

Bukenya Umar v Attorney General (Complaint UHRC 349 of 2004) [2024] UGHRC 1 (20 May 2024)

BEFORE

Mariam Wangadya - Chairperson, Stephen Basaliza - Commissioner, Crispin Kaheru - Commissioner, Jacklet Atuhaire Rwabukurukuru - Commissioner

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COMMISSIONER

DECISION

This complaint was brought by John Sempala on 21st July, 2004, on behalf of Bukenya Umar who he said was his brother. Although Bukenya was a free man at his home in Bukulula, Kalungu, Sempala said that Bukenya was "bedridden since his release in December 2003", and could not move.

In his complaint form Sempala alleged that Bukenya had been arrested on 15th October, 2003 by Violent Crime Crack Unit (VCCU) officers and detained in various places where he was "severely tortured and got multiple injuries on his leg, joints, knee and chest".

Perhaps Sempala's allegations in the complaint form were considered sufficient by the Commission investigators. That explains why they did not record a formal statement from him or Bukenya Umar himself, the alleged victim.

After they picked the Police investigation file, they finally, on 15th May, 2009, asked Bukenya to "react" to it. He then furnished them with a statement he called "My True Story of Captivity by VCCU".

During the hearing of his case on 13th June, 2016, Bukenya alleged that the events in issue started with his arrest by "VCCU" on 11th October, 2013, not on 15th October, 2003 as earlier stated by John Sempala. He was accused of theft. He said VCCU officers detained him at Saza headquarters, Kireka, and Central Police Station (CPS), Kampala. He alleged that during his period in detention, VCCU officers beat him demanding that he produces a gun they said he used to carry out robberies.

It was contended that the alleged actions of VCCU officers amounted to violation of Bukenya Umar's right to protection from torture, cruel, inhuman and degrading treatment. It was further contended that the above alleged actions by VCCU officers amounted to violation of Bukenya's right to personal liberty. During the material time the said VCCU officers were acting in the course of their employment as agents of the state hence the respondent was held vicariously liable for their actions.

Bukenya Umar sought compensation.

This matter was heard **ex parte** as the respondent did not appear before the tribunal despite receipt of summons and hearing notices.

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- Whether the respondent's agents violated the complainant's right to \$(i)\$ protection from torture, cruel, inhuman and degrading treatment or punishment.

- Whether the respondent's agents violated the complainant's right to (ii) personal liberty.
- Whether the complainant is entitled to compensation. (iii)

Before we resolve the above issues, we put on record that the tribunal as currently constituted did not hear this case. It was heard by one of our colleagues then sitting as a sole Commissioner. This decision is based on his record of proceedings.

The complainant had the duty to prove his case against the respondent on the balance of probabilities. This duty was not diminished an inch by the absence of the respondent at the hearings.

(i) Whether the respondent's agents violated the complainants' right to protection from torture, cruel, inhuman and degrading treatment or punishment

The term 'torture' is defined by the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) 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 discrimination 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".

Torture is outlawed by Articles 24 and 44(a) of the Constitution of the Republic of Uganda (hereinafter, "the Constitution").

Torture is further outlawed by various regional and international human rights instruments to which Uganda is signatory.

It is our view that all the ingredients of torture have to exist in order to prove that an act of torture was indeed committed. (See *Irembe Wambui* Muchai and 5 others v AG, Kenya Constitutional and Human Rights Petition 211/2013; Lenaola J*).

We begin by dealing with the question of when the alleged events in issue occurred. Bukenya Umar testified that "On 11th October, 2013 as I came from Lukaya.... they knocked my car from behind and took me out".

But in his "My True Story of Captivity By VCCU" dated 15th May, 2009 he said, "On 11th October, 2003 as I was driving from Lukaya.... we found a car parked at the roadside".

We tend to think that the cause of action in this matter arose on 11th October, 2003, and not 2013 as recorded in the proceedings. The date of 11th October, 2013 must have been a typing error. More so, the case number itself; 349/2004 shows that the cause of action could not have arisen in 2013.

