

UGANDA / JUDGMENT

Nabawanuka Sekabembe Harriet v Attorney General (Complaint UHRC 19 of 2011) [2019] UGHRC 16 (7 February 2019)

[2019] UGHRC 16

COURT

Uganda Human Rights Commission

BEFORE

Rusoke Victoria Businge - Commissioner

CASE / FILE NUMBER

Complaint UHRC 19 of 2011

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THE REPUBLIC OF UGANDA

UGANDA HUMAN RIGHTS COMMISSION (UHRC)

HOLDEN AT KAMPALA

COMPLAINT NO: UHRC/19/2011

NABAWANUKA SEKABEMBE HARRIET:.....

AND

ATTORNEY GENERAL:.....

DECISION

The Complainant Nabawanuka Sekabembe Harriet lodged a complaint with the Commission seeking compensation for the violation of her right to personal liberty and freedom from torture or cruel, inhuman or degrading treatment or punishment. She alleged that on 21st September 2011 while at her home in Kalagala Sub County, Luwero District, three men accompanied by her daughter went to her home asking for the whereabouts of her son, a one Musoke. That when she denied having knowledge of his whereabouts, she was arrested and taken to Bombo Police Station where she was booked in; and thereafter brought to Kampala to a Police Station she could not identify. That she advised them that Musoke could be at Mpejja and they

drove her to Kigo Police, and later went to Mpejja in search for Musoke. That when they did not find him at Mpejja, she was beaten for a long time using canes(sticks) from the tree and batons while being asked for the whereabouts of Musoke. That when they left Mpejja, they went back to Kigo and she was driven to Central Police Station and detained for two days. That she was thereafter transferred to Kireka and detained for one week. That while in detention she fell sick but no

medical treatment was offered. She further stated that one day; she was pulled out of the cell, driven back to Central Police Station and detained for a full month before being taken to court at Kasangati where she was released on bail. The Complainant contended that the actions committed against her by the Respondent's agents amounted to a violation of her rights to personal liberty and freedom from torture or cruel, inhuman or degrading treatment or punishment for which she holds the Respondent vicariously liable.

Issues for determination before the Tribunal are;

- 1. Whether the Complainant's right to personal liberty was violated by the Respondent's Agents.
- 2. Whether the Complainant's right to freedom from torture or cruel, inhuman or degrading treatment or punishment was violated by the Respondent's agents.
- 3. Whether there are any remedies available for the Complainant.

Before I resolve the above issues I wish to note that this complaint was heard to conclusion by the late Commissioner Joseph. A. A Etima (RIP). I will therefore decide the same basing on the record of proceedings as is on file.

It should also be noted that the principles of proof of a complaint or case in evidence require that a person that alleges must prove that a right has been breached. Sections 101 and 102 of the Evidence Act Cap 6 categorically state that:

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist; and, that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

I shall now resolve the issues dependent on the legal framework and evidence adduced by the parties.

Whether the Complainant's right to personal liberty was \$\$ violated by the Respondent's agents.

National, Regional and International legal frameworks guarantee the right to personal liberty. Article 23 of the Constitution of the Republic Uganda 1995 provides for the right to personal liberty.

The Constitution under Article 23(1) also provides for circumstances under which a person can be deprived of the right to personal liberty. It specifically provides that "a person's right to personal liberty may be deprived for the purpose of bringing that person before a court in execution of the order of a court or upon reasonable suspicion that the person has committed or is about to commit a criminal offence under the laws of Uganda among others.

Furthermore, Article 23(4) (a) and (b) of the Constitution is to the effect that a person arrested or detained

- a) for the purpose of bringing him or her before a court in execution of an order of court or
- b) upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the laws of Uganda, shall if not earlier on released, be brought to court as soon as possible but in any case not later than 48 hours from the time of his arrest.

Section 25 of the Police Act Cap 303 gives effect to the provisions of the Constitution by highlighting the above Article 23(4) (a and b).

Article 6 of the African Charter on Human and People's Rights 1986 provides that every individual shall have the right to liberty and to the Security of person. It further provides that no one may be deprived of his freedom except for reasons and conditions previously laid down by the law.

Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) 1966 states that everyone has the right to liberty and security of person and that no one shall be subjected to arbitrary arrest or detention.

In addition, Article 9 (3) of the above Convention provides that everyone arrested or detained on a criminal charge shall be brought promptly before a judge and shall be entitled to trial within a reasonable time or to release.

In *Wintwerp V. The Netherlands* (1979-80) 2 HRR 387 it was stated that no one shall be deprived of his or her liberty save in a limited number of circumstances which must be in accordance with a procedure prescribed by law.

I shall now apply the law to the Complainant's and her witness's testimony so as to ascertain whether the Respondent's agents' actions amounted to a violation of the Complainant's right to personal liberty.

The Complainant Nabawanuka Harriet testified and stated that on 21st September 2011 at 1:00p.m while she was at home with a one Senfuka, she saw a vehicle parking at her courtyard and three men came out together with one lady and her daughter called Harriet Nanyonjo. That all men were dressed in civilian clothes and had batons and one gun. That she was showed a picture and was requested to identify the person thereon. That she identified the person as Musoke, her son. That the men informed her that Musoke was wanted because he had committed murder, thus demanded her to disclose his whereabouts. That she denied knowing his whereabouts and thereafter, she was arrested. That she was taken to Bombo Police Station, booked in and thereafter taken to Kampala to a Police Station she could not recognize. That they

went to Kigo Police and thereafter upon her advice, they went to Mpejja Island but did not find Musoke. That they went back to Kigo Police and thereafter she (Nabawanuka) was driven to Central Police Station and detained for two days. That she was thereafter transferred to Rapid Response Unit at Kireka where she was detained for one week and interrogated about Musoke. That one day, she was pulled out of the cell and driven back to Central Police Station and detained for one month. That during her detention, she was sick and no treatment was given to her. That on 10th November 2011, she was taken to court at Kasangati and released on bail. That she went for treatment after her release.

CW1 Mukalazi Livingstone testified and stated that in September 2011, he received a phone call from one of his sisters Namubiru Jessica informing him that their Aunt Nabawanuka Sekabembe Harriet had been arrested by unknown people and taken to Kampala. That he traced her and found her at Rapid Response Unit (RRU) Kireka, now Special Investigations Unit (SIU) Headquarters. That when he asked her what had happened, she told him that people went to the village looking for Musoke on allegations of murder and when they did not find him, they decided to arrest her.

That the people who arrested her forced her to lead them to the island where she suspected her son to be but they did not find him and brought her back to Kireka. That after narrating her ordeal, he gave her something to eat and left.

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That after some few days, she was transferred to Central Police Station, Kampala where he also visited and found her detained. That she was detained at CPS for one and a half (1 ½ months) and in Kireka for two (2) weeks. That he kept visiting her until when she was produced in court at Kasangati. He further stated that he used to visit her at CPS and left on 10th November 2011, which is the same day she was taken to court at Kasangati where she was released on bail.

The Commission Counsel tendered in a certified copy of the lock up register from Special Investigations Unit, CID headquarters as evidence in support of the complainant's illegal detention which was admitted as an exhibit and marked as CX1.

Mr. Kerios Mwetsigwa, the Commission's investigations officer based at Central Regional Office, Kampala testified and stated that he was among the staff members who investigated this matter. He stated that the Complainant was transferred from Central Police Station to Kireka on 29th September 2011 and detained for six (6) days and then taken back to Central Police Station on 5th October, 2011. That he tried to obtain the lockup register from the Police Station, but was told that he could only get one page of the lock up register dated 13th October 2011. That the Commission wanted an explanation as to how the Complainant left CPS and the Officer in Charge refused stating that the suspect could have been registered in other registers belonging to Joint Anti -Terrorist Task Force (JATT). That the records officer informed him and the investigations team that the suspect was detained at CPS for a month.

The one page lockup register from Central Police Station for proof of the complainant's illegal detention was admitted as part of the evidence and marked as CX2.

