

Mutama Richard & Others v Attorney General (Complaint UHRC 70 of 2009) [2024] UGHRC 6 (24 June 2024)
[2024] UGHRC 6

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CORAM:

- 1. HON. MARIAM WANGADYA
- HON. COL. (RTD.) STEPHEN BASALIZA COMMISSIONER \$2.\$
- \$3.\$ HON. CRISPIN KAHERU
- HON. JACKLET ATUHAIRE \$4.\$ RWABUKURUKURU

COMMISSIONER

COMMISSIONER

CHAIRPERSON

DECISION

The complainants brought this complaint against the respondent seeking compensation for alleged violation of their human rights.

All the three complainants are residents of Lwaboba, Bumasikeye, Bungokho, Mbale District. During the material time robbers, with the use of a gun, broke into the homes of Sam Sakwa and Bosco Wabomba and robbed a generator and money from their victims. The robbery occurred in Lwaboba, the same village which is home to the complainants. The main suspect in the robbery, John Watira, mentioned Mutama Richard, Sakwa Moses and Sakwa William as his accomplices in the crime prompting their arrest by Police officers of Mbale Police Station.

Sakwa Moses and Sakwa William were arrested on 17th January, 2007. while Mutama Richard was arrested on 19th January, 2007. They were all detained at Mbale Police Station vide *CRB 254/2007*. On 22nd January, 2007 they were taken to Rapid Response Unit (RRU), Kireka where they were further detained. On 6th May, 2007 they were returned to Mbale Police Station and detained. On 8th May, 2007 they were arraigned in Court on charges of aggravated robbery and remanded until 26th September, 2008 when they were acquitted and set free.

All the three complainants alleged that during their detention at RRU Kireka, they were severely beaten by Policemen to compel them to confess to the robbery, and produce the gun used in the robbery. They maintained that they were innocent.

It was contended by the complainants that the alleged actions of the Police officers at Mbale Police Station, and RRU Kireka, amounted to violation of their rights to personal liberty, and freedom from torture, cruel, inhuman and degrading treatment. They held the respondent vicariously liable.

The respondent's representatives Ms. Juliet Topacho, Mr. Eric Mukisa, Ms. Diana Mudoola, Ms. Nakanaabi Babra, and Ms. Kyoshabire Carolyne denied liability.

Issues:

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- Whether the respondent's agents violated the complainants' right to (i) personal liberty
- Whether the respondent's agents violated the complainants' right to (ii) protection from torture, cruel, inhuman and degrading treatment
- Whether the complainants are entitled to compensation. (iii)

Before we resolve the above issues we have to put on record that the tribunal as currently constituted did not hear this complaint, save for 20th February 2023 when the complainants moved to close their case, having failed to avail more witnesses. We also presided over the proceedings of 4th October, 2023 during which the respondent's representative, Ms. Diana Mudoola, told the tribunal that they were unable to trace witnesses

but would instead file written submissions in defence of the matter. The said submissions were duly filed on 1st February, 2024.

This decision is based on the record of proceedings of Commissioner Dr. Katebalirwe Amooti Wa Irumba, who personally heard this matter.

The complainants had the duty to prove their case against the respondents on the balance of probabilities. See Sections 101 and 102 of the Evidence Act Cap 6.

Back to the issues.

(i) Whether the respondent's agents violated the complainants' right to personal liberty

The right to personal liberty is protected by the Constitution, various regional and international human rights instruments, and the Law of Tort under the tort of False Imprisonment. Richard Clayton and Hugh Tomlinson in their book, the Law of Human Rights, Vol. 1 write as follows:

"The tort of false imprisonment is committed by someone who intentionally subjects another to total restraint of movement either by actively causing his confinement or preventing him from exercising his privilege of leaving the place where he is. Any interference with liberty is unlawful unless the person responsible for the imprisonment can show that it is justified".

As was held in *Sekaddu v Sebaduka* 1968 E. A. 213 at 215, once the detention is proved, the burden shifts to the defendant (respondent) to prove that the detention was justified.

