

UGANDA / JUDGMENT

Ochom v Attorney General (UHRC/SRT/04/2008) [2018] UGHRC 26 (22 May 2018)

[2018] UGHRC 26

COURT

Uganda Human Rights Commission

BEFORE

Dr. Katebalirwe Amooti Wa Irumba - Commissioner

CASE / FILE NUMBER

UHRC/SRT/04/2008

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THE REPUBLIC OF UGANDA**THE UGANDA HUMAN RIGHTS COMMISSION (UHRC) TRIBUNAL****HOLDEN AT SOROTI****COMPLAINT NO: UHRC/SRT/04/2008****OCHOM JOHN FRANCIS J:..... COMPLAINANT****AND****ATTORNEY GENERAL RESPONDENT****BEFORE PRESIDING COMMISSIONER HON. DR. KATEBALIRWE AMOOTI WA
IRUMBA****DECISION**

The Complainant (C), Ochom John Francis alleged that on 17th September 2007, he was arrested and beaten severely by Police Officers attached to Kumi Central Police Station (CPS), and was subsequently detained for one day on the accusation of having trespassed on Okello Robert's land. C alleged further that he suffered injuries as a result of the aforementioned assault.

C therefore prayed to the Tribunal to order for compensation to him by R for the alleged violation of his right of freedom from torture or cruel, inhuman or degrading treatment or punishment.

However, the Respondent (R), through their representative, State Attorney Topasho Juliet (RC) denied the allegations and opted for putting up a defence.

Issues:

The issues to be resolved by the Tribunal are:

- 1. Whether C's right of freedom from torture or cruel, inhuman or degrading treatment or punishment was violated by State agents.
- 2. Whether R is liable for the violation.
- 3. Whether C is entitled to any remedy.

It is necessary to point out at this juncture that **Section 101 (1) of the Evidence Act, Cap. 6** Laws of Uganda provides that: "Whoever desires any court to give judgment as to any legal right or liability over the existence of facts which he or she asserts must prove that those facts exist." In addition, **Section 102 of the same Act** also provides that: "The burden of proof in a suit or proceedings lies on the person who would fail if no evidence at all were given on either side."

Accordingly, the onus in this matter lay on C to prove his claim against R on a balance of probabilities.

This matter was first heard by former Commissioner Agaba Maguru and after him, by Late Hon. (Rtd) Justice Gideon Tinyinondi. ^I only heard this matter once and it was then at the stage of defence. However, R's side did not call witnesses but only filed in their written submission.

Resolution of issues:

The aforementioned three issues shall be resolved in the order ^I have already stated them.

Issue 1: Whether C's right of freedom from torture or cruel, inhuman or degrading treatment or punishment was violated by State agents

C testified that on a date he could not recall in 2007 and at around 2:00 a.m while he was in his house, he heard people calling him from outside and ordering him to open the door to his house but he refused to do so. That they kicked his door open and he was forcefully taken out of the house. That he saw the people numbering about nine and they were all wearing police uniform. That one of the policemen started beating him as he accused him of trespassing on a one Okello Robert's garden. That he was then thrown on a waiting police vehicle and taken

to Kumi Central Police Station (CPS), where he was detained. That he was taken to court the following day, and court released him on bail. He therefore sought for compensation for the injuries he had suffered.

During cross-examination, C reiterated having been arrested at around 2:00 a.m and by policemen who were using a police vehicle. That when the policemen knocked at the door of his house, he refused to open. That it was the leader of the team that arrested him who beat him on his back in the presence of his wife and his mother. That after his arrest, he was then taken to Kumi CPS. That he was arrested because a complaint of trespass on a garden had been filed against him and the complainant, Okello Robert came with the police to his home. That when he went for treatment, he was given Medical Form V by the Doctor who treated him and he was also admitted for two weeks. However, he clarified that he had improved after the treatment and therefore, he no longer suffered any pain.

C's first witness (CW1), Mudodo Immaculate testified that in 2008, on a date she could not recall but at about 2:00 a.m, policemen went and kicked the door of their house where she and C, her husband were sleeping. That C was forced out of the house and ordered to sit down. That one policeman called Sargent Emong, started hitting him with a gun and as a result of this, his back started bleeding. That C was then thrown onto the police vehicle and when she inquired what the problem was, she was informed that C had trespassed on Okello Robert's land. That she followed C at Kumi CPS the following morning and found him in a bad condition. That he was taken to court that very day and released on bail. She added that upon his release, C went to Kumi Hospital for treatment and he was admitted for two weeks, adding that she was the one taking care of him. That he received a medical form from the hospital.

