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

MISCELLANEOUS CAUSE NO.85 OF 2020

HON. ZAAKE FRANCIS:..... APPLICANT

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VERSUS

- 1. THE ATTORNEY GENERAL OF UGANDA
- 2. KAGARURA BOB (RPC- Wamala)
- 3. ALEX MWIINE (DPC -Mityana District)
- 4. ELLY WOMANYA (Commandant, SIU
- 5. MUSA WALUGEMBE (OC - SIU)
- 6. TWESIGYE HAMDANI
- 7. MULUNGI HARUNA NSAMBA
- 8. ABEL KANDIIHO (Head, CMI)

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.....RESPONDENTS

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BEFORE: HON. JUSTICE ESTA NAMBAYO

RULING

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The Applicant, Hon. Zaake Francis, brought this application under **Article 50 of the 1995 Constitution of Uganda, Sections 3 and 4 of the Human Rights (Enforcement) Act, 2019, Rules 5(1)(a), 6(1) and 7(1) of the Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules, 2019, Sections 14, 33 and 39 (2) of the Judicature Act and Section 98 of the Civil Procedure Act**, against the Attorney General of Uganda, the Regional Police Commander (RPC), Wamala, Karugaba Bob, the District Police Commander (DPC), Mityana, Alex Mwiine, the Commandant, Special Investigations Unit, Elly

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Womanya, the Officer-in-Charge, SIU, Musa Walugembe, Twesigye Hamdani, Mulungi Haruna Nsamba and the Head of CMI, Abel Kandiiho (hereinafter referred to as the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents respectively), seeking for orders and declarations from this Court as follows;

- 35           **1. A declaration that the intentional infliction of severe pain and suffering on the Applicant during his arrest and detention by the Respondents and/or their subordinates/officers through their actions and/or omissions including punching, kicking and pepper-spraying as well as tying and forcing the Applicant to assume a fixed and stressful body**  
40           **position, infringed on the Applicant's fundamental human rights to dignity and freedom from torture and cruel, inhuman and degrading treatment or punishment protected by Articles 20, 24, 44 (a) and (c) of the 1995 Constitution of Uganda.**
  
- 45           **2. A declaration that the intentional infliction of severe pain and suffering on the Applicant during his arrest and detention by the Respondents and/or their subordinates/officers through actions and/or omissions including punching, kicking and pepper-spraying as well as tying and forcing the Applicant to assume a fixed and stressful body position while denying him access to medication, doctors and medical**  
50           **professionals of his choice threatened his life and constituted a threat of his protection of the right to life under Articles 20 (2) and 22 of the 1995 Constitution of Uganda.**
  
- 55           **3. A declaration that the Respondents acted in contempt of Court and infringed the Applicant's right to effective remedy, right to administrative justice and right to personal liberty contrary to Articles 20, 23 (2), (3), (4) and (5) and 42 of the 1995 Constitution of Uganda,**

when they continued detaining the Applicant in defiance of a lawful unconditional release Court Order, issued by Nakawa Chief Magistrates Court in Misc. Cause No.36 of 2020 yet they had knowledge of the same.

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4. A declaration that the Respondents and their subordinates/officers infringed on the Applicant's right to be heard and right to liberty protected by Articles 28(1), (3) and 23 (2), (3), (4) and (5) and Article 43 (2) (b) of the Constitution of Uganda 1995, when they detained the Applicant incommunicado for ten (10) days in several places not authorized for detention by law, and without allowing him access to medical treatment of his choice.

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5. A Declaration that by making derogatory statements against the Applicant's tribe and cultural leaders during his arrest and detention, the Respondents and/or their subordinates/officers infringed on the Applicant's right to equality and nondiscrimination and right to culture protected by Articles 21(2), 37 and 44 (a) of the 1995 Constitution of Uganda.

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6. A declaration that by intentionally inflicting severe pain and suffering on the Applicant as well as making derogatory statements against the Applicant because of his subscription to the 'People Power' political movement during his arrest and detention, the Respondents and/or their subordinates/officers infringed on the Applicant's freedom of association and freedom from political persecution protected by Articles 29 (1) (e), 38 (1) and 43 (2) (a) of the 1995 Constitution of Uganda.

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7. A Declaration that by unlawfully entering into the Applicant's home in Mityana Municipality and conducting a search of the same without a search warrant, the Respondents and/or their subordinates/officers

85 infringed the Applicant's right to privacy protected by Article 27 of the  
1995 Constitution of Uganda.

8. An order permanently staying all criminal proceedings arising against  
the Applicant in connection with the Applicant's impugned arrest and  
torture by the Respondents and/or their subordinates/juniors.

9. An order that the Respondents, jointly and/or severally, compensate the  
90 Applicant with special, general, aggravated and punitive damages for  
their actions and/ or omissions complained of herein; and

10. An order awarding costs of this Application to the Applicant.

The grounds of this application are as laid out in the affidavit in support of the  
application by the Applicant and a supplementary affidavit by the Applicant's wife,  
95 Ms. Nnamirembe Bridget, but briefly are that;

i. The Applicant is an opposition-leaning independent Member of  
Parliament representing Mityana Municipality in Mityana District and also  
heads the Youth Wing of the 'People Power' movement, a political  
opposition group led by the former Kyaddondo East Member of  
100 Parliament, the Hon. Robert Kyagulanyi Ssentamu alias Bobi Wine.

ii. The 1<sup>st</sup> Respondent is the statutory legal advisor and representative of the  
Government of Uganda, sued directly and vicariously for the impugned  
actions and/or omissions against the Applicant by the Respondents and/  
or their subordinates/officers.

105 iii. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents are serving members or agents of  
the Uganda Police Force (UPF). They were sued in their individual  
capacity.

