

UGANDA / JUDGMENT

Agaba Lauben v Attorney General (Complaint UHRC 159 of 2009) [2018] UGHRC 2 (21 June 2018) [2018] UGHRC 2

COURT

Uganda Human Rights Commission

BEFORE

Stephen Basaliza - Commissioner

CASE / FILE NUMBER

Complaint UHRC 159 of 2009

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**THE REPUBLIC OF UGANDA THE UGANDA HUMAN RIGHTS COMMISSION (UHRC)
TRIBUNAL HOLDEN AT KAMPALA COMPLAINT NO: UHRC/159/2009 AGABA
LAUBEN::::::::::::::::::::::::::::::::**

\$-\$ AND-

ATTORNEY GENERAL::::::::::::::::::::::::::::::::

DECISION

Agaba Lauben lodged this complaint alleging that on 4th August 2009 at around 6:30 a.m. he was arrested at Kabalagala Police Station on allegations of theft. That he was detained at the Station until 26th October, 2009 when he was taken to court and released on bail. That while at Kabalagala Police Station, the Rapid Response Unit (RRU) officers occasionally got him from Kabalagala Police Station and took him to RRU Kireka where they beat him with a baton on the ankles, knees and back resulting into serious body injuries. The Complainant sought compensation for the violation of his right to personal liberty and the right of freedom from torture or cruel, inhuman and degrading treatment or punishment.

The Respondent being represented by Ms. Adong Imelda denied the allegations and opted for putting up a defense.

Issues:

At the commencement of the Tribunal hearing, the following issues were framed and agreed upon by the both parties

- 1. Whether the Complainant's right to freedom from torture or cruel, inhuman and degrading treatment or punishment was violated by the Respondent.
- Whether the Complainant's right to personal liberty was violated by the Respondent.
- Whether the Respondent is vicariously liable
- Whether the Complainant is entitled to any remedies.

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The summary of the Tribunal hearing.

Before I consider and determine the aforementioned issues, I wish to briefly give a background of the hearings leading to this decision.

The Tribunal heard this matter with in nine sessions, the first hearing was held on 21st March, 2014. The Complainant was absent since he was serving a sentence at Luzira Prison related to the case and therefore Counsel for Commission prayed for an adjournment to allow Complainant be able to appear. The adjournment was granted. The second hearing was held on 29th August 2014. The Complainant being present testified and was cross examined by Respondent Counsel Ms. Imelda Adong. CW2 Nturanabo Winnie also testified but Respondent Counsel chose to cross examine her at the next hearing sinec she did not have the required documents. The matter was therefore adjourned. At the third hearing held on 22nd September, 2014, the matter was coming up for cross examination of CW2 but how ever Respondent Counsel Ms. Akello Susan informed Tribunal that counsel in personal conduct Imelda Adong was attending to a matter in the Commercial court and so could not proceed. She therefore prayed for an adjournment which was granted. At the fourth hearing held on 4th December, 2014, the matter was adjourned to next tribunal since Counsel in personal conduct Imelda Adong was appearing before the High Court at Jinja. At the fifth hearing held on 18th February 2015, the cross examination of the Complainant witness did not take place since Respondent counsel in personal conduct was absent attending to official duties. The matter was still adjourned. At the sixth hearing held on 13th April 2015, the respondent representative was absent, the matter proceeded exparte with the expert witness giving evidence. Tribunal directed that should the Respondent fail to turn up at the next hearing, then the matter would proceed to be delivered. The matter was further heard on 9th May 2017. Both parties were absent. The Complainant was appearing before a chief magistrate at Makindye Court having been re-arrested. Respondent counsel did not appear. The matter was therefore adjourned for defence. On 11th October 2017 the matter was adjourned to allow Respondent prepare written submission within two months. At the last hearing held on 9th April 2018, Respondent was not represented though they were dully served. No

submissions had been filed either as from 11th October 2017. Matter was adjourned for decision and it's against this background that this decision has been written.

I will now deal with the agreed issues in the order in which they were presented.

Issue No. 1

Whether the Complainant's right of freedom from torture or cruel, inhuman and degrading treatment or punishment was violated by the Respondent.