Article 23(1) of the Constitution of the Republic of Uganda (hereinafter called "the Constitution") provides in part:

"No person shall be deprived of personal liberty except in any of the following cases $-(c)$ for purposes of bringing that person before a court upon reasonable suspicion that, that person has committed a criminal offence".

Under Article 23(4)(b) :

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"A person arrested or detained upon reasonable suspicion of his having committed a criminal offence shall be brought to court as soon as possible but in any case not later than 48 hours from the time of his arrest".

Mutama Richard testified that his neighbors; Wabomba John Bosco and Mutonyi Yekoseba, had been victims of a robbery. He, on his own,

reported to Mbale Police Station on 19th January, 2007 upon hearing that John Watira had named him as an accomplice in the robbery. He was immediately arrested by the Officer-in-Charge (O/C) Station, Alex Atyang and put in the cells. He further testified that on 22nd January, 2007, he, together with Sakwa Moses and Sakwa William, were taken to RRU. Kireka where they were detained until 6th May, 2007 when they were returned to Mbale Police Station and detained further. On 8th May, 2007 they were taken to Court and remanded at Malukhu prison.

Mutama's testimony before Commissioner Dr. Katebalirwe Amooti Wa Irumba on 23rd November 2016 tallied exactly with the information recorded in his complaint form on 12th June, 2009. Cross-examination of Mutama by Ms. Juliet Topacho was mainly focused on his alleged torture.

Sakwa Moses testified that Policemen in the company of the LC.1 Chairman arrested him at his home on 17th January, 2007 at around 8 to 9am. They took him to Mbale Police Station where he was detained. He said, "after 5 days I was transferred to Kireka with 3 other people -Mutama Richard, Sakwa William and Watira John". Sakwa Moses said that he could not remember when they were returned to Mbale and arraigned in Court but guessed "it was after 5 months".

Sakwa Moses' failure to remember the exact date of their arraignment in Court is not fatal to his case. He was able to know that date 8 years earlier as 8th May, 2007 when he recorded a statement before the investigator. More so, the totality of the evidence shows that they were all taken to Court on 8th May, 2007.

Sakwa William testified that on 17th January, 2007 at around 6pm, while at Diana Trading Centre he learnt that there had been a robbery in the village, and that he was one of the suspects. A man called Philemon, a farmer, called Police on his phone. Six Policemen quickly arrived, arrested Sakwa William and took him to Mbale Police Station where he was detained. He said, "on 22nd January, 2007 I, together with Sakwa Moses, Mutama Richard and Watira John were put in a double cabin car and taken to Violent Crime Crack Unit (VCCU) Kireka

and detained..... On 8th May, 2007 we were taken to Court and remanded at Malukhu prison".

Sakwa's testimony, on his arrest and incarceration, exactly matched the information he had given the investigator 8 years earlier.

Again cross-examination of the two Sakwas by Ms. Juliet Topacho, learned Counsel for the respondent focused on their alleged torture, but not on their detention. So the evidence adduced by all the 3 complainants together, that they were detained beyond the period authorized by the law, remained undisturbed.

Further, the Lockup register for Mbale Police Station, adduced by the Commission investigator, Ms. Juliet Logose shows that Mutama Richard, Sakwa Moses and Sakwa William were booked in the cells at Mbale Police Station on 6th May, 2007 on a robbery charge vide *CRB 254/2007*, and were taken to Court on 8th May, 2007.

On the earlier period of detention, Ms. Logose stated, "Inspection of the Lockup register for 2007 availed to me by the O/C CID, Mbale Police Station, D/ASP Ojok Denis established that some pages were missing and it started from 23rd March, 2007". The register did not contain information on detentions ranging from 1st January, 2007 to 22nd March, 2007. But Ms. Logose went on to say;

"Inquiries conducted at Special Investigation Unit (SIU), Kireka which was previously VCCU and later changed to RRU, revealed that Sakwa Moses, Sakwa William and Mutama Richard were booked in their cells on 22nd January, 2007 on a case of robbery vide Their serial numbers were: PC Sakwa Mbale CRB 254/2007. William – 144, Mutama Richard – 145, and Sakwa Moses – 146. On 6th May, 2007 they were transferred back to Mbale Police Station from where they were taken to Court. Permission to photocopy this record was denied by the Commandant, ASP Biata Chelimo".