- 110 iv. The 7<sup>th</sup> Respondent is a serving member of the Uganda People's Defence Force (UPDF) and heads UPDF's Chieftaincy of Military Intelligence from where the Applicant was illegally detained and tortured on the night of the 19<sup>th</sup> April, 2020.
- 115 v. On the 19<sup>th</sup> April, 2020, the Applicant was inhumanly arrested from his home in Mityana District by a group of military and police officers led by Mityana District Police Commander Alex Mwine and Wamala Regional Police Commander Kagarura Bob.
- vi. A warrantless search was conducted at the Applicant's home by the Respondents and/ or their subordinates/officers during which some of the Applicant's property was either lost or destroyed during the process.
- 120 vii. The Applicant was later held incommunicado, tortured and detained without trial for ten days at several places including Mityana Police Station, UPDF's Chieftaincy of Military Intelligence Headquarters in Mbuya, Uganda Police Force's Special Investigations Unit Headquarters in Kireka, Iran- Uganda Friendship Hospital in Naguru and Kiruddu Hospital in Makindye, until the 29<sup>th</sup> April, 2020. Most of the places where the Applicant was detained are not gazetted detention facilities.
- 125 viii. On the 27<sup>th</sup> April, 2020, the Chief Magistrates Court of Nakawa issued an Order directing the Respondents and/or their subordinates/officers to unconditionally release the Applicant but they willfully defied the Court Order despite being aware of the same.
- 130 ix. Demonstrably, the impugned actions and/or omissions of the Respondents and/or their subordinates/officers infringed the Applicant's non-derogable rights as well as other fundamental human rights and freedoms protected by Articles 20(2), 21(2), 23(2), (3), (4) and (5), 24,27,

135           **28(1) and (3), 29(1) (e), 37, 38(1), 42, 43 (2) (a) and 44 (a) and (c) of the  
1995 Constitution of Uganda.**

x.   **The impugned actions and/or omissions of the Respondents and/or their  
subordinates/officers impaired the Applicant's health, threatened his life,  
infringed his dignity and caused him severe physical and psychological  
140   pain and suffering, humiliation and loss of self-worth, among other  
injuries.**

xi.   **The impugned actions and/or omissions of the Respondents are  
manifestly unacceptable, demonstrably unjustifiable in a free and  
democratic society and specifically go beyond the permissible exercise of  
145   the Respondents' law enforcement authority.**

xii.   **In order to promote national harmony, the rule of law and effective  
redress for the infringement of the Applicant's fundamental human rights  
and freedoms, it is imperative, just and equitable for this Court to grant  
the prayers sought.**

150   The Respondents through Mwine Mukono Alex, the District Police Commander  
Mityana District, Elly Womanya, Senior Commissioner, Ugandan Police Force and the  
Deputy Director, CID in charge of Special Investigations Division of Uganda Police  
Force, the 4<sup>th</sup> Respondent, Capt. Francis M. Okumu, an Investigator at CMI  
Headquarters, Clare Kukunda, a State Attorney in the 1<sup>st</sup> Respondent's Chambers,  
155   Mulungi Nsamba Haruna, a Detective of Uganda Police Force and the 7<sup>th</sup>  
Respondent, Hamdani Twesigye, a Detective Inspector of Police, stationed at the  
Special Investigations Division of Uganda Police Force, and the 6<sup>th</sup> Respondent,  
Mugisha Moses, a State Attorney in the 1<sup>st</sup> Respondent's Chambers, Walugembe  
Musa, the Assistant Superintendent of Police (ASP), in charge of the lock up cells at  
160   SID, and the 5<sup>th</sup> Respondent Bob Kagarura, Wamala Regional Police Commander and

2<sup>nd</sup> Respondent, filed affidavits in reply opposing this application and denying the allegations levied against them.

### **Background to the Application.**

165 Briefly, the background to this application is that the Applicant is a Member of Parliament representing Mityana Municipality in Mityana District. On the 19<sup>th</sup> April, 2020 between 1700 and 1800 hours, he was arrested while at his home in Mityana by the 2<sup>nd</sup>, 3<sup>rd</sup> and 7<sup>th</sup> Respondents for distributing food to the people without following the Ministry of Health Covid-19 Standard Operating Procedures and detained at Mityana Police Station. He was thereafter transferred to the Police  
170 Special Investigation Directorate (SID) at Kireka. It is the Applicant's contention that during his arrest, his house was searched without a search warrant and that while in police custody, he was beaten, kicked, his eyes sprayed with pepper, detained in ungazetted facilities and insulted for belonging to his tribe and political party.

175 On the 27<sup>th</sup> April, 2020, the Chief Magistrates Court of Nakawa ordered for the unconditional release of the Applicant, but he was instead released on a Police bond on the 29<sup>th</sup>/4/2020, hence this application.

### **Representation**

180 Learned Counsel Kiiza Eron from M/S Kiiza & Mugisha Advocates, represents the Applicant, while Counsel Johnson Natuhwera, a State Attorney from the Attorney General's Chambers appeared for the Respondents. Counsel for the parties filed their written submissions.

Issues for determination by this Court are: -

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1. Whether the Respondents' conduct amounts to torture or cruel, inhuman and degrading treatment or punishment of the Applicant.
  2. Whether the Respondents' conduct threatened the Applicant's right to life.
  3. Whether the Respondents were contemptuous of the Court Orders.

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  4. Whether the Respondents violated the Applicant's right to administrative justice and personal liberty.
  5. Whether the Respondents' conduct threatened or violated the Applicant's right to privacy.
  6. What remedies are available to the Applicant?

195 Counsel for the Respondents raised two preliminary objections in his submissions that: -

- i. The Human Rights (Enforcement) Act, 2019 is not applicable to this case.
- ii. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents are irregularly added to the application and should be struck off.

200 I will first address the preliminary objections raised.

**Preliminary objection 1: The Human Rights (Enforcement) Act, 2019 is not applicable to this case.**

### **Submissions**

Counsel for the Respondents submitted that the Human Rights (Enforcement) Act, 2019, under which this application was brought is not applicable in this case  
205 because there are no rules yet in place by the rules Committee to operationalize the



Act. He relied on **S.18 of the Human Rights (Enforcement) Act, 2019** and explained that at the moment, the Rules Committee has not yet come up with the rules to operationalize the Act. That in the absence of the Rules, considering the peculiar nature of the Human Rights (Enforcement) Act, there ought to be clear direction on how these matters should proceed. Counsel prayed that Court finds that the Human Rights Enforcement Act, 2019, for the reasons given is not applicable and the application should be dismissed for being brought under a wrong law.

In reply, Counsel for the Applicant submitted that an Act is not applicable merely because there are no rules by the Rules Committee. That the Courts have been rightly applying the law. He relied on S.14 of the Acts of Parliament Act, Cap 2 and submitted that the Human Rights Act, having been published in the Gazette on the 15<sup>th</sup> November, 2019 under volume CXII No.58 issue is now operational. That S.17 of the Act, adopts the Civil Procedure Act and the Rules thereto to the enforcement of human rights. Counsel further relied on Order 52 Rule 1 of the Civil Procedure Rules and Rule 7 of the Judicature (Fundamental Rights and Other Freedoms (Enforcement Procedure) Rules, 2019 and prayed that the preliminary objection raised by Counsel for the Respondents be over ruled with costs so that the matter is heard on merit.

