

UGANDA / JUDGMENT

Agaba v Attorney General (Complaint No: UHRC/ FPT/52/2012) [2022] UGHRC 20 (1 January 2022)

[2022] UGHRC 20

COURT

Uganda Human Rights Commission

BEFORE

Shifrah Lukwago - Commissioner

CASE / FILE NUMBER

Complaint No: UHRC/ FPT/52/2012

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**THE REPUBLIC OF UGANDA THE UGANDA HUMAN RIGHTS COMMISSION (UHRC)
TRIBUNAL HOLDEN AT FORTPORTAL COMPLAINT NO: UHRC/ FPT/52/2012 AGABA
CHARLES::: COMPLAINANT AND ATTORNEY
GENERAL ::::::::::::::::::::::::::::::::::: RESPONDENT**

BEFORE HON. COMMISSIONER SHIFRA LUKWAGO

DECISION

The Complainant (C), Agaba Charles alleges that on 20th July 2012 at around 2:00 a.m, he was arrested from his home by a one Bumali Joseph, the defense secretary of Kabuhango Village who was accompanied by Police Officers attached to Buhesi Police Post on the allegation of theft. That during his arrest, he was beaten on the back, arms and legs and also kicked on the stomach. That he was thereafter taken to Buhesi Police Post together with his brother a one Bright Joseph and detained. That he (Agaba) was released on 23rd July 2012.

C therefore prayed to the Tribunal to order the Respondent (R) to pay him compensation for the violation of his right of freedom from torture or cruel, inhuman or degrading treatment or punishment by State agents.

R who was represented by three counsel (RC's) namely Ms. Asiimwe Phiona Bamanya, Mr Kawalya Ronald and Mr. Rwamwama Mannington denied liability and opted for putting up a defense in the matter. However, the aforementioned R's representatives only cross examined C and his three witnesses. No defense case was put up to rebut C's allegations as had been initially suggested by R's side. R's counsel also suggested for the filing of submissions in absence of the defense but the same was unfruitful.

The Issues that have to be resolved by this Tribunal are:

- 1. Whether C's right off freedom from torture or cruel, inhuman or degrading treatment was violated by State Agents.
- 2. Whether (R) Attorney General is liable.
- 3. Whether C is entitled to any remedy.

However, before I determine the above-mentioned issues it is pertinent for me to note that, that this matter was heard by my colleague Hon. Commissioner Katebalirwe Amooti Wa Irumba and it is from his record of proceedings that I have arrived at this decision.

The two Cs were expected to discharge the duty of proving their case against R to the satisfaction of the Tribunal, as required under Section 101 (1) of the Evidence Act Cap 6, which provides that:

Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that the facts exist.

As well as Section 102, which provides that:

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

However, according to **Rule 23(1) of the Uganda Human Rights Commission (Procedure) Rules, 1998**, the standard of proving this claim against R is on a balance of probabilities.

Let me now resolve the aforementioned four issues that have been raised before the Tribunal.

Issue 1: Whether C's right of freedom from torture or cruel, inhuman or degrading treatment or punishment was violated by State Agents.

C, **Agaba Charles** testified that he was 27 years old and working as a casual laborer. That he was married but he separated from his wife of one child. That on a date and month he could not remember at about 2:00a.m, while he was at his home sleeping he heard some people knock on his door and they asked him if he knew the whereabouts of one Rabwogo's goats. That he told the people that he did not know where the goats and where Rabwogo's farm was. That thereafter, two Police officers namely Mashuhuku and Kalenzi attached to Kasusu and Buheesi Police Posts and a one Bumali Joseph the LC1 defense secretary kicked his door entered into his house. That they ordered him to sit down and started beating him using sticks on the legs, ankles and back. That they also kicked him on the stomach and the part which was affected got swollen. That the people

who beat him did not tell him why they were beating him but his wife and sister were in the house when this was happening.

He added that he was thereafter taken outside the house and his wife came out and woke up his father, Isingoma David whose house was in a distance of two meters away from his. That the Policemen took him near his father's house and they told him that if he came out they would shoot him. That they walked from his home from 2:00a.m and reached Buheesi Police Post at about 6:00a.m. That he was detained in a cell with other suspects. That he spent four days in detention but he was not feeling well.

