

UGANDA / JUDGMENT

Businge v Attorney General (Complaint No: UHRC/FPT/45/2011) [2019] UGHRC 26 (1 April 2019) [2019] UGHRC 26

COURT

Uganda Human Rights Commission

BEFORE

Dr. Katebalirwe Amooti Wa Irumba - Commissioner

CASE / FILE NUMBER

Complaint No: UHRC/FPT/45/2011

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THE REPUBLIC OF UGANDA**THE UGANDA HUMAN RIGHTS COMMISSION (UHRC) TRIBUNAL****HOLDEN AT FORT PORTAL****COMPLAINT NO: UHRC/FPT/45/2011****BUSINGE JOHN COMPLAINANT****and****ATTORNEY GENERAL:::RESPONDENT****BEFORE HON. COMMISSIONER DR. KATEBALIRWE AMOOTIWA IRUMBA****DECISION**

The Complainant (C), Businge John alleged that on 11th February, 2011 he was arrested on the allegation of murder. That he was later detained at Kyenjojo Police Station for three days and thereafter, transferred to the Rapid Response Unit (RRU) in Fort Portal, where he was detained for an additional one week. That while he was recording his statement at RRU he was beaten by a light skinned Officer whose name he did not know. That he was beaten on the joints of his legs, the shoulders and beneath his feet for about 30 minutes, so as to obtain a confession from him. That he was later taken back to Kyenjojo Police Station where he was further detained for one

month and three weeks on another charge of murder that was allegedly committed in 2007. That he was released on 31st March, 2011 after it had been established that there was no evidence in support of the allegations made against him.

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

R through their representative Counsel (RC), State Attorney Asiimwe Phiona Bamanya denied liability and opted for putting up a defence in this matter.

ISSUES:

The issues to be resolved by the Tribunal are:

- 1. Whether C's right of freedom from torture or cruel, inhuman or degrading treatment or punishment was violated by State agents.
- 2. Whether C's right to personal liberty was violated by State agents.
- 3. Whether R is liable for the violations.
- 4. Whether C is entitled to any remedy.

Let me point out at this juncture that according to the record of proceedings on the complaint file, RC cross-examined only C and his two witnesses. R's side also neither called any witnesses in defence in this matter, nor filed any written submission. Nevertheless, C still retained the duty of proving his case against R to the satisfaction of the Tribunal as required under Section 101 (1) of the Evidence Act Cap 6, which states that:

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

And under Section 102 of the same Act, which also states 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.

Let me now resolve the aforementioned four issues

Issue 1: Whether C's right of personal liberty was violated by State agents.

C testified that he was arrested on Friday 11th February, 2011 at around 12.30 p.m. when he was in Kyenjojo Town, by police officers and taken to Kyenjojo Police Station where he met the Criminal Investigations Officer (CID) who informed him that they were investigating a certain murder case. That he was thereafter detained without recording a statement for three days, and then transferred to Fort Portal Police Station in a Primio car carrying the Rapid Response Unit (RRU) soldiers and two other suspects including Kamwesige, who were also charged with the same offence. That he was detained for five days at Fort Portal Police Station and on the 6th day,

he was taken back to Kyenjojo Police Station where he again spent one month and three weeks but he was not beaten during that period. That his relatives visited him while in detention and after one month and three weeks, he was released on police bond and was never taken to court.

C's Police Bond dated ³ 1st March, ²⁰¹¹ was admitted with the consent of RC as his first exhibit (CX1).

The certified copy of the lock up register from Fort Portal Police Station was also admitted with RC's consent as C's second exhibit and marked CX2. It indicated that C was booked in on 16th February 2011 and booked out on 21st February, 2011.

In addition, the certified copy of the lock up register from Kyenjojo Police Station was admitted with the consent of RC as C's third exhibit and marked CX3. It indicated that C was booked in on 11th February, 2011 and booked out on 15th February, 2011 when he was taken away by RRU operatives.

During cross-examination, C reiterated that he was arrested on 11, 1 February, 2011 at around 11:30 a.m. by policemen from Kyenjojo Police Station including CID officer Wamala. That he was arrested on the allegation of murder. That he was taken from Kyenjojo to Fort Portal Police Station in the Premio car, by RRU men wearing civilian clothes. That he spent two weeks in Kyenjojo Police Station before he was taken to Fort Portal Police Station where he spent one week, and then returned to Kyenjojo Police Station where he spent another one month and three weeks.