## **Analysis**

**Article 79 (1) of the 1995 Constitution of Uganda** provides that;

**"Subject to the Provisions of this Constitution, Parliament shall have power to make laws on any matter for peace, order, development and good governance of Uganda."**

**S. 14 of the Acts of Parliament Act, Cap 2, provides that-**

(1) Subject to this section, the Commencement of an Act shall be such date as is provided in or under the Act, or where no date is provided, the date of its publication as notified in the Gazette.

235 (2) Every Act shall be deemed to come into force at the first moment of the day of enforcement. (see also MA No.3 of 2002, AG -v- DR. JAMES RWANYARARE & 9 others).

S. 18 of the Human Rights (Enforcement) Act, 2019 provides that subject to the provisions of this Act, the rules Committee may make rules to give effect to the provisions of this Act.

240 The above provisions of the law show that the Human rights (Enforcement) Act is operational. Although there is no commencement date of the Act, the date of gazeting, which is the 15<sup>th</sup> of November, 2019, now becomes the date of commencement of the Act under S.14(1) of the Acts of Parliament Act. Under S. 18 of the Human Rights (Enforcement) Act, 2019, it is not mandatory for the Rules  
245 Committee to come up with rules for the operationalization of the Act. I would therefore find no merit in the preliminary objection raised by Counsel for the Respondents and hereby overrule it.

**Preliminary Objection 2: The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents are irregularly added to the application and should be struck off.**

250 Counsel argued that the acts that the Applicant claims to have been done by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents were done in conduct of their official government duties for which S. 10 of the Government Proceedings Act provides that the Attorney General is the proper party to be sued. He relied on the case of *Muwonge -v- Attorney General, CA No.10 of 1996*, and *Kafumba Mukasa -v- AG*

255 **(1984) HCB 33**, where the Court recognized a master's liability for the acts of his  
servant committed within the scope of his employment and explained that in this  
case, all the alleged acts done by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents  
were done in the course of their official duties as members of the Uganda Police  
Force and their interaction with the Applicant was only limited to the events  
260 surrounding his arrest on suspicion of violation of laws made to limit the spread of  
Covid-19. Counsel further submitted that there are dangerous consequences for  
governance and effective administration of the Country if Police and other critical  
officers are held personally liable, especially in unverified circumstances such as  
these. That this would curtail government officials and agencies to act in the best  
265 interests of their professional duties in fear that they will personally be liable.  
Counsel prayed that this Court carries out an inquiry into the Applicant's allegations  
to find out whether they are true. He also prayed that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and  
8<sup>th</sup> Respondents be struck off the application with costs.

In reply, Counsel for the Applicant submitted that Counsel for the Respondent's  
270 reliance on S.10 of the Government Proceedings Act for the proposition that the  
Attorney General is the sole party to suits challenging human rights violations by  
government functionaries is mistaken, it is contrary to the Constitution and  
disregards the relevant statutory provisions and a catena of post 1995 jurisprudence  
on this matter. He averred that the Human Rights (Enforcement) Act, 2019 is not  
275 only a later Act but also a law specifically dealing with Human Rights violations. He  
relied on the case of ***Haj Kaala Ibrahim -v- The Attorney General and  
Commissioner General of URA MC No.23 of 2017***, where Court held that;

***"The principle of legislative interpretation is that once there is a specific  
legislation on any subject matter, it overrides a general legislation."***

280 Counsel explained that in this case, the Government Proceedings Act, Cap 77, is a  
general legislation that must give way to the Human Rights (Enforcement) Act, 2019,  
which specifically provides for the enforcement of human rights and freedoms  
pursuant to Article 50 of the Constitution of Uganda. Counsel argued that liability of  
Government for the human rights transgressions of its employees or functionaries is  
285 two-fold as one emanates from common law and later codified as well as direct-  
following from the Constitutional framework and human rights law. That the same  
was buttressed in the cases of *Rights Trumpet & 2 others -v- AIGP Asan Kasingye  
& 5 Others consolidated MC No.17 and 03 of 2017 and Jennifer Muthoni  
Njoroge & 10 others -v- Attorney General (2012) eKLR.*

290 Counsel also relied on **S. 10 (2) of the Human Rights Enforcement Act, 2019**,  
which provides that the cost of compensation to the victim of the abuse should be  
shared between the state and the officer who committed the abusive acts. He relied  
on the case of *Yahaya Lukwago & 4 others -v- James & 3 Others HCCS No.226  
of 2015*, where **Justice Musa Ssekaana** while granting damages to the plaintiffs,  
295 acknowledged the personal liability for infringement of rights and freedoms under **S.  
10 of the Human Rights (Enforcement) Act, 2019** and the case of *Rights Trumpet  
& 2 others vs AIGP Asan Kasingye & 5 Others supra*, where Court held that;  
*“whereas waiting for orders from above or acting on the instructions from  
above may be acceptable and applicable in reference to routine administrative  
300 functions within Uganda Police Force and other security agencies or forces, it is  
archaic, unacceptable and extraneous in the modern constitutional and human  
rights regime where states and their agencies are mandated by the Constitution  
to observe, uphold, protect and promote the universal human rights of citizens.  
Any officer who violates the rights of citizens on orders from above or under*

305 ***the pretext that he or she was waiting for orders from above does so at his own  
peril.***

Counsel submitted that even prior to the promulgation of the Human Rights  
(Enforcement) Act, 2019, Courts had guided legal practitioners to add perpetrators  
and their supervisors, of impugned actions as parties in their personal capacity so  
310 that they can face civil consequences for their willful disregard of fundamental rights  
and freedoms of the people and prayed that this Court finds this Objection baseless.

### **Analysis**

***S. 10(1) of the Human Rights (Enforcement) Act, 2019 provides that;***

315 ***“A public officer who individually or in association with others, violates or  
participates in the violation of person’s rights or freedoms shall be held  
personally liable for the violation notwithstanding the state being vicariously  
liable for his or her actions.”***

The same holding has been cited with approval in several cases including the case  
of ***Rights Trumpet & 2 others -v- AIGP Asan Kasingye & 5 Others (supra)***.

