

UGANDA / JUDGMENT

Omoding Okwi and 3 Others v Attorney General (Complaint No: UHRC/SRT/006/2008) [2022] UGHRC 8 (24 January 2022)

[2022] UGHRC 8

COURT

Uganda Human Rights Commission

BEFORE

Shifrah Lukwago - Commissioner

CASE / FILE NUMBER

Complaint No: UHRC/SRT/006/2008

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THE REPUBLIC OF UGANDA

THE UGANDA HUMAN RIGHTS COMMISSION (UHRC) TRIBUNAL

HOLDEN AT SOROTI

COMPLAINT NO: UHRC/SRT/006/2008

1. OMODING FRANCIS OKWI}

2. CHARLES ONYAIT}

COMPLAINANTS

<sup>J</sup> '■

3 . OLEO JAMES

4. OPOLON MUSA}

AND

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

{BEFORE HON. COMMISSIONER SHIFRAH LUKWAGQ}

DECISION

The Complainants (Cs), Omoding Francis Okwi (C1), Charles Onyait (C2), Oleo James (C3) and Opolon Musa (C4) alleged that on 25th December 2007 at around 8:00p.m, while they were at their home with their friends, relatives and neighbors celebrating Christmas, three armed and uniformed Policemen attached to Abariella Police Post who were patrolling the area shot at them on ground that they were playing loud music at night. That as a result of the shooting, a one Aranit Jennifer died while C1, C2 and C3 sustained severe injuries on the chest, arm, and legs which left a negative impact on the functionality of their bodies,

irrespective of the medical treatment they were able to access from Soroti regional Referral Hospital, Kumi Hospital and Jinja Hospital.

The Cs therefore prayed for compensation to be paid to them by Respondent(R) for the violation of their right of freedom torture or cruel, inhuman or degrading treatment or punishment and Aranit Jennifer's right to life.

R who was represented by Mr. Eric Mukisa Emmanuel, Ms. Topacho Juliet, Mr. Muganga Paul and Ms. Madiina Senyonjo denied liability and opted for defending themselves in the matter.

However, some of the aforementioned RCs only cross examined the Cs and their witnesses. No defense case was put up to rebut the Cs evidence in order to disprove his allegations as it had been earlier suggested. At some stage during the process of hearing this complaint, R's side suggested to explore an amicable settlement but this also did not succeed. After this failure, R's side was accorded an opportunity to at least file written submissions but for about eight months, the same were not filed, at all. The Tribunal therefore adjourned the matter for a decision to avoid delayed justice in this matter.

Issues:

The issues to be determined by the Tribunal are:

- 1. Whether the C1, C2 and C3's right of freedom from torture or cruel, inhuman or degrading treatment or punishment was violated by the State Agents.
- 2. Whether Aranit Jennifer's right to life was violated by State agents.
- 3. Whether the R (Attorney General) is liable for the violations.
- 4. Whether the Cs are entitled to any remedy.

R's failure to put up a substantive defense case did not take away C's duty to prove his allegations to the satisfaction of the Tribunal. C still had a burden of

proving that R violated his rights under Section 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 those facts exist.

And under Section 102 also provides that:

The burden of proof in any suit of proceeding lies on that person who would fail if no evidence at all were given on either side.

^I have to clearly state that the standard of proof in this complaint is on a balance of probabilities and nothing more.

Now, let me turn to the aforementioned four issues.

Cl, Omoding Francis testified that on 25th December 2007 at around 8:00p.m while himself and his brothers were celebrating Christmas at their uncle Mzee Onyait Joram's house three armed and uniformed Policemen by the names of Omuge, Ekayu and Ekwalen Obukul all attached to Abarilela Police Post came to where they were and one of the Policemen who was carrying a baton ordered them to stop the music. That in less than one minute, the Policeman who was holding a baton ordered the other Policemen to fire and two Policemen fired bullets directly to the people who were with them at their uncle's home. That the 1st bullet caught his cousin Charles Onyait and as he (C) was trying to rescue him from dying, he was also shot on the chest and on the hand hence fracturing his hand (C showed the Tribunal the scars between his heart and chest). That the other bullets brushed off his leg but did not harm him. That it was at that moment, that he fell down and became unconscious for about four days. That he was told that he and the other people who got injured on that day were carried to Soroti Regional Referral Hospital.

