

UGANDA / JUDGMENT

Muhereza and Another v Attorney General and 8 Others (Civil Suit No. 301 of 2016) [2022] UGHCCD 220 (31 October 2022)

[2022] UGHCCD 220

COURT

HC: Civil Division (Uganda)

BEFORE

Musa Ssekaana, J

CASE / FILE NUMBER

Civil Suit No. 301 of 2016

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL SUIT NO. 301 OF 2016

- 1. RONALD MUHEREZA 2. MICHAEL
NYESIGA:.....PLAINTIFFS VERSUS 1. ATTORNEY
GENERAL 2. GENERAL KALE KAYIHURA 3. JAMES RUHWEZA 4. ANDREW KAGGWA 5.
SAMUEL BAMUZIBIRE 6. GEOFFREY KAHEEBWA 7. AARON BAGUMA 8. JONATHAN
BAROZA
- 9. DAN TANDEKA RWABWERE:.....DEFENDANTS

BEFORE: HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiffs filed this matter seeking redress and compensation for the violation of their fundamental freedom from torture, cruel, inhumane, and degrading treatment, right to property, right to carry on any unlawful business or trade, the right to livelihood, and an adequate standard of living.

The plaintiffs alleged that on the 13th of July 2016 were ferrying passengers on Entebbe road when they were both suddenly, violently, angrily, arbitrarily, and wantonly attacked by policemen. They alleged that they were beaten for following Dr. Kizza Besigye to the FDC headquarters in Najjanankumbi along the same Entebbe road where they were attacked. Further that a police truck had

loaded the plaintiffs' boda bodas and they were forced to abandon their business. The plaintiffs alleged that they were unable to work for the rest of that day as well as the next day due to the violent disruption and pain that they were feeling. The plaintiffs contended that the actions of the defendants were high-handed, unlawful, and unconstitutional and that they suffered physical harm, damage, and loss following their beatings by police and the disruption of their business activities.

The 1st defendant filed a written statement of defense denying the plaintiffs' allegations and contended that they were not entitled to the orders sought.

At the hearing, the 2nd to 9th defendants were struck out and the matter proceeded against only one defendant. The plaintiffs filed two witness statements for Michael Nyesiga and Ronald Muhereza but only Ronald Muhereza (PW1) was presented for cross-examination. The 1st defendant did not call any witnesses.

The plaintiffs were represented by *Stella Nakamya and Nakigudde Winnie* while the defendant was represented by *Patricia Mutesi (Asst Commissioner)* now Judge of the High Court.

The parties filed a joint scheduling memorandum and the following issues were framed for determination by this court;

- 1. Whether the plaintiffs' freedom from torture, cruel, inhumane, and degrading treatment was violated.
- 2. If so, whether the defendants are liable.
- 3. Whether the plaintiffs' right to property was violated.
- 4. If so, whether the defendants are liable.
- 5. Whether the plaintiffs' right to carry on any lawful business or trade was violated.
- 6. If so, whether the defendants are liable.
- 7. Whether the plaintiffs' right to livelihood and an adequate standard of living was violated.
- 8. If so, whether the defendants are liable.
- 9. Whether the plaintiffs are entitled to remedies sought.

The parties were directed by this court to file final written submissions which they did and the same were considered by this court.

DETERMINATION

I shall proceed to determine issues 1 and 2 together.

1. Whether the plaintiffs' freedom from torture, cruel, inhumane, and degrading treatment was violated.**2. If so, whether the defendants are liable.**

The 1st plaintiff testified that he was violently beaten by the defendants. That he was beaten by a group of police officers with a big stick on his head, shoulders, back, and thigh and pushed into the trench with his boda boda. Counsel for the plaintiff submitted that the defendants used items that were described as deadly weapons under **Section 5 of the Prevention of Torture Act, 2012**. That it was the use of deadly weapons that aggravated the torture.

