

Uganda

Constitution of the Republic of Uganda

## Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022

Legal Notice 8 of 2022

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Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 (Legal Notice 8 of 2022)

Contents

- Part I – Preliminary ..... 1
  - 1. Title ..... 1
  - 2. Application ..... 1
  - 3. Objectives of Practice Directions ..... 1
  - 4. Interpretation ..... 2
- Part II – General principles and the right to apply for bail ..... 2
  - 5. General principles ..... 2
  - 6. Right to apply for bail ..... 2
  - 7. Stage of application for bail ..... 2
  - 8. Time for disposal of bail application in the High Court ..... 2
- Part III – Procedure and considerations for bail applications ..... 3
  - 9. Mandatory bail for offences triable by High Court and Magistrates Courts ..... 3
  - 10. Mandatory bail for offences triable only by High Court ..... 3
  - 11. Procedure for applying for bail ..... 3
  - 12. Contents of bail application ..... 3
  - 13. Considerations for bail ..... 3
  - 14. Considerations for bail in capital offences and other grave offences ..... 4
  - 15. Determining suitability of surety ..... 5
  - 16. Obligations of surety ..... 5
  - 17. Consideration for bail for children ..... 6
  - 18. Consideration of bail for vulnerable persons ..... 7
  - 19. Bail pending appeal ..... 7
  - 20. Lapse and cancellation of bail ..... 7
- Part IV – Review of bail terms and incidental matters ..... 7
  - 21. Review of bail terms ..... 7
  - 22. Insufficient sureties ..... 8
- Part V – Management of bail funds ..... 8
  - 23. Receipt of bail funds from applicants ..... 8
  - 24. Payment where banks not easily accessible ..... 8
  - 25. Maintenance of bail records ..... 9
  - 26. Bail refunds ..... 9
  - 27. Reporting requirements ..... 10
  - 28. Order of forfeiture ..... 10

Schedule 1 (paragraph 13(6), 16(2)(b) and 16(3)) ..... 11  
Schedule 2 (paragraph 26 (2)) ..... 11

# Uganda

## Constitution of the Republic of Uganda

# Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022 Legal Notice 8 of 2022

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**Assented to on 16 June 2022**

**Commenced on 28 June 2022**

*[This is the version of this document from 28 June 2022.]*

*[Under Article 133 (1) (b) of the Constitution of the Republic of Uganda, 1995]*

IN EXERCISE of the powers conferred upon the Chief Justice by article 133 (1) (b) of the Constitution, these Practice Directions are issued this 16th day of June, 2022.

## Part I – Preliminary

### 1. Title

These Practice Directions may be cited as the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022.

### 2. Application

These Practice Directions apply to all Courts of Judicature.

### 3. Objectives of Practice Directions

The objectives of these Practice Directions are—

- (a) to ensure that bail decision making complies with the provisions of the Constitution;
- (b) to give further effect to the existing legal provisions on bail;
- (c) to promote uniformity and consistency by courts when considering bail applications;
- (d) to streamline and address disparities in the handling of bail applications;
- (e) to promote the balancing of rights of accused persons with the public interest and the rights of complainants;
- (f) to facilitate effective inter-agency cooperation and coordination in the handling of bail applications;
- (g) to reduce incidences of pretrial detention;
- (h) to safeguard the interests and concerns of society in bail decision making;
- (i) to facilitate effective supervision of persons granted bail; and
- (j) to promote transparency and efficiency in the management of bail deposits and refunds.

#### 4. Interpretation

In these Practice Directions, unless the context otherwise requires—

“**advanced age**” means sixty years of age and above;

“**applicant**” means an accused person who has applied to court for release on bail;

“**bail**” means the temporary release of an accused person after providing security for future appearance in court on such conditions as the court considers reasonable;

“**security**” means a sum of money or property pledged or deposited in court in exchange for the release of an accused person, as a guarantee of that person’s appearance in court;

“**surety**” means a person who undertakes to ensure that the applicant will appear in court and abide by the bail conditions and who furnishes security which may be forfeited to the State if the applicant fails to appear in court;

“**vulnerable persons**” includes persons of advanced age, persons with grave illness, expectant mothers, children, care givers, and persons with disabilities.

