

UGANDA / JUDGMENT

Alango Katorin v Attorney General (Complaint UHRC 16 of 2008) [2025] UGHRC 1 (20 February 2025) [2025] UGHRC 1

COURT

Uganda Human Rights Commission

BEFORE

Mariam Wangadya - Chairperson, Stephen Basaliza
- Commissioner, Omara Apitta Lamex -
Commissioner, Crispin Kaheru - Commissioner

CASE / FILE NUMBER

Complaint UHRC 16 of 2008

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THE UGANDA HUMAN RIGHTS COMMISSION TRIBUNAL HOLDEN AT LIRA**COMPLAINT NO. GLU/16/2008**

ALANGO KATORIN

COMPLAINANT <pre>.....

-AND-

RESPONDENT: ATTORNEY GENERAL <pre>.....

CORAM: $\mathbf{4}$

- HON. MARIAM WANGADYA \$1.\$
- 2. HON. COL. (RTD.) STEPHEN BASALIZA COMMISSIONER
- HON. LAMEX OMARA APITTA \$3.\$ HON. CRISPIN KAHERU

CHAIRPERSON COMMISSIONER COMMISSIONER

DECISION

The complainant is an 83 year old peasant farmer residing at Bung-Gudu village, Ajok Parish, Inimo Sub-County, Apac District. She brought this complaint as a mother, and administrator of the estate of the late Adyebo Francis, alias Onyala who died on 25th October 2007, aged 29 years.

It was alleged that on 24th October 2007 Adyebo was remanded to Erute Prison on grounds of alleged theft. On the morning of 25th October 2007, the District Police Commander (DPC), Lira Police Station, Otim Raymond in the company of the Officer-in-Charge (O/C), Criminal Investigations Department (CID, Lira Police Station, Ocamgiu Christopher, went to Erute Prison and requested that Adyebo Francis be handed over to him as they needed him in the investigation of a murder case. The said Adyebo was duly handed over to them by the early shift Gate Keeper No. 6777 Cpl. Amot Olong. The complainant and her family learnt of Adyebo's death on 26th October 2007. Adyebo's body was retrieved from Lira Hospital mortuary that same day. It had bullet wounds on the forehead and chest.

Alango contended that state security agents killed her son, and that the said killing was unlawful and intentional, and amounted to violation of his right to life. She holds the respondent vicariously liable for their actions.

The respondent's representatives Mr. Shaffi Amuru and Ms. Areebwe Allyna denied liability.

Issues:

- Whether the respondent's agents violated Adyebo Francis' right to life;
- Whether the complainant is entitled to any remedies. (ii)

Before we resolve the above issues we put on record that the tribunal as currently constituted did not hear this matter. It was heard by our previous colleagues Hon. Violet Akurut Adome, Hon. Victoria Businge Rusoke, and a current colleague Hon. Col. (Rtd.) Stephen Basaliza, sitting as sole Commissioners. This decision is based on their record of proceedings.

It should further be noted that although the respondent's representatives cross-examined the complainant and her witnesses, they did not call any witnesses in defence of the matter. Neither did they file submissions in rebuttal of the complainant's evidence. All the same the complainant retained the duty to prove her case on the balance of probabilities. Sections 101(1), and 102 of the Evidence Act Cap 6 refer.

We now turn to the issues.

§(i) Whether the respondent's agents violated Adyebo Francis' right to life

The right to life is protected by Article 22(1) of the Constitution of the Republic of Uganda (hereinafter called "the Constitution") which provides as follows:

"No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court".

The right to life is further protected by regional and international human rights instruments to which Uganda is signatory.

Under Article 4 of the African Charter on Human and Peoples Rights (ACHPR):

"Human beings are inviolable. Every living being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right".

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Article 6 of the International Covenant on Civil and Political Rights (ICCPR) provides:

"Every human being has the inherent right to life. No one shall be arbitrarily deprived of his life".

Alango had the duty to prove that prison authorities at Erute Prison, and/or Police Officers of Lira Police Station caused the death of Adyebo Francis, and that the said death was unlawfully caused. In our view, however, this burden will be significantly reduced upon proof by Alango that Adyebo was remanded to prison while in good health. The burden will then shift to the state to give a plausible explanation of how Adyebo died within just hours of the state taking custody of the deceased.