Counsel further submitted that the fact that some of the police officers that is Andrew Kaggwa, Samuel Bamuzibire, and Dan Tandeka Rwabwere were tried by a Police Tribunal and found culpable for wrongful acts against civilians as per paragraph 5 of the 1st defendant's Written Statement of Defense corroborated PW1's evidence.

Counsel submitted that PW1 had testified that he still felt pain in his left hand and severe joint pain in all joints and could not lift his hands and his back still ached. That the plaintiff could no longer do the work he used to do as a boda boda rider, casual work since they all required energy. That the injuries sustained by PW1 were treated by Dr. Lubega at African Centre for Treatment and Rehabilitation of Torture Victims (ACTV) until he became fine.

It was counsel's submission therefore that the acts of the police officers and the weapons used amounted to physical torture as per the **Second Schedule (1) of the Prevention of Torture Act, 2012**, and concluded that the defendant was liable.

From the onset, counsel for the defendant submitted that whereas it was admitted in the Written Statement of Defense that the 4th, 5th, and 9th defendants were tried by a Police Tribunal and found culpable for wrongful actions against civilians, that did not amount to an admission of the claims made by the plaintiffs specifically, and thus they still had a legal duty to prove their claims to the required standard.

Counsel submitted that PW1 on cross-examination admitted that he did not make any report or complaint of this assault to police and did not have any corroborating witnesses of the assault, but rather adduced newspaper reports of the incident. Counsel also noted that his witness statement did not identify or mention any specific officers who assaulted him, but in cross-examination, he mentioned the names of police officers whose names were stated in the said newspaper reports.

Counsel further submitted that whereas the plaintiff alleged that the acts of Police were severe and amount to 'torture', he did not adduce any medical report as evidence of the said torture or injuries sustained.

Counsel responded to the argument that PW1 had received a reference from Counsel Ladislaus Rwakafuuzi to go to African Centre for Treatment and Rehabilitation of Torture Victims (ACTV)' where he was treated until he became fine arguing that ACTV was an NGO and not a medical clinic. That even if so, there was no report from ACTV to support these claims of torture. Counsel further submitted that a person who had been severely assaulted or tortured' would not have waited to get a referral from a lawyer to go to an anti-torture NGO, but instead, would have sought immediate urgent medical attention from a clinic or hospital to treat their alleged injuries. That from PW1's own admission he had only taken painkillers on the day of the alleged assault and then went home.

Counsel concluded that the plaintiff had not adduced evidence to prove the allegation that he was tortured.

Analysis

Article 24 of the Constitution guarantees freedom from torture, cruel, inhuman, or degrading treatment or punishment. Article 44(a) of The Constitution declares the freedom non-derogable.

Section 2 of the Prevention And Prohibition of Torture Act, 2012 defines torture to mean 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.

For an act to amount to torture, not only must there be a certain severity in pain and suffering, the treatment must also be intentionally inflicted for the prohibited purpose.

The courts should apply a very strict test when considering whether there has been a breach of an individual's right to freedom from torture or inhuman or degrading treatment. Only the worst examples are likely to satisfy the test. *(See Issa Wazembe vs Attorney General Civil Suit No. 154 of 2016)*

The plaintiff alleged that he was beaten by police officers suffering severe injuries that still cause him pain to this day. He alleged that he was referred to ACTV where he was treated until he was recovered. He relied heavily on the newspaper articles that reported on the events of the day he was allegedly tortured.

According to the articles presented by the plaintiffs as evidence in this court, it is clear that there were reported incidents of beatings by police officers against the supporters of opposition leader Dr. Kiiza Besigye as well as innocent civilians who

were watching Dr. Besigye. The same was widely reported on across various media houses and widely criticized. The defendant even admitted in the Written Statement of Defence that the 4th, 5th, and 9th defendants were tried by a Police Tribunal and found culpable for wrongful actions against civilians.

