstract; he held that no positive law of England authorised the detention, and he discharged Somerset.[13] The writ did not ask who Somerset was. It asked who held him and on what basis. "Free man" in 1215 did not mean everyone. The universal writ is a later, liberal achievement, and any practice that treats some detainees as beyond its reach reverses that achievement.

The writ crossed the Atlantic with the common law. Alexander Hamilton named the evil it exists to remedy as "the creation of crimes after the commission of the fact … and the practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny."[14] Thomas Jefferson counted "freedom of person under the protection of the habeas corpus" among the principles that "form the bright constellation which has gone before us, and guided our steps through an age of revolution and reformation."[15] The United States Constitution forbade suspension of the writ save "when in Cases of Rebellion or Invasion the public Safety may require it."[16] As Part III shows, Uganda's Constitution goes further and admits no exception at all.

Nor was the writ ever a peacetime luxury. In November 1943, in the middle of a world war, Winston Churchill wrote to his Home Secretary:

> "The power of the Executive to cast a man into prison without formulating any charge known to the law, and particularly to deny him the judgment of his peers, is in the highest degree odious and is the foundation of all totalitarian government whether Nazi or Communist."[17]

The writ followed British rule into East Africa. Part VI.A records how Ugandan courts used it, and refused it, in the crisis of 1966. The Amin years and the wars that followed brought detention without trial, safe houses and disappearances on a vast scale, documented by two commissions of inquiry.[18] The 1995 Constitution answered that history by making the writ inviolable and non-derogable.

One episode from those years deserves a place of its own. In September 1972, as Francis Gimara SC recounted in the 2025 Benedicto Kiwanuka Memorial Lecture, other judges, fearing reprisals, declined to handle the case of Daniel Stewart, a British national held by the army. Chief Justice Benedicto Kiwanuka took it himself,

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[13] *Somerset v Stewart* (1772) Lofft 1, 98 ER 499 (KB).

[14] Alexander Hamilton, *The Federalist* No. 84 (1788).

[15] Thomas Jefferson, First Inaugural Address, Washington DC, 4 March 1801.

[16] Constitution of the United States, Article I, Section 9, Clause 2.

[17] Winston S. Churchill, telegram to the Home Secretary, Herbert Morrison, 21 November 1943.

[18] Commission of Inquiry into the Disappearances of People in Uganda since 25 January 1971 (sat July 1974 to June 1975; report submitted to President Amin in 1975 but never officially published); Commission of Inquiry into Violations of Human Rights (the Oder Commission), Report (1994).

issued the writ and ordered Stewart's release, holding that "the military forces of this country have no powers of arrest of any kind whatsoever." Amin answered with a decree conferring powers of arrest on the military. On 21 September 1972, armed men who claimed to be government security personnel took the Chief Justice at gunpoint from his chambers at the High Court. They murdered him, and no one has ever given his body a proper burial.[19]

Every Ugandan judge who hears a habeas application sits in the shadow of that ruling and of its price. The question Kiwanuka answered—whether soldiers may seize a civilian outside the law and hold him beyond the reach of the courts—is the question in the Kivumbi and Mugumya files today.

D. Why the Writ Matters

Four ideas explain what the procedure assumes. A young lawyer needs them when a judge treats habeas corpus as an ordinary motion.

(a) **Liberty is the baseline.** For thinkers from Locke to Philip Pettit, freedom means not living at the mercy of another's uncontrolled will. The writ does not abolish detention. It abolishes unaccountable detention. Even Hobbes, the theorist of near-absolute sovereignty, held that no subject can give up the liberty to resist imprisonment.[20]

(b) **Legality of custody is a judicial question, not an executive fact.** The jailer produces the body so that someone who does not command the jail can test the reason for holding it. No one may judge his own cause. A return that pleads national security or superior orders does not end the inquiry. It opens it.

(c) **A remedy does more than a declaration.** A.V. Dicey observed that the Habeas Corpus Acts declared no principle and defined no rights, yet were worth more than a hundred constitutional articles guaranteeing liberty.[21] Hannah Arendt explains why: domination begins by removing a person from the world of law.[22] Enforced disappearance is the purest form of that removal. The writ is the counter-move that compels the State to acknowledge or explain custody.

(d) **The writ corrects imbalances of power.** The State knows where the detainee is. The detainee's family does not. Arbitrary detention is cheap for the State and ruinous for the citizen. A government that can detain opponents at will cannot credibly promise fair political competition. And one unlawful detention chills speech and litigation across a whole community.

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[19] F. Gimara SC, "Upholding Justice with Courage: Advancing the Benedicto Kiwanuka Legacy", keynote address at the 8th Benedicto Kiwanuka Memorial Day, Judiciary of Uganda (19 September 2025), pp. 2–3.

[20] Thomas Hobbes, *Leviathan* (1651), ch. 21.

[21] A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (8th edn., 1915), ch. V.

[22] Hannah Arendt, *The Origins of Totalitarianism* (1951), Part III, ch. 12.

"No state power is more fearsome than the power to imprison."[23] That is why the common-law tradition holds the writ so dear that liberty ordinarily prevails even over appeals to national security, and why the Supreme Court of the United States has called it "the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action."[24]

Where the rule of law is settled, applications for the writ are rare and it has acquired an almost mythical standing. Where detention without charge persists, it is the last safety net against imprisonment by unconstitutional means. Habeas corpus gives meaning to the principle that anyone unlawfully detained may reach a judge at once, at any hour and by any means.

A judge need not share the jailer's theory of danger or guilt. The judge need only ask whether the detention is lawful. Deciding a habeas application does not require taking sides in politics. It requires only that the judge apply the law to the body before the court.

E. The Nature of the Writ in Ugandan Law

Five propositions emerge.

(a) **It lies wherever liberty is taken without legal justification.** That is the principle of *Ibingira 1*.[25] It is not confined to criminal or political custody. In *In Re Mudondo & Achipa (Infants)*, the applicants used the writ to recover two infants whose retention by the Uganda Police was alleged to be illegal.[26]

(b) **It is a summary inquiry into legality, not a trial.** In *Karuhanga* and *Balidawa*, the High Court held that the writ reviews the legality of arrest, imprisonment and detention, and challenges the custodian's authority to continue holding the applicant. It reaches detention without charge, without due process, without sufficient legal cause, and detention incommunicado. The validity of a charge, the sufficiency of evidence, bail, and the jurisdiction of a competent court to try the offence are matters for the trial court.[27]

(c) **It runs against any custodian, public or private.** In *Nicholas Oyoo and Bob Njagi v Chief of Defence Forces & Others*, Kinobe J held that the Constitution does not confine the order to the State: it lies against unlawful deprivation of liberty by the State or by private individuals.[28] The breadth of that statement makes the outcome of the same case, examined in Parts VI.A and VII.E, all the harder to defend.

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[23] George F. Will, *The Washington Post*, 16 June 2008.

[24] *Harris v. Nelson*, 394 U.S. 286, 290–291 (1969), per Fortas J.

[25] *Grace Stuart Ibingira and Others v Uganda* [1966] EA 306 (CA) (*Ibingira 1*).

[26] *In Re Mudondo & Achipa (Infants)* [2014] UGHCFD 38.

[27] *Karuhanga v Inspector General of Police & Others* [2013] UGHCCD 143; *Balidawa v Officer in Charge Kigo Prison & Others* [2013] UGHCCD 166.

[28] *Nicholas Oyoo and Bob Njagi v Chief of Defence Forces & Others* [2025] UGHCCD 185.

(d) **It is civil in character.** In *Ibingira 2*, the Court of Appeal for East Africa held that habeas corpus proceedings are normally civil, becoming criminal only where refusal of release would lead immediately to trial on a criminal charge or to a return to prison to serve a sentence. The High Court exercises the common-law habeas jurisdiction. The Court further held that bad faith should not be alleged against a deponent unless that deponent is called for cross-examination.[29]

(e) **Its object is release, not punishment.** The remedy exists to secure the release of persons actually in unlawful custody, not to punish those who detained them, and it falls away once the person has been released.[30] Where the return discloses no lawful basis, release follows at once. In *Kopia Moses v Kintu & Another*, Kawesa J ordered the officer in charge of Kamuge Prison to release the applicant immediately and issued the writ.[31]

The last proposition explains why the punishment of defiant officers must come through contempt and Article 50, not through the writ itself. It does not mean that a court which finds a detention unlawful must stay silent once the detainee is released or charged. The writ falls away; the constitutional wrong does not. Part VII returns to that point.

III. CONSTITUTIONAL PROVISIONS

The Constitution supplies the standard by which every habeas application is measured. The provisions that matter most are these:

(a) Article 20 declares that fundamental rights are inherent and not granted by the State, and it binds every organ and agency of Government to respect and uphold them.

(b) Article 23(1) permits deprivation of personal liberty only in the cases it enumerates, and Article 23(2) requires that a person be held only in a place authorised by law.

(c) Articles 23(3) and 23(5) require that a detainee be informed of the reasons for arrest in a language he understands, and that his next of kin, lawyer and doctor be informed and granted access.

(d) Article 23(4)(b) requires a person arrested on suspicion of an offence to be brought before a court within forty-eight hours. Detention beyond that period is unlawful on its face.

(e) Article 23(9) declares the right to an order of habeas corpus inviolable and expressly forbids its suspension.

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[29] *Grace Stuart Ibingira and Others v Uganda* [1966] EA 445 (CA) (*Ibingira 2*).

[30] *Sentamu* (above), adopting the speech of Lord Watson in *Barnardo v Ford* [1892] AC 326 (HL).

[31] *Kopia Moses v Kintu & Another* [2014] UGHCCD 5.

(f) Article 24 prohibits torture and any form of cruel, inhuman or degrading treatment.

(g) Article 28 guarantees a fair, speedy and public hearing before an independent and impartial tribunal.

(h) Article 44 lists the rights from which no derogation is permitted, among them freedom from torture (paragraph (a)), the right to a fair hearing (paragraph (c)), and the right to an order of habeas corpus (paragraph (d)).

(i) Article 50 entitles any person whose right is threatened or infringed to apply to a competent court for redress, which may include compensation.

(j) Article 126(2)(e) directs the courts to administer substantive justice without undue regard to technicalities.

Two words are decisive: inviolable and non-derogable. Because Article 44 places the right among those from which there can be no derogation, it stands beyond even the general limitation in Article 43, which otherwise permits limits demonstrably justifiable in a free and democratic society. The framers rejected the notion that the sovereign may declare an exception and then hold bodies without answer. There is no emergency in which the Ugandan State may hold a body without answering for it before a court.

What does "inviolable" require in practice? At least four things. The court must hear the application at once. It must not accept a bare denial from a party that holds all the information. It must not allow the State to cure an unlawful detention by producing a late charge. And it must enforce its orders. A right that a court will not enforce is not inviolable. It is decorative.

IV. STATUTE

A. The Governing Statutes

(a) **The Judicature Act (Cap. 16).** Section 38(a) empowers the High Court to award the writ where a person is deprived of personal liberty otherwise than in execution of a lawful sentence or order of a competent court, and an affidavit shows reasonable ground for the complaint. On the return, the judge inquires into the truth of the facts and may make any order the justice of the case requires. Section 38(b) provides for the writs ad testificandum and ad respondendum, which bring a prisoner up for examination or for trial.

(b) **Section 39 of the Judicature Act (Cap. 16).** 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, whether the order was made in the exercise of the civil or the criminal jurisdiction of the High Court. Part IV.C examines what that right of appeal covers and how it should be used.

(c) **The Judicature (Habeas Corpus) Rules.** The Rules set the procedure, including the application, the return and the production of the body. They

provide for an urgent application and permit an *ex parte* application where the circumstances require it. Practitioners should confirm the statutory instrument number of the Rules in the 2023 revision before filing.[32]

(d) **The Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules, 2019.** The Rules govern applications for the enforcement of rights under Article 50 and direct that an application for the writ be made in accordance with the Judicature (Habeas Corpus) Rules.[33]

(e) **The Human Rights (Enforcement) Act (Cap. 12).** The Act gives effect to Article 50. It allows any person to apply to a competent court on behalf of a victim, and it contemplates release where a court finds that a detention breaches a non-derogable right. Both habeas corpus and this Act envisage unconditional release in fitting circumstances, and practitioners rely on both together.