### Part II – General principles and the right to apply for bail

#### 5. General principles

The court shall, in considering a bail application, be guided by the following principles as enshrined in the Constitution—

- (a) the right of an applicant to be presumed innocent as provided for in article 28(3)(a) of the Constitution;
- (b) the applicant’s right to liberty as provided for in article 23 of the Constitution;
- (c) the applicant’s obligation to attend trial;
- (d) the discretion of court to grant bail on such terms and conditions as the court considers reasonable; and
- (e) the need to balance the rights of the applicant and the interests of justice.

#### 6. Right to apply for bail

Where a person is charged with or convicted of a criminal offence, he or she may apply to court to be released on bail and the court may grant that person bail on such conditions as the court considers reasonable.

#### 7. Stage of application for bail

An accused person may, at any time after being charged, apply for bail—

- (a) in a Magistrate’s Court, for offences triable by a Magistrate’s Court; or
- (b) in the High Court, for offences triable by the High Court; or
- (c) in an appellate court, upon conviction, only where a notice of appeal has been filed.

#### 8. Time for disposal of bail application in the High Court

The court shall consider and dispose of an application for bail expeditiously and in any case within thirty days from receipt of the application.

## **Part III – Procedure and considerations for bail applications**

### **9. Mandatory bail for offences triable by High Court and Magistrates Courts**

Where an offence is triable by the High Court as well as by a subordinate Court, if a person has been remanded in custody in respect of that offence for 60 days and trial has not commenced, that person shall be released on bail on such conditions as the court considers reasonable.

### **10. Mandatory bail for offences triable only by High Court**

- (1) Where an offence is triable only by the High Court, if a person has been remanded in custody in respect of that offence for one hundred and eighty days before the case is committed to the High Court, that person shall be released on bail on such conditions as the court considers reasonable.
- (2) In the case of a person who has been on remand for one hundred and eighty days in accordance with article 23(6)(c) of the Constitution, the Magistrate's Court shall immediately refer the file to the High Court.
- (3) For the avoidance of doubt, mandatory release on bail for offences triable by the High Court under article 23(6)(c) of the Constitution shall be granted only by the High Court.

### **11. Procedure for applying for bail**

- (1) An application for mandatory bail may be oral in the Magistrate's Court.
- (2) An application for mandatory bail in the High Court and an application for bail in the High Court, the Court of Appeal and the Supreme Court, shall be by notice of motion supported by affidavit.
- (3) A Magistrate's Court shall submit to the High Court, files of persons who are eligible for mandatory bail and, upon receipt, the Registrar shall cause the files to be registered in the bail register.
- (4) The Registrar shall list the files submitted under subparagraph (3) for hearing by the Judge.
- (5) Upon disposal of the bail application, the file shall be returned to the Magistrate's Court to enable the court to proceed with the committal process.

### **12. Contents of bail application**

An application for bail shall contain the particulars of the applicant, accompanied by—

- (a) a copy of the applicant's national identity card, or passport or aliens identification card, or employment card, or student identity card;
- (b) an introduction letter from the Local Council 1 chairperson of the area where the applicant resides;
- (c) where applicable, asylum seeker or refugee registration documents issued by the Office of the Prime Minister; and
- (d) expounded grounds for the application.

### **13. Considerations for bail**

- (1) The court shall consider the following in handling a bail application—
  - (a) the gravity of the offence;
  - (b) the nature of the offence;
  - (c) the antecedents of the applicant so far as they are known;
  - (d) the possibility of a substantial delay of the trial;