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All the above evidence erased any doubts in our minds that the complainants were detained far beyond the period authorized by law, before they were arraigned in Court. Specifically Sakwa Moses and Sakwa William were illegally detained for a total of 106 days, while Mutama Richard spent a total of 104 days in illegal detention. The respondent's representatives did not adduce any evidence, or render any explanation to justify their detention. The only reasonable conclusion we can arrive at is that the detention of the complainants was unjustifiable and illegal.

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Wherefore, we find on the balance of probabilities that the respondent's agents violated the complainants' right to personal liberty. Throughout the period in issue they were acting in the course of their employment as The respondent is vicariously liable for their servants of the state. wrongful actions.

(ii) Whether the respondent's agents violated the complainants' right to protection from torture, cruel, inhuman and degrading treatment

The term 'torture' is defined under the United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) 1984 as:

"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*".

Torture is outlawed by Articles 24 and 44(a) of the Constitution.

Torture is further outlawed by various regional and international human rights instruments to which Uganda is signatory.

Each one of the 3 complainants gave an account of harrowing deeds that supposedly were committed against them by Policemen to compel them to admit that they had committed robbery, and to produce the gun used in the robbery. If the same were proven they would constitute torture.

Mutama Richard, testifying on 23rd November, 2016 said among others as follows:

"When we reached Kireka we were welcomed with slaps. On 24th January, 2007 we were severely tortured. They beat me with batons on the body and joints for 3 hours. Three people tortured me. I started bleeding from the mouth and nose. They used to torture me every day for 5 days while asking me to tell them where the gun was. I was beaten from outside".

On cross-examination by Ms. Juliet Topacho, learned Counsel for the respondent, Mutama said that in addition to batons, he was beaten with metal bars and kicked by policemen wearing boots. He added that he was beaten daily for 4 days and not 5 days as he had testified in his evidence in chief. He also said that he suffered "bruises all over the body". This time he did not mention "bleeding from the mouth and nose". The responses Mutama gave Ms. Topacho were a departure from what he had said in his testimony in chief.

We also noted that during the hearing of his case, Mutama introduced particulars of torture which he had not revealed in his Complaint Form in 2009, when we believe his memory was more fresh. He also made some serious claims in his Complaint Form which he did not mention during the hearing.

For example in his testimony before the tribunal, he said they were "welcomed" with slaps at Kireka, he was beaten daily for 5 days and that he bled through the mouth and nose. His statement is silent on all these acts. And in his statement to the investigator he said, "We were tortured to the extent that we could not walk. UHRC officers who visited us at Kireka found when we could not walk". He did not mention this to the tribunal. And the investigation report is silent on this claim.

Mutama told different stories to different audiences. Such inconsistencies expose him as unreliable which makes it impossible to believe any of his stories.

Mutama's medical evidence raised more questions than the answers it The expertise brought by Dr. Tagaba Alice from Mbale provided. Regional Referral Hospital did not add value to Mutama's case despite her impeccable academic qualifications and 22 year working experience. She came in ostensibly to interpret a medical form prepared by Dr. Sentongo who had examined Mutama.

To begin with, the form was neither signed nor stamped. So at that point its authenticity was in issue. Secondly it indicates that Dr. Sentongo allegedly examined Mutama on 18th June, 2009; more than 2 years after the alleged torture. The symptoms indicated on the report if real were

probably inflicted on him under some other circumstances not related to this case. This is what was documented in that report (among others):

"Severe headache, chest pain and vomiting blood for 2 weeks. Upon examination he was sick looking, weak, and had generalized tenderness on all body joints especially on the shoulder joints, and ankle joints. He had a traumatic chest injury and head injury. Head injury is grievous harm".

