

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT SOROTI
MISC. CAUSE NO. 14 of 2005
(ARISING FROM MISC. CAUSE NO.163 OF 2002 AT MBALE)

HON. OKUPA ELLIJAH & 2020 OTHERS:.....APPLICANTS

VERSUS

1. ATTORNEY GENERAL	}	:.....:	RESPONDENTS
2. MOROTO DISTRICT COUNCIL			
3. KOTIDO DISTRICT COUNCIL			
4. NAKAPIRIPIT DISTRICT COUNCIL			

BEFORE HIS LORDSHIP HON. MR. JUSTICE BATEMA N.D.A, JUDGE.

RULING

The Applicants brought this application under Article 50 of the Constitution of the Republic of Uganda for enforcement of their rights against the government of Uganda for actions of its servants that violated their rights. I met the matter at its conclusion stage and proceeded to judgment, The Applicants sought for declaratory orders of rights and compensation for rights and property violated and claimed damages and costs. The Applicants alleged that:

- a. The respondents jointly and severally through their servants acting within the course of their employment, between 1994 and September 2001 pursued illegal policies and practices prior to the disarmament exercise of 2001, which policies permitted Karimojong to possess firearms acquired illegally and possessed without licenses and that the said policies led to the violation of fundamental human rights and freedoms of the Applicants.
- b. That the fundamental human rights and freedoms of the Applicants were directly affected by cattle rustling and insecurity arising from acts of Karimojongs using the illegal arms.
- c. That the policies of the respondents that permitted Karimojong Tribesmen in the respondent Districts to possess firearms contrary to the Laws of Uganda with in

breach of ministerial duties under the Firearms Act and an infringement of the fundamental and other rights and freedoms of the applicants which were and are directly affected by the said breach.

- d. That the Executive arm of Government is under a legal duty to enforce the Fire Arms Act and any laws enacted by Parliament as the implementing organ of the state so as to protect the rule of law and the fundamental and other rights and freedoms of the applicants affected by proliferation of illegal arms in their region.
- e. That the first respondent's policies since the pre-independence period recognizes that the Karimojong community are a community that engaged in cattle rustling both within and without the boundaries of Uganda sufficient to have a written law to deal with cattle rustling specific to the 2nd, 3rd and 4th respondent Districts which laws were in force prior to the Law Reform (Miscellaneous Repeals) Statute of the year 2000.
- f. That the first respondent recruited and armed the Anti stock Theft Unit (ASTU) Karimojong vigilantes consequently was under a duty to discipline and control them so as to prevent them from violating the fundamental and other rights and freedoms of the applicants rights were threatened and have been violated by the Karimojong raid on Katakwi in September 2001 led by one Angella a vigilante leader.
- g. That the Executive arm of the Government of Uganda is bound to implement and follow laws passed by Parliament and delegated legislation regarding cattle rustling, illegal arms and disarmament.
- h. That any policy or policies of the Executive arm of the State that contradicts or conflicts with laws passed by Parliament are illegal and contrary to the rule of law and a violation of the fundamental and other rights and freedoms to be governed by laws enacted by elected representatives of the people.

The defendants in reply denied liability and said:

- 1. That no policy has ever been passed by the Government between 1994 and September 2001 allowing for breach of the fundamental and other rights of the Applicants.
- 2. That the Government of Uganda and other respondents have never pursued policies that permit Karimojong to possess fire arms acquired illegally.

3. That cattle rustling is a criminal offence and punishable under laws of Uganda. Uganda Government does not Condon it.
4. That it is not true that all Karimojong tribesmen in the respondents districts possess firearms illegally. Some criminal warriors have illegal fire arms and the rest of the Karimojong have no fire arms. The respondents continue to ensure that the illegal guns are recovered and culprits are punished according to the law.
5. That the Government has never allowed the Karimojong herdsmen to graze their cattle in the districts of Kaberamaido, Soroti, Kumi, and Katakwi.

ISSUES

1. Whether the Respondents had a policy of allowing the Karimojong to carry Firearms contrary to the Firearms Act
2. Whether the Respondents are vicariously liable for the acts of the Anti-stock Theft Unit
3. Whether the acts or omissions of the respondents in allowing the Karimojong to carry arms contrary to the firearms Act and/or arming the Anti-stock Theft Unit were in breach of the statutory duty of the Respondents to provide security and protection to the Applicants.
4. Whether the actions of the Respondents and/or their servants violated the rights of the Applicants granted under the Constitution.
5. What remedies are available?