He further testified that his mother Basemera Agnes visited him at the Police Post and paid 50,000= for him to be released. That his mother visited him three times on the first, second and last days while he was detained. That he was released on Police bond and he was told to keep reporting but he did not because he fell sick and went for treatment at Fort Portal Regional Referral Hospital.

C added that when he was in the hospital, the doctor informed him that his kidneys got damaged. That he went to hospital because he was feeling pain, had wounds on his elbows and his forehead and left side of the stomach were swollen. That he went with his father to the hospital. That he was in poor health condition because he could not bend. That the doctor told him that he sustained internal injuries and that any time they would operate him. That on that day, the doctor gave him some tablets and also filled a medical form.

The medical examination report was admitted with the consent of RC as CX2.

The release on bond from Buheesi Police Post was admitted with consent of RC as CXI.

During cross examination, C clarified that when the incident happened, he was 15 years old. That only one year had passed since he married his wife. That they together had one child. That Bright Joseph was his brother with who he was arrested. That when he (C) was arrested Bright was at his own home. That when the door of his house was kicked and opened, the Police Officers entered. That they had left maize on the fire so the officers ate it. That they also took a bunch of bananas alleging that it could also have been stolen. That the total number of Police officers who arrested him were ten of which eight were armed with guns. That all Police Officers were wearing khaki Police uniforms except the LC¹ defense secretary who was wearing black clothes. That only three people that is two Police Officers (Mashuhuku and Kalenzi) and Joseph Bumali (defense secretary) beat him because other Police officers went to arrest other people.

He further clarified that his brother Bright was arrested on suspicion of defiling a school girl. That at the point when he (C) was taken to his father's house, he did not find him outside. That it was his wife who went to wake him up after they (the Police officers and himself) had passed by his house. That his father did not see him being taken by Police Officers but he was in his house. That he only made an alarm and cried when he was still at his house but not on the way to Buheesi Police Post.

He also stressed that he personally heard with his own ears Bumali Joseph the LC1 Defense secretary saying that if his father came out of his house he would be shot. That he was beaten from near his father's house. That his wife visited him at the Police Post on the fourth day on which he was released on. That there were about 24 other people who were arrested on that day. That he was arrested on allegations of theft while the others for playing cards.

He clarified that his father did not visit him in detention because he told him that if he visited him, he would also be detained. That at the Police Post, he was never called to make a statement. That he spent four days in the cell and the Officer in Charge Buheesi Police Post released him on Police bond.

That he went to hospital on the following day after he was released. That the doctor told him that he wanted UGX 200,000= for him to carry out the operation. That he was attended to but he still felt constant pain for which he has to buy himself tablets. That he was not going for regular checkups. That whenever he did heavy work, he could not wake up on the following day.

He also stressed that his wife separated from him because he could not perform conjugal rights because of the beating. That he still has swellings on his left side of the stomach. That the doctor did not tell him about impotency. That he has never reported back to the Police Post and he did not know whether they cancelled the bond. That he used to work before he was beaten which he cannot do now. That he was telling the truth.

CW1, Isingoma David Jack testified that he was married with 10 children and a builder to earn a living. That on a date and month he could not recall in the year 2000 at about 2:00a.m, while he was in his house in Kabuhango village, he heard noise from outside his house. That he woke up and he found C being beaten by uniformed Police Officers and the LC1 defense secretary. That out of the 10 Police Officers that had come to their home, only five were wearing Police uniform. That the other five including the LC1 defense secretary were wearing civilian clothes. That the Police Officers were from Buheesi Police Post but he did not know their names. That he only knew and identified Bumali the LC1 defense Secretary. That several Police officers had torches and he could see all of them. That when the Police officers were beating C, he was lying down on the ground. That they were beating him using sticks and kicks for about two minutes. That during that time, he was standing by watching while C was being beaten. That he told the Police Officers to stop beating him but to instead take him to the Police Post and settle the matter from there.

That as a result of the beating, C sustained injuries on the back and the area next to his private part was swollen. That one the following morning, he went with his wife Basemera Agnes to the Police Post to visit him and found when his back and stomach were swollen. That he visited him twice while he was in detention and also took for him some drugs. That he was given a document so that he could take him to hospital and when they reached, Dr. Shaban examined him. That by the time he took him to hospital, his back, stomach and the upper part of his private parts were swollen. That Dr. Shaban examined him and he told them that C had suffered internal bleeding so he told him to take him for medication. That C got medical treatment from Fort portal Regional Referral Hospital.

