

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT GULU  
HCT – 02 – CV – CS – 056 – 2007

ONGOM PATRICK:.....PLAINTIFF

=VERSUS=

1. AYER SUB-COUNTY
2. APAC DISTRICT LOCAL GOVERNMENT:.....DEFENDANTS

**BEFORE: HIS LORDSHIP, JUSTICE REMMY K. KASULE**

**JUDGMENT**

The plaintiff sued the defendants jointly and severally to recover twelve bags of fertilizers or their value, a sum of shs 12,000,000/= taken as cash as well as general damages.

The first defendant is local Government of Ayer Sub-County and the second of Apac District, under which the first defendant exists.

The agreed upon facts are that on 12.04.2007 the servants of the first defendant arrested and detained the plaintiff and impounded thirty bags of fertilizers found in his possession. This was at Teotit village, Temi parish, Ayer Sub-County. Later 18 bags of the fertilizers were returned to the plaintiff; the 12 were never returned.

Seven issues were framed. They are:-

1. Whether the arrest and detention of the plaintiff was lawful.
2. Whether the plaintiff was tortured by servants of the defendants.
3. Whether the servants/agents trespassed on the plaintiff's premises.
4. Whether not the plaintiffs lost shs. 12,000,000/= taken by the defendants' servants/agents.

5. Whether or not the plaintiff is entitled to the return of the 12 bags of fertilizer or their value from the first defendant.
6. Whether the plaintiff has suffered any loss or damages as a result of the defendants acts, and if so the quantum.
7. What remedies are available to the plaintiff.

As to the first issue, an arrest is restraint of a person by another by moral or physical force which may be in form of threats of violence or actual usage of violence upon the restrained person without the sanction, or contrary to law. See: **LEMI ARON V REPUBLIC (1977) LR T (19) 40.**

The plaintiff testified that he was arrested, with two other people he was with, at Ayer Sub-County Headquarters by security personnel who were armed. On being arrested plaintiff was removed from the vehicle, told to lie down and was made to leap frog to the Sub-County Headquarters, a 100 metres away. There, he was told that he had been arrested for he was a thief having stolen fertilizers. He explained, in a written statement, that he had bought the fertilizers from farmers and he was taking them to his farm. He was detained from 8.45 a.m. till 4.00 p.m. The rest of the two people, he was with, were released on paying some money to the Sub-County Chief. The plaintiff refused to pay any money.

That the plaintiff was arrested is supported by the evidence of PW2, Yusita Ongom, who saw him under arrest, and PW3 Amoki Patrick, who took photographs, exhibits P2(a) and (b) of those arrested.

On the evidence adduced, court finds that fertilizers are not a common commodity to be in possession with, particularly in large quantity and therefore there was sufficient ground for stopping the plaintiff and demanding for an explanation as to the source of the fertilizers. There was however, no justification for the use of a gun, ordering the plaintiff to lie down and to frog leap him. The evidence of the plaintiff and his witnesses on this point has not been rebutted by the defence. Court therefore find that the plaintiff's arrest was unlawful.

As to the detention of the plaintiff, the evidence of the plaintiff is that he, as soon as he was arrested, explained in writing where how and from whom he had acquired the fertilizers. There was thus no justification to detain him from 8.45 a.m. to 4.00 p.m. in the evening. Further it is when he refused to pay money to the Sub county Chief that he was taken to his home, purportedly to search the premises. From that time the plaintiff continued to call on the officials of both defendants to know the fate of his fertilizers, and why he was not being released. But he never got a straightforward answer and was never charged with any offence. The fertilizers were not also released to him. This evidence of plaintiff was not controverted by the defence. Court holds that the detention of the plaintiff on 12.04.2007 from 8.45 a.m. up to the time of his release which was beyond 4.00 p.m. was unlawful.

The second issue is whether plaintiff was tortured by agents of defendants.

Plaintiff's evidence is that the one who arrested him had and pointed a pistol at him, he was told to lie down and to frog leap, he was photographed at the instance and request of defendants servants, as a thief of fertilizers. Money was demanded from him with menaces by the Sub-County Chief of the first defendant and at the first defendant's headquarters. While at his home, plaintiff was kept under guard by an armed escort. This evidence was not in any way controverted by the defence. Court thus finds that the defendant was tortured.

The third issue is whether the servants/agents of the defendants trespassed on the plaintiff's premises. The evidence, that there is, is that the going to the plaintiff's home was to carry out a search as regards the fertilizers. The search party included the Sub-county Chief, an officer of NAADS and Police. Court finds that it was legitimate of these officers to carry out a search at the plaintiff's home.

According to plaintiff however, on arriving at his home, the search party placed the plaintiff some 75 meters away in his yard from his building premises; and was kept by an armed escort. The search party then caused the L.C.I. Chairman of the area to bring someone who forcefully broke the door to plaintiff's store. No explanation was furnished to court as to why the plaintiff

was not required to open his stores using his own keys. Court finds that this constituted trespass to the plaintiff's premises.