RESOLUTION OF ISSUES

1. Whether the Respondents had a policy of allowing the Karimojong to carry Firearms contrary to the Firearms Act

Government denied having such a policy of allowing the Karimojong to carry Firearms contrary to the Firearms Act. It was pleaded that the Government of Uganda and other respondents have never pursued policies that permit Karimojong to possess fire arms acquired illegally.

Hon. Okupa Elijah stated in paragraphs 5,6,7 and 12 of his affidavit in support of the application thus;

“5. That it is within my knowledge that for a long time especially between 1994 and the end of the year 2001 Karamojong herdsmen have been carrying unlicensed firearms openly without the intervention of the government or the local authorities to disarm or license them.

6. That several efforts have been made by the leadership of the Itesot in Uganda to move the executive arm of government to disarm the Karamojong. The official position of government and the respondent local councils jointly and severally not to disarm Karamojongs without first making provision for watering cattle and dealing with cattle rustlers from other countries is shown in the MAGORO peace agreement herein attached and marked “C”.

7. That I know for a fact that all the respondents between about the years 1994 and September 2001, instead of disarming Karamojongs who possessed and bore illegal firearms instituted policies of negotiating with the neighbouring districts of Kotido, Moroto and Nakapiripirit so as to permit Karamojong herdsmen to graze their cattle in the districts of Kaberamaido, Soroti, Kumi and Katakwi while armed with unlicensed firearms. In one meeting of district leaders when the question of bearing of illegal firearms arose in the annexed “magoro” peace talk, the respondents servants acting within the scope of their duties and in line with unlawful government policy resolved that the Karamojong herdsmen would keep their firearms in their districts and not move with them in to the districts of Katakwi, Soroti, Kumi and Kaberamaido. A copy of the peace talk proceedings referred to as magoro peace accord is annexure “C” and is evidence of the actions on firearms of the respondents jointly and severally.”

Omongole Richard stated in paragraph 4 of his affidavit in support of the application that;

“4. That I believe that the said Hansard (hereinafter referred to as the hansard) gives strong evidence of the official government policy on the question of the keeping and bearing of firearms by Karimojong herdsmen and warriors over a period of over a decade.”

The Prime Minister (Prof. Apollo Nsibambi) (as he then was) stated in the Hansard issue No.33 at page 9201 referred to in Omongole Richard’s affidavit that;

“On disarmament, the government is not at variance with the spirit and letter of the motion but differs with the motion to the extent of the time frame within which to embark on and complete the exercise.....disarming the Karimojong will be contingent upon Uganda’s ability to institute effective protection against military incursions from neighbouring countries. This will require constructing a road on the eastern boarder, which will facilitate rapid movements of troops and equipments. We shall also seek the necessary cooperation from our neighbours; in fact interstate meetings are taking place....Government is working on the following water sources, which will also go a long way in addressing the problem of cattle keepers who travel long distances looking for water for their animals.

Hon. Wagidoso Madibo stated at page 9212 of the Hansard issue No.33 referred to in Omongole Richard’s affidavit that;

“There are two reasons advanced by government for leaving the Karimojong armed. One is that the Karimojong stand a risk- they are vulnerable to attacks from the Turkana and Pokot of Kenya. In this way government is moving away from its responsibility of protecting the lives and property of its people and instead leaving the people to protect themselves and that is most unfortunate. A second reason advanced by government is contained in the Hon. Prime Minister’s presentation. It appears that the Prime Minister was saying from (d) on page 5 that “Disarming the Karimojong will be contingent upon Uganda’s ability to institute effective protection against the military incursions from neighbouring countries” it is an open secret that the Karimojong are left to remain armed because I think they serve as a buffer against external attacks and again, in this way, the government is abdicating its responsibility.”

Hon. Owiny Dollo, MP. Agago County, Kitgum (as he then was) stated at page 9164 of the Hansard issue No.33 referred to in Omongole Richard’s affidavit that;

“In the face of all this, what does the government say? The government will say, “we want to promote peace talks” how many times have we leaders and our local leaders at home held peace talks with the Karimojong? The Karimojong do not appreciate peace talks. Actually, they do it to ridicule us. You will agree on everything today, they will go back and have their own meeting which they call “Nakoth”, meaning “now it is ours, the other one was for the fools” and they sit and discuss and plan atrocities, and come and carryout those atrocities.”