The term 'torture' is defined by the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), 1984 as;

"An act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a

confession punishing him for an act he or a third person has committed or suspected of having committed or intimidating or coercing him or a third person for any reason based on discretion of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or any other person acting in an official capacity".

From the definition of 'torture' above, the actions complained of must be deliberate and carry with them an aspect of intent and ill will or malice with the purpose of procuring compliance of some sort.

The Universal Declaration of Human Rights 1948 states under Article 5 that;

"No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Similarly the International Covenant on Civil and Political Rights (ICCPR) 1996 under Article 7, The African Charter on Human and Peoples Rights (ACHPR), 1981 under Articles 4 and 5 is strictly forbid all forms of torture.

Torture is outlawed by Article 24 of the Constitution of the Republic of Uganda, 1995. It is also emphasized in Attorney General Vs Salvatori Abuki Constitutional Appeal No.1/1998 that freedoms enshrined under Article 44(a) of the Constitution are non-derogable which include freedom from torture or cruel, inhuman and degrading treatment or punishment.

The actions committed against the Complainant would constitute "torture" if the same were proved. As I resolve the issue under my consideration now, I shall take into account the definition of torture as provided under Article 1 of the CAT that I have already cited above. It is pertinent to evaluate the evidence adduced with a view of determining whether the treatment that is alleged to have been meted out on to the complainant by the Respondent's agents amounted to the level of severity that constitutes what would be categorized as torture according to the definition of torture provided under Article 1 of the CAT and also in line with the related conceptualization of torture. If not, then it has to be determined whether the effects of the same actions amount to what is categorized as cruel, inhuman or degrading treatment or punishment. The court in the

case of *Ireland V United Kingdom* (1978) 2* EHRR 25, differentiated torture from cruel, inhuman degrading treatment or punishment by noting that torture requires a deliberate inhuman treatment causing very serious and cruel suffering,' whereas inhuman treatment or punishment involved the 'infliction of intense physical and mental suffering' which reached a minimum level of severity, and degrading treatment required 'ill-treatment designed to arouse in victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance.

In this respect therefore, I shall evaluate the evidence to determine whether the four important ingredients and contours that are identifiable in the CAT definition and the current international concept of torture are proved by the evidence adduced. In order to determine whether the actions a person was subjected to amount to torture or not, four significant questions have to be answered in the affirmative. The definition of torture in Article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984 as comprises of four important ingredients namely;

- Actions of torture caused severe pain and suffering to the victim both physical or mental,
- Actions of torture were intentionally inflicted on the victim,
- Intention was to obtain information, or for punishment, or intimidation or coercion, as for any reason based on the discriminating of the victim, and
- Actions were committed by or at the instigation of a public official or another person acting in an official capacity. Also see (*Fred Tumuramye Vs. Gerald Bwete And Others*, UHRC/264/1999).

First and foremost on whether actions of torture caused severe pain and suffering to the victim both physical and mental. We have to establish whether the actions meted out onto the Complainant amounted to either torture or to a lesser offence of cruel, inhuman and degrading treatment. The Special Rapporteur 1986 report on Torture or cruel, inhuman and degrading treatment or **punishment** includes a listing of the types of actions that constitute torture. Some of the acts on the list are acts of commission, such as beating, burning, and suspension in water, among others. Also taken into account are other factors for instance the nature of the harm caused. According to a Journal by David Weissbrodt and Cheryl Heilman of University of Minnesota Law School on Defining Torture and Cruel, Inhuman, and Degrading Treatment, in order to establish torture you have to consider the severity of the resulting harm. The minimum level of severity is relative, depending on the circumstances of the case. In an approach that originated with the European Commission and Court of Human Rights, international bodies have held that the harm suffered must attain a minimum level of severity to constitute torture or inhuman or degrading treatment. Both the African Commission on Human and Peoples' Rights and the Inter-American Commission have adopted the European Court of Human Rights' conclusion that the minimum level of severity "depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the victim's age, sex and state of health. David Weissbrodt writes that a number of tribunals have also

used the degree of suffering to distinguish between conduct constituting torture and that constituting cruel, inhuman, or degrading treatment or punishment. To constitute torture, according to these tribunals, conduct must result in severe physical or mental pain or suffering. That severe harm may be either physical or mental, and in many cases, both types of harm are alleged and supported by medical or other corroborating evidence.

