UGANDA / JUDGMENT

Kasaija v Attorney General (Complaint No: UHRC/FPT/39/2013) [2022] UGHRC 12 (15 January 2022)

[2022] UGHRC 12

COURT
Uganda Human Rights Commission

BEFORE
Shifrah Lukwago - Commissioner

CASE / FILE NUMBER
Complaint No: UHRC/FPT/39/2013

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THE REPUBLIC OF UGANDA

IN THE UGANDA HUMAN RIGHTS COMMISSION TRIBUNAL

HELD AT FORTPORTAL

COMPLAINT NO: UHRC/FPT/39/2013

KASAIJA PATRICK :: COMPLAINANT

AND

ATTORNEY GENERAL J:: RESPONDENT

BEFORE: HON. COMMISSIONER. SHIFRAH LUKWAGO

DECISION

The Complainant (C), Kasaija Patrick alleges that on 1st June 2012 at about 11:00a.m, he was arrested from Mpanga Market by Police Officers attached to Fort Portal Police Station on the allegation of theft. That he was taken to the Police Station and detained but after about two hours, he was picked from the cell by the Officer in Charge called Mr. Mugarura Stephen and taken to a room near the Police counter and beaten in the back, right knee and elbow using a hand hoe. That the Officer also kicked him on his mouth a result of which his three teeth were partly

broken. That the beating took about 15 minutes and he was taken back to the cell. That he was detained at the Police Station for about two weeks and thereafter remanded at Katojo Prison. That while he was in the cell, one of his friends called Harajuba visited him and brought him some tablets. That he accessed medical treatment from Katojo Prison Clinic and Buhinga Hospital in Kabarole District.

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

R through their representative counsel (RC) Mr. Rwamwana Hannington denied liability and stated that R's side intended to challenge C's allegation. Counsel Rwamwana who denied liability on 15/12/2017, later on during the hearing that took place on 10/05/2018 opted for settling the matter amicably with C only in respect of the violation of his right to personal liberty.

In this connection, although C's complaint was originally about two issues and that is, the violation of his right to personal liberty and the right of freedom from torture or cruel, inhuman or degrading treatment or punishment, later on during the hearing that took place on 10/05/2018, RC Rwamwana Hannington offered to settle the complaint with C amicably but considering only the aforementioned first issue on personal liberty. In turn, C accepted to drop the violation of his right to freedom from torture or cruel, inhuman or degrading treatment or punishment, and C's written proposal for settlement of his complaint at **5,600,000=** (Uganda Shillings Five million six hundred thousand) that was dated 11/5/2018 was also duly received by R's side on the next day 12/5/2018, clearly sought to settle the complaint in respect of the aforementioned first issue regarding personal liberty.

During the subsequent hearings, RC did not present any report on the progress of the settlement and therefore it could not be ascertained as to whether the Solicitor General had approved the same.

Accordingly, ^I have also decided to focus my assessment of the facts of this complaint mainly on the issue of personal liberty, which both parties singled out to settle amicably consideration, in order to seek to determine whether the

UGX **5,600,000=** that was proposed by C and accepted by R's side was fair given the fact that R's side offered to consider only one of the two issues that were raised by C and yet, R had convinced C to drop the violation of his right of freedom from torture or cruel, inhuman or degrading treatment or punishment for which he sought Compensation at the beginning of the hearing of the complaint.

Therefore, my assessment of the facts of the complaint shall be focusing only on the following three issues.

- 1. Whether C's right to personal liberty was violated by State Agents.
- 2. Whether R (Attorney General) is liable.

- 3. Whether C is entitled to any remedy.

However, before I determine the above-mentioned issues it is pertinent for me to note that, that this matter was heard by my colleague Hon. Commissioner Katebalirwe Amooti Wa Irumba and it is from his record of proceedings that ^I have arrived at this decision.