Mr. Otag Wilson (Usuk county, Katakwi) as he then was, stated at **page 9166** of the Hansard issue No.33 referred to in Omongole Richard’s affidavit that;

“The government allowed the Karimojong to carry guns and I think under the prevailing circumstances then, it was a wise decision, because Karimojong

felt threatened from the external aggression from neighbouring countries. But having pleaded with government to allow them carry the guns. They have now seen it fit to use the same guns to terrorize twelve neighbouring districts of this country and I think this is the point that must be understood”

The above evidence goes to show that the respondents’ policy was to allow the Karamojong warriors to own illegal and unlicensed guns which policy was illegal and contrary to the Firearms Act.

2. Whether the Respondents are vicariously liable for the acts of the Anti-stock Theft Unit.

Vicarious liability is a legal doctrine where one person, himself blameless, is held liable for another person’s conduct. The rule is often justified by reference to a Latin Maxima *qui facit per alium facit per se* (he who acts through another acts himself).

Under that doctrine an employer is liable for the acts of his/her employees done in the scope of that employee’s duty.

There is sufficient evidence on record showing that the government of Uganda, in attempt to curb cattle rustling, formed the Anti-Stock Theft Unit (ASTU) and recruited vigilantes, armed them and gave them identity cards. These vigilantes while acting within the scope of their duty turned and attacked residents of Ngariam displaced people’s camp and committed a lot of atrocities including raiding cattle and killing people in Ngariam and other neighbouring areas. According to **Hon. Okupa Elijah** in his affidavit in support of the application some of the respondents’ servants, acting within the scope of their duties together with Karimojong cattle rustlers, on or about the 13th of September 2001, at about 2:00pm in the afternoon, led by Anti Stock Theft Unit (ASTU) vigilantes, servants of the government of Uganda and commanded by an ASTU commander **one Angella**, a native Karimojong, raided Ngariam displaced people’s camp in Ngariam sub-county, Katakwi district killing 17 people stealing 500 cattle, household items, destroying property, burning homes, injuring more than 50 people, violating human rights and halting the livelihood and economic sustenance, education and the social life in the area.

In **Muwonge V. Attorney General [1967]1EA 17, Newbold P.** stated thus;

“An act may be done in the course of a servant’s employment so as to make his master liable even though it is done contrary to the orders of the master and even if the servant is acting deliberately, wantonly, negligently or criminally or for his own benefit never the less if what he did is merely a

manner of carrying out what he was employed to carryout then his master is liable.”

In the instant facts, the vigilantes carried the guns 24 hours - day or night. There was no restriction on the time they were on duty. It can therefore be concluded that though the vigilantes did it criminally, or wantonly, or deliberately to raid, they were in ordinary course of duty.

Again in **Kafumbe Mukasa Vs. Attorney General (1984) HCB 33**, Manyindo J, held that;

“An act may be done in the course of a servant’s employment so as to make his employers liable even if it is done contrary to the orders of the employer and even if the servant is acting deliberately, negligently or criminally or for his own benefit, if what he did is merely a manner of carrying out what he was employed to carry out. In the present case, the soldiers carried out duty in an improper manner but were not frolic of their own.”

In the instant facts therefore, the facts that the vigilantes were carrying guns given to them by government makes government liable since they were acting in course of employment. The government is liable for the action of the vigilantes.

3. Whether the acts or omissions of the respondents in allowing the Karimojong to carry arms contrary to the firearms Act and/or arming the Anti-stock Theft Unit were in breach of the statutory duty of the Respondents to provide security and protection to the Applicants.

Under Article 189 of the Constitution of the Republic of Uganda, 1995 the functions of the government and district councils are spelt out. Clause (1) thereof provides;

(1) Subject to the provisions of this Constitution, the functions and services specified in the sixth schedule to this Constitution shall be the responsibility of the government.

(2) District Councils and the Councils of Local Government Units may on request by them be allowed to exercise the functions and services specified in the sixth schedule to this Constitution or if delegated to them by the Government or by Parliament by Law.

