

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO.611 OF 2006

CPL OPIO MARK :::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

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

BEFORE: HON. JUSTICE REMMY K. KASULE

JUDGMENT

The plaintiff, Corporal in the Uganda's Police, sued the defendant for general and exemplary damages for unlawful arrest and false imprisonment.

Five issues were framed for trial:-

1. Whether plaintiff was arrested.
2. If so whether the arrest was lawful.
3. Whether plaintiff was wrongly detained.
4. Whether the defendant is liable.
5. Whether the plaintiff is entitled to the remedies sought.

The Plaintiff testified in person and called no witness. The defence called no witness.

The plaintiff testified and defence did not rebut, that he was arrested and detained at Central Police Station, Kampala, from 08.03.02 up to 21.03.02, when he was released. Court's finding on the first issue is affirmative.

As to whether the arrest was lawful the testimony of the plaintiff is that on 29-10-01 at 11.00p.m, at night, on the instructions of his superior officers, he, plaintiff reported to Natete Police Station, where he met one, who was introduced to him by the police at Natete Police Station as sergeant Emma Matovu of the Chieftaincy of Military Intelligence: “CMI”. The Plaintiff was by then working on and was in-charge of a Police Patrol Vehicle “999”. On the same day at night with the said sergeant Emma Matovu, the plaintiff proceeded to make a search at the home of a robbery suspect who too was in their custody in Ndeeba, a suburb of Kampala City. The search did not materialize as the suspect escaped from the search party of police and CMI. A month later, again in the company of Sergeant Emma Matovu, the plaintiff went to the home of the alleged victim of the robbery. The plaintiff got an explanation from the said alleged victim as to how he had been robbed. It turned out afterwards, that the police had arrested this same Sergeant Emma Matovu of CMI on the ground that he had been robbing people. The plaintiff, according to police was suspected to have been acting with Emma Matovu in the alleged robberies. It is for this reason that Plaintiff appeared on 08.03.02 before the Deputy Regional Commander, Mr. Magara, and the Regional CID officer, Mr. Sakira, both of Uganda police, to answer the allegation of having committed robberies with Sergeant Emma Matovu of CMI. On 08.03.02, having heard plaintiff’s explanation to the allegation, police decided to arrest and detain plaintiff at CPS, Kampala.

Section 4(3) of the Police Act, Cap.303 provides that no person shall arrest, detain or institute Criminal Proceedings except as is provided for under a written law or the Constitution. Section 23(1) of the same Act vests powers in a police officer to arrest any one, even in absence of a Court order or without warrant, if that police officer has reasonable Cause to suspect that the person, the subject of the arrest, has committed or is about to commit an arrestable offence.

From the very evidence of the plaintiff at the time the plaintiff’s arrest was effected on 09.03.02, the police was investigating allegations of robbery against Sergeant Emma Matovu of CMI and the plaintiff had, on 29.10.01 and a month thereafter, worked with this Sergeant Emma Matovu in handling a robbery case. In the considered view of Court these were

sufficient facts for the police to have reasonable cause to suspect the plaintiff of commission of an arrestable offence and thus to order for his arrest.

Court finds, on the basis of the evidence before it, that while the plaintiff has established, prima facie, that he was arrested, the facts as stated by the plaintiff himself justify the lawfulness of the arrest. See: **Campbell Vs. Roberts & Others [1994] ALL ER 326**. See also: **Ssekaddu Vs. Ssebaduka [1968] EA 213**.

It is also the evidence of the plaintiff that both Magara and Sakira, Senior Police Officers, informed him at CPS, Kampala, at the time of his arrest that the reason for his arrest was that he was suspected to have made road blocks to facilitate robberies in which Sergeant Emma Matovu of CMI is suspected to have participated. Thus Article 23(3) of The Constitution, which embodies the fundamental requirement of a lawful arrest, namely that a person arrested must be informed of the reason for his or her arrest, was complied with by the police. See also **Christie VS. Leachinsky [1947] A.C.573**.

On the second issue this court finds that the plaintiff's arrest was, on the facts of the case, lawful.

The third issue is whether the plaintiff was wrongfully detained.

The plaintiff was detained in the cells at Central Police Station from 09.03.02 up to 21.03.02, a period of 13 days; when he was released, on the intervention of the Inspector General of Police who, according to Exhibit P1 dated 19.03.02, directed The Regional CID Officer, Kampala Extra, thus:

“In the Circumstances, you are required to release the suspect on police bond or ensure that he appears in court to- day. His continued detention is unlawful and unconstitutional.”

Under Article 23(4) of the Constitution, and also Section 25 of the Police Act, Cap.303, a person arrested upon suspicion of having committed a criminal offence, can only lawfully be detained under police custody for a period not exceeding 48 hours. It follows therefore that the Plaintiff's detention in police custody beyond the 48 hours was unlawful by reason of being contrary article 23(4) of the Constitution and Section 25 of the Police Act, Cap.303: See. **H.C.C.S No.105 of 2003: Patrick John Mukasa Vs. Attorney General:** and also **KAINAMURA PATRICK VS. ATTORNEY GENERAL H.C.C.S No. 688 of 2001:** both cases unreported.