During cross-examination, CW1 reiterated that C was arrested by policemen who were wearing police uniform, carrying guns and also using a police vehicle. That they were in the company of Okello Robert who had complained against C. That she was able to identify them using the head lights of their own vehicle but none of the police officers was known to her. That her mother-in-law was also present but she had since died. CW1 further added that the beating lasted for about one hour. That when C received treatment, he got healed, and that he also won the court case.

C's second witness (CW2), Ojoo Anthony testified that he was C's neighbor; and that on 17th August 2007, three policemen went to C's place and arrested C and then proceeded to his home and arrested him, too. That the policemen later on arrested Akol Francis, and all the arrested people were taken to Kumi CPS, and later on they were arraigned in court. That he did not see C being beaten but he

heard directly from C himself telling him that he had been beaten by the policemen who arrested him.

During cross-examination, CW2 clarified that he was 11 years old in 2007 and could therefore recall everything that happened then. He stressed that they were arrested on 17th August, 2007 although he was not at C's home when C was arrested. He clarified that they were both taken in a police patrol car. That when they were released, C went to hospital by himself and CW2 went home.

C's third witness who was also his medical expert witness (CW3), Dr. Olupot Robert testified that he was a surgeon and the Medical Director of Kumi Hospital. That he had a Masters Degree of Medicine in Surgery obtained in 2005 from Makerere University, adding that he had been in practice since 2000. That he knew C because he was once a member of staff of Kumi Hospital and was also patient at the same hospital.

That on 20th October 2007, C presented to the person who examined him a history of backache after an assault, and when he was examined, he was found with bruises on his chest and back. That he was given treatment and further investigations of an ultrasound scan was requested but the details of the findings were not availed to him to interpret.

He testified further that on 30th October, 2007 C returned to hospital for review and was diagnosed to be having deep-seated chest pain. That he was therefore put on pain killers for management, and the same investigations of an ultrasound scan was again recommended but the details still were not availed to him for interpretation.

CW3 clarified that he did not personally do the assessment of the injuries C suffered but the documents he interpreted for the Tribunal indicated that the injuries suffered by C were post traumatic soft tissue injuries. He also provided his own opinion stating that such injuries would be classified as harm, meaning that they were not serious injuries and the victim could recover from them and therefore, they could not cause permanent disability.

The medical documents from Kumi Hospital dated 30th October, 2007 and 20th October, 2007, respectively and which were duly certified, were admitted as C's first and second exhibits (CX1 and CX2) respectively.

During cross-examination, CW3 clarified that he did not examine C but also stressed that since he was a qualified surgeon, he could ably explain and also classify C's injuries from the documents he had interpreted even without physically examining the patient. He also clarified that C was no longer working at Kumi Hospital because he had left that hospital in 2010.

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The human rights legal regime at international, regional (African) and national (Ugandan) levels prohibit violation of people's right to freedom from torture or cruel, inhuman or degrading treatment or punishment. In this regard, the Universal Declaration of Human Rights (UDHR) of 1948 states under Article 5 that: "No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." In addition, the International Covenant on Civil and

Political Rights (ICCPR) of 1996, also prohibits torture or cruel, inhuman and degrading treatment or punishment under Article 7, stating that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

At the African regional level, the African Charter on Human and Peoples' Rights (ACHPR) of 1981 under Article 5 also reiterates the total prohibition of violation of the same aforementioned right.

More important still, the Constitution of the Republic of Uganda under Article 24 clearly prohibits the violation of an individual's right to freedom from torture or cruel, inhuman or degrading treatment or punishment; and under Article 44 the same right is made non-derogable.

On the other hand, Article 1 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), gives an internationally agreed legal definition of torture, stating that:

Torture means 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.

