

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 977 OF 2000

MAGEZI RAPHAEL :::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

ATTORNEY GENERAL :::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. MR. JUSTICE REMMY K. KASULE

JUDGMENT

The plaintiff sued the defendant seeking compensation of lost property and the refund of shs.74,000/= as well as general damages for wrongful arrest, unlawful detention, assault, battery and false imprisonment.

The issues framed for court determination are-

1. Whether the plaintiff was unlawfully arrested, detained and tortured by servants/agents.
2. Whether the defendant suffered any damage and loss.
3. Whether the defendant is vicariously liable.
4. What remedies are available to the plaintiff?

Plaintiff testified and called no witness. The defendant called two witnesses, Julius Shariita, a Commissioner of police, and Musana John Geoffrey, a detective Senior Superintendent of police.

As to the first issue, Plaintiff's testimony is that on 21.04.00 he hired a special taxi at an agreed upon fee of Shs.15,000/= to transport him to the village to collect his workers. Later the taxi driver demanded of the plaintiff to pay an extra Shs.5000/=. The plaintiff refused to pay. The taxi driver told the plaintiff that the vehicle belonged to a soldier.

The taxi driver then drove to Kabale Police Station, and without giving any hearing to him, the police ordered the plaintiff to remove his shoes, took away his personal moveable properties and sent him to the police cell where he stayed from 1.00a.m. on 21.04.00 till the following day when he was released.

The taxi driver never testified to controvert the above version of the plaintiff as to his arrest and imprisonment. No police officer from Kabale Police Station gave evidence stating he or she witnessed the arrest and imprisonment of the plaintiff. DW1 and DW2, both Senior Police Officers, only came to know of the plaintiff's fate the following day when the plaintiff had already spent a night at Kabale Police Station. No recorded statements by Kabale Police Station from any relevant witness were availed to court to controvert the plaintiff on the issue of his arrest.

An arrest is an act that deprives one of one's liberty as a free person and is usually effected in relation to an investigation and/or prevention of crime. An arrest becomes wrongful, when the same is carried out in absence of a complaint before one is arrested and, subject to some exceptions, in absence of an arrest warrant: See *Lutaaya Vs. Attorney General: H.C.C.S No. 461 of 1989.*

There are exceptions where an arrest may be made in absence of an arrest warrant. An arrest may be effected by police or a private citizen where there is reasonable cause to suspect that the person being arrested has committed or is about to commit a crime. But in case of such a type of arrest, effected without a warrant of arrest, the arresting police or private person must forthwith take the person arrested before a police officer of appropriate rank who has power to grant bail to the person arrested. The principle of law is that:-

“The law does not grant to the person who has arrested a reasonable time in which to make up his mind what he is going to do; he has to take the person arrested before a justice or a superior police officer as quickly as he reasonably can.” See:-*Tims VS John Lewis & Co. Ltd, [1951] 2KB 459.*

In Uganda, the principle of law as enunciated above is now Constitutionally provided for by Article 23(4)(b) of the Constitution. It provides:-

“(4) a person arrested or detained -

(b) upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the laws of Uganda, shall, if not earlier released, be brought to court as soon as possible but in any case not later than forty-eight hours from the time of his or her arrest.”

As to the determination whether or not **“reasonable cause”** exists, it has been observed by the then **East African Court of Appeal in Fernandes V. Commercial Bank of Africa Ltd and Another [1969] EA, 482**, that:-

“The question of reasonable and probable cause depends in all cases, not upon the actual existence, but upon the reasonable bonafide belief in the existence, of such a state of things as would amount to a justification of the course pursued in making the accusation complained of no matter whether this belief arises out of the recollection and memory of the accuser or out of information furnished to him by others.”

Applying the above principles of law to the facts of this case, Court finds that the defendant has adduced no evidence to rebut the plaintiff’s assertion, that his arrest was effected without listening and getting any explanation from him as regards any complaint that might have been given to the Kabale Police. The driver of the taxi never testified as to what complaint he lodged at the police. No statement of such a complaint was produced to court.

In the considered view of this Court, the plaintiff was perfectly within his own rights, to refuse to pay an extra fare of shs.5000/= which was beyond the amount originally agreed upon of Shs.15,000/=. At any rate the disagreement as to the fare to be paid was a purely

civil matter, between two individuals, in their private capacities. There was no crime disclosed at all to warrant the arrest and detention of the plaintiff at a police station.

This court therefore holds that the plaintiff was unlawfully arrested.

As to the detention, the evidence on record is that plaintiff was arrested and detained at about 1.00a.m. on 21.04.00. According to plaintiff he was released at about 1.00p.m the following day. The evidence of DW1 and DW2, is that the plaintiff was released and let to go at 9.00a.m.