Bukenya Umar testified that he was arrested by VCCU officers on 11th October, 2003 at 8pm. His testimony is dominated by accusations against VCCU officers of extortion of money from him. He dwelt so much on these accusations that one may be forgiven for thinking that his main grievance against the state was extortion of money from him, and his alleged torture was secondary. He claimed that the demands for money started immediately he was arrested. First he gave VCCU officers U. Shs.300,000= which he borrowed from Kizito, then he added them U. Shs.300,000= which he borrowed from his aunt, then U. Shs.2,600,000= $\frac{1}{2}$ which his wife got from selling a cow and a car bla bla. He lamented about alleged theft of his Samsung phone; how one Byamugisha stole his passport while they were in Botswana bla bla. Bukenya's alleged torture occupied about just a quarter of his testimony.

The case communicated to the Attorney General on 23rd May, 2013 was torture, and deprivation of liberty. Prosecuting Counsel ought to have guided Bukenya to confine himself to building that case rather than led

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him to lament about irrelevancies at the expense of his actual case against the respondent.

Finally when Bukenya started talking about his alleged torture, still punctuated with extortion allegations, he testified as follows:

"While at Saza headquarters they started beating me. They beat me with batons all over the body. The following day they beat me on the cheeks and asked me where I got money to buy a new car. At Kireka Serunkuma beat me with batons asking for a gun. The following morning I could not walk but crawl to the suspects' parade".

Bukenya's testimony was not believable. It did not tally with his "My True Story of Captivity by VCCU" (which we now adopt as his statement to the investigator, in the absence of one!). The closest Bukenya's statement gets to his testimony before the tribunal is that about 80% thereof is devoted to accusations of extortion of money from him by his "captors". On his alleged torture, his statement says:

"I was pulled out from the steering wheel. After a good beating I was forced into their car. At Saza headquarters we were beaten and

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locked up in a small room. We went to Kireka and after beating us seriously we were locked up in custody".

It is curious that Bukenya's statement is silent on any particulars of torture for example the weapon used to beat him, which parts of his body were hit, the duration of the alleged beating, and injuries suffered if any. We think that in May, 2009 his memory was a little better than it was in June 2016 when he testified before the tribunal. Why didn't he tell the investigator about his being beaten with batons all over the body, and his crawling to parade as a result of inability to walk? And what does a "good beating" mean exactly? Perhaps if only a statement had been recorded from Bukenya this would have been explained. No such statement was recorded. Alternatively, Commission Counsel ought to have asked him what "a good beating" meant. This was not done.

We think that the particulars of torture narrated to the tribunal by Bukenya were an afterthought; lies conveniently crafted by him to exaggerate the pain, if any, he may have suffered at the hands of VCCU officers. This was intended to con the tribunal into awarding him underserved damages.

We also recall that when Bukenya's alleged brother, John Sempala brought this complaint on 21st July, 2007 he alleged that Bukenya was so ill, resulting from the alleged 'torture', that he could not personally reach

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our offices. He said, "I seek for his compensation for the torture and detention because he is still bedridden since his release in December, 2003".

Bukenya Umar did not say anywhere that he was ever bedridden after his release from custody. Was Bukenya in hiding, given his character as revealed by the Police investigation file? Or was he in a jail somewhere? Why did Sempala have to seek "his compensation" for him? Why did it take Bukenya almost 5 years after Sempala had brought this case, for him to show his face at the Commission offices? Why did Sempala deem it necessary to lie that Bukenya was bedridden? And did Bukenya's alleged wounds leave any scars? If so, why didn't he show them to the tribunal? Could he have been asked by Commission Counsel to do so? May be she did not find this necessary. Or perhaps the scars did not exist.

Only one witness was called to support Bukenya's case; Dr. William Male Mutumba. This Doctor did not examine Bukenya. He was summoned to "interpret medical documents". He went on to testify as follows:

"Bukenya was seen on 31st December, 2003 and on examination he had scattered chest problems in the lungs, a wound on the right knee measuring $3 \times 4 \times 0.5 \text{ cm}$, a wound on the right toe measuring $4 \times 4 \times 1 \text{ cm}$, and a wound on the left knee measuring $6 \times 4 \times 3 \text{ cm}$. The injuries were inflicted by a blunt object".

It was a medical report from Masaka Regional Referral Hospital.

There are a number of questions surrounding Dr. Mutumba's evidence. First and foremost Bukenya's statement to the investigator does not mention that Bukenya ever sought medical examination or treatment in Masaka Regional Referral Hospital, or in any health facility.