It is very unlikely, in our view that Mutama Richard would have presented such symptoms more than 2 years after his alleged torture. What is more, in his own complaint form and testimony before the tribunal, Mutama never said that he ever vomited blood as stated in the so called medical examination report.

We also find it very strange that Mutama's condition seemed to have worsened at every hospital visit. Ideally he ought to have improved. When he went back to Mbale Regional Referral Hospital on 20th September, 2009, according to the report, he complained that he had been "assaulted and tortured while in prison and lost consciousness for 3 days. On examination he was a bit hot, semiconscious and had tenderness around the joints. The impression was a closed head injury with multiple soft injuries". This time, Dr. Tagaba personally saw him. Again, Mutama himself never told the investigator or the tribunal that he ever lost consciousness at any moment, let alone for 3 days. We further opine that soft tissue injuries, if any, would have fully healed by the time of examination by Dr. Tagaba.

And if he was "semi-conscious" on 20th September, 2009 when Dr. Tagaba saw him, surely this situation cannot be attributed to the events of January, 2007. Had Mutama been "semi-conscious" since January 2007? How was he able to communicate with the doctors? Was he still "semiconscious" when he testified before the tribunal?

Mutama returned to hospital on 15th October, 2009. Then he had "persistent headache and joint pains. His pressure was 180/70 meaning he had pressure on the brain. He was given antibiotics and a pain killer. I still treated him personally", said Dr. Tagaba. So, somehow the Police officers at Kireka were responsible for his high blood pressure!

Dr. Tagaba again saw Mutama on 14th May, 2010. He had headache and chest pain. On 6th September, 2010 he returned to hospital. He had backache, was apparently unable to carry heavy loads and unable to dig. He was diagnosed with "Sciatic nerve injury". On 8th January, 2011, Mutama told the doctor he was "unable to flex the joints and still had backache". Was he merely carried to hospital?

Dr. Tagaba Alice ended her tedious and exhausting testimony with these words:

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"On 17th August, 2011, the patient had been undergoing treatment after being tortured in prison for seven months. He was advised to avoid heavy duties, over bending, and avoid lifting heavy loads of above 10kgs".

If we are to believe Dr. Tagaba, Mutama's ailments increased as his treatment increased. He even developed other ailments and symptoms he himself had never talked about. Mutama was semi-conscious as he spoke to her. Perhaps this explains why he revealed to her that he had been tortured "for 7 months while in prison" yet he personally testified that he was tortured for 5 days.

This is what Dr. Tagaba answered Ms. Juliet Topacho, learned Counsel for the respondent when the latter sought to know from her the period the complainants had the injuries Dr. Tagaba had testified about, "since they were in prison".

So Mutama had been vomiting blood, been hypertensive, semi-conscious etcetera etcetera since he was in prison! Did Dr. Tagaba deliver to the tribunal her expertise in Medicine and Surgery, or in lying? It seems the latter.

We note from the investigation file that the complainants were examined at African Centre for the Treatment and Rehabilitation of Torture Victims (ACTV) at around the same time they were attended to at Mbale Regional Referral Hospital. Reports from the 2 institutions are worlds apart. Under the physical examination of Mutama, ACTV entered the following data: No abnormality detected. General: "Local: Good general status. Normal findings. Pain/permanent disability: 3% Degree of Systems: support between physical symptoms and allegations of torture: Mild."

It is almost unbelievable that the 2 medical examination reports from Mbale Regional Referral Hospital, and ACTV are about the same person examined around the same time. The findings and assessment in one, are the exact opposite of the other. The report presented by Dr. Tagaba is a compilation of plain naked lies which contained no iota of truth. We would rather be guided by the report from ACTV which shows that Mutama may have suffered mild physical pain with almost no permanent disability and that he was in "good general status". This cannot therefore amount to "severe pain or suffering" as envisaged in the definition of torture under the CAT.