In *Akdeniz and Others v Turkey* 2001 ECHR Pg.349 it was held that "the deceased having died in the custody of the respondent's agents, the burden shifted to the respondent to give a plausible explanation of the circumstances of his death".

That Adyebo Francis was in the custody of the state during the period in issue is abundantly clear. Three prisons officers testified so. There was also the remand warrant issued by the Chief Magistrate's Court of Lira on 24th October 2007 directing the Superintendent of Erute Government Prison to receive Adyebo in their custody. Further Adyebo's name was entered in the Admissions Book of the prison on 24th October 2007 and he was labelled No.538207.

The complainant testified that at the time Adyebo was arrested, taken to court and remanded to Erute Prison, he was a young man aged just 29 years. He was a businessman selling general merchandise. She said among others:

"Adyebo supported me with his earnings and was paying tuition for his younger siblings. He was my breadwinner since my husband was deceased"

There was no indication that Adyebo had any known illness. He was healthy and vibrant and able to work and support his mother and siblings. Indeed the testimony of Okello George Washington who was a Prisons officer at Erute Prison during the material time attests to this. He said that all prisoners went through a health check upon admission to the prison. He testified in part as follows:

"All the prisoners were healthy. Adyebo Francis was found to be healthy without any problem. The board admitted him and gave him number 538207".

Alango further testified as below:

"I was informed by a lady called Evelyn that Adyebo had been killed. I confirmed the death of Adyebo when his brother Odwong brought the body from the mortuary. Adyebo's body had bullet wounds on the head, mouth, chest and back".

On cross-examination of Alango by Ms. Areebwe, learned Counsel for the respondent, Alango said that she was "familiar with bullets" and could tell that the wounds she saw on Adyebo's body were bullet wounds. She saw such wounds on his forehead and the back of the head.

The evidence on record shows that the DPC, Lira, Raymond Otim, in whose custody Adyebo had died, ensured that no postmortem examination was done on Adyebo's body. But even in the absence of a postmortem report, there was overwhelming evidence that Adyebo was shot and killed with bullets. One such piece of evidence is the Short Death Certificate issued by the Senior Assistant Town Clerk, Lira Central Division, Sam Okello. It shows the cause of Adyebo's death as a "gunshot".

How did Adyebo suffer gunshot wounds leading to his death within less than 48 hours in state custody? This is a question that ought to have been answered by the DPC of Lira Police Station and not poor Alango. All the

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3 Prisons Officers who were summoned before the tribunal pointed fingers in the direction of the DPC Lira Police Station, Otim Raymond. These were Assistant Superintendent of Prisons (ASP) Malinga Faith Norah, Okello George Washington and Cpl. Amot Olong.

ASP Malinga, at the time of testifying on 15th November 2017, was the She came armed with the records O/C Erute Government Prison. including the Admission Book and the Gate Book. She said Adyebo Francis was admitted to the prison on 24th October 2007 and registered as R538/007. He was on trial for theft. She told the tribunal that prison records show that on 25th October 2007 at 10:52 hours the DPC of Lira Police station "moved out with Prisoner No.538/007 by the names of Adyebo Francis for further interrogation. The Gate Keeper that day was Amot Olong". The DPC said that he was going to "interrogate" Adyebo at Lira Police Station.

Okello George Washington was the O/C Erute Government Prison during the period in issue. He testified that Adyebo Francis was one of the prisoners they received on 24th October 2007. On 25th October 2007 he selected prisoners to go and work in the field. Adyebo was so healthy that he was selected as part of the "4th Party" to go and work. Okello George Washington added as follows:

"Otim Raymond then DPC, Lira Police Station entered the prison at 10:52 am with a letter that Adyebo Francis had another charge of murder. The Gate Keeper No.6777 Amot Olong received him at the gate where he presented his letter. Olong without consulting anybody senior to him sent a warder to pick Adyebo from where he was working. Amot Olong handed over Adyebo to Otim Raymond. The process of removing Adyebo Francis from prison and handing him over to Otim lasted 8 minutes".

