

UGANDA / JUDGMENT

# Alacu v Attorney General

## (Complaint No: SRT/202/2007)

### [2016] UGHRC 24 (31 October 2016)

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## COURT

Uganda Human Rights Commission

## BEFORE

Meddie Mulumba - Commissioner

## CASE / FILE NUMBER

Complaint No: SRT/202/2007

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**THE REPUBLIC OF UGANDA****THE UGANDA HUMAN RIGHTS COMMISSION (UHRC) TRIBUNAL****HOLDEN AT SOROTI****COMPLAINT NO: SRT/202/2007****ALACU STEVEN::::::::::::::::::::::::::::::::: COMPLAINANT****AND****ATTORNEY GENERAL::::::::::::::::::::::::::::::::: RESPONDENT****[BEFORE HONOURABLE COMMISSIONER MEDDIE B. MULUMBA]****DECISION**

The Complainant Alachu Steven, lodged his complaint with the Uganda Human Rights Commission alleging that on the 19th August 2007, his rights to personal liberty and freedom from torture or cruel, inhuman or degrading treatment or punishment were violated by UPDF officers and policemen attached to Soroti Police Station. That on the fateful day, he was arrested by UPDF soldiers and handed over to the police and taken to Soroti CPS on allegations of murder. That he was beaten all over the body at the time of the arrest by the UPDF soldiers and at Soroti

Police

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Station by the policemen. That he spent one week in detention at CPS Soroti before he was released on Police bond.

The Complainant claims compensation for the violation of his rights to personal liberty and freedom from torture or cruel, inhuman or degrading treatment or punishment.

The Respondent as represented by Ms. Topacho Juliet denied the allegations.

### Issues:

The Tribunal was required to determine the following issues in order to make a decision on the allegations made:

- 1. Whether the Complainant's right to personal liberty was violated by State agents.
- 2. Whether the Complainant's right of freedom from torture or cruel, inhuman or degrading treatment or punishment was violated by State agents.
- 3. Whether the Respondent (Attorney General) is liable for the violations against the Complainant's rights.
- 4. Whether the Complainant is entitled to any remedy.

The testimonies of the Complainant and his witnesses are relevant in determining this issue.

The Complainant testified that on the 19th August 2007, soldiers surrounded his home where they tied his hands 'kandoya' style and started beating him using gun butts. That one of the soldiers pierced him with a beret as the soldiers demanded him to produce a gun. That the soldiers dug his compound in search of this gun and when they failed to find it, they handed him over to the police who also searched his house for the same gun. He further testified that the police took him to Soroti Police

Station where three policemen boxed and beat him on the back using a wire lock and that he was denied treatment until the 27th August 2007 when he was released on police bond.

The Complainant presented and tendered in documentary evidence which included the Lock up register of the relevant Soroti Central Police Station that reflected that he was detained on the 19th August 2007 and was released on the 27th August 2007. This document was accepted by the Tribunal for identification and marked **Exhibit 1**. The Complainant also tendered in the Police Release Bond which indicated that the complainant was released on the 27th August [2007.] (2007. It) It was also accepted in evidence as identification **document 1**.

The Complainant's first witness, **Okello Torange James (CW1)** testified that on the 19<sup>th</sup> August 2007, while he had visited the family of the late Gabula who had been murdered, he saw a group of soldiers who arrested the complainant from his home on suspicion that he had murdered the late Gabula. That the soldiers demanded the complainant to produce a gun which the complainant denied its whereabouts. That the soldiers then pierced the complainant's right leg to compel him to confess where the gun was. He further testified that the soldiers then handed the Complainant to the police who threw him onto the police car and was taken to Soroti Central Police Station. That he later saw the complainant two weeks later with torture marks on his body

The Complainant's second witness **Amado Susan (CW2)** testified that on the 19th August 2007, she saw soldiers surrounding the Complainant's home and searched his compound and then arrested him as a suspect of murder. That the soldiers searched his house and even dug around the complainant's compound in search of a gun. That the complainant was thereafter arrested and that she saw him after about 3

nine days when he was released from police custody. That when he was released, the complainant had marks and wounds on his back that he could not wear a shirt because the wounds were big. She further stated that she did not witness the Complainant being beaten except that she saw him being pierced.