C's first witness (CW1), Kisembo Kahugye John testified that he knew C from Kyenjojo Police Station. That he met him on 12th February 2011 when they were detained together on charges of murder of an Accountant of the Local Government. That after spending a few days in detention C, Osam and Patrick were taken away from Kyenjojo Police Station at around 3.00 a.m by police officers wearing civilian clothes whom he saw through a hole of the cell door. That C was returned after one week.

That he himself and others were transferred to RRU at Kireka in Kampala but he left C at Kyenjojo Police Station. That he spent around one month at Kireka then he was returned to Kyenjojo Police Station. That he found C still detained there but C was then released and he himself (CW1) released later on 16th April 2011.

During cross-examination, CW1 reiterated that he was detained at Kyenjojo Police Station from 12th February, 2011 because he had been arrested on the allegation of murder. That he met C in a detention cell at Kyenjojo Police Station but he had never met him before. That his sons were also arrested but not at the same time with him although all the suspects, thirty in total were detained in the same cell. That C and other two people were taken from the cell and other inmates informed him that they had been taken by RRU operative.

The right to personal liberty is guaranteed for all peoples by Human Rights law at International, Regional (African) and National (Uganda) levels. The right is specifically guaranteed and protected under Article 3 of the Universal Declaration on Human Rights (UDHR) of 1948, Article 9 of the International Convention on Civil and Political Rights (ICCPR) of 1976, and at Regional

level, under Article 6 of the African Charter on Human and Peoples' Rights of 1997. All these instruments have been signed and ratified by Uganda which therefore has the obligation to comply with their provisions.

This right is also nationally protected under Article 23 of the Constitution of Uganda. According to this Article, personal liberty may only be denied or interfered with in exceptional circumstances that are clearly defined under the same Article. Anybody or authority that denies this right can only legally do so if that person or the authority relies on any of the exceptions or circumstances that are provided for under that same Article.

Article 23 also prescribes the procedural requirements to be respected and complied with by any person or authorities that arrest or detain another person. The Article provides that a person arrested or detained upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the laws of Uganda shall if not earlier released be brought to court as soon as possible but in any case not later than 48 hours from the time of arrest.

Therefore, in a complaint like the instant one which is based on alleged violation of the right to personal liberty, it is necessary to consider and determine whether the Complainant was actually arrested or detained, whether the arrest or detention was permissible under clause ¹ (a) to (h) of Article 23 of the Constitution, and whether any of the procedural requirements under Article 23 of the Constitution was infringed upon.

I must however, now consider whether C was illegally detained by the aforementioned police officers at Kyenjojo Police Station and Fort Portal Police Station in breach of Article 23 (4) of the Constitution of Uganda and also, ignoring the relevant provisions in the International and African Regional human rights legal instruments I cited earlier on.

Based on the evidence I have assessed, I find on the balance of probabilities that C's right to personal liberty was indeed violated for most of the duration when he was detained from 11th February to 31st March, 2011 when he was released on bond. This is confirmed by the documentary evidence in form of the lock up registers from Fort Portal and Kyenjojo Police Stations, as well as the release on bond document that was admitted as CXI.

This amounts to a total of 49 days of C's detention thus, making it 47 days of illegal detention since the first two days of his detention were lawful as per the afore-cited provisions of the Constitution of Uganda.

Accordingly, C's claim in this respect succeeds.

Issue 2: Whether C's right of freedom from torture or cruel, inhuman or degrading treatment or punishment was violated by State agents.

C testified that when he was being transferred from Kyenjojo Police Station to Fort Portal Police Station in a Primio car, the RRU operatives assaulted him. That later on when he was transferred to RRU in Fort Portal, he was beaten by a man called "Karamojong" on the knees, under the feet, and on the shoulders. That he beat him using a baton. That his shoulder bone was seriously

injured and at the time he testified, he said that whenever he carried anything heavy, the shoulder would swell and he would also feel a lot of pain. That after he had been released, he received treatment from Fort Portal Referral Hospital and later on from Kyenjojo Hospital. That he also started getting treatment from different clinics. He however claimed that he had lost his medical documents.

During cross-examination, C clarified that he was not beaten while at Kyenjojo Police Station but was beaten while he was at Fort Portal Police Station. That after he had been returned to Kyenjojo Police Station, he was not interrogated or beaten but at Fort Portal Police Station, there was serious interrogation and for any question he was asked, he was beaten.

CW1 testified that C was returned to Kyenjojo Police Station after one week when he could not sit. That C informed him that he had been beaten by the police officers who had taken him to Fort Portal, and he showed him the injuries on his knees, elbows, shoulders and ankles all which had been beaten. That he narrated the incident while he was crying.

