

UGANDA / JUDGMENT

L/CPL Walumbe Ronald v Attorney General (Complaint UHRC 99 of 2010)

[2019] UGHRC 17 (15 October 2019)

[2019] UGHRC 17

COURT

Uganda Human Rights Commission

BEFORE

Meddie Mulumba - Commissioner

CASE / FILE NUMBER

Complaint UHRC 99 of 2010

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THE REPUBLIC OF UGANDA THE UGANDA HUMAN RIGHTS COMMISSION TRIBUNAL HOLDEN
AT KAMPALA COMPLAINT NO UHRC/99/2010

L/CPL WALUMBE RONALD:.....COMPLAINANT \$-\$ AND \$-\$

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ATTORNEY GENERAL:.....RESPONDENT DECISION

(Before: Hon. Commissioner Meddie B. Mulumba)

(the Complainant) alleges that $\overline{\text{on}}$ \$ Walumbe Ronald 12/08/2009 he was arrested and detained at Mubende Army Quarter Guard Cells until 10/09/2009. That he was detained without being given food and water. That he was later transferred to Mubende Central Police Station (CPS) where he was further detained until 18/09/2009 when he was taken to Court

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The following issues were framed for determination:-

- I. Whether the Complainant's right to personal liberty was violated?
- II. Whether the Respondent is vicariously liable?

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

The Complainant testified in person and called one witness L/Cpl Mbikyo Fred - CW I. The Respondent did not call defence witness but Respondent Counsel opted to file written submissions in defence which have not been filed to date.

I will resolve the Issues in the order they were raised.

In regards to Issue I, the Complainant's testimony is that he is a Lance Corporal attached to the UPDF 2nd Battalion, Kayunga, Mubende District. On 12/08/2009 while studying agriculture at Mubende Community Polytechnic School he was arrested by fellow soldiers. Upon arrest he was taken to the Mubende Army Barracks Quarter guard cells where he was detained for 29 days until 10/09/2009 when he

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was transferred to Mubende CPS. Upon reaching Mubende CPS he was informed that he had a defilement case. He was detained at Mubende CPS for one week and taken before Courts of law. He tendered in Exhibits I and II.

In cross examination he stated that he was arrested by a fellow soldier. He was detained for 29 days at Mubende Army Barracks Quarter guard cells before being taken to Mubende CPS where he was further detained for 1 week before being taken to Court.

CW I testified that towards 2009 while he was still a prison warder at Mubende Army barracks, the Complainant was brought into the army barracks cells. The Complainant was brought by the O/C Arthur Barigye. He could not recall the exact day when the Complainant was brought into custody. The Complainant spent one month in detention. He does not know why the Complainant was detained.

A person arrested or detained on suspicion of having committed or about to commit an 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

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A person arrested or detained on suspicion of having committed or about to commit an 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

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hours from the time of his or her arrest. See: Article 23(4) (b) of the Constitution of the Republic of Uganda; the African Charter on Human and Peoples' Rights Article 6, The Universal Declaration of Human Rights 1948 Article the International Covenant on Civil and Political 6. Rights 1966 Article 9.

From the evidence on record, the Complainant was arrested and detained at Mubende Military Barracks Quarter Cell on in detention at Mubende 12/08/2009. He was Military Barracks Quarter Guard cell for a period of 29 days. This is corroborated by CW I who was the cells guard. He was then transferred to Mubende CPS where he was further detained. To corroborate his testimony of detention at Mubende CPS he tendered in evidence a certified copy of the Police lock-up Register from Mubende CPS which was marked Exhibit I. From Exh I, the Complainant was in detention from 10/09/2009 vide Serial No 3066/09. He alleged allegations of defilement until 18/09/09 when he was taken to Court and granted Exh II which is a certified copy of the Release on bond. The Complainant was therefore in custody from 12/08/2009 until 18/09/2009 which is a period of 37 days; and when the 2 lawful days permissible under

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Article 23 \$(4)\$ of the Constitution of the Republic of Uganda 1995 are deducted, 35 unlawful days of detention remain.

The detention of the Complainant which was beyond 48 hours requirement, thus infringed the Constitutional provisions enshrined in articles \$20(2)\$, \$23(3)\$ and \$(4)\$. See: Omar Awadh Omar and 10 others vs Attorney General Consolidation Constitutional Petition No.s 055 and 56 of 2011; Mbusa Wilson and Attorney General UHRC/F/151/2003.

In regards to Issue II, the law on vicarious liability as enunciated in *Muwonge vs Attorney General* (167) EA 17 has been further laid out in various decided cases (see also *Oketha Dafala Valente vs Attorney General* HCCS 69 of 2004). In the instant complaint, the testimony of the Complainant is uncontroverted to the effect that he was arrested and detained at Mubende Military Barracks Quarter guard Cell and Mubende CPS. I found not found any evidence to suggest that the UPDF soldiers attached to Mubende policemen Quarter guard Cell and Barracks Military attached Mubende CPS involved were on a frolic of their own.

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On basis of the evidence availed to the Tribunal, I find the complainant has proved on the balance of that probabilities that the army soldiers and the policemen who detained him at Mubende Quarter Cell and Mubende Police Station respectively did so in the scope of their duty and course of their employment for which the Attorney General is vicariously liable.

Issue too is therefore answered in the The second affirmative.

Having held Issues I and II in the affirmative, I find that the Complainant is entitled to a remedy which may include compensation (see Article 53 \$(2)\$ \$(b)\$ and \$(c)\$ of the Constitution of the Republic of Uganda 1995). $\mathbf{I}$ n determination of the quantum of damages he is entitled to, I will take into account the period of illegal detention. the instant case the Complainant was in illegal $\mathbf{I}$ n detention for 35 days before he was taken to Court. I deem \$UGX\$ 7,000,000/ = (Uganda Shillings seven figure of $\mathbf{a}$ \$ **million only**) as general damages for the violation of his right to personal liberty as protected under Article 23 \$(4)\$ (b) of the Constitution.

The actions of the Respondent's agents were oppressive, arbitrary and this calls for the award of exemplary damages as a deterrence of others who might be considering the same (see *Obongo and Another vs Municipal Council of Kisumu* [1971] 1 EA 91; *Transtel LTD & Another vs Mahi Computers & Appliances Ltd* HCCS 397 of 2015). I therefore award a sum of UGX 3,000,000/- (Uganda Shillings three million only) as exemplary damages.

ORDERS

- 1. The complaint is allowed.

- 2. The Respondent is ordered to pay to the Complainant a 7, 000, 000/= (Uganda) Shillings seven $\overline{\text{of}}$ UGX sum million only) as general damages for the violation of his right to personal liberty as protected under Article 23 (4) (b) of the Constitution.
- 3. The Respondent is ordered to pay to the Complainant a \$3,000,000/= (Uganda) shillings three UGX $\overline{\text{of}}$ sum million only) as exemplary damages.
- 4. The total sum of UGX 10,000,000/= (Uganda shillings) ten million only) shall carry interest at 10% per

arum calculated from date of the decision until payment in full.

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

$\overline{\text{mathcal{L}}}$ Dated at KAMPALA this $\frac{1}{2}$ day of $\frac{1}{2}$ day of $\frac{1}{2}$ 2019.

Mans $\sim$

MEDDIE B. MULUMBA PRESIDING COMMISSIONER

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