(f) **The Prevention and Prohibition of Torture Act (Cap. 130).** The Act criminalises torture by public officials and those acting at their instigation, which matters wherever a detainee is held out of sight.

(g) **The Uganda Peoples' Defence Forces Act (Cap. 330), which Parliament amended in 2025.** The 2025 amendment sought to restore military jurisdiction over civilians after the Supreme Court held that jurisdiction unconstitutional. It is open to constitutional challenge and is under challenge, but it explains why civilians continue to appear in military hands.

(h) **The Civil Procedure Act (Cap. 282) and the Civil Procedure Rules.** These govern affidavits, including the rule that an affidavit on information must disclose its source.

B. How the Procedure Works

The applicant moves the High Court by Notice of Motion supported by an affidavit. Ideally the detainee swears the affidavit. Because he usually cannot, a relative, friend or counsel may swear it on his behalf, stating why the detainee cannot do so. Where the deponent relies on information from others, the affidavit must disclose the source and the grounds of belief.

The Rules allow the court to hear the application ex parte and issue the writ at once, or to direct that the respondents be served and heard. The proper sequence, long established in Ugandan practice, is that the application proceeds ex parte; if the supporting affidavit discloses a reasonable ground, the judge grants an order nisi directing the detaining authorities to file a return and to produce the body.

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[32]The statutory instrument number in the 2023 revision has not been confirmed against the printed volume and is therefore not cited here.

[33]Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules, 2019, Statutory Instrument No. 31 of 2019.

Karuhanga illustrates the sequence. The High Court considered the application ex parte and granted an order nisi. The Officer in Charge of Luzira Women's Prison then made a return certifying the remand warrant on which she held the applicant, and the court decided the application on that return.[34] In *Besigye and Lutale*, Singiza J restated the principle: applications for habeas corpus are in principle ex parte, and where the court prefers that the parties be notified, notice must run on strict timelines.[35]

In current practice, however, Ugandan courts usually proceed inter partes from the outset. Once the writ (or order nisi) issues, the person to whom it is directed must produce the detainee and make a return on oath stating the cause and authority of the detention. The court then decides whether that cause is lawful.

That two-stage design matters. The writ is the summons, the return is the answer, and the inquiry takes place on the return with the detainee before the court. The respondent's case is meant to arrive on oath, from the person who holds the body, after the writ has issued. It is not meant to arrive weeks later in an affidavit in reply filed to resist the writ's issue. Part VII.B shows how far current practice has drifted from that design.

Two rules of Commonwealth law shape every habeas corpus application. First, the writ lies against anyone with custody, power or control sufficient to procure release, not only the physical jailer, and doubt about control is a reason to issue the writ and test control on the return.[36] Second, habeas corpus is not subject to *res judicata*, so a fresh application on new evidence is competent.

A third rule comes from the statute itself. Section 38(a) of the Judicature Act (Cap. 16) directs the judge, on the return, to inquire into the truth of the facts and to make any order the justice of the case requires. A return is therefore the beginning of the inquiry, not its end.

The High Court's practice on the return has varied: some judges treat the return as conclusive unless the applicant can immediately contradict it; others, following the statute more closely, test a disputed return by cross-examination of the deponent, by requiring further returns, by ordering inspection of named facilities, or by summoning the officer who made the return to appear in person.

A sworn denial of custody is a fact to be tested, not a password that closes the file. Where the court dismisses the application or makes any other final order, Section 39 affords an appeal to the Court of Appeal within thirty days.

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[34] *Karuhanga v Inspector General of Police & Others*, Miscellaneous Cause No. 86 of 2013, [2013] UGHCCD 143 (Musota J, 28 October 2013).

[35] *Rtd Col Dr Kizza Besigye & Another v Attorney General & Another*, Miscellaneous Cause No. 31 of 2025, [2025] UGHCCD 29 (24 February 2025), part 3.1, citing rules 3 and 4 of the Judicature (Habeas Corpus) Rules.

[36] *Barnardo v Ford* [1892] AC 326; *R v Secretary of State for Home Affairs, ex parte O'Brien* [1923] 2 KB 361.

C. Appeals from Habeas Corpus Orders

Section 39 of the Judicature Act (Cap. 16) gives any person aggrieved by an order made under Section 38 a right of appeal to the Court of Appeal, to be exercised within thirty days of the order, whether the High Court acted in its civil or its criminal jurisdiction. Four features of the provision matter.

(a) It resolves an old jurisdictional question. At common law, whether an appeal lay in habeas corpus turned on whether the proceedings were a criminal cause or matter. That was the question in *Ibingira 2*, where the Court of Appeal for East Africa held that habeas proceedings are normally civil. Section 39 removes the question altogether: an appeal lies whatever the character of the proceedings.

(b) It reaches "an order", not only a final dismissal. A refusal to issue the writ, a dismissal on a bare denial of custody, a dismissal as moot after the State produces a charge, and an order declining to issue the writ until the respondents have investigated are each an order made under the habeas jurisdiction. The orders in the Kivumbi, Besigye and King Zale files were all, on their face, appealable.

(c) It is open to "any person aggrieved", which on its face includes the State. At common law, an order discharging a prisoner was final: no appeal lay from it.[37] Section 39 departs from that rule, but Article 23(9) limits what a State appeal can do. An appeal against an order of release cannot operate as a stay that keeps the detainee in custody while the appeal is pending, because a stay would suspend the writ, and the Constitution forbids its suspension. A person ordered released must be released. The State may argue its appeal from the other side of the prison gate.

(d) Thirty days is the time limit for appealing, not a period for waiting. A habeas appeal is as urgent as the application from which it comes. Counsel should lodge the notice of appeal at once, apply for the record of proceedings the same day, ask the Court of Appeal for an urgent hearing, and seek interim orders pending appeal—production of the detainee, sworn returns, or inspection of named facilities—where the detainee remains held.

Appeal is not the only route. Because habeas corpus is not subject to res judicata, a detainee whose application has failed may file a fresh one on new evidence, and that is usually faster. The two serve different purposes. A fresh application answers a gap in the evidence. An appeal answers an error of law. Where the High Court has applied the wrong test—requiring the applicant to identify the custodian before the writ issues, treating a bare denial as conclusive, dismissing as moot a detention that was unlawful when the application was filed, or sending the applicant to another forum—only an appellate ruling will stop the error from repeating in the next file.

That is the deeper reason the right of appeal matters. Most of the Ugandan authorities this Paper examines are first-instance rulings, and *Sentamu* reached the

[37] *Cox v Hakes* (1890) 15 App Cas 506 (HL).

Constitutional Court on a reference, not on appeal. Appellate guidance on the writ since 1995 is thin, and High Court judges have filled the space with competing practices. None of the five files examined in Part VI has produced an appellate ruling on the writ. An appeal is not rendered pointless because the detainee has since been charged or released. The Court of Appeal may decide a question of public importance that is likely to recur, and the legality of a detention that has ended is exactly such a question. The errors in Part VII will not correct themselves.

V. INTERNATIONAL TREATIES AND STANDARDS

Uganda's treaty obligations match its constitutional promise.

(a) The International Covenant on Civil and Political Rights, to which Uganda acceded on 21 June 1995. Article 9(4) entitles anyone deprived of liberty to take proceedings before a court that decides without delay on the lawfulness of the detention and orders release if it is unlawful. The Human Rights Committee holds that this right must never be diminished by measures of derogation, and treats enforced disappearance as a particularly aggravated form of arbitrary detention.[38]

(b) The African Charter on Human and Peoples' Rights, which Uganda ratified on 10 May 1986. Article 6 forbids arbitrary arrest and detention, and Article 7 guarantees the right to have one's cause heard. The African Commission requires that habeas corpus or a like remedy be available and effective at all times, including during emergencies.[39]

(c) The Treaty for the Establishment of the East African Community, which Uganda ratified on 6 June 2000 and which entered into force on 7 July 2000. Articles 6(d) and 7(2) bind Uganda to the rule of law and to the protection of human rights.

(d) **The UN Declaration on the Protection of All Persons from Enforced Disappearance.** Article 9 requires a prompt and effective judicial remedy to find a detainee, and access for the court to every place of detention.[40]

(e) **The International Convention for the Protection of All Persons from Enforced Disappearance.** Uganda signed it on 6 February 2007 but has not ratified it. Ratification would bind the State to criminalise enforced disappearance and to keep official registers of every person deprived of liberty.

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[38] Human Rights Committee, General Comment No. 29 (2001), para. 16; General Comment No. 35 (2014), CCPR/C/GC/35, paras. 17 and 67.

[39] African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003); *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa* (Luanda Guidelines, 2014).

[40] UN General Assembly Resolution 47/133 (1992), Article 9.

(f) **Inter-American standards.** The Inter-American Court holds that habeas corpus may never be suspended because it protects the non-derogable rights to life and humane treatment.[41]

We have the stronger text. The failure is not statutory. The failure relates to the presence of habits that drain those words of force.

VI. CASE LAW

A. Uganda

1. The 1966 cases. Two decisions of the Court of Appeal for East Africa in the *Ibingira* litigation remain the foundation of the Ugandan law. In *Ibingira 1*, five ministers detained under the colonial Deportation Ordinance applied for the writ. The Court held the Ordinance void, so far as it affected citizens, for inconsistency with the freedom of movement guaranteed by the 1962 Constitution, and directed that the writ issue.[42] It is the authority for using habeas corpus to test a detention founded on an unconstitutional law. It taught that liberty is a constitutional fact, not a ministerial favour.

Ibingira 2 is the procedural authority, and a warning. On release under the writs, the ministers were immediately re-detained under emergency powers, and the Court upheld that detention.[43] A challenge to release followed by re-arrest must therefore attack the lawful basis of the new detention itself, not merely the circumstances in which the detainee was moved.

In the same year, in *Matovu*, the High Court refused habeas corpus to Michael Matovu, the Pokino of Buddu, detained under emergency regulations.[44] The three-judge bench decided the constitutional questions referred to it rather than the writ itself, and used the application to uphold the 1966 Constitution as the product of a successful revolution.

Cite *Matovu* with care. The applicant lost. Counsel may cite it only for three narrow propositions: that the State, through its courts, must inquire into an illegal detention; that habeas corpus sits alongside a constitutional remedy; and that technical defects do not defeat an application about liberty. The *Matovu* case is a warning against judicial deference to executive power.

2. The limits the courts have drawn. A return that shows a valid legal basis defeats the writ. In *Captain Mike Komakech Mwaka v Military Police*, the High Court found remand by the General Court Martial lawful, dismissed the application, and held that it could not direct the military court to grant bail.[45] A later valid remand by a competent court supplies a lawful basis for continued detention, even where the

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[41] Inter-American Court of Human Rights, Advisory Opinion OC-8/87, *Habeas Corpus in Emergency Situations* (30 January 1987).

[42] *Ibingira 1* (above).

[43] *Ibingira 2* (above).

[44] *Uganda v Commissioner of Prisons, ex parte Matovu* [1966] EA 514.

original arrest was unlawful; the earlier illegality must be pursued by other remedies. The High Court decided *Komakech* three decades before *Kabaziguruka*, and it does not settle the detention of civilians by military courts. The State will say that the 2025 amendment to the Uganda Peoples' Defence Forces Act (Cap. 330), which reintroduced the trial of civilians by courts martial in defined circumstances, has restored *Komakech* to full force. That does not follow. *Kabaziguruka* rested on the Constitution: courts martial, as then constituted, were not the independent and impartial courts that Articles 28 and 126 guarantee to a civilian. Parliament cannot reverse a constitutional judgment by ordinary statute, and whether the restructured courts martial cure the defect the Supreme Court identified is a constitutional question now pending before the Constitutional Court. Until it is answered, a habeas court faced with a court martial remand of a civilian should ask whether the detention falls within the statutory exception at all, refer the constitutional question under Article 137(5) where it is properly raised, and treat *Kabaziguruka* as binding. *Komakech* cannot do that work for the State.

