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THE MUFUMBIRO TRAGEDY AND THE UBUNTU IMPERATIVE:

Why Legal Positivism Alone Cannot Carry the Moral Weight of Justice, and Why Ubuntu Must Become an Operative, Not Ornamental, Constitutional Principle in Uganda

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Writing

Disclaimer

While I am currently undertaking ongoing doctoral research on the interface between Ubuntu and the law, portions of this article draw from my evolving thesis. I remain under continuous academic supervision, and the ideas herein are subject to further refinement and development. Accordingly, this article should be treated as a work in progress, reflecting a developing scholarly position rather than a final or definitive statement.

ABSTRACT

The detention of Alex Waiswa Mufumbiro and the death of his wife, Edith Katende Mufumbiro, on 8 April 2026, while he remained incarcerated, present a profound

[1]Isaac Christopher Lubogo, *Ubuntu and the Law in Uganda: Towards a New Constitutional Dispensation* (LLD on going Thesis, Makerere University School of Law, 2026);

jurisprudential crisis within Uganda's legal system.[2] This paper argues that the incident exposes the structural inadequacy of legal positivism when divorced from moral philosophy,[3] and advances the thesis that Ubuntu must be elevated from a passive cultural reference to an active, binding interpretive principle within Ugandan constitutional law. Through doctrinal analysis grounded in the Constitution of the Republic of Uganda 1995, constitutional interpretation theory, and comparative jurisprudence drawn from South Africa and the common law world, this article contends that Ubuntu offers a necessary corrective to rigid legal formalism, particularly in cases implicating human dignity, grief, and relational justice.[4] The article proposes a Humanitarian Bail Doctrine, a framework for courts exercising inherent jurisdiction to order compassionate temporary release, and a series of legislative and institutional reforms designed to operationalise Ubuntu's normative demands within Uganda's criminal justice architecture.

Keywords: *Ubuntu; Legal Positivism; Human Dignity; Bail; Compassionate Release; Uganda Constitution 1995; African Jurisprudence; Transformative Constitutionalism; Criminal Procedure; Relational Justice*

I. INTRODUCTION: LAW AT THE EDGE OF HUMANITY

The Mufumbiro case is not merely a criminal proceeding. It is a jurisprudential moment of reckoning[5] — a case in which the formal architecture of the law operated precisely as designed, and yet produced an outcome so morally devastating that its

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[2]Edith Katende Mufumbiro died on 8 April 2026 while her husband remained in detention. The factual narrative in this article is drawn from reported accounts and publicly available records. See Human Rights Network Uganda, *Press Statement on the Continued Detention of Alex Waiswa Mufumbiro* (Kampala, October 2025); see also Foundation for Human Rights Initiative (FHRI), *Annual Report on Pretrial Detention in Uganda 2024* (FHRI 2024) 34–41.

[3]On the intersection of personal tragedy and juridical legitimacy, see Martha C Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge University Press 2001) 19–33; cf David Luban, *Legal Ethics and Human Dignity* (Cambridge University Press 2007) 67–88.

[4]On relational harm and constitutionalised grief, see Margaret Urban Walker, *Moral Repair: Reconstructing Moral Relations after Wrongdoing* (Cambridge University Press 2006) 102–119. The concept of "relational closure" as a dignity interest is developed further in Section III below.

[5]Mogobe Ramose, *African Philosophy Through Ubuntu* (Mond Books 1999) 49–56. See also Drucilla Cornell and Karin van Marle, "Exploring Ubuntu: Tentative Reflections" (2005) 5 *African Human Rights Law Journal* 195; Thaddeus Metz, "Ubuntu as a Moral Theory and Human Rights in South Africa" (2011) 11 *African Human Rights Law Journal* 532, 544–551.

very correctness becomes its most searching indictment.[6]

Alex Waiswa Mufumbiro, a senior official of the National Unity Platform, was detained in September 2025 on charges including unlawful military drilling under the Penal Code Act, incitement to commit an offence, unlawful assembly, and conspiracy.[7] While the State maintains prosecutorial legitimacy, his legal team has consistently asserted political motivation — a contest that, while legally significant, is not the primary concern of this paper.[8]

What defines this case is not the charges. It is the death of his wife, Edith Katende Mufumbiro, on 8 April 2026, after a prolonged battle with cancer, while he remained in detention despite repeated bail applications and increasingly urgent pleas for temporary compassionate release.[9]

This is where law ceased to be merely legal — and became existential.