Sakwa Moses testified that his ordeal started immediately upon his arrest. In his testimony before Commissioner Dr. Katebalirwe Amooti Wa Irumba on 15th February, 2017 he said in part as follows:

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"They immediately handcuffed me and started beating me. They then put me in the vehicle. They stopped at Busiu Police Post, removed me from the motor vehicle and started beating me..... I was beaten in Mbale Police Station for 3 days. While at Mbale Police Station the other people I was detained with could not see me being beaten but they would see the injuries on my body. I would also see injuries on their bodies."

This is incredible stuff. The other 2 complainants said while in detention at Mbale Police Station they were not beaten at all. Neither were they ever beaten on arrest. Mutama Richard said, "We were not beaten at Mbale Police Station". Sakwa William said, "Nothing happened to us at Mbale Police Station". So it cannot be true that Sakwa Moses saw any injuries on Sakwa William and Mutama while at Mbale Police Station.

We also do not believe that Sakwa Moses was ever beaten on arrest, or in detention at Mbale Police Station. There was no reason that should have happened to him. Among all the 3 of them, it was Sakwa William who was a Policeman and by implication had access to a gun; and a gun had been used in the robbery. It would have been easier for us to believe the accusations of beatings at Mbale Police Station if they had been made by William not Moses.

Sakwa Moses further testified as follows:

"At Kireka someone told me he wanted only the gun not the generator. He said if I did not produce the gun the beating I had received at Mbale was nothing. They slapped me and I was moved to a corner with my hands tied behind and they continued beating me with batons. They beat me on my knees and joints and slapped me on the ears. I was beaten like three times each day for about an hour. I suffered wounds and swollen joints. Fluids would come out of my ears. I still feel pain in my joints and cannot do heavy work".

We found difficulty believing this account of events. There are some particulars of torture Sakwa Moses introduced in his testimony but which he did not tell the investigator in 2009 when his memory was more fresh. Similarly some material particulars of torture he told the investigator are not in his testimony before the tribunal.

For example Sakwa Moses told the tribunal that at Kireka he was beaten three times each day for about an hour, and that fluids would come out of his ears as a result. He never revealed this to the investigator.

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In his 12th June, 2009 statement to the investigator he said, among others:

"They put short sticks between my fingers and they would hit them. The RRU operative would beat us with a short flat metallic object that looked like a sandal. It was very painful".

Why did Sakwa Moses keep quiet about these gruesome acts, if indeed they were ever committed against him, when he testified at the hearing? Which reasonable man forgets this magnitude of pain inflicted on him? And how come both Mutama Richard and Sakwa never talked about being beaten with a "metallic sandal"?

Again on cross-examination by Ms. Juliet Topacho, learned Counsel for the respondent, Sakwa Moses said that he sought treatment at only Mbale Regional Referral Hospital and not anywhere else. Yet the record shows that, in addition to Mbale Regional Referral Hospital, all the 3 complainants sought treatment at ACTV, and they produced reports to that effect. Why did Sakwa Moses have to tell a lie? What else did he lie about?

Sakwa Moses told different stories to different audiences. The inconsistencies in his stories as well as contradictions between his testimony and those of his co-complainants on material particulars lead us to the conclusion that he is probably unreliable and a liar.

Dr. Tagaba Alice was equally dramatic in her testimony in support of Sakwa's case. She told the tribunal that she saw Sakwa Moses on 14th August, 2009, that is, more than two and a half years after the alleged torture. She said in part:

"On examination he had tender swollen joints, tenderness around the back of the neck and on the chest. ENT examination found a discharge from the ears. My impression was traumatic chest pain, head injury and soft tissue injuries. He was admitted for 2 days and given painkillers and antibiotics. This was grievous harm".

In our view, if indeed Dr. Tagaba saw those injuries on Sakwa Moses, then they must have been inflicted on him by other people on a more recent occasion and not Policemen in January 2007. It cannot be possible that Sakwa's joints, neck and chest were still swollen more than two and a half years after his alleged torture. The further claim by Dr. Tagaba that she admitted Sakwa in hospital over such old injuries, and for her to

administer to him painkillers and antibiotics makes her story even more incredible. Even Sakwa himself never said he was ever admitted at Mbale Regional Referral Hospital.

