

UGANDA / JUDGMENT

Buwembo Monday v Attorney General (Complaint UHRC 124 of 2007) [2018] UGHRC 5 (9 April 2018)

[2018] UGHRC 5

COURT

Uganda Human Rights Commission

BEFORE

Stephen Basaliza - Commissioner

CASE / FILE NUMBER

Complaint UHRC 124 of 2007

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**THE REPUBLIC OF UGANDA THE UGANDA HUMAN RIGHTS COMMISSION (UHRC)
HOLDEN AT KAMPALA COMPLAINT UHRC/124/2007**

BUWEMBO MONDAY:.....

-AND-

ATTORNEY GENERAL:.....

[BEFORE STEPHEN BASALIZA- PRESIDING COMMISSIONER]

DECISION

This is a complaint brought by the Complainant, Buwembo Monday intended who alleged that on 19th April 2006, he was arrested by the Chieftaincy of Military Intelligence (CMI) operatives while he was along Kibuubo lane in the company of the LC III Chairman of Malangala Sub-County. That he was taken to CMI offices at Container Village from where the operatives demanded money from him. The Complainant further alleged that while at Container Village, he was put in a room and beaten severely by CMI operatives whom he identified as Lt. Mugisha, Sendi and one Kamanda wherein he sustained severe injuries including losing his molar tooth and that he bled profusely. That he was also

forced to sign an agreement of paying the operatives one million, three hundred shillings (UGX.1, 300,000) and that his car Toyota Diana UAD 432X was also taken.

The Complainant contended that the actions of the CMI operatives were unlawful and amounted to the violation of his right to protection from torture, cruel, inhuman and degrading treatment or punishment and the right to property for which he holds the Respondent vicariously liable.

ISSUES:

On the basis of the allegations made, the following issues were raised and agreed upon:

- 1. Whether the Complainant's right to freedom from torture or cruel, inhuman and degrading treatment or punishment was violated by the Respondent's agents.
- 2. Whether the Complainant's right to property was violated.
- 3. Whether the Complainant is entitled to any remedy.

Before I resolve the above issues, I wish to bring to your attention that the Respondent did not enter any appearances despite several adjournments which were made to that effect. The Tribunal also ordered the Respondent to file written submissions but still it was not done.

The Complainant's evidence was therefore unchallenged. Nevertheless, the Complainant retained the duty to prove his case against the Respondent to the satisfaction of the Tribunal in accordance with S.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 dependent on the existence of facts which he or she asserts must prove that the *facts exist* "

And S.102 of the Evidence Act which is to the effect 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."

The findings by the Tribunal

Issue No. 1: -Whether the Complainant's right to freedom from torture or cruel, inhuman and degrading treatment or punishment was violated by the Respondent's agents

Torture is defined under Article 1 of the United Nations Convention against Torture (CA \$ \Gamma\$), 1984 to mean,

"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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions".

The International Covenant on Civil and Political Rights (ICCPR), 1996 prohibits torture or cruel, inhuman and degrading treatment or punishment under Article 7, which states; "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Similarly, the Universal Declaration of Human Rights (UDHR), 1948 states under Article 5 that; "No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and The African Charter on **Human and Peoples' Rights** of 1981 also prohibits torture under Article 5.

Considering National Instruments, the Prevention and Prohibition of Torture Act, 2012 under section 3 defines 'torture' as;

"any act or omission, by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person whether a public official or other person acting in an official or private capacity for such purposes as obtaining information or a confession from the person or any other person, punishing that person for an act he or she or any other person has committed, or is suspected of having committed or of planning to commit; or intimidating or coercing the person or any other person to do, or to refrain from doing, any act".

The Constitution of the Republic of Uganda, 1995 under Article 24 prohibits the same violation by 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(a) that "there shall be no derogation from the enjoyment of the right of freedom from torture and cruel, inhuman or degrading treatment or punishment".

