

UGANDA / JUDGMENT

Odongo Simon v Attorney General (Complaint No: UHRC/ SRT/092/2008) [2022] UGHRC 11 (24 January 2022) [2022] UGHRC 11

COURT

Uganda Human Rights Commission

BEFORE

Shifrah Lukwago - Commissioner

CASE / FILE NUMBER

Complaint No: UHRC/ SRT/092/2008

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THE REPUBLIC OF UGANDA

THE UGANDA HUMAN RIGHTS COMMISSION (UHRC) TRIBUNAL

HOLDEN AT SOROTI

COMPLAINT NO: UHRC/ SRT/092/2008

ODONGO SIMON :::::::::::::::::::::::::::::: COMPLAINTANT

AND

ATTORNEY GENERAL :::::::::::::::::::::::::::::: RESPONDENT

{BEFORE HON. COMMISSIONER SHIFRAH LUKWAGO}

DECISION

C, Odongo Simon alleged that in September 2008 at around 3:00p.m, while he was in Ocunye Swamp he was arrested by five Uganda Peoples' Defense Forces Soldiers on the allegation of illegal possession of a fire arm. That during his arrest, he was beaten using batons, gun butts and sticks so that he could produce the gun. That the beating continued until they reached his home where the soldiers carried out a search and no gun was found. That he was thereafter put in a waiting vehicle and he was taken to Soroti Police Station and detained. That as a result of the beating, he became unconscious for about six hours and a doctor was brought and he was given treatment. That the following day, he was taken to Soroti military barracks from where he was

beaten and he again became unconscious. That he spent the night at the barracks and the following day, he was taken back to Soroti Central Police Station and detained for one month after which he was released on Police bond.

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

R through their representative counsel (RC), Mr. Erick Mukisa Emmanuel, Ssenyonjo Madina and Mukanja Paul, Nakanabi Barbara, Kyoshabire Carolyne denied liability and opted to defend the matter.

Issues:

The issues to be determined by 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 C's right to personal liberty was violated by State Agents
- 3. Whether R (Attorney General) is liable for the violation.
- 4. Whether C is entitled to any remedy.

However, before ^I resolve the issues above, it is pertinent for me to note that this matter was heard by former Hon. Commissioner Dr. Katebalirwe Amooti Wa Irumba and it is from his record of proceedings that ^I have arrived at this decision.

Let me first point out that from the record of the proceedings of this complaint, RC only cross-examined C and his two witnesses. In addition, R's side neither called any witnesses in defense in this matter, nor filed any written submission. Nevertheless, C is still expected to discharge the duty of proving his case against R to the satisfaction of the Tribunal, as required under Section 101 (1) and 102 of the Evidence Act Cap 6, which provide that whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he or she asserts must prove that the 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.

Accordingly, Rule 23(1) of the Uganda Human Rights Commission (Procedure) Rules 1998 provides that a decision shall be made based on a balance of probabilities.

Let me now resolve the aforementioned four issues.

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

C, Odongo Simon testified that on 30th August 2008 at 3:00p.m, he left home with his wife Aloka Susan to go fishing. That the latter later called him and he went to where she was only to find her with about 30 soldiers. That the soldiers were armed and wearing their uniforms and had taken cover. That when they saw him, they came out of their hiding and ordered him to sit down. That before he sat down, the soldiers started beating him with sticks all over the body especially on the joints and poking him in the ribs with the gun but while asking him to produce the gun he had. That he was beaten until he reached his home while some soldiers were pouring on him water. That he was put in a vehicle and taken to Soroti Central Police Station while unconscious but he could not hear what other people were saying. That he regained consciousness on the following day at around 11:00a.m when he found himself on the veranda. That he was detained at Soroti CPS for one day and on the third day, he was taken to Soroti military barracks where he was further detained for one day. That while he was at the barracks, he was beaten all over the body. That he was also forced to make pressups and whenever he failed, he would be beaten. That as a result, he developed wounds on his fingers. That he was taken back to Soroti CPS where he was detained for one month but while in detention, he was not given food and not

