

UGANDA / JUDGMENT

Omoding Joseph v Attorney General (Complaint No: UHRC/ SRT/61/2009) [2022] UGHRC 10 (25 January 2022) [2022] UGHRC 10

COURT

Uganda Human Rights Commission

BEFORE

Shifrah Lukwago - Commissioner

CASE / FILE NUMBER

Complaint No: UHRC/ SRT/61/2009

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THE REPUBLIC OF UGANDA**THE UGANDA HUMAN RIGHTS COMMISSION (UHRC) TRIBUNAL****HOLDEN AT SOROTI****COMPLAINT NO: UHRC/ SRT/61/2009****OMODING JOHN JOSEPH COMPLAINANT****AND****ATTORNEY GENERAL ::::::::::::::::::::::::::::::: RESPONDENT****{BEFORE HON. COMMISSIONER SHIFRAH LUKWAGO}****DECISION**

C, Omoding John Joseph alleged that on 8th September 2009 at around 10:00a.m., while he was on his way to Ngora Town, he was arrested by three Policemen attached to Ngora Police Station on the allegation of theft of a battery. That two Policemen immediately started beating him with a stick on the back while the third one boxed him. That as a result of the beating, he sustained injuries on his body for which he sought medical treatment for two weeks.

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), Ms. Topacho Juliet denied liability and opted for defending themselves in this matter.

In addition, ^I need to mention that this complaint file was initially handled by the Hon. Commissioner Retired Justice Gideon Tinyinondi (deceased) and former Commissioner Dr. Katebalirwe Amooti Wa Irumba. Therefore the record I shall be relying on in making a decision is from them.

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 R (Attorney General) is liable for the violation.
- 3. Whether C is entitled to any remedy.

It is important to stress that R's failure to put up a substantive defense case in this matter did not take away C's duty to prove his allegations to the satisfaction of the Tribunal as required under Sections 101(1) of the Evidence Act Cap 6, which provides 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 the facts exist.

And also under Section 102, which provides 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.

It should be noted that Rule 23(1) of the Uganda Human Rights Commission (Procedure) Rules 1998 provides that:

> ...the Commission shall give a decision on a balance of probabilities.

Let me now resolve the aforementioned three issues that were raised before the Tribunal.

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

C, **Omoding John Joseph** testified that on 8th September 2007 at around 10:00a.m., while he was in his village, a one Okiling Alex went to the Local Council ¹ Chairman and reported to him that a boy called Omoding Simon had borrowed a battery from him but he had not returned it at the time they had agreed. That the Chairman then came to C's home and told him

about the Complaint but he (C) told him that he was neither the Omoding Simon they were talking about nor had he borrowed any battery. That the Complainant was asked to bring his witness but he never appeared at the Chairman's place again. That he (C) also went back to his home and settled.

That after about three weeks, while he was on his way to Ngora Town, he saw Okiling Alex at the Police Station. That he (Okiling) pointed at him and he (C) was immediately arrested and the Policeman never gave him a chance to explain anything. That he was taken to Ngora Police Station by two Policemen who started beating him. That one Policeman hit him with a stick on the back while the other boxed him. That as a result he got a hearing impairment. That he was detained at the Police Station for three days but during this time, he was never given any food and that he was beaten in the morning and evening so as to force him to accept that he had stolen the battery. That he was released on the fourth day on Police bond and he thereafter went to a clinic for medical treatment. That he was treated for two weeks.

During cross-examination, C stressed that there were four people in detention. That he was beaten from the Ngora Police Station and he was the only one that was beaten at that time. That on the second day when he was in detention, his mother brought him food. That after his release, he received some injections as an outpatient from a clinic in Ngora. That he sustained injuries and his body was swollen as a result of the beating.

C did not produce any witnesses to corroborate his evidence. **CW1 Apiso Lucy** who was presented before the Tribunal gave evidence which appeared to have been contradictory to her statement that she had recorded with the Commission. C also submitted to the Tribunal that he had no other witnesses to summon but prayed that he presents his medical documents which he had not carried nor submitted with the Commission before. The Tribunal therefore granted C another opportunity to appear and present his scientific evidence through the expert witness he intended to summon.