In my determination of the issue now under assessment, it is important and necessary to evaluate the evidence availed to the Tribunal with a view to determining whether the treatment alleged to have been meted out on the Complainant by State agents amounted to the kind of severity that constitutes torture; or whether the effect was less severe and therefore categorized as cruel, inhuman or degrading treatment or punishment. In this respect, I shall evaluate the evidence taking into account four important ingredients that are identifiable in the definition of what constitutes torture, as it is given under Article 1 of the CAT already cited. The ingredients which are also accepted under the International concept of torture are that any action carried out amounts to torture, if:

- a) The action caused the victim severe pain and suffering, whether physical or mental;
- b) Such pain and suffering the action has caused was intentionally inflicted on the victim;
- c) 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
- d) 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.

Evidence

The Complainant testified that around 2006, when he was moving through Kikubo in Kampala to Nabugabo to buy tyres for his vehicle, he was arrested by certain men who showed him a chart indicating that he was wanted by police over a case that had been reported. That he was then taken to CMI offices at Container Village in Bugoloma where they found soldiers dressed in army uniforms who held him by the trouser and led him to their Lieutenant's offices upstairs which had guns and bullets. That he was interrogated by an officer called \$2^{nd}\$ Lt. Salambwa about a missing gun which he denied and that is when one of the men who identified himself as Lt. Sendi and another officer started hitting him with a gun until blood started oozing from his mouth / nose and that they only stopped beating him after a one Kawuma, the LC3 Chairman Malangala intervened and informed the soldiers that the Complainant had a case to answer and therefore should be taken to police. That the officers demanded money from him alleging that he had ambushed a certain vehicle carrying maize at gun point, and that Mr. Kawuma promised to pay the money the following day and then he was released although his vehicle was taken by the officers which matter he reported to Central Police Station - Kampala. The Complainant

further testified that as a result of the injuries he sustained, he was hospitalized and upon his discharge from the hospital, the same soldiers that beat him and demanded from him money went ahead to call Mr. Kawuma demanding the same. That he reported the matter to police and explained the whole ordeal to a one GraceTuryagumanawe who was the O/C of CPS then and Sgt. Didad and that they then ordered their detectives to monitor the said soldiers. That later, Kawuma led the officers led by Grace to Uganda Commercial Bank (UCB) and that the detectives arrested the soldiers. That later some men began harassing him and his wife and when he reported to old Buganda Bus Park the police advised me to go slow on the men.

The Complainant's Expert Witness(CW1) Dr. Jackson Kakembo who treated the Complainant testified that the Complainant's Police Form.3 was authorized on 20th April 2016 from the police at Central Police Station- Kampala by D/CPL. That he is the one who examined the Complainant who exhibited a wound on his right hand (Dorsum) and the wound was \$1x1/2Cm\$, that the Complainant also had soft tissue tenderness of the left cheek size 8x6cm and also had a left tender lower moiar tooth for which he advised him to see a dental surgeon. He testified that the Complainant also had tenderness of the chest and he classified the injuries as grievous harm. That these injuries were brought about by a blunt trumour caused by blunt object and the witness further testified that he later learnt that the Complainant had lost the tooth and by this he went to classify the Complainant's injuries as grievous harm

Complainant's second witness Nakato Resty (CW2), who is also the The Complainant's wife testified that in 2006, while at home she received a call from Kawuma who was the Chairman LC3 Malangala then (now deceased) informing her that the Complainant had been beaten by soldiers and that he was admitted at Rhone Medical Centre Kansanga. That she proceeded to the Medical Centre where she found the Complainant complaining of tooth ache,

and general body pain and pain in the legs and arms. That the Complainant informed her that he was advised by a doctor to go for dental checkup and extract his tooth. That they then proceeded to Mulago Hospital where doctors extracted the Complainant's tooth and was admitted for three days there. That after discharge, he developed a problem with his left leg which was operated upon. That the doctors also performed a prophy on the Complainant where they removed some part of his thigh to the leg and that he is a bit disabled ever since.

In light of the above evidence presented, am convinced that the Complainant was beaten by soldiers who are government officials and at the material time were acting in their official capacity as government employees. The Complainant's evidence is supported by his witnesses' evidence CW1 and CW2. The Complainant also adduced documentary evidence in form of his medical reports which were tendered in evidence as Exhibits and were interpreted by CW1 the author of the same. He testified that he treated the Complainant at the first instance when he was released, for injuries on his body which he classified as harm and went to upgrade the classification to grievous harm when he learnt that indeed the Complainant's tooth had been extracted as he had recommended to the Complainant. I also note that the actions of the soldiers meted on the Complainant were for purposes of extracting information out of him. The Complainant testified thus;

'... I was interrogated by an officer called \$2^{nd}\$ Lt. Salambwa about a missing gun which i denied and that is when one of the men who identified himself as Li. Sendi and another officer started hitting me with a gun until blood started oozing from the mouth nose and that they only stopped beating me after Kawuma, the LC3 Malangala intervened..'

