

UGANDA / JUDGMENT

# Estate of Lomanat Lomuge v Attorney General (Complaint No: UHRC/MRT/51/2009) [2019] UGHRC 30 (24 October 2019)

[2019] UGHRC 30

## COURT

Uganda Human Rights Commission

## BEFORE

Meddie Mulumba - Commissioner

## CASE / FILE NUMBER

Complaint No: UHRC/MRT/51/2009

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THE REPUBLIC OF UGANDA THE UGANDA HUMAN RIGHTS COMMISSION (UHRC)  
TRIBUNAL HOLDEN AT MOROTO COMPLAINT NO: UHRC/MRT/51/2009 ESTATE OF  
THE LATE LOMANAT LOMUGE ::::::::::: COMPLAINANT -AND-

ATTORNEY GENERAL ::::::::::: RESPONDENT

(BEFORE HON. COMMISSIONER MEDDIE ,B. MULUMBA)

## DECISION

Lomanat Lomuge a resident of Kawalakol Parish, Kapedo Sub County, Kaabong District alleged that at around 8:00 am on 9th June 2009 while he was at his home, he was approached by Uganda People's Defence (UPDF) soldiers attached to Kawalakol Army detach led by Lt Maliamungu. That the soldiers then ordered him to walk with them towards the barracks but after walking a short

distance, the soldiers begun shooting at him. That as a result he fell on the ground only to realize that he had been shot on the right hand. He further alleged that the soldiers took him to Kocholo Health Centre where he received treatment and that he was later taken to Kawalakol army detach to make a statement.

This matter came up for 1<sup>st</sup> time hearing on 23rd October 2014 before former Commissioner Violet Akurut Adome. At the hearing, the Respondent was represented by Counsel Sylvia Cheptoris. The following issues were raised for determination; -

- I. Whether the Complainant's right to freedom from torture or cruel, inhuman and degrading treatment or punishment was violated?
- II. Whether the Respondent is vicariously liable for the actions of its servants?

III. Whether there are any remedies available to the Complainant?

At the hearing examination in chief was carried out on Lomanati Lomuge. **Logwel Hillary (CW I)** and **Ikinga Regina (CW II)** were examined in chief and cross examined. On 5th December 2014 cross examination was carried out on Lomanati Lomuge. When the matter

came up for further hearing on 9th March 2015, Commission Counsel Esther Angella informed the Tribunal that Lomanat Lomuge had died in January 2015. That matter came up again for hearing on 3rd May 2016 and in accordance with Rule 32 of the UHRC Rules 1998, the Administrator of the Estate of the Late Lomanat Lomuge was substituted as the Complainant.

The matter later came up for further hearing before me on 17th October 2017. At the hearing Respondent Counsel Martha Akurut raised a preliminary objection to the effect that since Lomanati Lomuge had passed on in 2015, hearing of the matter could not proceed. Learned State Attorney contended that torture is a personal claim and Lokol Lucia as a Legal Administrator could not take over the matter. In her oral submission she referred this Tribunal to the case of Israel Kabwa vs Martin Banoba Musiga SCCA 52/1995 in support of her argument.

In response, in her oral submission Commission Counsel Angella Esther submitted that the family of the deceased should be reimbursed for the expenses incurred as a result of victimization. She

referred this Tribunal to the case of People vs Robinson Appellate Court of Illinois

<sup>I</sup> made a ruling on the objection in which <sup>I</sup> held that since the deceased had given his evidence in chief and had also been cross examined, hearing of the matter should proceed. CW <sup>I</sup> had also given evidence in chief and had also been cross examined.

Hearing of the matter then proceeded with examination in chief and cross examination on CW **III Lochoro Flavio**. This was the close of Lomanat Lomuge's case. On 4th April <sup>2018</sup> when the matter came up for defence case, Respondent Counsel Akurut Martha did not call defence witnesses but opted to file written submissions.

Having laid out how the matter proceeded at the Tribunal, <sup>I</sup> will now proceed to resolve the Issues in the order in which they were raised.

<sup>I</sup> will resolve Issue <sup>I</sup> and II concurrently.