He added that on 26th December 2007, he lost one tooth *(showed the Tribunal a gap in his upper jaw)* because he had an operation on the chest, hand, leg and jaw. That on 28th December 2007, he was referred to Kumi Hospital for specialized treatment. That he was operated on the right arm and metals were fixed on it. That he was admitted at Kumi Hospital until 15th January 2008 when his right hand was amputated and thereafter discharged.

He further stated that his hand healed in 2009 but in 2010, he developed another condition called Osteomyelitis (bone infection) which stayed until 2014 when he was again operated on so that the bone could be cleaned. That this operation was done from Entebbe Hospital and given documents to that effect.

During cross-examination he stressed that he had a complaint against the Policemen who went to their home and shot him. That he was shot at around 8:00p.m. That on that day when the Policemen shot him, they were armed and wearing maroon uniforms. That it was a bit dark but they had some small light; that is a lamp and a torch in the corner. That the Policemen were very close to where they were. That it was in a distance of about two meters That at the time he was shot, he did not know them but he later came to know them as; Omuge, Ekwaret and Ekau.

He added that when they were taken to Soroti Regional Referral Hospital, the District Police Commander of Amuria District followed them and told them the names of the Policemen who shot them. That their neighbors also knew the Policemen but he personally did not know them. That the matter was reported to Police but he was not able to make a statement because he was unconscious for about four to five days. He stressed that even after he was discharged from hospital, he did not make any statement. That the three Policemen were arrested and taken to prison but because they were all sick, no one followed up the case and it was dismissed. That as a result, he was given a document from court signed by the Magistrate which showed that the case against the Policemen was dismissed. That it had come to about one year since that action was taken by the court.

Cl confirmed that he recorded a statement with the Commission around 2009 or 2010 after his condition had improved. That he sustained multiple injuries *(shows Tribunal scars on his body and broken left hand)*. That he was treated from Soroti Hospital on 28th December 2007 and thereafter referred to Kumi Hospital in 2009. That he was further referred to a private hospital called CoRSU Entebbe in 2014 and operated on. That he went there by himself after being advised at Soroti Regional Referral Hospital to seek specialized treatment. That witnesses who saw him being shot included Otim James, Okello John his brothers and neighbors. That C2, C3 and Aranit Jennifer were all shot. That C2 and C3 were all shot in the legs While Aranit died on the spot. That he (Cl) lost his tooth when he fell down after being shot.

That he did not have a job at the moment. That he used to work as a records person at Amuria and Katakwi Health Center IV before he was shot but he decided to leave it because of his health condition much as he has been trying to get another job.

C2, Onyait Charles testified that on 25th December 2007 at around 8:00- 9:00p.m, while they were having a family gathering (*drinking malwa)* with relatives, some friends and neighbors at his father Onyait Joram's home, three armed and uniformed Policemen came, greeted them and asked for the owner of the home. That he directed them to go and talk to his mother because his father had hearing problems. That the Policemen went and talked to his mother from outside and after about 30 minutes, they came and took position and their commander (the Policeman who had a baton) called for the owner of the home again. That when his mother went to talk to them, they told her to tell her sons to stop the music. That as his mother was coming to tell his elder brother Okwi James to stop the music, he (Okwi) asked what the problem was and the

Policemen immediately started shooting. That the shooting was triggered by the order of the Policeman who was carrying the baton. That the first bullet hit his brother Omoding Francis Okwi in the chest, and he (C2) was trying to jump, he was shot in the lower leg and the bullet came out from the other side of the leg. He added that as he was trying to crawl to enter the house, he was again shot in the same leg. That he leaned against the wall but felt a liquid substance on his leg and the leg became cold. That his sister and other people made an alarm and the Policemen took off. That he only saw his brother Omoding being shot in the chest.

C2 stated that they (himself, C1, and Oleo) were taken to Soroti Regional Referral Hospital and while there, he heard that it was Aranit who was shot had instantly died. That on that night while at Soroti Hospital, he was given first aid and on the next day, himself and C1 were taken to the theatre. That his employers were informed about what happened to him and they came and took him to Kakira and he was taken to Jinja Hospital from where his leg was operated on two times. That he was bedridden for one month. That he was admitted at Jinja Hospital for two weeks and the rest of the time he was at home. He claimed that he thereafter recovered but not completely. That he did not have balance in his leg because he sometimes misses steps while walking. That he also suffers trauma from any kind of noise and he was still receiving medical treatment.

