

UGANDA / JUDGMENT

Eceku v Attorney General (Complaint No: UHR/ SRT/87/2008) [2019] UGHRC 21 (19 March 2019) [2019] UGHRC 21

COURT

Uganda Human Rights Commission

BEFORE

Dr. Katebalirwe Amooti Wa Irumba - Commissioner

CASE / FILE NUMBER

Complaint No: UHR/ SRT/87/2008

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THE REPUBLIC OF UGANDA

THE UGANDA HUMAN RIGHTS COMMISSION (UHRC) TRIBUNAL

HOLDEN AT SOROTI

COMPLAINT NO: UHR/ SRT/87/2008

ECEKU DAVID COMPLAINANT

And

ATTORNEY GENERAL RESPONDENT

BEFORE HON. COMMISSIONER DR. KATEBALIRWE AMOOTI WA IRUMBA

DECISION

The Complainant (C), Eceku David alleged that on 16th August, 2008, he was arrested and severely beaten by the soldiers of Soroti Military Detach on the allegation of illegal possession of a fire arm. He llated further that he was subjected to severe beating in a bid to make him confess that he was ideed in possession of a fire arm. That he was taken Soroti Central Police Station (CPS) where he was detained until 27th August, 2008 when he was taken to Soroti Regional Referral Hospital for treatment because of his bad health condition.

C therefore came to the Uganda Human Rights Commission (UHRC) to seek for redress for the alleged violation of his right of freedom from torture or cruel, inhuman or degrading treatment or punishment and the right to personal liberty by State agents.

The Respondent (R) through their representative (RC), State Attorney Topasho Juliet denied liability and opted for putting up a defense against the allegations made by C.

Issues

The issues to be resolved by 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 (Attorney General) is liable for the violations.
- 4. Whether C is entitled to any remedy.

Let me first point out that from the record of the proceedings of this complaint, RC only cross-examined C and his two witnesses. In addition, R's side neither called any witnesses in defence in this matter, nor filed any written submission. Nevertheless, C is still expected to discharge 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 dependent 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 freedom from torture or cruel, inhuman or degrading treatment or punishment was violated by State agents.

C testified that on 16th August, 2008 at about 3:00 p.m, he was arrested from his home in Aloet Village by about eight soldiers who were wearing military uniform. That they included the GISO (Gombolola Internal Security Officer) of Arapai Sub-County, one Elabu Peter. That he was asked for a gun and when he replied that he did not have any gun, one of the soldiers picked a baton and started beating him on the back, legs, arms and elbows. That the other soldiers also joined in and also beat him using batons and guns butts. That they then pushed him under the seats of the vehicle and drove to Soroti Central Police Station, where they handed him over to the police. C testified further that he once kept a gun when he was working with the Arrow Boys from 2003 to 2004 but Odweny Justine who was also an Arrow boy, had returned the gun to the barracks although he did not personally sign for its return.

During cross-examination, C reiterated that he was arrested by soldiers at about 3:00 p.m. in the presence of Oluk Moses, the LC1 Defence Secretary, as well as Agelu, Amulo Stephen and others whose names he had forgotten. That he was beaten by eight soldiers from his compound. That he was permitted to leave the Arrow Boys by Lt. Odweny Justine but he was never given any discharge letter because they were not giving such letters those days. That his permission was supposed to last for 10 days and the practice was that everyone given such permission was allowed to go with a gun. That he had not completed the 10 days given to him by the time he was arrested. That when Lt. Odweny Justine, Otim Ojok and Otai collected him, he refused to go with them because he had not completed the work he was supposed to do during the ten days he had been allowed. That he did not return to the Arrow Boys after the ten days but he only returned the uniform and the gun. That he however, never recorded anywhere that he had given back the gun. That when he was released, he got treatment from Soroti Joint Clinic where he was also admitted. That he was only beaten from home.

C's first witness (CW1), Oluk Moses testified that on a day he could not remember but in August 2008 between 3:00 p.m and 4:00pm, as him and other people were taking local brew at Aloet Central Village, soldier swearing army uniform approached them and started beating C and forced him into the vehicle they had come in. That in his own capacity as the LC1 Defence Secretary of that area, he approached one of the soldiers and asked him where they were taking C but the soldier ordered him to go back and take his brew. That he did not know what happened to C after he was taken away but that he only saw C being beaten all over his body as he was being arrested.

During cross-examination, CW1 clarified that the five soldiers who arrested C were with the Gombolola Internal Security Officer (GISO), and they were not known to him. He stressed that all the soldiers beat C using the sticks they came carrying and also gun butts. That he did not know where C was taken but he saw him again after some time and although he was the LC1 Defence Secretary, he did not follow up the matter after C's arrest.