Dr. Tagaba claims to have examined Sakwa Moses a second time on 19th October, 2009, and on 11th January, 2010, then on 18th March, 2010, and on 21st June, 2010, on 6th September, 2010, and lastly on 17th February, 2011.

The most intriguing bit about this whole episode is that her alleged patient was getting progressively worse as she continued to treat him. Conventional wisdom would make us think that, barring a life threatening illness, a patient should get better with treatment. Not with Sakwa Moses.

On his second visit to Dr. Tagaba, on 19th October, 2009 he had "severe neck pain and unable to turn the neck, had headache, unable to lift objects weighing 5kgs, was sick-looking and pain would worsen on stretching limbs". He was given painkillers and antibiotics.

On 11th January, 2010 and on 18th March, 2010 he had "neck pain and chest pain and could not lift heavy objects". The prescription given to him was "a gel and physical therapy". On 21st June, 2010 his condition seemed to have worsened more. He had "headache, neck pains, and could

get seizures". His pain had worsened on 6th September, 2010 and on 17th February, 2011.

Was Dr. Tagaba's treatment ineffective, or did she merely set out to tell lies to the tribunal? Our observation is that Dr. Tagaba deliberately told lies to the tribunal. We are not convinced that she ever examined or treated Sakwa Moses at all. We would rather rely on the examination report from ACTV. The ACTV report provides the following data on Sakwa Moses' physical examination:

Local: Normal findings. General: Fair general condition. System: Under "interpretation of findings" the following data was Normal. entered: Degree of support between physical examination findings and allegations of torture: None: Degree of support between psychological symptoms and allegations of torture: Mild. His "permanent disability" was put at \$3\%\$.

Going by the findings of ACTV, we think that Dr. Tagaba's classification of Sakwa Moses' pain as "grievous harm" was a gross exaggeration and is misleading. His pain was mild. It was not the "severe pain or suffering" contained in the definition of torture under the CAT.

Sakwa William testified that while at Kireka he was beaten by 3 Police officers. He said he knew one of them to be Asuman. He added as follows: "At Kireka we were put in a room. After 3 days Asuman would call us one at a time. Each time they would take me out and demand that I produce the gun. I would tell them that I did not have a gun and they start beating me. They beat me with a baton on the joints, legs, arms and shoulders. They would beat me in turns. I would be beaten for about 30 minutes twice a day. I was beaten for one week".

On cross-examination by Ms. Juliet Topacho, learned Counsel for the respondent, Sakwa William said that he was beaten by 4 men not 3 and from 7am to 10am not for 30 minutes, and once a day not twice a day as he earlier testified in his evidence in chief.

Which begs the question, which version of events should we believe? But this was not our only dilemma. There were some serious allegations of torture which Sakwa made to the investigator which he did not reveal to the tribunal. Did he merely forget to do so?

For example in his 12th June, 2009 statement Sakwa William said in addition to a baton, he was also beaten with iron bars and sticks and was kicked. He added, "I reached an extent where I would urinate blood. We were all vomiting blood. Whenever I want to go for short calls, I sense it

from the painful joints". These are very grave forms of torture which no reasonable person can ever forget. Why did Sakwa William not disclose them to the tribunal? And Mutama Richard and Sakwa Moses never spoke about vomiting blood as alleged by Sakwa William. Are they equally so forgetful?

Further, contrary to what he told the tribunal in his examination in chief and on cross-examination by Ms. Topacho, in his statement to the investigator Sakwa William said that he was beaten 3 times a day, not twice or once, and for 1 hour not for 30 minutes or 3 hours. Sakwa's story kept changing. This lack of consistency leads us to conclude that he is a liar.

Dr. Tagaba Alice claimed to have treated Sakwa William on 20th July, 2009. She testified as follows:

"I saw Sakwa William on 20th July, 2009. I treated him. He complained of severe headache, chest pain and vomiting blood. The history was that he had been assaulted in the past and suffered injuries on the head and chest. On examination he was sick looking, and had tenderness on the chest and head. The impression was blunt chest trauma and head injury. This was grievous harm though I did not indicate it on the form".