That when they were released, he interacted with C when he came to Fort Portal but C was not in the kind of bad state he was in earlier on at Kyenjojo Police Station.

During cross-examination, CW1 clarified that he did not personally see C being beaten but C was the one who told him that he had been beaten. That when he saw C again after their release, he had improved.

The human rights legal regime at International, Regional (African) and National (Ugandan) levels prohibit violation of the people's right of freedom from torture or cruel, inhuman or degrading treatment or punishment. In this regard, the Universal Declaration of Human Rights (UDHR) of 1948 states under Article 5 that: "No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." In addition, the International Covenant on Civil and Political Rights (ICCPR) of 1996, prohibits torture or cruel, inhuman and degrading treatment or punishment under Article 7, stating that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

At the African regional level, the African Charter on Human and Peoples' Rights (ACHPR) of 1981 under Article 5 also reiterates the total prohibition of violation of the same aforementioned right.

The Constitution of the Republic of Uganda under Article 24 clearly prohibits the violation of an individual's right of freedom from torture or cruel, inhuman or degrading treatment or punishment; and under Article 44 the same right is made non-derogable.

On the other hand, Article ¹ of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), gives an internationally agreed legal definition of torture, stating that:

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 of having committed, or intimidating or coercing him or a third person, or 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 other person acting in an official capacity.

In the case of Fred Tumuramye Vs Gerald Bwete and 10 others, Complaint No. UHRC 264/1999, the Tribunal held that the central elements of the CAT definition of torture are:

- That the act results into severe suffering or pain, whether physical or mental.
- That the act is intentionally inflicted on the victim.
- That the act is carried out for the purpose such as obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind; and
- That the act is carried out by or with the instigation or with the consent or with the acquiescence of a public official or any other person acting in official capacity.

I am taking into account these four important elements of the definition of torture as I evaluate the evidence before me to determine whether the said four elements are proved. Once they are proved, then C would have proved his case that he was indeed subjected to torture in contravention with the laws of Uganda.

C's evidence has satisfactorily indicated that he suffered severe pain in his knees and feet, and this was confirmed by CW1 who although did not witness the beating, personally saw the condition C was in as he could not sit or stand, and was also crying as he narrated to him the incident of assault he had suffered. The aforementioned assault on C was done by RRU operatives both intentionally and purposefully to get a confession from him about the alleged murder case that they were investigating. The RRU operatives who carried out the assault were on their official duty of interrogating C as a suspect.

Although C did not adduce any medical evidence to demonstrate the extent of the injuries he suffered and their effects on him, his own cogent evidence that was well corroborated by the testimony of CW1, is adequate and convincing to me to believe that indeed, he was seriously injured by the said State agents.

In the case of Fred Kinamura and others Vs. Attorney General, 1994 KALR 92, court held that:

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 ^a witness says "he boxed and kicked me", that is 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.

I am therefore convinced that all the ingredients required to prove whether C's right of freedom from torture or cruel, inhuman or degrading treatment or punishment was violated by the aforementioned State agents, are on a balance of probabilities satisfactorily met.

I therefore find on the balance of probabilities, that the aforementioned State agents indeed both individually and severally violated C's right of freedom from torture or cruel, inhuman or degrading treatment or punishment.

I therefore resolve this issue also in the affirmative.

Issue 3: Whether R is liable for the violation

I have already established that the police officers who detained C beyond 48 hours and the RRU operatives who tortured him violated his aforementioned two rights while carrying out their security duties in the service of the State which employed and paid them.

In this regard therefore, the key tenet of the applicable law which I am adopting, provides that any action or even omission that is carried out by a servant while performing his or her official duties, or while he or she is in his or her employment, is considered to be part and parcel of the servant's employment and it renders the servant's master liable for the action or omission of the servant. Even if the act or omission was carried out contrary to the orders or instructions of the master, or even when the servant acted deliberately, wantonly, negligently or even criminally or contrary to specific instructions given to him or her by his or her master, or indeed acted for his or her own benefit, gain or advantage, as long as what the servant did or omitted was merely a manner of carrying out what that servant was or is employed to carry out, then the master is liable. [See the judgment by Justice Newbold in the famous case of *MUWONGE vs ATTORNEY GENERAL* (1967), EA, 17]

Accordingly, regarding this third issue it must be the State to be held vicariously liable for the violation of the aforementioned C's rights as already proved.