CW2, Odiény Justin testified that he had worked with C as Arrow Boys in 2003, and that all the Arrow Boys had guns. That however, after six months, C left for his village with a gun for about one month without returning to work. That the Commander sent CW2, together with Olapo, Ochen and Obule to go and look for C and also retrieve the said gun from him. That when they met he told them that he had been employed as a builder and he did not therefore want to go back to work as an Arrow boy. That he handed over the army uniform and the gun to them, and they took the said items to the barracks where they were recorded as received. That later in 2008, he was informed that C had been arrested but when he went to visit C at the Police Station, he was informed that he had already been released. That later on he saw C at his home and he showed him torture marks on his back and buttocks.

During cross-examination, CW2 reiterated that C had left work and gone away with a gun and to him, C had therefore deserted the Arrow Boys force because he left without permission. That he personally took back C's uniform and the aforementioned gun to the 8th Battalion but he was not given any document to show that he had returned the items on behalf of C, although they were

recorded as received. That C was not given a discharge certificate when he left the Arrow Boys. CW2 further reiterated that he only heard that C had been arrested but he could not recall the exact date when this took place, and he also never saw him being beaten. He also added that at the time he testified, he used to see C riding a motor cycle and he was also a builder.

During re-examination, CW2 reiterated that he returned C's uniform and gun because he was instructed by his superiors to take the items to his boss who was at the 8th Battalion. That although he was the second in command, he was not in position to give a discharge certificate. He also clarified that he was not in position to declare any one a deserter.

CW3 who was also C's medical expert witness, Samali Samuel testified that he was a retired Senior Clinical Officer. That he had qualified in 1982 as a Clinical Officer and held a Diploma in Clinical Medicine and Community Health, and a Bachelor of Community Service Management from the Islamic University In Uganda (IUIU) which he obtained in 2010. That he had worked as a Clinical Officer for 33 years before retiring. That he had worked at Abim Hospital from 1983 to 2012, at Soroti Regional Referral Hospital in 2012, and Moroto Hospital till retirement.

He identified C's document which he interpreted for the Tribunal, as having been issued by UHRC and in C's names. That he had authored and signed it. That C went to him having injuries on various parts of the body which he had incurred after being tortured. That the examination was carried out on 1st September, 2008 and the injuries were specifically on his head, below the left eye and on the back. That C also had open wounds, blunt injuries and an open wound on the left foot. That the injuries were all soft tissue injuries. That at that time C could not stand or even walk because he was in severe pain. That he prescribe treatment for C and also recommended physiotherapy because C was unable to walk. That he prescribed Fancida and antibiotics.

CW3 classified C's injuries as grievous harm because the injuries affected the head and were also deep lacerations. That they were capable of causing a permanent deformity. That according to C, he had been tortured by soldiers who used guns and batons.

The Medical report from Soroti Regional Referral Hospital was admitted with RC's consent as C's second exhibit and marked CX2.

During cross-examination, CW3 clarified that he had become a Clinical Officer in 1982, and that he was not a Medical Officer because a Medical Officer would be higher than a Clinical Officer. That in 2009, he was already a Senior Clinical Officer having attained a promotion in 2003; and that he was working at Soroti Regional Referral Hospital and the Medical Superintendent then was Dr. Odu Bernard. That although the document he interpreted was addressed to a Medical Officer, it was him who had examined C since himself and the Medical Officer were doing work interchangeably. That he signed as a Senior Clinical Officer and used the stamp of the Medical Superintendent because he was authorized to examine the patient and stamp medical reports with the said stamp.

CW3 also added that in practice, he was authorized by his superiors to handle cases of that nature although he was not a Medical Officer and he had never had any document granting him that authorization. That he had obtained his medical degree in 2010, long after C's examination. That he had based on his findings after he had examined C's injuries to conclude that C had indeed been tortured, and not on any previous documents but that he never indicated that there was a likely hood of a permanent injury to his left wrist as after the examination, he never treated C again.

During re-examination, CW3 also reiterated that as a Clinical Officer, he handled cases that came in during the absence of the Medical Officer; and that he was also authorized to stamp medical documents or reports using the stamp of the Medical Superintendent, since Clinical Officers do not have stamps. He clarified further that all external documents were to be stamped with the Medical Superintendent's stamp. That as a Clinical Officer, he could assess, refer and even discharge patients.

RC submitted that the medical report adduced to the Tribunal was not from a Medical Officer as the instructions for examination demanded but from a Clinical Officer. That the report did not also specify and classify the injuries C suffered thus, making it incompetent to prove torture. That no X-ray was taken on C. Therefore, RC concluded by stating that such a medical report was not authentic and should not be relied on by the Tribunal.

In addition, RC submitted that some of C's witnesses did not see any person beating him thus, deferring from what C had testified. That C did not also prove that the security people who beat him were in the course of their duty.

I shall make brief comments about RC's arguments and conclusions later on.

The human rights legal regime at International, Regional (African) and National (Ugandan) levels prohibit violation of 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 (ACI-IPR) 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 also 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.