The Expert witness Dr. Elijah Sangadi interpreted the complainant's medical report which was authored by Dr. Opio J. D a medical doctor from Soroti Referral Hospital which indicated the complainant sustained injuries on the back which were classified as **harm**. The medical report was tendered in evidence in support of the Complainant's evidence and this document was accepted into evidence as an exhibit Marked EX.2

The respondent filed written submissions on the 20th May 2016 which I will consider later in the determination of the issues raised. I now turn to the issues.

### **Issue No. 1: Whether the Complainant's right to personal liberty was violated by State agents.**

<sup>1</sup> shall seek to determine this issue within the context of the relevant legal framework established for the guarantee and protection of peoples' right to personal liberty.

The right to personal liberty is guaranteed and protected Internationally first, through Article 3 of the **Universal Declaration of Human Rights (UDHR)** of 1948, which provides for everyone's right to life, liberty and security of person, and also prohibits arbitrary arrest and detention of anyone except where the established law allows this to be done.

Similarly, Article 9 of the **International Covenant on Civil and Political Rights**, 1976 which Uganda has signed and ratified, also prohibits arbitrary arrest and detention, or any limitation on individuals' right to personal liberty, unless this is done on grounds and procedures established by law.

At the African Regional level, the **African Charter on Human and Peoples' Rights** of 1997 under Article 6 guarantees for "every individual the right to liberty and to security of person"; and reiterates that this right can only be constrained "for reasons and conditions previously laid down by law".

Here in Uganda, the Constitution of 1995 under Article 23 guarantees and protects the right to personal liberty as a positive right for everybody, which can only be limited under the circumstances that are specified under Article 23 (1) of the same Constitution. Therefore, anyone who is arrested or detained on suspicion of having committed or about to commit an offence under the laws of this country, must be released on Police Bond or taken to Court as soon as possible but in both cases, not later than forty-eight hours from the time of his or her arrest (Article 23(4)). This legal requirement is again specifically and explicitly stated in Section 25 (1) of the Police Act Cap. 303.

The key question I must now seek to answer is whether the soldiers and Police officers at Soroti Central Police Station actually arrested and detained Alacu Steven illegally in breach of the provisions of the Police Act and the Constitution of Uganda, and also ignored the provisions in the International and Regional (African) human rights legal instruments.

The complainant testified before this tribunal that on the 19th August 2007, he was arrested by UPDF soldiers and handed over to the police at Soroti Police Station who detained him for a week on allegations of murder. The Complainant's claim is supported by his witnesses CW1 and CW2 who testified that on 19th August 2007, the Complainant was arrested and detained by the police at Soroti Police Station. Infact CW1 stated that he visited the Complainant while he was detained at Soroti Police Station. Although their testimonies varied in relation to the actual time the Complainant spent in detention, the Complainant's claim is also supported

documentary evidence in form of by a certified lock up register which reveals that the Complainant was booked at Soroti Police station on Sunday 19th August 2007 under CRB 1283/07 on charges of murder and released on police bond on Monday 27th August 2007 implying that he spent eight days in detention.

Counsel for the Respondent Ms. Juliet Topacho in her written submission also concurred with Complainant's evidence stating that;

"From the evidence on record, it is somehow probable that the complainant was arrested and detained for those days"

The above documentary evidence corroborates and unequivocally proves the Complainant's claim that his right to personal liberty was violated

In conclusion therefore, I am finding and holding that on balance of probabilities, that the Police at Soroti Central Police Station detained the Complainant Alacu Steven illegally for 6 days thus, violating his right to personal liberty.

## **Issue No. 2: Whether the Complainant's right of freedom from torture or cruel, inhuman or degrading treatment or punishment was violated by State agents.**

As I have done with the first issue, I shall determine this second issue within the context of the relevant laws at International, Regional(African)and National levels.

The Universal Declaration of Human Rights already cited, under Article <sup>5</sup> prohibits violation of the right under consideration now. Similarly and even more emphatically, the International Covenant on Civil and Political Rights also already cited, under Article 7 totally prohibits torture or cruel, inhuman or degrading treatment or punishment. In addition, the Convention Against Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment not only totally prohibits violation of the same human right but also, provides for this right as a nonderogableby stating that:

".. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification oftorture.

The African Charter on Human and Peoples' Rights of 1981 totally prohibits torture under Article 5.

The Constitution of Uganda under Article 24 also totally prohibits the same violation, stating that: "No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment". The Constitution further states under Article 44 that "there shall be no derogation from the enjoyment ofthe right of freedom from tortureand cruel, inhuman or degrading treatment or punishment".