Court notes that though DW1 stated that a police file Number SD/02/04/00 had been opened up at Kabale Police Station in respect of the plaintiff, records in that file were not availed to court to show exactly what time of the day the plaintiff was released from Kabale Police Station. It is also unexplained by DW1 and DW2 why no document at all was issued to the plaintiff by police when he was being released. DW1 does not claim that, after he had ordered that the plaintiff be released at 9.00a.m, that he actually saw the plaintiff leave the police station at that very time of the order of the release.

DW2 asserts that he saw the plaintiff leave the police station, but he was not particular as at what exact time plaintiff left. Since plaintiff had to be handed over his personal belongings by other police officers, some time must have been spent doing this before he ultimately left the police station. On the totality of evidence adduced court holds that plaintiff was released and left Kabale Police Station between 11.00a.m and 12.00 noon.

While it is true that the plaintiff was released from custody before the expiry of the forty eight (48) hours, constitutionally provided for by Article 23(4) (b) of the Constitution, it does not necessarily follow that his detention was lawful. In the considered view of this court, once the arrest and subsequent detention of a person is unlawful from the very beginning, the detention remains unlawful throughout its duration, the compliance with the forty eight hours Constitutional requirement notwithstanding. This court finds that there was no basis whatsoever for the arrest and detention of the plaintiff. His detention

at Kabale Police Station from 21.04.00 at 1.00a.m up to 12.00 noon of the following day was thus unlawful.

As to whether the plaintiff was tortured, both at arrest and while in detention, plaintiff's evidence is that on arriving at Kabale Police Station, he was grabbed from the vehicle, taken to the counter, where he was not listened to at all, and was then ordered to enter the police detention cell. He was ordered to remove his shoes. He insisted that the matter of his arrest be solved by UTODA, the body that controls taxis, but instead he was slapped and kicked by the police. In the cell he stayed without food or drink or without getting to ease himself until his release was ordered. It is when he was given a hearing that the police officer to whom he spoke, that is DW1, ordered for his release.

DW1 and DW2 in their evidence did not claim to have witnessed the arrest and detention of the plaintiff on 21.04.00. They only saw him in the morning of the next day. They thus did not see what might have happened to the plaintiff at the time of his arrest. However both DW1 and DW2 confirm that soon after his release, plaintiff, in the company of Justice Kanyeihamba, came back to Kabale Police Station to complain against the mistreatment that the plaintiff had suffered at the police station. DW1's evidence was also to the effect that when he looked at the plaintiff he was not putting on his shirt. This evidence is indicative of torture having been carried out upon the plaintiff.

Torture is infliction of pain or suffering to a person to a degree that is deemed unacceptable in a particular context. In a context, like that of Uganda, where the need to observe basic human rights is of paramount importance, given the country's past history of Human Rights violations, it can be inferred that acts such as removing shoes, and being undressed at a police station tend to show torture, than otherwise. The immediate return to the police station of plaintiff in the company of Justice Kanyeihamba, to complain against mistreatment is also consistent with the plaintiff's assertion that he was subjected to torture during his arrest and detention at Kabale Police Station. That plaintiff, after his release, took Panadol as medication to reduce pain, is further proof that his stay at Kabale Police Station resulted in some pain to his body. As already observed,

DW1 and DW2, came to know of the plaintiff's presence at the Police Station in the morning of the following day. It is thus possible that both witnesses did not and were not aware of the torture of the plaintiff at the time of his arrest and detention in the night of 21.04.00. This court therefore finds that the plaintiff has established, on a balance of probabilities, that he was subjected to torture during his arrest and detention at Kabale Police Station.

Therefore the answer of court to the first issue is that the plaintiff was unlawfully arrested, detained and tortured by police personnel at Kabale Police Station for the period of 21.04.00 at 1.00a.m. to 12 noon, the following day.

The second issue is whether the plaintiff suffered any damage and loss.

By reason of unlawful arrest, unlawful detention and torture the plaintiff suffered pain and suffering and is entitled to general damages by reason thereof.

The plaintiff claims compensation of lost property and a refund of shs.74,000/=. Plaintiff admitted in his evidence that the personal properties he had such as shoes, watch, bellet and bag were given back to him as he left the police station. He gave no evidence in respect of what other property he sought compensation for. This part of the claim is thus not proved by the plaintiff.

As to the Shs.74,000/= plaintiff testified that the Shs.70,000/= was taken away from his bag and the Shs.4000/= was taken from his person by the police. The said money was never given back to the plaintiff as he was leaving the police. DW1 and DW2 denied that any money was taken from the plaintiff. Instead it is the police who gave shs.2,000/= transport fare to plaintiff to travel home.