provided the opportunity to take a bath. That his wife would take him food but other time she would be chased away. That his brother Okoed would take him drugs but he was refused from accessing them on ground that he would commit suicide. That he was released by a one major Opio. That he was given a document but he did not know where he put it. That he could not remember the date of his release because he was emotionally disturbed. That he reported to Police three times and thereafter stopped. That he received medical treatment from a clinic belonging to Dr. Isiadi found near his home. That the doctor used to write in a text book but he did not know where it was. That as a result of the beating, he could not carry heavy things because his back pains. That he cannot walk long distances because he experienced swellings on his legs. That his wife left him four years ago. That he was currently involved in fishing.

The Lock up register from Soroti Central Police Station was admitted with the consent of RC as CXI

During cross examination, C confirmed that he was beaten by about 30 soldiers and as a result, he sustained injuries all over the body. That he did not go to hospital because he was detained immediately after the torture for one month. That he did not get drugs when he was at home so he went to hospital after release. That he got the drugs from a clinic for a period of five months. That he was still feeling pain. That even though he did not see a doctor to ascertain the extent of the injuries, the injuries were visible much as some were internal and he was still feeling pain all over the body. That his testicles were stepped on and he used to urinate blood for some time.

CW1, **Okoed Francis** testified that on 30th August 2008 at around 3:00p.m, while he was at Komu Parish, he saw one Policeman and the Local Council 3 Chairperson, Omoding Paulo passing by him. That shortly thereafter, two uniformed Policemen came back to him and asked him to go with them to his brother Odongo Simon home. That he took them to Odongo's home but he was 'not there. That they looked for Odongo's wife a one Aloka Susan and asked her where Odongo was and then many UPDF soldiers aboard a vehicle came on a vehicle and said that they were looking for Odongo. That Major Opio identified himself and Aloka told them where her husband was after being beaten. That they all went to the swamp where Odongo was and the soldiers first hid themselves and Aloka called Odongo. That when the latter came, he was put on gun point and they started beating him with sticks and gun butts while asking him to produce the gun. That Odongo was beaten on the back and the whole body. That the beating took about an hour and Odongo told them that they should kill him because he had no gun. That Odongo crawled to the car because he could not walk after being beaten. That he was taken to Soroti CPS and followed to see how he was doing and he found when his arms and body were all swollen. That Odongo came out of the cell while crawling. That he was thereafter advised to report Odongo's matter to UHRC and he was released after one month. That upon his release, his right hand, ear and right leg were swollen. That his head does not work well and his speech is not coordinated. That at one time, they took Odongo to a one Shagi's clinic. That he was staying with some woman but had not paid dowry.

During cross examination, CW1 confirmed that C was arrested on 30th August 2008 at around 3:00p.m on the allegation of illegal possession of a fire arm. That he (CW1) was in his garden and he saw him being beaten. That C was arrested by Major Opio and many other soldiers and Policemen who were riding two motorcycles. That C was beaten by soldiers who were wearing red caps. That when Odongo was detained at Soroti CPS, he visited him but found him in a bad state. That he crawled from the cell to go where he was. That C was released after one month. That he saw Odongo when he was arrested and when he was released. That he saw Odongo's wife after his arrest because the Police was looking for the two of them (C's wife and CW1). That the Police found C's wife in the garden.

CW2, **Aloka Susan** testified that on 30th August 2008 at around 3:00p.m soldiers who were wearing army uniform and red caps together with uniformed policemen found her in the garden and asked her where Odongo was. That she told them that she did not know, then a soldier slapped her and she directed them to where he was. That she called Odongo because most soldiers were hiding and when he came, they asked him where the gun was and he told them that he had no gun. That the soldiers started beating Odongo using gun butts and batons all over the body. That he was taken home and some soldiers poured on him water as he was being beaten. That the beating took about one hour. That their house was searched but the gun was not found. That their money UGX 150,000/= got lost. That Odongo was taken to their vehicle and taken to Soroti CPS. That she first went to Kapor Police Post but he was not there so she went back home. That after two days, she went to Soroti CPS and she was not allowed to see him. That the Policemen only took the food she had brought and she went back home. That Odongo was released after one

month and he found her at home. That he received treatment from Dr. Ishagi's clinic. That currently, Odongo cannot dig or perform in bed. That it was now eight years and their youngest child was six years old.