320 The above provisions of the law would therefore mean that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>,  
7<sup>th</sup> and 8<sup>th</sup> Respondents being public officers accused of violating the Applicant’s  
human rights by virtue of their offices, were rightly sued personally and jointly with  
the 1<sup>st</sup> Respondent under S.10(1) of the Human Rights [Enforcement] Act, 2019 for  
the alleged violations. Accordingly, this Preliminary objection fails and it is hereby  
325 overruled. I now turn to the substantive issues of the application.

**Issue 1: Whether the Respondents' conduct amounts to torture or cruel, inhuman and degrading treatment or punishment of the Applicant.**

### **Submissions**

330 Counsel for the Applicant relied on Articles 24 and 44 of the Constitution, S. 2 (1) and S. 1(2) of the Prevention and Prohibition of Torture Act, 2012 and submitted that the definition of torture set out in subsection (1) above does not include pain or suffering arising from, inherent or incidental to a lawful sanction. He relied on the case of *Attorney General -v- Salvatori and Anor SCCA No.1 of 1998*, pp.39 & 40  
335 and explained that Article 24 of the Ugandan Constitution was fortified when the Supreme Court held that;

*"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;*
- 340 *ii) Cruel punishment;*
- iii) Inhuman treatment;*
- iv) Degrading treatment; and*
- v) Degrading punishment.*

*Under Article 44 the protection from the seven conditions is absolute."*

345 Counsel further cited *Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights and Article 5 of the African Charter on Human and People's Rights* which prohibit subjection of anyone to cruel, inhuman and degrading forms of treatment or torture. He referred this Court to the case of *Ireland -v- United Kingdom ECHR Application No.5310/71* which was cited with approval by Justice Ssekaana Musa in *Issa*  
350

***Wazembe –v- Attorney General Civil Suit No.154 of 2016***, where Court explained the distinction between torture and inhuman or degrading treatment.

355 Counsel submitted that the fact that the Applicant was held incommunicado merits further consideration as torture in terms of International Human Rights law. That the United Nations Human Rights Committee has directed states to make provisions against incommunicado detention which can amount to a violation of Article 7 (torture and cruel punishment) of the International Covenant on Civil and Political Rights to which Uganda acceded.

360 Counsel referred this Court to the case of ***Uganda -v- Mulooki Henry (Criminal Session No.93 of 2017, where Justice Mutonyi*** held that;

***"Court, which has the Constitutional mandate to ensure that the fundamental rights and freedoms of individuals which are inherent and not granted by the State, cannot condone this heinous act of beating prisoners and act as if nothing wrong has happened... it is this Court's view that all responsible persons must join hands to end the horror of torture in Government prisons or any facility of incarceration. This Court emphasizes that as a crucial first step the Government must be held accountable for victims of torture in all Government gazetted places of custody as torture is not part of the sentence."***

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370 While relying on paragraphs 7 and 15 of the Applicant's affidavit in support of the application, Counsel explained that it is established that the 2<sup>nd</sup> Respondent hit the Applicant in the rib with what appeared to be a radio call and kicked him in the leg causing him excruciating pain when the Applicant requested for a warrant of arrest and whether the same had been sent to Parliament.

Under paragraph 20 of the same affidavit, the Applicant states that while he was  
375 hand cuffed, he heard the 2<sup>nd</sup> Respondent telling one of the officers that "make sure  
he doesn't see" and thereafter, the Applicant saw the 2<sup>nd</sup> Respondent hand two cans  
containing unknown chemical to the officers and the chemical was sprayed into his  
eyes. The Applicant felt a lot of pain and itching and he lost his sight. That this is  
corroborated by paragraphs 8 and 26 of the supplementary affidavit of Nnamirembe  
380 Bridget and annexure BN-10 which is a copy of the Referral form from Nsambya  
Health Centre IV, signed by Dr. Kato, indicating that the Applicant was being  
referred to the aforesaid Health Centre for "ophthalmologist review due to failure to  
open his eyes for a week". Counsel further referred this Court to paragraph 21 of the  
Applicant's affidavit in support of the application which states that under the orders  
385 of the 2<sup>nd</sup> Respondent, a group of officers grabbed the Applicant's legs and dragged  
him out towards what he believes to have been a police truck. That the officers then  
chained his legs together and tied his hands with a rope, then they held him by the  
chain and rope, lifted him up and threw him under the seats behind the truck. That  
the 2<sup>nd</sup> Applicant's actions against the Applicant, while he was in his custody,  
390 amounted to torture or cruel, inhuman and degrading treatment or punishment and  
violated the Applicant's freedoms protected under Articles 20 (2), 24, 44(a) and (c) of  
the 1995 Constitution of the Republic of Uganda.

In reply, Counsel for the Respondents submitted that the 2<sup>nd</sup> Respondent accessed  
the Applicant's house through a one DAN who notified the Applicant of the Police's  
395 presence at his home. That the Applicant allowed the Respondents into his house.  
That while in the house, the Applicant was informed of his arrest and the reasons for  
the arrest and that he was then led out of his house without any police officer  
beating or touching him. That there was no scuffle as the Applicant was taken to a  
Police Double- Cabin pick up. (See paragraphs 8, 9, 10, 11, 12, 13 and 14 of the 2<sup>nd</sup>



400 Respondent's affidavit in reply and paragraph 12 of the 3<sup>rd</sup> Respondent's affidavit in reply. Counsel submitted that the above is supported by the NTV News video clip depicting the Applicant's arrest. That the Applicant was handcuffed and placed in the vehicle whereupon the 2<sup>nd</sup> Respondent drove to Mityana Police Station.