It was Complainant Agaba Lauben's (CW 1) testimony that he was arrested on 28th August 2009 when he had gone to Kabalagala Police Station after his boss had reported to police that he stole her money. He added that police detained him from 28th August 2009. He added that while in detention, he was beaten as he was being asked for money by a one Panwa George a policeman dressed in khaki uniform. That the following day 29th August 2009 he was taken to RRU Kireka where he was beaten

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by a one Magala and another Alex Kanywanuseyi. That the men who beat him at RRU were police men.

In his testimony he further narrated;

"They beat me on the head where I have a scar. My elbow was burnt. I was, beaten on the knees and behind my legs. They used batons and also pliers to remove my nails which affected my hands. They wanted me to tell them about the money and I told them I do not know. I was kicked on the stomach and I don't function well".

Upon cross examination by counsel for the Respondent Ms. Imelda Adong, the Complainant stated that he was treated at ACTV for wounds due to torture. That he started treatment after getting bail. He confirmed that he was beaten by a one Mr. Magara and Alex Kanywanuseyi who are police men.

(CW2) Winnie Nturanabo corroborated the Complainant's testimony. She stated that in 2009 but on a date she doesn't recall, Lauben was arrested at Kabalagala Police Station. That when she visited him, he was in bad condition. She further stated that she took him drugs but was not allowed in to see him. That he informed her that while at Kireka he was always beaten.

In further corroboration is the testimony of Dr. Immaculate Idraku (CW3) the expert witness apart timer at ACTV and also at AAR interpreted the Medical Report and also examined the Complainant. She stated that she had been working with torture cases for five years. That this was a case presented with all clinical signs and with features related to torture. The patient complained of pain at the back, shoulder pain, pain on both knee joints and pain on the jaw. She further stated that she looked at his general appearance though was not limping but was sad. That he had good nutrition at that time and that he looked younger than what he told me 17 years. That she estimated him to be around 14 -15 years. She further stated that on examination she was not able to see the bruises or scars but when she touched there was tenderness. Systemic examination of abdomen, chest, heart, brain were all okay. That when she tried to assess the sadness, he had signs of suicidal ideas as he told her he felt frustrated and did not know where to

start new life from, that he felt useless. She concluded and made a diagnosis of severe soft tissue injury. That he also had anxiety disorder, the severe soft injuries were on the knee, shoulder and back, he had dental issue or oral injury that was painful. That the dentist gave treatment of Zerodol Ampiclox-pain killers and antibiotic respectively. That he came back twice and complained of chest pain. She added that they recommended physiotherapy and breathing exercises. She also stated that the last time she saw him was in March 2012 and he was in a tearful mood. That the Complainant then informed her that he was still undergoing counseling exercise. That he was still having anxiety disorder that needed to be addressed. The medical report was tendered in as evidence and marked Exhibit No. III.

It is an established principle in the case of **Aksoy Vs Turkey**, (1195) 21 EA 573, in which the European Court held that:

"Where an individual is taken into Police custody in good health but is found to be injured on release, it is incumbent on the Police authority to provide a plausible explanation as to the cause of the injury, failing which a clear issue arises".

The Complainant in the instant case did complain about any ailment or injuries prior to the arrest and eventual detention. Nobody mentioned so. It is worth noting that the Respondent never called any witnesses. The Complainant did allege that he sustained injuries and suffering constituting a clear issue to which the Respondent was required to respond but which they omitted to do. The Respondent waived their right to defend this matter which renders the Complainant's evidence wholly solid and largely unchallenged. In **Edeku Vs Attorney General**, (1995) XL KALR 24 the position was that once contentious issues asserted by the complainant or the plaintiff in a case are not challenged and disproved by the evidence adduced by the witnesses of the respondent or defendant in rebuttal, then such issues must of necessity be deemed to have been admitted by the respondent or defendant. Gathering from evidence brought forward by the Complainant, I accordingly find that this ingredient has been proved.