The functions and services for which government is responsible under the sixth schedule that are applicable in the present case are;

- a) Arms, ammunition and explosives
- b) Defence, security, maintenance of Law and Order

The above statutory duties were breached by Government and the Local authorities when they allowed Karimojong warriors to carry and possess firearms contrary to the Firearms Act. The Constitution imposes a duty upon the government to be responsible for arms and ammunitions and as such the government ought to have taken control of the firearms illegally owned by the Karimojong warriors by disarming them. The policy of recruiting Ant-stock Theft Unit vigilantes and arming them as adopted by Government in an attempt to stop cattle rustling was abused. It left the Karimojong warriors in possession of illegal firearms which led to the several raids and in particular reference to this suit the raid on Ngariam Displaced People's camp on the 13th of September 2001.

The government local authorities also have a duty to provide security to citizens under Article 189 of the Constitution of the Republic of Uganda, 1995 and the sixth schedule thereof. However, the government instead adopted a policy of allowing the Karimojong warriors to carry unlicensed firearms so they can protect themselves from attacks by the Turkana, Pokot and Topotha from the neighbouring countries of Kenya and Sudan.

Hon. Owiny Dollo (MP) Agago, as he then was, is quoted in the Hansard issue No.33 at page 9164 cited by Omongole Richard in his affidavit saying that;

“The government understands but has so many explanations. I will mention this to say okay you know the areas bordering Karamoja in Kenya and in the Sudan is volatile, the Karimojong are vulnerable if the guns are removed the Karimojong will be so vulnerable. I have never heard a more classical case of abdication of duty by a government.”

I would agree with the above opinion . Government had a duty to deploy the Uganda Peoples Defence Forces to provide security to its citizens and to protect and defend the territorial integrity of Uganda, including Karamoja, at all costs (Article 209 of the Constitution of the Republic of Uganda 1995).

Under Section 2 of the Fire Arms Act, carrying of weapons without a license is illegal. Under subsection 2 thereof non-compliance the above provision is an offence, which attracts 10 years imprisonment. Under Section 40 of the Firearms Act, the Minister is empowered to prohibit the carrying of firearms and ammunitions in any place in Uganda. The Minister is also under duty to prohibit the sale or transfer by gift or otherwise of firearms or ammunitions within any place in Uganda and order that such arms specified be delivered to any person or place in Uganda.

The Attorney General did not adduce any evidence to show that the Minister and Law enforcement agents of the state made any attempts to enforce this statutory duty. The authorities simply neglected to act in that respect while the arms carried contrary to the Firearms Act caused heavy losses of both lives and property in the Teso and Karamoja regions.

Under Article 212 of the Constitution *the Uganda Police Force (UPF)* is established with the following duties:

- (a) *To protect life and property;*
- (b) *To preserve law and order;*
- (c) *To prevent and detect crime; and*
- (d) *.....”*

The UPF is a government organ. Its failure to perform the above statutory duties in Teso cannot go uncondemned. A lot of property and lives were lost, anarchy became prevalent and cattle theft by Karamojong all went unabated or as the government forces, simply watched, and/or participated in the creation of anarchy. Government failed in its statutory duties and is hence liable for the torts committed by its failure to implement the Firearms Act and provisions of the Constitution.

The statutory duty to control arms is binding on the government as well as the person who wants to possess the arms. And under Section 4(3) if the officer commits a tort while performing or purporting to perform such duty, government is liable. The UPDF, UPF and other armed forces did not act in time as expected and Government must be held accountable.

Section 4(2) of GPA Cap 69 thus creates government liability. It states;

“2. Where the government is bound by statutory duty which is binding also upon persons other than the government and its officers, then subject to the provisions of this Act and to the provisions of section 6 of the Law reform [Misc. Prov.] Act, the government shall, in respect of a failure to comply with that duty, be subject to all liabilities in tort, if any, to which it would be so subject if it were a private person of full age and capacity.”

4. Whether the actions of the defendants and/or their servants violated the rights of the plaintiff granted under the Constitution.

This court has found that it is proved beyond any doubt that the following fundamental human rights and freedoms of the applicants were violated by the respondents

The right to life

Article 22 provides;

“ (1) No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a Court of competent jurisdiction in respect of a criminal offence

under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate Court.”