Nevertheless, I regard it to be necessary and important for me to also take into consideration the promises made by R's side to settle the matter amicably but in vain. ^I shall also take into consideration the fact of fairness and justification of the quantum of the compensation which C made was accepted by R's side.

Tribunal Hearings

The first Tribunal Hearing was held on 15/12/2017. C, Kasaija Patrick was present. R was represented by Mr. Rwamwana Hannington.

C testified that in June 2012 at around 9:00a.m, while he was at Mpanga Market, he was arrested by two Police Officers who were wearing civilian clothes on the allegation oftheft of money. That when he was being arrested, there was no other person because he was at the market going to Buhinga Regional Referral Hospital. That he was taken to Fort portal Police Station by the same people who

arrested him. That his name was recorded in a book at the counter and thereafter detained in a cell. That was when he confirmed that the people who had arrested him were Police Officers. That after two hours when he was in the cell, a man called Mugarura Steven who was also the Officer in Charge, Criminal Investigations picked him and took him to a room which was near the counter. That Mugarura also sent a Police Officer to bring two basins of water and when he brought them, Mugarura poured them on his head. That he (Mugarura) then got a hoe handle and he beat him and he fell down. That thereafter, that was when Mugarura started beating him all over the body but concentrating on the back and shoulder. That he also kicked him and the beating took about 15 to 20 minutes.

That while Mugarura was beating him, he was saying that he was fed up of thieves and that he (C) should give him the money he had stolen. That he (C) told him that he did not know anything about the money. That because he was making a lot of noise, Mugarura tied his mouth so that people outside would not hear him. That after the beating, he (C) removed the cloth from his mouth only to find that he had lost two lower teeth while the third was broken though it was remaining in the jaw. That his two teeth fell down and he picked them and tied them in a handkerchief (C *shows the gaps in hisjaw to Tribunal).*

That he was taken back to the cell by a Police Officer called Arajabu and he (C) kept his teeth with a one Buuza Isaac who was a suspect/cell mate he got to know while in detention. That as a result, his lips got swollen, bleeding and feeling a lot of pain in the back. That he only got capsules to ease the pain he was feeling.

The certified copy ofthe lockup registerfrom Fortportal Central Police Station was admitted with the consent ofRC as CXI.

During cross examination, C clarified that he was 30 years old. That he did not know the officers who arrested him. That Mugarura Steven was the person/officer who beat him but he did not arrest him. That he was arrested in June 2012 on a date he could not remember. That he was detained for two weeks before he was produced before court. That his teeth were lost when Mugarura beat him. That it was while in Police custody (arrest and detention) that he lost the teeth. That he asked the Police officers at Fort portal to take him for medical treatment and they declined but one of the officers bought him tablets. That he accessed treatment from Katojo Prison.

C's cross examination was carried out during the second Tribunal hearing which was held on 10/05/2018. This was when RC informed the Tribunal that their office (Ministry of Justice and Constitutional Affairs) had a mechanism of ensuring that complaints involving the violation of personal liberty (where a lock up register was present) are settled amicably to avoid lengthy hearings and the costs/expenses incurred in prosecuting them. RC prayed to the Tribunal that if C was agreeable to settle the matter, they would reach a compromise and settle the complaint. RC further submitted to the Tribunal that if C would drop the violation of torture and they proceed with the violation of personal liberty, then R's side would be able to settle amicably. C submitted to the Tribunal that he agreed to drop the issue of torture so that himself and R's side could pursue the settlement of the violation of personal liberty. The Tribunal therefore ordered that C provide to R a written proposal and clearly state in his proposal his agreement to drop the issue of torture and retain that of personal liberty and also propose what form of compensation he would like R to pay in. The Tribunal further ordered that Commission Counsel (CC) assist **^C** in delivering C's proposal to R and that both parties to give a report to the Tribunal on the progress of amicable settlement.

