

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
HCT – 02 – CV – CS – 0094 2004

JOHN OGIL:.....PLAINTIFF

VERSUS

THE ATTORNEY GENERAL:.....DEFENDANT

BEFORE HON. JUSTICE REMMY K. KASULE

JUDGMENT

The plaintiff sued the defendant claiming damages for the tortious actions of unlawful arrest and wrongful detention, assault and battery of the person of the plaintiff, as well as conversion and/or detinue of his property by the defendant.

The tortious actions complained of are said to have happened between 18.12.02 and 27.09.2003 at Pakele, Adjumani District and also in Gulu Municipality, Gulu District.

It is the plaintiff's case that the torts complained of were carried out by military soldiers of the UPDF and other security personnel of Government acting in the course of and within the scope of their employment.

The defendant in a written statement of defence filed in court denied the plaintiff's claims.

The issues framed are:-

- i. Whether the plaintiff's cash and cattle were impounded.
- ii. Whether the plaintiff was unlawfully arrested.
- iii. Whether the plaintiff was unlawfully detained.
- iv. Whether the plaintiff lost income from his agricultural labour.
- v. Whether the plaintiff was tortured.
- vi. Whether the plaintiff suffered personal injuries.

vii. What reliefs, if any, are the parties entitled to.

The plaintiff testified in person and called one witness. The defendant also called one witness.

The first issue is whether the plaintiff's cash and cattle were impounded.

The testimony of plaintiff is that on 18.12.02, at Pakele, Adjumani District, when he had just bought two oxen from the market, he was arrested by UPDF soldiers and was taken together with his two oxen at Pakele barracks, Adjumani. At the barracks his two oxen and money were taken away from him. He had bought each oxen at shs. 200,000/=, a total of shs. 400,000/= for the two. He had also with him shs. 400,000/=

For the defence, DW1 Amoko Richard, LC Defence Secretary Pakele, Adjumani, testified that he witnessed the arrest of the plaintiff from the home of the plaintiff's mother to which the witness was a neighbour. On 18.12.02 at 8.00 p.m. a UPDF soldier, one I.S. Opira, reported to the witness as defence Secretary to the area. The soldier explained that the plaintiff was being taken to the military barracks at Pakele, as he had come to the area after a very long period of 10 to 15 years, and he had not reported to the local council authorities and the army of the area, as he was required to do, given the precarious security situation at the time. The witness led I.S. Opira, the UPDF soldier, to the home of the mother of the plaintiff. The plaintiff willingly accepted and proceeded with I.S. Opira to the military barracks at Pakele.

The witness did not see any oxen or money or anything else being taken away from the plaintiff at the home of the plaintiff's mother. Witness then returned to his home. He, the witness, in his capacity as defence Secretary, never received any complaint from the mother of the plaintiff that anything had been taken from her home, or that any military soldiers had returned after the arrest of the plaintiff and taken any cows or money from her home.

Plaintiff, in his testimony, did not deny that he had been away from the area for a long time. As a matter of fact, plaintiff had been away by being abducted in rebel activities until the 22nd April, 2002, when he was, upon surrender, granted a certificate of amnesty, under the Amnesty Act, 2000. The certificate was tendered in evidence as exhibit P1. Plaintiff who had just surrendered

as a rebel gave to court no explanation as to where he had got the money to buy the two oxen. Plaintiff did not adduce evidence of JAI PII from whom he says he bought the oxen. No evidence was adduced by him of the veterinary and/or LC authorities as to movement of the two oxen.

In his oral testimony to court, the plaintiff stated that he bought the ploughs and oxen from the market on a market day. DW1, however, stated otherwise; according to him there was no such a market day in the area.

In the plaint the plaintiff claimed value for two cows, without any mention of any ploughs. No explanation was given to court for this discrepancy.

The plaintiff adduced no evidence of her mother or any one else who was present on 18.12.2002 when he was being arrested by the army to support his version of the two oxen being taken away by the army.

Court saw the demeanour of both plaintiff and DW1 when they testified over this issue. DW1 was confident and gave his evidence clearly and in a straightforward manner. The plaintiff was less confident and was not able to explain the source of the money to buy the oxen leaving a balance of shs 400,000/= with him. He did not also explain why he had to go with any money to the barracks, given the circumstances of his arrest.