Bukenya's testimony before the tribunal is equally silent. The closest Bukenya came to mentioning medical examination or treatment is when he said, in his testimony before the tribunal; "I am not okay because I got special treatment and I went on road to Kamya and when we reached Botswana my colleagues one Byamugisha got my passport and disappeared". We could not discern what Bukenya was talking about here.

Even John Sempala who brought this complaint did not disclose that Bukenya ever visited Masaka Regional Referral Hospital for medical examination or treatment.

The other issue with Dr. Mutumba's evidence is that Bukenya was released on 24th November, 2003, according to his release on bond form. Dr. Mutumba testified that he was seen by a doctor at Masaka Regional Referral Hospital on 31st December, 2003. For a person who was said to have been so badly beaten as described before the tribunal; why did it take Bukenya more than a month before he sought attention of a doctor? What prevented him from going for treatment the moment he was released?

Further, Bukenya Umar told the tribunal that the alleged torture was inflicted on him on 11th October, 2003, and upon arrival at Kireka on 12th October, 2003, that is, more than two and a half months before his purported medical examination and treatment at Masaka Regional Referral Hospital. How possible is it that by the time of the medical examination none of the wounds had started to heal? How easy was it for the examining doctor to see those wounds so clearly as to accurately document their sizes as "3x4x0.5 cm, 4x4x1 cm" etcetera? And these "wounds" were unusually enormous. Even the largest toe on earth cannot accommodate a wound measuring 4x4x1cm. And the Doctor saw 2 wounds on Bukenya's left knee alone; one measuring 2x3x1cm, and the other measuring 6x4x3cm. Did these wounds really exist? How large is Bukenya's left knee?

The other difficulty we found with the purported medical examination report was that it was a photocopy, had no stamp, did not carry the name or title of the doctor who issued it, and neither was it certified. Learned Counsel for the Commission said, at the conclusion of Dr. Mutumba's testimony: "I pray to tender in these interpreted medical documents pending certification, as evidence to the complainant's case, as Ex.1". The said certification was never done.

Dr. Mutumba should also have been asked to explain some of the statements he made in his testimony. What did he for example, mean by How about explaining some of the "scattered chest problems"? medication he said was administered to Bukenya for example "ethromyan" which does not seem to exist? This expert should have been asked for his opinion as to whether "wounds" which were more than two and a half months old would appear the way the "medical examination" report presented them. He should further have been asked how a man who was beaten with batons all over the body was able to survive such heavy beating. Was Bukenya's body made out of steel?

We do not believe that Bukenya was ever examined and/or treated at Masaka Regional Referral Hospital or anywhere else. His purported medical examination report, the basis of Dr. Mutumba's testimony, was not authentic. In fact it was clearly a forgery. We reject the entire "medical evidence" as no evidence at all.

We noted too with concern that neither the complainant nor his witness took oath ahead of giving their testimonies, and no reason was given to

explain this strange procedure. Why was this allowed to happen? Did the absence of the respondent mean that known norms and procedure ceased to have value? Notwithstanding that many witnesses proceed to tell impeccable lies after taking oath, it remains vital to take oath before a witness testifies. An oath is considered sacred and enlists the confidence of a court that the witness has a sincere intention to tell the truth. What value should we attach to this evidence? The general rule in relation to unsworn testimony is that it carries very little to zero value.

Even if Bukenya Umar had been able to prove that he was severely beaten as alleged, which he did not, there was no evidence to connect his alleged beating to the respondent's agents. Given the contradictions between his testimony and the contents of Sempala's complaints registration form, and inconsistencies in his statement and testimony, Bukenya needed to adduce credible and independent evidence to back up his case. He needed concrete evidence to prove who beat him and when exactly he was beaten.

Rather than present any eyewitness to Bukenya's alleged torture, the learned and able Commission Counsel did something spectacular. She addressed the tribunal as follows: "I hereby tender in a police file to be used as evidence in the complainant's case". She did not mention what exactly in that file was relevant to the case at hand, and what in particular it was intended to prove. Her attitude towards the tribunal seems to have been: "Mwesotinge". Just work it out; you are on your own! Indeed the

entire Police investigation file was tendered in evidence and marked \$Ex.1(b)\$.