Sentamu shows both what the writ once looked like in practice and the limit on which the State relies today.[46] In May 1998, the police arrested four men and held them without charge. On affidavits sworn by their relatives and by people who had witnessed the arrests, Tabaro J granted an order nisi on 8 June 1998, directed to the Inspector General of Police and returnable four days later. The police did not know where the men were held. The court did not decline the writ for want of an identifiable custodian. It extended the return, again and again, and kept the Inspector General answerable. When a return came in incomplete, the court refused to treat it as an answer, summoned the officer who had made it, ACP Garyahandera, to appear in person, and ordered the Kasese court file to be produced. The State's answer was a charge: the State had charged two of the applicants with treason before the Magistrate's Court at Kasese on 19 June 1998, eleven days after the order nisi.

On a reference, the Constitutional Court (Manyindo DCJ, Okello, Berko, Twinomujuni and Kitumba JJCC) held that no question of constitutional interpretation arose, and in doing so restated and upheld the doctrine of supervening legality—the rule on which the State now relies. The relevant time at which a detention must be justified is the time at which the court considers the return to the writ. Where valid proceedings have followed the arrest, an illegality in the original arrest is immaterial to the writ, and a substituted warrant may be accepted at any stage, even at the very moment the prisoner is brought up.

That doctrine can diminish the practical outcome of a habeas petition by allowing a later charge or remand to cure an earlier unlawful detention for the purposes of the writ itself.[47] The Court also held that the Constitution "has not changed the practice and the law applicable to Habeas Corpus", and it described the dispute as "purely

[45] *Captain Mike Komakech Mwaka v Military Police* [1994] UGHC 114 (15 November 1994); see also *In the Matter of an Application for a Writ of Habeas Corpus ad Subjiciendum by Komakech Mwaka*, Miscellaneous Cause No. 3 of 1994, [1994] UGHC 121 (15 November 1994).

[46] *Sentamu* (above).

[47] *Sentamu* (above), citing *Ibingira 2* and *R v Secretary of State for the Home Department, ex parte Iqbal* [1979] QB 264, [1979] 1 All ER 675 (DC), affirmed [1979] 1 All ER 685, [1979] 1 WLR 425 (CA).

enforcement of fundamental rights under the Constitution", for which the route is Article 50. Part VII.C considers what that rule does and does not decide.

The writ also presupposes custody, and two recent rulings show how readily that premise can be turned against the detainee. In *Oyoo and Njagi*, once the respondents denied holding the applicants, Kinobe J declared them missing persons, observing that the State can only produce what it has.[48] The Muwanga Kivumbi application, set out in paragraph 8 below as the fifth file this Paper examines, carried that premise further.

3. Military courts and civilians. In *Kabaziguruka*, the Supreme Court held that military courts have no jurisdiction to try civilians, and directed that pending civilian cases before them stop and be transferred to the ordinary courts.[49] The judgment underlies the first two files below.

4. On **7 January 2025**, I appeared before the General Court Martial at Makindye as one of Dr Kizza Besigye's lawyers. The Judge Advocate, Brig Gen Richard Tukacungurwa, accused me of contempt. Soldiers manhandled me and arrested me inside the courtroom. Later that day, after a short recess, the Court Martial, chaired by Gen Freeman Mugabe, convicted me of contempt and sentenced me to nine months in prison. The charge was never formally read to me, and I was not heard in my defence.[50] The Court Martial committed me to Kitalya prison. After *Kabaziguruka*, I applied for habeas corpus in Miscellaneous Cause No. 37 of 2025, under Articles 23(9), 44(d) and 50 and Section 38 of the Judicature Act (Cap. 16). On 3 March 2025, Justice Douglas Singiza dismissed the application as the wrong procedure. He told me to try judicial review or the Court Martial Appeal Court, and held that the Civil Division lacked criminal appellate or revisionary power to examine the conviction.[51] This was so despite the Supreme Court's clarification not only that military courts have no jurisdiction over civilians, but also that court martial convictions of civilians then under legal challenge stood nullified. I remained in Kitalya Mini Max prison despite the *Kabaziguruka* decision until Justice Elubu granted me bail pending appeal on 4 April 2025, eighty-eight days after I was illegally taken from the bar.

5. Dr Kizza Besigye and Hajji Obeid Lutale. Security agents abducted the two men in Nairobi on 16 November 2024, brought them to Uganda, and charged them before the General Court Martial. After *Kabaziguruka*, their detention under the Court Martial's orders had no legal basis, yet they remained in Luzira.[52] Their lawyers, led by Erias Lukwago, filed Miscellaneous Cause No. 31 of 2025 on 5 February 2025. At

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[48] *Oyoo and Njagi* (above).

[49] *Attorney General v Hon. Michael Kabaziguruka*, Supreme Court Constitutional Appeal No. 2 of 2021, [2025] UGSC 1 (judgment of 31 January 2025).

[50] "Uganda: Besigye case stalls as Court Martial deliberates on lawyer's detention", *allAfrica*, 7 January 2025, <https://allafrica.com/stories/202501070369.html>; "Besigye's lawyer jailed after banging the table", *Daily Monitor*, 7 January 2025, <https://www.monitor.co.ug/uganda/news/national/besigye-s-lawyer-jailed-after-banging-the-table-4882088>.

[51] "Lawyer Eron Kiiza loses bid to regain his freedom", *Daily Monitor*, 3 March 2025, <https://www.monitor.co.ug/uganda/news/national/lawyer-eron-kiiza-loses-bid-to-regain-his-freedom--4949788>.

the hearing on 19 February 2025, Dr Besigye was visibly ill after a hunger strike. Justice Singiza declined interim release for medical care, reserved his ruling, and remarked that habeas corpus is typically used where a person's whereabouts are unknown.[53] On 21 February 2025, the State charged the two men with treason in the Chief Magistrates Court at Nakawa (Criminal Case No. 285 of 2025) and remanded. On 24 February 2025, the High Court took judicial notice of that charge and dismissed the application as moot, with no order as to costs.[54] Habeas corpus is the pre-eminent legal answer to illegal detention, and time is of its essence: every day of delay defeats equity and prolongs the illegal detention, thereby denuding the Great Writ of its magic.

It is also erroneous to suggest that habeas corpus is limited to cases where the detainee's whereabouts are unknown. Habeas tests legality of detention and is even more effective when the custody of the detainee is certain.

6. Gody Christopher, alias King Zale. Mr Gody, a musician and mobiliser, was abducted near the Firebase offices in Kamwokya on the night of 21 April 2026. Witnesses said armed men, some in uniform, forced him into a Toyota Hiace of the kind Kampala calls a "drone". He applied for habeas corpus. The police objected that the supporting affidavit, by his relative Nakiwala Lillian, was hearsay. Justice Joyce Kavuma rejected the objection because the deponent had disclosed her source. Most respondents filed nothing, and the judge drew an adverse inference from their silence, noting that the police had searched only their own systems although the allegation was against military and intelligence personnel. On 29 May 2026, she issued the writ and directed six respondents to produce Mr Gody on 5 June 2026.[55] The writ did not produce him. The army and the police told the court that he was not in their custody. The family and their lawyer, Jonathan Elotu, later said the court dismissed the application on those denials and that the family suspended the court process.[56] By early October 2026, more than 160 days after he was taken, he was still missing.

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[52]Amnesty International, "Uganda: Authorities must respect court decision and immediately free Kizza Besigye and others" (18 February 2025), <https://www.amnestyusa.org/press-releases/uganda-authorities-must-respect-court-decision-and-immediately-free-kizza-besigye-and-others/>.

[53]"Besigye to remain behind bars as Ugandan court defers case", *NTV Uganda*, 19 February 2025, <https://ntv.co.ug/africa/news/besigye-to-remain-behind-bars-as-ugandan-court-defers-case-4932870>; "Justice Singiza further remands Besigye", *The Observer*, 19 February 2025, <https://observer.ug/news/justice-singiza-further-remands-besigye/>.

[54]"Court dismisses Besigye, Lutale habeas corpus application", *KFM*, 24 February 2025, <https://kfm.co.ug/court-dismisses-besigye-lutale-habeas-corpus-application>.

[55]*Gody Christopher v Attorney General & Others*, High Court (Civil Division), habeas corpus ruling of 29 May 2026, reproduced at <https://www.studocu.com/row/document/islamic-university-in-uganda/evidence-law/habeas-corpus-application-gody-v-attorney-general-others-2026/164675966>.

[56]"Christopher Godi: Weeping family in limbo over missing relative", *NTV Uganda*, June 2026, <https://ntv.co.ug/news/christopher-godi-weeping-family-in-limbo-over-missing-relative>; account of the family and counsel reported in *The Kampala Report*, July 2026. I have not seen the later ruling and do not attribute it to any named judge.

7. Sam Mugumya. Mr Mugumya, a former aide to Dr Besigye, was abducted at a hotel in Mbarara on 26 August 2025. On 5 September 2025, in Miscellaneous Cause No. 227 of 2025, Justice Collins Acellam issued the writ and ordered the State to produce him before a competent court within seven days, holding that the military's denial did not sufficiently answer the evidence of his arrest.[57] The order was never obeyed. The UPDF's Director of Civil Affairs, Lt Col Edgar Musasizi, swore that searches of military detention records found no entry for him.[58] When the court directed the State to investigate and report, the State asked for more time again and again, citing in October 2025 the death of the official leading the investigation.[59]

A year later, the evidence moved decisively. Two released detainees swore that they saw Mr Mugumya held at the Special Forces Command facility at Kasenyi. Footage circulated that appears to show him frail and unable to walk unaided. On 30 September 2026, a UPDF intelligence officer, Lt Herbert Matanda Mabonga, released a statement and records alleging that Mr Mugumya had been held and tortured in military custody. On 2 October 2026, the Chief of Defence Forces, Gen Muhoozi Kainerugaba, stated on X that the UPDF was holding him; a later post threatened to shoot him.[60] Parliament gave the government two weeks to explain his whereabouts.[61]

On 4 September 2026, counsel filed a second application as Miscellaneous Cause No. 0208 of 2026, naming six respondents: the Chief of Defence Forces, the Commandant of the Special Forces Command, the Commanding Officer of Kasenyi Barracks, the Director of Intelligence and Security, the Inspector General of Police and the Attorney General. The court fixed it for mention on 15 September 2026 before Justice Simon Peter Kinobe, but did not proceed because the judge was attending to election petitions. The court then fixed it for 7 October 2026; it did not proceed again, for the same reason, and the court stood it over to 17 November 2026.[62] On 7 October 2026, counsel wrote to the Principal Judge, complaining that the judge had prioritised

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[57]"Court orders Muhoozi to produce missing opposition aide Sam Mugumya", *The Observer*, September 2025, <https://observer.ug/news/court-orders-muhoozi-to-produce-missing-opposition-aide-sam-mugumya/>.

[58]"Where is political activist Sam Mugumya?", *Daily Monitor*, September 2025, <https://www.monitor.co.ug/uganda/news/national/where-is-political-activist-sam-mugumya--5194618>.

[59]"State seeks more time in Sam Mugumya disappearance case", *Nile Post*, October 2025, <https://nilepost.co.ug/news/295654/state-seeks-more-time-in-sam-mugumya-disappearance-case>.

[60]"I have Sam Mugumya, says Gen Muhoozi", *UG Bulletin*, October 2026, <https://www.ugbulletin.co.ug/i-have-sam-mugumya-says-gen-muhoozi/>; "Uganda's Army Chief Vows to Shoot Missing Activist", *Rio Times*, 4 October 2026 (citing *Daily Monitor*, 3 October 2026), <https://www.riotimesonline.com/muhoozi-threatens-shoot-missing-activist-mugumya-2026/>. Screenshots of the posts are on file with the author and should be annexed to any filing that relies on them, since posts can be deleted.

[61]"Parliament gives gov't two weeks to explain Mugumya's whereabouts", 2 October 2026, <https://www.ghanamma.com/2026/10/02/parliament-gives-govt-two-weeks-to-explain-mugumyas-whereabouts-5/>; "ULS seeks UN intervention over missing activist Sam Mugumya", *Nile Post*, October 2026, <https://nilepost.co.ug/news/374587/uls-seeks-un-intervention-over-missing-activist-sam-mugumya>.

election petitions over Mr Mugumya's liberty and asking that the file be re-allocated to a judge able to hear it within seven days.[63] The court then brought the matter forward and heard it on 26 October 2026.