When the time came for the Tribunal to hear C's scientific evidence, Counsel for the Commission (CC) submitted to the Tribunal that the expert witness had not been summoned because C's medical report had been fabricated to suit C's testimony. In that regard, C's case was closed and the matter opened for the defense case to begin.

R's side did not adduce any evidence to rebut that adduced by C and his witnesses. R's side also did not file any written submissions to as he had earlier prayed to the Tribunal. However, the only reason advanced by RC through CC was that she was experiencing logistical challenges to enable them to appear and defend the complaint. It was therefore in the interest of justice that a decision be made so that matter could be disposed of.

In the case of **EDEKU MARTIN VS ATTORNEY GENERAL (1995) XI KALR 24**, court held that:

> Contentious issues are deemed admitted where a defendant does not call evidence in rebuttal.

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^I shall now look at the various legal frameworks (International, Regional and National) that provide for the aforementioned right so as to assess whether C's claim lies within their prescriptions.

Article 7 of the International Covenant on Civil and Political Rights of 1966 provides that:

> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 5 of the African Charter on Human and Peoples' Rights 1986 also provides that:

> Every individual shall have the right to the respect of the dignity inherent in a human being... All forms of exploitation and degradation of man particularly torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

In addition, Article 24 of the Constitution of the Republic of Uganda 1995 states that:

> No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment.

All the aforementioned provisions simply guarantee the enjoyment of the right under consideration but they do not specifically mention what "torture or cruel, inhuman or degrading treatment or punishment" entails.

According to Article ¹ of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment "torture" has been defined as:

An 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 suspected of having committed or intimidating or coercing him or a third person 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 any other person acting in an official capacity. It does not include pain or suffering arising from, inherent in or incidental to lawful sanctions.

From the above definition of "torture" there are about five key elements that have to be identified for an act/omission to amount to the same. They include:

- That the assault on C caused him severe suffering or pain, whether physical or mental.
- That the assault was intentionally inflicted on C.
- The assault was inflicted for the purpose such as obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind;
- The act was 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.

- That the pain or suffering did not arise from, inherent in or incidental to lawful sanctions imposed on C.

Article 16 of the aforementioned Convention highlights and refers to other acts of cruel, inhuman or degrading treatment or punishment not amounting to torture. ^I shall therefore make further reference to the case of **IRELAND VS UNITED**

KINGDOM (1978) 2 EHRR 25 which specifically defines each component not amounting to torture distinctively. The court thus stated that:

> "torture" required a deliberate inhuman treatment causing very serious and cruel suffering; whereas inhuman treatment or punishment involved the infliction of intense physical and mental suffering which reached a minimum level of severity; and further that degrading treatment required ill treatment designed to arouse in the victims the feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly, breaking their physical or moral resistance.

^I now seek to determine whether C was subjects to torture or cruel, inhuman or degrading treatment as per the above legal provisions.

From the evidence adduce by C , he was beaten when he was arrested by Policemen taking him to the police station. That one Policeman hit him with a stick on the back while the other boxed him. As ^I had earlier mentioned, C did not adduce any evidence (both direct and documentary) to corroborate his evidence. The witness and medical document produced before the Tribunal were expunged from the record as they were not found credible. It is therefore prudent that ^I only look at the evidence which was consistent with C's testimony and then do away with the evidence that seemed fabricated. Thus, I shall consider the case of **UGANDA VS ASP AURIEN JAMES PETER CRIMINAL CASE NO. 012 OF 2010 (Unreported)**, in which Justice Lawrence Gidudu stated that:

> On the issue of credibility and inconsistency of witnesses, the 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

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could be believed in those parts where he has been truthful.

According to C's evidence, he testified that he was beaten in the morning and evening (so as to force him to reveal where the battery was) while he was detained at Ngora Police Station which he retracted during cross examination. This is therefore noted by the Tribunal as an inconsistency which has a very close connection with his testimony and therefore ^I shall only focus on that part in which he was consistent in both examination- in-chief and cross-examination and also give an independent assessment of the evidence adduced.

It is notable that C's evidence did not reveal elements of torture or cruel treatment or punishment but that of **inhuman treatment or punishment** because the acts of the Policemen only inflicted upon him intense physical and mental suffering of a minimal level as described in the case of Ireland . V. United Kingdom I have already cited above.