Regarding the second ingredient of whether the actions of torture were intentionally inflicted on the victim. The Special Rapporteur of the U. N. Commission on Human Rights has indicated that "the requirement of specific purpose seems to be the most decisive criterion which distinguishes torture from cruel or inhuman treatment. In order to constitute torture, an act must have been committed deliberately and for a prohibited purpose. The Convention Against Torture lists illustrative examples of the types of purposes indicative of acts constituting torture, including: obtaining from [a detainee] or a third person information or a confession, or punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing [a detainee] or a third person, or for any reason based on discrimination of any kind. The Complainant testified that;

"I was beaten while being asked for the stolen money by Panwa George policeman in khaki uniform."

This clearly indicates that the Complainant was being beaten purposely to coerce him into giving up the money he was suspected of having stolen. This is indicative of the fact that the acts of beating, were purposely inflicted onto the Complainant to put him under pressure to submit to the officer's demands. The second ingredient has also been proved.

Moving on to the third ingredient of whether the intention was to obtain information, or for punishment, or intimidation or coercion, as for any reason based on the discriminating of the victim, it is answered in the affirmative as the Complainant has stated that while he was being beaten, the officers wanted him to tell them about the money to which he told them that he did not know. This is indicative enough that the beating was for both intimidation as well as punishment purposes.

Lastly on the fourth ingredient of whether the actions were committed by or at the instigation of a public official or another person acting in an official capacity. This is also answered in the affirmative too as the Complainant has testified that while in detention he was beaten and while being beaten, a one Panwa George policeman dressed in khaki uniform kept asking for the stolen money. He added that when he was taken to RRU Kireka, he was beaten by a one Magala and another

Alex Kanywanuseyi who are police men. These are government agents by virtue of their employment in the Uganda Police Force.

Notwithstanding, having carefully considered the evidence adduced by the Complainant above in line with the four ingredients constituting torture. I find that the Complainant's evidence which was uncontested is on a balance of probabilities sufficient to prove that he was tortured by the government agents.

Issue no. 2

Whether the Complainant's right to personal liberty was violated by the Respondent.

The right to personal liberty is guaranteed and protected by International, Regional (African) and National Human rights laws, all of which provide for it as a positive right that can only be limited under the condition prescribed by law. This kind of guarantee and protection is provided for under Article 3 of the Universal Declaration of Human Rights (UDHR) of 1948, Article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR) of 1976, and Article 6 of the African Charter on Human and Peoples' Rights (ACHPR) of 1981, all three instruments that have been signed and ratified by Uganda thus, binding itself with their provisions. The provision in the ICCPR for example, states that "everyone has the right to liberty and security of person" and that "no one shall be subjected to arbitrary arrest or detention". It also adds that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as established by law".

In **Makomberedze vs Minister of state (security) [1987] LRC (Const) 504**, per Ebrahim. J. The right of the individual to liberty was described by the High Court of Zimbabwe as one of the Pillars of freedom in a democratic society. The Constitution of Uganda of 1995 under Article 23 (4) (a) and (b) also similarly protects and guarantees the right to personal liberty as a positive right to be enjoyed by everybody. Article 23 (4) (b) of the Constitution requires that anyone arrested and/or detained on suspicion of having committed or about to commit an offence under the laws of Uganda must, if not earlier released, be brought to court as soon as possible but in any case, not later than forty-eight (48) hours from the time of his or her arrest. The same requirement is also specifically and explicitly provided for under Section 25 (1) of the Police Act Cap 303, which is an Act governing the Uganda Police Force.

Specifically, Article 23 (1) (c) provides that a person's right to personal liberty can be deprived for purpose of bringing that person before a court in execution of the order of a court **or** upon reasonable suspicion that the person has committed or is about to commit a criminal offence under the laws of Uganda. In **Wintwerp V The Netherlands (1979-80) 2 HRR 387** it was stated that no one may be deprived of his or her liberty save in a limited number of circumstances which must be in accordance with a procedure prescribed by law.