This however did not validate the plaintiffs' claim before this court. The plaintiffs had a duty to specifically prove to this court that they were victims of that reported police brutality. The trial court has a duty to consider the totality of the evidence led by each of the parties. It should then put it on an imaginary scale of justice to see which of the two sides weighs more credibility than the other. Evaluation of evidence by trial court should necessarily involve a reasoned belief of the evidence of the other or a reasoned preference of one version to the other.

See *Adesina v Ojo (2012) 10 NWLR p 522*

Evaluation of evidence does not stop with assessing the credibility of the witnesses; it extends to a consideration of the totality of the evidence adduced on an issue to determine whether the totality supports a particular finding of fact.

The 1st plaintiff's testimony that he was severely injured by the police was wanting. He alleged that he was beaten by 10 police officers, went to the hospital bleeding and with a broken tooth but does not show the court evidence of a medical report. He also alleged that he was referred to ACTV where he was treated until he recovered but ACTV is not a medical facility and even then no medical report was alluded to or presented to the court from ACTV.

The plaintiffs could not merely quote the police officers mentioned in the newspaper articles as the perpetrators of torture and be seen to have proved their case. The fact that some of those police officers were found culpable of

wrongful actions against civilians did not mean that the plaintiffs were automatically part of the victims. They ought to have led evidence to show that they were personally victims of the alleged police brutality. The plaintiff's cause of action appears to have been based on the Monitor Newspaper and the no corroborating evidence was presented in this court.

On that premise, I concur with the counsel for the defendant that the plaintiffs did not adduce evidence to prove the allegation of torture.

Whether the plaintiffs' right to property was violated. If so, whether the defendant are liable.

The right to property is protected under Article 26 of the constitution of the Republic of Uganda, 1995. It provides;

"Every person has a right to own property either individually or in an association with others. No person shall be compulsorily deprived of property or any interest in or right over property of any description with exceptions."*

PW1 testified that he was a boda boda rider and in the course of his job, carrying a passenger from Kibuye Kobil to Kategura at the junction of calendar. That his boda boda was broken by the police and later impounded by the police. That the same was never recovered.

The defense argued that PW1's evidence was inconsistent and contradictory. That he had alleged that he owned a motorcycle and sought compensation for a motorcycle but while being questioned by the court he stated that his boda boda was a bicycle and not a motorcycle and that the same was returned. Counsel argued that it was not plausible that a boda boda operator would be confused as

to whether he rides a bicycle or a motorcycle, or whether it was returned to him or not.

Analysis

This court agrees with the defense counsel that the plaintiff failed to prove that he owned a boda boda. Away from his own words, no evidence was led to prove that he owned one or that he was a boda boda rider at all. The contradiction of whether he owned a motorcycle or a bicycle cannot be overlooked. This court therefore cannot rely on the plaintiff's naked statement that he owned a boda boda that was confiscated by the defendant. The plaintiff had a duty to prove to the court on a balance of probabilities that he owned a boda boda which he has failed to discharge. (See *Akullu Hellen vs Odong Jino Gwore Civil Appeal No. 0021 of 2018)*

The 1st defendant's admission and prosecution of some of the original defendants did not mean that the allegations are admitted. The plaintiff had a duty to adduce cogent and credible evidence in support of his claim in order to succeed.

Justice is much more than a game of hide and seek. It is an attempt, our human imperfections notwithstanding, to discover the truth. Justice will never decree anything in favour of a slippery party. Thus a party will not be allowed to take one stance in his pleadings and then summersault during the trial. There must be credible evidence for a party to succeed on balance of probabilities in civil trials.

The plaintiff's evidence is so incredible to support any judgment, the nature of the witness statement was crafted to suit the newspaper story and above is contrary to what was pleaded in the plaint. The court is bound to put the entire evidence on the imaginary scale of justice to determine in whose favour the balance tilts.

The nature of evidence in this scale is so hollow to support any judgment on the alleged violation of his rights.

The plaintiffs are not entitled to the remedies sought and this suit is hereby dismissed with costs
I so order.

SSEKAANA MUSA JUDGE 31st OCTOBER 2022

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