

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
MISCELLANEOUS CAUSE NO.102 OF 2019

IZIDORO KIZITO----- APPLICANT

VERSUS

ATTORNEY GENERAL ----- RESPONDENT

BEFORE HON. JUSTICE MUSA SSEKAANA

RULING

The Applicant brought this application by way of Notice of Motion against the respondent under Article 20, 24, 50, & 119 (1) of the Constitution for;

- a) A declaration that the officers of the Uganda police Force breached the applicant's right to freedom from torture, cruel, inhuman, degrading treatment guaranteed under Article 24 of the Constitution, when they unlawfully and intentionally shot the applicant once in the head, occasioning his grave injuries including loss of an eye.
- b) A declaration that the respondent is vicariously liable for the actions of the officers of the Uganda Police Force.
- c) An Order directing the respondent to pay the applicant general and punitive damages for the breach of his constitutional rights.
- d) Costs of this application be provided for.

The grounds in support of this application are set out in the notice of motion and affidavit of Hon. Izidoro Kizito dated 15th April 2019 which briefly sets out the background of the applicant's case as follows:

1. On the 29th day of April 2011 at Nakasero Market in Kampala district, the applicant was unlawfully and intentionally shot once at the back of his head through the right eye by officers of Uganda Police Force.
2. As a result of the shooting by the said police officers, the applicant sustained grave injuries, was admitted for one month and four days at Mulago Hospital during which time he underwent seven operations.
3. That upon discharge, he kept going back to Mulago Hospital for review and was also advised to seek further medical treatment elsewhere for services they could not offer at Mulago Hospital.
4. The applicant has since lost his right eye and he desires to have an operation to have it replaced, but has since failed due to lack of finances and has not recovered fully.
5. The Uganda Police contributed Ugshs 800,000/= towards the medical expenses at RELA DENTAL CLINIC, an indication that they accepted responsibility for the torture.
6. The intentional shooting of the applicant by officers of Uganda Police amounts to torture, cruel, inhuman degrading treatment contrary to Article 24 of the Constitution.
7. The Attorney General is vicariously liable for actions of Uganda Police Officers.

In opposition to this Application the Respondent through Mukama Allan- State Attorney at Attorney General Chambers filed an affidavit in reply wherein he briefly stated that;

1. The applicant in 2013 Uganda Human Rights Commission central regional Office received a complaint from the applicant in this application vide Kiziti Izidoro and Uganda Police Force, Complaint No. UHRC/19/2013.
2. The complaint was investigated and is yet to be heard.

3. The applicant's claim in this application and his claim in Complaint No. UHRC/19/2013 before the Human Rights Commission, are both based on what happened on the 29th April, 2011 and on the same allegations of fact.
4. That the applicant in this application has two concurrent claims before two courts of competent jurisdiction and this is an abuse of court process and this application is caught by the doctrine of laches.
5. That the allegations of fact which are the basis of this application happened 8 years go in April 2011 and the applicant is guilty of dilatory conduct in bringing this application.
6. That the officers of the Uganda Police Force who were conversant with the facts of the event of the day on which the applicant claims his rights were violated, are not readily available to provide information and clear evidence to enable the respondent effectively respond to the application.
7. The delay of 8 years to bring this application shall prejudice the respondent in its defence and his right to fair hearing will be violated.
8. That if this court rejects this application or strikes it out, the applicant will not suffer any prejudice because he already filed a complaint before the Uganda Human Rights Tribunal and can appeal to this court if dissatisfied with the decision of Uganda Human Rights Commission.

ISSUES FOR DETERMINATION

The following preliminary issues were raised for determination by this Court:

- a) **Whether this application is time barred?**
- b) **Whether this application is an abuse of court process?**

In the interest of time the respective counsel were directed to file written submissions and i have considered the respective submissions. The applicant was represented by *Mr Rwakafuuzi Ladislaus* whereas the respondent was represented by *Mr. Musota Brian*.

Whether this application is time barred?

The respondent's counsel submitted that the application has been brought the Limitation Act and also by analogy invited this court to apply the limitation period in ***Section 24 of the Uganda Human Rights Commission Act*** which is a specific law on the enforcement of Human Rights. Under that section it is enacted as follows;

24. Limitation.

No complaint shall be brought before the commission after the expiration of five years from the date on which the alleged violation of a human right to which the complaint relates occurred.

