

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
ANTI-CORRUPTION DIVISION**

MISC. APPL No 007 and No 8 OF 2022

(Consolidated)

(Arising from criminal case 01 of 2022)

(A1) ROBERT ASIIMWE AKANGA.....

(A2) KALEMBA STEVENS.....APPLICANTS

VRS

(1) ATTORNEY GENERAL

(2) DIRECTOR OF DPP.

(3) UGANDA REVENUE AUTHORITY.....RESPONDENTS

BEFORE: GIDUDU, J

RULING

The applicants, Robert Asiimwe Akanga and Kalembe Stevens filed two motions against the Attorney General, **DPP** and **URA** under the provisions of **Article 50(1) of The Constitution of the Republic of Uganda and Section 11 of The Human Rights Enforcement Act, 2019** seeking various declarations and orders.

The gist of the orders sought is that the trial of the two be declared null and void on grounds that at the time of arrest and detention, their non derogable Rights were violated. They also seek compensation, punitive and general damages

I consolidated the two applications for convenience since the two originated from the same **Criminal Session case 1 of 2022** and are seeking the same reliefs basing on similar or related facts and grounds.



The applicants are **A1 and A2 respectively in Criminal case 1 of 2022** and for convenience I will refer to them as such in this Ruling. A1 and A2 are charged with two other persons for crimes like **Abuse of office C/S 11(1) of the ACA, 2009, Theft C/S 254(1) & 261 of the PCA, Cap 120** and Conspiracy to commit a felony **C/S 390 PCA, Cap 120**. They are accused of stealing **USD 410,000** the property of **GAK Express Co. Limited**.

The allegation is that on the 28th day of February 2021, A1 and A2 being employed by Uganda Revenue Authority as a customs officer and driver respectively stole **USD 410,000** the property of **GAK Express Co. Limited**. The two deny the charges.

In his affidavit in support dated 25th march 2022 A1 stated that on 3rd March 2021, he received a phone call from Paul Karatunga, the In-Charge Operations Team 1 informing him of a planned operation along Entebbe road. Karatunga assigned A1 to lead the team.

They met at Total Petrol Station, Kajjansi at 6.30 am. Karatunga was in company of two soldiers namely Captain Charles Isingoma and Captain Winnie Kusiima plus two armed escorts.

A1 was instead arrested under gun point and pushed him into a vehicle. He was taken to **URA** offices where he met other **UPDF** and Police officials attached to **URA**. He was handcuffed. Lt. Col Zaakye informed him, the arrest is in connection with theft of money belonging to a Sudanese national. He denied participating in theft.

Captain Isingoma, Captain Gorret Atim and D/ASP Lumumba and others took him to his home for a search. The search certificate (Annexure A) reads that no exhibit was found.

Col. Cassette Ignatius Wamundu asked him to confess to the theft of money or be tortured by the Joint Anti -Terrorism Taskforce until he does so.

That he was denied a right to contact his lawyer or make any phone call. On 6th March 2021 at 7 am, he was picked by a team from **CMI**, blindfolded and taken to **CMI** Hqrs at Mbuya where he was subjected to torture.

Torture was administered by beating, boxing, kicking using metals, wires, kicked in the ribs with combat boots, burning him with hot metals under his feet, chaining his hands and arms behind his back, dragging him on the floor while pulling the ropes tied in the neck and arms, hitting his toes, ankles and elbows and suspending him in air while tying his neck, legs and arms.

It was executed by 10 well-muscled men using weapons such as guns, sticks, batons, metal bars, pliers, chains, ropes and electric wires. He maintained his innocence as they demanded for the money he is alleged to have robbed.

He lost consciousness due to prolonged torture. He regained his senses to realise he was in a corridor. He was bleeding and still chained. He was taken back to Custody at **SIU** Kireka during darkness. He could not walk.

On 7th March 2021, he was accessed by his brother Robert Kazoora who took photos of his wounds using his phone camera (Annexure B).

That as a result of the torture, A1's body became swollen, he developed wounds on the legs, back, hands, chest pains, pain in the ribs, abdominal pain and paralysis. He never got any treatment.

That on 8th March 2021, he was returned to Mbuya **CMI** qtrs for more torture sessions. He was slapped, boxed and had a gun inserted in his mouth and told he would be shot if at the count of ten, he did not confess to stealing the money. He begged for mercy to no avail until he passed out believing he had been shot.

When he regained consciousness he asked to speak to his brother Kazoora. They agreed and made an appointment to meet at the Lawyer's office. He was taken to the lawyer's office where he asked for medicines to treat his injuries. See annexure C and D.