At that hearing, the State remained in official denial. Lt Col Edgar Musasizi, the Director of Civil Affairs in the Ministry of Defence and Veteran Affairs—the officer who had sworn the denial in the first application—swore again that Mr Mugumya had never been abducted or detained by officers of the Special Forces Command, that he had not been held at Kasenyi Barracks or at any gazetted facility under the respondents' command and control, and that the men who took him on 26 August 2025 were not UPDF personnel. He stated that he had visited Kasenyi Barracks several times and found no record of Mr Mugumya. In the same affidavit, he conceded that Mr Mugumya's whereabouts remained unknown and that investigations were ongoing, and he asked the court to dismiss the application.[64]

Against that denial stood overwhelming evidence. Raymond Asiku Eden swore that he saw Mr Mugumya in detention. Speaking to the *Daily Monitor* at court, he said that Mr Mugumya was alive when they were held together, and so weak that he and other detainees carried him because he could not walk on his own.[65] Video clips in circulation appear to show Mr Mugumya frail and unable to stand unaided. A serving intelligence officer had released records alleging his detention and torture in military custody, and the Chief of Defence Forces had publicly claimed to hold him.

The court did not issue the writ. Justice Kinobe directed the respondents to file, by 9 November 2026, a detailed report on their efforts to trace Mr Mugumya and on what the State knows of his disappearance, and to investigate and identify who recorded and circulated the videos, and in what circumstances.[66] The State was thus given two more weeks to "investigate" the whereabouts of a man whom the head of its army had publicly claimed to hold. To delay habeas corpus is to render it ineffective. Such delay is an irresponsible and dangerous complicity in the illegal detention that the application contests and seeks to halt.

8. Muhammad Muwanga Kivumbi. On 9 July 2026, Justice Susan Okalany of the International Crimes Division granted Mr Kivumbi, a former Member of Parliament for Butambala County and Vice President of the National Unity Platform (Central Uganda), cash bail after some 169 days on remand in a terrorism-related case. The

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[62] Court-day reports from the High Court (Civil Division), 15 September and 7 October 2026. Confirm against the ECCMIS endorsements before citing.

[63] Letter of M/s Kiiza & Mugisha Advocates to the Principal Judge dated 7 October 2026; "Lawyers demand new judge to hear Sam Mugumya's habeas corpus case", *Daily Monitor* (8 October 2026).

[64] Affidavit in reply of Lt Col Edgar Musasizi in Miscellaneous Cause No. 0208 of 2026; "UPDF Denies Holding Sam Mugumya as Court Adjourns Case to November 9", *ChimpReports* (26 October 2026); "Court Orders Security Agencies to Trace Missing Activist Mugumya", *Uganda Radio Network* (26 October 2026).

[65] *Daily Monitor*, interview with Raymond Asiku Eden at the High Court, Kampala, published on X (26 October 2026).

[66] "Judge tasks security agencies to identify person who filmed Sam Mugumya", *Daily Monitor* (26 October 2026); *Uganda Radio Network* (26 October 2026), above.

next day, while he was travelling from Butambala towards Kampala, he was abducted at a police checkpoint near Mpigi Police Station by UPDF officers and plain-clothed military men, driven away in a numberless military van of the kind Kampala calls a "drone", and held incommunicado. On 14 July 2026, four days later, his lawyers filed an application for the writ in his own name against the Chief of Defence Forces, the Inspector General of Police and the Attorney General.[67] His elder brother, Hajji Musa Lutaaya, a retired public servant, affirmed the supporting affidavit. It deposed that the abductors wore military uniform, produced no warrant and refused to identify themselves, and that he was a civilian whom the armed forces had no power to arrest. It annexed two posts by the Chief of Defence Forces on X. On 19 June 2026: "My arrest of Lukwago is just the beginning of the 'Rectification Campaign' in Uganda. The lists are long. Many more traitors are going to be arrested too." On 23 June 2026: "Our operations against the Opposition last week are a reassurance to the great Ugandan people by the Security Forces …"

The ruling records how the court handled the file. At the first hearing, on 17 July 2026, the parties agreed to adjourn so that the respondents could file affidavits in reply. By 21 July 2026, the only affidavit in reply was that of ACP Tumugumye Godwin, an Assistant Commissioner of Police. He denied that the police had arrested or held Mr Kivumbi, and contended, on the advice of counsel, that the writ is available only where there is credible evidence that the applicant is being unlawfully detained by the respondent. The Chief of Defence Forces, whose officers the supporting affidavit accused, filed nothing. In rejoinder, Hajji Lutaaya deposed that he had been travelling in the same vehicle and witnessed the abduction; that police officers manning the checkpoint helped drag his brother into another vehicle; that his brother was taken by both police and UPDF officers; and that he was later dropped at Bombo Military Hospital in critical condition, following torture by his captors.[68]

On 22 July 2026, Acellam J described the writ as "a constitutional safeguard for personal liberty", citing *Sentamu*. He then declined to issue it. On the evidence before him, in which the only denial of custody came from the police, he found that the applicant's whereabouts remained unknown and that he was not in the custody of the Uganda Police Force. He held that the writ "would be ineffective at this stage if it cannot be directed to the person or authority required to produce the Applicant", and that before it can issue the court "must be satisfied as to both the Applicant's whereabouts and the person or authority responsible for his detention." Because the respondents had indicated their willingness to continue inquiries, he directed them to conclude their investigations and to file, within seven days, an affidavit on behalf of

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[67] *Hon. Muwanga Kivumbi Muhammad v Chief of Defence Forces & 2 Others*, High Court (Civil Division) Miscellaneous Cause No. HCT-00-CV-MC-0187 of 2026: Notice of Motion dated 14 July 2026; affidavit in support affirmed by Hajji Musa Lutaaya on 14 July 2026, with annexures A, B and B2; ruling of Acellam J of 22 July 2026. The application papers are on file with the author. The full written ruling had not been published on ULII at the time of writing; the account of it here is drawn from contemporaneous reports of the ruling as delivered, and quotations should be checked against the certified ruling before they are relied on in a filing.

[68] *Hon. Muwanga Kivumbi Muhammad v Chief of Defence Forces & 2 Others*, Miscellaneous Cause No. 0187 of 2026, ruling of Acellam J (22 July 2026), pp. 2–4.

the Uganda Police Force setting out the outcome. Public reports indicate that the UPDF and the police later filed affidavits denying custody and asked the court to dismiss the application.[69]

The seven days ended in a way that no affidavit had foretold. On the morning of 29 July 2026, the day fixed for the hearing, unidentified security operatives, described in some accounts as members of the Joint Anti-Terrorism Task Force, dropped Mr Kivumbi at Nateete Police Station. His lawyers learned of it at the High Court itself. David Lewis Rubongoya, Secretary General of the National Unity Platform, reported: "While we were at the High Court to follow up his Habeas Corpus application, we were informed that Hon. Muwanga Kivumbi was dumped this morning at Nateete Police."[70] By the time the lawyers reached the station, his captors had moved him. The same day he was produced under security escort before the Chief Magistrate's Court at Butambala, charged with inciting violence and managing an unlawful society over remarks allegedly made at his home on 9 July 2026, and remanded to Kitalya Prison until 11 August 2026. His lawyers reported visible signs of physical distress and alleged torture marks. Mr Kivumbi has since described being blindfolded, carried in an unmarked vehicle of the kind Kampala calls a "drone", and beaten at an undisclosed location.[71]

For nineteen days, every agency before the court had sworn that it did not hold him. The writ never issued, no return was ever filed, and no court has yet recorded who held him, where, or on what authority. Parts VII.C and VII.F return to this file.

B. Comparative Authorities

These decisions are not binding on Ugandan courts. They are useful because they describe, with unusual clarity, the job that Articles 23(9) and 44(d) already impose.

(a) **The burden lies on the detainer.** In *Khawaja*, the House of Lords held that where liberty is at stake, the executive must prove the facts that justify detention, and the court must decide those facts itself.[72]

(b) **Security is not a password.** In the Belmarsh case, the House of Lords, led by Lord Bingham, held indefinite detention of foreign terror suspects without trial disproportionate and discriminatory, and rejected blanket deference to the executive.[73]

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[69]Contemporaneous press reports of the later proceedings in Miscellaneous Cause No. HCT-00-CV-MC-0187 of 2026. Confirm against the court record before citing.

[70]Statement of David Lewis Rubongoya, Secretary General of the National Unity Platform, 29 July 2026, as reported in contemporaneous press coverage. A copy of the original statement should be annexed to any filing that relies on it.

[71]Contemporaneous press reports of the proceedings in the Chief Magistrate's Court at Butambala on 29 July 2026, and later public accounts given by Mr Kivumbi.

[72]*Khawaja v Secretary of State for the Home Department* [1984] AC 74.

[73]*A v Secretary of State for the Home Department* [2004] UKHL 56.

(c) **Arbitrary detention cannot hide behind comity.** In *Belhaj*, Lord Sumption held that torture and arbitrary detention offend principles of justice regarded in England as fundamental since the seventeenth century. In *Serdar Mohammed*, he held that even lawful security detention needs review by an impartial body under a fair procedure, not by officials within the executive.[74]

(d) **Sovereignty does not decide the writ.** In *Rasul*, the US Supreme Court held that the federal courts had jurisdiction over Guantanamo detainees' habeas petitions, drawing on the English history set out in the Commonwealth Lawyers Association's amicus brief, signed by Sir Sydney Kentridge QC.[75]

(e) **The writ exists for the crisis.** In *Fay v. Noia*, Brennan J observed that habeas corpus has repeatedly played a central role in national crises, when the claims of order and liberty clash most acutely. The case's central holding was later overruled, but the historical observation stands.[76]

(f) **Liberty and security are reconciled within the law.** In *Boumediene v. Bush*, Kennedy J answered the security argument directly: "Officials charged with daily operational responsibility for our security may consider a judicial discourse on the history of the Habeas Corpus Act of 1679 and like matters to be far removed from the Nation's present, urgent concerns. Established legal doctrine, however, must be consulted for its teaching. … Liberty and security can be reconciled; and in our system they are reconciled within the framework of the law. The Framers decided that habeas corpus, a right of first importance, must be a part of that framework, a part of that law."[77] The point applies with greater force in Uganda, where the Constitution has made the writ inviolable.

(g) **The State must account for a person last seen in its custody.** The Inter-American Court in *Velásquez Rodríguez* held that where the State controls the evidence of a disappearance, the burden shifts to the State. The European Court in *Kurt* held that unacknowledged detention is a complete negation of the guarantees of liberty and a most grave violation of them.[78]

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[74] *Belhaj v Straw* [2017] UKSC 3; *Al-Waheed v Ministry of Defence; Serdar Mohammed v Ministry of Defence* [2017] UKSC 2.

[75] *Rasul v. Bush*, 542 U.S. 466 (2004); Brief for the Commonwealth Lawyers Association as Amicus Curiae, Nos. 03-334 and 03-343 (3 October 2003), <https://barhumanrights.org.uk/wp-content/uploads/2016/10/amicus_brief.pdf>.

[76] *Fay v. Noia*, 372 U.S. 391, 401 (1963); overruled on other grounds in *Coleman v. Thompson*, 501 U.S. 722 (1991).

[77] *Boumediene v. Bush*, 553 U.S. 723, 797–798 (2008), per Kennedy J.

[78] *Velásquez Rodríguez v Honduras*, IACtHR, Judgment of 29 July 1988, Series C No. 4; *Kurt v Turkey* (1999) 27 EHRR 373 (judgment of 25 May 1998), para. 124.

VII. COMMENTARY ON THE LAW AND PRACTICE GAP

A. The Pattern

The five files in Part VI show six recurring failures:

(a) **Sending the applicant elsewhere.** The court treats a question of jurisdiction, which habeas corpus exists to answer, as a matter for appeal or judicial review in another forum.

(b) **Waiting for the charge.** The court delays habeas corpus proceedings and lets the State cure an unlawful detention by producing a charge after the application is filed, then dismisses the application as moot, leaving the earlier illegality without a record.

(c) **Accepting the bare denial.** The court treats a sworn line (mostly a lie) that "*we do not have him*" as the end of the inquiry, even where the State controls all the evidence and earlier filed nothing. The court then recasts the detainee as a missing person, as though the State's denial had moved him from its custody into the unknown.

(d) **Orders without consequences.** The court issues the writ, the State ignores it, and no contempt, personal summons or personal costs follow.