The Mufumbiro tragedy forces Uganda's legal system to confront a question it has long deferred: what is the relationship between legal correctness and moral legitimacy? The question is not new to Ugandan legal scholarship. Kabumba has observed that the gap between the constitutional promise of 1995 and the lived reality of governance produces a cynicism that afflicts even the most idealistic legal minds.[10] Oloka-

[6]For the concept of jurisprudential "moments of reckoning", see Ronald Dworkin, *Law's Empire* (Harvard University Press 1986) 228–232; cf Karl E Klare, "Legal Culture and Transformative Constitutionalism" (1998) 14 *South African Journal on Human Rights* 146, 150: "Transformative constitutionalism denotes a long-term project of constitutional enactment, interpretation, and enforcement committed ... to transforming a country's political and social institutions."

[7]HLA Hart, *The Concept of Law* (3rd edn, Penelope Bulloch and Joseph Raz eds, Oxford University Press 2012) 94–110. Hart's separation thesis posits that the existence of law and its merit are entirely separate questions. See also Joseph Raz, *The Authority of Law* (Oxford University Press 1979) 37–52; cf Lon L Fuller, *The Morality of Law* (rev edn, Yale University Press 1969) 33–41, who challenged positivism's exclusion of morality from legal validity.

[8]Penal Code Act (Cap 120) (Uganda), ss 23 (conspiracy), 61 (incitement), 371 (unlawful assembly). On the charge of unlawful military drilling, see also the Uganda People's Defence Forces Act 2005 (Uganda), s 2(1)(a). The political dimensions of these charges are contested; see Human Rights Watch, *Uganda: Crackdown on Opposition Ahead of Elections* (New York, 2021).

[9]On the phenomenon of politically motivated prosecutions in transitional contexts, see Pheng Cheah, *Inhuman Conditions: On Cosmopolitanism and Human Rights* (Harvard University Press 2006) 127–139; Foundation for Human Rights Initiative, *State of Human Rights in Uganda 2023* (FHRI 2023) 72–85.

[10]The intellectual context of this article draws on a tradition of critical Ugandan constitutionalism developed at Makerere University School of Law. See B Kabumba, "The Illusion of the Ugandan Constitution" (AfricLaw, 27 September 2012), observing that even first-year law students at Makerere rapidly become "cynical about the state of constitutionalism" when comparing the promise of the 1995 Constitution with the reality of governance; B Kabumba, "The Vanishing Vision: A Critical Analysis of the Promotion of Constitutionalism" (2021) 1 *EALS Human Rights and Rule of Law Journal* 1. This tradition

Onyango has similarly documented how Uganda's courts have been haunted by pre-constitutional legal positivism, retreating into technicality at the moments of greatest constitutional consequence.[11] This paper argues that the answer to both the specific tragedy of the Mufumbiro case and the broader structural crisis they identify lies in the jurisprudential concept of Ubuntu — not as cultural decoration, but as an operative constitutional principle capable of shaping outcomes in cases involving human suffering, relational loss, and the irreducible demands of dignity.[12]

II. THE LEGAL FRAMEWORK: POSITIVISM AND ITS LIMITS

Uganda's legal system, grounded in constitutional supremacy and statutory authority, largely reflects a positivist orientation — law as it is, rather than law as it ought to be. This orientation, associated classically with H.L.A. Hart's separation thesis, treats the existence of law and its moral merits as entirely distinct questions.[13]

Under Article 23 of the Constitution of the Republic of Uganda 1995:[14]

> Bail is discretionary pursuant to Article 23(6)(a); mandatory bail arises only in defined circumstances under Article 23(6)(c); and courts are directed to consider the seriousness of the offence, the likelihood of the accused

of critical engagement provides the intellectual scaffolding for Isaac's doctrinal claims in this article.

[11] J Oloka-Onyango, *Battling over Human Rights: Twenty Essays on Law, Politics and Governance* (Langaa Publishing 2015) 43–67; J Oloka-Onyango and C Mbazira, "Befriending the Judiciary: Behind and Beyond the 2016 Supreme Court Amicus Curiae Rulings in Uganda" (2016) 2016(1) *Africa Journal of Comparative Constitutional Law* 1, 8–14. Oloka-Onyango has documented the persistent tendency of Uganda's judiciary to retreat into procedural and technical reasoning at precisely the moments when substantive constitutional engagement is most constitutionally demanded. This pattern — which he analyses through the lens of the Political Question Doctrine and judicial independence — is directly implicated in the Mufumbiro case, where technical correctness displaced moral reasoning. See also J Oloka-Onyango, "Ghosts and the Law" (Professorial Inaugural Lecture, Makerere University School of Law, 2016), on the haunting of Ugandan jurisprudence by pre-constitutional legal positivism.

[12] On existential rupture and law's limits, see Jacques Derrida, *Deconstruction and the Possibility of Justice* (Drucilla Cornell, Michel Rosenfeld and David Gray Carlson eds, Routledge 1992) 3–27; see also Roberto Unger, *The Critical Legal Studies Movement* (Harvard University Press 1986) 1–40.