During cross examination, C2 confirmed that he was attacked by three armed Policemen from Abarilela Police Post at around 8:00 -9:00p.m. That at that time they (with C1 and C3) were together with neighbors, friends, his father Onyait Joram, sister Apolot Grace and many others. That he was shot in his right leg with two bullets in the presence of his mother (Adikor Lucy), friends and sisters. That he came to know the Policemen after three months. That his mother knew all the Policemen but he did not know the one who shot him. That he was able to see the Policemen shooting him because there was moonlight. That himself and his brothers C1 and C3 were also shot. That he clearly saw when C1 was being shot at. That on the following morning when he was at Soroti Regional Referral Hospital he realized that one person had died while the other had been severely injured. That at Soroti Hospital, they were first given first aid and later operated on. That after that, his employer was notified about the incident and he catered for his medical expenses.

He added that he was taken to Jinja Hospital where he was admitted for three months. That it was only himself, C1, C3 and Aranit Jennifer (deceased) who were shot on that day. That he did not report the matter to the Police because they were all admitted at hospital at the time. That he only recorded a statement with the Commission when he was still receiving treatment from Hospital at Soroti. That he did not follow up the case at Police because he had reported the same with Uganda Human Rights Commission.

He stressed that he did not know whether the Policemen who shot him were taken to court and charged but all he knew was that they were arrested. That he saw the same Policemen again in the village. That before and after the incident, he was working at Kakira Sugar Works. That he has not fully recovered because he has a problem with unbalanced legs. That when there is any slight noise, he starts sweating. That he used to play football but he can no longer play. That was told to always do exercises. That Cl was working with Amuria Local Government.

C3, Oleo James testified that on 25th December, 2005 at around 8:30p.m while they were celebrating Christmas at Mzee Onyait's home, he saw three uniformed Policemen coming where they were. That they (C3, Cl, C2) were drinking alcohol and playing music while other people who were at their home were dancing. That there was solar light where they were seated. That two Policemen were armed while one of them was carrying a baton. That as the Policemen advanced to where they were seating, one (who was carrying a baton) stopped around a mango tree and he shouted "fire." That he heard the Policemen's name that is Omuge, Ekayu and Obukul when people started screaming. That he also heard gunshots and one woman was crying that he was dying. That he then ran inside the house and at the time he could not tell the name of the woman who was crying because he was also trying to save his life. C3 claimed that while he was running, he felt like he was shot in the leg, near the knee *(shows the Tribunal the scar on the leg).* That the bullet penetrated the leg and got out from the other side. That the Mzee Onyait and his wife took them (himself, Cl and C2) to Soroti Regional Referral Hospital for treatment. That it was after they were taken to hospital, that he saw that Cl and C2 had also been shot. That Cl was shot on the chest while C2 was shot on the leg. That he did not know what exactly happened to the woman who was shouting that she was dying but he only later learnt that her name was Aranit.

He added that while at Soroti Regional Referral Hospital, they were given first aid and on the next day, they were taken to theater and operated on. That his leg was stitched and admitted for three days. That he was thereafter discharged but he continued receiving treatment from Abarilela Health center. That he left Cl and C2 admitted at Soroti hospital and he did not know what happened to them thereafter. That after receiving treatment he improved but he cannot walk long distances because he felt a lot of pain in the leg. That he only did simple work.

During Cross examination, C3 confirmed that he was shot on 25th December 2007 at around 8:30p.m by armed uniformed Policemen. That the Policemen were three and only two were armed with guns. That at that time he did not know them but came to know them when the owner of the house mentioned their names as Ekau, Omuge and Ekwaret. That at the time the incident occurred, there was light provided by solar and a torch. That there was no moonlight. That he knew C2 because he was a son to his friend and he was also at the scene on that day he was shot.

He clarified that the light that was provided by solar and a torch also light up the outside parts because there was a film which was showing at that time. That he was shot with only one bullet on the leg *(shows scar).* That all the people who were shot were taken to Soroti Regional Referral Hospital that same night.

He added that he was admitted for two days and discharged on the third day. That he thereafter went home but he continued receiving treatment as an outpatient. That he did not recover fully because he cannot walk long distances. That he was told to continue with treatment such as (dressing the wound and removing stitches) from the nearby health center. That he presently has difficulties with cultivating. That he does not know what happened to the Policemen who shot them after their arrest.