During cross-examination, CWI clarified that the distance from his house to C's house was about 40 meters. That he heard him cry while the Police was beating him and he (C) was asking them why they were beating him. That when he reached where C was, he told the Police to take him to the Police Post and then settle the matter on the following day. That he was woken up by the alarm C made and then he left his own house and went to C's house. That he found five Police Officers were beating C using sticks and kicks while the other five Police officers were only watching. That the Police Officers were armed but he did not know their names.

That when he told the Police to stop beating C, they told him to go to Buheesi Police Post on the following day. That when the Police was leaving the scene, they went along with his son walking in a group of around 30 to 40 people. That C was tied together with a one Mathias using ropes.

That the Police officers did not knock at his (CWI) door neither did they walk C to his compound and beat him from there. That after the Police officers had left, he went back to his house and went to the Police Post on the following day. That he requested the Police to release C and the Officer in Charge of Buheesi Police Post did. That the Officer in Charge also gave him two documents on that very day that C was released. That he is the one that stood surety for him. That C was detained from 2:00a.m to 5:00p.m. That after C's release, they boarded a "boda-boda" because he was not feeling well. That C was taken to Hospital and Dr. Shaban told him that he had suffered internal bleeding. That the Doctor filled the form which he returned to the Police Post. That while at hospital, C was given medical treatment but did not fully recover. That C still feels pain and he cannot do any work because the upper part of his private part got swollen. That C was only taken to hospital on the day he was released and taken back home. That apart from services at the hospital, he (CWI) bought more medicine from a clinic.

CW2 Mugarura Jackson testified that he was a Clinical Officer and he has been working with Fort Portal Regional Referral Hospital for the past 26 years. That he held a Diploma in Curative and Community Medicine, a certificate in Clinical Instruction and has been conducting medical training for eight years so far. That he also held a certificate in Crime Prevention.

That his duties at the hospital included general clinical work that is receive patients, record their particulars and ask about their complaints. That he did physical examination and thereafter give patients medical examination form to take them back where they got them from.

That in 2012, he examined C at Fort portal Regional Referral Flospital and he was complaining that he was injured. That he saw C once very briefly but he could not remember his face.

He interpreted the medical examination form dated 7lh October 2012 which was issued by Buheesi Police Post to Fort portal Regional Referral Hospital in respect to (C) Agaba Charles whom he physically examined. That he also took his particulars and history and C stated that he was injured four days ago by the defense secretary LC1 while he was looking for a matooke thief. That C was beaten at 2:00a.m had a swelling on the chest of about two inches wide and another swelling on the left cheek of about two inches too. That C had a swelling on the back of his right knee of about 2x3 inches wide. That he also had swellings on his back. That the injuries could have been caused by blunt objects such as fists and shoe kicks. That the injuries were classified as

harm. That he (CW2) signed the form and stamped it. That the document certified by the hospital administrator on 7th August 2012. That the document he had also worked as medical form 3 because it was the same form that the hospital makes the patient's report.

During cross-examination, CW2 stressed that in the past 26 years of his work, he had handled a variety of forms such as Police Form 3, rape and defilement forms among others. That the form/report presented to the Tribunal was regular.

He clarified that the form was not addressed to him but when it was brought to him at hospital he filled it. That he had the form but it he did not write the sex, name and age of C. That there should be another form where the particulars are written but he did not have it.

He further clarified that he classified the injuries as harm because by the time C reached the hospital and according to the medicine he gave him, the injuries he sustained could heal with minimal implications on his life. That he gave C medication but he did not have the form where the prescriptions were written. That in respect to the form he was filling, he was filling it as a medical document but he did not know where C was taking it. That C did not pay for services at the Hospital.

In re-examination, CW2 clarified that he indeed examined C. That forms such as one that C presented to the Hospital should bear a CRB number, Police Stamp, signature of the Police Officer and offence committed by the suspect. That this information was disregarded because he did not go to the Police. That the hospital took the form as Form 5.