The aforementioned CAT definition of torture has been applied by the UHRC Tribunal in a number of cases before, including that of **Fred Tumuramye Vs Gerald Bvete and 10 others, Complaint No. UHRC 264/1999**, where 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 therefore taking into account the aforementioned 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 on his back, below the eye and on one of his feet. The assault on C was confirmed by CW1 who personally and directly witnessed the beating and therefore, testified as an eye-witness. C's injuries and their effects on him were also medically confirmed by CW3 who also classified them as grievous harm, adding that they could lead to permanent disability. I was satisfied with the explanation given by CW3, that Clinical Officers could carry out the duties of Medical Officers in case the latter were not present; and that they also had authority to use the stamp of the Medical Superintendent.

^I therefore reject RC's argument and conclusions in these two regards. Moreover, the medical report that was tendered in by C and interpreted by CW3, was admitted in C's evidence with the consent of RC.

The aforementioned assault on C was done by soldiers both intentionally and purposefully to inflict pain and suffering on C in order to get from him information about the whereabouts of the gun they alleged he had not returned to the barracks when he left the Arrow Boys. The soldiers who carried out the assault were on their official duty of arresting and interrogating C as a suspect.

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 in the affirmative.

Issue 2: Whether C's right to personal liberty was violated by State agents

C testified that when he was arrested he was taken to Soroti CPS where he was detained from 16th to 27th August, 2008.

The Lockup register from Soroti CPS was admitted as C's first exhibit and marked CXI, indicating that C was booked in on 16th August 2008 and booked out on 27th August 2008.

Both CW1 and CW2 corroborated C's evidence regarding his arrest and detention, and CW2 even followed up C at Soroti CPS where he was informed that C had been released from detention.

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 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 specially 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 who 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 arrests or detains 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 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.

However, the key question I must consider now, is whether C was illegally detained by the aforementioned security officers at Soroti CPS where he was taken by the soldiers who arrested him, and whether the detention was not in breach of Article 23 (4) of the Constitution of Uganda, and also out of step with the relevant provisions in the International and African Regional human rights legal instruments I have cited already.

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 16th to 27th August, 2008 when he was released. This amounts to a total of 12 days of detention thus, making it 10 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 also succeeds.

Issue 3: Whether R is liable for the violation

I have already established that the soldiers who tortured C, and the police officers who detained him beyond 48 hours violated his aforementioned two rights while they were 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 about personal liability, it must be the State to be held 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. Accordingly, it was proper for R (the Attorney General) to be the Respondent in the instant matter.

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 in 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 case of **Matiya Byalema and Others Vs Uganda Transport Company, SSCA No 10 of 1993**, where it was stated 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 first 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 the right of 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.

I must consider the time lag since C's right was violated; the effects of the assault that caused C to become paralyzed; and the value of money today. I am however, not attaching much weight to the opinion of CW3 that the injuries would cause a permanent disability, since during cross

examination, he stated that he did not include this conclusion in his report because he did not treat C again.

I therefore award C, UGX 6,000,000/= (six million shillings) for the violation of his right of freedom from torture or cruel, inhuman or degrading treatment or punishment.

b) Violation of right to Personal liberty

Since C has proved to my satisfaction that his right to personal liberty was also violated by the said State agents, he is therefore again entitled to receive compensation from R by way of damages which I must now assess and determine.

In the case of **ABDUL MAKA Vs J1NJA DISTRICT COUNCIL, JJA HCCS No.60/2000** (unreported) where the plaintiff was illegally detained for seven days, Justice Yorokamu Bamwine awarded him UGX. Shs. 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**, 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 precedent 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 first, I am taking into consideration the afore-mentioned daily rate used in the afore-cited two precedent cases, as well as the value of money as it stood 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.

Secondly, I must also take into consideration the time lag from August 2008 when the violations against C were committed, up to now when the matter is resolved thus, a total of nearly eleven years of delayed justice

On the other hand, I must also not be oblivious of R's limited capacity to execute the orders given to them by not only this Tribunal but also, courts of law, given the current limited level of government revenue.

Accordingly, I am adjusting the aforementioned daily rate to only UGX. 300,000/= per day and which I am applying to determine the quantum of the award for C who was detained illegally for 10 days.

I therefore award C, a sum of UGX. 3,000,000= (shilling three million only) as general damages in compensation for the violation of his right to personal liberty as already determined and ruled in this decision.

I am therefore ordering as follows:

ORDERS

- 1. The complaint is wholly allowed.
- 2. R is ordered to pay to C, Eceku David a total sum of UGX 9,000,000/= (Uganda Shillings nine million only) broken down as follows:
 - a) UGX 6,000,000 (Uganda Shillings six million only) as compensation for the violation of his right to freedom from torture or cruel, inhuman or degrading treatment or punishment.
 - b) UGX 3,000,000 (Uganda Shillings three million only) as compensation for the violation of his right to personal liberty.
- 3. The total sum of UGX. 9,000,000/= (Uganda shillings nine 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 SOROTI this ... day of .. 2019.

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