Due to his state of health, the police at **SIU** took him to a police surgeon for medical assessment. Meantime several release court orders were served on security agencies for his unconditional release but were ignored until 19th March 2021 when he was charged in



court. He was released on bail. He reported a case of torture at Jinja Road police station. He was given PF3 (annexture K) whose details reveal injuries using blunt objects and hot substances. His injuries were classified as dangerous harm. By Dr. Ojara Santos.

A1's statements are supported by the affidavit of his brother, Kazoora Robert who visited him in detention, saw his wounds, took photos of his injuries, bought him medicine and spoke to his arresters such as Col. Wamundu begging for his release on bond in vain because according to the arresters, A1 had refused to confess to the robbery.

Dr. Kalika of Platinum Hospital, in his affidavit dated 25th March 2022 states that he examined A1 on 22nd March 2021 at 2.00pm and observed that he had grievous wounds on his legs, feet, back, hands, thighs and buttocks. Laboratory test results revealed features of blunt trauma. He concluded that A1 was subjected to significant blunt trauma. He managed him on admission till 1st April 2021 and continues to manage him as an outpatient. A1 suffered lung contusion due to blunt trauma. He also suffered persistent paralysis in the legs and thighs.

A2, in his affidavit of 25th March 2021 states that on 2nd March 2021 at around midnight, he received a call from Sekweyama, a fellow driver at **URA**, claiming to be stuck near his home and needed help. A2 responded only to find army captains who put him under arrest at gun point.

Col Cassette Ignatius Wamundu asked him about the money. He denied knowledge of where the money was. He punched him in the right eye and as he fell down. He was kicked in the ribs at gun-point before his children and wife who cried and shouted. He threatened to shoot him unless he admitted having stolen money on 28th February 2021. Present were Captains Isingoma. Diana Museveni and Winnie Karugwara. They took him back to his home.

That night soldiers took his wife to a garden and returned with a black polythene bag with money. He was made to pose for photos with the money. He was taken by the soldiers to **URA** offices and paraded before Col. Cassette Wamundu, Lt Col. Zaakye, Captains

Isingoma. Diana Museveni, Winnie Karugwara, Gorreti Atim and other soldiers. He was asked about A1. He was forced to write an admission that A1 gave him money on 28th February 2021.

That on 6th March 2021 he was taken to **CMI** offices in Mbuya and taken to a room where four muscled men had assorted weapons including guns, sticks, batons, metal bars, pliers, chains, ropes, electric wires among others. He was undressed. He was badly and severely beaten using the electric cables, hang on hand cuffs up the ring as his legs were tied down and suspended in one position for a whole day as he was being beaten.

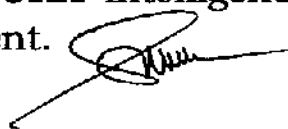
The alleged torture was meant to compel A2 to confess to the crime of stealing money on the 28th February 2021. Because of torture, he suffered physical and mental anguish including several ailments like acute stomach pain, swelling of legs, feet and arms and paralysis.

He was tortured again on 8th March 2021. His body became swollen with wounds on the legs, back, hands, ribs and abdomen. He did not receive any medical attention or have access to a lawyer or family members. Further mistreatment went on until he was produced in court after an ordeal of 16 days in detention.

He stated that after being released on bail, he sought medical treatment and suffers from paralysis, headaches, hallucinations and general body weakness.

The 1st respondent in the affidavit of Col. Moses Wandera, Deputy Chief of Legal Services Ministry of Defence and Veterans' Affairs dated 3rd may 2022 denied all allegations of torture of the applicants. Col Wandera stated that on 1st March, 2021, **URA** intelligence on advice by the police investigated a case of robbery of **USD 410,000=**

He stated that **M/V UBA 809Q** was occupied by A1, A2, Pte. Abigaba and Pte. Olinga of **UPDF** on 28th February, 2021. The four occupants were arrested by **URA** intelligence team and handed to police for further management.



It was his statement that allegations of torture by A1 and A2 are baseless and false. He stated further that the soldiers named by A1 and A2 are attached to and supervised by **URA**.

D/IP Kisa Clare, in her affidavit of 3rd May 2022 stated that she was part of the investigation team. The case of robbery had been reported to Kawempe Police Station vide CRB/246/2021. The case was referred to the Police Flying Squad Unit. A South Sudanese National had alleged that A1 and A2 had robbed him of USD 410,000= on 28th February 2021. It was her evidence that the applicants were interviewed by **URA** intelligence team before being taken to the **SIU** at Kireka. She had no knowledge of the alleged torture of the two.

The 2nd respondent in an affidavit of Chief State Attorney, Harriet Angom, distanced the **ODPP** from any involvement contending that none of the alleged torture makes reference to their office.