(e) **Delay.** Applications that should be heard within hours wait weeks or months. Delay rewards the jailer, who uses the time to move the detainee, find a charge or let public attention fade.

(f) **Treating the writ as an ordinary motion.** The court fixes the application for mention, directs affidavits in reply and written submissions, entertains preliminary objections and reserves its ruling, as though the parties were equals and no one were waiting. This habit is the engine of most of the other failures, and Part VII.B examines it.

B. The Ordinary-Motion Habit

Behind most of these failures lies one habit, and it is the one young practitioners meet first. Many judges still treat a habeas application as an ordinary motion. The registry registers the file, allocates it to a single judge's diary and fixes it for mention. The applicant serves the respondents, the court gives them time to file affidavits in reply, and it gives the applicant time to rejoin. The State raises preliminary objections, and counsel argue them. The court directs counsel to file written submissions on a timetable. The judge reserves the ruling. At every stage the detainee waits, and at every stage the State, which alone knows where he is, gains time.

That is the procedure for a dispute between parties of equal standing over a contested right. It is not the procedure the law prescribes for a person in a cell. Section 38(a) of the Judicature Act (Cap. 16) requires only an affidavit showing reasonable ground for the complaint; once that is shown, the writ issues, and the inquiry takes place on the return. The respondent's case *is* the return: a sworn statement, by the person who

holds the detainee, of where he is held and by what authority, made with the body before the court. The Judicature (Habeas Corpus) Rules permit the writ to issue *ex parte* for exactly this reason. *Ibingira 2* confirms that the High Court exercises the common-law habeas jurisdiction, and at common law the writ was, in Lord Birkenhead's words, "**a swift and imperative remedy**". An inquiry that requires rounds of affidavits and written submissions before anyone asks the jailer a single question on oath is not summary. It is a civil suit about a body.

The bench knows the rule. In *Besigye and Lutale* itself, Singiza J stated that applications for habeas corpus are in principle ex parte, that any notice to the parties must run on strict timelines, and that the writ operates as a "red flag" raised instantly whenever personal freedoms are threatened. The application before him was first heard fourteen days after filing and dismissed on the nineteenth day.

It was not always so. In *Sentamu*, in 1998, the High Court granted an order nisi on the affidavits of relatives and eyewitnesses, returnable in four days and directed to the Inspector General of Police, although the police could not say where the men were held. When the return was incomplete, the court summoned the officer who had made it. That is the summary procedure the law prescribes, practised by a Ugandan court within three years of the 1995 Constitution. What has changed since is not the law, which the Constitutional Court held the Constitution had left intact. It is the habit.

The five files show the habit at work:

File	**How the application was handled**	**What it cost the detainee**
Kiiza Eron (Miscellaneous Cause No. 37 of 2025)	Argued *inter partes* on whether habeas corpus was the right procedure; dismissed on 3 March 2025 with directions to pursue judicial review or an appeal in another forum.	Eighty-eight days in prison in all before bail pending appeal of a null and void conviction, with the application consuming weeks of them.
Besigye and Lutale (Miscellaneous Cause No. 31 of 2025)	Filed on 5 February 2025; first heard on 19 February; interim release refused and ruling reserved; dismissed as moot on 24 February, the State having laid a charge on 21 February.	Fourteen days to a first hearing and nineteen to dismissal; the earlier illegality never recorded.
Gody Christopher, alias King Zale	Police preliminary objection that the supporting affidavit was hearsay argued and ruled on; writ issued on 29 May 2026, with production fixed a week later, on 5 June; application reportedly dismissed on denials of custody.	Thirty-eight days from abduction to writ; still missing more than 160 days after he was taken.

File	How the application was handled	What it cost the detainee
Sam Mugumya (Miscellaneous Causes No. 227 of 2025 and No. 0208 of 2026)	First application: writ issued on 5 September 2025, followed by repeated adjournments at the State's request to investigate. Second application: filed on 4 September 2026 and fixed for mention on 15 September; not reached on 15 September or 7 October because the judge was hearing election petitions; re-fixed for 17 November; brought forward to 26 October after counsel complained to the Principal Judge; heard on a fresh denial of custody; writ withheld; respondents given until 9 November to report on their own investigations.	Fifty-two days from filing of the second application to its first hearing, and sixty-six to the next date; more than fourteen months since he was taken.
Muhammad Muwanga Kivumbi (Miscellaneous Cause No. 0187 of 2026)	Filed on 14 July 2026, four days after the abduction, on an affidavit naming the UPDF; adjourned on 17 July for affidavits in reply; only the police replied; writ declined on 22 July pending identification of a custodian; seven days given for an affidavit on behalf of the Uganda Police Force; matter fixed for 29 July.	Nineteen days incommunicado, ended by a drop-off at a police station and a charge sheet on the morning of the hearing.

Three features stand out.

(a) **No writ issued on the affidavit alone.** In every file, the court heard the State before deciding whether to issue the writ, and in three of the five it never issued the writ at all. The State therefore answered with affidavits in reply, sworn by officers of its own choosing, denying custody. That is not the answer the writ demands. Once the writ issues, the head of each agency named must make a sworn return stating where the detainee is held and on what authority, and a false return is defiance of the court's order, punishable as contempt. The *ex parte* power in the Rules, which exists for the case of a person held incommunicado, went unused.

(b) **The calendar served the State.** Where the State used the time, the court closed the file for it: a charge sheet arrived in *Besigye* three days before the ruling, and in *Kivumbi* on the morning of the hearing. Where it did not, the file simply waited: Mr Mugumya's second application was first heard fifty-two days after filing, and then only to give the State a further fortnight.

(c) **Procedure displaced the question.** The hearsay objection in *King Zale*, the dispute over the correct forum in my own application and the search for an

identifiable custodian in *Kivumbi* each turned an inquiry into the legality of a detention into litigation about the application itself, while the detention continued.

Ordinary procedure is prejudicial in a habeas application. Each step that is fair between equal parties favours the jailer, because the jailer is the only party who is not waiting. The remedy is not a new law. It is a judicial practice that the existing law already requires: issue the writ on a credible affidavit, fix the return within days, hear the matter orally on the return with the respondents and the detainee before the court, take oral evidence where the return is disputed, and rule from the bench. Written submissions, if needed at all, belong after the body has been produced, not before.

Justice H.R. Khanna, the lone dissenter when the Supreme Court of India held in *ADM Jabalpur* that detainees could not seek habeas corpus during the Emergency, later warned that the greatest danger comes when liberty is "nibbled away in bits and pieces". India's Supreme Court has since repudiated the majority in that case.[79] The ordinary-motion habit is a nibbling of exactly that kind: no single adjournment repeals Article 23(9), but together they leave the writ without force when it is needed.

C. What Each File Should Have Produced

My own application. Habeas corpus has always tested the jurisdiction of the body that ordered the detention. That is its oldest function. After *Kabaziguruka*, a sentence imposed on a civilian by a military court was not a lawful cause of detention. The court did not need to quash the conviction in the language of a criminal appeal. It needed only to ask whether a competent court had imposed a lawful sentence, and Section 38 of the Judicature Act (Cap. 16) exists for exactly that question. Habeas corpus does not quash a conviction or sit in appeal over it. It asks only whether the warrant now in the jailer's hands is a lawful cause of detention, and a sentence passed on a civilian by a court that the Supreme Court has held cannot try civilians is not that cause. Procedure cannot be used to sanction an illegality, and Article 126(2)(e) forbids undue regard to technicalities. Twenty years ago, in *Attorney General v Joseph Tumushabe*, the Supreme Court (Mulenga JSC) held that the General Court Martial is not exempt from the constitutional command of Chapter Four, and that a person on trial before a military court is not deprived of the right to reclaim his liberty through the order of habeas corpus.[80] If the writ reaches a person lawfully before a court martial, it reaches a civilian whom a court martial had no power to try.

Section 38(a) of the Judicature Act (Cap. 16) withholds the writ only where a person is held in execution of a lawful sentence or order of a *competent* court, and a court that the Supreme Court has held cannot try civilians is not competent to sentence

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[79] *ADM Jabalpur v Shivkant Shukla* (1976) 2 SCC 521; H.R. Khanna, *Judiciary in India and Judicial Process: The Tagore Law Lectures* (Ajoy Law House, 1985) 19; *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1.

[80] *Attorney General v Joseph Tumushabe*, Constitutional Appeal No. 3 of 2005 (SC), pp. 14–15 (Mulenga JSC), as quoted in Gimara, above.

one. And in *Ibingira 1* the writ issued because the law under which the State held the ministers was void; a conviction by a body without jurisdiction over the person is no firmer a foundation than a void Ordinance. *Karuhanga* and *Balidawa* leave the jurisdiction of a competent court to try an offence to the trial court, and rightly so. They say nothing about a body that has no jurisdiction over the person at all. *Sentamu*, far from defeating the application, supports it. If a detention must be justified at the time of the return, the only justification the State could offer in March 2025 was a warrant from a court martial whose jurisdiction over civilians the Supreme Court had denied a month earlier. Measured at the moment of the return, as *Sentamu* requires, there was no lawful cause.

Dr Besigye and Hajji Lutale. I do not deny that a lawful remand changes the future of a detention. I deny that a later charge sheet erases an earlier unlawful hold. The remark that habeas corpus is mainly for unknown whereabouts is not the law: Somerset was on a ship in the Thames, and everyone knew where he was. The proper order was short. Note the new remand, declare the earlier hold unlawful, record the days, and leave the door open to damages. Mootness, as the court used it here, repeals Article 23(9) for every detainee the State remembers to charge on the eve of the hearing. The bigger problem was the initial adjournment, when Besigye was sick, in illegal custody; and the Judge closed his eyes to the illegality. Instead of releasing the illegally detained Ugandans, he sent them back to prison.

Sentamu and *Komakech Mwaka* are not to the contrary, and this Paper does not ask any court to depart from them. *Sentamu* holds that the writ looks to the cause of detention at the time of the return, so that a valid remand made after the order nisi will defeat a prayer for release. That rule governs what the writ can order. It does not require a court to treat the earlier detention as lawful, and *Sentamu* itself described the dispute as one for the enforcement of rights under Article 50. *Komakech Mwaka* says the same: the earlier illegality must be pursued by other remedies. Since 1998 those remedies have acquired a statutory home. The Human Rights (Enforcement) Act (Cap. 12), enacted in 2019, provides a route to redress for the violation of non-derogable rights, and counsel brought the Kivumbi application under both that Act and the Judicature (Habeas Corpus) Rules. A court that dismisses such an application as moot, with no finding and no order as to costs, leaves those other remedies to begin from nothing. Nothing prevents a habeas court from recording, in the ruling that ends the writ, the finding of illegality on which an Article 50 claim will rest. *Sentamu* also shows how old the pattern is: in 1998, as in 2025 and 2026, the State answered the writ with a charge laid after the court had acted.

The ruling in *Besigye and Lutale* went further than *Sentamu* allows. It stated that where an earlier arrest and detention were invalid, the subsequent proceedings "will retroactively validate those acts".[81] *Sentamu* says no such thing. It holds that an earlier illegality is immaterial to the writ, which looks to the cause of detention at the time of the return. It does not hold that the illegality is cured. A later remand may supply a lawful cause going forward. It cannot make lawful, after the event, a detention that had no lawful cause while it lasted. The ruling also applied the return-

[81] *Besigye and Lutale*, above, parts 3.1 and 4. The ruling cites *Sentamu* for the proposition.

date rule in a file in which no writ had issued and no return had been made. The State's answer was not a return on oath by the custodian, but a charge sheet of which the court took judicial notice.

Karuhanga shows the same reflex. The police had held the applicant for forty-seven days without charge when she filed the application. A charge sheet arrived with the return, and the court left the earlier detention to unnamed "other proceedings", observing that it did not condone it if the allegations were true. A court that does not condone an unlawful detention should say so in its order, not leave the detainee to begin again elsewhere.

King Zale. Justice Kavuma's ruling of 29 May 2026 shows how a habeas court should read a file: a relative's affidavit with a disclosed source is enough to issue the writ, and unanswered allegations against named agencies shift the burden. The failure came after. A bare denial, made only after the writ issued, by parties who had earlier declined to contest the facts, did not discharge that burden. The court could have required sworn returns from the named heads, ordered cross-examination of the deponents, directed the Uganda Human Rights Commission to inspect named facilities, or kept the file open with periodic returns. A decided writ that the State can answer with a denial, and that the court then closes, gives the family a piece of paper and returns them to the street.