Court prefers the evidence of the defence to that of the plaintiff on the first issue, and on a balance of probabilities, court holds that the plaintiff has not satisfied court, on a balance of probabilities that his cash and cattle were impounded by the UPDF on 18.12.02.

The second issue is whether plaintiff was unlawfully arrested.

According to plaintiff and DW1 the army soldiers asked plaintiff to accompany them to their barracks, ostensibly, because plaintiff had returned to the area, after 10 to 15 years and had not introduced himself to the local council authorities and the army in the area.

Court takes judicial notice of the fact that in 2002, the security situation in northern Uganda was precarious due to rebel activities.

It follows therefore that subjecting one, like the plaintiff, who had been away from the area for long, was justified. Court therefore holds that the act of taking the plaintiff from the home where he was to the barracks to question him as to where he had been all along was lawful and justified.

However, once at the barracks, no explanation has been furnished to court as to why the plaintiff had to remain there and be detained, inspite of the plaintiff having explained that he had been granted Amnesty under the Amnesty Act. Court therefore holds that once the army at Pakele refused to release the plaintiff, after one interrogation, but instead opted to detain him, then the plaintiff's arrest became unlawful.

The answer to the second issue is that the plaintiff's arrest became unlawful when the UPDF decided to keep him in detention at Pakele Military barracks.

The third issue is whether the plaintiff was unlawfully detained.

Plaintiff's testimony is that at Pakele barracks, from the night of 18.12.02, he was called a rebel, and was kept in the barracks for six (6) days and from Pakele he was transferred to Gulu Division Military barracks where he was kept alone in room 7 at Quarter Guard; for three (3) days; after which he was taken to a common room, where he joined other inmates including his witness in this case PW2. He remained in detention at Gulu military barracks 4th Division, Battalion up to 2003, when, he was brought to Gulu Central Police station and was released. All along he had his amnesty certificate, exhibit P1. This was the basis of his released by Gulu Police station.

During his detention in the military barracks plaintiff was not charged with any criminal or disciplinary offence, or subjected to any criminal court martial proceedings. Defendant offered no explanation at all for his detention.

On the evidence adduced before court, plaintiff has established, on a balance of probabilities, that he was unlawfully detained from 18.12.02 up to September, 2003, when he was released at Gulu Central Police station.

The fourth issue is whether the plaintiff lost income from his agricultural labour.

The testimony of plaintiff is that before his arrest on 18.12.2002 he had carried out cultivation at Okung Cedi, Amuru District. He had cultivated beans, maize, groundnuts and cassava for commercial purposes. He had sold some of what he had cultivated to Gulu Archdiocese, Church of Uganda at shs. 11,500,000/= He had expected another shs 16,000,000/= about 25 acres of land had been cultivated. All that he had done had gone to waste by reason of his being detained. In cross examination, plaintiff admitted he had no license to show he sold produce, and he was not paying taxes to Uganda Revenue Authority as a commercial farmer. He had no receipts issued to him by Gulu Archdiocese for what he had sold to the diocese.

The burden is on the plaintiff to strictly prove what he lost from his enterprise of agriculture by reason of his being detained. The plaintiff put his loss at shs. 10,000,000/= according to paragraph 7 of the plaint. Plaintiff has not adduced credible evidence to support this magnitude of the claim.

Court notes that the certificate of Amnesty was issued to plaintiff on 22.04.2002. This is the date when the plaintiff returned from the rebels, to where, according to his (plaintiff) evidence he had been abducted as a child aged 16 years, in 1998. Court deduces from all this that, whatever cultivation the plaintiff did, was for a period between 22.04.2002, the Amnesty date, and 18.12.2002, the date of arrest, which is about eight (8) months. This cannot be said to be along established agricultural enterprise. Court however appreciates that the plaintiff, lost some income from his agriculture, by reason of being in unlawful detention for about ten (10) months. Doing the best in the circumstances court awards to plaintiff shs. 1,000,000/= as lost income from agriculture.

The fifth issue is whether plaintiff was tortured.

The evidence of plaintiff is that on 18.12.2002 at Pakele military barracks, he was beaten, was kept in solitary confinement in a cell with a pit below and with hardly any ventilation. He was not provided with food for three days, the food being brought by her mother, being rejected. It was only later on in his captivity when he was put with other soldier inmates that he shared with them some cassava and some source.