### **Torture is defined under Article <sup>1</sup> ofthe CAT to mean**

\*"Torture means any 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 is suspected ofhaving committed, or intimidating or coercing him or a third person, orfor any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation ofor with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions\*

In my determination of the issue now under assessment, it is important and necessary to evaluate the evidence and information availed to the Tribunal with a view to determining whether the treatment alleged to have been meted out on the Complainant by State agents amountedto the kind ofseverity that constitutes torture; or whether the effect was less severe andtherefore categorized as cruel, inhuman or degrading treatment or punishment.

In this respect, I shall evaluate the evidence taking into account four important ingredients and contours that are identifiable in the definition of what constitutes torture, as it is given under Article <sup>1</sup> of the CAT already cited. The ingredients and contours which are also accepted under the International concept of torture are that any action carried out amounts to torture, if:

- 1. The action caused the victim severe pain and suffering, whether physical or mental
- 2. Such pain and suffering the action has caused was intentionally inflicted on the victim;
- 3. The purpose of the action meted out upon the victim was or is to obtain information or confession, or to punish, intimidate or coerce the victim, or for any reason based on discriminating the victim in any way; and
- 4. The act was or is carried out by, or at the instigation of, or with the consent of, a public official, or another person acting in an official capacity.

At this juncture and in light of the above contours as provided for by CAT, I note that with the recently enacted **Prevention and Prohibition of Torture Act 2012** in Uganda, the definition of torture has been given a broader meaning to include private individuals. This Act emphasizes individual liability which was not the case before where the definition of torture was limited to state actors. However, this Act is applicable to alleged violations that occurred after the commencement of the Act, 18th September 2012. In the case at hand therefore, the definition of torture provided for under the CAT will apply since Uganda has ratified this Convention. I will therefore consider the evidence available in the light of this definition.

I shall also take into account \*Section 101 (1) of the Evidence Act, Cap 6\* on Burden of proof, it provides as follows:

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 those facts exist.

And Section 102 adds that:

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

It is the complainant's testimony that on the 19th August 2007, soldiers surrounded his home, arrested him and tied his hands 'kandoya' style, and beat, him using gun butts. That one of the soldiers pierced him with a beret as the soldiers demanded him to produce a gun. He further testified that the police took him to Soroti Police Station where three policemen boxed and beat him on the back using a wire lock and that he was denied treatment contrary to Article 23(5)(c) of the Constitution until the 27th August 2007 when he was released on police bond. His testimony was corroborated by his witnesses and a medical report which was interpreted by an expert witness.

CW1 corroborated the complainant's testimony in as far as he testified that on the 19th August 2007, soldiers came to the complainant's home demanding for a gun. That when the Complainant denied knowledge of its whereabouts, and the soldiers pierced the complainant's right leg to compel him to confess where the gun was. He described the complainant's state after the arrest as 'the complainant was crying while urging his wife to take care of the children since he knew he was going to die'. He further testified that the soldiers then handed the Complainant to the police

who threw him onto the police car and was taken to Soroti Central Police Station. That he later saw the complainant two weeks later with torture marks on his body.

Upon Cross examination, the witness stated upon his release from police custody, the complainant was dirty, smelly and thin and that he was injured and thereafter went for treatment. He also stated that he visited the once while the complainant was in custody and asked him to keep him his property. He described the complainant as incoherent and distressed while in custody. He also responded that he did not witness the complainant being beaten and that he only witnessed the soldiers piercing the complainant's leg. He refuted the assertion by Counsel for the respondent who stated that the complainant was only being protected from a mob.

CW2 also testified and supported the Complainant's evidence to the effect that on the 19th August 2007, she saw soldiers surrounding the Complainant's home, searched his compound and then arrested him as a suspect of murder. That the soldiers searched his compound around and dug around the complainant's compound. That when he was released, the complainant had marks and wounds on his back that he could not wear a shirt because the wounds were big. She further stated that she did not witness the Complainant being beaten except that she saw him being pierced.

The Expert witness Dr. Elijah Sangadi interpreted the complainant's medical report which indicated that the nature of injuries sustained by the complainant were classified as **harm**. He also revealed that the injuries sustained by the complainant on the back had **acute effects** on the complainant even though complete recovery was expected.

I note that although the respondent counsel challenged the evidence of the complainant at cross examination and in her submissions, the Respondent failed to produce any defense witnesses or evidence to rebut the complainant's evidence.