The second Tribunal hearing was held on 11/6/2018. C was present. R was represented by Ms. Atumanyise Racheal. CC submitted to the Tribunal that the matter was coming up for an update on amicable settlement but especially to enable R's side start the process of settling the complaint. That C provided R with his proposal on 10/05/2018. RC submitted to the Tribunal that she had no update regarding the settlement. She therefore prayed that the Tribunal allows them two months to follow up the settlement. The Tribunal accordingly allowed RC's prayer but remarked that if after two months, there was no progress presented before it by their side, the complaint would be adjourned for a decision.

The third Tribunal hearing was held on 2/4/2019. C was present. R was represented by Mr. Rwamwana Hannington and Mr. Singura Isaac. The matter came up for an update on amicable settlement. RC submitted to the Tribunal that he had no update regarding the settlement. He prayed to be granted one month so that he could file submissions. The Tribunal thus, allowed RC's prayer and the matter was adjourned.

Accordingly since 2/4/2019, when R's side offered to file submissions, to date, none has ever been filed, hence this decision.

^I want therefore to stress the observation that although R offered to settle the matter amicably, this never came took off. ^I must also specifically emphasize that from the Tribunal proceedings on record, it is clear that Mr. Rwamwana Hannington indeed requested C to provide to R's side with a proposal and also requested him to drop (on a compromise) the issue of torture. This was therefore one of the explicit actions that were undertaken by R's representatives including the promises to secure the settlement which clearly indicated that R had actually admitted the allegation made by C and specifically, regarding the issue of violation of his right to personal liberty and of freedom from torture.

^I must further note that this matter about three years, two of which the complaint has been pending amicable settlement, including filing submissions. All this time was allowed in order to mainly or largely accord R the opportunity to settle the complaint with C amicably. Although RC appeared on two different occasions before the Tribunal, with no updates on the settlement whatsoever, it was taken that the time frame within which RC's prayed for the several adjournments to both pursue the settlement and file submissions was adequate. That is therefore no doubt that their voluntary initiative to settle the matter was the clearest indication to the Tribunal of their side having admitted liability for the actions of the State Agents at Fortportal Central Police Station, which were contrary to Articles 23(4) (b) of the 1995 Constitution of the Republic of Uganda which prohibit the violation of an individual's right to personal liberty.

Let me also emphasize that the role of the Uganda Human Rights Commission in human rights enforcement, is to ensure thatjustice is served. The Commission should therefore not condone any human rights violations by the State or its agents who moreover, ought to uphold peoples' rights. The Commission and specifically this Tribunal, must ensure that the victims of human rights violations are accorded the due justice. The foregoing is enshrined under Articles 50(2), 52(1) (a) and 53(2) (b and c) of the 1995 Constitution of the Republic of Uganda.

Therefore, in order for the Tribunal not to delay justice any more in the instant complaint, ^I am accordingly considering Rule 20(a) of the Uganda Human Rights Commission (Procedure) Rules 1998, which provides that:

> On appearance of both parties before the Commission, the respondent shall be asked by the Commission whether or not he or she admits the claim of the Complainant and if the respondent admits the claim in its entirety, the decision shall be given confirming the violation of the human right or freedom as alleged by the complainant; and the Commission shall make the appropriate orders in the circumstances in favor of the complainant.

As ^I have already mentioned, this decision is also largely based on the Constitutional provision enshrined under Article 53(2) (b) and (c), which provides that the Commission may, if satisfied that there has been an infringement of a human right or freedom, order payment of compensation or any other legal remedy or redress.

Let me now look at the right that was violated and also assess the quantum of damages to be awarded to C in respect to the violation of C's right to personal

liberty. In this respect, ^I am taking into consideration the principle that was laid down in the case of **MATIYA BYABALEMA AND OTHERS VS UGANDA TRANSPORT COMPANY SCCA NO 10 OF 1993,** where it was stated that:

"Courts ought to assess the amount of damages taking into account the current value ofmoney in terms ofwhat goods and services it can purchase at present".

As ^I have already stated, the aforementioned lock up register from Fort portal Central Police Station which R had a chance to look at revealed that C was detained for a period of 14 days before he was produced before court.