The aforecited CAT definition of torture has been applied by the UHRC Tribunal in a number of cases before, including that of Fred Tumuramye Vs Gerald Bwete and 10 others, Complaint No. UHRC 264/1999, where the Tribunal held that the central elements of the UNCAT definition of torture are:

- That the act results into severe suffering or pain, whether physical or mental.
- That the act is intentionally inflicted on the victim.
- That the act is carried out for the purpose such as obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind; and
- That the act is inflicted by or with the instigation or with the consent or with the acquiescence of a public official or any other person acting in official capacity.

^I am therefore taking into account the aforementioned four important elements of the definition of torture as I evaluate the evidence before me to determine whether the said four elements are proved. Once they are proved, then C would have proved his case that he was indeed subjected to torture or cruel, inhuman or degrading treatment or punishment, in contravention with the laws of Uganda.

C's evidence has certainly satisfactorily indicated that he suffered severe pain on his back and chest. The said injuries were scientifically confirmed by CW3, who also classified them as harm. C was also humiliated and degraded in front of his own wife. The aforementioned assault on C by security personnel was intentionally inflicted on C so as to punish him for having refused to open the door to his house when the policemen knocked and ordered him to open; and the policemen who carried out the assault were on their official duty of arresting C.

RC submitted that torture which is triable by the Uganda Human Rights Commission Tribunal should be considered to have occurred only when the act of assault involved is found to have been aimed at obtaining a confession or information from the victim. That therefore, C's allegations did not amount to torture since the beating was not aimed at obtaining a confession or information from C. However, RC never submitted on the elements of "cruel, inhuman or degrading treatment or punishment", which are also part of the right now under my consideration.

RC further submitted that C's Medical Report was not accompanied by X ray and Ultra Scan reports to prove severe pain on the said parts of C's body. She added that the Medical Report did not specify the injuries that C suffered, and the report itself was also not authored by a medical officer thus, making it unauthentic and therefore, unable to prove torture since this medical evidence was supposed to be adduced to prove severe pain.

I do not accept RC's arguments. First of all, C's evidence in this respect was effectively and convincingly corroborated by the evidence that was adduced by CW1, who testified as an eye-witness to the incident of assault and its effect on C. Secondly, C's medical documents (exhibits) were interpreted by a senior medical Officer from Kumi Hospital and who clearly pointed out that C had suffered soft-

tissue injuries, adding during cross-examination that his own classification of C's injuries was based on the information that was contained in the two medical reports. Furthermore, CW3 interpreted the medical documents not only with the confidence he had in them as being authentic medical documents but also, with his own conviction that the documents contained information that was adequate enough to enable him even classify the injuries for the Tribunal. In any case, this medical evidence was not absolutely necessary for proving C's allegation of violation of his right now under my consideration. C's medical evidence is considered for the purpose of assisting me to determine the gravity of C's injuries. In this respect, I shall therefore apply the principle that was upheld in the case of *FRED KAINAMURA AND ANOTHER vs ATTORNEY GENERAL*, 1994, KALR 92, in which Justice Okello held as follows:

> It is not a requirement of the law that every allegation of assault must be proved by medical evidence. If a witness says "he boxed me and kicked me", then that is the evidence of assault. You do not need medical evidence to prove that he was boxed and kicked. Medical evidence helps to prove the gravity of the assault.

The same principle is also stated in the case of *BLANDINA NSHAKIIRA vs KAMPALA CITY COUNCIL*, HCCS (248/02 (24/5/04 AT KAMPALA) in which Justice Yorokam Bamwine also held as follows:

> A person can testify in court as to her injuries without the aid of an expert medical witness as long as the party describes the injuries clearly. ---while it is prudent practice to seek expert opinion of the doctor on the nature of such injuries, it by no means implies that absence of such evidence would necessarily be fatal to the plaintiff's case. It must all depend on available evidence and its quality. Medical evidence is of course helpful that it is from an expert. In its absence, other evidence may suffice.

I am therefore convinced that all the ingredients required to prove whether C's right of freedom from torture or cruel, inhuman or degrading treatment or punishment was violated by the aforementioned State agents, are on a balance of probabilities satisfactorily met.

I therefore find on the balance of probabilities, that the aforementioned State agents indeed both individually and severally violated C's right of freedom from torture or cruel, inhuman or degrading treatment or punishment.

Accordingly, the issue ^I have been considering hitherto is resolved in the affirmative and therefore, C's claim in this regard succeeds.