In her written submissions filed on 25th May 2016, Counsel for Respondent Ms. Apacho Juliet, contended that the complainant and his witnesses exaggerated the injuries sustained by the complainant specifically where the complainant and his witnesses stated he was pierced by the soldiers a bonnet which was not supported with medical evidence. She also referred to the interpretation of the Expert witness who classified the injuries as harm and the medical report did not refer to any piercing.

Taking into account the case of \*Fred Kainamura and another vs. Attorney General,\* 1994, KARL 92, in which the Complainants alleged among other issues, that they had been assaulted but without tendering in any medical evidence to this effect. The defendants argued that as there was no medical evidence, the Complainants had therefore not substantiated the allegation of torture. However, in accepting the evidence tendered in by the Complainants as such, the Presiding Judge Justice Okello J. held that:

\*It is true that there is no medical evidence to support the evidence of assault was submitted but it is not a requirement of the law that every allegation of assault must be proved by medical evidence. I think cogent evidence can do. If <sup>a</sup> witness says "he boxed me and kicked me", that is the evidence of assault. You do not need medical evidence to prove that he was boxed and kicked. That would not be the case. Medical evidence helps to prove the gravity of the assault.\*

In light of the above, in the presence of any other evidence, the complainant's claim can stand without medical evidence.

Respondent's Counsel also submitted that there is a possibility that the Complainant could have been injured before his alleged arrest because according to the Medical examination report, it indicated that the injuries were approximately three weeks which according to the time frame given in the Complainant's evidence does not add to three weeks.

I disagree with this argument on this issue because the doctor's use of the word 'approximately' is a word used to show that something is almost, but not completely, accurate or exact; and therefore if the report indicated that the injuries were roughly three weeks, it cannot be taken to mean conclusively three weeks.

The Respondent's Counsel further submitted that if at all the complainant was ever tortured, then it simply was of a nature not warranting any significant remedy. That the complainant could have suffered a simple assault on his body as per the medical report.

The Expert witness Dr. Elijah Sangadi interpreted the complainant's medical report which indicated that the nature of injuries sustained by the complainant were classified as **harm**. He also revealed that the injuries had acute effects on the complainant even though complete recovery was expected. I therefore I do not agree with Counsel for the Respondent who sought to trivialize the complainant's claim as a simple assault and justifying illegal actions of the Respondent's servants. An assault that had a grown man crying and which caused him injuries on the back cannot just be overlooked and termed as simple.

I also note that the Respondent Counsel in her arguments mainly concentrated on the complainant's lack of medical evidence to support the claim of the soldiers piercing him with a Benet but failed to produce any evidence to explain the injuries the complainant sustained while he was in custody.

As the tenet of law has it, in the event of such allegations being made by a complainant or plaintiff against the police, then the police under whose cells the complainant or plaintiff was detained must provide an explanation regarding the cause of the injuries sustained by the complainant or plaintiff while under their custody. This principle was upheld in the case of *\*Aksoy Vs Turkey,\**(1195) 21 EA 573, in which the European Court gave judgment holding as follows:

*\*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 same principle was also upheld in the case of *\*Velikova Vs Bulgaria, Application No. 41488,\** in which court held that:

*\*When an individual is taken into custody in good health but is later found dead, it is incumbent on the State to provide a plausible explanation of the events leading to his death, failing which the authorities must be held responsible.\**

The Complainant's witnesses all described the complainant's state when he was released, CW1 and CW2 informed this tribunal that the complainant was dirty, smelly and thin and that he was injured and thereafter went for treatment. That when he was released, the complainant had marks and wounds on his back that he could not wear a shirt because the wounds were big. It is therefore not enough for the Respondent Counsel to make mere guesses as to how the complainant could have sustained these injuries without any supporting evidence.

Article 221(l) of the Constitution provides that it shall be the duty of UPDF and any other armed force established in Uganda, **the Uganda Police Force** and any other police force, the Uganda Prison Service, all intelligence services and the national security council to observe and respect human rights and freedoms in the performance of their functions.