CW3, Bright Joseph testified that he was a builder. That in May 2012 at about 4:00a.m while he was sleeping in his house, A Police Officer called Masubuka from Kabarole called him outside and asked him where C was. That Masubuka was accompanied by about seven armed Police Officers. That when Masubuka knocked on his door, he identified himself but he was accompanied by armed Police Officers who were carrying torches. That he (CW3) was able to see them because the officers were flashing the light in the house. That he was able to recognize the District Internal Security officer, Masubuka, Bumali Joseph and two other people whose names he could not recall. That he knew Bumali because he was from their village. That Masubuka was a security officer as he used to see him around Rwesene where the District Internal Security Officer used to stay.

That he took the Officers to C's home and when they reached, one of them kicked the door of C's house and it fell inside. That four officers entered the house where C and his wife were sleeping and he (CW3) stayed outside. That he did not see what happened inside the house but that he saw one of the Officers push C's head while another officer held his trouser as he kicked him. That C fell down and the Officers started beating him using batons and kicks all over the body without telling him the reason for beating him. That C was weak but he was thereafter handcuffed and taken to Buheesi Police Post. That when they (Police Officers, C and CW3) reached the Police Post, they were detained in the same cell and C was told the reason for his arrest. That he (CW3) was told that he was arrested on the allegation of defilement. That they

were never re-arrested nor taken to court. That after their release, there was never a follow up made on the allegations made against them. That when he (CW3) was released, he found C at home but he was not in good health condition. That he (C) used to go with their father to receive medical treatment. That he (C) is a casual laborer working with Pine Plantations. That he slashes grass in the plantations.

During cross-examination CW3 stressed that he was summoned before the Tribunal as a Complainant. That at the first hearing he did not come because he was very far and by the time he appeared, he had been struck off the complaint. That C was arrested from his home from where he was also arrested from. That he was staying together with C. That they were arrested in May 2012 at around 4:00a.m and taken to Buheesi Police Post where he was detained for two days. That C was detained for one day but was not sure if it was actually four days. That while they were in detention, C was beaten by the DISO, a Policeman called Masubuka and the L. C. I defense secretary.

That as a result of the beating, C's stomach got swollen, was feeling general pain all over the body and breathing with difficulty. That he was present when C was being beaten. That he asked C what was wrong with him because he wanted to know how he was feeling. That it was their mother who brought C medicine. He further stressed that C was not doing well health wise.

R never produced or presented any defense witnesses nor filed submissions in defense despite the several opportunities or adjournments granted for the same.

According to C's evidence, it is clearly revealed that the assault occasioned on him was very severe and it seriously injured his stomach, legs, ankles and the back. All this was done so that he could reveal the whereabouts of Rwabogo's goats. The evidence adduced by CW1 and CW3 clearly reveal that the assault occasioned on C caused him severe pain and suffering which affected his stomach, back and upper part of his private parts. C's evidence was further corroborated by CW3 who interpreted his scientific evidence which confirmed that he indeed sustained the injuries. R's side never rebutted the evidence adduced by C and his witnesses. RC also consented to the admission of C's CX2 before it was admitted by the Tribunal. RCs only cross examined C and his witnesses but did not present any defense witnesses in order to rebut that adduced by C. Moreover, during cross examination, C and his witnesses' evidence was not shaken in anyway especially regarding the fact that he suffered severe injuries on the stomach, back, ankles and upper part of his private parts. The only controversial pieces of evidence in C's witnesses was in respect to when CW3 said that he was staying *I* residing with C at the latter's home yet C mentioned in his testimony that CW3 was staying in his own home. C also said that CW3 was beaten yet the latter stated the contrary. Also C mentioned that he was taken and beaten from near his father's house yet the latter said that it was not true. In any case, these contradicting

pieces of evidence do not go the root of the matter. I shall therefore concentrate on that piece of evidence that largely reveals that C suffered severe pain and suffering at the hands of security agencies.

In the case of **ASKOY VS TURKEY (21987), (1996), ECHR 68(18 DECEMBER 1996)** court held that:

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

Given the fact that there was no explanation offered by R's side to the Tribunal in respect to C's injuries, R failed to discharge the burden of disproving the allegations made against him by C especially regarding the assault occasioned on him by the Police officers.

Accordingly, I must conclude this issue stating that C has on a balance of probabilities proved that he was indeed subjected to severe pain and suffering which was intentionally inflicted on him by the aforementioned State Agents who were carrying out their official duty.

I therefore find that C's right of freedom from torture or cruel, inhuman or degrading treatment or punishment was violated by State Agents.