Plaintiff failed to explain why he did not tell the police that there was shs.70,000/= in the bag. He also offered no explanation as to why he did not report to DW1 and DW2 that his money totaling Shs.74,000/= had been taken by the police on his being arrested and

detained and that the police had not returned the same to him. Justice Kanyeihamba, to whom the plaintiff complained against his being unlawfully arrested, detained and tortured, did not testify to this Court that the plaintiff complained to him of his having lost shs.74,000/= to the police. Indeed it is doubtful that Justice Kanyeihamba would have accepted to receive the plaintiff's bag from Kabale Police Station, which he did according to plaintiff, without inquiring as to the whereabouts of the Shs.74,000/= if the plaintiff had complained to him that the police had taken this money from him. On the basis of the evidence adduced, court holds that plaintiff has not proved that he lost Shs.74,000/= and that the said sum of money was taken from him by Kabale Police Station Personnel.

Court holds, as to the second issue, that plaintiff suffered damage by way of unlawful arrest, detention and torture. Plaintiff suffered no loss of personal property and money of shs.74,000/=.

The third issue is whether defendant is vicariously liable.

The evidence of plaintiff and defence is that plaintiff was taken by a taxi driver to Kabale Police Station, and that it is that police who arrested and detained the plaintiff in the police cell, until the following day when DW1 and DW2 effected his release. As to torture, the plaintiff was tortured while in absolute control, custody and on the premises of Kabale Police Station. No evidence was adduced by defendant that the arrest, detention or torture could have been carried out by someone else, independent of Kabale Police Station, or that those who did so were on a frolic of their own outside the scope of their employment.

An act is done in the course of a servant's employment and makes the master liable even though such act is done contrary to the orders of the master, and even if the servant is acting deliberately, wantonly, negligently, or criminally or for own benefit, if what is done is merely a manner of carrying out what that servant is employed to carry out: See ***MUWONGE VS ATTORNEY GENERAL [1967] EA 17.***

Applying the above principle of law to the facts of this case, court holds, in answer to the third issue, that the defendant is vicariously liable for the acts and omissions of Kabale Police Station carried out against the plaintiff.

The fourth issue is what remedies are available to the plaintiff.

As already held, the plaintiff is entitled to damages for unlawful arrest, unlawful detention and torture.

Plaintiff spent about eleven (11) hours in unlawful custody from 21.04.00 at 1.00a.m. to 12 noon of the following day. He was kept in the police cell, barefooted and later, with no shirt on. He was tortured by being kicked and slapped. He was a young person, less than 40 years old, at the time of his arrest, detention and torture and was a trader dealing in timber. Had he been given an early hearing as to his explanation of the issue with the taxi driver, he would possibly not have been arrested and detained.

IN KATENDE VS ATTORNEY GENERAL [1971] EA 262, plaintiff a journalist, was arrested on a Kampala Street, accused of having bought a car with money stolen from a bank. He was detained in a filthy cell and was not given food. He was questioned on the next day and at mid-day he was released. No criminal charges were brought against him. Damages, exemplary damages inclusive, of Shs.5000/= were awarded.

IN FRED KAINAMURA & OTHERS VS ATTORNEY GENERAL AND OTHERS (1994) V KALR 92, general damages of Shs.150,000/= were awarded to each of the plaintiffs. The first plaintiff had been detained for 10 days, the second plaintiff for 30 days.

The cases referred to above are cases decided a long time ago. The value of the shilling was stronger then than now. The periods of detention were also longer in those cases than the one of the plaintiff in the present case. There was also evidence of more serious assaults on the plaintiffs in the two cases referred to, than the torture that the plaintiff underwent in the present case. Doing the best possible in the circumstances, Court awards general damages of Shs.1,500,000/= to the Plaintiff.

As to exemplary damages, in the considered view of court, the conduct of the police towards plaintiff was not such oppressive and arbitrary as to have the plaintiff deserve to be awarded exemplary damages. None are accordingly awarded.

Judgment is thus entered for the plaintiff against the defendant in the sum of Shs.1,500,000/= general damages. Interest at the court rate is awarded on the general damages, and the same is to run from the date of Judgment till payment in full.

The plaintiff is awarded the costs of the suit to be taxed at the High Court scale, as the case has involved a number of complicated issues of law and fact.

Remmy K. Kasule

Judge

29th May 2009

29th May 2009

Moses Mukwaya – Court Clerk

Mrs Rwakoojo – for Attorney General

Plaintiff and Counsel absent

Court: Judgment delivered.

Remmy K. Kasule

Judge

29th May 2009