The letter Otim Raymond presented to Cpl. Olong was tendered in It is dated 25th October 2007 and was signed by D/ASP evidence. Ocamgiu Christopher, O/C CID, Central Police Station (CPS) Lira and addressed to the O/C Erute Prison. It is referenced "Adyebo Francis alias Onyala". It reads:

"The above-named is a remand prisoner in your custody." $\mathbf{H}$ e is charged with Theft C/ S 254(1) and 261 of the Penal Code Act (PCA). However, there is another charge of murder pending on him. This is to request you to release him to us to help in our investigations into the new charge on him".

Cpl. Olong acted on this letter as requested and handed over Adyebo to Otim Raymond. Otim entered in the Gate Book that he had taken Adyebo

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and signed accordingly. Adyebo would die within a few hours of walking out of Erute Prison.

Cpl. Amot Olong testified that on 25th October 2007 he was the Gate Keeper of the prison. He said in part:

"It was 10:52 am Otim Raymond came with a team. DPC Otim presented me with a letter ref. 26/61/2007 dated 25th October 2007. It required that prisoner Adyebo Francis be handed to them for interrogation for murder. I allowed them to interrogate him from Adyebo came knowing he was going to be inside the prison. interrogated from inside. After a few minutes they said they were taking him to Police. I resisted saying the procedure was that he had to be accompanied by a Prisons Officer. The DPC threatened to charge me with conspiracy to murder. I requested him to enter their presence in the Gate Book. The DPC wrote his names as Otim Raymond. I wrote down that they had come in at 10:52 am and left with a prisoner at 11 am".

The DPC undertook to return Adyebo to prison but he never did. On 29th October 2007 the O/C, Erute Prison, Okello George Washington went to Lira Police Station to demand for the return of Adyebo to prison. The O/C CID, D/ASP Ucamgiu Christopher told him that Adyebo had escaped from custody at Lira Police Station. D/ASP Ucamgiu made this weird claim after Adyebo's body had already been picked by his brother Odwong from Lira Hospital mortuary.

Otim Raymond was summoned to appear before the tribunal on 17th June 2019 to explain how a healthy young man he had taken from Erute Prison turned up to be dead and in a mortuary within 24 hours of taking him. When Otim Raymond appeared before Hon. Businge Rusoke he feigned loss of memory. He said, "I cannot recall whether I ever interacted with one

Adyebo Francis. I need to refresh my memory". When Commission Counsel, Mr. Okello Welborne presented before him the Gate Book he had written in and signed before taking Adyebo, Otim claimed he could not tell if that was his handwriting. Commission Counsel then asked him, "Did you ever go to Erute prison?" Otim said, "Yes I did though I do not remember". Commission Counsel again asked Otim, "What did you do at Erute prison?" His response was just words but not an answer. He said:

"We could have gone to inquire about whether the prisoner was there. It was not usual for us to check on prisoners. It depends on the nature of inquiries and if the inquiries are finished the prisoner is supposed to be escorted back. I remember going to Erute prison when I was DPC. I was with Christopher who was the O/C CID, Lira. It is really long. Unless documented I cannot remember".

The presiding Commissioner, Hon. Businge Rusoke asked him if he denied taking Adyebo from prison. Otim said, "I do not deny that I picked Adyebo Francis". He then passed the buck to his then O/C CID Ucamgiu saying that he left Adyebo with him. Pressed harder by Hon. Rusoke if, as head of station, he cared to inquire about what had happened to Adyebo, Otim said, "It is long. I cannot remember".

Raymond Otim is a ruthless, half clever and cunning man who is a coward at the same time. He grudgingly appeared before the tribunal determined not to explain anything about the killing of Adyebo Francis despite the overwhelming evidence pointing his way. He feigned loss of memory about what transpired after he had taken Adyebo away from prison. But he had, with intense pressure from the tribunal, somehow remembered that he went to Erute prison during the material time. Perhaps sensing that this outrageous behavior may not take him off the hook, he did what most cowards do – pass the buck to his junior and duck into hiding. He totally abdicated his duty to explain or reveal what he had done to Adyebo that day of 25th October 2007.