The 3rd respondent in the affidavits of Capt. Isingoma, of the **UPDF** seconded to **URA** and Douglas Kabagambe of **URA** denied allegations of torture.

Both Capt. Isingoma and Mr. Kabagambe stated that they were notified by the police flying squad that it was investigating an alleged robbery of **USD 410,000** belonging to a Sudanese national which happened on the 28th February 2021. That the **URA** vehicle **UBA 809Q** was involved in the said robbery and the applicants were in charge of the vehicle that day.

That on 2nd March 2021, Capt Isingoma was detailed to look for A2 and take him to office. He tricked A2 by using a fellow driver and in company of others like Capt. Winnie Karugwara and Capt Diana Museveni plus other **UPDF** personnel arrested A2 at Kiti trading Center near his home.

When informed of the reason for his arrest, A2 admitted participating in the robbery and asked his wife to go to the banana plantation and recover the money which was found to be **USD 16,300**. A photo of him was taken with the money (annexture B). He denied assaulting

A2. He handed over A2 to the intelligence office for further management.

The affidavit of Kabagambe is that after arresting A1 and A2, they handed them over to the police for further management. He denied knowledge of A1 and A2 being picked from Kireka **SIU** to be tortured at **CMI**.

I understood both Capt. Isingoma and Mr. Kabagambe to state that there was credible evidence implicating A1 and A2 to face charges on account of A2's admission in his plain statement attached to Mr. Kabagambe's affidavit as annexure A. A2's plain statement states that he participated in impounding three phones and unspecified fake dollars. He was given a share of **USD 16,300** which he surrendered upon arrest.

Mr. David Kamukama appeared for A1. Mr. Ssekajja Ukasha for A2. M/s Johnson Natuhwera, Brian Musota and Franklin Uwizera appeared for the 1st respondent. M/s Stuart Ahebwa and Patricia Ndagire represented the 3rd respondent. The 2nd respondent was absent.

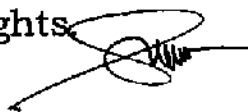
From the several affidavits and attachments of both sides, the following issues arise for determination.

Issues

- 1. Whether A1 and A2 were subjected to torture.**
- 2. If so, whether the non derogable rights of A1 and A2 were violated.**
- 3. What remedies if any.**

Whether A1 and A2 were tortured.

Mr. Kamukama, learned counsel for A1 submitted that, A1's application is based on a harrowing tale of impunity, intolerable arrogance and indefensible abuse of authority, horrendous torture, total violation and disregard of human rights and abuse of inalienable rights enshrined in the Constitution and all other Acts that protect human rights.



He referred to the affidavits of A1, Kazoora and Dr. kalika which show that A1 was tortured and suffered serious injuries as a result. He referred court to the graphic photos of A1's injuries to confirm acts of torture.

Further, Mr. Kamukama asked court to treat the detention of A1 from 3rd March to 19th March 2021 as evidence violation of A1's rights. He submitted that A1 was denied access to legal and medical services while in detention which aggravated his condition.

Mr. Kamukama questioned the involvement of soldiers in investigating a case of alleged theft. It was his view that the act of soldiers from **CMI** picking A1 from **SIU** Kireka and taking him to Mbuya where they beat him with metals and wires and kicked him in the ribs with combat boots plus burning him with hot metals, tying him with ropes and suspending him until he was unconscious inflicted physical, psychological and mental injuries and anguish. He contended that this violated A1's rights against torture which are protected by **Articles 24 and 44 of the Constitution**.

In rejoinder, he submitted that a suit of this kind cannot be challenged for failing to comply with a particular procedure. He relied on **section 6(5) of the Human Rights (Enforcement) Act 2019** for that proposition.

He asked court to declare that the acts of the respondents of grossly torturing A1 violated his fundamental Human Rights guaranteed under **Articles 23,24,42 and 44(a) of the Constitution**.

He cited the case of **Wanyoto Mugoya Paul Vrs A.G CA 91 of 2021** which observed that in cases of torture, the perpetrators tend to hide evidence and it would not be appropriate for a court to insist on medical evidence. It is enough if the applicant demonstrates that his/her rights were violated. He insisted that in this case A1 had gone beyond by providing photographs and medical examination of his injuries.

He also prayed for an order of compensation to the tune of 1.5 billion as punitive and general damages for impunity of not releasing A1

after 48 hours despite court orders to that effect and for medical expenses A1 had to pay for his continued treatment.

He asked for the nullification of A1's trial in **criminal session case 1 of 2022 pursuant to section 11(2) of the Human Rights (Enforcement) Act 2019.**

He also prayed for costs.