The answer to the third issue, is that, the plaintiff was unlawfully detained for 11 days.

The fourth issue is whether the defendant is liable.

The evidence on record is to the effect that the arrest, detention and release of the plaintiff was done by officers and at the premises of the Uganda Police acting in the course and within the scope of their employment. The defendant adduced no evidence to rebut this. Section 3(1) (a) of the Government Proceedings Act, Cap 77, subjects the Government liable to the tortious claims of the plaintiff in this case.

Further Section 3(2) of the same Act, provides that the Government shall, in respect of a failure to comply with a statutory duty, be subject to all those liabilities in tort, if any, as if it were a private person of full age and capacity. The Government has, not only a statutory duty, but a Constitutional one, not to detain an individual for more than 48 hours without releasing him or producing him before a court of law.

The answer to the fourth issue is in the affirmative.

The fifth issue is whether the plaintiff is entitled to the remedies sought.

Court has already found that the arrest of the Plaintiff was lawful. No damages are thus awardable for unlawful arrest.

As to unlawful detention, the period of detention is 11 days. According to the plaintiff, while in detention he was allowed to be visited by his family members, relatives and friends. No evidence was adduced that he was denied to see a lawyer of his choice. He slept on bare cement, he was attacked by lice and other insects – and the cell was dark throughout. He was dressed in a shirt and under-pant. He ate cell food, that from his family, not being allowed to be brought in. While police personnel did not harass him, the inmates in the cell did so. He, while in detention, was depressed, humiliated and psychologically tortured. He claimed that he had lost promotion opportunities in the Uganda Police. He prayed to be awarded substantial, including exemplary and punitive damages, by reason thereof.

The principle of law is that:-

“... any evidence which tends to aggravate or mitigate the damage to a man’s reputation which flows naturally from his imprisonment must be admissible up to the moment when damages are assessed:-” See Robert B.K. Ssebunya Vs. AG H.C.C.S No.611 of 1979: [1980] HCB 66. See also Macgregor ON DAMAGES, 15th Edition (Sweet & Maxwell) Paragraphs 180 pages 169.

The Plaintiff, a Corporal in Uganda police, had served the Force since 11.10.86, a period of about 16 years when he was arrested and detained. Defendant adduced no evidence to show that by the time of his arrest and detention, plaintiff was not serving well in the Uganda police. Plaintiff must therefore have suffered considerably as a member of Uganda Police by reason of his detention. According to the plaintiff he resumed work as a Corporal in the Uganda Police after eleven months of his being released. His salary has been paid to him all along.

In **Patrick John Mukasa Vs. AG** (supra), Plaintiff was a former employee of the East African community. He was aged 68 years. He was detained for about 4 days beyond the period of 48 hours allowed by the Constitution. The police cells where he was detained were filthy. He had to clean the same and dispose of a bucket full of urine every morning. He was awarded Shs.1,500,000/= general damages and Shs. 500,000/= exemplary damages in 2005.

In the **Robert Sebunya case** (supra), a 1979-1980 case, the plaintiff had been manager with Madhivan Group of Companies, then a director with Uganda Development Corporation, and later Deputy Minister, Government of Uganda. He was unlawfully detained in a police cell for about 4 days. He was awarded Shs.15,000/= general damages.

Shs.3,500,000/= was awarded as general damages in **Martin Edeku Vs. Attorney General H.C.C.S. No.93A/89: [1995] VI KALR 24**, where a Police Inspector of 35 years good service, was arrested from his office, violently tortured by being tied “**Kandoya**” style, whipped with a wire, kicked all over the body, burnt with a melting jerrycan and detained in several military barracks where he was subjected to hard labour, and then to a Government prison for a period of a year and two weeks.

Doing the best in this case, given the facts of the case of the plaintiff and taking into consideration past decisions of this Court and the fact that inflation is currently eating into the value of the Uganda shilling Court awards to the plaintiff general damages of Shs.5,000,000/=.

In the **Patrick John Mukasa case**, (supra) Musoke-Kibuuka .J. held:

“In the instant case, the police kept the plaintiff in police custody for nearly four days contrary to the provisions of Article 23(4) (b) of the Constitution of the Republic of Uganda, 1995. The conduct of the police in detaining him beyond the Constitution limit was clearly unconstitutional and oppressive. His case, therefore, falls within the category of cases in which exemplary damages may be awarded on top of general damages”

Court then proceeded to award Shs.500,000/= exemplary damages to the plaintiff in that case:- This court applies the above holding to the facts of this case. Court awards Shs.1,000,000/= exemplary damages to the Plaintiff.

Judgment is therefore entered for the Plaintiff against the defendant in the following terms:-

(a) Shs.5,000,000/= general damages,

- (b) Shs.1,000,000/= exemplary damages
- (c) Interest on the sums in (a) and (b) above at the rate of 8% p.a – from the date of Judgment till payment in full.

The Plaintiff is awarded the costs of the suit against the defendant.

Remmy K. Kasule

Judge

13th February, 2009