We are convinced that the DPC, Lira Police Station then Otim Raymond, was responsible for the death of Adyebo Francis. He conned and bullied Cpl. Amot Olong into releasing Adyebo to him. The next day Adyebo was lying dead in Lira Hospital mortuary; his upper body riddled with

All the 3 prisons officers testified that it was Otim bullet wounds. Raymond who took Adyebo. Otim's evasive conduct before the tribunal betrayed his guilt. All the 3 Prisons Officers having proved that Otim took custody of Adyebo, the burden shifted to Otim to answer how Adyebo died. He totally failed or refused to do so. We reasonably believe that Otim Raymond either personally shot and killed Adyebo Francis or gave the orders to shoot and kill him and so it was done. The killing of the complainant's son was intentional and unlawful.

Wherefore, we find on the balance of probabilities that the respondent's agents violated Adyebo Francis' right to life. Throughout the material time they were acting in the course of their employment as servants of the state. The respondent is vicariously liable for their actions.

Whether the complainant is entitled to any remedies \$(ii)\$

Having held as hereinabove, it follows that the complainant is entitled to compensation by way of general damages. Article 50, and 53(2) of the Constitution refer.

Adyebo's last hours on earth were agonizing. The emotional turmoil he went through upon realizing the true intentions of Otim was unspeakable; Adyebo discovered he faced imminent execution. He was shot in the head and chest intentionally to kill him.

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Adyebo was a young man aged only 29 years, according to the complainant, his mother. The age entered in Erute Prison Admission Book was 22 years. He was still a single man and had no children. He never got to know the joy of being a husband and a father. He had many decades of life ahead of him before his life was brutally snatched from him by the respondent's agents.

The right to life is the most important right without which all the other rights and freedoms cannot be enjoyed. Death is final and irreversible. Alango was permanently separated from her son and breadwinner. She suffered untold anguish and grief upon the murder of her son. The emotional scars of losing a family member last forever.

The actions of Otim Raymond were barbaric, criminal, oppressive, intentional, deliberate, arbitrary, sadistic, cruel, arrogant, wanton and impossible to justify. We want to remind the Uganda Police Force of their obligation to respect human rights and freedoms in the performance of their work. Article 221 of the Constitution refers. Impunity will not be tolerated in a civilized country like Uganda.

In consideration of the above circumstances deem \$we\$ U. Shs.60,000,000= (Sixty Million Shillings) adequate compensation to the complainant for violation of Adyebo Francis' right to life. We so award.

Further, it is the considered opinion of this tribunal that this case must attract exemplary damages. As was held in the case of **Rookes v Barnard** (1964) ALLER 367 at 411, by Lord Devlin exemplary damages are awarded:

where there has been oppressive, arbitrary or unconstitutional action by the servants of the government".

We award the complainant an additional U. Shs.5,000,000= (Five Million Shillings).

ORDER:

- The complaint is allowed. 1.
- The respondent is ordered to pay the complainant a total of \$2.\$ U. Shs.65,000,000= (Sixty Five Million Shillings) as follows:
- U. Shs.60,000,000= as general damages for violation of \$(a)\$ Advebo Francis' right to life.

- U. Shs.5,000,000= as exemplary damages. \$(b)\$
- The U. Shs.65,000,000= (Sixty Million Shillings) will carry interest \$3.\$ at 10% per annum from to-date until payment in full.

We further recommend that the Director CID, Uganda Police Force (UPF), investigates the case of the death in Police custody of Adyebo Francis with the view to prosecuting Otim Raymond for his murder.

Either party dissatisfied with this decision is advised to appeal to the High Court of Uganda within 30 days from the date hereof.

DATED at Lira this 20th day of February \$2025.\$

HON. MARIAM WANGADYA

HAIRPERSON

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HON. COL. (RTD.) STEPHEN BASALIZA

HON. LAMEX OMARA APITTA

HON. CRISPIN KAHERU

COMMISSIONER

COMMISSIONER

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