At Gulu barracks, for the period of nine (9) months, plaintiff testified he was being beaten, and was sleeping on bare ground.

Plaintiff showed to court, and court saw, scars on the left shoulder, back and on the knee joints of both legs as proof of injuries he received by reason of being tortured by beating.

Plaintiff further testified that during the whole of his detention, he was now and then sodomised by other soldiers, who were, now and then, coming into the barracks.

As to sanitation, the evidence of plaintiff is that this was at its worst in the barracks as utensils for eating were also being used for toilet purposes.

The plaintiff's witness, David Nicholas Opoka Pyenlyec, with whom, for some time, the plaintiff was detained at Gulu Military barracks confirmed in his testimony, that the detention place was filthy. Defecation by inmates was in basins used for bathing as well, inmates were being assaulted, proper feeding was lacking, food was badly cooked, the place was overcrowded, waragi was being smuggled inside and there was sodomisation going on.

The evidence of plaintiff and his witness, PW2, as to torture during detention in the military barracks was not in any way contraverted by the defendant. Court therefore finds that the plaintiff was subjected to physical, mental and psychological torture during his detention at Pakele and Gulu military barracks.

The sixth issue is whether plaintiff suffered personal injuries.

The evidence of plaintiff is that the torture to which the plaintiff was subjected to during the nine (9) months detention caused him to suffer much pain and suffering to his body as well as mentally and psychologically. As already held in issue five, this evidence has not been contraverted by defence. Court thus accepts it as truthful.

Further, plaintiff testified that on 27.09.2003 at 8.00 p.m. at Awor Primary school, at a road block put up by the UPDF, the plaintiff sustained serious bodily injuries as a result of, the vehicle he was traveling on, being shot at by the UPDF soldiers. By this time, the plaintiff, who had been released from detention was working with the Internal Security Organization: ISO. They were returning from a mission to retrieve armaments in Awere Sub-county. The UPDF soldiers opened fire on the vehicle without making any inquiries and for no apparent cause. Eight (8) of the colleagues of the plaintiff who were on the vehicle died on the spot. The plaintiff sustained serious gun shot wounds. The UPDF, according to plaintiff, confessed to him that they shot at the vehicle; on the ground that, they were complying with orders from above.

The plaintiff received medical treatment at Lacor hospital. The medical reports, on plaintiff's injuries, exhibits P4 and P5 were tendered in evidence. The two reports show that plaintiff was hospitalized for 11 days from 28.09.2003 to 08.10.2003. Medical diagnosis showed gunshot wound on posterior left thigh, soft tissues injury with no fracture. Plaintiff was resuscitated before being operated upon to remove the bullet that had lodged in his body together with dead tissues. He lost a lot of blood, suffered pain and loss of sensation at the site of injury. He developed scars. His disability was put at 10%.

In cross-examination, plaintiff explained that by the time he was shot at on 27.09.2003, he was already deployed in ISO, and that he got the movement order, exhibit P3, later on 08.10.2003, when he had already sustained the gunshot wounds and had been admitted at Lacor hospital.

Defendant called no witness from UPDF or any where else to deny or explain the shooting of the plaintiff. Court therefore accepts the evidence adduced by the plaintiff and holds that plaintiff sustained injuries both during his detention from 18.12.2002 up to September, 2003, when he

was released. Plaintiff also sustained gun shot wounds on 27.09.2003 when he was shot at by UPDF soldiers at Awor Primary school, Awere Sub-county.

The seventh issue is what remedies are available to the parties.

From the way the issues have been resolved, plaintiff is entitled to be paid shs 1,000,000/= being lost income from agriculture during the period of his detention. This is because the loss from agriculture was a direct result of the arrest and detention of the plaintiff, thus disabling the plaintiff from carrying on with his agriculture. In **BENEDICTO MUSISI VERSUS ATTORNEY GENERAL: HCCS NO 622/80** decided on 04.04.96 at Kampala, where the plaintiff's shop was looted after plaintiff had been unlawfully arrested and detained by soldiers, Berko J, stated:-

“Therefore whatever loss the plaintiff sustained was a direct result of the soldiers’ unlawful action. The army is in my judgment responsible for the loss of the plaintiff’s property”.