Ibingira 2 supplies the method. If bad faith may not be alleged against a deponent who is not called for cross-examination, the converse also holds: the court should test a disputed denial of custody by calling the officer who swore it. A denial that its maker will not defend in the witness box does not discharge the State's burden.

Sam Mugumya. Justice Acellam's ruling of 5 September 2025 was a model order. But an order disobeyed for a year without contempt proceedings, personal summons or inspection is an order in name only. If the statements now attributed to the Chief of Defence Forces are accurate, the sworn denial filed in the first application was false. The second application before Justice Simon Peter Kinobe went unheard on two dates, although witnesses who say they shared his cell support it, and the court reached it on 26 October 2026 only after counsel complained to the Principal Judge. Election petitions matter. They do not outrank an inviolable right. The Civil Division has more than one judge, and an occupied judge can release the file to a colleague the same day.

When the file was heard, it repeated the error of the Kivumbi ruling. The court withheld the writ and sent the agencies accused of holding Mr Mugumya away to investigate themselves for another two weeks. The respondents' affidavit is not a return. It is the same denial, from the same officer, that the court in the first application held insufficient to answer the evidence, and it now stands against sworn eyewitness evidence, video footage, the records released by an intelligence officer and the Chief of Defence Forces' own public claim. The proper order was to issue the writ to each of the six named heads, returnable within days; to require the Chief of Defence Forces to answer on oath his own public statement that he holds Mr Mugumya; to summon Lt Col Musasizi for cross-examination on his denial, as

Ibingira 2 contemplates; and to direct the Uganda Human Rights Commission or an independent officer to inspect the Kasenyi facility.

The direction to identify who recorded and circulated the videos needs particular care. The question before the court is who holds Mr Mugumya, not who exposed his condition. An inquiry conducted by the agencies accused of holding him, into the identity of whoever filmed him while in custody, risks becoming a search for the source, and exposes potential witnesses to reprisal. The court should require the State to account for the man, not to hunt the camera.

Muhammad Muwanga Kivumbi. The writ should have issued on 22 July 2026. His brother's affidavit deposed that UPDF officers and plain-clothed military men had abducted him at a police checkpoint the day after the International Crimes Division released him on bail, and it annexed the Chief of Defence Forces' own posts boasting of arrests and of "operations against the Opposition"; that was reasonable ground for the complaint under Section 38(a) of the Judicature Act (Cap. 16). The police swore that they did not hold him. The army, whose officers the affidavit accused, had filed nothing when the court refused the writ, and denied custody only later. Nineteen days after he was taken, on the very morning the court was to hear the matter, his captors delivered him to a police station; the State charged him before a magistrate, who remanded him. He bore marks that his lawyers described as signs of torture. Someone held him, and someone with the power to release him chose the hour. That is the custody, power or control that *Barnardo v Ford* and *O'Brien* hold sufficient for the writ. Had the writ issued, directed to the heads of the agencies implicated, each would have had to make a sworn return disclosing where he was held and by whose authority, and a false return would have exposed its maker to contempt. Because the writ did not issue, the State gave its answer in its own time and in its own form: not a return, but a charge sheet. Two of the failures in Part VII.A met in one file: the court accepted the bare denial, and the charge then arrived to close the question. The order that should follow, in this application or in a fresh one under Article 50, is a declaration that his detention from 10 to 29 July 2026 was unlawful, with directions requiring each respondent to account on oath for those nineteen days.

Soldiers took Mr Kivumbi the day after a judge of the High Court granted him bail. The Constitutional Court has seen this before. In the litigation arising from the 2005 siege of the High Court, when security agents surrounded the court to re-arrest accused persons who had been granted bail, it described what the State did as "an outrageous affront to the Constitution, constitutionalism, and the Rule of Law in Uganda".[82] Re-arrest outside the law after a grant of bail is the same affront, carried out more quietly.

D. What the Great Jurists Ask of a Judge

Lord Bingham treated liberty as the default: anyone who detains must justify the detention in law, before an independent court, promptly, and a bare claim of

[82] *Uganda Law Society & Another v Attorney General*, Constitutional Petitions Nos. 2 and 8 of 2002 (CC), as quoted in Gimara, above.

executive authority or national security is not enough.[83] R. J. Sharpe argued that habeas corpus is a writ of right, not a discretionary remedy, and that once the applicant shows a prima facie case the burden shifts to the detainer.[84] Sir Sydney Kentridge showed that control, not formal custody or sovereignty, decides whether the writ runs. Lord Sumption, the most restrained judge of the modern common law, still drew the line at arbitrary detention and executive self-review. And Brennan J explained that the crisis is the reason the writ exists, not a reason to relax it.

The older voices say the same. Blackstone warned that secret confinement is more dangerous than open tyranny precisely because it is less striking. Brennan J reduced the writ to its root principle: government must always be accountable to the judiciary for a man's imprisonment. Churchill, at war, called executive imprisonment without charge the foundation of all totalitarian government. And Kennedy J, writing while his country held prisoners in a war on terror, refused to treat liberty and security as rivals: they are reconciled within the framework of the law, and habeas corpus is part of that law.

Taken together, these voices ask a Ugandan judge to do five things:

(a) Hear the application on the day it is filed.

(b) Put the burden on the State once a credible affidavit names the captor or the last sighting.

(c) Require a sworn return from the named head of each agency, not a junior officer.

(d) Treat non-production as contempt.

(e) Write a reasoned ruling even if the detainee is later released or charged, so that the principle outlives the file.

E. Inability or Fear

Why does the gap persist? The rulings do not record judges' motives. Some of the failure looks like inability: a crowded diary, a habit of written submissions, no working method for a bare denial of custody. Some of it looks like fear: a powerful respondent, a political detainee, an order that is never enforced. The applicants in all five files share one feature. They are opposition politicians, their aides, their mobilisers or their lawyers, the people whom those in power regard as enemies.

Pressure on judges is real, and it does not come from one direction only. In *Besigye and Lutale*, Singiza J recorded in an obiter that while the file was pending people on social media had insulted and threatened him and those close to him.[85] No judge should be threatened for a ruling, and threats against a judge do the cause of liberty no good. The surest protection against pressure from any side is the one the writ

[83] Tom Bingham, *The Rule of Law* (Allen Lane, 2010).

[84] Sharpe (above), passim.

[85] *Besigye and Lutale*, above, part 5 (Obiter).

already prescribes: a prompt hearing on the return, and a short, reasoned ruling delivered from the bench.

Every judicial officer worth their salt knows the urgency and importance of habeas corpus and will prioritise it without fuss. It is the timid who dilly-dally. The Constitution does not ask judges to be brave in the abstract. It asks them to do one simple thing, quickly: make the State say why.

F. The Limits of the Writ

Here is what the writ cannot do.

(a) **It tests legality, not justice.** A return that cites a real statute, a real warrant and a competent court may succeed. The writ is only as strong as the substantive law behind it, which is why lawyers must challenge bad detention laws directly.

(b) **It depends on enforcement.** A production order means little if the executive ignores it and the court will not use contempt.

(c) **It can be defeated by a lie.** A bare denial of custody attacks the writ at its root. The answer, developed in the Inter-American and European courts and available on our own Articles, is to treat credible evidence of last-known State custody as shifting the burden, and to draw adverse inferences from silence or unexplained denial.

Oyoo and Njagi and the Kivumbi ruling show the danger in practice. In *Oyoo and Njagi*, Kinobe J declared the applicants missing persons on the strength of the respondents' denial of custody. That finding was wrong in principle. In the Kivumbi application, Acellam J went further and made knowledge of the detainee's whereabouts and of his custodian a condition for issuing the writ. That test inverts the writ.

Habeas corpus does not issue because the court already knows where the detainee is and who holds him. Habeas corpus issues to compel the State to tell the court. To demand proof of both before the writ issues is to demand from the family the very facts that only the abductor knows. The more completely the State hides a person, the further he passes beyond the writ's reach. Acellam J cited *Sentamu* for the nature of the writ, but *Sentamu*'s own facts point the other way. There, the writ issued to the Inspector General of Police although the police did not know where the applicants were held, and the court required the State, not the family, to find them.

It is true that the State can only produce what it has. But whether the State has the detainee is the very fact in issue, and the State alone knows the answer. Section 38(a) of the Judicature Act (Cap. 16) requires only an affidavit showing reasonable ground for the complaint, and it directs the judge to inquire into the truth of the facts on the return, not to accept them.

In the Kivumbi application, the evidence was stronger than the ruling allowed. The brother who swore the affidavit was in the vehicle. He saw police officers at a State

checkpoint help drag his brother into another vehicle, he swore that both police and UPDF officers took part, and he deposed that his brother was later dropped at Bombo Military Hospital, a military facility, in critical condition. He annexed the Chief of Defence Forces' own public claims of arrests and "operations against the Opposition". The denial that persuaded the court came from the police alone. The army, the agency the affidavit chiefly accused, filed nothing, and the ruling drew no inference from its silence—the very inference that Kavuma J drew in King Zale. Nor did the ruling address the deposition placing Mr Kivumbi in a military hospital.

Such an account is reasonable ground for the complaint. It is not answered by an affidavit from one of the agencies implicated, and it is not answered by directing the police, which had already denied custody, to report on investigations into a detention it said was not its own. As Lord Sumption held in *Serdar Mohammed*, review of detention by officials within the executive is no substitute for review by an impartial body. What followed in the Kivumbi file, set out in Part VII.C, shows the cost.

A rule that the writ is ineffective unless the custodian is identified rewards the abductor who conceals his identity, and concealment is the whole technique of enforced disappearance. Where credible evidence shows that State agents took the person, the State is the identifiable custodian until it proves otherwise, and the writ should issue to the head of every agency whose officers are implicated. To declare the detainee a missing person, or to hold back the writ while the State searches for him, converts a constitutional remedy against the State into a police search conducted by the State.

G. Conclusion on the Gap

Uganda does not lack law. It has one of the strongest habeas corpus clauses in the Commonwealth. What it lacks is the consistent judicial will to apply that clause against the security agencies, and real consequences for those who defy it. The trouble with habeas corpus in Uganda is not the writ. It is what we have allowed the writ to become.

VIII. REMEDIES

A. Remedies Available Now

(a) **Habeas corpus** under Article 23(9), Section 38 of the Judicature Act (Cap. 16) and the Judicature (Habeas Corpus) Rules, to compel production and a sworn return. Part X provides the Notice of Motion, the Affidavit in Support, and the Summary of Evidence with the lists of witnesses, documents and authorities (Templates 1 to 3).

(b) **An application under Article 50 and the Human Rights (Enforcement) Act (Cap. 12)**, brought under the Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules, 2019, and filed together with or after the writ, for declarations, release and compensation.

(c) **Contempt proceedings** against named officers who defy a production order.

(d) **A fresh habeas application** on new evidence, since the writ is not subject to *res judicata*.

(e) **Criminal complaints** under the Prevention and Prohibition of Torture Act (Cap. 130) where there is evidence of torture in custody.

(f) **Regional and international mechanisms**: a reference to the East African Court of Justice, a communication to the African Commission on Human and Peoples' Rights, and urgent appeals to the UN Working Groups on Arbitrary Detention and on Enforced or Involuntary Disappearances.

(g) An appeal to the Court of Appeal under Section 39 of the Judicature Act (Cap. 16), within thirty days of any order made on a habeas application, including an order refusing or deferring the writ or dismissing the application as moot.

B. A Working Procedure for Young Practitioners

1. Gather facts before you draft. Establish who took the detainee, when, where, and in what vehicle or uniform; who saw it; every place you have searched, with the officer, time and SD or reference number; and every written demand for production you have sent. Send demands the same day to the police, the relevant security agency and the Attorney General. A refusal or a silence becomes an annexure.

2. Choose your respondents carefully. Name the head of every agency with custody, power or control sufficient to procure release, and join the Attorney General. Naming several heads makes it harder for the State to pass the detainee between agencies and deny custody.