Issue 2: Whether R is liable for the violation

Article 119 of the Constitution of Uganda provides that the functions of the Attorney General shall include among others, to represent the Government of Uganda in Courts or any other legal proceedings to which Government is a party. Accordingly, since these allegations were brought by C citing policemen as the culprits in this matter, and the cited policemen were employed under the Uganda Police Force which is one of the security institutions under the government of Uganda, it was proper for the Attorney General to be the Respondent in the instant matter.

However, ^I shall decide this issue in line with the legal principle that was stated in the case of *Muwonge vs Attorney General*, (1967) (EA) 17, in which Justice Newbold P. gave his judgment holding that: "The law is that even if a servant is acting deliberately, wrongfully, negligently or criminally, even if he is acting for his own benefit, nevertheless if what he did was in the manner of carrying out what he was employed to carry out, then his acts are for which the master is to be held liable."

It has already been established that C's right of freedom from torture or cruel, inhuman or degrading treatment or punishment was indeed violated by the police officers who beat him upon arrest, and that the police officers did so while they were on their official duty of arresting and detaining C as a suspect.

R's side failed totally to call defence witnesses and to provide a credible and satisfactory defence. Although RC cross-examined C and his witnesses, she still failed to shake their evidence. In fact, CW1 who testified as an eye witness categorically pointed out that she was able to identify the police officers who arrested and assaulted C with the help of the head lights of the police vehicle that was used by the same policemen.

In RC's submission, the learned counsel stated that C testified that he was beaten by one police officer and did not indicate if the said officer was in the course of his duty. She submitted that accordingly, the said officer was not in line of his duty and therefore, R could not be held liable for the violation of C's right.

In my response to RC's submission, ^I have considered C's own evidence as well as that of CW1 and CW2. All this evidence indicate clearly that C was after being beaten on the back, arrested and taken to Kumi CPS where he was detained on the allegation of trespass. The police officers who arrested C also used the police patrol vehicle during this operation. C was taken to, and detained in a Police Station. All these facts therefore implicate the police officers who arrested and beat C to have done all that they did while they were carrying out their official duty.

^I therefore find it fitting to hold R (Attorney General) vicariously liable for the violation of C's right already proved.

Issue 3: Whether C is entitled to any remedy

Article 53(2) (b) of the 1995 Constitution of Uganda empowers the Uganda Human Rights Commission, once it gets satisfied that there has been an infringement of a human right or freedom, to order for redress which may include among other forms, payment of compensation. ^I now evoke these powers.

Since C has proved to my satisfaction that his aforementioned right was violated by the said State agents, he is therefore entitled to receive compensation from R by way of damages.

In **Kisembo Milton Vs Attorney General FP/005/2004** where the complainant was beaten all over the body, pushed against the wall and punched heavily by policemen at Budibugyo Police Station, the Presiding Commissioner C. K. Karusoke awarded the complainant Ug Shs 3,000,000= (Three million shillings) as compensation for the violation of his right of freedom from torture or cruel, inhuman or degrading treatment or punishment.

However, considering the time lag since 2008 when C's complaint was received by UHRC up to now, as well as the current rate of inflation in our country, ^I must award a higher amount to C than what was awarded in the cited above case.

^I accordingly award to C Shs. 5,000,000=(Five Million Uganda Shillings) as general damages in compensation for the violation of his right of freedom from torture or cruel, inhuman or degrading treatment or punishment.

^I therefore order as follows:

ORDERS:

- 1. The complaint is wholly allowed.
- 2. R (Attorney General) is ordered to pay C, Ochom John Francis a total sum of Ug. Shs. 5,000,000=(Uganda Shillings five million only) as general damages in compensation for the violation of his right as ruled in this decision.
- 3. Interest at the rate of 10% per annum to be paid on the total sum of Ug. Shs. 5,000,000=(Uganda Shillings five million only) calculated from the date of this decision until payment in full.
- 4. Each party to bear their own costs.
- 5. Either party may appeal to the High Court of Uganda within thirty (30) days from the date of this decision if not satisfied with the decision of this Tribunal.

So it is ordered.

DATED AT SOROTI ON THIS DAY OF L..... 2018

SIGNED BY:

DR. KATEBALIRWE AMOOTI WA IRUMBA PRESIDING COMMISSIONER

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