In regards to Issue I, the Late Lomanati Lomuge testified that at around 8:00 am on a date and month he could not recall while he was at his home in Naoyagum Village, he was approached by

uniformed armed UPDF soldiers attached to Kawalakol army detach. The soldiers called him to go with them to the barracks but he run away in fear. When he tried running away, the soldiers shot him instead.. As a result of the gunshot injury, his hand was broken on the right elbow. The soldiers took him to Kochoro Health Center where he was admitted for about one month. While admitted, the soldiers brought for him food and also apologized for shooting him under mistaken identity.

Upon cross examination he stated that the soldiers shot him because they thought that he was a criminal.

CW <sup>I</sup> testified that the Late Lomanat Lomuge was his neighbor. In the early hours on a date and month he could not recall but in 2008, Lomanat Lomuge was approached by twelve UPDF soldiers. The UPDF soldiers found Lomanat Lomuge outside his home resting on a rock. When Lomanat Lomuge saw the UPDF soldiers he became scared and decided to run away. When the soldiers saw Lomanat Lomuge running away, they thought that he had a gun and decided to shoot at him. As a result of the gunshot injury, Lomanat Lomuge fell down and other soldiers came to see what had

happened. Together with the soldiers and other people who had gathered, they went to where Lomanat Lomuge was lying and found him in a pool of blood. Together with other people, they carried Lomanat Lomuge to a nearby health center where he was treated. Lomanat Lomuge was not admitted at the health Center but kept reporting as an outpatient. After a short while, Lomanat Lomuge developed a mental problem which was mainly attributed to the fact that Lomanat Lomuge fell on a rock upon being shot.

Upon cross examination he stated that the events occurred during the disarmament exercise. During that time UPDF soldiers were fond of torturing people. The deceased was approached by 12 soldiers who were conducting a cordon and search operation.

CW II testified that on a day, month he could not recall UPDF soldiers found Lomanat Lomuge outside his \*manyatta.\* Upon seeing the soldiers, Lomanat Lomuge tried running away but the soldiers shot at him. As a result of the gun shot injury, Lomanat Lomuge fell down on a rock. He did not see the soldiers shooting Lomanati Lomuge but he found him lying on a rock with a bruise. Together with other community members Lomanati Lomuge was taken to a

nearby health Centre. Lomanat Lomuge was not admitted at the health Centre. Lomanat Lomuge was shot on the left hand and later became better. The soldiers did not offer any assistance to the Lomanati Lomuge.

Upon cross examination he testified that he did not see the soldiers shooting the Complainant but he heard a gunshot and run to the direction where the gun shots were coming from. He saw the soldiers with guns. After the shooting, the Complainant developed a mental problem.

CW III testified that he is a full time medical doctor attached to Moroto Regional Referral Hospital. He interpreted exhibit <sup>1</sup> which is a Referral Note to Kaabong Hospital from Kocholo Health Centre II. The deceased was examined at Kocholo health Centre II on 6th September 2009 with a gunshot wound. The report did not indicate the type of examination which was carried out or the body part that he was shot. The deceased was given an injection and antibiotics.

Upon cross examination, he stated that the medical report lacked critical information. The deceased might not have gone to the referred health facility.

Article 24 of the Constitution of the Republic of Uganda provides that no person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment. The right to torture, cruel, inhuman and degrading treatment or punishment as protected under Article 24 and 44 (a) of the Constitution of the Republic of Uganda is non derogable right \*(see Attorney General/ vs. Satoro Abuki Constitutional Appeal No. 1/1998; Ojok Alex and Attorney General UHRC/G/3/2005).\* Torture requires <sup>a</sup> deliberate inhuman treatment causing very serious and cruel suffering whereas inhuman treatment or punishment involves the infliction of intense physical and mental suffering which reached a minimum level of severity and degrading treatment requires ill treatment designed to arouse the victim's<sup>s</sup> feelings of fear, anguish and inferiority capable of humiliation and debasing them and possibly breaking their physical or moral resistance \*(see Mohammed Draku vs Attorney General & Kajoingi Andrew UHRC/G/88/2005; Robert Sekajjugu and Makindye Ssabagabo Sub County UHRC/452/2004).\*

Respondent Counsel in submission does not dispute the fact that the UDPF soldiers were in the course of their employment but disputes the fact that the Complainant's<sup>s</sup> rights were violated. She pointed out

that the Complainant's<sup>s</sup> evidence must be put into context of the times and his own actions. The soldiers were working in a very dangerous region full of armed warriors and they were also carrying out their duties of disarming these warriors who were a danger to their own people and the neighboring communities of Teso, Acholi and Lango. The soldiers were doing their routine work of searching for illegal guns. The deceased's<sup>s</sup> actions of running away sent wrong signals to the soldiers who believed him to be a wrong character and therefore fleeing justice or running away to hide his guns. He was shot at on the right hand just to disable him and this was reasonable force. If the soldiers intended to inflict severe pain upon the deceased they would have shot at another part of the body such as the back, chest or head which would have been fatal. The Complainant acted recklessly in trying to run away towards the valley upon seeing the soldiers and therefore contributed to his injuries.