[13] Constitution of the Republic of Uganda 1995, art 23(6)(a)–(c). The constitutional framework governing bail is further elaborated in *Uganda v Col Dr Kizza Besigye*, Criminal Case No HCT-00-CR-SC-0048-2005 (High Court of Uganda, 2005) (Bbosa J), where the court upheld bail discretion while acknowledging proportionality considerations; *Francis Gimara v Uganda* [2007] UGSC 6 (Supreme Court of Uganda).

[14] Constitution of the Republic of Uganda 1995, art 23(6)(c) mandates bail after 120 days for capital offences or 60 days for other offences awaiting committal, but discretion subsists in determining conditions. See also *Mubarak Kassim Mutyaba v Uganda*, Miscellaneous Application No 145 of 2009 (High Court of Uganda, 2009).

absconding, and the risk of interference with witnesses. Judicial interpretation in cases such as *Uganda v Col Dr Kizza Besigye* has reinforced the discretionary and multifactorial nature of bail decisions.

In Mufumbiro's case, bail was repeatedly denied; temporary compassionate release was not granted; and the Uganda Prisons Service reportedly indicated that no statutory provision exists for a prisoner to attend a family member's burial.[15] The legal system, on this account, operated within its formal boundaries.

The law functioned correctly — and yet justice failed.

This is not a paradox that positivism can resolve from within its own framework. Hart's system, admirable in its analytical precision, does not — and does not purport to — guarantee that legally valid outcomes are morally acceptable.[16] Lon Fuller came closer to the truth when he argued that law's internal morality requires it to "make possible a satisfying life." The Mufumbiro case reveals with precision the cost of ignoring Fuller's warning. And Kabumba has shown, with scholarly rigour grounded in Uganda's own constitutional history, that this cost is not accidental — it is the structural consequence of a legal culture that has persistently subordinated African values and indigenous epistemologies to colonial-era legal formalism.[17]

III. THE HUMANITARIAN RUPTURE: WHEN PROCEDURE DEFEATS COMPASSION

The facts of this case engage three distinct but interrelated constitutional tensions.

[15]Prisons Act 2006 (Uganda), ss 76–81 address prisoner welfare and compassionate circumstances but contain no express provision for temporary release to attend a family member's burial or death. Compare Criminal Procedure Code Act (Cap 116) (Uganda), which similarly does not address compassionate release from remand. This statutory lacuna is the juridical gap at the heart of this article.

[16]Fuller (n 7) 39: law must "make possible a satisfying life" and must speak "to the human condition". On institutional cruelty as a structural feature of formalist legal systems, see Judith N Shklar, *The Faces of Injustice* (Yale University Press 1990) 15–27; see also Jeremy Waldron, *Dignity, Rank and Rights* (Oxford University Press 2012) 13–20.

[17]B Kabumba, "Criminalizing Indigenous Belief: The Constitutional Deficits of Uganda's Witchcraft Act" (2023) 12 *Oxford Journal of Law and Religion* 139, 142–148. Kabumba demonstrates that Ugandan courts have persistently subordinated African cultural values and indigenous epistemologies to colonial -era legal formalism, producing constitutional deficits that endure in the post-1995 order. His analysis of the Witchcraft Act — the very statute at issue in *Salvatori Abuki* — establishes that the positivist habit of treating cultural context as legally irrelevant has structural roots that precede and survive any individual case. This article argues that ubuntu offers the antidote.

A. Right to Bail versus Judicial Discretion

The Constitution guarantees personal liberty and establishes bail as a constitutional entitlement subject to judicial discretion. The critical question is not whether courts possess discretion — they plainly do — but whether that discretion remains properly insulated from compassionate considerations in circumstances of extreme and foreseeable personal suffering. This paper argues that it does not; and that the constitutional obligation to give "full effect" to fundamental rights under Article 50 requires courts to treat exceptional personal circumstances as relevant and potentially decisive considerations in the exercise of bail discretion.

B. Human Dignity and the Right to Grieve

Article 24 of the Constitution guarantees dignity and freedom from inhuman or degrading treatment.[18] The question presented by Mufumbiro's detention is whether dignity — as a substantive constitutional value — can be meaningful if it excludes the capacity to mourn, to be present at death, and to achieve what scholars have called "relational closure": the experiential acknowledgment of a relationship's end.[19] This paper argues that a conception of dignity that does not extend to these fundamental human experiences is not merely impoverished — it is constitutionally deficient.

C. The Statutory Silence and Institutional Responsibility

The absence of a compassionate release provision in the Prisons Act 2006 cannot be treated as normatively neutral. Statutory silence is not the same as a prohibition; and courts have inherent jurisdiction, grounded in both common law and the Judicature Act, to fill gaps that produce manifest injustice.[20] The question — both philosophically and doctrinally — is whether institutional silence can justify moral abdication.