Hon. Okupa Elijah stated in paragraph 14 of his affidavit that;

“That in my capacity as the Member of Parliament representing Kasilo constituency and having visited Ngariam Displaced People’s Camp, I established from the residents of the camp that the following people were killed in the raid in Katakwi on the 13th of September 2002 namely:”

- a) MZEE ILUKOR MISEBOSES 80 years*
- b) OURE DAVID 8 years (grandson to Mzee Ilukor)*
- c) ILUKOR CHARLES 19 years (brother to Okure David and grandson to Mzee Ilukor)*
- d) IBERE JENIFER ROSE 11 years*
- e) IMOJOGIT JOSEPH 9 years*
- f) IKAITO DEBORAH 30 years*
- g) AKWI STELLA ROSE (Ikaito’s daughter) 13 years*
- h) IKAITO AND AKWI are survived by: Ariko Silver 35, husband and father respectively-Ingolan Rose 5 years daughter, Mariam Alungat 2 weeks old by then who was as well shot and injured by the said servants of the respondents)*
- i) ABOKET WILLIAM 25 years survived by the following dependants: Mother Mongo Eupeteba 50 years, children 1. Asege 4 years, Among Rose 2*
- j) OPUUNO JOSEPH 27 years, survived by 5 children: Icuma 9 years, Elungot Micheal 8 years, Imalingat 7 years, Ibere 5 years, Opus Jaanes 3 years.*
- k) AYOLO KELETESIA (wife to Opuuno Joseph) survived by 5 dependants above mentioned.*
- l) APOLOT ANN GRACE killed with a pregnancy. Child as well died in the womb*
- m) IKAREUT MAKADELIN 26 years survived by: 3 days old baby shot on the buttocks, Isekeny Angella Rose 3 years old and husband Emmanuel Angiro (Annecture)*
- n) IDONGO 9 years survived by father Opoo G. William*
- o) Others killed were people in the camp who could only be identified as Alebo and 3 local defence unit personnel, Adangat James, Imalingat and Ebo John Robert.*

The right to life as protected by article 22 of the Constitution of the Republic of Uganda, 1995 was grossly violated in Teso area. The respondents breached that duty when they allowed their servants the ASTU, Karamojong warriors to carry unlicensed guns and ammunitions which facilitated cattle rustling and led to deaths, in which many people were killed.

Right to livelihood

This right is not expressly provided for in the constitution of the Republic of Uganda. It is however justifiable by virtue of the provisions of the Article 8 A and 45 cited above which recognizes rights and freedom not expressly provided for by the Constitution.

In *Olga Tellis & Ors –Vs- Bombay Municipal Council* [1985] 2 supp SCR 51. The Supreme Court of India held that;

“The right to life includes protection of means of livelihood...the right to life, in Article 21 of the Constitution, encompassed means of livelihood since, if there is an obligation upon the State to secure to citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life.”

The right to livelihood was violated as a result of the respondents’ unlawful policies of allowing the Karimojong warriors to own unlicensed firearms which led to cattle rustling and the insurgency in which people lost their homes, properties like clothes, cooking utensils and livestock, gardens were slashed down or burnt, many people lost their jobs and generally the means to livelihood were destroyed in violation of the right to livelihood.

In *Attorney General Versus Salvatory Abuki and Another* SCCA No.1 of 1998 the right to livelihood was recognized and Court noted;

“The impact of barring a human being from his home area or gardens is to render him homeless and devastated...it is no answer that he can setup a home somewhere and live like any other peasant”

The insurgency made many people to flee their homes leaving their gardens, household belongings and other means of livelihood depriving them of livelihood.

The right to property

The right to property is protected under the Constitution of the Republic of Uganda, 1995. Article 26 thereof provides;

“26. Protection from deprivation of property.

(1) Every person has a right to own property either individually or in association with others.

(2) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied-

(a) The taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, morality or public health; and

(b) The compulsory taking of possession or acquisition of property is made under a law which makes provision for-

(i) Prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and

(ii) A right of access to a Court of law by any person who has an interest or right over the property;”

In *Osotraco Limited versus the Attorney General HCCS No.1380 of 1986* the right to property as envisaged by the constitution of the Republic of Uganda, 1995 was recognized and upheld Court observed thus;

“The right to property is a right protected by the Constitution in Article 26”

That right is protected and can only be taken away upon payment of adequate compensation prior to taking. In the case of *Gideon Emaru Vs. Attorney General HMC No.071 of 2005*, a matter arising out of insurgency in Teso, Justice Elizabeth Musoke held;

“What is in issue is whether the failure to compensate him was illegal and infringed on his rights. The right to property as provided under the Constitution is clear and the circumstances under which this right can be interfered with subject to compensation; as such failure to fulfill the requirements therein makes the action illegal in the instance.”