CW1, Adikor Lucy testified that on 25th December on a year she could not remember at around 8:00p.m, while she was seated at her home with all her children namely; Omoding Francis, Onyait Charles, Oleo James, Aranit Jennifer and many other people celebrating Christmas, three uniformed Policemen attached to Abarilela Police Post came to their home and shot at them. That she knew the names of the Policemen and that she could easily see them at that time because there was light. That one of them was called Omuge and the other was called Ekwaret. That they (CW1 and her family) were residing near the Police Post. That at that time when the Policemen came, they were carrying out their duties. That two of them were carrying guns and when they came, she heard them saying that it was past time and before they could say anything, they heard one of them say "fire" and immediately heard gunshots. That she did not know who exactly told the others to fire but it was in a distance of 50meters when she first saw them. That by the time they fired, they had moved closer to their verandah.

She added that they did not do anything because immediately they shouted, she heard gunshots. That she right away saw Aranit lying down on the door way and

there was nothing she (CW1) could do. That Cl was shot in the chest and around the hands while C2 and C3 were shot on the legs. That they took Cl, C2, C3 to Soroti Regional Referral Hospital for treatment. That she did not know what happened to the Policemen who shot the people but she only heard that they were arrested.

She further stated that from Soroti Regional Referral Hospital Cl was referred to Kumi Hospital while C2 was transferred to Jinja. That she thereafter returned home and the victims remained in hospital with their wives and she went and reported the matter to UHRC.

During cross-examination, CW1 clarified that the policemen came to their home at around 8:00p.m when they were outside on the verandah. That when they started firing bullets, she did not run away but remained where she was seated. That the Policemen were wearing their uniforms and there was some light. That it was after she reached Soroti Regional Referral Hospital that she heard that Aranit had died.

CW2 Otim James, testified that he knew all the complainants as they were their family friends. That on 25th December in a year he could not recall, he was invited as a family friend to celebrate Christmas with them at their parents' home. That at around 7:30 p.m., he was sent to go to the Trading Center and get some local brew. That after he left the home, he met a convoy of Policemen patrolling the area and bypassed each other. That after spending about 30 minutes at the Trading center, he realized that the Policemen had stopped the people from watching the video that was to be run. That he quietly went and sat down but he also found that the Policemen

had surrounded the place. That he could not tell the number of Policemen around. That the Policemen said that the ceremony ought to stop because time had gone. That the Policemen included; Omuge

Edward, Ekwere Ebukoit Jonathan, Obwin James and others whose names he could not remember. That he then heard a voice commanding the Policemen "fire" and bullets were released. That three people were injured as C1 was shot in the chest and arm, C2 and C3 were shot in the leg while Aranit was shot dead.

He added that after the shooting, the Policemen thereafter took off and they carried the injured people and took them to Soroti Regional Referral Hospital. That C1 was thereafter referred to Kumi Hospital because he was badly off. That he went with C1 to Kumi hospital and stayed with him for about one month until his wife and mother came to visit/nurse him. That C2 was taken to Jinja Hospital while C3 remained in Soroti Hospital. That when he (CW2) came back home, he found out that the Police was trying to investigate the incident.

During cross examination, CW2 stressed that he did not know the number of Policemen who were at the Complainants' home so he could not identify all of them. That he only identified Omuge and Ekwere. That the Policemen ordered that the video be switched off when he was seated. That people were many but it was C2 who switched off and the people who were outside made noise but they did not stone the Policemen. That he could not count the number of bullets/gun shots that he heard because when a gun is fired, it scared off people. That the gunshots took about one minute. That he did not run away from the scene. That the Police went to Kumi Hospital where he was at the time and that was where he made his statement from. That he has never been called to any other court to testify against the Policemen except at the Uganda Human Rights Commission Tribunal.

CW3, Dr. Opolot George Patrick testified that he was a medical doctor holding a Bachelor of Medicine and Surgery (MBChB) from Kumi University obtained in 2014. That he had three years of working experience.

He interpreted C1's medical report from Kami Hospital and stated that C1 was referred from Soroti Regional Referral Hospital and admitted on 27th December 2007 until 20th January 2008. That he was treated for a penetrating chest injury and a fragmented fracture (the bone got broken in many parts) of the right humerus (bone of the upper arm) following a gun shot. That the patient underwent two operations first; was stabilization of the fractures and the second operation was a disarticulation (separating two bones that form a joint) due to a bacterial infection/ gangrene infection. That it was concluded that the patient remained with a stump not fully functioning meaning a permanent disability. That in his opinion, the patient cannot perform his duties as before thus the emotional upset. That part of the hand of the Patient was cut off much as he can receive an artificial limb or counselling. That the document was signed by Dr. Ruth Obikol the then Acting Medical Superintendent Kumi Hospital. That he knew her and her signature because he was working with her at the Hospital.