Mr. Ssekajja, learned counsel for A2 also submitted that the fundamental Rights of his client had been violated by the manner of arrest, detention, torture and denial of access to legal and medical services.

He submitted that A2 was detained incommunicado for 16 days beyond the legal limit of 48 hours. He repeated the statements of A2 in his affidavit in support.

A2 was tricked in his arrest and humiliated before his wife and children in the dead of the night. After arrest, he was tortured by Col. Wamundu with the view to forcing him to confess to a crime of theft of US dollars from a South Sudanese National. He repeated the mode of torture including being undressed and being beaten badly using guns, sticks, batons, metal bars, pliers, chains, ropes and electric wires.

A2 could hardly walk after the torture session. He was forced to sign a document admitting committing a crime he never did. He was denied medical attention and access to a lawyer or family members.

Learned counsel asked court to declare A2's trial a nullity under **section 11 of the Human Rights (Enforcement) Act 2019.** He referred to the decision of the Court of Appeal in **Wanyoto's case(supra)** where it held that it is irrelevant if the prosecution has strong evidence against the applicant as long as his non derogable rights were violated the trial falls.

On the basis of physical evidence attached in form of photographs showing torture marks on the feet, buttocks, legs etc., he asked for compensation and damages.



Finally, Mr. Ssekajja submitted that the respondents have not challenged A2's allegations of torture.

In response, it was submitted for the first respondent that A1 had flouted procedural requirements and should have his affidavits (supplementary and in rejoinder) struck out.

Three preliminary objections were raised namely that A1 did not obtain leave of court to file the supplementary affidavit lodged on 4th May 2022. This was because the respondent had already responded to the main affidavit. The case of **Mutembuli Yusuf V Nagwomu Moses Election Appeal 43 of 2016** was cited in support.

The second objection was that A1's affidavit in rejoinder is defective because it was filed after the time lines given by court had expired. It was submitted that A1 needed leave to extend the time.

The third objection was that the medical forms attached to A1's affidavit do not have affidavits of the medical experts to prove their opinions. **Sections 43 and 59(d) of the Evidence Act, Cap 6** were cited in support.

On the merits, it was submitted for the first respondent that A1 and A2 were not tortured because there was no severity of pain and suffering inflicted intentionally by either the police or **UPDF**.

A submission was made that *"the courts should apply a very strict test when considering whether there has been a breach of an individual's right to freedom from torture or inhuman or degrading treatment. Only the worst examples are likely to satisfy that test"*

It was further submitted that the applicants had not discharged the burden of proof as required by section 101 of the Evidence Act. It was suggested that A1 could have been injured when out on bail because it is the examination after bail that categorized his injuries as dangerous harm while the Police Form 24 referred to his injuries as bruises.

I was also asked to find that A1 by his own affidavit evidence had access to his relative and lawyer so his complaint that he was denied access to them is false.

Turning to A2, counsel for the 1st respondent submitted that his allegations were not proved because he did not adduce evidence that he was healthy before arrest and only got injured in detention.

Another argument was that under **Article 23(4)(b) of the Constitution**, detaining A2 beyond 48 hours was permissible because it was intended to produce him in court which was done. With due respect, the said Article demands that suspects be brought to court within 48 hours. It does not say that an accused can be detained for any period as long as he/she will eventually be taken to court.

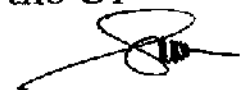
On the issue of remedies, it was submitted that they are not available because this is not a Civil Court to grant them and that the claim of 1.5 billion was out of the ordinary. It was suggested that 20 million would atone for such violations. This is another submission made in ignorance of the provisions of the **Human Rights (Enforcement) Act 2019** specifically sections **3,4, 8,9 and 11** thereof. These provisions mandate this court to entertain this application.

Mr. Ahebwa made submissions on behalf the 3rd respondent. He contended that the applicants were in the vehicle **UBA 809Q** belonging to the 3rd respondent from which they committed a crime.

He denied allegations of torture raised by the applicants and referred to a statement of A2's daughter Bayiga Rachel Kalumba attached to Capt. Isingoma's Affidavit. In the statement Bayiga made on 8th March 2021. It is supposed to be 3 pages. Only the 1st and 3rd page were attached. It does not say that A2 was not tortured. It is irrelevant in its incomplete form.

Mr. Ahabwe submitted that A1 was granted bail on 19th March 2021, if he had been tortured as alleged he should have waited to go for treatment on 22nd march 2021. He was of the view that this delay to seek medical treatment means he was not tortured.