3. Draft tightly. File a Notice of Motion supported by an affidavit, with a certificate of urgency if the court is in vacation. Seek four orders: a writ directing production, a sworn return stating the cause and authority for detention, release if no lawful cause is shown, and costs. Keep the grounds short, numbered and tied to Articles 23(4)(b), 23(9) and 44(d). Confine each deponent to what he saw, disclose every source, and attach demand letters, references, photographs and witness accounts. A judge should grasp the case in two minutes.

4. File, serve and press for a hearing. File in the High Court and engage the Registrar the same day. Ask for a hearing within twenty-four to forty-eight hours. If the file is not allocated, or the allocated judge is engaged elsewhere, write to the head of the Division or the Principal Judge and ask for re-allocation, keeping a copy for the record. Serve every respondent, including the Attorney General's Chambers, and file affidavits of service. Ask the court in terms to issue the writ on the affidavit under Section 38(a), and resist directions for affidavits in reply, rejoinders and written submissions before the return; ask instead that the respondents answer by return, with the detainee in court.

5. Meet the return. If the State produces the detainee with fresh charges, ask for a declaration that the earlier detention was unlawful. If it claims lawful authority, demand the warrant, the charge and proof of compliance with the forty-eight-hour

rule. If it releases the detainee and re-arrests him, attack the lawful basis of the new detention itself, as *Ibingira 2* requires. If it simply denies custody, ask for sworn returns from the named heads, cross-examination of the deponent, inspection of named facilities by the Uganda Human Rights Commission or an independent officer, and periodic returns, and argue that the burden has shifted to the State.

6. Enforce and escalate. If the State defies the order, apply promptly for contempt, ask the court to summon the named officers personally, and record every day of non-compliance. Bring the Article 50 application, and consider the regional and international mechanisms listed above. If the court refuses or defers the writ on a wrong test, file a fresh application on any new evidence, and consider an appeal under Section 39 at once. Lodge the notice of appeal immediately, request the record the same day, and ask the Court of Appeal for an urgent hearing and interim orders. Do not let the thirty days run.

7. Protect yourself and your witnesses. Keep copies off-site, prepare witnesses for pressure, consider protective measures, and log every intimidation incident with times and names.

C. Recommendations

To the Judiciary:

1. Hear every habeas application within forty-eight hours of filing, give it precedence over all other business, and roster duty judges for vacations and for judges engaged on election petitions or other business.

2. Treat every habeas application as a summary inquiry, not an ordinary motion: issue the writ, *ex parte* where necessary, on an affidavit showing reasonable ground for the complaint; fix the return within seventy-two hours; hear the matter orally on the return with the detainee before the court; and dispense with mention dates, affidavits in reply and written submissions before production.

3. Issue the writ on prima facie evidence that State agents took the person, and direct it to the heads of every agency with control over the suspected captors.

4. Reject bare denials. Require sworn returns by named, responsible officers setting out every search made, facility checked and record examined, and allow cross-examination.

5. Where detention was unlawful, grant declarations and costs even after the detainee is produced or charged.

6. Enforce the writ through contempt: summon defaulting officers in person, commit or fine them, and award costs against them personally.

7. Issue a Practice Direction on habeas corpus that fixes timelines and standards for returns, and publish data on how quickly such applications are decided.

8. Give habeas appeals under Section 39 of the Judicature Act (Cap. 16) precedence in the Court of Appeal, with a hearing within fourteen days of the notice of appeal, and treat a State appeal against an order of release as no ground for keeping the detainee in custody.

To Parliament and the Executive:

1. Enact a Habeas Corpus Act that fixes timelines, places the burden of proof on the State, empowers court-ordered inspection and penalises non-production.

2. Gazette every place of detention, criminalise detention anywhere else, and keep a central custody register open to courts, families and counsel.

3. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and make enforced disappearance a specific crime.

4. Repeal the 2025 provisions of the Uganda Peoples' Defence Forces Act (Cap. 330) that restore military jurisdiction over civilians.

5. Produce Sam Mugumya, Gody Christopher and every other person held incommunicado before a competent civilian court, or release them.

To the Bar, law faculties and civil society:

1. Record every habeas application and its outcome, and publish an annual audit of judicial timeliness and State compliance.

2. Take defied orders to the East African Court of Justice, the African Commission and the relevant UN mechanisms.

3. Teach habeas corpus as a living remedy, through clinics and moot courts, so that every young lawyer can draft and argue an application on the day it is needed.

4. Take wrongly decided habeas rulings on appeal, even after the detainee has been charged or released, so that the Court of Appeal can settle the governing tests: the burden on a denial of custody, the identification of the custodian, and mootness.

The Great Writ asks where the body is, and by what authority it is held. The common law designed it for cases in which the State lies, or pleads that national security is at stake. A court that accepts the jailer's word, or waits until the jailer is ready, has abandoned or obstructed the Great Writ.

Uganda's framers placed the writ beyond suspension, beyond derogation and beyond emergency. What no constitution can supply is the judge's resolve to use it, or the lawyer's insistence that it be used. The writ will be what our judges make of it, and what our lawyers demand of it.

IX. LIST OF AUTHORITIES

A. Constitution

(a) The Constitution of the Republic of Uganda, 1995, Articles 20, 23, 24, 28, 43, 44, 50 and 126(2)(e).

B. Statutes and Subsidiary Legislation

(a) The Civil Procedure Act (Cap. 282) and the Civil Procedure Rules.

(b) The Human Rights (Enforcement) Act (Cap. 12).

(c) The Judicature Act (Cap. 16), Sections 38 and 39.

(d) The Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules, 2019, S.I. No. 31 of 2019.

(e) The Judicature (Habeas Corpus) Rules.

(f) The Prevention and Prohibition of Torture Act (Cap. 130).

(g) The Uganda Peoples' Defence Forces Act (Cap. 330).

C. Treaties and International Instruments

(a) African Charter on Human and Peoples' Rights (1981), Articles 6 and 7.

(b) International Covenant on Civil and Political Rights (1966), Article 9.

(c) International Convention for the Protection of All Persons from Enforced Disappearance (2006).

(d) Treaty for the Establishment of the East African Community (1999), Articles 6(d) and 7(2).

(e) UN Declaration on the Protection of All Persons from Enforced Disappearance, GA Res 47/133 (1992).

(f) Human Rights Committee, General Comment No. 29 (2001) and General Comment No. 35 (2014).

(g) African Commission, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003), and the Luanda Guidelines (2014).

D. Ugandan Cases

(a) *Attorney General v Hon. Michael Kabaziguruka*, Constitutional Appeal No. 2 of 2021, [2025] UGSC 1.

(b) *Attorney General v Joseph Tumushabe*, Constitutional Appeal No. 3 of 2005 (SC).

(c) *Balidawa v Officer in Charge Kigo Prison & Others* [2013] UGHCCD 166.

(d) *Besigye and Lutale v Attorney General & Another*, High Court (Civil Division) Miscellaneous Cause No. 31 of 2025.

(e) *Captain Mike Komakech Mwaka v Military Police* [1994] UGHC 114; *In the Matter of an Application for a Writ of Habeas Corpus ad Subjiciendum by Komakech Mwaka*, Miscellaneous Cause No. 3 of 1994, [1994] UGHC 121.

(f) *Gody Christopher v Attorney General & Others*, High Court (Civil Division), ruling of 29 May 2026.

(g) *Grace Stuart Ibingira and Others v Uganda* [1966] EA 306 (CA) (*Ibingira 1*).

(h) *Grace Stuart Ibingira and Others v Uganda* [1966] EA 445 (CA) (*Ibingira 2*).

(i) *Hon. Muwanga Kivumbi Muhammad v Chief of Defence Forces & 2 Others*, High Court (Civil Division) Miscellaneous Cause No. HCT-00-CV-MC-0187 of 2026, ruling of 22 July 2026.

(j) *In Re Mudondo & Achipa (Infants)* [2014] UGHCFD 38.

(k) *In the Matter of a Reference from the High Court of Uganda and In the Matter of Sheik Abdul Karim Sentamu and Another*, Constitutional Reference No. 7 of 1998.

(l) *Karuhanga v Inspector General of Police & Others* [2013] UGHCCD 143.

(m) *Kiiza Eron v Attorney General*, High Court (Civil Division) Miscellaneous Cause No. 37 of 2025.

(n) *Kopia Moses v Kintu & Another* [2014] UGHCCD 5.

(o) *Mugumya Sam*, High Court (Civil Division) Miscellaneous Cause No. 227 of 2025 and Miscellaneous Cause No. 0208 of 2026.

(p) *Nicholas Oyoo and Bob Njagi v Chief of Defence Forces & Others* [2025] UGHCCD 185.

(q) *Uganda Law Society & Another v Attorney General*, Constitutional Petitions Nos. 2 and 8 of 2002 (CC).

(r) *Uganda v Commissioner of Prisons, ex parte Matovu* [1966] EA 514.

E. Comparative Cases

(a) *A v Secretary of State for the Home Department* [2004] UKHL 56.

(b) *ADM Jabalpur v Shivkant Shukla* (1976) 2 SCC 521.

(c) *Al-Waheed v Ministry of Defence; Serdar Mohammed v Ministry of Defence* [2017] UKSC 2.

(d) *Barnardo v Ford* [1892] AC 326.

(e) *Belhaj v Straw* [2017] UKSC 3.

(f) *Boumediene v. Bush*, 553 U.S. 723 (2008).

(g) *Cox v Hakes* (1890) 15 App Cas 506 (HL).

(h) *Ex parte Yerger*, 75 U.S. (8 Wall.) 85 (1869).

(i) *Fay v. Noia*, 372 U.S. 391 (1963).

(j) *Harris v. Nelson*, 394 U.S. 286 (1969).

(k) *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1.

(l) *Khawaja v Secretary of State for the Home Department* [1984] AC 74.

(m) *Kurt v Turkey* (1999) 27 EHRR 373.

(n) *R v Earl of Crewe, ex parte Sekgome* [1910] 2 KB 576.

(o) *R v Secretary of State for Home Affairs, ex parte O'Brien* [1923] 2 KB 361.

(p) *R v Secretary of State for the Home Department, ex parte Iqbal* [1979] QB 264, [1979] 1 All ER 675 (DC), affirmed [1979] 1 All ER 685, [1979] 1 WLR 425 (CA).

(q) *Rasul v. Bush*, 542 U.S. 466 (2004).

(r) *Secretary of State for Home Affairs v O'Brien* [1923] AC 603 (HL).

(s) *Somerset v Stewart* (1772) Lofft 1, 98 ER 499.

(t) *Velásquez Rodríguez v Honduras*, IACtHR Series C No. 4 (1988).

(u) Inter-American Court of Human Rights, Advisory Opinion OC-8/87 (1987).

F. Books, Historical Instruments and Other Sources

(a) Arendt, H., *The Origins of Totalitarianism* (1951).

(b) Bingham, T., *The Rule of Law* (Allen Lane, 2010).

(c) Blackstone, W., *Commentaries on the Laws of England*, Books I and III (Clarendon Press, 1765–1768).

(d) Churchill, W. S., telegram to the Home Secretary, Herbert Morrison (21 November 1943).

(e) Commonwealth Lawyers Association, Brief as Amicus Curiae in *Rasul v. Bush* (2003).

(f) Constitution of the United States (1787), Article I, Section 9, Clause 2.

(g) Dicey, A. V., *Introduction to the Study of the Law of the Constitution* (8th edn., 1915).

(h) Gimara, F., “Upholding Justice with Courage: Advancing the Benedicto Kiwanuka Legacy”, keynote address, 8th Benedicto Kiwanuka Memorial Day, Judiciary of Uganda (19 September 2025).

(i) Habeas Corpus Act 1679 (31 Cha. 2 c. 2).

(j) Hamilton, A., *The Federalist* No. 84 (1788).

(k) Hobbes, T., *Leviathan* (1651).

(l) Jefferson, T., First Inaugural Address (4 March 1801).

(m) Khanna, H.R., *Judiciary in India and Judicial Process: The Tagore Law Lectures* (Ajoy Law House, 1985).

(n) Magna Carta 1215, clause 39.

(o) Sharpe, R. J., *The Law of Habeas Corpus* (2nd edn., Oxford University Press, 1989).

(p) Will, G. F., *The Washington Post* (16 June 2008).

(q) Press reports cited in the footnotes to Part VI.