During cross examination, CW2 clarified that she had stayed with C for about 20 years. That they were all not at home when the Police went there searching for C. That at that time, she was in the garden so some people came and asked her where C was. That C was found in the swamp and it was about 3:00p.m. That the soldiers who arrested him were wearing military uniform and red caps. That Policemen had also accompanied the soldiers. That all the soldiers and Policemen were more than ten and came in a vehicle and two motorcycles. That it was the soldiers who beat C all over the body using batons and also poured water on him. That C got drugs from the clinic.

As it was expected from R's side, no defense witnessed or other evidence was adduced to rebut that adduced by C as RCs had initially submitted during the hearing. In addition, RCs requested to the Tribunal to file submissions, but the same was not complied with.

The human rights legal regime at International, Regional and National levels prohibit violation of people's right of freedom from torture or cruel, inhuman or degrading treatment or punishment. In this regard, the International Covenant on Civil and Political Rights of 1966, prohibits torture or cruel, inhuman and degrading treatment or punishment under Article 7 and it provides that; no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

The African Charter on Human and Peoples' Rights of 1981 under Article 5 also reiterates the total prohibition of violation of the same aforementioned right.

The Constitution of the Republic of Uganda under Article 24 clearly prohibits the violation of an individual's right of freedom from torture or cruel, inhuman or degrading treatment or punishment; and Article 44 the same mentions that this right is non-derogable.

On the other hand, Article ¹ of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 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 UNCAT 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 included:

- 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 carried out 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 elements of the definition of torture as I evaluate the evidence before me to ascertain whether the said four elements are proved. In the event that they are proved, then C would have proved his case.

Accordingly, C's evidence has satisfactorily indicated that he suffered severe pain all over his body but specifically on his legs, fingers and back, private parts. The assault on C was confirmed by CW1 and CW2 who personally and directly witnessed the beating and therefore, testified as eye-witness. CW1 and CW2's also confirmed that C frequently visited Dr. Ishagi's clinic to collect drugs to treat the injuries he sustained. Although the foregoing assertions were not proved by way of any documentary evidence, it was not necessary that C prove the injuries he sustained by the said documentary or scientific evidence. This foregoing observation was also raised by RC during cross examination and in the case of

KANANURA & OTHERS V. ATTORNEY GENERAL & OTHERS 1992/94 VOL 4

; KALR court observed that absence of a medical evidence could not defeat a case of torture because the aim of medical evidence was to only show the extent/gravity of the injury.

The aforementioned assault on C was done by mainly soldiers both intentionally and purposefully to inflicted pain and suffering on C in order to force him to tell them where the gun he allegedly had was. The soldiers who carried out the assault were on their official duty of arresting, interrogating, and disarming C as a suspect in the offence of illegal possession of a firearm.

^I am therefore convinced that C has satisfactorily proved all the ingredients **Q** 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.

^I therefore find on a balance of probabilities that the aforementioned State agents indeed both violated C's right of freedom from torture or cruel, inhuman or degrading treatment or punishment contrary to the aforementioned legal provisions.

I therefore resolve this issue in the affirmative.

Issue 2: Agents. Whether C's right to personal liberty was violated by State

C testified that when he was arrested on 30th August 2008, he was taken to Soroti Central Police Station that after three days, he was taken to Soroti Military barracks and detained for one day. That he was taken back to Soroti Central Police Station and further detained for one month.

The Lockup register from Soroti Central Police Station was admitted as CXI. This exhibit revealed that C was book in on 2nd September 2008 and released on 13th October 2008 by Major Opio.

Both CW1 and CW2 corroborated C's evidence regarding his arrest and detention at Soroti Central Police Station. These two witnesses even followed up C to find out how he was doing.

The right to personal liberty is guarantee by under different legal frameworks and these include; the international, regional, and national. Therefore, Article 9 of the International Convention on Civil and Political Rights of 1976 provides that; everyone has the right to liberty and that no one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. It is further provided under Clause three of the aforementioned article that, anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release...