Counsel explained that paragraphs 4,5,6,7, 8, 9,10,11,12, 13-20 of the Applicants  
405 affidavit in support of the application are falsehoods intended to present drama and as such this Court should not consider them. He relied on the case of *Lucas Marisa -v- Uganda Breweries Ltd [1988-1990] HCB at pg 132*, where it was held that;

*"Statements contained in affidavits are not to be taken as gospel truth. The inherent and intrinsic probability has always to be looked into under the totality  
410 of circumstances before accepting them as prima facie evidence of certain facts."*

Counsel referred this Court to the 4<sup>th</sup> Respondent's affidavit in reply showing that the Applicant had complained of beatings to the 4<sup>th</sup> Respondent and that indeed the 4<sup>th</sup> Respondent noticed bruises on the Applicants wrists and forehead. It was  
415 Counsel's submission that this implied that some beatings or torture could have occurred on the 19<sup>th</sup> April, 2020 while at Mityana Police Station in custody of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

### **Analysis**

*Torture is defined under S. 2 of the Prevention and Prohibition of Torture Act,  
420 2012 as an act or omission, by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person whether a public official or other person acting in an official or private capacity for such purpose as;*

425 (a) *Obtaining information or a confession from the person or any other person;*

(b) *Punishing that person for an act he or she or any other person has committed, or is suspected of having committed or of planning to commit; or*

430 (c) *Intimidating or coercing the person or any other person to do, or to refrain from doing, any act.*

*Article 24 of the 1995 Constitution of Uganda provides that;*

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

Article 44 (a) of the Constitution provides that;

435 "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."

440 In the case of *Attorney General –v- Salvatory Abuki and Anor SCCA No.1 of 1998*, Court held that;

*"Article 24 of the Ugandan Constitution provides that 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*

445 *disinjunctively. Thus read, the Article seeks to protect the citizens from several different conditions of torture, cruel treatment, cruel punishment, Inhuman treatment, Inhuman punishment, degrading treatment and degrading punishment. Under Article 44 the protection from the seven conditions is absolute."*

Oder JSC stated in *Attorney General -v- Salvatory Abuk (supra) that;*

450 *"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 questions of justification can ever arise."*

455 In the instant case, the Applicant's claim is that he was tortured by the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents during his arrest at Mityana, while in Police custody at Mityana, at SID-Kireka and at CMI in Kampala. Annexures BN-2(1), BN-2(2), BN-2(3), to the supplementary affidavit in support of the application by Bridget Nnamirembe show healing wounds on various body parts of the Applicant. The  
460 report by the Minister of Internal Affairs to the Rt. Hon. Speaker of Parliament, dated 6<sup>th</sup>/06/2020 (annexure BN-9 to the supplementary affidavit of Nnamirembe, at page 12 paragraphs 6.5(i) & (ii) show that the Applicant had bruises on his body) and annexure BN-5 shows that the Applicant was released on a Police bond on the 29<sup>th</sup>/04/2020. Annexure "A" to the Applicant's affidavit in rejoinder is a report from  
465 the African Centre for Treatment and Rehabilitation of Torture Victims (ACTRTV), dated 9<sup>th</sup>/9/2020, showing on page 10 that the Applicant had symptoms consistent with torture and ill treatment (see paragraph 1 on page 10). The video clip showing the arrest of the Applicant and another one showing the Applicant hospitalized

(annexures "C" & "B") to the affidavit in re-joinder, show that at the time of his  
470 arrest, the Applicant had sound sight and was not in pain as compared to the time  
of hospitalization when he has closed his eyes in pain, with injuries all over his body.  
The above evidence leaves me with no other option but to arrive at a conclusion  
that the injuries inflicted on the Applicant were sustained while the Applicant was in  
Police custody. This is fortified by the fact that the Applicant was released on police  
475 bond on the 29<sup>th</sup>/4/2020 and admitted at Lubaga Hospital on the same date (see a  
report from Lubaga Hospital attached to the Applicant's affidavit in re-joinder) with  
the said injuries on his body.

What I have to establish now is whether or not the officers named in the application  
are individually responsible for the Applicant's torture.

480 **S.101 of the Evidence Act provides that whoever desires any court to give  
judgment as to any legal right or liability dependent on the existence of facts  
which he or she asserts, must prove that those facts exist.**

Annexure "C" to the Applicant's affidavit in re-joinder is a video clip showing the  
Applicant during his arrest. At this point the Applicant moved to the Police vehicle  
485 without any evidence of torture. He is seen and heard telling the Police that if his  
arrest was in respect of giving out food, then he would give it out. Paragraphs 13 to  
24 of the Applicant's affidavit in support of the application alleging torture by the  
2<sup>nd</sup> Respondent are not backed up by any evidence. It would appear from the  
finding of the report to the Rt. Hon. Speaker of Parliament (page 12 paragraph 6.2),  
490 that there was a CCTV footage of four vehicles showing transmission of the  
Applicant to Kampala. This footage was not presented to Court. This created a gap  
in the evidence to establish the state in which the Applicant was when leaving  
Mityana Police where the 2<sup>nd</sup> Respondent was in charge. The Applicant has not also

presented any other evidence specifically pointing at any of the Respondents for  
495 orchestrating his torture. Therefore, I find that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> & 8<sup>th</sup>  
Respondents cannot be held personally liable under S. 10(1) of the Human Rights  
(Enforcement) Act, 2019. This now leaves the 1<sup>st</sup> Respondent responsible in his  
representative capacity for the torture of the Applicant while in Police custody under  
Art. 119 (4) of the 1995 Constitution of Uganda and Section 3 (1) of the Government  
500 Proceedings Act. (See also the cases of *Abdalla Byabashaija -v- Attorney General  
HCCS No.243 and Jenifer Mutoni Njoroge & 10 others -v- Attorney General  
(2012) e KLR*). Having found as above, I would answer the 2<sup>nd</sup> issue in the  
affirmative.

### **Issue 3: Whether the Respondents acted in Contempt of Court**

505 Counsel submitted that on the 27<sup>th</sup> April, 2020, Court issued an order vide *MC  
No.36 of 2020; Hon. Zaake Francis -v- Attorney General & 2 others*, for the  
unconditional release of the Applicant. The Respondents were aware of the same  
but disregarded it by detaining the Applicant until the 29<sup>th</sup> April, 2020 when he was  
conditionally released by signing a police bond form.

510 He referred this Court to **Halsbury's Laws of England Volume 1(1) 2001 paragraph  
458** where Contempt of Court is defined as a refusal or neglect to do an act  
required by a judgment or order of Court within the time specified in the judgment  
or to disobey a judgment or order, requiring a person to abstain from doing a  
specified act; and the case of *Stanbic Bank (U) Ltd and Anor -v- Commissioner  
515 General, Uganda Revenue Authority HCMA No.42 of 2010*.

Counsel also relied on the case of *Barbra Nambi -v- Raymond Lwanga, MA  
No.213 of 2017*, where court laid out the principles to be considered in establishing

what amounts to contempt. He explained that although the Respondents were aware of the Court order, they did deliberately decline/refuse to obey it.