Dr. Tagaba's evidence again worsened our dilemma. Sakwa William himself never said anywhere that he was beaten on the head and chest. In his (questionable) testimony before the tribunal he said, "I was beaten on the legs, joints, arms and shoulders". How then could he have suffered injuries on the head and chest?

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We are also unable to believe that Sakwa Moses would have exhibited symptoms as vomiting blood, tenderness etcetera more than two and a half years after the alleged assault. And why didn't Dr. Tagaba document the classification of the injuries at the time she wrote her report? That she said "grievous harm" only during the hearing reveals, at best, lack of seriousness on her part. Whatever Dr. Tagaba said or wrote was on impulse, or as requested by her "patients" who should best be referred to as "clients". And how miraculous that, unlike Mutama Richard and Sakwa Moses, Sakwa William seems to have healed upon his first visit to hospital; she did not

have to examine and treat him over and over again!

Like his 2 counterparts Mutama and Moses, Sakwa William was examined at ACTV around the same time he visited Mbale Regional Referral Hospital. The reports from the two entities are so fundamentally different that one can think they are about 2 separate people. The ACTV

report, dated 22nd September, 2010 provides this data on Sakwa William after physical examination:

Local: No abnormality detected. General: Fair general condition. Systems: Normal. Pain/ permanent disability: 3%. Degree of support between physical examination findings and allegations of torture: None. Degree of support between psychological examination and allegations of torture: Mild.

Going by the report from ACTV, which we consider more credible than Dr. Tagaba's, we conclude that if Sakwa William suffered any injuries at all at the hands of security agents, which we do not believe he did, these were mild and not severe. In the absence of severe pain or suffering, an act cannot amount to torture.

The testimonies of all the 3 complainants were stuffed with exaggerations. inconsistencies and outright lies. They contradicted their own statements they had recorded when lodging their complaint, on material particulars. Sometimes they sharply changed on cross-examination by Ms. Juliet Topacho, learned Counsel for the respondent. Sometimes their testimonies did not tally with each other's. For example Sakwa William said that they were all badly beaten while at Mbale Police Station, a claim expressly denied by the other two complainants.

We also note that the complainants were all acquitted and set free on 26th September, 2008. According to their "star" witness Dr. Tagaba Alice they had carried injuries and pain they suffered in January, 2007 until she saw them in 2009. They had been vomiting blood, had head and chest injuries, swollen knees, were unconscious and semi-conscious etcetera dating back to January, 2007. The question we ask is, why didn't they seek medical treatment immediately they were set free on 26th September, 2008? Why did they have to wait to go to hospital in June the following year?

The only reasonable conclusion we can make is that the injuries/pain described by Dr. Tagaba Alice were non-existent. The 3 complainants went to her, not to seek treatment, but to get fake medical reports to support their false claim against the respondent. We also think that if indeed the complainants had been beaten as they alleged with iron bars, a metallic sandal, batons and had for years vomited blood, been unconscious for more than 2 years etcetera, they probably would not have been alive by the time Dr. Tagaba saw them.

The complainants did not present any independent eyewitness to their alleged torture. There must have been other inmates at Kireka where they say they were beaten. None of them was called as a witness. They relied on each other and did not turn out to be credible witnesses for each other.

The investigation report is silent on the condition of the complainants at the time they were interviewed. If they had been in a state they themselves described, or Dr. Tagaba described, that surely ought to have been documented in the investigation report.

For the reasons hereinabove said, we find on a balance of probabilities that the respondent's agents did not violate the complainants' right to protection from torture, cruel, inhuman and degrading treatment.

(iii) Whether the complainants are entitled to compensation

The complainants are entitled to compensation for violation of their right to personal liberty. Articles 50 and 53(2) of the Constitution refer.