That the report was also signed by Dr. Okure John on 25th March 2014 who noted that the patient had 100% disability. CW3 further testified that Dr. Okure was an Orthopedic whom he worked with when he was still a student.

He further interpreted CI's medical report noting that it was his discharge note indicating that he was discharged with a fragmented right humerus fracture and penetrating chest injury. That the surgical procedures done were external fixation meaning pins pinned in the fragmented fracture which are usually done at the primary stage. That the CI was to be reviewed on 23rd February 2008 at Kumi Hospital. That the patient was to continue with daily dressing at the nearby health center and he was discharged with chlroramphenicol capsules (an antibiotic drug), ibrufen tablets or pain killers. That the discharge form was signed and certified by Dr. Ruth Obikol from Kumi Hospital.

CW3 also interpreted the discharge from CoRSU (Comprehensive Rehabilitation Services) dated 24th July 2014 in the names of CI who was admitted at the facility on 20th July 2014 and discharged on 24th July 2014. That he spent four night at the hospital in the general ward-orthopedic room. That the diagnosis was Chronic Osteomyelitis or the right radius (infection of the right radius between finger and joint). That he was operated on 23rd July 2014 to spread off the bad part of the arm and for external fixation of the right radius (sequestroctony). That upon discharge, treatment therapy instructions were not included by the doctor.

The medical report from Kumi Hospital were admitted with the Consent of RC as CXI (a and b).

During cross examination, CW3 stressed that Dr. Ruth Obikol the acting medical Superintendent-Kumi Hospital was the one who extracted the information about CI from their records such as the discharge form. He clarified that at that time he did not have the hospital records that were referred to. That he did not have the referral form from Soroti Regional Referral Hospital.

He asserted that it was possible for a patient to be referred from a bigger hospital to a lower hospital because he was referred to an orthopedic surgeon. That what was used to determine the degree of the fracture was the type of fragment, the displacement and the injuries caused. That some findings especially for an inside fracture an x-ray is needed while for an open fracture it could be seen physically. That for CI's case, he needed an X-ray.

That he did not have the x-ray report but CI was treated from Kumi Hospital because Dr. Okure was working at Kumi Orthopedic center and that was why he stamped it after certifying that he treated C1.

He further clarified that what was done at CoRSU was mainly cleaning up the remains of the bone which had been infected. That CI was operated on again and they concluded that he was in good condition. That the issue regarding permanent disability was that CoRSU worked on the radius while at Kumi Hospital, the hand was cut off.

That it was not indicated that the patient ever went back for review at Kumi Hospital. That it could not be presumed that he was fine because in 2014, he went for further treatment. That CoRSU did not indicate the cause of the infection.

As ^I noted earlier at the beginning of this decision, R's side never presented any defense witnesses to rebut C's claims made against them. Apart from cross-examining C and his three witnesses they also never filed any written submissions to demonstrate the desire to defend their side in this matter.

Accordingly, ^I am adopting the principle that was upheld in the case of **MARTIN**

EDEKU VS ATTORNEY GENERAL 24 (1995) VI KALR, where court held that:

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

The right of freedom from torture or cruel, inhuman or degrading treatment or punishment is guaranteed under International, Regional and National human rights instruments that Uganda has signed and ratified for the purpose of protecting human dignity.

For instance, Article 5 of the Universal Declaration on Human Rights (UDHR) of 1948, provides that:

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

And Article 7 of the International Covenant on Civil and Political Rights (ICCPR) of 1966, reiterates the position of the UDHR stating that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

In addition, Article ¹ (2) of the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment (in brief the UNCAT) of 1984 provides that:

> No exceptional circumstances whatsoever, whether a state of war, or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

Furthermore, Article 5 of the African Charter on Human and Peoples' Rights (ACHPR) of 1986 also provides that:

Human beings are inviolable, and therefore, respect for life and integrity of person should be upheld; and further that all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 24 of the 1995 Constitution of the Republic of Uganda also prohibits the violation of the above mentioned right, and specifically provides that no person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment. And under Article 44(a) the Constitution makes the same right to be non derogable under any circumstances, including the most extreme times of war or a state of emergency.

However, in most of the above instruments do not offer an appropriate definition of torture that ^I could adopt in order to determine whether C's allegation falls within the classification of "torture," especially as the incident of alleged torture of C took place before Uganda enacted the Prohibition and Prevention of Torture Act of 2012, which provides a useful definition in this regard but which cannot be retrospectively applied to the incident that took place in 2010. However, the aforementioned UNCAT provides an appropriate definition that is safe for me to adopt in the instant complaint.