520 In reply, Counsel for the Respondents, contended that all the Court Orders regarding the Applicant were complied with. That the Court order from Nakawa, directed that the Applicant to be either charged or released. That on the 27<sup>th</sup> April, 2020, in compliance with the Court order in MA No.36 of 2020, the Applicant was charged before the Chief Magistrate's Court at Mityana. Mityana Court did not order for the  
525 release of the Applicant but it requested the Respondents to take him for medical treatment before Court could allow him to take plea. On the 29<sup>th</sup> April, 2020, the Applicant was released on Police bond. Counsel explained that the above actions of charging the Applicant at Mityana Court and releasing him on police bone were in compliance of the Nakawa Court order and were done before this application was  
530 filed in this Court on the 6<sup>th</sup> May, 2020 and as such, the Respondents were not in contempt of the court orders.

### **Analysis**

**Black's Law Dictionary (10<sup>th</sup> Edition at page 385)**, defines contempt of Court as;

535 **"Conduct that defies the authority or dignity of a Court. Because such conduct interferes with the administration of justice, it is punishable usually by a fine or imprisonment."**

According to **Halsbury's Laws of England, 4<sup>th</sup> Edition at page 284 paragraphs 458;**

540 **"It is a civil contempt to refuse or neglect to do an act required by a judgment or order of the Court within the time specified in that judgment, or to disobey a judgment or order requiring a person to abstain from doing a specific act."**

When dealing with the issue of contempt of Court, the complainant must show to Court that there was a lawful order, the person accused of the contempt had knowledge of the order and that he/she failed to comply with the said order of court. (*See the case of Stanbic Bank (U) Ltd & Anor -v- The Commissioner General Uganda Revenue Authority MA No. 42 of 2010 and the case of Hon. Sitenda Sebalu -v- Secretary General of The East African Community Reference No.8 2012 Arising out of Reference No.1 of 2010 and Taxation Reference No.1 of 2011*).

In this case, it is not in dispute that the responsible officers of the 1<sup>st</sup> Respondent were aware of the court order issued by Nakawa Chief Magistrates Courts. This order dated 27<sup>th</sup> April 2020 directed the 1<sup>st</sup> Respondent to unconditionally release the Applicant from Police Custody or formally charge him before a competent Court of law. The Applicant was charged before Mityana Chief Magistrate, (see paragraphs 9, 10, 11 and 12 of Mugisha Moses' affidavit in reply). Mityana Chief Magistrate declined to take plea and directed that the Applicant be taken for medical treatment. It is the evidence of Mugisha Moses in paragraphs 12 and 13 of his affidavit in reply that the Applicant was taken to Mulago as directed by Mityana Chief Magistrate. That the Applicant was examined by a medical officer from Mulago Hospital but he opted to have his personal Doctors attend to him. This is when he was granted a police bond on the 29<sup>th</sup>/4/2010 so as to access medical treatment. Given the fact that the Court Order to release or charge the Applicant in Courts of law were issued by Nakawa Chief Magistrates Court on the 27<sup>th</sup> /04/2020 and the Applicant was charged before Mityana Chief Magistrate's Court, taken for medical treatment as directed by Mityana Court and subsequently released on a police bond on the 29<sup>th</sup>/04/202, (within a period of 2 days after the order giving the alternative of having the Applicant formally Charged in a Court of law), it is my view and

finding that the responsible officers of the 1<sup>st</sup> Respondent complied with the Court Orders, especially considering the fact that the Applicant had to be charge before Mityana Court in whose jurisdiction the alleged offences against him are said to have occurred and he had to be moved from Kireka SID where he was in detention to Mityana. Considering the distance and process of movement, it is my view that a time lag of two days does not show disobedience of the Court Ourders.

#### **Issue 4. Whether the Respondents violated the Applicant's personal liberty**

Counsel for the Applicant relied on Article 23 of the Constitution. He relied on paragraphs 34, 38 and 39 of the Applicant's affidavit in support of the Application which show that the Applicant was detained at Kireka Special Investigations Unit, a safe house and unauthorized place for detention. That Article 23 (4) (b) of the Constitution guarantees that a person detained or restricted on suspicion of having committed an offence must be taken to Court not later than 48 hours. That the Applicant was detained in a non-authorized place of detention without either being set free or taken to Court within the 48 hours required by law. Further, that Article 23 (5) (a) of the Constitution requires that an arrested person be allowed to inform his next-of kin/family that he has been arrested, failing of which is a violation. Counsel submitted that the above actions of the 1<sup>st</sup> Respondent's officers violated the Applicant's right to liberty and could not meet the standards of Article 43 of the Constitution.

#### **Analysis:**

***Article 23 of the 1995 Constitution provides for personal liberty.***

***Article 23(4) (b) provides that a person arrested or detained upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the laws of Uganda, shall, if not earlier released, be brought to***



***Court as soon as possible but in any case not later than forty-eight hours from the time of his or her arrest.***

In this case, the Nakawa Court Order is enough evidence to show that the Applicant  
595 was in Police custody for more than the stipulated period of 48 hours without being  
arraigned before Court.

***Under Article 23(5) (a), the next of kin of the arrested person shall, at the request of that person, be informed as soon as practicable of the restriction or detention, failing of which is a violation.*** In this case, the Applicant has not  
600 presented evidence to show that he requested that his next of kin be notified of his  
arrest and his request was declined. Be that as it may, paragraphs 3, 4 and 6 of  
Nnamirembe Bridget's supplementary affidavit show that the Applicant was arrested  
from his home in Mityana in her presence and taken to Mityana Police. (Annexure  
BN-1 to the supplementary affidavit by Nnamirembe Bridget, the affidavit in support  
605 of the Motion in MA No.36 of 2020, Zaake Francis -v- The Attorney General & 2  
others, at the Chief Magistrate's Court Nakawa.) by Hon. Mwiru Paul also shows that  
the Applicant was visited while in police custody.

On the ground of the Applicant being detained in an ungazetted facility, the  
Applicant has not presented evidence to show that Kireka SID, where the Applicant  
610 was detained is an ungazetted facility or that the Applicant was detained in any other  
ungazetted detention facility.