According to the facts that ^I have noted at the beginning of this decision, C was arrested from Mpanga Market on 1st June 2012 by Police Officers attached to Fort portal Central Police Station and he taken to the Police Station where he was detained for two weeks, as it was reflected in the certified copy of the lock up register. The time frame of C's detention at the Police Station gives a total of 12 days if ^I subtract the two days allowed by detention facilities to hold suspects.

When ^I apply to this duration of 12 days of illegal detention, the daily rate of UGX 300,000= that the Commission's Tribunal has on several occasions in the past used in resolving complaints like this on the issue of violation of the right to personal liberty, my calculation gives me a total of UGX 3,600,000= covering the 12 days of C's illegal detention; and which can be rounded up to UGX 4,000,000=, taking into account the legal principle that ^I cited earlier on in respect of the need to take into account the value of money in terms of the goods and services that it can purchase at present while the violation for which it is ordered to be paid was committed several years in the past.

^I must also consider the fact that once C was detained for the above period of time, it was not necessary for the Officer in Charge Criminal Investigations a one Mugarura to inflict pain on him as C indicated in his original testimony. Although ^I indicated in this decision that the subject of the settlement was in

respect to the violation of the right to personal liberty, ^I must emphasize that once a suspect is restrained/detained, he or she should not be exposed to further harm/ his personal security compromised. This is because an individual's detention has its own impact on such person and therefore it would not be necessary for the captors to create further negative impacts whether the suspect did or not commit an offence.

In that case therefore, ^I shall also be considering the fact that the suspect/C 's personal liberty was compromised when he was exposed to further risk or being beaten and worst of it all detained for 12 days without availing him proper medical attention. It did not matter whether C requested for medical treatment or not. Once he had been beaten by the said officer, the station had a duty to ensure that he was adequately attended to. ^I am not

talking about Article 23(5) (b and c) here, but the fact that while in detention his health and personal security was compromised and yet, the prolonged detention was not a solution in itself. The detention made matters worse.

Accordingly, the UGX 5,600,000= that was proposed by C and accepted by R's side as a final settlement of the complaint appears to be fair on one part but it is not adequate considering that C was detained at the Police Station in the circumstances describe above. The said Officer in Charge Criminal Investigations acted contrary to Article 211 of the Constitution of Uganda, a duty that cannot be overlooked. Article 23 accordingly provides confines within which detention can be carried out but does not include beating of suspects.

Therefore, C deserves to be compensated for all that he was made to go through in this regard, and for the loss he incurred in terms of money, time and other respects.

^I am taking into account the seriousness of the violation of C's right of personal liberty and ^I am raising the amount C had initially proposed from UG 5,600,000= to UGX. 6,000,000= majorly due to the circumstances within which C was detained in, the initial proposal for settlement was never challenged by R's side

and the fact that C's hopes to be paid sooner were falsely raised yet their part of the bargain was never met.

^I am also considering the value of money and what it can purchase at present as the principle laid down in the case of Matia Biryabalema above, ^I accordingly order **R** to pay to **C** UGX. 7,000,000/= as general damages in compensation for the violation of C's right to personal liberty, losses and inconveniences already highlighted above.

^I therefore order as follows:

ORDERS:

- 1. The complaint is wholly allowed.
- 2. R (the Attorney General) is ordered to pay to **C** Kasaija Patrick a total sum of UGX 7,000,000/= (Uganda Shillings Seven Million only) as general damages for the violation of his right to personal liberty and inconveniences suffered by C, all as established in this decision.
- 3. Each party to bear their own costs.
- 4. Either party may appeal to the High Court of Uganda within 30 days from the date of this decision if not satisfied with this decision of the Tribunal.

So it is ordered.

DATED AT FORTPOARTAL ON THIS . DAY OF..vS?.<tV.^£7 2022.

SHIF LUKWAGO PRESIDING COMMISSIONER

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Prepared on 13 October 2026 · Esheria