The Complainant and her witnesses were never cross examined. The Respondent did not enter appearance for the hearing of this complaint despite effective service of summons; neither did he furnish the Tribunal with a justifiable cause as to why he was unable to enter appearance. In *George Asiimwe Vs. Attorney General* HCCS No. 481/1997, the plaintiff closed his case and the defendant offered no evidence. It was held by P. Magamba J. that the plaintiff's evidence was not controverted and had to be accepted as the truth.

I further note that the Complainant testified that from Kigo Police, she was taken to Central Police Station and detained for two days and taken to Rapid Response Unit, now Special Investigations Unit (SIU) in Kireka where she was further detained. The Lockup Register from SIU revealed dates of Friday 01/10/2011, Saturday 02/10/2011, Sunday 03/10/2011, Tuesday 04/10/2011, and Thursday 05/10/2011 which make a total of six (06) days. This was corroborated by the evidence by Mr. Kerios Mwetsigwa, the Commission Investigations Officer. The Lockup further revealed that the Complainant was detained at Central Police Station on Thursday 13/10/2011. The Complainant further testified that from Kireka SIU, she was taken to Central Police Station and detained for one month. This is affirmed by the testimony of the Commission investigations officer who testified that indeed, he was informed by the Records Officer at Central Police Station that the Complainant was detained for one month much as he declined to avail the lockup register and stated that the Complainant could have been registered in other different registers.

From the above evidence, the Complainant was detained for a period of one month and seven days. I therefore find that her right to personal liberty was violated by the respondent's agents.

Whether the Complainant's right to freedom from torture or \$\$ cruel, inhuman or degrading treatment or punishment was violated by the Respondent's agents.

The right to freedom from torture or cruel, inhuman or degrading treatment or punishment is guaranteed under Article 24 of the Constitution of the Republic of Uganda, 1995 as amended. The above article provides that "no person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment. Article 44(a) of the Constitution prohibits the derogation of this right and states that;

"Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the right to freedom from torture or cruel, inhuman or degrading treatment or punishment."

In addition, Articles 7 of the International Covenant on Civil and Political Rights (ICCPR) 1966 and 4 and 5 of the African Charter on Human and Peoples' Rights (ACHPR) 1986 prohibit torture or cruel, inhuman or degrading treatment or punishment. This not only shows the extent to which this right is protected but also the need to promote upholding fundamental rights and freedoms.

Before the coming into force of the Prohibition and Prevention of Torture Act 2012, torture had not been defined and what was relied on was the United Nations Convention Against Torture 1984. I note that this complaint was lodged with the Commission in 2011 and the 2012 Act mention above had not yet come into force to regulate the violation of torture. In this case the Tribunal will proceed and apply the UNCAT and applicable case law to resolve this issue.

Article 1 of the UNCAT has described the concept of torture to mean:-

"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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

And, the Ugandan case of Fred Tumuranye V. Gerald Bwete and Others, UHRC NO. 264/1999, Commissioner JM AliroOmara spelt out central elements of torture to include:-

- a. An act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person,
- b. For the purpose such obtaining information or a confession, punishment or coercion or for any reason based on discrimination
- c. The act 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.

In order to determine acts of the Respondent's agents against the Complainant constituted "torture" the Tribunal shall consider the definition of torture given under Article 1 of the UNCAT with its major components above. I shall now therefore relate the evidence adduced by the Complainant to the legal framework

The Complainant Nabawanuka Harriet testified and stated that on 21st September 2011 at 1:00p.m while she was at home with a one Senfuka, three men dressed in civilian clothing carrying batons and one gun came out of the car together with one lady and her daughter called Harriet Nanyonjo. That when they went to her home and showed her a picture while requesting her to identify the person thereon. That she identified the person in the picture as Musoke, her son. That the said men informed her that Musoke was wanted because he had committed murder and that they wanted her to disclose his whereabouts. That she denied knowing his whereabouts and as a result, she was arrested. That she was taken to Bombo Police Station, booked in and thereafter to Kampala at a Police Station she could not recognize. That at Mpejja, she took them to Edesa Nakabo, her sister who also denied knowing the whereabouts of Musoke and so they started beating them. That they beat them unsystematically, using canes/sticks from the tree and

batons. That she was beaten for a long time while being asked the whereabouts of Musoke. That they were beaten in the open and people were around. That she went for treatment after release.