Why didn't Commission Counsel summon the man who actually brought this complaint, John Sempala to testify? He could have described in detail the condition of Bukenya when he left Police custody, and how exactly he was at the time of lodging this complaint. How about Gerald Magyera Kateregga Ssalongo who stood surety for Bukenya? And since Commission Counsel had unleashed an entire Police file on the tribunal record, why didn't she summon as witnesses some of the people whose statements were on that file? One of them would have been Abdul Ntaganda; Bukenya's alleged accomplice in the robberies and who was detained together with Bukenya. In fact, according to the 23rd May, 2013 letter of allegations to the Attorney General, the Director Complaints, Investigations and Legal Services (D/CILS) mentioned Ntaganda as a cocomplainant in this matter. At what point was he dropped as a complainant?

At the commencement of the hearing on 13th June, 2016, the able and learned Counsel for the Commission told the tribunal as follows: "Abdul Rugemwa Ntaganda could not make it because of comments". This tribunal was unable to comprehend these words. As it turned out perhaps the learned Commission Counsel meant that Abdul Rugemwa Ntaganda

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had been dropped as a party to the complaint, as he was not mentioned again. Ntaganda should have been summoned to testify in support of his comrade's case. How about Bukenya's friend Kizito Ronnie?

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In the end no eyewitness was summoned. We do not know what we were expected to do with the Police file. With the purported medical evidence having been ruled worthless, Bukenya's claim of torture remained unsubstantiated. Effectively he was his own sole witness and not a credible one either. There was no evidence that VCCU officers severely beat Bukenya Umar or at all, and with the purpose of extracting from him a confession or any information. More so, the fact that Bukenya did not take oath ahead of testifying renders his testimony almost worthless.

For the reasons hereinabove, we find on the balance of probabilities, and accordingly hold that the respondent's agents did not violate the complainant's right to freedom from torture, cruel, inhuman and degrading treatment or punishment.

(ii) Whether the respondent's agents violated the complainants' right to personal liberty

The right to personal liberty is protected by the Constitution, various regional and international human rights instruments, and the Law of Tort under the tort of False Imprisonment. Richard Clayton and Hugh

Tomlinson in their book, the Law of Human Rights, Vol. 1 at page 455 write as follows:

"The tort of false imprisonment is committed by someone who intentionally subjects another to total restraint of movement either by actively causing his confinement or preventing him from exercising his privilege 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".

As was held in *Sekaddu v Sebaduka* 1968 E. A. 213 at 215, once the detention is proved, the burden shifts to the defendant (respondent) to prove that the detention was justified.

Article 23(1) of the Constitution of the Republic of Uganda (hereinafter called "the Constitution") provides in part:

"No person shall be deprived of personal liberty except in any of the following cases $-(c)$ for purposes of bringing that person before a court upon reasonable suspicion that, that person has committed a criminal offence".

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Under Article 23(4)(b):

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

Bukenya Umar testified that he was arrested by VCCU officers on 11th October, 2003. John Sempala who brought this complaint on his behalf said that he was arrested on 15th October, 2003. We will go by the testimony of Bukenya himself considering he is the actual "victim", more so the 11th October, 2003 date is consistent with what he said in his 15th May, 2009 statement. In any case the difference between the two dates is negligible.

Bukenya testified that that night he was detained at Saza headquarters and the following day he was taken to Kireka. He said that "I spent a month at Kireka. I spent another month at Central Police Station (CPS)". Evidence was not led on the exact date of Bukenya's release. At least that question was not put to him. May be Commission Counsel, having offloaded on us the Police investigations file, expected us to do the needful – comb that file ourselves for information about Bukenya's release date. This we did and landed on his release on bond form. It

shows that Bukenya was released on 24th November, 2003. He had been suspected of committing robbery. So, in our calculation, Bukenya spent 43 days in Police custody.

Besides, among the documents on the Police file is a \$30th November, 2004 letter by the Regional CID Officer, Southern Region, Detective Senior Superintendent of Police (D/SSP) Francis Egwoku addressed to the Inspector General of Police (IGP) which says in part:

"Dan Mugula, attached to VCCU headquarters, organized with LDUs and caused the arrest of Bukenya Umar on 11th October, Bukenya was subsequently released on bond on 24th 2003...\$ November, 2003".