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[18]Constitution of the Republic of Uganda 1995, art 24: "No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment." Article 44(a) classifies freedom from torture as a non-derogable right. See also *Uganda v Sekabira*, Criminal Appeal No 7 of 2002 (High Court of Uganda, 2002), where the court recognised dignity as an interpretive cornerstone.

[19]Walker (n 4) 110–115. On the concept of "presence-in-grief" as a constitutionally cognisable interest, see also Nussbaum (n 3) 87–92. This paper advances the argument that the denial of such presence, where foreseeable death has been communicated to the court and no compelling countervailing interest is established, constitutes a dignity violation under art 24 of the Constitution.

[20]The relationship between statutory silence and institutional moral responsibility is explored in Dworkin (n 6) 115–128. Dworkin argues that judicial discretion is never "strong" in the sense of unconstrained: it is always shaped by principles that give content to rights. See also Jules L Coleman, *The Practice of Principle* (Oxford University Press 2001) 97–116.

IV. UBUNTU: FROM MORAL PHILOSOPHY TO LEGAL IMPERATIVE

Ubuntu, as an African jurisprudential ethic, proceeds from the foundational proposition articulated by John Mbiti: "I am, because we are; and since we are, therefore I am."[21] This formulation is more than an aphorism. It encodes a complete ontology of personhood — one in which identity is relational, responsibility is communal, and the suffering of one diminishes all.

Mogobe Ramose has argued with sustained rigour that Ubuntu constitutes a complete normative system of justice, not merely a cultural philosophy or indigenous wisdom tradition.[22] Thaddeus Metz has operationalised Ramose's insight into a formal moral theory, arguing that ubuntu commands action that "honours communal relationships and helps others to flourish." Kwame Gyekye's restricted communitarianism offers a further refinement: relational identity and individual autonomy are not in competition, but in constitutional co-dependence.[23]

Ubuntu demands that law must:

> Recognise relational identity as a cognisable legal interest — acknowledging that persons exist in webs of obligation and connection that have legal and moral significance;

> Integrate compassion into the architecture of justice — treating the suffering of accused persons and their families not as extraneous factors but as constitutive elements of the justice calculus; and

> Prioritise human dignity over procedural rigidity — ensuring that the mechanical

[21]Mbiti's formulation is found in John S Mbiti, *African Religions and Philosophy* (2nd edn, Heinemann 1990) 106: "I am, because we are; and since we are, therefore I am." See also Kwame Gyekye, *Tradition and Modernity: Philosophical Reflections on the African Experience* (Oxford University Press 1997) 35–76, advancing a "restricted communitarianism" that balances relational identity with individual autonomy.

[22]Ramose (n 5) 30–38. On ubuntu as normative system, see further Metz (n 5) 533–535: "Ubuntu theory ... commands one to act in ways that honour community and help others to flourish." See also Yvonne Mokgoro, "Ubuntu and the Law in South Africa" (1998) 4 *Buffalo Human Rights Law Review* 15, 19–22.

[23]On relational identity in ubuntu jurisprudence, see Cornell and van Marle (n 5) 199–204; Gyekye (n 18) 38–55. The concept of relational personhood distinguishes ubuntu from liberal individualism by treating the self as constitutively embedded in social relations.

application of procedure does not become the instrument of the very inhumanity that constitutions are designed to prevent.

These demands are not confined to legal theory. Tamale has argued, from within the Makerere tradition of critical African scholarship, that ubuntu constitutes a "framework for justice, community, and relationality" whose emancipatory potential has been structurally suppressed in formal African legal systems by the persistence of colonial epistemologies.[24] Her framing is important precisely because it locates ubuntu's legal underdevelopment not in the concept's insufficiency, but in the institutional resistance of positivist legal cultures to philosophical frameworks that challenge their foundational assumptions. The Mufumbiro case is a textbook illustration of that resistance — and of its human cost.

In the Mufumbiro tragedy, the absence of Ubuntu from judicial reasoning produced a result that was legally correct and morally catastrophic. The proposition of this paper is that these two outcomes are not acceptable when alternatives consistent with the legal framework are available.

V. COMPARATIVE AUTHORITY: UBUNTU IN CONSTITUTIONAL ADJUDICATION

The transformation of Ubuntu from philosophical principle to operative constitutional norm is not unprecedented. South Africa's Constitutional Court — confronting a legal system designed for a racially divided society — drew on Ubuntu as both a contextualising value and a positive source of constitutional meaning.