The complainant's first witness Mukalazi Livingstone testified and stated that he was a Police Officer attached to C. I. D Sexual Offences and Gender Based Violence FI NO. 43741. That he also headed trafficking cases at Old Kampala Police Station. That he had so far served for 32 years.

That in September 2011, he received a phone call from one of his sisters Namubiru Jessica informing him that their Aunt Nabawanuka Sekabembe Harriet had been arrested by unknown people and taken to Kampala. That he traced her and found her at Rapid Response Unit (RRU) Kireka, now Special Investigations Unit (SIU) Headquarters. That he requested to have a look at her and was shocked because the situation in which she was in was not good. That she had bruises on the hands and appeared weak. That she asked her what had happened to her and she narrated the story and stated that people arrested her and started beating her so that she could reveal where her son was.

The complainant and the witness adduced evidence but were never cross examined by the Respondent due to their non-appearance after effective service of summons on them. However, even when the Tribunal made sure that principles of justice are observed, the Respondent chose not to enter appearance for the Tribunal hearing; neither did he provide the Tribunal with any justifiable reason as to why he was absent or not represented.

I also note that the Complainant testified that after advising the men to go to Mpeija Island where her son was suspected to be, they went to her sister Nakabo Edesa's place(at the Island and when she (Edesa) denied knowledge of Musoke's whereabouts, they were beaten unsystematically, using canes/sticks

from the tree and batons. That she (Nabawanuka) was beaten for a long time while being asked the whereabouts of Musoke.

The Complainant's evidence was corroborated by the testimony of CW1 Mukalazi Livingstone to the effect that when he found the Complainant at Rapid Response Unit at Kireka, she had bruises on the hands and appeared weak. That when he asked her what had happened, she told him that people arrested her and started beating her so that she could reveal where her son was. Section 58 of the Evidence Act requires that proof of all facts except contents of a document be by oral evidence. That the latter evidence must be direct in that it refers to a fact which could be heard, it must be the evidence of a witness who says he or she heard it (Ref. Section 59(a) Evidence Act).

The witness wants to portray compulsion/coercion by those who arrested the Complainant which has not been proved. I think that in the circumstances, what a reasonable person/ Complainant would do is to assist or cooperate with the men in looking for the suspect because it was upon the Complainant's advice that they went/took her to Mpeija Island. In this case, I will disregard this part of the witness' evidence and consider the evidence which was adduced by the Complainant. This is also in reference to the finding of the learned Justice Lawrence Gidudu in case of **Uganda Vs. ASP Aurien James Peter** Criminal Case No. 012 of 2010 (Unreported), in **Juuko Vs. Uganda**

Criminal Appeal No. 058 of 2013[2014], in which it was stated that the issue of credibility and inconsistency of witnesses, courts have decided in a number of cases that a witness may be untruthful in certain aspects of his evidence but truthful in the main substance of his evidence. He further stated that a witness who has been untruthful in some parts and truthful in other parts could be believed in those parts where he has been truthful.

In respect of the beating meted on the Complainant, the latter did not tell the Tribunal where she was beaten and effects of the beating had on her, it is CW1 who testified that he saw the Complainant with bruises on the hands and also looked weak. However the Complainant mentioned that she was beaten for a long time and she went for treatment after being released on court bail. My question is, why was it not possible for the Complainant not to tell the extent she was beaten by the Respondent's agents and why was it that the witness was in a better position to tell her story? The perception here is that, if indeed something happened to a Complainant, she should be able to tell what happened to her or at least express it. Was it that the Complainant was not concerned with her own life or not? It is also evident that when she was asked by the Tribunal why she reported this case with the Uganda Human Rights

Commission, she stated that it was because she was unlawfully arrested, detained for long and innocently.

In *Uganda Vs. Abdallah Nassur* [1982] HCB 1, it was held that where grave inconsistencies occur, the evidence may be rejected unless satisfactorily explained while minor inconsistencies may have no adverse effect on the testimony unless it points to deliberate untruthfulness.

