

UGANDA / JUDGMENT

Siraji Eitu v Captain Taban Ali (Complaint UHRC 118 of 2003) [2022] UGHRC 3 (21 February 2022) [2022] UGHRC 3

COURT

Uganda Human Rights Commission

BEFORE

Shifrah Lukwago - Commissioner

CASE / FILE NUMBER

Complaint UHRC 118 of 2003

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THE REPUBLIC OF UGANDA IN THE UGANDA HUMAN RIGHTS COMMISSION TRIBUNAL HOLDEN AT JINJA COMPLAINT NO: UHRC/JJA/118/2003

SIRAJI EITU ::::::::::::::::::::::::::::::

AND

CAPTAIN TABAN ALI ::::::::::::::::::::::::::::::

{BEFORE HONOURABLE SHIFRAH LUKWAGO} DECISION

C, Atuhaire Joshua Kacence alleges that on 24th May 2003 at about 7:00p.m, he sent his brother a one (Siraji Eitu) to Captain Taban Ali's home to collect their flat iron which was borrowed by his son a one Abdi Taban. That he (C) had previously gone to the Captain's home to collect the flat iron but he had failed to get it. That on that day when he sent Siraji, he never returned, so he followed him up to see what had happened to him. That while he was on his way, he met the Captain at the Garrison Commander's home reporting that he had

beaten a thief but he was not sure whether he had killed him or not. That the Garrison's commander went together with the Captain to the latter's home and he \$(C)\$ also followed them. That upon reaching the home, he found that it was his brother Siraji who was lying on the verandah unconscious in a pool of blood. That the Captain slapped him (C) and he was restrained by Lt. Okot Abdul. That Siraji was carried to their home with the help of a one John Kambasu a mortuary attendant and first aid was administered on him. That the following day, he reported the matter at Magamaga Police Post and was further referred to Mayuge Police Post.

C therefore prayed to the Tribunal to order for compensation to be paid to him by the Respondent (R) for the violation of the victim's right of freedom from torture or cruel, inhuman or degrading treatment.

As a requirement under Rule 8(3) and 10(1) part b of the Uganda Human Rights Commission (Procedure) Rules 1998, Siraji Eitu was substituted as the actual Complainant and therefore the rightful beneficiary, for proper determination of the claims.

\$R\$ was throughout the proceedings not represented. \$R\$ was duly served with a notice of commencement of hearing the complaint. summons (including substituted service) for subsequent hearings but no appearance was entered.

Issues:

The issues to be determined by the Tribunal are:

- 1. Whether C's right of freedom from torture or cruel, inhuman or degrading treatment or punishment was violated by R.
- 2. Whether R (Captain Taban Ali) is liable.
- 3. Whether \$C\$ is entitled to any remedy.

Sections 101(1) and 102 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 dependant on the existence of facts which he or she asserts must prove that those facts exist" and; "the burden of proof in any suit or proceeding lies on that person who would fail if no evidence was given at all."

The standard of proof required is on the balance of probabilities and this is captured under Rule 23(1) of the Uganda Human Rights Commission (Procedure) Rules, 1998.

Before I delve into resolution of the issues raised before the Tribunal, I wish to state that this complaint was previously heard by Commissioner Agaba Maguru, Retired Justice Gideon Tinyinondi (deceased) and Dr. Katebalirwe Amooti Wa Irumba. Therefore, I have relied on their record of proceedings deliver this decision.

Whether C, Siraji Eitu's right of freedom from torture or cruel, inhuman or degrading treatment was violated by \$R\$.

C, Eitu Siraji testified that he was staying in Kabale Town. That he was rearing goats and also helping his maternal aunt with work at home. That in 2003, when they were residing at Magamaga Baracks,

a one Zaki Taban a son to Captain Taban Ali borrowed their flat iron. That he went to pick their flat iron after four days and it was around 6:00p.m. That when he reached Captain Taban's home, the latter opened the door while he was holding a stool. That Captain Taban immediately hit him on the head and he collapsed. That he regained consciousness while he was taken to his home

and after getting an injection the following morning. That he was taken to hospital but his eyes could not see well. That his back was aching and it still does to date. That he often forgets things and his feet are paralyzed to date.

That when he was taken to hospital, he was treated and taken back home. That he kept on reporting to the hospital for about four to five days. That he got healed after five months but he still suffers joint pain and constant headaches. That he was only using tablets to ease the pain.

CW1, Atuhaire Joshua Kacence testified that on 24th May 2003, while they were residing at Magamaga barracks, he sent his brother Siraji Eitu to pick a flat iron from Captain Taban Ali's residence. That they had lent the flat iron to Captain Taban's son. That Siraji took long to return home so he followed him up only to find him in a pool of blood at the Captain's home near the door. That next to where Siriage was lying was a wire. That when Captain Taban saw him (CW1), he came out of the house and told him that he had beaten a thief but he did not know if he was still alive or not. That at that time, a one Lieutenant Okot was also present at the scene. That he (CW1) told Captain Taban that he had beaten his brother and he in turn

replied that if he had a gun, he would kill him (CW1). That Captain Taban slapped and Lieutenant Okot physically intervened and stopped Captain Taban from beating him. That Lieutenant Okot told Captain Taban that C and CW1 were simply children. That thereafter, he (CW1) called a soldier called Kambasu John who was also a mortuary attendant to help him carry C home and he (Kambasu) also administered first aid on him. That they just lifted C because he was unconscious. That he thereafter got a bicycle and took him to Jinja Main Hospital. That by this time, C was conscious but not steady.