The right to property is also provided for in the Universal Declaration of Human Rights, article 17 thereof provides;

Article 17.

“(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.”

Article 14

“The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”

The respondents' failure to control its units the ASTU and policies of allowing the Karamojong warriors to bare unlicensed firearms led to violation of the right to property. During the raids by the ASTU and Karamojong warriors a lot of property was destroyed and many people lost their cattle which were rustled by the Karamojong warriors.

Freedom from torture, inhuman and degrading treatment

Article 24 of the Constitution of the Republic of Uganda, 1995 provides for freedom from torture or cruel, inhuman and degrading treatment. It states;

“No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment.”

Article 44 of the Constitution of the Republic of Uganda prohibits derogation from that right, it provides;

“Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms.

(a) Freedom from torture and cruel, inhuman or degrading treatment or punishment.”

The right to freedom from torture was upheld in Attorney General Versus Salvatory Abuki and Another SCCA No.1 of 1998 wherein it was held thus;

“Article 24 of the Ugandan Constitution provides; ‘No person shall be subjected to any form of torture, cruel, inhuman or degrading treatment or punishment.’ It seems clear that the words emphasized have to be read disjunctively. Thus read, the article seeks to protect the citizens from several different conditions:

- (i) torture;*
- (ii) cruel treatment;*
- (iii) cruel punishment;*
- (iv) inhuman treatment;*
- (v) inhuman punishment;*
- (vi) degrading treatment and*
- (vii) Degrading punishment*

Under Article 44 the protection from the seven conditions is absolute.”

The right to freedom from torture, inhuman and degrading treatment is also provided for in the Universal Declaration of Human Rights under Article 5 thereof which provides;

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

The right to freedom from torture is also envisaged in the International Covenant on Civil and Political rights, Article 7 thereof provides;

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

The African Charter on Human and People’s Rights provides for freedom from torture, inhuman and degrading treatment under Article 5 which states;

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

Hon. Okupa Elijah stated in his affidavit in paragraph 17 thus;

“That when I visited Ngariam displaced people’s camp I found the following listed people were injured in the raid on the 13th of September 2001 in Katakwi, namely:

- i. OGWANG DAVID injured and disabled by a bullet wound on the left hand
- ii. ICUMA 2 years old injured by a bullet wound on the right leg
- iii. IKORIT LUCY 22 years injured by a bullet wound on the right breast and can no longer breastfeed.
- iv. ASIO STELLA ROSE 25 years injured by a bullet wound and now crippled on the right leg-wife to Odwar Charles
- v. ANYESI IKIAT 35 years injured by a bullet wound on the back can no longer fend for her 5 children
- vi. SAM EGEAT 2 years
- vii. ALUNGAT ROSE 3 years
- viii. ROBERT ADIKIN 5 years
- ix. IDWET JAMES 18 years
- x. IKARET JESSICA 4 years
- xi. IMET BETTY 4 years, shot and injured on the right hand
- xii. ANGIRO WILLIAM 3 months, a baby shot on the buttocks

In Attorney General versus Salvatory Abuki and Another SCCA No.1 of **1998 Oder JSC** stated thus;

“As I have already said, the prohibitions under Article 24 are absolute. The state’s obligations are therefore absolute and unqualified. All that is therefore required is to establish a violation by a state organ which falls within one or other of the seven permutations of Article 24 set out above. No question of justification can ever arise.”

From the above authority it is clear that the Respondents cannot give any excuse for failing to respect, protect, promote and fulfill the applicants' right to freedom from torture, cruel, inhuman and degrading treatment or punishment since the said right is absolute and not qualified.

Freedom from discrimination

The Constitution of the Republic of Uganda, 1995 provides for freedom from discrimination under Article 21 which states;

“(1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.”

“(2) without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour. Ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.”

The said Constitution goes defines the meaning of discrimination under Article 21 Clause 3 which states;

“(3) For the purposes of this article, ‘discriminate’ means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour. Ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.”