Similarly, article 6 of the African Charter on Human and Peoples' Rights of 1997 re-echoes article 9(1) of the ICCPR and provides that; every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

In addition, article 23 of the Constitution of Uganda guarantees this right and it provides that personal liberty may only be denied or interfered with in exceptional circumstances that are clearly defined under the constitution. Anybody or authority who denies this right can only legally do so if that person

'or the authority relies on any of the exceptions or circumstances that are provided for under that same Article 23(1) (a-g) and these include; in execution of the sentence or order of a court, whether established for Uganda or another country or of an international court or tribunal, in execution of the order of a court made to secure the fulfillment of any obligation imposed on that person by law; for the purpose of bringing that person before a court in execution of the order of a court or upon reasonable suspicion that that person has committed or is about to commit a criminal offence under the laws of Uganda; for the purpose of preventing the spread of an infectious or contagious disease; in the case of a person who has not attained the age of eighteen years, for the purpose of the education or welfare of that person; in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted, for the purpose of the care or treatment of that person or the protection of the community, for the purpose of preventing the unlawful entry of that person into Uganda, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Uganda.

Furthermore, Article 23(4) (b) provides that a person arrested or detained 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 released, be brought to court as soon as possible but in any case not later than forty-eight hours from the time of his or her arrest.

Therefore, in a complaint based on alleged violation of the right to personal liberty, it is necessary to consider and determine whether C was actually arrested or detained, whether the arrest or detention was permissible under clause ¹ (a) to (g) of Article 23 mentioned above, and whether any of the procedural requirements under Article 23(4) (b) was infringed upon.

However, the key question ^I must consider now, is whether C was illegally detained by the aforementioned security officers at Soroti Central Police Station where he was taken by the soldiers who arrested him, and whether the detention was not in breach of Article 23 (4) (b) of the Constitution of Uganda, and also out of synch with the afore cited international and regional human rights legal instruments.

Accordingly, based on the evidence I have assessed, I find on the balance of probabilities that C's right to personal liberty was indeed violated when he was detained from 30th August 2009 to 13th October 2009 when he was released. This amounts to a total of 44 days of detention thus, making it 42 days of illegal detention since the first two days of his detention were lawful as per the aforecited provisions of the Constitution of Uganda.

Accordingly, C's claim in this respect also succeeds

Issue 3: Whether R (Attorney General) is liable.

^I have already established that the soldiers who tortured C, and the police facility where he was detained him violated his aforementioned two rights while they were carrying out their security duties in the service of the State which employed and paid them.

In that respect, Article 119(4) (c) 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, the Attorney General has been defending this complaint from the beginning. Therefore, it is proper that R (the Attorney General) be held vicariously liable for the in the instant matter for the violation of C's two rights.

Therefore, C's claim succeeds.

Issue 4: Whether C is entitled to any remedy.

The right to reparations is provided for under articles 50 and Article 53(2) (b and c) of the 1995 Constitution of Uganda. The latter article specifically places upon the Uganda Human Rights Commission the power to order payment of compensation and any other legal remedy or redress where it deems that there has been an infringement of fundamental right or freedom

I now invoke these powers.

Having resolved Issues ¹ and 2 in the affirmative, ^I find that C is entitled to compensation

However, ^I shall determine the quantum of the damages to be ordered taking into account the case of **MATIYA BYALEMA AND OTHERS VS UGANDA TRANSPORT COMPANY, SSCA NO 10 OF 1993**, where it was stated that "courts ought to 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."

^I am also taking into account the fact that the aforementioned first violation affected a non-derogable right, injuries that were sustained, relevant case precedents, innocence of C, value of money and also that C's evidence was never challenged in any way.

Let me now handle the two violations in the same order I handled them earlier.