The Constitution prescribes the circumstances in which it may be derogated from. It is a positive right whose denial or removal or interference must be justified. And any justification for an interference with the right must be within the exceptions outlined under the Article. The meaning is that any deprivation of personal liberty outside these prescribed cases results in a violation of the right to personal liberty. Article 23 \$(2)\$, \$(4)\$ and \$(5)\$ prescribe procedural guarantees for the right violation of which also constitutes a violation of the right to personal liberty. In addition, the Article prescribes in detail how a person arrested or detained should be dealt with. These procedural requirements must be respected and complied with as they are important guarantees for the right to liberty. Specifically Article \$23(4)\$ (b) is to the effect that;

"A person arrested or detained upon reasonable suspicion of his or her having committed a criminal offence under the laws of Uganda, shall, if not earlier released, be brought to court as soon as possible but in any case not later than 48 hours from the time of his or her arrest".

According to Richard Clayton & Hugh Tomlinson: The Law of Human Rights, Volume 1 at pg. 455

'The Tort of false imprisonment is committed by someone who intentionally subjects another to total restraints of movement either by actively causing his confinement or preventing him from exercising his privileges of leaving the place where he is. Any interference with liberty is unlawful unless the person responsible for the imprisonment can show that it is justified'

Thus in the absence of adequate facts or information supporting the basis for reasonable suspicion, detention will be unjustified.

In the case of *Erau Stephen vs Oryem D/SP& Ors UHRC No. 397/1999*, the complainant was detained partly for two days at a military police barracks on suspicion that he was a deserter of the army. On the question as to whether it amounted to unlawful detention as to violate the complainant's rights to personal liberty, Commissioner J. M Aliro Omara held that Erau was lawfully detained in the barracks. He, however, added that his detention would have been unlawful had he been detained for more than 48 hours.

It therefore follows from the above that detention for whatever reason should not exceed 48 hours before producing such a person before courts of law or releasing that person.

Therefore the question to answer is does the evidence before the Tribunal support the case that the Complainant's personal liberty was violated?

First and foremost in considering whether a person's personal liberty has been violated several questions are pertinent. Answers should be sought to questions like:-

\$(a)\$ Whether the person in question was actually arrested or detained \$(b)\$ Whether upon the arrest or detention the procedural requirements under Article 23 were complied with and

Whether the arrest or detention was permissible under clause \$(1)\$ (a) to (h) Article 23. \$(c)\$

The Complainant Agaba Lauben testified that he was arrested on 28th August 2009 when he had gone to Kabalagala Police Station to make a statement since his boss had reported to police that he had stolen her money. That he was detained at the Police Station from 28th / ^{sup} August 2009. He further stated that the following day 29th / ^{sup} August 2009 he was taken to RRU Kireka. He added that he spent two and half weeks in RRU and then I was taken back to Kabalagala cells for the months of September and October.

However it should be noted that there are inconsistencies concerning the exact date the Complainant was actually arrested and released. The Complainant testified that he was arrested and detained 28th / ^{sup} August 2009. The certified copy of the lock up register marked I. D I indicates that the Complainant was booked in on 2nd / ^{sup} October 2009 on allegations of theft vide SD ref no. 17/23/09/09 up to 11th / ^{sup} October 2009 when he was taken to court. In the case of *Mujuni Vs Uganda HCT-04-CR-CN*. Hon. Justice Stephen Musota stated that the law now governing inconsistencies or a discrepancy is that grave inconsistencies if not satisfactorily explained will usually result in evidence of the witness being rejected. He went on to define a grave inconsistency as one that goes to the root of the case. However in the instant matter given that there is a copy of certified lock up register evidencing the Number of days the Complainant was in custody, clearly setting out the dates I will disregard the inconsistency pertaining to the dates due to the presence of the documentary evidence. According to the case of Orhena Adugu and another Vs. Mrs. Ngunan Addingi and Another SCCA No. 193/2012, it was established that documentary evidence is used to test the veracity of evidence whether given orally or by disposition. The question as to whether the Complainant was actually arrested and detained is answered in the affirmative since there is a certified copy of the lock up register from

Kabalagala Police Station indicating that the Complainant by the names of Agaba was booked in on 2nd October 2009 on allegations of theft vide SD ref no. 17/23/09/09 up to 11th October 2009 when he was taken to court. Initially, the arrest was lawful when the Complainant was arrested on reasonable suspicion that he had committed the offence of theft for 48 hours (two days) after which he should have been produced in court but which was not done keeping him in unlawful detention at Kabalagala Police Station for seven (7) days

I accordingly find and hold that on balance of probability that the Complainant's right to personal liberty was violated when he was detained for a total of Seven days (7) days beyond the prescribed 48 hours, contrary to Article 23 (4) of the Constitution of Uganda.