All the above evidence shows that the Complainant was treated in a manner that falls within the definition of CAT (supra) by soldiers who were acting in the

course of their duty as indicated from the fact that the Complainant was beaten from their offices and as such the Attorney General is vicariously liable for their actions in accordance with Article 119 of the Constitution of the Republic of Uganda 1995 as amended.

Issue 2: Whether the Complainant's right to own property was violated.

The right to property is protected under Article 26 of the Constitution of the Republic of Uganda, 1995 and Article 17 of the Universal Declaration of Human Rights (UDHR). Article 17(1) of the UDHR provides that everyone has the right to own property alone as well as in association with others. It further provides that no one shall be arbitrarily deprived of his property. Article 26 of the Constitution is in pari-materia with Article 17 of the UDHR, except that the Constitution goes further to provide for exceptions and the procedures under which property can be lawfully taken away.

Article \$26(2)\$ of the Constitution provides that no person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied;

- a) Taking possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health and
- b) The compulsory taking of possession or acquisition of property is made under a law, which makes provision for-

i) Prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and

ii) A right to access to a court of law by any person who has interest or right $\frac{1}{2}$ over property

In James Rwanyarare And-Patrick Muhumza & others UHRC 304/1999, Commissioner C. K. Karusoke held that in order to prove that the right to

property was violated, the complainant had to prove, ownership and or possession of the property at the material time and the fact that he was unlawfully deprived of the same. Similarly, Commissioner Aliro Omara in Stephen Erau and Oryem D/ASP and 3 others, No.397/99 emphasized that to sustain a violation of property contrary to Article 26 of the Constitution, one must prove that his property was taken from them and not returned. They must also prove that that the act of taking away the property was unlawful.

The Complainant testified that the soldiers forced him to sign an agreement to pay them UGX.1, 300,000(Uganda shillings One Million, Three Hundred Thousand) and that his vehicle was taken away from him by the soldiers. The Complainant did not adduce any evidence to this Tribunal to prove that he was in possession of the vehicle or that it was taken from him or money for that matter. I note that the Complainant submitted a still photograph of himself standing in front of a vehicle, which the Tribunal noted that was not sufficient to prove ownership. Therefore this issue fails.

Issue No.3: Whether there is any remedy due to the Complainant

Under Article 53 (2) of the Constitution, the Uganda Human Rights Commission may, if satisfied that there has been an infringement of a human right or freedom, order for payment of compensation or give any other legal remedy or redress.

Christopher Ssajabi Nsereko and Attorney General UHRC No.112/99 Commissioner F. Mariam Wangadya observed that indeed human rights and freedoms would serve no purpose if their violations did not attract redress to the victims. In this Complaint, the Tribunal finds that the Complainant's right to freedom from cruel, inhuman or degrading treatment or punishment was violated and thus is entitled to compensation.

Taking into account the complainant's evidence presented to this Tribunal, that he was beaten and injured by state agents who are mandated to protect the lives of the people and the fact that Torture is unjustifiable in all forms, I hereby award the Complainant Ug. Shs. \$12,000,000/=\$ (Uganda Shilling Twelve Million) as compensation for the violation of the Complainant's right to freedom from torture or cruel, inhuman or degrading treatment or punishment.

I so award.

ORDER

- 1. The complaint is allowed
- 2. The Respondent pays the Complainant a sum of UGX. 12,000,000 (Uganda Shillings Twelve million) as compensation for the violation of the Complainant's right to freedom from torture or cruel, inhuman or degrading treatment or punishment.
- 3. The said sum of UGX 12,000,000/- (Uganda Shillings Twelve million) shall attract interest at court rate from the date of decision until payment in full.

Either party not satisfied with this decision may appeal to the High Court of Uganda within 30 days from the date hereof.

Dated at KAMPALA this

STEPHEN BASALIZA

PRESIDING COMMISSIONER

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