He criticized the medical report by Dr. Kalika saying it is false because if eight well-built men had beaten A1 as he alleged, the CT



scan would have showed significant internal injuries. He concluded that the medical reports were unreliable.

He submitted that the case of **Wanyoto Paul (supra)** did not say that court should not act on evidence. He contended that the applicants have a duty to prove the violation of their rights.

On the issue of compensation, he called it an imagination to claim a billion shillings for unproven injuries. He asked that the applications be dismissed.

The applicants have the burden of proof of the allegations of torture on the balance of probabilities.

The Law relating to respect for Human Rights is both Constitutional and Statutory including International Conventions. **Article 24** of the Constitution of the Republic of Uganda provides thus: -

24. Respect for human dignity and protection from inhuman treatment.

No person shall be subjected to any form of torture or cruel, inhuman or

degrading treatment or punishment.

Article 44 of the Constitution commands that there shall be no derogation from the enjoyment of certain rights and freedoms.

44. Prohibition of derogation from particular human rights and freedoms.

Notwithstanding anything in this Constitution, there shall be no derogation

from the enjoyment of the following rights and freedoms—

(a) freedom from torture and cruel, inhuman or degrading treatment or punishment;

It follows that freedom from torture and cruel, inhuman or degrading treatment or punishment is guaranteed under **Article 44 of the**

Constitution. Non derogation means it is inviolable. There is no legal justification for torture, cruel, inhuman or degrading treatment or punishment of a human being.

What amounts to torture? **Section 2 of the Prevention and Prohibition of Torture Act, 2012** defines torture as: -

- (1) any act or omission, by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person whether a public official or other person acting in an official or private capacity for such purposes as-
 - (a) obtaining information or a confession from the person or any other person;
 - (b) punishing that person for an act he or she or any other person has committed, or is suspected of having committed or of planning to commit or;
 - (c) intimidating or coercing that person or any other person to do or to refrain from doing any act.
- (2) Severe pain or suffering means the prolonged harm caused by or resulting from-
 - (a) the intentional infliction or threatened infliction of physical pain or suffering
 - (b) the threat of eminent death.

The allegations of torture by A1 and A2 are contained in their affidavits in support. They are also seen from the photographic presentation of the scars and injuries on their bodies. They also attached medical reports from health facilities where they sought treatment.

A1 describes his torture in paragraphs 19, 20, 21, 27, 28 of his affidavit dated 25th March 2022 in support of the motion. It is a chilling graphic episode that resulted in his becoming unconscious.

Paragraph 19 states as follows: -

“That inside the said room one of them ordered me to bring the money I had stolen. When I pleaded my innocence, I was



immediately subjected to indiscriminate assault, beating, boxing, kicking, beating me with metals, wires, kicking me in the ribs with combat boots, burning me with hot metals under the feet, undressing me and leaving me naked as they beat me, chaining my hands and arms behind the back, dragging me on the floor while pulling the ropes tied in the neck and arms, hitting my toes, uncles and elbow with batons, spraying my body with a liquid unknown to me while naked and simultaneously beating me, tying me with ropes in the neck, legs and hands and suspending me in the air and all manner of torture”

This he says in paragraph 20 that torture lasted 4 hours until he lost consciousness.

In paragraph 27 one tormentor put a gun in his mouth and counted ten to kill him. The fact of counting caused him to faint when the trigger was pulled. He thought he had been shot.

A2 in his affidavit of 25th March 2022 in paragraphs 13, 15, 16 17 18, 19, 20, and 21 recounts a similar experience at **CMI** offices. In paragraph 16 A2 states: -

“That on 6th March 2021 I was taken to a room in a blindfold which was removed and I found myself in a room with a semblance of a torture chamber. It had about 4 well-built men. There were an assortment of torture weapons including guns, sticks, batons, metal bars, pliers, chains, ropes and electric wire among others. I was undressed badly and severely beaten using an electric cable at CMI and constantly asked where he had put the money, a fact that was not known to me. I was hanged on hand cuffs up the ring and the legs were also tied down and made to hang in one position for a whole day while being beaten.”

Photographs of the impact of these beatings were attached to the affidavits of A1 and A2.

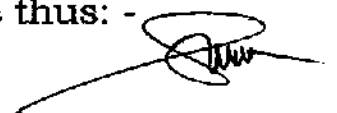
The 1st and 3rd respondents disputed the torture claims contending that there was no sufficient medical proof of injuries sustained and doubted if the applicants were ever tortured. Affidavits of Col. Moses Wandera, Captain Isingoma and Mr. Kabagambe deny that any torture was administered on the applicants.