615 **Issue 5 Whether the Respondent's Conduct threatened or violated the Applicant's Freedom of Association or constitutes Political persecution.**

Counsel for the Applicant submitted that freedom of association is a right to join others in a common undertaking that would be lawful if pursued individually. Or a civil liberty in so far as it contemplates the ability of persons to form associations without intervention. He referred this court to the 10<sup>th</sup> edition of the Black's law Dictionary at page 779 and Article 29(e) of the Constitution. He explained that freedom of association also includes freedom to form and join associations including trade unions, political and other civic organizations as provided for under Article 22 of the International Covenant on Civil and Political Rights (ICCPR). He relied on the case of *Ournio Toxo and Others vs Greece, Application No.74989/01, 20 October*  
620 *2005, para.40 (European Court of Human Rights) page 7-9.*

Counsel further explained that under paragraphs 22, 29, 31,41,42,45 and 47 of his affidavit in support of the Motion, the Applicant states that he heard the second Respondent say that; "*you Baganda are a problem here and you think you will ever rule this Country; we are going to teach you a lesson.*"

630 That according to the Applicant, the above statement implied that he was being punished for belonging to a political group that the Respondents did not subscribe to. That the Respondents kept on referring to Kyagulanyi Robert the head of People Power as a dog (see paragraph 29 of the Applicant's affidavit in support of the application). That under paragraph 31 the Respondents are said to have asked the Applicant to call his King, the "Kabaka" as they had earlier seen him report about the torture of the Baganda. Under paragraphs 41, 42 and 42, the 6<sup>th</sup> Respondent is said to have asked the Applicant to leave politics. Counsel submitted that the arrest and detention of the Applicant was intended to punish and dissuade him from his cultural and political associations, thoughts and opinions.

640 Counsel went on to define persecution as the infliction of suffering or harm upon those who differ (in race, religion or political opinion) in a way regarded as offensive. That persecution is found only when there is a difference between the persecutor's views or status and that of the victim. It is oppression which is inflicted on groups or individuals because of a difference that the persecutor will not tolerate he relied on  
645 the case of *Desir n Ilchert, No.86-2064 United States Court of Appeals, Ninth Circuit 1987* and submitted that the contents of paragraphs 22, 29, 31 and 45 of the Applicant's affidavit in support of the application is evidence that the political persecution suffered by the Applicant at the hands of the 1<sup>st</sup> Respondent and his agents were due to his political choice and cultural belonging.

650 In reply, Counsel for the Respondents submitted that the Applicant was lawfully arrested for flouting the Covid-19 guidelines and not because of his tribe or political affiliations. That the Applicant's political and/or cultural activities are not restricted. He explained that the words alleged to have been uttered under paragraphs 22, 29, 31, 42, 45 and 47 of the Applicant's affidavit in support of the application are  
655 falsehoods. That the Applicant claims that the events occurred while he was in detention at CMI, yet he was never at CMI. Counsel prayed that this issue be answered in the negative.

### **Analysis**

***Article 29 (1) (e) of the 1995 Constitution provides that;***

660 ***"Every person shall have the right to freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organizations."***

Annexure "C" to the affidavit of Nnamirembe Bridget, (the video clip) shows the Applicant uttering the following words;

665 ***“if it is about giving out food, I will give it out. This is funny. People are starving and you are just arresting those who are giving out food.”***

The above words show that the Applicant was aware that the reason for his arrest was in regard to the distribution of food. It is the Respondents claim that the Applicant was in violation of the Covid-19 Standard Operating Procedures (SOPs).  
670 I’m convinced from the above evidence that the Applicant’s arrest arose out of his distribution of food rather than his political or tribal affiliations. Therefore, the 1<sup>st</sup> Respondent’s officers did not violate Article 29(e) of the 1995 Constitution.

**Issue 6: Whether the Respondents’ conduct threatened or violated the Applicant’s rights to privacy.**

675 Counsel for the Applicant submitted that Police Officers made an unlawful entry into the Applicant’s premises contrary to Article 27(1) (b) of the Constitution. That the Respondents also interfered with the Applicant’s right to privacy contrary to Article 27 (2) of the Constitution and that the Respondents unlawfully searched the Applicant’s house contrary to Article 27(1) (b) of the Constitution. He relied on  
680 paragraphs 2-5 of the Applicant’s affidavit in support of the Motion and annexure “ZF-1” a picture of a broken door and explained that the same is corroborated by paragraphs 4 and 5 of the supplementary affidavit of Nnamirembe Bridget.

Counsel submitted that the law on searches is well settled under Article 27(1), of the Constitution and S. 27 of the Police Act. That the exercise of a search should be  
685 carried out in accordance with the law and that a search conducted without strict observation of the law is illegal as held in ***Kifampa Siraje & Yusuf Musa Musuda vs Attorney General, High Court Misc. Course No.154 of 2017 at page 14*** and ***Monitor Publications Ltd –v- Attorney General Civil Suit No.747 of 2013 page 19.***

690 Counsel prayed that Court finds that the Applicant's right to privacy was violated by the Respondents.

In reply, Counsel for the Respondents relied on the case of ***Baguma Mugarama -v- Uganda Revenue Authority HCCS No.93 of 2014*** that;

695 ***"The right to privacy is not unlimited and can be limited where it is fair and justifiable in an open and democratic society. Therefore, the law allows searches and seizures where there is probable and reasonable basis or suspension in order to facilitate criminal investigation."***

He explained that in this case, the 3<sup>rd</sup> Respondent only entered the Applicant's premises for the purpose of arrest and there was no order of a search made by the 3<sup>rd</sup> Respondent to his subordinates. Counsel prayed that Court finds this issue in the  
700 negative.

### ***Analysis.***

Article 27 of the Constitution provides for a right to privacy of a person, home and other property. In this case, the 2<sup>nd</sup>, 3<sup>rd</sup> and 7<sup>th</sup> Respondents entered the Applicant's premises for the purpose of arresting him for violation of the Covid-19 guidelines.  
705 Annexure (C), the video clip shows the Applicant acknowledging that he had distributed food to members in his constituency and that he finds nothing wrong with it and yet in the Respondents' view, the Applicant's actions were in violation of the Covid-19 Standard Operating Procedures.

Under Article 23(4) (b) of the Constitution, a person can be arrested upon  
710 reasonable suspicion for having committed an offence (see also the case of ***Issa Wazembe -v- Attorney General Civil Suit No.154 of 2016***). It is my finding in this

case that the Respondents were justified to access the Applicant's premises under Art. 23(4) (b) of the Constitution.