The UNCAT defines "torture" under Article 1, stating that "torture" is: 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 or 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.

The afore-cited definition comprises four important ingredients on which ^I shall base my assessment of the adduced evidence in order to determine whether C's right was indeed violated. The ingredients are:

- Whether the acts of assault inflicted severe pain or suffering on the victim, whether physical or mental;
- Whether the acts were intentionally inflicted on the victim, irrespective of whether they were direct or indirect.
- Whether the acts were carried out for the purpose of obtaining information, confession or punishing on the victim for the act he committed or intimidating him or coercing him for any reason based on discrimination; and
- Whether the acts were carried out by or at the instigation or with the consent or acquiescence of a public official or any other person acting in an official capacity.

In addition, in the case of **IRELAND VS UNITED KINGDOM, (1978), 2 EHRR 25**, the court differentiated "torture" from "inhuman treatment or punishment" and from "degrading treatment or punishment" by noting 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.

The responsibility I have right now is to establish within the legal contexts I have summarized above, whether or not C1, C2 and C3 were actually subjected to "torture" or whether their evidence only reveals the components of "cruel, inhuman or degrading treatment or punishment"; or whether the general violation as a whole as it is stated under Articles 24 and 44(a) of the Constitution of Uganda, was involved.

According to C1, C2 and C3's evidence, the assault that they were subjected to by the Policemen attached to Abarilela Police Post was very intense, and it seriously injured C1's chest and hand, C2 and C3's leg(s). And all this was done to them because they were drinking and playing music at a time which the Policemen thought was late. The evidence that C1, C2, C3 and his three witnesses adduced clearly reveal that the assault on the Cs resulted into severe pain and suffering being experienced by them, with the worst effects being experienced on C1's body especially on the jaw, chest and left hand ; and on C2 and C3's legs. The medical exhibits also scientifically corroborate this fact especially in respect to C1. Moreover, RC's side never rebutted all this credible evidence and RC consented to all C's exhibits being admitted into his evidence. Even when the Cs and their witnesses were cross examined, their evidence remained

I am therefore convinced that C1, C2 and C3's evidence have on a balance of probabilities proved that the Cs indeed suffered severe pain or suffering which was intentionally inflicted on them by the aforementioned Policemen, and the Cs have to live everyday with the effects of the Policemen's actions. These Policemen

who were attached to Abarilela Police Post, carried out this unlawful act on the Cs while they were carrying out their official duty.

I therefore find on the balance of probabilities, that the aforementioned State agents indeed both individually and severally, violated the Cs right of freedom from torture or cruel, inhuman or degrading treatment or punishment contrary to Articles 24 and 44(a) of the Constitution and as illustrated by Article 1 of the UNCAT and the aforementioned case of Ireland Vs. United Kingdom.

I therefore resolve this issue in the affirmative.

Issue 2: Whether Aranit Jennifer's right to life was violated by State Agents.

C4, Opolon Musa testified that on 25th December 2008 at about 8:00p.m while he was in Wera Sub County in Amuria District, he received information from his brother a one Osigire Patrick that Policemen attached to Abarilela Police Post had killed his wife Aranit Jennifer and injured several others. That he immediately went to the scene and when he reached, he found the Local Council

¹ Chairperson called Okello Moses and the Defense secretary Omoding Peter where his wife's body was lying. That he went and reported the matter at Abarilela Police Post and shortly thereafter, Policemen from Amuria Central Police Station came to the scene. That because he had not finishing paying dowry for his wife, his in-laws attacked him. That his in-laws also followed up the matter and they found that the case had already been reported to Amuria Central Police Station and the suspects were already arrested. That the suspects were taken to court and remanded at prison but he did not know how they left the prison. That the Police did not give them any support following the death and injury of the people.

He added that he had three issues with the victim but one of them passed away. That the other two aged 14 and 12 years were studying at Akum Primary School

in primary five and three respectively. That his deceased wife used to sell local brew (ajono) to earn a living. That he did not get any postmortem report much as the victim's body was examined from where she was shot from by the doctor who came from Amuria. That his in-laws were the ones taking care of the two children and they were also aware that he was pursuing the complaint regarding the death of his wife before the Commission Tribunal.

During cross- examination, C4 confirmed that he was told about the death of his wife by his brother called Osigire Patrick. That it was a Policeman who killed her. That he believed what he was told because on the next day the Policeman who killed her reported themselves to the Police. That eye witnesses also told him that it was the Police that had killed his wife. He stressed that he did not know the cause of the shooting. That he was convinced that a Policeman shot his wife and killed her.