In **Paul Wanyoto Mugoya V Sgt Oumo and AG Civil Appeal 91 of 2021**, the COA after citing the Kenyan case of **Jennifer Muthoni Njoroge V AG** and a report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment A/HRC/25/60 of 4th March 2014 held that the requirement for medical evidence to prove torture has no legal basis. This is because torture by its nature is carried out in secrecy whilst a victim in detention is not in a position to assemble medical evidence. Torture is said to be done by skilled people who ensure that physical injuries are not visible on the victim.

It follows that to insist on physical or medical evidence can only promote acts of torture rather than check them. Yet in this consolidated application, both applicants have endeavored to attach photographs of physical injuries to augment their claims.

One doctor Kalika referred to A1's injuries as being a result of blunt trauma. This lends credence to the observation that those that torture do not want to leave observable physical injuries to conceal their acts. Except for the submission from the bar, there was no challenge to the medical evidence adduced by both applicants. The submission that there was no medical evidence to support the claim of torture is not sustainable in law.

The 1st respondent had also submitted that court should only treat extreme cases of pain to uphold a claim of torture. With due respect to the learned Attorney General's representative, Human Rights are not subject to qualifications or grading by courts based on severity or degree of violation. The suggestion made by learned counsel for the first respondent offends the letter and spirit of **Chapter 4** of the Constitution and specifically **Article 20** which provides thus: -



20. Fundamental and other human rights and freedoms.

(1) Fundamental rights and freedoms of the individual are inherent and not granted by the State.

(2) The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.

It follows that no standards can be imported to meet the test suggested by learned counsel for the 1st respondent. Human Rights are inviolable which means they must be respected, and not attacked or destroyed.

Before I conclude on this issue I need to resolve the preliminary objections raised by the 1st respondent. The objection in regard to proof of medical has been dealt with above. It is not a legal requirement in cases of Human Rights where torture is the subject of inquiry. Be that as it may I have found that medical evidence adduced by both applicants has not been scientifically challenged. If blunt trauma can leave such torture marks as seen on the feet, arms, buttocks, legs and the back in the photos tendered as evidence then the torture sessions were severe.

There was an issue of late filing a supplementary affidavit and another in rejoinder by A1 without leave of court. It is true that I gave the parties time lines to file submissions. But these timelines were administrative and not amounting to a court order that follows a trial. All parties fell short of complying and when I noticed this I decided to fix the matter for oral submissions in open court. This rendered the administrative timelines that I gave inconsequential.

Extension of time is strictly for time imposed by the Rules or a Statute. Administrative timelines can be extended by ordinary letter request. Besides, **section 6(5) of the Human Rights (Enforcement) Act, 2019** exempts suits under the Act from technicalities as follows:

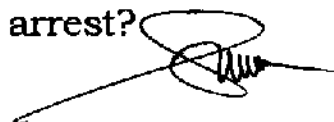
6(5) No suit instituted under this Act, shall be rejected or otherwise dismissed by the competent court merely for failure to comply with any procedure, form or on any technicality.

Cases of Human Rights are not subjected to the strict Rules of Procedure and Evidence. Courts are mandated to examine substance and not mere form when dealing with fundamental human rights of citizens.

Be that as it may, even without the supplementary affidavit or the one in rejoinder, there was sufficient evidence in the supporting affidavits to sustain the applications. The objection is, therefore, not sustainable.

Before deciding if the applicants have proved allegations of torture which is a violation of their non derogable rights, I feel compelled to interrogate the circumstances surrounding their arrest and charging in court. This will place the matter into proper context. The following species of circumstantial evidence require examination by court.

- (i) The affidavit evidence of A1, A2, Capt. Isingoma, AIP Kisa Claire and Mr. Kabagambe when considered in totality look that like a movie. A1 and A2 are arrested through the use of trickery as if they were on the run whereas not. A1 is deceived that he was reporting for deployment on an operation. When he reports at the appointed time and place he is literally abducted. He is made to leave his vehicle unattended at a fuel station as if he was a terrorist.
- (ii) A2 was called by a fellow driver at midnight claiming he needed help having got a mechanical problem. He is lured in the middle of the night and arrested like a terrorist.
- (iii) The arrest takes place at midnight for A2 and at dawn for A1. What was the problem of waiting for them to report for duty normally and arrest them if necessary? There was no evidence that they were in hiding. They responded to calls made to them willingly and innocently. What was the reason for staging ambushes to effect their arrest?