X. TEMPLATES

The templates below give the core text of a habeas corpus application. Highlighted fields in square brackets require completion. Counsel must adapt each template to the facts, keep the respondents numbered identically across every document in the file, and confirm the procedural citations against the current Rules and practice of the court before filing.

Template 1: Notice of Motion for a Writ of Habeas Corpus

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT [KAMPALA]
([CIVIL DIVISION])
MISCELLANEOUS CAUSE NO. _____ OF [YEAR]

IN THE MATTER OF AN APPLICATION FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM
AND
IN THE MATTER OF THE DETENTION OF [FULL NAME OF DETAINEE]

[FULL NAME OF DETAINEE] **APPLICANT**

VERSUS

1. ……., CHIEF OF DEFENCE FORCES **1ST RESPONDENT**

2. ……., COMMANDER, SPECIAL FORCES COMMAND **2ND RESPONDENT**

3. ……., CHIEF OF DEFENCE INTELLIGENCE AND SECURITY **3RD RESPONDENT**

4. ……., COMMANDING OFFICER, [FACILITY] **4TH RESPONDENT**

5. ……., INSPECTOR GENERAL OF POLICE **5TH RESPONDENT**

6. ……., ATTORNEY GENERAL OF UGANDA **6TH RESPONDENT**

NOTICE OF MOTION

(Under Articles 20, 23(1), 23(2), 23(3), 23(4)(b), 23(5), 23(9), 44(d) and 50 of the Constitution of the Republic of Uganda; Section 38 of the Judicature Act (Cap. 16); the Human Rights (Enforcement) Act (Cap. 12); and Rules [1, 2 and 3] of the Judicature (Habeas Corpus) Rules, S.I. [16-6])

TAKE NOTICE that this Honourable Court shall be moved on the _____ day of _____ [YEAR] at _____ o'clock in the forenoon/afternoon, or so soon thereafter as Counsel for the Applicant may be heard, on an application for the following orders:

(a) That a writ of *habeas corpus ad subjiciendum* do issue, directed to the Respondents jointly and severally, commanding them to produce the body of **[FULL NAME OF DETAINEE]** before this Honourable Court on such day and at such time as the Court may appoint, to undergo and receive all and singular such matters and things as this Honourable Court shall then and there consider concerning him.

(b) That each Respondent make and file a return on affidavit disclosing whether the Applicant is, or at any material time has been, in its custody or under its control; the place or places of his detention; the authority under which he is or

was held; and, where custody has been relinquished, the date and manner of release or transfer and the person or authority to whom he was transferred.

(c) Such other or further relief as this Honourable Court may deem fit and just to grant.

TAKE FURTHER NOTICE that this application is supported by the affidavit of **[FULL NAME OF DEPONENT]**, which shall be read and relied upon at the hearing hereof, but briefly the grounds are that:

1. The Applicant, **[FULL NAME OF DETAINEE]**, is an adult [male/female] Ugandan of sound mind, [occupation/status].

2. On or about the [day] day of [month] [year], at [place], the Applicant was abducted by [describe: armed men in plain clothes / uniformed officers of NAME OF FORCE], reasonably believed to be agents of the Respondents, bundled into [describe vehicle, with registration number if known] and taken to an undisclosed location.

3. The Applicant is presently detained by the Respondents at [NAME OF FACILITY], which is not a place authorised by law for the detention of persons, contrary to Article 23(2) of the Constitution.

4. The Applicant has not been informed of the reasons for his arrest and detention, and the Respondents have not informed his next of kin of his detention, contrary to Articles 23(3) and 23(5) of the Constitution.

5. The Applicant has been held incommunicado, without access to his advocates, his family or a medical practitioner of his choice, contrary to Article 23(5) of the Constitution.

6. The Applicant has been held for [period], far in excess of the forty-eight (48) hours prescribed by Article 23(4)(b) of the Constitution, without being charged or produced before any court of competent jurisdiction.

7. The right to an order of *habeas corpus* is inviolable and may not be suspended (Article 23(9)), and is non-derogable (Article 44(d)).

8. There is a grave and imminent risk to the life and health of the Applicant, and it is urgent that his detention be brought to an end and that he receive immediate medical attention.

9. The Respondents bear a constitutional duty under Article 20(2) to respect, uphold and promote the fundamental rights and freedoms of the Applicant.

10. It is lawful, just and equitable that the orders sought herein be granted.

DATED at _____ this _____ day of _____ [YEAR].

.....

COUNSEL FOR THE APPLICANT

GIVEN under my hand and the seal of this Honourable Court this _____ day of _____ [YEAR].

.....

DEPUTY REGISTRAR

TO BE SERVED UPON:

1. The Attorney General, Attorney General's Chambers, Kampala.

2. [Each other Respondent, at the official address of the office].

Drawn and filed by:

M/s [NAME OF FIRM] Advocates
[Physical address]
[P.O. Box]
Tel: [telephone]
Email: [email]

Template 2: Affidavit in Support

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT [KAMPALA]
([CIVIL DIVISION])
MISCELLANEOUS CAUSE NO. _____ OF [YEAR]

IN THE MATTER OF AN APPLICATION FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM
AND
IN THE MATTER OF THE DETENTION OF [FULL NAME OF DETAINEE]

[FULL NAME OF DETAINEE] **APPLICANT**

VERSUS

1. ……., CHIEF OF DEFENCE FORCES **1ST RESPONDENT**

2. ……., COMMANDER, SPECIAL FORCES COMMAND **2ND RESPONDENT**

3. ……., CHIEF OF DEFENCE INTELLIGENCE AND SECURITY **3RD RESPONDENT**

4. ……., COMMANDING OFFICER, [FACILITY] **4TH RESPONDENT**

5. ……., INSPECTOR GENERAL OF POLICE **5TH RESPONDENT**

6. ……., ATTORNEY GENERAL OF UGANDA **6TH RESPONDENT**

AFFIDAVIT IN SUPPORT

I, **[FULL NAME OF DEPONENT]**, an adult [male/female] Ugandan of sound mind, of [address] / C/o M/s [NAME OF FIRM] Advocates, [address], do hereby make oath and state as follows:

1. I am the [relationship to the Applicant, e.g. spouse / brother / advocate] of the Applicant and the deponent herein, and I am well acquainted with the facts hereinafter deposed to.

2. The Applicant is unable to swear an affidavit in support of this application by reason of his detention incommunicado, and I make this affidavit on his behalf and for his benefit.

3. The Applicant, **[FULL NAME OF DETAINEE]**, is an adult [male/female] Ugandan of sound mind, aged about [age], of [residence], [occupation/status]. A copy of the Applicant's [national identity card / employment identity card] is attached hereto and marked **"A"**.

Abduction

4. On or about the [day] day of [month] [year], at about [time], at [precise place], the Applicant was abducted by [number] armed men [describe dress, weapons

and conduct] who bundled him into [describe vehicle, make, colour and registration number] and drove off towards [direction/destination]. [I witnessed the abduction personally.] / [I am so informed by NAME, who witnessed the abduction, and whose information I verily believe to be true.]

5. The abductors did not identify themselves, did not inform the Applicant of the reasons for his arrest, and did not inform his family of where he was being taken.

Efforts to trace the Applicant

6. Following the abduction, [I/we] searched for the Applicant at [list police stations, barracks and other places visited, with dates], where officers denied holding him.

7. On the [date], I reported the Applicant's disappearance at [NAME] Police Station vide SD Reference No. [number]. A copy of [the police acknowledgement/letter] is attached hereto and marked **"B"**.

Place and conditions of detention

8. I am reliably informed by [NAME], [describe: a former co-detainee released on DATE / an eyewitness], whose information I verily believe to be true, that the Applicant is detained at [NAME OF FACILITY], where [NAME] personally saw him on or about [date(s)].

9. [NAME OF FACILITY] is a [military installation / safe house / other] and is not a place authorised by law for the detention of persons.

10. Since his abduction, the Applicant has not been charged with any offence nor produced before any court, and has been held for [period], far in excess of the forty-eight (48) hours prescribed by Article 23(4)(b) of the Constitution.

11. The Applicant has been denied access to his advocates, his family and a medical practitioner of his choice.

12. [Where applicable] The Applicant suffers from [medical condition] requiring [treatment/medication], and his continued detention without medical care places his life and health at grave risk.

13. I swear this affidavit in support of the application for a writ of *habeas corpus ad subjiciendum* and the other orders sought.

14. Whatever is stated herein is true and correct to the best of my knowledge, save for matters deposed to on information, the sources whereof have been disclosed, and which I verily believe to be true.

SWORN at _____ by the said **[FULL NAME OF DEPONENT]** this _____ day of _____ [YEAR].

.....

DEPONENT

BEFORE ME:

……

COMMISSIONER FOR OATHS

CERTIFICATE OF TRANSLATION *[use only where the deponent does not understand English]*

I, [NAME OF INTERPRETER], certify that I faithfully translated the contents of this affidavit from English into [language] to the deponent, who appeared to understand them perfectly before appending [his/her] signature/thumbprint hereto.

……

INTERPRETER

Drawn and filed by:

M/s [NAME OF FIRM] Advocates
[Physical address]
[P.O. Box]
Tel: [telephone]
Email: [email]

Template 3: Summary of Evidence, List of Witnesses, List of Documents and List of Authorities

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT [KAMPALA]
([CIVIL DIVISION])
MISCELLANEOUS CAUSE NO. _____ OF [YEAR]

IN THE MATTER OF AN APPLICATION FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM
AND
IN THE MATTER OF THE DETENTION OF [FULL NAME OF DETAINEE]

[FULL NAME OF DETAINEE] **APPLICANT**

VERSUS

1. ……., CHIEF OF DEFENCE FORCES **1ST RESPONDENT**

2. ……., COMMANDER, SPECIAL FORCES COMMAND **2ND RESPONDENT**

3. ……., CHIEF OF DEFENCE INTELLIGENCE AND SECURITY **3RD RESPONDENT**

4. ……., COMMANDING OFFICER, [FACILITY] **4TH RESPONDENT**

5. ……., INSPECTOR GENERAL OF POLICE **5TH RESPONDENT**

6. ……., ATTORNEY GENERAL OF UGANDA **6TH RESPONDENT**

SUMMARY OF EVIDENCE, LIST OF WITNESSES, LIST OF DOCUMENTS AND LIST OF AUTHORITIES

I. SUMMARY OF EVIDENCE

The Applicant shall adduce evidence as contained in the affidavit of **[FULL NAME OF DEPONENT]** in support of the Notice of Motion herein, and such further evidence as may be adduced with the leave of Court.

II. LIST OF WITNESSES

1. **[FULL NAME OF DEPONENT]**, the deponent of the affidavit in support.
2. Any other witness with the leave of Court.

III. LIST OF DOCUMENTS

1. Copy of the Applicant's [national identity card / employment identity card] (Annexure "A").
2. Police acknowledgement of the report of disappearance, SD Reference No. [number] (Annexure "B").

3. Any other document with the leave of Court.

IV. LIST OF AUTHORITIES

1. The Constitution of the Republic of Uganda, Articles 20, 23, 44 and 50.
2. The Judicature Act (Cap. 16), Section 38.
3. The Human Rights (Enforcement) Act (Cap. 12).
4. The Prevention and Prohibition of Torture Act (Cap. 130).
5. The Judicature (Habeas Corpus) Rules, S.I. [16-6].
6. The Civil Procedure Act (Cap. 282) and the Civil Procedure Rules.
7. The Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules, 2019, S.I. No. 31 of 2019.
8. *Grace Stuart Ibingira and Others v Uganda* [1966] EA 306 (CA).
9. *In the Matter of Sheik Abdul Karim Sentamu and Another*, Constitutional Reference No. 7 of 1998.
10. *Karuhanga v Inspector General of Police & Others* [2013] UGHCCD 143.
11. *Nicholas Oyoo and Bob Njagi v Chief of Defence Forces & Others* [2025] UGHCCD 185.
12. *Velásquez Rodríguez v Honduras*, IACtHR, Judgment of 29 July 1988, Series C No. 4.
13. [Further case law relevant to the facts.]
14. Any other authority with the leave of Court.

DATED at _____ this _____ day of _____ [YEAR].

.....

COUNSEL FOR THE APPLICANT

Drawn and filed by:

M/s [NAME OF FIRM] Advocates
[Physical address]
[P.O. Box]
Tel: [telephone]
Email: [email]