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Whether the Attorney General (Respondent) is liable for the violations

The principle of law is that once the actions or omissions of the servant have been proved to have been part of the process of the servant's duty for which he was employed, then they render the master liable, even though the same actions or omissions were carried out contrary to the orders or instructions of the master, and even if the servant acted deliberately, wantonly, criminally, negligently, or contrary to the specific instructions or orders of the master, or for his or her own benefit, gain or advantage; as long as what the servant carried out or did was merely a manner of carrying out or doing what that servant was or is employed to do or to carry out (see **Muwonge vs* Attorney General* (1967), (EA) 17; also *Jones Vs Boots Co. Ltd* (1997) ALL ER 40B; and *Komakech Patrick through his next Friend Sabino Kidega And Opio Walter through his next Friend Dominic Atare Vs Attorney General*)

The Complainant stated that he was arrested on 28th August 2009 when he had gone to Kabalagala police station after his boss had reported to police that he stole her money. He added that while in detention, he was beaten as he was being asked for money by a one Panwa George a policeman dressed in khaki uniform. That the following day 29th August 2009 he was taken to RRU Kireka where he was beaten by a one Magala and another Alex Kanywanuseyi. He further added that the men who beat him at RRU were police men.

Accordingly, in respect to the issue of liability, I must consider Article 119 of the Constitution of Uganda, which provides for the functions of the Attorney General to include among others, to represent the Government of Uganda in courts or any other legal proceedings to which the Government is a party. The perpetrators of these alleged violations are employed under the Uganda Police Force whose mandate is to protect life, property and other rights of the individual as provided for under Section 4 of the Uganda Police Force. Cap 303. For this reason, the Attorney General was rightly identified and summoned as the Respondent in this case.

It therefore follows that the Attorney General is vicariously liable for the violation of the Complainant's two rights as already established and ruled in the foregoing discussion of issues numbers \$1\$ and \$2\$.

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Whether the Complainant is entitled to any remedies.

Article 50 (1) of the Constitution provides for effective remedies to be ordered by competent national tribunals for victims whose fundamental rights granted to them by the same Constitution have been violated. In addition to this, under Article 53 (2) the Constitution also gives powers to the Uganda Human Rights Commission, and therefore to this Tribunal, to order payment of compensation or any other remedy or redress, where it has been satisfied that there has been an infringement on anybody's

human right or freedom. I shall therefore now invoke these powers. I shall therefore proceed to assess compensation in respect of the two issues of contention on which I have already ruled.

In order to determine suitable quantum of the damages to be awarded for the violations under consideration, I shall consider the following important elements:

- The specific nature of the violation already proved to have been committed by State \$a)\$ agents.
- \$\mathbf{b}\$) The constitutional status of the specific right that has been violated: whether positive and subject to limitation under the relevant laws, or absolute and non-derogable.
- \$c)\$ The fact that the Complainant was acquitted by court after having been found to have not committed the alleged crime for which he had been arrested by Police.
- \$d\$) Previous awards in cases or complaints similar to the instant one.
- The value of the money to be awarded for damages, taking into account its purchasing \$e)\$ power under the current national economic conditions; as well as the time lag from the time when the violation was committed up to the time of making this decision; and
- \$\mathbf{f}\$) The capacity of the Respondent to pay the awarded damages, taking into account the current national economic conditions and overall government revenue status.

a) Violation of the right of freedom from torture or cruel, inhuman or degrading treatment or punishment

In respect to this issue the Complainant has also proved to the satisfaction of the Tribunal that on balance of probability that his right of freedom from torture or cruel, inhuman and degrading treatment or punishment was violated by the Respondent's agents. He is therefore also entitled to recover from the Respondent compensation by way of damages.