^I must accordingly mention that C was his own witness in this case. In that case, I shall make reference to the case of **AKOT CATHERINE AND ATTORNEY GENERAL HIGH COURT CIVIL APPEAL NO. 002 OF 2017**, *Arising from Uganda Human Rights Commission Tribunal at Kampala; Complaint No. UHRC/06/2009:* the Commission Tribunal had initially held that the Complainant did not produce evidence to prove that the perpetrators were employees of the government and that they actually tortured her. On appeal, the court held that since the Respondent did not adduce evidence to the contrary but generally denied the allegation, yet the Complainant's case was not controverted during cross examination, it had been proved on a balance of probabilities that it was the Respondent's agents who tortured the complainant. The court further noted that there was no minimum and maximum number of witnesses required to prove any fact.

In conclusion of the issue under consideration, on a balance of probabilities, there was a violation of C's right of freedom from inhuman treatment or punishment by Policemen from Ngora Police Station who were carrying out their duty.

Therefore, C's claim succeeds.

Issue 2: Whether R (Attorney General) is liable for the violation.

^I have already found that the Policemen who arrested C were executing their official duty as prescribed by their employer - the State. According to Article 119(4) (1) of the Constitution of Uganda, the State is represented by the (R) Attorney General in all civil proceedings instituted against it in courts of law. The principle of vicarious liability is to the effect that

> Once it is proved that the servant was an employee of the master, there is a presumption that he was in the course of employment. The burden then lies on the master to prove the contrary.

In the instant case, R did not adduce any evidence to controvert C's claim against them, much as from the beginning of hearing this complaint, R showed interest to defend the matter but did not. ^I thus conclude this issue stating that R should be held vicariously liable for the violation of C's right of freedom from inhuman treatment or punishment.

Issue 3: Whether C is entitled to any remedy.

Article 53 (2 b and c) provides that the Commission may if satisfied that there has been an infringement of a human right or fundamental freedom, order payment of compensation or any other legal remedy or redress. Since ^I have already ruled that C's right of freedom from inhuman treatment or punishment was violated, he therefore deserves compensation to be paid to him.

Furthermore, in determining the quantum of damages to be paid to the Cs, I shall consider the following elements:

- a) That the right that was violated was non derogable as per Article 44(a) of the Constitution.
- b) The injuries sustained by C.
- c) Relevant case precedents.
- d) The value of money.

In the case of **OMOLA MOSES AND ATTORNEY GENERAL UHRR [2012-2014] VOL1- 171** the Complainant was beaten with a stick and he sustained soft tissue injuries on the left arm, back and buttocks. The Tribunal awarded the Complainant UGX. 3,000,000/= as compensation for the violation of his right of freedom from inhuman treatment or punishment.

The difference between the aforementioned case with the present case is that C was beaten with a stick on the back and boxed and my finding was only one element of torture; that is inhuman treatment or punishment could be sustained by his evidence. It is also noticeable that the effect of the Police's actions was not severe. Accordingly, I shall consider an award of UGX. 2,000,000/= as general damages in compensation for the violation of C's right.

^I am also taking into consideration the case of **MATIYA BYABALEMA AND OTHERS VS UGANDA TRANSPORT COMPANY SCCA NO 10 OF 1993**, where court states 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.

Therefore, in considering the award due to C, ^I am taking into account all the above factors, and ^I am ordering R pay to C UGX. 2,500,000/= (Uganda Shillings two million five hundred thousand only) as general damages in compensation of the violation of his right of freedom from inhuman treatment or punishment.

» I therefore order as follows.

ORDERS:-

- 1. The complaint is allowed wholly.
- 2. R (Attorney General) is ordered to pay to the C, Omoding John Joseph a total sum of UGX. 2,500,000/= (**Uganda Shillings two million five hundred thousand only**) for the violation of his right of freedom from inhuman treatment or punishment.
- 3. Each party shall bear their own costs.
- 5. Either party not satisfied with the decision of the Tribunal may appeal to the High Court of Uganda within thirty (30) days from the date of this decision.

So it is ordered.

DATED AT SOROTI ON THIS DAY OF

SHIFRAH LUKWAGO PRESIDING COMMISSIONER

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