25. Extension of limitation period.

Where a person entitled to bring a complaint before the commission against any violation of a human right is incapacitated from doing so by reason of age, infirmity of body or mind, detention or other just cause, whether similar to the foregoing or not, then the complaint may be brought at any time within five years after the incapacity ceases or the person entitled to bring the complaint dies, whichever event first occurs

It was his contention that in either case this application as it is before court is time barred by law. He prayed that that this court upholds the point of law and strikes out the application with costs for being time barred by law.

The applicant's counsel contended that The Limitation Act was meant for common law causes of action such as recovery of land, torts, contracts, industrial property, indemnity and contribution.

According to him, Parliament has enacted the Human Rights (Enforcement) Act 2019 which provides in Section 19 of a limitation period of 10 years. To him in the present cause of action arose in April 2011 and was still subsisting when the same was filed on 15th April 2015.

Resolution

This court agrees with the submission of counsel for the respondent that a delay of 8 years prejudices the Attorney general to make any meaningful defence or line up the witnesses and the same affects the court.

The respondent has cited the Human Rights (Enforcement) Act and the basis of filing this application after this long period of time. It is important to note that the said Act is not yet law applicable and has not commenced.

This court would make reference to the Human Rights Commission Act which has some limitation periods for lodging complaints of human rights violations to 5 years.

This action is time barred and the 8 year period is too long to institute such an action.

Whether or not this application is an abuse of court process?

The respondent argued that this application is an abuse of court process. There is already a pending Complaint before the Uganda Human Rights Commission in 2013 there is proof of this in *annexture "D" to the affidavit in support* of this application and paragraphs *3, 4, 5, 6 and 7 of the affidavit in reply* to this application.

In the case of Karuhanga & Anor vs Attorney General & 2 Ors (MISC. CAUSE NO. 060 OF 2015) this honourable court defined abuse of court process as follows;

"The concept of abuse of court process is not very precise but the Nigerian case of R-Benkay Nigeria Ltd Vs Cadbury Nigerian PLC SC 29 of 2006 outlines circumstances which give rise to abuse of court process and these include:

1. Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues or a multiplicity of actions on the same matter between the same parties where there exists a right to begin the action.

2. Instituting different actions between the same parties simultaneously in different courts even though on different grounds.

3. Where two similar processes are used in respect of the exercise of the same right for example a cross appeal and the respondents' notice.

4. Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of fact already decided by a lower court.

5. Where there is no law supporting a court process or where it is premised on frivolity and recklessness.

6. Where a party has adopted the system of forum shopping in the enforcement of a conceived right.

7. Where two actions are commenced, the second asking for a relief which may have been obtained in the first. In that case the second action is prima facie, vexatious and an abuse of court process.

In a nutshell, the common feature of an abuse is in the improper use of the judicial process by a party in litigation.”

In this application, the applicant has instituted two different suits against the Uganda Police Force both, in the Uganda Human Rights Commission and in this Court. This is an abuse of court process and I pray that this Honourable Court finds it to be so.

The applicants counsel in response argued that the respondent has not shown the Uganda Human Rights Tribunal case number that would show the matter was sent for adjudication. According to counsel for the applicant the Human Rights Tribunal is not a court of competent jurisdiction with co-equal jurisdiction with the High Court under Article 50 of the Constitution.

He also argued that there is no law setting up UHRC as a court. To him UHRC orders are administrative not judicial. Therefore there was nothing precluding the applicant from filing this application, since there is nothing pending in the UHRC since the matter was never sent to the tribunal.

The applicant instituted a complaint before the Uganda Human Rights Commission and the same is pending hearing. It would be wrong for the applicant with assistance of his advocate to file new or same claims in the courts. The remedies are the same and it is an abuse of court process.

This Court agrees with the respondent's counsel submission that the application filed after such a long period of 8 years and yet there is a pending case/complaint with Uganda Human Rights Commission is an abuse of court process.

In the final result for the reasons stated herein above this application fails for the reasons set out herein and is hereby struck out with costs.

It is so ordered.

SSEKAANA MUSA
JUDGE
16th/08/2019