In determining the quantum of the said compensation, I will take into consideration the nature of injuries he suffered and the fact that freedom from torture is a non-derogable right.

The Complainant testified that,

"They beat me on the head and I have a scar my elbow was burnt. I was, beaten on the knees and legs. They used batons and also pliers to remove my nails which affected my hands."

Dr. Immaculate Idraku (CW3) testified that when she examined the Complainant, she made a diagnosis of severe soft tissue injury. That the victim also had anxiety disorder, the severe soft injuries were on the knee, shoulder and back, he had dental issue or oral injury that was painful. That the dentist gave treatment of Zerodol Ampiclox- pain killers and antibiotic respectively. That the Complainant came back twice and complained of chest pain. She added that they recommended

physiotherapy and breathing exercises. She also stated that the last time she saw him was in March 2012 and he was in a tearful mood. That the Complainant then informed her that he was still undergoing counseling exercise. That he was still having anxiety disorder that needed to be addressed. That he seemed suicidal as he had no idea where to start from afresh. This all indicates that in addition to the physical torture, the Complainant suffered psychological torture.

Considering the principle that the basic purpose of damages is to put the victim in the position he would have been had he not suffered the wrong. (See Dr. Denis Lwamafa -v- Attorney General C/S No.79/1983; George Paul Emenyu & Another \$-v\$ - Attorney General 109/1994 VK) and also taking into account the current economic situation characterized by inflation and skyrocketing poverty, and going by the principle in the case of *Matiya Byabalema And Others Vs Uganda Transport Company, SCCA, 10/193*, in which His Lordship Justice Odoki JSC held that:

"Courts ought to assess the amount of damages taking into account the current value of the money in terms of what goods and services it can purchase at present".

Having taken into account all the above factors, and the general anguish the Complainant was subjected to I deem that a figure of Ug. Shs \$6,000,000/\$ = (Six million Shillings) adequate compensation for the violation of the Agaba Lauben's right to protection from torture or cruel, inhuman and degrading treatment or punishment.

b) Violation of the right to personal liberty

I have already ruled that the Complainant's right to personal liberty was violated for a total of seven days. In the case of *Matiya Byabalema And Others Vs Uganda Transport Company, SCCA, 10/193*, in which His Lordship Justice Odoki JSC held that:

> "Courts ought to assess the amount of damages taking into account the current value of the money in terms of what goods and services it can purchase at present".

In the case of *Agaba Bernard Vs. Attorney General UHRC(2008-2011)* Commissioner Fauzat Mariam Wangadya held that the complainant was entitled to compensation for violation of his right to personal liberty and that it was the practice of the Tribunal to award U. Shs \$2,000,000=(Uganda)\$ Shillings Two Million) for every seven (7) days of unlawful confinement.

I therefore deem a figure of, UGX. Shs.2, 000,000/= (Uganda Shillings Two million shillings) adequate general damages for the violation of the Agaba Lauben's right to personal liberty

ORDER

- $\$1$. The complaint is allowed.
- $\$2$. The Attorney General (the Respondent) is ordered to pay to the Agaba Lauben, a total of Shs.8, 000,000/= (Uganda Shillings Eight million only) as damages broken down as follows:
- General damages for the violation of his right to personal liberty $\$2$, \$000,000/=
- $\$b$) General damages for the violation of his right to freedom from torture or cruel, inhuman and degrading treatment or

Punishment

TOTAL

Shs. \$8,000,000/=

Shs. \$6,000,000/=

Interest at the rate of 10% per annum to be paid on the total amount of Shs. 8,000,000/= $\$3$.

(Uganda Shillings Eight million only) calculated from the date of this decision until payment in full.

$\$4$. Each party to meet their own costs.

Either party may appeal to the High Court of Uganda within thirty (30) days from the date of this decision if not satisfied with the decision of this Tribunal.

..... DATED at Kampala this...

Signed:.

STEPHEN BASALIZA (PRESIDING COMMISSIONER)

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