The fourth issue is whether or not the plaintiff lost shs 12,000,000/= allegedly taken by the defendants' servants/agents. The testimony of plaintiff is that he had obtained this money through loans during the period 02.04.2007 and 11.04.2007. He was keeping the money at his home. He saw the defendants servants/agents who forcefully broke the door and entered his premises take the money. These were the sub-county Chief, the Giso and NAADS officers, all in the service of the defendants. The plaintiff saw the paper he had covered his money with in the hands of the Sub-county Chief. The Loan agreements whereby the plaintiff had borrowed the money for business purposes were tendered in evidence as exhibits P3, P4 and P5. When the plaintiff had an opportunity to go to Police at Apac District Headquarters he mentioned the fact of his money having been taken by those already stated. Court notes that the plaintiff, a business man of some experience gave no satisfactory explanation why he was keeping so much money in cash at his home yet he admitted he operated bank account. Further, in exhibit P6, a communication of the District CID officer Apac District, concerning the result of the police investigations of the case: Apac CRB No. 393/2007 and the advice of the Resident State Attorney, Lira, there is no mention at all of the issue of the stolen money. This throws doubt about the plaintiff's claim that he reported the matter to Apac Police. The non reporting of the theft of this money, there and then, points to the fact that the event did not happen as the plaintiff claims. Court is not satisfied that the plaintiff has, on a balance of probabilities proved that there was shs 12,000,000/= in his premises at his home and that this money was taken by the agents/servants of the defendants.

The fifth issue is whether or not the plaintiff is entitled to the return of the 12 bags of fertilizers or their value from the first defendant. The evidence on record proves on a balance of probabilities that the first defendant remained in custody of the said 12 bags and that the same have never been returned to the plaintiff. The first defendant offered no explanation as to the whereabouts of the said bags. Court also infers from the fact that it is now almost (2) years since the said bags were taken from the plaintiff, and as such the fertilizers in them must by now have

wasted and thus become useless to the plaintiff in their physical status. Plaintiff is thus entitled and is awarded their value.

The sixth issue is whether the plaintiff has suffered any loss or damage as a result of the defendants acts, and if so the quantum. That the plaintiff lost the 12 bags has been resolved upon. As to the 18 bags of fertilizers, these were handed over to the plaintiff in about June 2007, and by this time, according to the plaintiff, they had been wasted and useless to him. This evidence was not rebutted by the defendants.

Plaintiff testified that he had bought each bag of the fertilizers at shs 50,000/=. This makes the value of the 30 bags to be shs ( 50,000 x 30) = 1, 500,000/=. It was an admitted fact at scheduling; and also the evidence on record, is to the effect that the acts complained of were carried out by the agents/servants of both defendants in the course of their respective employment. Court therefore holds that both defendants are jointly/or severally liable to the plaintiff in the sum of shs 1,500,000/= being the value of 30 bags of fertilizers.

As to what remedies are available, plaintiff is entitled to the value of the fertilizers as well as to general damages for the arrest, detention and torture.

The entitlement is based on the principle that the plaintiff who, has proved his/her claim, is entitled to be awarded such sum of money as will as far as possible, make good him the financial loss which he has suffered, and will probably continue to suffer as a result of the wrong done to him for which the defendant is liable: see **Charles Lwanga vs Centenary Rural Development Trust: H.C.C.S. Mp. 887/96: reported (1998) IV KALR 1 at P.4.**

In the quoted case, the plaintiff, a bank accountant, was arrested and detained for 8 days by police in unhygienic conditions. He had lost his employment after his acquittal of charges of forgery, uttering a false document and obtaining money by false pretences. Plaintiff was awarded shs. 5, 000,000/= general damages in 1998, about ten(10) years ago.

In this case, plaintiff a businessman and a farmer, was violently arrested, tortured, branded a thief of fertilizers and was publically photographed to be shown as a thief. He was taken to his home, through the public and in his area of stay, as a thief and was so kept by an armed askari. He was unnecessarily detained for almost a day, and thereafter was made to go to the police and defendants' offices to pursue recovery of his fertilizers and to answer police inquiries from 12.04.2007 up to 07.06.2007 when he was cleared of the recitations. He was never charged in a court of law. Court, in its considered view, awards the plaintiff shs 3, 500,000/= as general damages for all that he went through.

Accordingly judgment is entered jointly and /or severally against the defendants for:-

- a. shs 1,500,000/= the value of the 30 bags of fertilizers, and
- b. shs 3,500,000/= general damages.
- c. The sums awarded in (a) and (b) above are to carry interest at 20% p.a. from 12.04.2007 in respect of the sum in (a), and from the date of judgment in respect of the sum in (b) till payment in full.

The plaintiff is awarded the costs of the suit jointly and/or severally from the defendants.

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**Remmy K. Kasule**  
**Judge**  
**30<sup>th</sup> January, 2009**