Issue 3: Whether R (Attorney General) is liable for the violations.

I have already resolved that C1's^s right of freedom from torture or cruel, inhuman or degrading treatment and C2's right of protection from forced labour were violated by the Prison Officers who arrested the two Cs, assaulted C1 and forced C2 to work on the prison farm without his consent. Since the Prison Officers were at the material time carrying out their roles in the service of the State which employed them, I shall adopt the principle that was upheld in the case of **RAILWAYS CORPORATION VS OBWOYA, [1974] E. A 276**), where court held that:

> "An act is said to be done by a^a servant in the course of his employment not only when the servant is actually doing the work which he is employed to do but also, when the act done is an incident in performing something he is employed to do"

Since the State employed the aforementioned Prison officers to do the work assigned to them, liability for the aforementioned violations therefore shifts from them and unto the State, their master and employer. However, according to Article 119(4) (c) of the Constitution of Uganda, the Attorney General has the duty to represent the Government of Uganda in courts of law or any other legal proceeding to which Government is a party. Therefore, in this instant case, R vicariously bears the responsibility for the aforementioned violation of the rights of the two Cs.

Accordingly, again the claims made by the two Cs also succeed in this regard.

Issue 2: Whether C is entitled to any remedy.

Article 53(2) (b and c) of the 1995 Constitution of the Republic of Uganda, provides that the Uganda Human Rights Commission may if satisfied that there has been an infringement of a human right order for compensation to be paid to the victim or order any other remedy or redress. C therefore deserves compensation to be paid to him.

However, as I determine the quantum of the damages to be paid for each of the two aforementioned violations, I shall take into account the case of **MATIYA BYABALEMA AND OTHERS VS UGANDA TRANSPORT COMPANY, SCCA NO 10 OF 1993**, where it was stated that:

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

Let me now consider the compensation to be paid to C.

In determining the damages to be paid in respect of this violation, I am taking into consideration the following factors:

- a) That the right that was violated is non derogable.
- b) The injuries that C sustained were severe.
- c) The age of C at the time, that is 15 years old
- d) Previous case precedents
- e) The value of money and what it can purchase at present.

In the case of **JOHN ALIGAWESA AND WILSON KITYO -AND - ATTORNEY GENERAL, UHRR[2008-2011] 122**, the complainant, John Aligawesa was beaten by Police officers attached to Kampala Central Police Station using batons all over his body and kicked in his private parts. That as a result, his kidneys and private parts got swollen. Wilson Kityo was also arrested and pushed under the Police Patrol car where his legs remained outside and one of the soldiers stamped on his private parts which later got swollen. That this led to an operation and his left testicle was removed. That this also caused him to suffer depression. The Tribunal observed that the acts of the Police officers were oppressive, arrogant, extremely cruel, unconstitutional, barbaric and totally unjustifiable. Aligawesa was awarded UGX 18,000,000/= while Kityo was awarded UGX 25,000,000/= respectively for the violation of their right of freedom from torture or cruel, inhuman or degrading treatment.

In both cases we note that C's injuries are closely related to those suffered by the Complainants in the afore cited case.

Therefore, taking into consideration the value of money and the nature of the right which was violated being non derogable and his age having been a child at the time, I accordingly award to C a sum of UGX 20,500,000/= (Uganda Shillings twenty million, five hundred thousand only) as general damages in compensation for the violation of his right of freedom from torture or cruel, inhuman or degrading treatment or punishment.

I therefore order as follows:

ORDERS:-

- 1. The complaint is allowed wholly.

- 2. R (Attorney General) is ordered to pay to C, Agaba Charles a total sum of UGX 20,500,000= (Uganda Shillings twenty million five hundred thousand only) for the violation of his right to freedom from torture or cruel, inhuman or degrading treatment or punishment.
- 3. Interest at the rate of 10% per annum to be paid on the total sum of UGX 20,500,000= (Uganda Shillings twenty million five hundred thousand only) from the date of this decision until payment in full.
- 4. Each party shall bear their own costs.
- 5. Either party not satisfied with the decision of the Tribunal may appeal to the High Court of Uganda within thirty (30) days from the date of this decision.

So it is ordered.

DATED AT FORT PORTAL ON THIS DAY OF.....2022.

SHIFRAH LUKWAGO PRESIDING COMMISSIONER

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