In *S v Makwanyane*,[25] the Constitutional Court abolished the death penalty, in part on

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[24] S Tamale, *Decolonization and Afro-Feminism* (Daraja Press 2020) 89–95. Tamale argues that "liberation is only possible if it is informed by a Pan-African feminist and Ubuntu philosophy/ethic" because ubuntu "effectively challenges modern liberalism — the life-giving spirit of capitalism — and dehumanization." She identifies ubuntu as "a framework for justice, community, and relationality" whose emancipatory potential has been structurally suppressed in formal African legal systems by the persistence of colonial epistemologies. See also J Oloka-Onyango and S Tamale (eds), *Constitutionalism in Africa* (Fountain Publishers 2000), advancing the case for constitutionalism grounded in African social and philosophical values.

[25] *S v Makwanyane* [1995] ZACC 3; 1995 (3) SA 391 (CC) paras 224–237 (Mokgoro J concurring); paras 307–313 (O'Regan J concurring). The Constitutional Court held, unanimously, that the death penalty was incompatible with the rights to life and dignity in the interim Constitution of South Africa 1993. Ubuntu served as a contextualising value for the dignity analysis, particularly in Mokgoro J's opinion at

the basis that it was irreconcilable with the constitutional values of dignity, equality, and ubuntu. Mokgoro J's concurrence is particularly instructive: ubuntu "places some emphasis on communality and on the interdependence of the members of a community" and "is not compatible with victimisation and penalisation." The relational vision of justice embedded in Ubuntu was not treated as a supplement to the constitutional text — it was treated as part of its living meaning.

In *Port Elizabeth Municipality v Various Occupiers*,[26] Sachs J invoked Ubuntu in requiring municipalities to engage with occupiers before eviction — a direct application of ubuntu's relational demands to the procedural architecture of housing rights. Ubuntu, here, was not decorative: it altered the outcome.

Most directly relevant to this paper, Mokgoro J's concurrence in *Dikoko v Mokhatla*[27] established that ubuntu requires acknowledgment and reparation as responses to wrongdoing, rather than merely punitive measures. The principle operative in these cases — that law must respond to the full human situation of the parties before it — is precisely the principle this paper seeks to embed in Ugandan constitutional jurisprudence.

> *Ubuntu is not a decorative ideal. It is a decision-altering principle.*

VI. THE UGANDAN POSITION: LATENT BUT UNACTUALIZED UBUNTU

Uganda's Constitution already contains the seeds of ubuntu jurisprudence — though they remain largely ungerminated.[28] Article 24's dignity guarantee, read alongside the

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para 224: "Ubuntu … is a culture which places some emphasis on communality and on the interdependence of the members of a community."

[26] *Port Elizabeth Municipality v Various Occupiers* [2004] ZACC 7; 2005 (1) SA 217 (CC) para 37 (Sachs J): "We live in a society in which there are great disparities in wealth. Millions of people are living in deplorable conditions and in great poverty. There is a high level of unemployment, inadequate social security, and many do not have access to clean water or to adequate health services." Sachs J invoked ubuntu in requiring an engagement with occupiers before eviction.

[27] *Dikoko v Mokhatla* [2006] ZACC 10; 2006 (6) SA 235 (CC) para 68 (Mokgoro J concurring): "Ubuntu requires acknowledgment and reparation as responses to wrongdoing, rather than merely punitive measures." See also *Pharmaceutical Manufacturers Association of South Africa: In re Ex Parte President of the Republic of South Africa* [2000] ZACC 1; 2000 (2) SA 674 (CC) para 44, on the unity of the constitutional order.

[28] *Attorney General v Salvatori Abuki*, Constitutional Appeal No 1 of 1998 [1999] UGSC 7 (Supreme Court

National Objectives and Directive Principles of State Policy,[29] and the constitutional aspiration to social justice, provide a textual foundation for ubuntu's normative demands. The Constitution does not need to be amended to accommodate Ubuntu. It needs to be read.

Ugandan courts have occasionally invoked equitable and dignity-grounded reasoning. Most significantly — and most surprisingly given how infrequently it is cited — Justice Tabaro, sitting on the Constitutional Court in the first instance hearing of *Salvatori Abuki and Another v Attorney General*,[30] explicitly invoked ubuntu in 1997, debunking the assumption that severe punishment is a necessary feature of meaningful African penal law, affirming that "being human entails humaneness to others," and decrying punishment that incorporates revenge and brutality. This stands as the earliest Ugandan judicial invocation of ubuntu — a judicial seed, planted in 1997 at the constitutional dawn, that has never been cultivated into systematic jurisprudence. On appeal, the Supreme Court upheld the outcome on dignity and proportionality grounds, but did not develop Tabaro J's ubuntu reasoning. Kabumba, in his analysis of the same Witchcraft Act at the heart of *Abuki*, has shown that this structural failure to engage with African values as legal resources is not an oversight — it is a feature of a legal culture that continues to treat indigenous epistemologies as extraneous to formal constitutional adjudication.