Besides, the "Black minutes" by Detective Assistant Inspector of Police (D/AIP) Opendi entered on 24th November, 2003 say, "the suspects have been under detention for about one and a half months".

The above internal communication between Police officers confirm that Bukenya Umar was detained for 43 days. It is the only reason we reach the conclusion of Bukenya's detention for 43 days. Without these revelations in the Police file his claim would have collapsed considering he gave unsworn evidence.

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The respondent did not appear before the tribunal to explain why his agents arrested and detained Bukenya for 43 days. But luckily for us, the Police investigation file which Commission Counsel tendered in evidence did much more than help Bukenya's case. It opened up Bukenya's character; each and every little piece thereof. It revealed that Bukenya Umar and his comrade, Rugemwa Abdul Ntaganda, an army deserter, were reasonably suspected of having committed several armed robberies along Masaka-Mbarara highway, hence their arrest and detention. It is only unfortunate that they were detained for a period far exceeding 48 hours, and more so, they were not prosecuted. Bukenya's detention beyond 48 hours was illegal.

We therefore find on the balance of probabilities that the respondent's agents violated the complainant's right to personal liberty. Throughout the period in issue they were acting in the course of their employment as servants of the state. The respondent is vicariously liable for their illegal actions.

Whether the complainant is entitled to compensation \$(iii)\$

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

In assessing general damages to be awarded to Bukenya Umar, we will consider that he was illegally detained for 41 days. But his arrest was not arbitrary. It was premised on a reasonable suspicion that he had committed several armed robberies along Masaka-Mbarara highway. In fact the people who carried out Bukenya's arrest were Local Defence Unit (LDU) personnel of Kabaale, Bugozi, Masaka, who found him and Ntaganda digging out what they suspected to be a gun. They then handed them over to VCCU. A spade and a hoe were recovered from them but the gun was never recovered. The statement of Mugula Dan attached to VCCU reveals that, in addition, Bukenya Umar was wanted in connection with a murder which had occurred in Kiboga District.

It will also be recalled that when this matter came up for delivery of the decision on 8th February, 2023, Bukenya Umar was absent. One of his so many wives, Namubiru Amina, informed the tribunal that Bukenya was in detention at Rapid Response Unit (RRU), Kireka and that she had last seen him on 10th January, 2023. On 3rd May, 2023, after his stint in jail again, Bukenya wrote a letter to us saying, "On 8th February, 2023 I could not make it because I had been imprisoned by law enforcement officers". He did not reveal the place of his imprisonment, and whether or not he was on remand, or was serving a sentence. Bukenya is a jailbird. He has a kind of revolving door – enter jail; run to the UHRC; back to jail; back to the UHRC; and possibly return to jail. This scenario is not at all pleasant to us. It has to end at some point.

This is a human rights institution. It is not an anti-law enforcement institution. Protection and promotion of fundamental human rights and freedoms is inseparable from enforcing compliance with the law of the land. We want to remind Bukenya Umar of some of his duties as a citizen of Uganda as enshrined in Article 17(1) of the Constitution to wit:

"(b) to respect the rights and freedoms of others;

to cooperate with lawful agencies in the maintenance of law and order".

We also draw Bukenya's attention to the provisions of Article 43(1) of the Constitution to wit:

"In the enjoyment of the rights and freedoms prescribed in this chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest".

The circumstances of this case call for a moderate sum of money as compensation to the complainant. This tribunal must avoid sending out a message that crime pays.

In consideration of all the above, we deem U. Shs.3,000,000= (Three Million Shillings) adequate compensation to Bukenya for violation of his right to personal liberty.

ORDER:

- The complaint is allowed in part. (i)
- The respondent is ordered to pay the complainant U. Shs.3,000,000 = (Three Million Shillings) as general damages for violation of his right to personal liberty.
- The U. Shs.3,000,000= will carry interest at 10% per annum from (iii) the date hereof until payment in full.

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

DATED at Kampala this Q and Q day of M and Q 2024.

HON. MARIAM WANGADYA

M **CHAIRPERSON**

HON. COL. (RTD.) STEPHEN BASALIZA

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HON. CRISPIN KAHERU

HON. JACKLET ATUHAIRE RWABUKURUKURU

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