Assessment of general damages for violation of the complainants' right to personal liberty

The right to personal liberty is a key right whose restriction limits enjoyment of most other rights. Once a person's liberty is taken away they lose their right to free association with others of their choice, the right to work, the right to development, the right to procreate etcetera etcetera. It is why the law places the burden on the authority depriving a person of his liberty to explain why this was necessary. The respondent did not explain why their agents found it necessary to detain the complainants for

more than 100 days before taking them to court. 100 days is inordinately long for the state to have kept the complainants in pretrial detention.

But this tribunal will not lose sight of the grave crime Mutama and the 2 Sakwas were suspected to have committed – Aggravated Robbery. Behind that crime were victims who yearned for justice. A serious crime of a capital nature requires thorough investigations which include recovery of crucial exhibits etcetera. Indeed in this case the gun used in the robbery was not found. It is one of the major reasons Mutama Richard, Sakwa Moses and Sakwa William were acquitted by Justice Muhanguzi. The investigation lasted that long because the investigators were agonizingly searching for the gun to exhibit in Court.

We further note that the arrest of the complainants was not initiated by the respondent's agents but by the local people with their Chairman.

Mutama Richard said, on cross-examination by Ms. Topacho, that his neighbor Mutama John had informed him that people would kill him because they accused him of conspiring with thugs who had carried out the robbery in issue. It is why he went to Mbale Police Station on his own \$-\$ to escape a possible lynching by *wanainchi*. That is the point at which he was arrested.

Sakwa William in his testimony before the tribunal said that when he arrived at Diana Trading Centre he was informed by the crowd that there had been a robbery and that he was one of the suspects. One of the people in the crowd, Philemon, rang the Police to pick him and they duly did so.

Sakwa Moses said that he was arrested by the village Chairman who In arresting the trio, the Police were handed him over to Police. responding to public outcry, and in a way protected them from the wrath of the people.

The arrest and detention of Mutama Richard, Sakwa Moses and Sakwa William was not arbitrary. It was premised on a reasonable suspicion that they had participated in the robbery. When the news went out about the robbery, these men literally cried louder than the bereaved. They went into high gear. They were very active in hunting down and arresting John Watira to hand him over to Police. Their interest in the case was over the top and this could have aroused suspicion in their own direction. Indeed Watira later mentioned them as his accomplices.

We also note that a gun had been used in the robbery. One of the complainants, Sakwa William had access to guns. He was a Policeman attached to Sikoye Police Post. The *wanainchi* who blew the whistle on him saw a connection between him and the gun which was used in the robbery. We are cognizant of the fact that behind the actions of the complainants were victims of a crime (robbery) whose human rights were infringed on by the complainants.

The complainants were acquitted not on grounds of their innocence but because the 2 prosecution witnesses; Mutonyi Yekoseba and Nangosya Eric failed to identify them, and because the gun used in the robbery was not exhibited in Court.

In consideration of all the above, we deem U. Shs. \$8,000,000=\$ (Eight Million Shillings) adequate compensation to each complainant for violation of their right to personal liberty.

ORDER:

- \$(i)\$ The complaint is allowed in part.
- respondent ordered Mutama Richard The is \$(ii)\$ to pay U. Shs.8,000,000= (Eight Million Shillings) as compensation for violation of his right to personal liberty.
- The respondent is ordered to pay Sakwa Moses U. Shs.8,000,000= (iii) (Eight Million Shillings) as compensation for violation of his right to personal liberty.
- The respondent is ordered to pay Sakwa William U. Shs. \$8,000,000=\$ \$(iv)\$ (Eight Million Shillings) as compensation for violation of his right to personal liberty.
- The above sums of money will carry interest at 10% from the date \$(v)\$ hereof until payment in full.

It is the considered view of this tribunal that this forum be preserved for innocent victims of arbitrary oppressive acts. Aggrieved persons who have gone through trial ought to seek remedies within Courts of Judicature, more so, if the crimes they were prosecuted for are of a capital nature.

[illegible]
$$\mathcal{M}^{\mathcal{A}}_{\mathcal{A}}$$

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Prepared on 14 October 2026 · Esheria