- (e) the applicant's age, physical and mental condition;
  - (f) the likelihood of the applicant to attend court;
  - (g) the stage of the proceedings;
  - (h) the likelihood of the applicant to commit an offence while on bail;
  - (i) the likelihood of the applicant interfering with witnesses;
  - (j) the safety of the applicant, the community and complainants;
  - (k) whether the applicant has a fixed place of abode within Uganda or whether he or she is ordinarily resident outside Uganda;
  - (l) whether the applicant has sufficient sureties within Uganda to undertake that the applicant shall comply with the conditions of his or her bail;
  - (m) whether the applicant has, on a previous occasion when released on bail, failed to comply with his or her bail terms;
  - (n) whether there are any other charges pending against the applicant; or
  - (o) whether the offence for which the applicant is charged involved violence.
- (2) The court may give a complainant an opportunity to submit any information which, in the opinion of the complainant, should be considered by the court in making the bail decision.
- (3) The information given under subparagraph (2) shall include information on the safety of the complainant and their families.
- (4) The court shall, before deciding whether to grant or deny the applicant bail, give the applicant an opportunity to rebut the claims of the prosecution and the victims of the crime.
- (5) Where court grants an application for bail, the reasons and conditions attached to the grant of bail shall be set out in the ruling, and copies of the ruling shall be availed to the parties, upon request.
- (6) An applicant granted bail under subparagraph (5) shall sign the bail bond set out in Schedule 1 to these Practice Directions.
- (7) Where court denies an application for bail, the accused shall be remanded in custody and the reasons for the denial of bail shall be set out in the ruling, and copies of the ruling shall be availed to the parties, upon request.

#### **14. Considerations for bail in capital offences and other grave offences**

- (1) The High Court may, in exceptional circumstances, grant bail to a person accused of committing any of the following offences—
- (a) an offence triable only by the High Court;
  - (b) terrorism and any other offence punishable by more than 10 years imprisonment under the Anti-Terrorism Act, 2002;
  - (c) cattle rustling contrary to section 266 of the Penal Code Act;
  - (d) offences under the Firearms Act, punishable by more than 10 years imprisonment;
  - (e) rape, contrary to section 123 of the Penal Code Act;
  - (f) aggravated defilement contrary to section 129(3) and (4) of the Penal Code Act;
  - (g) embezzlement, contrary to section 19 of the Anti-Corruption Act, 2009;
  - (h) causing financial loss, contrary to section 20 of the Anti--Corruption Act, 2009;

- (i) corruption, contrary to section 2 of the Anti-Corruption Act, 2009;
  - (j) bribery of a member of a public body, contrary to section 5 of the Anti-Corruption Act, 2009; and
  - (k) any other offence in respect of which a Magistrate's Court has no jurisdiction to grant bail.
- (2) The exceptional circumstances referred to in subparagraph (1) include—
- (a) grave illness certified by a medical officer of the prison or other institution or place where the applicant is detained as being incapable of adequate medical treatment while the applicant is in custody;
  - (b) a certificate of no objection signed by the Director of Public Prosecutions; and
  - (c) the infancy or advanced age of the applicant.

### 15. Determining suitability of surety

- (1) When considering the suitability of a surety, the court shall take into account the following factors—
- (a) the age of the surety;
  - (b) work and residence address of the surety;
  - (c) character and antecedents of the surety;
  - (d) relationship to the accused person; and
  - (e) any other factor as the court may deem fit.
- (2) Subject to subparagraph (1) the proposed surety shall provide documentary proof including—
- (a) a copy of his or her national identity card, passport or aliens identification card;
  - (b) an introduction letter from the Local Council 1 Chairperson of the area where the surety is ordinarily resident; or
  - (c) asylum seeker or refugee registration documents issued by the Office of the Prime Minister.

### 16. Obligations of surety

- (1) The court shall explain to a surety the obligations that arise when he or she stands as surety for an accused person.
- (2) The obligations referred to in subparagraph (1) include—
- (a) the duty of the surety to ensure the attendance of the accused person before court, whenever required;
  - (b) the duty to sign the bail bond form set out in Schedule 1 to these Directions;
  - (c) the duty to inform court where an accused person is not able to attend; and
  - (d) the liability to pay the bail bond sum should he or she fail to ensure the attendance of the accused person before court.
- (3) Where court accepts a person as surety, the court shall require the person to sign a bail bond set out in Schedule 1 to these Practice Directions setting out the applicant's bail conditions and the consequences for the surety if the applicant breaches the conditions.