**Issue 7: Whether there are any remedies available to the parties**

715 Counsel for the Applicant relied on Article 50(1), 23(7) and 126(2) of the 1995 Constitution of Uganda, Article 8 of the Universal Declaration of Human Rights (UDHR), Article 2 (3) (a) of the International Covenant on Civil and Political Rights (ICCPR) and Section 3 and 9 of the Human Rights (Enforcement) Act, which all provide for compensation in case of violation of one's human rights. He also relied  
720 on the case of *Osotraco Limited -v- The Attorney General HCCS No.1380 of 1986 at.p.12* where **Egonda Ntende, J;** (as he then was) held in regard to Art. 50 of the 1995 Constitution that;

**"redress in my view refers to effective redress and nothing short of that. A less than appropriate remedy is not effective redress."**

725 And the case of *Issa Wazembe v Attorney General (supra)*, where Justice Ssekana while citing **McGregor on damages, 14<sup>th</sup> Edition** stated that;

*"There is no specific formula or detail of how the damages are worked out in cases of torture or inhuman and degrading treatment; generally, it is not a pecuniary loss but a loss of dignity or suffering or injury. The principal heads of  
730 damages would appear to be injury and liability, loss of time considered primarily from a non-pecuniary view point and injury to feelings that is the indignity, mental suffering, distress and humiliation with any attendant loss of social status."*

Counsel submitted that the instant case involves denigration, indignity, degradation  
735 of both physical and psychological torture of a Member of Parliament by officers of

the Uganda Police Force who are enjoined to observe and protect human rights under Article 221 of the Constitution. He prayed for UGX 400,000,000/= (Four Hundred Million shillings only) for the unjustifiable violation of the Applicant's Human Rights, Punitive/exemplary damages of UGX.100, 000,000/= (One Hundred  
740 Million shillings only) for the Respondent's arbitrariness, impunity and to serve as a lesson not to repeat human rights violations and costs with a certificate of two Counsel.

In reply, Counsel for the Respondents cited the case of *Stroms -v- Hutchinson [1905] AC 515*, where Lord Macnaghten stated that;

745 '*General damages are such as the law will presume to be direct, natural or probable consequence of the act complained of. General damages relate to all other items of damage whether pecuniary or non-pecuniary.*'

He also relied on *Matovu Adam Muhammad & 5 others -v- Kyambogo University, HCCS No.3 of 2016*, where Court held that;

750 "*Damages are usually incapable of precise assessment and Court by any arithmetic calculation cannot establish the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reasons of actions of another. However, as long as the plaintiff has proved facts on which approximation can be based, the Court must award a reasonable  
755 sum as damages, unless of course, there is a public policy consideration which prevents such a plaintiff from claiming damages on the facts of the particular case. Damages should not be awarded from sentimental consideration.*"

Counsel argued that the Applicant has not presented verifiable facts which could be a proper assessment of any damages and has failed to prove any alleged violation

760 of rights. That the Respondents did not violate any of the Applicant's rights enshrined in the cited Articles. He prayed that should this Court find the Application in favor of the Applicant, then the claim for the general and punitive damages should be found to be manifestly high and excessive.

### **Analysis**

765 **Article 50(1) of the 1995 Constitution of Uganda provides that any person who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.**

In *Issa Wazembe -v- Attorney General CS No. 154 of 2016*, Musa Ssekaana, J, cited with approval *Jennifer Muthoni & 10 Ors -v- AG of Kenya [2012] eKLR*, a case for enforcement of rights and freedoms where court cited Pilkington, Damages as a Remedy for Infringement of the Canadian Charter and Freedoms [1984] 62 Canada Bar Review 517, noting that;

775 *"it is said that the purpose of awarding damages in constitutional matters should not be limited to simple compensation. Such an award, ought in proper cases to be made with a view to deterring a repetition of breach or punishing these responsible for it or even securing effective policing of the constitutionally enshrined rights by rewarding those who expose breach of them with substantial damages."*

780 In awarding damages in cases of human rights violations, Courts can only use their legal expertise to determine what compensation is fair and reasonable. This may vary from case to case but in doing so, the courts must promote a degree of



consistency from one case or type of case to the next to avoid pitfalls. (See **Rees vs. Darlington Memorial Hospital NHS Trust (2003) UKHL 52 per Lord Nicholls of Birkenhead**) cited in **Jennifer Muthoni Njoroge & 10 Others –v- Attorney General [2012] ekr.**

In the case of **Issa Wazembe –v- Attorney General, (supra)**, Court awarded a sum of UGX 120.000.000/- as compensation for violation of his constitutional rights against torture and cruel, inhuman or degrading treatment, in that case, the plaintiff had lost his limb due to the torture.

In this case, a report from the African Center for Treatment and Rehabilitation of Torture Victims (annexure "A" to the Applicant's affidavit in rejoinder), has the Doctor's recommendation showing that the Applicant is in a great need of regular medical and psychological interventions, like physiotherapy of his back and the lower limbs together with verbal individual supportive therapy with psychoeducation and regular reviews by ophthalmologist.

In view of the above findings, this petition succeeds in part and this court now makes the following orders and declarations: -

- 1. A declaration be and is hereby issued that the infliction of pain and injury on the Applicant during his detention by the Police infringed on his fundamental human rights to dignity and freedom from torture and cruel, inhuman or degrading treatment or punishment protected under Articles 20, 24, 44 (a) of the 1995 constitution.**
- 2. A declaration be and is hereby issued that the period between the 19<sup>th</sup>/04/2020 and the 29<sup>th</sup>/04/2020, 10 days, that the Applicant was detained for more than 48hrs before he was arraigned in the Chief**

**Magistrate's Court at Mityana, constituted unlawful and illegal detention and was in violation of his personal liberty under Article 23(4) (b) of the Constitution of Uganda.**

810 **3. It is hereby ordered that the 1<sup>st</sup> Respondent pays a sum of UGX 75,000,000/- [Seventy-five Million Shillings only] to the Applicant in compensation of violations of his rights and freedoms.**

**4. The 1<sup>st</sup> Respondent pays the costs of this application.**

**5. Certificate of two Counsel is not granted.**

815 **I so order.**

**Dated, signed and delivered on line at Kampala, this 9<sup>th</sup> day of August, 2021.**

**Esta Nambayo**

**JUDGE**

820 **9<sup>th</sup>/08/2021.**