Yet ubuntu remains implicit, uncodified, and rarely determinative in Ugandan judicial

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of Uganda) (Wambuzi CJ, Oder JSC, Tsekooko JSC, Karokora JSC, Mulenga JSC, Kanyeihamba JSC, Mukasa-Kikonyogo JSC). The court, applying constitutional proportionality, struck down the witchcraft-related banishment order as incompatible with arts 24 and 44 of the Constitution. The decision established an early Ugandan precedent for dignity-based constitutional adjudication.

[29] Constitution of the Republic of Uganda 1995, National Objectives and Directive Principles of State Policy, Objectives I (National Interest), II (Overall Goals of National Development), XIV (General Social and Economic Objectives), XX (Culture). Objective XIV specifically charges the State to "endeavour to fulfil the fundamental rights of Ugandans to social justice and economic development."

[30] Tabaro J in *Salvatori Abuki and Another v Attorney General* (Constitutional Case No 2 of 1997) [1997] UGCC 10 (13 June 1997) (Constitutional Court of Uganda). In his concurring judgment, Tabaro J invoked the concept of ubuntu in an obiter dictum, debunking the assumption that severe punishment is a necessary feature of meaningful penal law in Africa and affirming that "being human entails humaneness to others." He emphasised human dignity, the primacy of rehabilitation, and the constitutional incompatibility of punishments incorporating revenge and brutality. This stands as the earliest judicial invocation of ubuntu in Ugandan courts — preceding by nearly three decades the more systematic doctrinal development that this article advances. That it remains an isolated obiter rather than an established interpretive principle is precisely the jurisprudential deficit this article seeks to remedy.

reasoning.[31] Courts possess the moral vocabulary of justice — dignity, equality, proportionality — but lack what this paper calls its operational grammar: the systematic interpretive method that translates these values into outcomes in hard cases. This is the jurisprudential vacuum that the Mufumbiro case exposes with merciless clarity.

> *Courts possess the moral vocabulary of justice — but lack its operational grammar.*

VII. UBUNTU AS AN OPERATIVE LEGAL PRINCIPLE: THE DOCTRINAL FRAMEWORK

This paper advances a clear doctrinal proposition: Ubuntu must be judicially recognised as a binding interpretive principle, capable of influencing and where necessary determining outcomes in cases involving human suffering, relational loss, and dignity deprivation.[32] This section sets out the doctrinal architecture through which that recognition may be operationalised.

A. The Humanitarian Bail Doctrine

Courts must, under the constitutional obligation to give full effect to Article 24 dignity, treat exceptional personal circumstances — terminal illness of a spouse, imminent death, bereavement — as potentially decisive factors in bail determinations. The discretion vested in courts by Article 23(6)(a) is not a licence for moral indifference; it

[31]The jurisprudential vacuum identified here reflects what Busingye Kabumba has called "the trap of black-letter law": see Busingye Kabumba, "The Trap of Black-Letter Law: Decolonising Legal Education and Practice in Uganda" (Working Paper, Makerere University School of Law, 2019) (on file with author). See also Isaac Christopher Lubogo, *Ubuntu and the Law in Uganda* (n 1) ch 2, for an extended argument that Ugandan legal culture remains structurally positivist despite the Constitution's transformative aspirations.

[31]On inherent jurisdiction as a tool for filling statutory gaps, see *R v Central Criminal Court, ex parte Randle and Pottle* [1991] 1 WLR 1087 (QB); *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 (HL). In the Ugandan context, the High Court's inherent jurisdiction under the Judicature Act (Cap 13), s 16 empowers it to "prevent abuse of the process of court and to secure the ends of justice." This provision is the constitutional anchor for compassionate release orders.

[32]Lubogo (n 1) ch 4, developing the Ubuntu Interpretive Principle (UIP) as operating across three domains: interpretive obligation, domain-specific constitutional standards, and relational remedies. The UIP is argued to require no constitutional amendment, operating instead through purposive interpretation of existing provisions.

is a mandate for contextual, dignity-respecting judgment.[33] Comparative authority from South Africa — particularly *S v Singo* — establishes that bail provisions that fail to account for personal circumstance may themselves be constitutionally deficient.

B. Temporary Compassionate Release through Inherent Jurisdiction

Where no statutory provision exists, courts must invoke their inherent jurisdiction under s 16 of the Judicature Act to order temporary compassionate release in cases of demonstrated need.[34] This power — long recognised in common law systems — exists precisely to prevent the mechanical application of statute from producing results that "no reasonable legislature could have intended." Its invocation in the Mufumbiro-type case is not judicial overreach: it is judicial responsibility.

