



Further, the Plaintiff alleges that the Officer in Charge Station and Officer in Charge CID ordered the other detainee/suspects in the cells to beat up the Plaintiff who sustained injuries in the process. That his detention in the circumstances was wrongful, malicious, deliberate, unjustified and false because it was not based on:

- a) Any reasonable suspicion
- b) It was intended to frustrate the Plaintiff's effort to fight criminality done on URA property because the missing motor vehicle has never been recovered.
- c) The Plaintiff was detained for more than the statutory period.

It is further contended that the Attorney General is vicariously liable for the actions of the policemen. That after sustaining injuries the Plaintiff incurred special damages of Shs.305,000/= on account of paying for medical bills.

The Attorney General denied each of the above allegations generally and in the alternative contended that the Plaintiff was arrested and detained upon reasonable suspicion that he had committed a criminal offence. That the claim by the Plaintiff is therefore remote frivolous and vexations and improperly before court.

In their joint scheduling memorandum, the parties hereto agreed that indeed the Plaintiff was:

- 1) A URA Security Officer in charge of Eastern Region by the 15<sup>th</sup> December 2008.
- 2) He was arrested and detained at Malaba Police Post on allegation of theft of a motor vehicle a Toyota Mark II Chasis No. GX100-605-1914, numberless under CRB reference No.389 of 2008.
- 3) He was never prosecuted over the alleged offence whatsoever and the missing motor vehicle has never been recovered.

In disagreement were two facts that is; that the police at Malaba acted on reasonable suspicion in ordering for the Plaintiff's arrest in that the Police as servants of government ordered, directed, instigated or participated in the Plaintiff's alleged beating, humiliation and/or embarrassment.

The issues framed for trial are:

- 1) Whether there was any complaint raising a reasonable suspicion justifying the arrest and detention of the Plaintiff at Malaba Police.
- 2) Whether the officers of government i.e. the Officer in Charge Police and Officer in Charge CID) while on official duties gave orders and/or instigated the beating up of the Plaintiff by Police in mates then under detention at Malaba Police Station.
- 3) If so whether the Defendant is vicariously liable for the acts and omissions of its servants in the circumstances.
- 4) What remedies are available to the parties in the circumstances.

During the hearing of the suit, the Plaintiff represented by Mr. Bulamu Mayanja testified in support of his case and called three other witnesses then closed its case.

The Defendant represented by Mr. Wanyama a Principal State Attorney offered no evidence in defence arguing that the Plaintiff failed to make out a case for the defence to answer despite having told court that he had a representative from Police to testify.

After carefully considering this case as a whole and the evidence on record, I will go ahead and deal with each issue separately.

**Issue No.1:**

On this issue, the defence conceded having arrested the Plaintiff but contends that it was on reasonable suspicion that he knew about how the vehicle in question was stolen. That he was suspected to have stolen the vehicle.

However, the Plaintiff testifying as PWI told court that he is the one who had reported the theft of a URA un registered Mark II vehicle from Malaba parking yard and he had arrested 2 suspects, one called Abdullah the driver and another called Ali Kibwana the leader of the convoy who had custody of the keys of the vehicle stolen.

That the driver told him that he brought the motor vehicle with 2 keys but Ali Kibwana was found with only one. Because of this, PWI suspected that Kibwana could have used the second key to take away the motor vehicle.

PWI reported to his boss called Mr. Balamaga who launched a search. The latter instructed PWI to take the two suspects to police. He took them to the Officer in Charge Mr. Kyaligonza who in turn referred PWI to the Officer in Charge CID Mr. Engungu. An entry was made in the station Diary. That Mr. Engungu told PWI that he could not leave without making a statement regarding the suspects. PWI recorded a statement before a Police woman who released him thereafter. The two suspects were detained. As he was leaving the station, PWI met Mr. Engungu at the counter. He got hold of him and informed PWI that he was also a suspect and a thief. Mr. Engungu the Officer in Charge CID ordered PWI to remove his shoes and whatever he had in his pocket, called two policemen i.e. PC Okello and PC Mukenyi who were ordered to force PWI into the cell because he had refused to enter the cells arguing that he was the complainant.

That Engungu ordered the beating of PWI who sustained a swollen left cheek.

PWI was detained for 8 hours from 6.00 p.m. to midnight. At midnight, PWI was given his property and a Police bond on Exhibit PI. PWI went on to testify that because he was badly off he went for medical treatment at Bwera Medical Services a private Clinic which charged him over Shs.30,000/=. Thereafter PWI went to Tororo Hospital on 17<sup>th</sup> December 2008 for further treatment.

PWI further testified that he was never charged in court. He denied ever being a thief but imputes police action on a grudge because police was stopped from guarding the yard and instead ultimate guards were engaged to do so.

PW2 Ogutu Charles testified confirming that while in detention at Malaba Police, PWI was brought into the cells while being beaten by 3 police men. That one policeman was in civilian clothes while the other two wore police uniform. That they beat and kicked PWI while he was still in the corridor. That later in the night at around 2.00 a.m. PWI was released.

It is trite law that the standard of proof in civil matters is on a balance of probabilities. This is the burden the Plaintiff had to discharge in order to prove that he was falsely imprisoned.

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Where an arrest is made on a valid warrant it is not false imprisonment; but where the warrant or imprisonment is proved to have been effected in bad faith then it is false imprisonment.