From my observation and line with the principle set out under Section 101 and 102 of the Evidence Act, I will not fully rely on the evidence of the Complainant witness but rather the complainant's testimony wherein she stated that she took the people who arrested her to Mpejja, to her sister Edesa Nakabo who also denied knowing the whereabouts of Musoke and so they started beating them. That they beat them unsystematically, using canes/sticks from the tree and batons. That she was beaten for a long time while being asked the whereabouts of Musoke. That on release she went and sought medical care.

Although the complainant alleged she sought medical care there was no medical report that was tendered in to prove the magnitude of the injuries but that does not cancel out her evidence. In the case of *Fred Kainamura Okello J held 92. Justice 1994 KALR & Ors Vs Attorney General & Ors* that, "it is true there is no medical evidence to support the evidence of assault submitted by Turyasingura. But it was not a requirement of the law that every allegation of assault must be proved by medical evidence. I think cogent evidence cando..... Medical evidence helps to prove the gravity of assault."

I find that the Complainant suffered pain. The police man who beat her up inflicted injuries on her which resulted into pain. This certainly means that the first ingredient of torture has been proved.

Secondly, she was beaten so that she could reveal the where about of her son who had been suspected of committing a crime of murder. There is no doubt that the beating meted out on Nabawanuka was deliberate and intentional. This satisfies the second and third ingredients of torture. She was beaten by police men who are government agents who were doing their work.

Accordingly, I am convinced and hold on a balance of probability that Nabawanuka Harriet's right to freedom from torture, cruel, inhuman and degrading treatment or punishment was violated by state agents.

Whether there are any remedies available for the Complainant. \$\$

Having held that the Complainant's right to personal liberty and freedom from torture or cruel, inhuman or degrading treatment or punishment were violated, I accordingly find that she is entitled to a remedy of compensation.

Article 53(2) (b) and (c) of the Constitution of the Republic of Uganda 1995, provides that "the Commission may, if satisfied that there has been an infringement of a human right or freedom, order the payment of compensation or any other legal remedy or redress."

a) Violation of the right to personal liberty

In order to determine the suitable quantum of damages to be awarded for the violation, I will take into consideration, the number of days in illegal detention and previous awards in complaints similar to the instant one and assess the amount of damages taking into account the current value of money in terms of what goods and services it can purchase at present

Article 23(7) of the Constitution provides that "a person unlawfully arrested, restricted or detained by any other person or authority shall be entitled to compensation from that other person or authority whether it is the State or any agency of the State or other person or authority."

I therefore deem Ug. Shs. 7,500,000/=(Seven million five hundred thousand Uganda Shillings) adequate compensation for the violation of her right to personal liberty.

b) Violation of the right of freedom from torture or cruel, inhuman or degrading treatment or punishment

In respect to this issue, the Complainant has also proved to the satisfaction of the Tribunal that on balance, her right of freedom from torture, cruel and inhuman treatment or punishment was violated by the Respondent's agents. She is therefore also entitled to recover from the Respondent compensation by way of damages.

However the extent of injuries that were sustained by the complainant were not determined from her evidence adduced in Tribunal, I accordingly, award Ug.shs 2,000,000 only (Two Million Uganda Shillings) as compensation for the violation of the Complainant's right to freedom from torture or cruel, inhuman or degrading treatment or punishment.

ORDER

- 1. The complaint is allowed.
- 2. The Attorney General (the Respondent) is ordered to pay to the Complainant Nabawanuka Harriet Sekabembe, a total sum of Shs.9,500,000/ \$=\$ (Nine million five hundred thousand Uganda Shillings only) as damages broken down as follows:
 - a) General damages for the violation of her right to personal liberty -Shs. \$7,500,000/= \$.
 - b) General damages for the violation of her right of freedom from torture or cruel, inhuman or degrading treatment or punishment - Shs. \$2,000,000/= \$
- 3. Interest at a rate of 10% per annum be paid on the total amount of Shs.9, 500, \$000/\$ = (Nine million five hundred thousand Uganda Shillings only), calculated from the date of this decision until payment in full.
- 4. Each party to meet their own costs.

Any party dissatisfied with this decision or any part thereof may appeal to the High Court of Uganda within 30 days from the date of this decision.

DATED on this..... HON. RUSOKE VICTORIA BUSINGE PRESIDING
COMMISSIONER

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