## 17. Consideration for bail for children

- (1) A court before which a child appears charged with any offence shall uphold the right of the child to apply for bail guaranteed under the Constitution and the law.
- (2) The court shall, in addition to the general principles set out in paragraph 5, be guided by the following principles—
  - (a) a child shall not be denied bail where the court is unlikely to impose a custodial order, upon proof of an offence against the child; and
  - (b) the deprivation of personal liberty pending trial shall be used only in exceptional circumstances, as a measure of last resort and for the shortest possible period of time.
- (3) A court considering a bail application by, or on behalf of, a child, shall inquire into—
  - (a) the criminal charge against the child, including the nature of the offence and severity of punishment;
  - (b) the likelihood of serious danger to the child and if it is in the child's best interest to remove him or her from association with any person; or
  - (c) the likelihood that the release of the child would defeat the ends of justice.
- (4) In granting bail, a court shall release a child on bail—
  - (a) on a court bond on the child's own recognisance; or
  - (b) with sureties, preferably the child's parents or guardians who shall be bound on a court bond, not cash.
- (5) A court may release a child on bail on conditions that may include—
  - (a) the obligation to appear on a specified time, date and place before the court;
  - (b) the obligation to report periodically to a specified person or place;
  - (c) the prohibition from interfering with witnesses, tampering with evidence or associating with any person; or
  - (d) the obligation to return to the child's home or to a specified address.
- (6) The conditions of release of a child on bail under subparagraph (5) shall be reasonable and in accordance with the seriousness of the crime committed.
- (7) A court may, in dealing with a bail application by, or on behalf of, a child, refuse to release the child and shall—
  - (a) record the reasons for refusal which may include—
    - (i) the nature and severity of the criminal charges;
    - (ii) that the child is in immediate danger to self or others;
    - (iii) that the child has failed to attend court on a criminal charge on a previous occasion; or
    - (iv) that the child has previously been granted bail by a court and has failed to comply with the conditions of bail;
  - (b) inform the child of his or her right to appeal against the decision; and
  - (c) make an order for the detention of the child in a remand home or in a place of safe custody.

## 18. Consideration of bail for vulnerable persons

The court may grant bail to a vulnerable person on his or her own recognizance, or on a recognizance being entered into by his or her parent, guardian or other responsible person, with or without sureties, for such an amount as, in the opinion of court, shall secure the attendance of the vulnerable person.

## 19. Bail pending appeal

The court shall, in handling an application for bail pending appeal, take into consideration the following factors—

- (a) the character of the applicant;
- (b) whether the applicant is a first offender or not;
- (c) whether the offence for which the applicant was convicted involved violence;
- (d) the appeal is not frivolous and has a reasonable possibility of success;
- (e) the loss incurred by the complainant or the victim;
- (f) the possibility of substantial delay in the determination of the appeal; or
- (g) whether the applicant has complied with the bail conditions granted by the trial court before the conviction of the applicant.

## 20. Lapse and cancellation of bail

- (1) Bail shall lapse where an accused person is convicted or acquitted.
- (2) The court may cancel bail where—
  - (a) an accused person has breached the bail conditions;
  - (b) a surety withdraws from being a surety and the accused person fails to provide another sufficient surety; or
  - (c) for any other reason that the court may deem satisfactory.
- (3) Where a court cancels bail in accordance with subparagraph (2)(b), the court shall require the accused person to present new sureties or remand the accused person.
- (4) Where bail is cancelled, the accused person may file a new bail application.

## Part IV – Review of bail terms and incidental matters

### 21. Review of bail terms

- (1) The prosecutor, an accused person or a surety may apply to court to vary, review or set aside the conditions of bail at any time after the ruling has been made.
- (2) Subject to the provisions of section 75(3) and (4) of the Magistrates Court Act, an application under subparagraph (1) shall be made to the Chief Magistrate where bail has been denied by a lower court; or to the High Court where bail has been denied by a Chief Magistrate.
- (3) Any application by the prosecutor or a represented accused person under subparagraph (1) shall be made to court by notice of motion supported by an affidavit.
- (4) An application by an accused person or surety under subparagraph (1) may be made to court orally or by letter.