The above principle of law equally applies to the plaintiff's case as regards the claim for lost income from agriculture.

Plaintiff is also entitled to damages for unlawful arrest of plaintiff at the military barracks at Pakele and subsequent detention of nine (9) months both at Pakele and Gulu military barracks and also for torture.

In **NEWMAN VS ATTORNEY GENERAL 1988-90 HCB 209**, plaintiff was detained for 12 days and was awarded shs, 3,000,000/= general damages.

In **H.C.C.S. NO 92 OF 2004 at Gulu, (28.06.2007) APIRE MICHAEL VS ATTORNEY GENERAL**, plaintiff a peasant, was detained for four (4) months. He was tortured by being beaten, locked up in squalid smelly conditions. He was sodomised by his captors. Wangutsi J; awarded general damages of shs 8,000,000/= for unlawful detention and shs. 4,000,000/= for torture.

Doing the best in the circumstances of this case, court awards shs. 15,000,000/= general damages for the unlawful arrest and unlawful detention of the plaintiff at the military barracks of Pakele and Gulu from 18.12.2002 to September, 2003 when he was released. Court also awards shs. 5,000,000/= for general damages for torture of the plaintiff.

As to the injuries sustained as a result of gun shot, plaintiff received a wound at back of left thigh, had soft tissue injury with no fracture. He lost 1000 MLS of blood. In-patient treatment at hospital was of about 11 days. The injuries healed leaving scars, the one on the thigh being 1043 cm in size, the others being on chest, and on the scapular region. There was no visible deformity of lower limb. Disability was assessed at 10%.

In **DR. LUKANGA NDAWULA & 4 ORS VS SALIM LUMAGO and ANOTHER: H.C.CS. NO 497/91** (22.2.96 at Kampala) one of the plaintiffs (Robinah Namirembe) suffered, in a traffic accident, a cut wound on the neck, a fracture on right ankle joint. The cut wound left no invisible scar. The fracture caused her residual pain. Disability was put at 5%. Shs. 1,500,000/= was awarded as general damages for pain and suffering.

The injuries of the plaintiff are some how more serious as they arise out of a gun shooting incident, which is more terrifying than a road traffic accident. In this particular incident eight (8) people died on the spot. There are scars that developed on the plaintiff. The disability is also more, being 10%. Court in the circumstances awards the plaintiff shs 4, 000,000/= for personal injuries sustained by plaintiff in the gun shoot out incident on 27.09.2003.

As to exemplary damages, this court stated in the APIRE MICHAEL case (supra) that:-

“Exemplary damages are not meant to enrich the plaintiff. They are punitive in nature as a deterrent to future acts of the defendant”

The court (Wangutsi J.) in that case proceeded to award shs 4,000,000/= exemplary damages to the plaintiff who had been arrested and detained for 4 months for no lawful reason, and was then sodomised while in detention.

The plaintiff in this case, had all along had his amnesty certificate issued to him under the Amnesty Act, Cap 94. He had been in company of rebels by reason of his having been abducted as a child aged 16 years by the LRA in 1998. Sections 1 and 2 of the Amnesty Act offered a pardon to the plaintiff from criminal prosecution or any other form of punishment by the State by reason of that person's participation in the war or rebellion.

By arresting, keeping in detention and totally disregarding the plaintiff's Amnesty certificate, the UPDF, at Pakele and Gulu military barracks acted most unjustly to the plaintiff. A sum of shs 5,000,000/= is awarded to plaintiff as exemplary damages against the defendant.

Accordingly judgment is entered for the plaintiff against the defendant for:-

- (a) shs. 1,000,000/= lost income from agriculture during period of plaintiff's unlawful detention
- (b) shs 15,000,000/= general damages for unlawful arrest and detention for nine (9) months.
- (c) Shs. 5,000,000/= general damages for torture of plaintiff during unlawful detention.
- (d) Shs. 4,000,000/= general damages for personal injuries sustained in the shoot out incident on 28.09.2003.
- (e) Shs. 5,000,000/= exemplary damages.

The sums awarded are to carry interest at court rate p.a. from 18.12.2002 in respect of the sum in (a) above, and from the date of Judgment in respect of all the other sums awarded, till payment in full.

The plaintiff is awarded the costs of the suit.

Remmy K.Kasule

Judge

30th April, 2009