- (iv) The number of **UPDF** officers such as Colonels, Captains and privates deployed in the night to arrest two un armed civilians working with the same organisation and who were not reported to be in hiding is a matter of curiosity.
- (v) The nature of the complaint is another piece of curiosity. Who was the complainant? Is it the unnamed South Sudanese National or the Private Company called GAK express Co. Ltd. AIP Kisa does not mention in her affidavit who reported the case to Kawempe Police Station and why the police assigned URA - a TAX body to prosecute individuals who are not tax defaulters!
- (vi) The Charges include Abuse of office, theft, receiving stolen property and conspiracy to commit a felony. None of these crimes fall under the **East African Community Customs Management Act, 2004**. Even if A1 and A2 are employees of **URA**, did they steal from **URA** or indeed commit a crime under tax laws? What is the grievance of **URA** in this case?
- (vii) The long detention of over two weeks and the use of **URA** officials and soldiers as part of the investigation of non-tax offences is out of the ordinary. The two were arrested on 3rd March 2021 and detained until 19th March 2021 when they were produced in court. Even this was after pressure was mounted to have them unconditionally released. Court orders were served on the police and **URA** to release them? What was reason for detaining them for 16 days on non-violent charges such as Abuse of office, conspiracy to commit a felony and theft?
- (viii) The two are said to have been arrested after they left their homes to go to appointed locations. They went there in good health. Why is it that their bodies bore marks of blunt trauma when in custody? What happened to them?
- (ix) When A2 was under arrest and brought to his home, he is said to have admitted sharing in the stolen money and he directed his wife into a banana plantation where she went with the soldiers and they recovered it in a black polythene. They photographed him with it. What is strange is how the

wife knew where the money was in the middle of the night? Why was A2 not taken along to lead the team where he had hidden it?

- (x) On 19th March 2021 when A1 appeared for plea. His lawyer applied for bail on grounds that A1 was tortured and put to very indignant treatment, had been burnt with hot metals and his body had bruises. The state did not respond to the submission about A1's health. I take this to be acceptance that A1 had been tortured in detention. The trial Chief Magistrate wrote. ***"I have noted on the record the concerns of counsel for the applicant (A1) about the chronology of events from what transpired from arrest till production of A1 to court....."*** She released A1 on bail.

The cumulative import of all the circumstances that I have listed above confirm that allegations made by the applicants in regard to their arbitrary arrests and subsequent torture to be true. A1 and A2's non-derogable Rights protected by **Article 24** and guaranteed by **Article 44(a)** of the Constitution of the Republic of Uganda were threatened, infringed upon and violated. The injuries sustained are gruesome to say the list and confirms that there was torture of A1 and A2. Their prosecution raises more questions than answers because of the manner in which they were treated before being brought to court.

Courts have in a number of cases especially in **Constitutional Petition 7 of 2007 between Dr. Kiiza Besigye and AG** the Constitutional Court after reviewing similar cases in Kenya and Canada held thus:

"This court cannot sanction any continued prosecution of the petitioners where during the proceedings the human rights of the petitioners has been violated.....No matter how strong the evidence against them may be, no fair trial can be achieved and any subsequent trials would be a waste of time and abuse of court process."



The enactment of the **Human Rights (Enforcement) Act, 2019** with specific provisions which seem to have enacted the holding of courts in enforcing Constitutional provisions that protect and guarantee Human Rights has rendered the torture of suspects if proven to result in their acquittal no matter how serious the charges are. The submission by the 3rd respondent that the charges are serious and the accused should stand trial is irrelevant once it is proved that fundamental non-derogable rights have been violated. Our duty as courts is to enforce compliance by all agencies of State to respect and observe human rights of suspects who after all are presumed innocent until proved guilty.

I am satisfied that the applicants have demonstrated that their non-derogable rights and freedoms were infringed upon when they were mercilessly battered in the hands of the military that should have had no role in purporting to investigate a criminal case of Abuse of office and theft.

I hereby declare their trial in **criminal session case 1 of 2022** a nullity and acquit them pursuant to **section 11(2) of The Human Rights (Enforcement) Act, 2019**. Issues one and two are answered in the affirmative.

What remedies are available? A declaration that the trial of A1 and A2 is a nullity is one of the remedies.

Each of the applicants asked for compensation of 1,500,000,000= plus punitive damages of 100,000,000=.

The 1st respondent contested this on grounds that a criminal session court cannot award compensation. As for the 3rd respondent it was submitted that the claim for compensation should not exceed 20 million.

Compensation is permissible in criminal trials by virtue of Statutes such as **S. 197 of the Magistrates Courts Act, Cap 16 and S. 126 of the Trial on Indictments Act Cap23**.

In cases brought under **The Human Rights (Enforcement) Act, 2019**, compensation is one of the reliefs granted to a victim of a human rights violation. It is provided for in **section 9(3) of the Act**.