- (5) The court may summon any other concerned party to be present in court when considering an application to review bail terms.

## **22. Insufficient sureties**

- (1) Where through a mistake, fraud or otherwise, insufficient sureties have been accepted, or where the sureties afterwards become insufficient, the court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him or her to find sufficient sureties and, on his or her failing to find sureties, commit him or her in prison.
- (2) All or any of the sureties for the appearance and attendance of a person released on bail may at any time apply to court to discharge the bond either wholly or so far as it relates to the applicant or applicants.
- (3) Where an application is made under subparagraph (2), the court shall issue a warrant of arrest against the accused.
- (4) On appearance, the court shall inquire into the matter and make an appropriate decision.

## **Part V – Management of bail funds**

### **23. Receipt of bail funds from applicants**

- (1) Upon granting bail, the court clerk shall submit the file of the accused person to the cashier for online assessment on the Uganda Revenue Authority portal.
- (2) The cashier shall, upon receipt of the file under subparagraph (1), print and issue an assessment form to the applicant, who shall deposit the bail amount in the relevant bank.
- (3) The applicant shall present the Uganda Revenue Authority acknowledgment receipt to the cashier.
- (4) The cashier shall, after confirming the deposit in the Uganda Revenue Authority system, issue a Government of Uganda general receipt in triplicate, bearing the case number, the name of the accused person, and the Payment Registration Number (PRN)
- (5) In receipting for bail funds—
  - (a) the original receipt shall be retained on the case file;
  - (b) the duplicate copy of the receipt shall be issued to the applicant or his or her representative with a stamp indicating that the original has been retained by the court; and
  - (c) the triplicate copy of the receipt shall be retained by the cashier.
  - (d) The cashier shall present the file to the court clerk who shall submit it to the presiding judicial officer for further action.

### **24. Payment where banks not easily accessible**

In areas where banks are not easily accessible, the following procedure shall apply—

- (a) the court shall seek authority in writing from the Secretary to the Judiciary to collect bail funds in cash, and the permission granted shall be in writing.
- (b) the cashier shall—
  - (i) make an online assessment of the bail amount to be paid;
  - (ii) receive the cash indicated on the assessment form and the applicable bank charges; and
  - (iii) issue a Government of Uganda general receipt in triplicate bearing the case number and the name of the accused

- (c) in receipting for bail funds in cash—
  - (i) the original receipt shall be retained on the case file;
  - (ii) the duplicate copy of the receipt shall be issued to the applicant or his or her representative with a stamp indicating that the original has been retained by the court; and
  - (iii) the triplicate copy of the receipt shall be retained by the cashier;
- (d) the cashier shall deposit the cash collected against the assessment forms in the bank on the next convenient day, and indicate the PRN on the original receipt on the case file and on the triplicate receipt in his or her possession;
- (e) the cashier shall present the file to the court clerk who shall submit it to the presiding judicial officer for further action;
- (f) the Uganda Revenue Authority receipt shall be filed on the case file.

## 25. Maintenance of bail records

- (1) The court shall maintain bail records to enable accurate reporting and management of bail funds.
- (2) The bail records shall be updated on a regular basis and made available to stakeholders, including inspectors and auditors.
- (3) The following records shall be maintained—
  - (a) a bail register which shall indicate the case number, the parties to the case, the bail amount paid, the date of payment, the amount refunded or forfeited and the date of refund or forfeiture; and
  - (b) a cash book in which shall be recorded all bail funds collected and banked.