That when they reached the hospital, an x-ray was done and C was taken back home. That he reported the matter at Magamaga Police Post and he was referred to Mayuge Police Station where his statement was recorded. That Captain Taban was engaged but he was adamant, because he did not even report at Mayuge Police Station. That that was when he reported the complaint to Uganda Human Rights Commission, Jinja office much as he has never seen Captain Taban at UHRC.

He further added that C still had persistent headaches. That on the day he was beaten, C sustained wounds and bruises on the face and back.

CW2, Angella Mary Nyakeyo testified that she was 70 years old. That she was a nurse working with Uganda Peoples' Defense Forces at the rank of Corporal based in Pajule. That in May 2003 on a date she could not recall at around 7:00p.m, while she was in the operation area, she received a phone call from CW1 who told her that

he and C were beaten by Captain Taban Ali, and he (CW1) was asking her about what he could do. That she told him to report the matter to administration and to Police and thereafter take C for medical treatment. That on the next day when she came back home at Magamaga barracks, she found CW1 with a photo showing C in a pool of blood. That C's face was swollen, he could not talk and was very weak. That CW1 was attending to C at Jinja hospital. That C was admitted at the Hospital for further management and discharged after some days.

That after three days, Captain Taban came back to the barracks and she tried to talk to him. That Captain told her that her sons were very bad and that she should get out from his presence/face. That Captain Taban was her superior so she had to move away from his home. That she went back to Pajule but she advised the children to follow up the matter with the Police. That she was told that Captain Taban refused to report there. That she later advised the children to report that matter to Uganda Human Rights Commission.

That after sometime, they met Captain Taban at Uganda Human Rights Commission and he said that he was punishing the children. That they requested that he pays to them compensation of UGX \$20,000,000\$ and he said that it was too high. That C improved after 10 years.

As a matter of fact, as I already mentioned at the beginning of this decision, R Captain Taban Ali never at one point entered appearance before the Tribunal, despite having been duly served with summons.

Therefore, no defense case was ever put up to controvert that adduced by C. It is therefore deemed that C's claim was admitted to be true.

The right of freedom from torture or cruel, inhuman or degrading treatment or punishment is guaranteed under several International and Regional human rights instruments which the Government of Uganda has signed and ratified. The same provisions have been adopted and form part of its national legal framework.

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. The same provision is highlighted under Article 7(a) of the International Covenant on Civil and Political Rights (ICCPR) of 1966 and Article 5 of the African Charter on Human and Peoples' Rights (ACHPR) of 1986 which prohibit the violation of this right.

Article 24 of the Constitution of the Republic of Uganda 1995 also prohibits the violation of an individual's right to freedom from torture or cruel, inhuman or degrading treatment or punishment. And, Article 44(a) makes this right non-derogable, despite any prevailing circumstances in the country.

From the aforementioned provisions, no single provision defines what entails torture but a legally acceptable definition has been provided under Article 1 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which defines torture as:

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 only from, inherent in or incidental to lawful sanctions.

From the above definition, I have identified five major components that to consider while evaluating the Cs evidence and they include:

- a) That the act inflicted severe pain or suffering on the Cs, whether physical or mental
- b) That the act was intentionally inflicted on the Cs irrespective of whether it was direct or indirect.
- c) That the act was carried out for the purpose of obtaining from the Cs or a third person information, a confession, intimidating or coercing them for any reason based on discrimination of any kind.
- d) That the act was 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.
- e) That the pain or suffering inflicted on such person was not inherent or incidental to any lawful sanctions.

Furthermore, 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 feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly, breaking their physical or moral resistance.

The issue to be determined is whether the actions committed against the C by Captain Taban constitute "torture" in line with the aforementioned UNCAT definition, or whether the adduced evidence constitute only the elements of "cruel, inhuman or degrading treatment or punishment" as illustrated by the above case precedent.

According to C's evidence, it is revealed that the assault he was subjected to by Captain Taban was very intense which seriously injured his head, back and feet. All this was done so because he had gone to collect the flat iron himself CW1 had lent to Captain Taban's

son and because he was to be a thief. The evidence adduced by CW1 and CW2 clearly revealed that the assault on C1 caused him severe pain and suffering which effects were more evident on the head, face and back. CW1 and CW2's clearly indicated in their evidence that C was hospitalized. The case of **FRED KAINAMURA AND ANOTHER AND ATTORNEY GENERAL**, 1994 KALR 92, exemplifies adducing of medical evidence because it not a legal requirement to prove every allegation of assault. The case further highlights the need to rely more on direct evidence because if a witness sustained injuries and they could be seen or said that this and that happened, it was sufficient to prove assault.