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

In the case of **ISSA WANIALA, JACK MAGOMU AND MAZAMBALA FRANCIS AND ATTORNEY GENERAL HRLR (2008-2011)**, the complainants were arrested on the allegation of illegal possession of a firearm. During their interrogation, they were tied with ropes, beaten using sticks until they got broken and burnt with molten plastic so that they produce the gun on different parts of the body. That they were also taken to Namatale river and submerged therein. That as a result of the beating, they were just dragged to the UPDF detach. That as a result, they sustained several protruding scars all over their bodies (which were visible even at the time of the hearing), suffered impotence and released when the soldiers realized that they were innocent. The Tribunal awarded each complainant UGX. 20,000,000/= as general damages for the violation of his right of freedom from torture or cruel, inhuman or degrading treatment or punishment.

In the instant case, C suffered almost the same eventualities that the Complainants in the above case suffered. However, the only difference is that C was not burnt with molten plastic. The issue regarding his impotence was clarified by CW1 who said that C was living with another woman because his wife had left. Accordingly, I am considering UGX. 8,000,000/= general damages and UGX. 2,000,000/= exemplary damages as adequate compensation for the violation of C's right of freedom from torture or cruel, inhuman or degrading treatment or punishment.

b) Violation of right to personal liberty

Since C has proved to my satisfaction that his right to personal liberty was also violated by the said State agents, he is therefore again entitled to receive compensation from R by way of damages which ^I must now assess and determine.

In the case of **ABDUL MAKI Vs JINJA DISTRICT COUNCIL, JJA HCCS No.60/2000** (unreported), the plaintiff was illegally detained for seven days, Justice Yorokamu Bamwine awarded him UGX. 2,000,000/= for the violation of his right to personal liberty.

And in the case of **ERIC BOSCO AKERA Vs ATTORNEY GENERAL, UHRC/G/76/2001**, in which the complainant was illegally detained for 43 days, former Commissioner Mariam F. Wangadya sitting at Gulu, applied the 'same rate that was used by Justice Yorokamu Bamwine in the afore-cited case, and awarded the complainant UGX. 12,000,000/= as being adequate compensation for the violation of his right to personal liberty.

From the above two precedent cases, it is clear that the complainants involved were each awarded approximately UGX. 285,000/= per day spent in illegal detention.

Therefore, in deciding my award to C first, ^I am taking into consideration the aforementioned daily rate used in the afore-cited two precedent cases, as well as the value of money as it stood at the time the awards in those two cases were made as compared to the value of money as it stands today twelve years later.

^I must not be oblivious of R's limited capacity to execute the orders given to them by not only this Tribunal but also, courts of law, given the current limited level of government revenue.

Accordingly, the daily is adjusted to UGX. 300,000/= per day which is applied to determine the quantum of the award for C who was detained illegally for 42 days. ^I therefore award C, a sum of UGX. 12,600,000= (**Uganda shillings twelve million six hundred thousand only**) as general damages in compensation for the violation of his right to personal liberty as already ruled in this decision.

Lastly, I would like to note that even though C was arrested for the purpose of recovering the gun he allegedly had, the actions of the soldiers and the prolonged detention was unwarranted. These acts were arbitrary and unprofessional.

Accordingly, ^I award a sum of UGX. 1,400,000/= (**Uganda Shillings One million, four hundred thousand only**) as exemplary damages.

^I am therefore ordering as follows:

ORDERS

- 1. The complaint is wholly allowed.

- 2. R is ordered to pay to C, Odongo Simon a total sum of UGX 22,000,000/⁼ (Uganda Shillings twenty two million only) broken down as follows:
- a) UGX 8,000,000 (Uganda Shillings Eight million only) as compensation for the violation of his right to freedom from torture or cruel, inhuman or degrading treatment or punishment.
- b) UGX 12,600,000 (Uganda shillings twelve million six hundred thousand only) as compensation for the violation of his right to personal liberty.
- c) UGX. 1,400,000 (Uganda shillings One million four hundred thousand only) as exemplary damages.
- 3. Each party shall bear their own costs.
- 4. Either party not satisfied with this decision has the right to appeal to the High Court of Uganda within 30 days from the date of this decision.

DATED AT SOROTI THIS DAY OF 2022.

SHIFRAH LUKWAGO PRESIDING COMMISSIONER

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