## 26. Bail refunds

- (1) Immediately upon disposal of a case, the court shall inform the accused person of his or her right to a bail refund.
- (2) The bail refund application form prescribed in Schedule 2 to these Directions shall be availed to the claimant to fill before leaving the court.
- (3) The claimant shall deposit the original bail bond form with the court clerk.
- (4) The court clerk shall submit the filled bail refund application form, the court order for refund of bail bearing the name and signature of the respective judicial officer, the court seal and the original bail bond form received from the claimant, to the cashier.
- (5) In handling bail refunds, the cashier shall—
  - (a) attach the original receipt and an original Uganda Revenue Authority acknowledgment receipt, where applicable, to the documents received from the court clerk; and
  - (b) prepare a requisition to the Secretary to the Judiciary for the signature of Registrar, Chief Magistrate or Magistrate in charge of the court.
- (6) The signed requisition under subparagraph (5) shall be delivered by the court and duly acknowledged by the office of the Secretary to the Judiciary for processing of the refund directly to the account of the claimant or their registered mobile money number.
- (7) The requisition for bail refund shall be made by the court to the Secretary to the Judiciary as soon as possible, and in any case not later than thirty days from the date of receipt of the application from the claimant.

- (8) Upon receipt of the requisition, the Secretary to the Judiciary shall forward it to the Internal Audit Unit for verification to ascertain whether all the relevant documents are attached and whether payment was received on the relevant bank account.
- (9) When verification is complete, the requisition is returned to the Secretary to the Judiciary for authorisation of payment.
- (10) Any queries raised by Internal Audit Unit during verification of the documents shall be referred to the Chief Registrar for onward transmission to the court that submitted the requisition for bail refund.

## **27. Reporting requirements**

- (1) The cashier shall prepare a bail report on a monthly basis.
- (2) The bail report shall be submitted to the Secretary to the Judiciary, with a copy to the Chief Registrar, by the Registrar, Chief Magistrate or Magistrate in charge of the court and a copy shall be maintained at the respective court.
- (3) The report shall contain—
  - (a) bail assessments made during the month;
  - (b) bail funds collected during the month;
  - (c) bail refunds requisitioned during the month; and
  - (d) bail forfeiture orders made during the month.
- (4) The Secretary to the Judiciary shall take appropriate action in relation to the reports submitted under subparagraph (2).

## **28. Order of forfeiture**

- (1) Where a surety fails to comply with the bail bond executed in paragraph 16, the provisions of section 83 of the Magistrates Courts Act and section 21 of the Trial on Indictments Act relating to forfeiture shall apply.
- (2) Whenever it is proved to the satisfaction of a court by which a recognisance under the Magistrates Courts Act, the Trial on Indictments Act or both has been taken, or when the recognisance is for appearance before a court, to the satisfaction of the court, that such recognisance has been forfeited, the court shall record the grounds of the proof, and may call upon any person bound by the recognisance to pay the penalty, or to show cause why it should not be paid.
- (3) Where sufficient cause is not shown and the penalty is not paid, the court may recover the penalty by issuing a warrant for the attachment and sale of the movable property belonging to the surety or any person, or his or her estate where the surety or person is dead.
- (4) The warrant may be executed within the local limits of the jurisdiction of the court which issued it, and shall authorise the attachment and sale of the movable property belonging to the surety beyond the local limits, when endorsed by any magistrate within the local limits of whose jurisdiction that property is found.
- (5) Where the penalty is not paid and cannot be recovered by attachment and sale, the surety is liable, by order of the court which issued the warrant, to imprisonment for a period not exceeding six months.
- (6) The court may, at its discretion, remit any portion of the penalty imposed in subparagraph (5).
- (7) When a surety or any person who has furnished security is convicted of an offence, the commission of which constitutes a breach of the conditions of his or her recognisance, a certified copy of the judgment of the court by which he or she was convicted of that offence may be used as evidence in

proceedings under this section against his or her surety or sureties, and, where that certified copy is used, the court shall presume that the offence was committed by him or her, unless the contrary is proved.

### **Schedule 1 (paragraph 13(6), 16(2)(b) and 16(3))**

#### **Form 61**

*[Editorial note: The form has not been reproduced.]*

### **Schedule 2 (paragraph 26 (2))**

#### **Application for bail refund**

*[Editorial note: The form has not been reproduced.]*