However, Article 119 of the Constitution of Uganda provides that the functions of the Attorney General shall include among others, to represent the Government of Uganda in courts or any other legal proceedings to which Government is a party.

I therefore find it fitting to hold R (the Attorney General) vicariously liable for the violation of C's rights that were proved earlier on this decision.

Issue 4: Whether C is entitled to any remedy.

Article 53(2) (b) of the 1995 Constitution of Uganda empowers the Uganda Human Rights Commission, once it gets satisfied that there has been an infringement of a human right or freedom, to order for redress which may include among other forms, payment of compensation.

I now invoke these powers.

Having resolved issues ¹ and 2 in the affirmative, I find that C is entitled to compensation

However, I shall determine the quantum of the damages to be ordered taking into account the legal principle stated in the case of **Matiya Byalema and Others Vs Uganda Transport Company, SSCA No 10 of 1993**, where it was 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."

I am also taking into account the fact that the aforementioned second violation affected a nonderogable right, and also that C testified honestly.

Let me now handle the two violations in the same order I handled them earlier.

a) Violation of right to Personal liberty

In the case of **ABDUL MAKA Vs JINJA DISTRICT COUNCIL**, JJA HCCS No.60/2000 (unreported) where the plaintiff was illegally detained for seven days, Justice Yorokamu Bamwine awarded him UGX. 2,000,000/= for the violation of his right to personal liberty.

And in the case of **ERIC BOSCO AKERA Vs ATTORNEY GENERAL**, UHRC/G/76/2001, and in which the complainant was illegally detained for 43 days, former Commissioner Mariam F. Wangadya sitting at Gulu, applied the same rate that was used by Justice Yorokamu Bamwine in the afore-cited case, and awarded the complainant UGX. 12,000,000/= as being adequate compensation for the violation of his right to personal liberty.

From the above two precedents cases, it is clear that the complainants involved were each awarded approximately UGX. 285,000/= per day spent in illegal detention.

Therefore, in deciding my awards to C I am taking into consideration the afore-mentioned daily rate used in the two precedent cases as well as the value of money at the time the awards in those two cases were made as compared to the value of money as it stands today, twelve years later.

Accordingly, I am adjusting the aforementioned daily rate to UGX.. 300,000/= per day and which I am applying to determine the quantum of the award for C who was detained illegally for 47 days.

I therefore award C, a sum of UGX. 14,000,000= (shilling fourteen million only) as general damages in compensation for the violation of his right to personal liberty as already determined and ruled in this decision.

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

In assessing damages in this respect, I am taking into consideration the fact that freedom from torture is a non-derogable right under Article 44 of the Constitution of Uganda and therefore, its violation is always considered to be a deliberate and serious breach of a fundamental right guaranteed absolutely by the Constitution, and also to be in contravention of Article 221 of the Constitution, which requires all State security agencies to observe and respect human rights and freedoms in the performance of their functions.

In the case of **Kisembo Milton vs. Attorney General, UHRC/FPT/005/2004** in which the Complainant was beaten all over the body, pushed against a wall and punched heavily by Policemen at Bundibugyo Police Station, the Presiding Commissioner, Constantine Karusoke awarded the same complainant UGX..3,000,000/= for the violation of his right of freedom from torture, cruel, inhuman and degrading acts.

The above facts are similar to the facts involved in the complaint before me. However, taking into account the aforementioned additional considerations regarding the value of money today and the constitutional status of the right involved in this violation, I award UGX. 5,000,000/= (five million shillings only) to for the violation of his right of freedom from torture or cruel, inhuman or degrading treatment or punishment.

I am therefore ordering as follows:

ORDERS

- 1. The complaint is wholly allowed.
- 2. R is ordered to pay to C Businge John a total sum of UGX 19,000,000/= (Uganda Shillings nineteen million only) broken down as follows:
 - a) UGX 14,000,000 (Uganda Shillings fourteen million only) as compensation for the violation of his right to personal liberty.
 - b) UGX 5,000,000/= (Uganda Shillings five million only) as compensation for the violation of his right to freedom from torture or cruel, inhuman or degrading treatment or punishment.
- 3. The total sum of UGX 19,000,000/= (Uganda Shillings nineteen million only) shall carry interest at 10% per annum calculated from the date of this decision until payment in full.
- 4. Each party shall bear their own costs.
- 5. Either party not satisfied with this decision has the right to appeal to the High Court of Uganda within 30 days from the date of this decision.

Dated at FORTPORTAL this

DR KATEBALIW&AMOOTWA IRUMBA PRESIDING COMMISSIONER

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