The principles of necessity and proportionality set limits on how and when force may be used lawfully and law enforcing officials must comply with these principles. Failure to respect these principles usually means that <sup>a</sup> victim's<sup>s</sup> human rights have been violated. Law

enforcement officials should in carrying out their duty, as far as possible, apply non-violent means such as persuasion, negotiation and mediation before resorting to the use of force and firearms \*(see Principle 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials 1990).\*

Respondent Counsel in submission states that the actions of the soldiers must be put in the context of the prevailing security situation at that time. It is important to note that under Article 221 of the Constitution, members of the Uganda Peoples' Defence Forces **shall observe and respect human rights and freedoms in the performance of their functions**. The tribunal emphasizes that the right to freedom from torture enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organized crime, the Article 44 (a) of the Constitution prohibits in absolute terms torture and inhuman or degrading treatment or punishment.

In **Bouyid vs Belgium Application no. 23380/09** the Grand Chamber of the European Court of Human Rights held that 'in respect of <sup>a</sup>

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person who is ... confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement' of the right to freedom from torture and inhuman or degrading treatment.

The Complainant has the duty to prove the allegations against the Respondent on <sup>a</sup> balance of probabilities \*(Ociti Dennis and Attorney General UHRC/GLU/60/2004).\* From the testimonies of CW <sup>I</sup> and CW II, the soldiers found the Late Lomanat Lomuge at his home resting on a rock which was outside his \*manyatta.\* Upon seeing the soldiers the deceased run away and the soldiers shot him. Nonviolent means could have been used by the soldiers. There is no evidence that the deceased was armed and was a threat to the well-armed soldiers. <sup>I</sup> see no justification for the soldiers to shoot at the deceased. The action of the soldiers shooting at Lomanati Lomuge was taken without any warning and giving him any opportunity to surrender. There were no exceptional circumstances prevailing at that time to show that the actions of the soldiers was necessary in their own defence or that it was necessary for them to shot at him in order to effect his arrest or prevent his escape.

<sup>I</sup> therefore hold Issues <sup>I</sup> and II in the affirmative.

Having answered Issues <sup>I</sup> & II in the affirmative, the estate of the Late Lomanat Lomuge is entitled to a remedy the Tribunal deems fit and this may be payment of compensation or any other legal redress or remedy \*(See Article <sup>8</sup> of the Universal Declaration of Human Rights and Article 53 (2) of the Constitution; Masiko Augustine and Attorney General UHRC/FP/60/2007; Matia Mu/umba and Attorney General UHRC/FPT/01/2008; Joseph Semambo and Attorney General UHRC/155/2004; Obirai Andrew Francis and Attorney General UHRC/SRT/06/2004).\* CW <sup>I</sup> and CW II in their testimony stated that during the shooting, the

deceased fell on a rock and developed mental problems.

<sup>I</sup> therefore deem the amount of Ug.shs. 15,000,000= (Uganda Shillings Twelve million) to be reasonable as general damages for the violation of as general damages for the violation of his right to freedom from torture or cruel, inhuman or degrading treatment or punishment.

## ORDERS

Bearing in mind the above considerations and the case law authorities referred to above, this Tribunal orders as follows:

- (1) The Complaint is allowed.
- (2) The Respondent is ordered to pay the estate of the Late Lomanati Lomuge a sum of Ug.shs. 15,000,000/= (Uganda Shillings Fifteen million only) as general damages for the violation of his right to freedom from torture or cruel, inhuman or degrading treatment or punishment.
- (3) The above total sum of Ug.shs 15,000,000/= (Uganda Shillings Fifteen Million only) shall attract interest at 10 % per annum from the date of this decision till payment in full.
- (4) Each party shall bear its own costs.

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

Dated at MOROTO this ..... day of ..... 2019.

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**MEDDIE B. MULUMBA. PRESIDING COMMISSIONER**

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