In the case of **GEORGE ASIIMWE VS ATTORNEY GENERAL HCCC NO. 481/1997**, Justice Paul Mugamba held that the plaintiffs evidence was not controverted and had to be accepted as the truth.

Let me now go ahead and ascertain whether R's agents caused Aranit Jennifer's death.

The right to life is guaranteed under international, regional and national legal frameworks. For example, Article 6 of the International Covenant on Civil and Political Rights 1966 emphasizes that a person's life should not be arbitrarily deprived.

Article 4 of the African Charter of Human Rights Peoples' Rights 1981 also guarantees the right to life and recognizes that human beings are inviolable and every human being shall be entitled to respect for his and integrity of person.

In addition, Article 22(1) of the Constitution of the Republic of Uganda 1995 to the effect that no person shall be deprived of his or her life intentionally except in execution of a sentence passed in a fair trial by a court of competent

jurisdiction in respect of a criminal offense under the laws of Uganda and the conviction and sentence confirmed by the highest appellate court.

In the case of **EDSON OLUKA VS ATTORNEY GENERAL, UHRR 2012-2014 VOL 1, 49**, the Tribunal stated that for the complainant to sustain the case of the violation of the right to life, they had a duty to prove that the respondent's agents caused his death and that the same was unlawful.

C4's evidence was corroborated by that adduced by C1, C2, and C3, who were with the victim at the scene on day that they were shot. The evidence was further corroborated by the evidence of CW3 who saw with her own eyes the victim lying dead in the door way after being shot by the Policemen. C4 testified that he did not have a postmortem report to further strengthen his claim because the doctor who examined the victim did it from home. Although scientific evidence especially the Postmortem report is important in cases of death to illustrate the general condition of the victim's body and to tell the internal and external condition leading to the cause of death, it is not necessary because it was never issued to C4. For that matter therefore, eye account witness especially that of CW3 is sufficient. In addition, Although C4 also stated that he was informed about the death of the victim, it was also sufficient that C1, C2, C3 and CW3 confirmed that the victim had died as a result of the shooting in line with Section 59 of the Evidence Act Cap 6, and because he also went to the scene and actually found that the victim was indeed dead.

C4's evidence was consistent even during cross-examination. As ^I had earlier noted, R's side did not adduce any evidence to controvert C4's evidence. The latter's evidence was overwhelming. The actions of the Policemen was uncalled for, given the nature of the gathering and the approach they used to keep law and order. On that note, ^I find that the victim's right to life was violated by State agents contrary to Article 22(1) of the Constitution of Uganda.

Therefore, ^I resolve this issue in the affirmative.

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

^I have already concluded that the Policemen attached to Abarilela Police Post who violated the Cs' right as pointed out above were State Agents who were executing State duties in line with the provisions of the Constitution of Uganda and the Police Act Cap 303. However, according to Article 119 (4) (c) of the Constitution, the Attorney General of Uganda is charged with the duty of representing the Government in any civil proceedings to which Government is a party. It is therefore proper that R should be held vicariously liable for the actions of the aforementioned State agents. And I have done exactly that.

Issue 4: Whether the Cs are entitled to any remedies.

The Uganda Human Rights Commission is mandated under Article 53(2) (b) and (c) of the Constitution of the Republic of Uganda to order payment of compensation or any other legal remedy or redress if satisfied that there has been an infringement on the human right or freedom of any person.

Since I[>] have already established and ruled that the aforementioned State agents violated the Cs right of freedom from torture or cruel, inhuman or degrading treatment or punishment and Aranit's right to life, then the Cs are entitled to compensation.

I am fully cognizant of the underlying principle in awarding compensation, which is to restore the victims to the position that they were in before being victimized. The compensation to C should therefore be adequate, effective and given to him as soon as possible.

I also take into account the case of **MATIYA BYABALEMA AND OTHERS VS. UGANDA TRANSPORT COMPANY, SCCA, 10193**, in which His Lordship Justice Odoki JSC stated that:

"Courts out to assess the amount of damages taking into account the current value of the money in terms of what goods and services it can purchase out at present".*

With all the foregoing in mind, let me now determine the compensation to be given to C.

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

In assessing the quantum for the compensation for the violation of the aforementioned right, I[>] am taking into account the following elements or facts:

- (b) The nature of injuries that were sustained.
- (c) The fact that this right is non derogable.
- (d) The fact that C was never found guilty for the accusations that led to his arrest.
- (e) Awards in previous cases that are similar to the instant case may provide some guidance.

