

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

CIVIL SUIT NO. 188 OF 2009

KAMUNTU ANTHONY ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

Versus

1. HAJAT ZAM SENDAGIRE

2. ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::::::: DEFENDANTS

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

JUDGMENT

The plaintiff Kamuntu Anthony filed this suit against the defendants jointly and severally for general, special, exemplary and aggravated damages, interest and costs of the suit.

The plaintiff's cause of action as stated in paragraph 5 of the plaint arose as follows;

- a. That on or about July 2008, the plaintiff was unlawfully arrested by officers of the rapid response unit of Uganda Police Force and that the unlawful arrest was initiated by the 1st defendant.
- b. That the plaintiff was illegally detained at police stations at Masindi, Kireka, Nakasongola, Mukono and Naggalama for several weeks where he was beaten, tortured and treated in the most inhuman and degrading manner and was never charged in court.

- c. That upon arrest, the 1st defendant in cohort with the Rapid Response Unit of the Uganda Police Force confiscated the plaintiff's property including 60 cattle, motor cycle Reg. No. UAC 570J, money totaling to 260,000/-, calcides and a pump.
- d. That the false and malicious allegations were levied against the plaintiff without any truth, and/or evidence and the file was closed on the orders of the Deputy DPP.
- e. That the plaintiff reported the confiscation of his property to police in Kiryandongo vide Police CRB/707/2008 but to date, he has not received them back and/or been compensated.

The 1st defendant did not file a written statement of defense and an interlocutory judgment was entered against her. The 2nd defendant who is the Attorney General filed a written statement of defense and denied the plaintiff's claims. The issues framed are as follows;

1. Whether the plaintiff was arrested, beaten, tortured and grievously harmed by the officers of the 1st defendant.
2. Whether the plaintiff suffered any loss as alleged.
3. What remedies are available to the plaintiff?

Learned counsel for the plaintiff in his submissions combined issue 1 and 2 and submitted that the oral testimony and evidence of the plaintiff's witnesses remained totally firm and unshaken as the plaintiff and his witnesses were not subjected to cross examination. He submitted that it was held by the Supreme Court that where a party declines to cross examine the opponent, he must be taken to admit to the evidence as presented. In **Habre International Co. Limited Vs Ebrahim Alarakia Kassam & others, SCCA No. 04 of 1999**, it was held that:

“Whenever the opponent had declined to avail himself of the opportunity to put his essential and material case in cross examination, it must follow that he believed that the testimony could not be disputed at all”.

He contended that the rule has also been embraced in criminal justice and in the Supreme Court decision of *Bwire Wycliff and Seruga George William Vs Uganda, Supreme Court Criminal Appeal No. 12 of 2002.*

I have considered the pleadings, the evidence adduced and the submissions of the plaintiff.

It was the evidence of the plaintiff that in July 2008 some unknown people came on a motorcycle and arrested him and they included the sub-county defense secretary. That he later saw a car come with two men and a woman armed in civilian clothes. They came out and handcuffed him and then put him in the car. He testified that he was driven to Masindi. He was removed from the car and they started boxing him. He was put in the boot taken to Budongo forest where a saw machine was picked and put in the boot where he was. He was taken to Masindi police station and detained in the cells. He stated that the next day around 2.00 pm, he was put in a taxi, handcuffed and they headed to Hoima, Kiboga then Kampala and later detained in Kireka where he spent four days.

It follows therefore that on the evidence adduced which was undisputed, the plaintiff was arrested by the police as a thief. No charge was however made against him and he was never taken to court. He was later released after spending a good number of weeks at different police stations. Much as the police had the powers to arrest under Section 10 of the Criminal Procedure Code Act, Cap 116, the actions of the police arresting the plaintiff and detaining him at different cells without being charged and subjecting him to torture as testified was unlawful. If at all the plaintiff had committed an offense, the arresting officers were bound to produce him before court which was never done. The plaintiff's evidence that he was driven from Masindi to Budongo forest and put in a boot together with a saw machine was not controverted. This was an inhuman and degrading treatment of the plaintiff. Consequently, I will resolve issue 1 and 2 in the affirmative.

Issue 3: What remedies are available?

The plaintiff prayed for special, general, aggravated and punitive/exemplary damages.

Special damages.