Also, according to Section 24 of The Police Act Cap 303 under the Schedule on "Disciplinary code of conduct" it states that:

A Police officer is guilty of unlawful or unnecessary exercise of authority if he or she -

- b) Uses any unnecessary violence to any prisoner or any person with whom he or she may be brought into contact in the execution of his or her duty;
- c) Is uncivil or uses improper language to any member of the public.
- In light of the above, I have evaluated the evidence adduced before this Tribunal, the four ingredients and contours of the International concept of torture that I earlier identified, have all been proved. I find that on the 19th August 2007 the complainant was beaten by soldiers and policemen in order to get a confession as to the whereabouts of a gun and he was taken to Soroti Police Station from where policemen further subjected him to beatings

boxed and beat and as result, he sustained injuries. Therefore, on a balance of probabilities, I find that the UPDF and Police officers at Soroti Central Police Station violated the Complainant's right offreedom from torture. Issue No. 3:Whether the Respondent (the Attorney General) is liable for the violation of the Complainant's rights.

In the case of \*MuwongeVs. Attorney General, (1967) (EA) 17 Pg. 18,\* Justice Newbold P. argued that:

The law is that even if a servant is acting deliberately, wrongfully, negligently or criminally, even if he is acting for his own benefit, nevertheless ifwhat he did was in themanner of carrying out what he was employed to carry out, then his acts are acts for which the master is to be held liable.

Similarly, in the case \*ofJones Vs. Tower Boots Co. Ltd (1997) All Er 40b,\* the court handling the case held as follows:

An act is within the course of employment ifit is either:-

- (1)a wrongful act authorized by the employer, or
- (2) a wrongful and unauthorized mode of doing some act authorized by the employer.

TheUPDF soldiers and PoliceOfficers at Soroti Central Police Station who tortured the Complainant did so, as already pointed out, as they carried out their official duty of arresting, investigating a crime andinterrogating complainant suspected criminal offender. In that way, they applied wrongful methods of work that are totally prohibited by the Constitution of Uganda as well as the International and Regional (African) human rights legal instruments that I cited earlier on. UPDF soldiers and police attached to Soroti Police Station officers did individually and severally work on behalf ofthe State, which is their master and employer.

Article 119 ofthe Constitution of Uganda provides that the functions ofthe Attorney General as among others,to represent the Governments in courts or any other legal proceedings to which Government is a party. Therefore the Attorney General is the right party as the Respondent is the instant matter. It therefore follows that since the soldiers and Police officers who tortured the Complainant did so in the course oftheir duty, I must hold the Attorney General vicariously liable for their actions that amounted to a violation of Alacu Stephen's rights to personal liberty and freedom from torture or cruel, inhuman or degrading treatment or punishment.

#### **Issue No. 4: Whether the Complainant is entitled to any remedy**

Article 53 (2) the Constitution empowers the Uganda Human Rights Commission, where it has been satisfied that there has been an infringement on anybody's human right or freedom, to order payment of compensation or any other legal remedy or redress.

Article 8 ofthe Universal Declaration of Human Rights provides that;

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law"

Counsel for Respondent in her submissions cited the case of \*Elalu Israel & Others Vs\* ydGUHRC SRT/275/2001 in which Commissioner Violet Akurut awarded not more than UGX 3,000,000 to each complainant for torture occasioned on the complainant which was classified as grievous harm and a sum not exceeding UGX 2,000,000 to each complainant for unlawful detention of two weeks.

The Respondent further submitted that the complainant should therefore be awarded not more than UGX 1,000,000 for the violation of the right to personal liberty and not more than UGX 700,000 for the violation of right to freedom from torture.

Taking into account the evidence before me, the injuries sustained by the complainant, the number of days he was detained at Soroti Police Station, and the fact that the Complainant was never charged in a court of law of the alleged crime and the current value for money, I find that a total amount of UGX.6, 000,000/= (Uganda Shillings six million) to be reasonable and adequate compensation to Alacu Steven for the violation of his rights.

I therefore order as follows:

## ORDER

- 1. The complaint is allowed.
- 2. The Attorney General (Respondent) is ordered to pay the Complainant, Alacu Steven a total of UGX. Shs.6,000,000/= (Uganda Shillings six million only), broken down as follows:
  - a) UGX. 2,000,000/ (Uganda Shillings two million) for the violation of his right to personal liberty.
  - b) UGX.4,000,000 (Uganda Shillings four million) for the violation of his right of freedom from torture, cruel, inhuman and degrading treatment
- 3. The total sum of Ug. Shs.6,000,000/- (Uganda Shillings six million) shall carry interest at court rate from the date hereof until payment in full.
- Either party may appeal to the High Court of Uganda within 30 days from the date of this decision if not satisfied with the decision of this Tribunal.

So it is ordered.

s" DATED AT SCROTI ON THIS. DAY... ..... 2016.

**MEDDIEB. MULUMBA PRESIDING COMMISSIONER**

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