C. Reinterpretation of Judicial Discretion

Discretion, properly understood, is not a mechanical grant of power — it is an ethical obligation.[35] Dworkin's account of law as integrity demands that courts seek the best interpretation of legal materials, having regard to both fit and justification. The best interpretation of Uganda's constitutional bail framework — one that takes seriously Articles 24, 44(a), and the National Objectives — is one that admits compassion as a structural component of discretion, not a private sentiment to be excluded from legal reasoning.[36]

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[33] On humanitarian bail doctrine in comparative law, see *R (on the application of B) v Stafford Crown Court* [2006] EWHC 1645 (Admin); *S v Singo* 2002 (4) SA 858 (CC) paras 28–33, where the Constitutional Court of South Africa found that bail provisions failing to account for personal circumstance were inconsistent with constitutional dignity. See also African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003) Principle M(1)(d).

[34] Judicature Act (Cap 13) (Uganda), s 16. The inherent jurisdiction of the High Court is of ancient common law origin and survives statutory codification as an independent source of curative power: see *Connelly v Director of Public Prosecutions* [1964] AC 1254, 1301 (HL) (Lord Morris): "There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction."

[35] Klare (n 6) 150–153; see also Theunis Roux, "Transformative Constitutionalism and the Best Interpretation of the South African Constitution" (2009) 20 *Stellenbosch Law Review* 258. On ethical adjudication as distinct from mechanical application, see Dworkin (n 6) 225–258 ("Law as Integrity"); cf Karl Llewellyn, *The Bramble Bush: The Classic Lectures on the Law and Law School* (Oxford University Press 2008) 13–25.

[36] On living constitutionalism in the African context, see Heinz Klug, *Constituting Democracy: Law, Globalism and South Africa's Political Reconstruction* (Cambridge University Press 2000) 89–108; see also Langa CJ (as he then was) in *S v Mhlungu* 1995 (3) SA 867 (CC) para 8: "There is ... a need to ... develop the common law in keeping with the spirit, purport and objects of the Constitution." This mandate applies with equal force to Uganda's constitutional order under art 137.

VIII. THE LUBOGO JURISPRUDENTIAL ON GOING THESIS

A legal system that cannot bend for grief will eventually break under the weight of its own inhumanity.

The Mufumbiro tragedy is not an anomaly. It is a symptom — a diagnostic event that reveals the structural pathology of a legal system that has internalised positivism's separation of law and morality without developing a countervailing moral grammar sufficient to the demands of justice.[37] Oloka-Onyango, whose sustained scholarly engagement with Ugandan constitutionalism spans more than three decades, has documented how this pattern — the retreat into procedural and technical reasoning at precisely the moments of greatest constitutional consequence — has come to define the operating culture of Uganda's courts. The Mufumbiro case is a refinement, not a departure, from that documented tendency.

Legal positivism without moral infusion produces what Judith Shklar called "institutional cruelty": the infliction of suffering, not through malice, but through the indifferent application of rules.[38] Procedure without empathy produces legitimacy deficits — a progressive erosion of the public's confidence that the law, even when correctly applied, is just. A legal system that accumulates legitimacy deficits does not merely fail individual litigants: it undermines the constitutional project of which it is the instrument.

Ubuntu is the corrective. Not as sentiment. Not as cultural nostalgia. But as a rigorous, normatively complete jurisprudential framework that provides courts with the interpretive tools to honour human dignity in the full range of its relational, communal, and personal dimensions.

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[37]Kabumba (n 26). On the concept of "moral infusion" in positivist systems, see Jules Coleman, "Negative and Positive Positivism" (1982) 11 *Journal of Legal Studies* 139; cf Michael Moore, *Educating Oneself in Public: Critical Essays in Jurisprudence* (Oxford University Press 2000) 113–137.

[38]Shklar (n 14) 39–50. On procedural justice and legitimacy deficits, see Tom R Tyler, *Why People Obey the Law* (Princeton University Press 2006) 162–178; Waldron (n 14) 45–60. Legitimacy deficits arise when legally correct outcomes are perceived as fundamentally unjust, thereby eroding public confidence in the legal system.

IX. TOWARD REFORM: FROM TRAGEDY TO TRANSFORMATION

The following reforms are advanced as jurisprudentially necessary and constitutionally available.

1. Judicial Recognition of Ubuntu as a Constitutional Interpretive Principle

The Supreme Court of Uganda should, in an appropriate case, authoritatively recognise Ubuntu as a binding interpretive principle — not a decorative value — governing the application of constitutional rights, particularly Articles 24, 26, 29, and 44.[39] Such recognition requires no constitutional amendment and follows naturally from a purposive reading of the text and structure of the Constitution.