Compensation in cases of quantum of damages is largely judge made. In theory the court may assess damages in a way it sees fit in order to do justice to the parties.

The aim of an award of damages is to compensate the claimant for the loss caused to him or her by his or her injuries and to place him or her, so far as is possible to do so in the position he or she would have been in had those injuries not been suffered.

The claimant must be compensated, therefore, not only for the injuries themselves but also for the effect they have had on him or her emotionally, intellectually and financially. This cannot be done, of course, simply by the payment of money; but money is all the law has to give, and so some arbitrary yet fair relationship has to be found between the injury and the compensation.

Damages for pain and suffering compensate the claimant for the physical pain and the emotional suffering caused by the injury. Shock is included as are anxiety, embarrassment and emotional injury.

A1 in his affidavit in support of the application stated hair raising moments during the ordeal. He suffered physical injuries which are visible on his body as shown by the photographs. He also suffered prolonged pain as all manner of weaponry was unleashed on him to extract an admission of guilt.

A gun muzzle was inserted into his mouth and a trigger pulled which made him faint. Of course it must have been unloaded but the effect was immense. He was arrested in a manner that did not allow him take care of his vehicle which he left un attended at a fuel station in Kajjansi. He was starved and not given medical attention. He still gets hallucinations. He was humiliated by and before persons he worked with in the same organisation. He was treated as a thief who had



hidden the stolen money and was beaten to reveal where it was. He had to undergo treatment.

A2 suffered similar mistreatment. He was suspected to have shared in the money and was arrested in his home trading center at Kiti. He was paraded before his wife and children. It is alleged that he asked his wife to go into a banana plantation that night and that they recovered 16,300 USD. He was photographed with it. It is not clear how the wife knew where money was in a banana plantation in the middle of the night. Those are some of the strange things in the case. He was tortured to unconsciousness. He got physical injuries and suffered mental anguish, humiliation and embarrassment. He also had to undergo treatment.

Since quantum is judge made we look at other awards to compare where possible or contrast. The applicants availed a recent case of **Hon Zaake Francis V AG and 7 others Misc. cause 85 of 2020** where Nambayo, J awarded Hon. Zaake 75 million as compensation for pain and injury inflicted upon him during police detention which was beyond 48 hours.

Lady Justice Nambayo considered the case **Issa Wazembe V AG CS 154 of 2016** where Justice Ssekaana awarded 120 million to the plaintiff for torture that resulted in loss of his limb.

I have not benefitted from details of how torture was administered to the victims in those cases. Those awards are instructive but I find that they are low and may encourage acts of torture rather than to stop them.

It was submitted for the applicants that they should be paid over one billion shillings each. It was not demonstrated how the figure was arrived at. The parties literally threw the claim at the court and said "that is what we want".

The brutality meted out to the applicants call for adequate compensation for not just their pain and prolonged suffering but also the impact on their lives after. The public humiliation and embarrassment caused also calls for a higher value of compensation.

Beating a person to unconsciousness or using tricks like pulling a trigger of a gun whose muzzle is inserted in the mouth of the victim is horrendous. This is a proper case where punitive damages are justifiable in addition to general damages. The acts of torture were committed with impunity.

Taking all these factors into consideration I award A1 as the main target and focus of torture a sum of 200 million as compensation for pain, suffering, and physical injuries. I award another 50 million to A1 as punitive damages for subjecting him to humiliation and embarrassment.

I Award a sum of 100 million to A2 as damages for pain, suffering and physical injuries. I award another 50 million to A2 as punitive damages for subjecting him to humiliation and embarrassment.

A1 and A2 are also awarded taxed costs of this consolidated application.

Compensation and costs are against the 1st and 3rd respondent jointly and severally. The 2nd respondent was not involved in this ordeal.

In conclusion, the consolidated application succeeds. It is my finding that the applicants were subjected to acts of torture and their non-derogable rights were threatened, infringed and grossly violated. The acts of torture of A1 and A2 are neither justifiable nor defensible.

I make the following orders: -

1. The trial of A1 and A2 in **criminal session case 1 of 2022** is hereby declared a nullity. Both are acquitted pursuant to **section 11(2) of The Human Rights (Enforcement) Act, 2019**
2. I award A1 **UGX. 200,000,000=** as general damages and another **UGX. 50,000,000=** as punitive damages.
3. I award A2 **UGX 100,000,000=** as general damages and another **UGX. 50,000,000=** as punitive damages.
4. The awards in 2 and 3, above, are against the 1st and 3rd respondent jointly and severally.



5. A1 and A2 shall have the taxed costs paid by the 1st and 3rd respondent.



.....

Gidudu Lawrence

JUDGE

12th September, 2022.