The Universal Declaration on Human Rights recognizes the freedom from discrimination and equality before the law under Article 7 which provide;

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

The right to equality before the law and freedom from discrimination is also provided for in the International Covenant on Civil and Political Rights under Article 26 which states;

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The African Charter on Human and People's Rights also recognizes the freedom from discrimination under article 28 which provides;

“Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.”

Hon. Okupa Elijah stated in paragraph 10 of his affidavit in support of the application that;

“That it is also my firm belief and knowledge of the rule of law that any policy of the respondents as reflected in the ‘Magoro Peace Accord’ is discriminatory in so far as it tries to discriminately apply laws application country wide, such as the Firearms Act and suspend it in some parts of Uganda without legislative approval and does not treat me and the persons I represent equally under the law contrary to several articles of the Constitution and particularly article 21 thereof”

I make Declaratory orders that the Respondents jointly and severally pursued illegal policies and practices, which policies permitted Karimojong to possess firearms acquired illegally and that the said policies led to the violation of fundamental human rights and freedoms of the Applicants for which the respondents are liable and must pay compensation..

5. What remedies are available?

Article 50 (1) of the Constitution of the Republic of Uganda, 1995 allows a person whose rights have been violated to seek redress and such redress includes compensation. It provides;

“(1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent Court for redress which may include compensation.”

The applicants in the present case have proved in issue one above that their fundamental rights and freedoms guaranteed under the Constitution were infringed by the respondents and as such they are entitled to redress under article 50(1) of the Constitution including award of compensation.

In *Osotraco Limited Versus The Attorney General HCCS No.1380 of 1986*, Egonda Ntende J.(as he then was) held that;

“Article 50 ensures such a person redress before the Courts, redress in my view refers to effective redress and nothing short of that. A less than appropriate remedy is not effective redress.”

On the above authorities it is my considered opinion that the applicants are entitled to the following appropriate remedies:

a) Compensation for lives lost

During the raid of Ngariam Internally Displaced People's Camp, many people were killed . In **Abu Igasit and Eliko David Vs. Attorney General HCMC No.63 of 2005**, **Justice Elizabeth Musoke** awarded general damages for the loss, pain and to the injury caused coupled with the manifest breach of due process.

The loss of lives in this case was a result of the respondent's breach of statutory duty and as such the respondents are liable to pay compensation. Counsel has asked me to award sh.150.000.000/= per life lost.

Life is priceless. I am unable to cost each life lost or estimate the value per head. It is an uphill task that requires in-depth inquiry and may not be easily resolved by affidavit evidence as is in this suit. Moreover the criminal nature of killing a person in raids requires that the culprits be tried for murder. The maximum penalty for murder is death. Such is the high price for a human life lost. I can only award damages for loss of dependence, pain and suffering caused over the years in the circumstances.

The survivors in a family that lost an adult person are awarded one hundred million shillings only (**SH.100.000.000/=**) for loss of dependence, pain and suffering caused by the loss of the adult member lost. The deceased referred to are identified by Hon Okupa as :

1. *MZEE ILUKOR MISEBOSES 80 years*
2. *ILUKOR CHARLES 19 years (brother to Okure David and grandson to Mzee Ilukor)*
3. *IKAITO DEBORAH 30 years. survived by: Ariko Silver 35, husband, Ingolan Rose 5 years daughter, Mariam Alungat 2 weeks old by then who was as well shot and injured by the said servants of the respondents)*
4. *ABOKET WILLIAM 25 years survived by the following dependants: Mother Mongo Eupeteba 50 years, children 1. Asege 4 years, Among Rose 2*
5. *OPUUNO JOSEPH 27 years, survived by 5 children: Icuma 9 years, Elungot Micheal 8 years, Imalingat 7 years, Ibere 5 years, Opus Jaanes 3 years.*
6. *AYOLO KELETESIA (wife to Opuuno Joseph) survived by 5 dependants above mentioned.*

7. *APOLOT ANN GRACE killed with a pregnancy. Child as well died in the womb*
8. *IKAREUT MAKADELIN 26 years survived by: 3 days old baby shot on the buttocks, Isekeny Angella Rose 3 years old and husband Emmanuel Angiro.*
9. *Alebo*
10. *LDU Adangat James,*
11. *LDU Imalingat and*
12. *LDU Ebo John Robert.*

I would award fifty million shillings (**Sh.50.000.000/=**) to parent/sguardians of each child killed in the Ngariam raid for the pain and suffering in these circumstances. The deceased children are:

1. *OURE DAVID 8 years (grandson to Mzee Ilukor)*
2. *IBERE JENIFER ROSE 11 years*
3. *IMOJOGIT JOSEPH 9 years*
4. *AKWI STELLA ROSE (Ikaito's daughter) 13 years*
5. *IDONGO 9 years survived by father Opoo G. William*

b) Compensation for the properties and livestock lost during the insurgency

The applicants claim they lost cattle to cattle rustlers. In **Gideon Emaru Vs. Attorney General HCMC No.071 of 2005**, it was held that;

“ The right to property as provided under the Constitution is clear and the circumstances under which this right can be interfered with subject to compensation; as such failure to fulfill the requirements therein makes the action illegal in the instance.”

In **Deylon Johnson Wilson and others Versus The Attorney General, HCCS No.0027 of 2010** wherein the plaintiffs sought recovery of their heads of cattle lost during the insurgency in Lango sub-region. **Justice Byabakama Mugenyi** granted them compensation for their livestock. He stated thus;

“Accordingly, I find the plaintiffs are entitled to compensation for their livestock at the following rates;

- a) *Ug. Shs. 900,000/= per head of cattle*
- b) *Ug. Shs. 150,000/= per goat*
- c) *Ug. Shs. 150,000/= per sheep*

d) Ug. Shs. 250,000/= per pig”

This Honourable Court adopts the monetary value of livestock set by Justice Byabakama Mugenyi in *Deylon Johnson and others Vs Attorney General* (cited above).

I was not able to find evidence of how many animals each applicant lost. The numbers shall be ascertained and verified by both parties in a joint verification exercise being conducted by government in similar cases. I shall expect a report within six months from today for final orders in execution of this judgment.

c) General Damages for violation of rights

The applicants suffered inconvenience as a result of the respondents’ infringement of their fundamental rights and freedoms. The applicants also lost opportunities in economic and social activities. Due to cattle rustling activities and insecurity they were confined in IDP camps. As such they are entitled to general damages.

In **Dr. David Lwamafa Versus Attorney General (1992) KALR 21** it was stated thus;

“A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been in had she or he not suffered the wrong.”

The applicants must be awarded general damages sufficient to put them in the position that they would have been in had they not suffered the wrong. This court has considered an award of Five Million (**Ug. Shs. 5,000,000/=**) to each of the Applicants as sufficient, appropriate and reasonable in general damages.

d) Exemplary Damages

In **Deylon Johnson Wilson and others Versus The Attorney General, HCCS No.0027 of 2010** Court gave the circumstances under which exemplary damages can be awarded. It was stated thus;

“These are awarded where there has been oppressive, arbitrary or unconstitutional action by the servants of government. This has to manifest in or cause suffering to the plaintiffs.”

The applicants in the instant case experienced untold suffering during the insurgency. The agents of government, vigilantes and the Anti-Stock Theft Unit (ASTU) took part in cattle rustling, killing of people, destruction of property, torture and the general violation of the applicants’ fundamental rights and freedoms contrary to chapter 4 of the Constitution. Their actions were oppressive, arbitrary and unconstitutional and as such the applicants are awarded exemplary damages of one million shillings (**Ug. Shs. 1,000,000/=**) each.

e) Interest

The applicants should be awarded interest which is reasonable in the circumstances of this case.

Section 26 (2) CPA Cap 71 provides that;

(1) Where and insofar as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of satisfaction the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the Court thinks fit.

In **Deylon Johnson Wilson and others Versus The Attorney General, HCCS No.0027 of 2010** it was stated that;

“It is settled the Court is seized with discretion to determine the rate of interest to be awarded to a party depending on the particular circumstances of the case.....it is also understood that the Court’s discretion must be exercised judicially and not arbitrarily.....the guiding principle is that the rate of interest must be reasonable.”

THIS Court awards interest of 25% per annum on the decretal sum from the date of filing this suit till payment in full.

f) Costs

It is settled law under section 27 (2) of the Civil Procedure Act that costs shall follow the event unless Court shall for good reason otherwise order. In the instant case there appears to be no good reason as to why Court should deny the costs to the successful party. The successful Applicants are awarded costs of the suit.

I so order in the interest of Justice.

BATEMA N.D.A.
JUDGE
31/01/2018

R/A explained.

**BATEMA N.D.A.
JUDGE
31/01/2018**