From the evidence adduced by the Plaintiff, I am satisfied that the police at Malaba had no justifiable reason to detain the Plaintiff for 8 hours, yet he had gone to them to report a case of theft of a vehicle from URA inland parking yard. He had as a Security Officer handed over two suspects to police but they instead arrested the Plaintiff who was the complainant. It is not clear why the Plaintiff was detained.

Undoubtedly he was detained without justification. As a complainant, he was simply told that he was also a suspect without a complaint against him. He was never taken to court as he was never charged. There is no evidence that any police file existed against him and I am sure there was none. After 8 hours, he was suddenly released on a purported police bond (Exhibit PI) which to me was a mere cover up. It was a cover up because even when the Plaintiff did not report to police he was never re-arrested yet he continued to work a stone throw away from the police station.

There was no reasonable basis justifying the arrest of the Plaintiff by Malaba Police in the circumstances. It was there unconstitutional and wrongful.

**Issue No.2:**

There is no doubt that the Officer in Charge CID Engungu and two other Constables PC Okello and PC Mukenye manhandled the Plaintiff upon arrest. PW2 Ogutu Charles observed what was going on through the iron bar openings of the cell where he was detained. He told court that he saw 3 police men beat up the Plaintiff. That they also kicked him during the scuffle. PW2

however, was unable to identify the officers who were assaulting the Plaintiff. It has however been proved on a balance of probabilities that the Plaintiff was assaulted by the Officer in Charge CID and two Constables but not by the Officer in Charge Station. The Plaintiff was hurt in the process. There is however no proof that, inmates beat up the Plaintiff.

**Issue No.3:**

An employer is in general liable for the acts of his employees or agents while the course of the employers business or within the scope of employment. This is referred to as vicarious liability. In proving vicarious liability the questions to be determined are:

- a) Whether or not the employee or agent was acting within the scope of his authority  
**Muwonge vs Attorney General of Uganda [1967] E. A 17**, or;
- b) Whether or not the employee was going about the business of his employer at the time the damage was done to the Plaintiff.

**Patel & Anor vs Tandree and Anor [1936] K. L. R 8.**

After considering the Plaintiff's evidence and having held issue 2 in the affirmative, I have no doubt that the Plaintiff suffered at the hands of policemen of Malaba Police Station. He went there to report a case of theft. He was a complainant. He took to police two suspects. He was instead arrested on un reasonable suspicion. It was ordered by the Officer in Charge CID that he be detained. He was detained and this was confirmed by PW2.

Later in the night, the Plaintiff was released at 2.00 a.m. on Police bond. The police bond has been admitted as Exhibit PI. The Plaintiff was never charged in court. His mysterious detention led to a mysterious release deep into the night. The arrest and detention is not denied. I have no hesitation in concluding that all this was done by the agents of the Defendant in course of their employment. I will find that the Attorney General is vicariously liable for the acts and omissions of its servants.

**Issue No.4:**

The Plaintiff sought from this court general, special and exemplary damages. It is trite law that where a tort has been committed, the Plaintiff is entitled to compensation in money for injuries

sustained. This is commonly known as damages. Damages are either nominal, compensatory or exemplary, punitive and aggravated.

Nominal damages are awarded if the injury is small or when the mitigating circumstances are strong. Compensatory damages are awarded to make good pecuniary loss resulting from the injury done to the Plaintiff.

Exemplary or aggravated damages are awarded when aggravating circumstances exist in the act or intention of the wrong doer. These are meant to deter the wrong doer from repeating the act or for wounded feelings of the Plaintiff. They result from the wanton disregard of the Plaintiff's rights by the Defendant.

General damages on the other hand are presumed or implied by the law to naturally flow or accrue from the wrongful act. These can be awarded without proof of any amount. They are immediate, direct and proximate result of injury. They include bodily pain and suffering.

Special damages are awarded after strict proof. They are not presumed to flow from the wrong.

From the evidence on record and submission by the Plaintiff's learned Counsel, there was no justification for the arrest and detention of the Plaintiff. There was an inference of a reasonable Vendetta against the Plaintiff. That the Plaintiff was detained for only 8 hours is no justification for violation of his right to freedom. This was in absence of any reasonable suspicion of committing a known crime or being about to commit a crime. The Plaintiff narrated the challenges he went through which led him to suffer physical injury which was confirmed by PW3 who examined him. The Defendant failed to disassociate from the police officers who arrested and detained the Plaintiff. Although the Plaintiff has not proved any special damages or that he is entitled to aggravated damages, on a balance of probabilities he has proved that he is entitled to general damages. I was perturbed at the casual way in which it appears the Plaintiff was arrested. The habit of the police taking into custody citizens on flimsy grounds pending inquires is deplorable.

There is no doubt that what the Plaintiff went through constituted false imprisonment by police. It was a disregard of a citizen's right to personal freedom entrenched in the constitution.

For the reasons given above and considering that the Plaintiff was detained unlawfully for only 8 hours, I will make an award of Shs.15,000,000/= (Shillings Fifteen million only) general damages. This award will carry interest at court rate per annum from the date of judgment till payment in full. The Plaintiff shall get the taxed costs of this suit.

**STEPHEN MUSOTA**

**JUDGE**

**17.12.2012**