The plaintiff prayed for special damages amounting to 94,450,000/=. According to paragraph 11 of the plaint, special damages were particularized as follows;

1. 60 herds of cattle each valued at 1,500,000/- amounting to 90million.
2. Costs incurred for his treatment after release from prison of 2,000,000/-
3. Money taken from him in the process of arrest 250,000/-
4. A motor cycle valued at 2,000,000/-
5. Calcide pump of 200,000/-

In his testimony the plaintiff stated that the defendants took the cows which were 60 to Masindi port. He stated that they took only the mature cows which included both Friesian and Boran. He further stated that they called a Dinka man who bought the cows and took them to Sudan and that he has never been given any money from the cattle since 2009 to date.

Halsbury's Laws of England Vol. 12, 4th edition paragraph 1202 defines damages to mean the pecuniary compensation given by the process of law to a person for the actionable wrong that has been done to him or her and special damages must be specifically pleaded and strictly approved. In the case of **Shell Uganda Limited versus Hercules Mukiibi Civil Appeal 69 of 2004**, it was held inter-alia that:

“ the plaintiff must understand that if they bring an action for damages, it is for them to prove their damages. It is not enough to write down the particulars and so to speak throw them at the head of the court saying this is what I have lost, I ask you to give these damages, they have to prove it”.

With these clear principles in mind and basing myself on the evidence on record, the plaintiff has proved on a balance of probabilities that he lost 60 herds of cattle. His evidence remained unchallenged and I will accordingly award special damages of 90 million for the 60 herds of cattle that were taken. Regarding the claim for money taken from him at the time of his arrest, the plaintiff testified that the Rapid response Unit People took 300,000/- from him but this claim is contrary to what was pleaded of 250,000/- I will accordingly find that this is contradictory and I will decline to award that.

For the value of the motor cycle, the plaintiff annexed annexure "A" to the pleadings which is to the effect that at the time of the plaintiff's arrest he handed over a motor cycle to one David son of Phoebe and that the same was returned to the plaintiff when he was released. The plaintiff did not dispute the contents of the annexure. I therefore have no doubt that the plaintiff got his motor cycle back and I will accordingly decline to grant this head of the special damages.

Costs incurred for treatment. The plaintiff pleaded for 2,000,000/- as the cost of his treatment after release from detention. The plaintiff testified that he was admitted for six days in a private hospital and he was charged 680,000/-. I will therefore only award this figure as opposed to 2,000,000 claimed but was not proved because special damages must be specifically pleaded and proved. Therefore the claim for special damages is allowed as follows:

UGX 90,000,000/= for the 60 cows and UGX 680,000/= as costs incurred for the plaintiff's treatment after release from detention.

General damages:

The legal principle for the grant of general damages is that they are compensatory in nature for the loss suffered and the inconvenience caused to the aggrieved party so that he/she is put back in the same position as he/she would have been in before the damage. General damages are not

intended to better the position of the claimant, and they are within the discretion of the court to award.

The plaintiff testified that he is a cattle keeper. He was arrested and detained at different police stations. His cows were taken, that some of the cows and almost all were being milked and under lactation and that the calves which were left behind died due to poor feeding. He stated that if he had remained with his cows, he would by now have very many of them. Taking into account all the circumstances I will consider an award of UGX 100,000,000/= general damages as reasonable in the circumstances.

Exemplary and punitive damages:

The plaintiff testified that he was arrested and detained. During arrest, he was driven in a car but later changed and put in a car boot. He was detained and was always changed from one police station to another without being charged until when his people demanded for his release.

I am satisfied that the callous and rather unlawful manner in which the defendant treated the plaintiff calls for punitive damages to be awarded. I have considered a sum of 100,000,000/= (one hundred million only) as punitive damages and I so award that amount to the plaintiff. This should act as a deterrent to police's unlawful actions of violating people's rights yet they should be the same organ safeguarding and guarding such rights.

Aggravated damages:

Upon considering the circumstances of this case, I am of the opinion that an award of aggravated damages is not appropriate in the circumstances and I will decline to award aggravated damages.

In summary, judgment will be entered for the plaintiff as follows;

- 1. Special Damages - UGX 90,680,000/-**
- 2. General Damages – UGX 100,000,000/-**
- 3. Exemplary/Punitive damages – UGX 100,000,000/-**

All the awards shall carry an interest at court rate from the time of judgment till payment in full.

The plaintiff shall get the taxed costs of this suit.

I so order.

Stephen Musota

J U D G E

30.08.2016