Regarding all the above evidence adduced by C, R never rebutted by way of presenting a defense. As I earlier stated at the beginning of this decision, R never at one point entered appearance before the Tribunal despite having been duly served with notice of commencement of hearing and summons for the subsequent hearing sessions. These summons and notice were served on his employers which were all government departments, that is Uganda Peoples' Defense Forces and Internal Security Organization under the Ministry of Security but all in vain. The Tribunal went ahead and also made substituted service but there was no show. Therefore, no explanation was ever obtained regarding the injuries sustained by C. It was therefore in the interest of justice that this matter be brought to a conclusion.

In that premise, I find that the C's evidence has on a balance of probabilities proved that C indeed suffered severe pain or suffering which was intentionally inflicted on him. These acts were committed by the aforementioned R in his personal capacity and not as a public officer.

Before concluding on this issue; I must take cognizant of the fact that whether a person has been caught committing an offense or is suspected to have committed or about to commit an offense, does not guarantee any person to beat/assault or torture him or her. The laws of Uganda provide clear guidelines to what ought to be done in all circumstances. No person is exempted to take the law in his or her own hands. R was and /or is still a public official who ought to have known better. He also should have known that what he was about to do when he was C at his door would culminate into something undesirable, besides, he was a captain in the army. The latter's inability to appropriately handle un armed young adult moreover a civilian was generally very crude, barbaric and unexpected from a person of his rank.

I therefore find on a balance of probabilities that the aforementioned public officer - Captain Taban Ali violated the C right of freedom from torture or cruel, inhuman treatment or punishment.

I therefore resolve this issue in the affirmative.

Whether the R (Captain Taban Ali) is liable for the \$\$ violation of the Complainant's right to freedom from torture or cruel, inhuman and degrading treatment or punishment.

As I have already indicated above, I have concluded and ruled that Captain Taban Ali violated C's right which he proved on a balance of probabilities. The violation was committed in his own capacity as a public official. I also mentioned that R never adduced any evidence to prove the contrary, thus upholding the principle highlighted in the case of *MARTIN EDEKU V ATTORNEY GENERAL*, (1995) XI KALR 24, where court held that:

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

Accordingly, I shall also consider Rule 18(1) of the Uganda Human Rights Commission (Procedure) Rules 1998 which provides that:

If on a date fixed for hearing, the respondent does not appear, the Commission may, if satisfied that summons or notice notifying the respondent of the time and place for the hearing has been duly served upon the respondent proceed to hear the evidence of the Complainant if any, and if satisfied that the Complainant has established his or her claim in whole or in part, shall make a decision for the complainant accordingly.

Bearing in mind the forgoing observations I have made, in both issues no.1 and 2 above, case precedents and legal provisions, R is liable for the violation of C's aforementioned right.

Accordingly, C's claim in this regard also succeeds.

Whether the Cs are entitled to any remedies. \$\$

Article 53(2)(b)\$ and (c) of the Constitution of the Republic of Uganda 1995 provides that the Commission may if satisfied that there has been an infringement of a human rights or freedom, order:

Payment of compensation; or any other legal remedy or redress.

Having already found that C's right of freedom from torture or cruel, inhuman treatment or punishment was violated and therefore R should compensate him for such violation, the quantum of damages has to be ascertained.

However, in determining the quantum of damages to be paid to C, the following factors have to be taken into account:

- a) That the right that was violated was non-derogable as per Article 44(a)\$ of the Constitution.
- b) That C suffered serious injuries especially on his head, back, and feet.
- c) Relevant case precedents.

- d) The value of money.

In the instant case, C suffered sustained injuries on the head and back, whose effects have been persistent. However, I must mention that the principle of the law laid down by J Odoki in the case of

MATIYA BYABALEMA AND OTHERS VS UGANDA TRANSPORT COMPANY SCCA NO 10 OF 1993, was 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 and taking into account all the above mentioned factors, I am therefore ordering \$R\$ to pay to C UGX \$10,000,000/\$ = (Uganda Shillings ten million) as general damages for the violation of his right of freedom from torture or cruel, inhuman treatment and degrading treatment or punishment.

I therefore order as follows.

ORDERS:-

- $\mathbf{\$1}$. The complaint is allowed wholly.
- $\mathbf{\$2}$. \$ R (Captain Taban Ali) is ordered to pay to C, Siraji Eitu a total sum of UGX, 10,000,000= (Uganda Shillings ten million **only**) for the violation of his right of freedom from torture or cruel, inhuman treatment and degrading treatment or punishment.
- $\overline{\mathbf{\$3}}$. Each party shall bear their own costs.

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 Jinja On This ... 21st..... Day of ... Felocomy.....2022.

HON. SHIFRAH LUKWAGO

PRESIDING COMMISSIONER

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