In the case of **APOLLO MANDE AND ATTORNEY GENERAL COMPLAINT NO. UHRC/495/2001**, the Complainant while he was in his shop, he was shot twice through the left shoulder, neck and then through the right jaw and he lost eight teeth and his tongue was also torn into two. That as a result of all this, his nasal cavity was destroyed. That he fell down and his left arm got injured The Complainant claimed that he suffered severe injuries and expenses to obtain treatment. The Tribunal awarded him UGX. 16,000,000= as general damages and UGX. 1,000,000= as exemplary damages.

In the instant case, the Cl suffered almost similar consequences as the Complainant in the above mentioned case. However the difference is that Cl lost one tooth and his right hand- a permanent disability he has to live with the rest of his life.

In the case of **MUTWALIB MULEPI V ATTORNEY GENERAL UHRR [2008- 2011]** the Complainant claimed that Policemen broke into his house and shot him in the leg so as not to resist arrest. That as a result, he sustained a compound fracture. His evidence revealed that his capacity to work had reduced and he could not stand on both limbs for a long time and he had suffered a disability of 40%. The Tribunal held that the Police used excessive force in effecting arrest, the shooting was unnecessary, unjustifiable and unlawful. An award of UGX. 4,000,000= general

damages was given to C.

In the instant case, the C2 and C3 suffered almost similar consequences as the Complainant in the above mentioned case. However, the gravity of the shooting was on C2 as he had a very deep wound on the leg where he was shot, which also left him with an un balanced leg, and other effects mentioned in his testimony.

Therefore, in considering the award due to each C, I shall take into account all the above mentioned factors, and I am therefore of the opinion that R pays to C1 UGX 18,000,000/= (Uganda Shillings Eighteen million), C2 UGX 7,000,000/= (Uganda Shillings seven million) and C3 UGX. 5,000,000/= (Uganda shillings Five million) respectively for the violation of their right of freedom from torture or cruel, inhuman treatment or punishment as general damages.

In addition, the actions of the State agents were uncalled for, arbitrary and unjustifiable C1, C2 and C3 are awarded an additional UGX. UGX 2,000,000/= (Uganda Shillings two million shillings only) each.

b) Violation of Aranit Jennifer's right to life.

I have already ruled in issue No.2 that the victim's right to life was violated and C4 is entitled to compensation. I am therefore considering the case of **SUNDAY STEVEN VS ATTORNEY GENERAL UHRR 2012-2014 VOL 1, 50** where court awarded UGX. 30,000,000/= to the Complainant for the deprivation of his father's life by Uganda Peoples' Defense Forces.

Considering the passage of time since the above case precedent was decided, I have to look at the principle laid down in the case of *Matiya Biiyabalema* above to determine the rightful compensation due to C4. I am therefore considering an award of UGX. 35,000,000/=

I have to also mention that the actions of the Policemen were not called for. They were arbitrary and contrary to their mandate of protecting lives of citizens. In the case of **Katende Vs Attorney General 1997 E. A 260**, Phodke J while quoting Lord Devin in **Rookes V Bernard 1964 A. C 1129** held that exemplary damages may be awarded in cases where the behavior of the defendant is oppressive, arrogant and high handed.

From the foregoing, I deem a figure of UGX. 35,000,000/= as general damages and exemplary damages of UGX. 5,000,000/= as adequate compensation to C4. I so award.

ORDERS:-

- 1. The complaint is allowed wholly.
- 2. R (Attorney General) is ordered to pay to the Cs, Omoding Francis Okwi(C1), Onyait Charles (C2), Oleo James(C3), and Opolon Musa (C4) a total sum of UGX , 76,000,000/= (Uganda Shillings seventy six million shillings only) broken down as follows:

- a) For the violation of their right of freedom from torture or cruel, inhuman or degrading treatment or punishment
- CI, Omoding Francis Okwi (severe torture leading to permanent disability)
..... UGX 20,000,000=

C2, Onyait Charles (torture) UGX 9,000,000= C3, Oleo James (torture) UGX 7,000,000= C4, Opolon Musa (For the violation of Aranit Jennifer's right to life) UGX 40,000,000=

TOTAL UGX 76,000,000=

- 3. Each party shall bear their own costs.
- 4. 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 2022.

shifrXh LUKWAGO PRESIDING COMMISSIONER

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