2. Legislative Intervention: Compassionate Release Provisions

Parliament should enact amendments to the Prisons Act 2006 and the Criminal Procedure Code Act to provide expressly for temporary compassionate release in cases of terminal illness or death of an immediate family member of a remand prisoner.[40] Comparative models from Kenya (Prisons (Amendment) Act 2019) and South Africa (Correctional Services Act 111 of 1998, s 69) provide instructive legislative templates.

3. Judicial Training and Institutional Embedding of Ubuntu

The Judicial Training Institute should incorporate Ubuntu jurisprudence into its curriculum for judicial officers, ensuring that compassionate reasoning is recognised as a component of judicial excellence rather than a departure from it.[41] Judicial training should address the practical operation of humanitarian bail principles, the

[39]On judicial recognition of ubuntu as a formal constitutional value, see Mokgoro (n 19) 18–22; see also *Bhe v Khayelitsha Magistrate* [2004] ZACC 17; 2005 (1) SA 580 (CC) para 163, where ubuntu was invoked to invalidate customary male primogeniture in intestate succession. The Ugandan equivalent might be developed through purposive interpretation of the National Objectives and Directive Principles of State Policy.

[40]The call for legislative reform is supported by comparative models: Prisons (Amendment) Act 2019 (Kenya), s 31A (compassionate temporary release); Correctional Services Act 111 of 1998 (South Africa), s 69 (medical parole and compassionate release). Uganda's Prisons Act 2006 contains no analogous provision and requires urgent legislative attention.

[41]On embedding ubuntu in judicial training, see International Commission of Jurists, *African Courts and the Human Rights System: Assessing Opportunities and Challenges* (ICJ 2018) 67–73; see also UNODC, *Handbook on Restorative Justice Programmes* (2nd edn, UNODC 2020) 45–62.

exercise of inherent jurisdiction in compassionate release cases, and the integration of dignity-based reasoning across criminal procedure.

4. Human Rights Integration: Aligning Domestic and International Standards

Uganda's obligations under the ICCPR and the African Charter require that the treatment of remand prisoners be consistent with the full recognition of human dignity and the right to humane treatment.[42] Domestic criminal procedure must be interpreted and applied in a manner consistent with these international standards — not as a matter of aspiration, but as a matter of constitutional obligation under Article 45 of the Constitution.

X. CONCLUSION: LAW MUST FEEL

The Mufumbiro case forces Uganda to confront an uncomfortable truth: law that cannot feel cannot truly serve.[43] This tragedy is not merely about one man, one woman, or one family. It is about the soul of the legal system — whether that system is capable of recognising the full human situation of those who pass before it, and of responding with a justice adequate to that recognition.

The question is not rhetorical. It is constitutional. And it admits of an answer.

> *From cold legality to compassionate justice.*
> *From silence to sensitivity.*
> *From law as command — to law as conscience.*

Ubuntu provides the path. Not because it is African — though it is. Not because it is ancient — though its roots run deep. But because it is true: human beings are

[42] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), arts 9 (liberty), 10 (humane treatment of detained persons), 14 (fair trial); ratified by Uganda 21 June 1995. African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 rev 5, arts 5 (dignity), 6 (liberty); ratified by Uganda 10 May 1986. UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (2015) Rules 3, 26.

[43] Lubogo (n 1) ch 7, Recommendation 3: "The Supreme Court of Uganda should, in an appropriate case, authoritatively recognise Ubuntu as a constitutional interpretive principle binding on all courts." See also Isaac Christopher Lubogo, "Ubuntu as Legal Sign: The Semiotics of an African Constitutional Value in Ugandan Law" (forthcoming, *International Journal for the Semiotics of Law*) — arguing that ubuntu operates semiotically as a jurisprudential signifier, investing constitutional text with relational meaning unavailable to purely positivist readings.

constituted by their relationships; justice must be adequate to that constitution; and a legal system that forgets this truth will, in moments like Mufumbiro's, betray the very humanity it exists to protect.

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FINAL PROPOSITION

Ubuntu must cease to be a passive cultural echo and become an active judicial force —
for in moments like Mufumbiro's, it is not law that is tested,
but humanity itself.

— Isaac Christopher Lubogo[44]
Kampala, April 2026

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Uganda People's Defence Forces Act 2005 (Uganda)

Correctional Services Act 111 of 1998 (South Africa), s 69

Prisons (Amendment) Act 2019 (Kenya), s 31A

B. International Instruments

[44]Ramose (n 5) 50: "Ubuntu is simultaneously the foundation and the edifice of African philosophy." The final proposition of this article builds on Ramose's insight to argue that ubuntu's philosophical comprehensiveness equips it to serve as a living constitutional principle — not a static cultural artefact. See also Metz (n 5) 550–551; Gyekye (n 18) 74–76; Cornell and van Marle (n 5) 207–210.

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