



b) That the Respondents jointly and/or severally be directed to pay the plaintiff compensation in general and punitive damages for the violation of the Applicant's Constitutional human rights.

[3] The grounds of the application are outlined in the affidavit in support of the application deposed by the Applicant, which in brief are:

1. *On the 16<sup>th</sup> day of March 2018, at Masindi General Hospital, the Applicant was wantonly and severely beaten up by the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondents rendering him semi-conscious.*
2. *That as a result of the said torture, the Applicant sustained grave body injuries including but not limited to fractured bones, occasioning the Applicant permanent incapacity, psychological and mental anguish.*
3. *That immediately after beating the Applicant, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents carried him to Masindi Chief Magistrate's court in the company of one bailiff identified as **Florence** where he was produced before a Magistrate Grade One and committed to civil prison-Masindi as a debtor while still in intense pain.*
4. *That the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondents further tortured the Applicant when they carried him to custody in Masindi Government prison while the wounds were still fresh and bleeding profusely, where the officer in charge upon seeing the state of the Applicant, rejected him and ordered that he be taken back to court.*
5. *That the manner in which the Applicant was treated by the 2<sup>nd</sup>-4<sup>th</sup> Respondents constituted a violation of the Applicant's fundamental rights and freedoms under **Articles 20, 24 and 44 of the Constitution 1995** and the 1<sup>st</sup> Respondent is vicariously liable.*

[4] In opposition to the application, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed their respective affidavits in reply. The 1<sup>st</sup> Respondent through **Asp. Atukunda Edwin** who by the year 2018 was O.C station Masindi Central

police station and the 2<sup>nd</sup> Respondent, **Magezi David**, a police officer at Masindi police station, denied any violation of the Applicant's fundamental human rights by beating up the Applicant on the 16/3/2018. It was the 2<sup>nd</sup> Respondent's contention that the applicant only wanted to enrich himself using this application.

- [5] Both deponents however, admitted that together with other police officers participated by reinforcing a court bailiff **Katushabe Flora** in execution of a warrant of arrest against the Applicant who was a judgment debtor. That the Applicant judgment debtor resisted arrest and was violent but however, using reasonable force, they took him to court where he appeared before a Magistrate and was committed to civil prison.

#### **Counsel legal representation**

- [6] The Applicant was represented by **Ms. Evona Kabatesi** of **M/s Rwakafuuzi & Co. Advocates, Kampala** while the 1<sup>st</sup> Respondent was represented by **Mr. Allan Mukama** and **Ms. Sarah Bingi** both of the **Attorney General Chambers** and then **Mr. Lubega Willy** of **Ms. Lubega, Babu & Co. Advocates, Kampala** represented the 2<sup>nd</sup> Respondent.

#### **Issues for determination by court**

- [7] 1. Whether the Application is competent.  
2. Whether the Applicant's right to freedom from torture, cruel inhuman or degrading treatment was violated by the agents of the Respondent.  
3. What remedies are available to the parties.

## **Resolution of Issues**

### **Issue No.1: Whether the Application is competent.**

[8] Counsel for the 1<sup>st</sup> Respondent submitted that the application violates the provisions the provisions of **O.49 r.2 CPR** when read together with **O.5 r.1 (2) CPR** which require the application to be served upon the Respondent within 21 days from the date of issue. Counsel relied on two authorities of **Michael Mulo Mulaggussi Vs Peter Katabalo H.C Misc. Appeal No.006 of 2016** and **Edson Kanyabwera Vs Pastori Tumwebaze (2005) E.A 86**.

That the instant case, the Notice of Motion was duly endorsed by the Deputy Registrar on the **18/9/2018** and was served on the 1<sup>st</sup> Respondent on **17/3/2020** after a period of 1 year and 6 months from the date the Application was endorsed by the Deputy Registrar, which period is outside the prescribed time, without seeking extension of time. Counsel argued that upon failure by the Applicant to serve the Application within the time prescribed by the rules, this court is obligated to dismiss the instant application.

[9] In the Applicant's submissions in rejoinder, counsel for the Applicant submitted that **O.49 r.2** and **O.5 r.1 CPR** do not apply to Miscellaneous applications and causes and relied on the authorities of **R.H.K Ddungu Vs The Co.op.Bank Ltd (in liquidation) H.C.Misc. Cause No.33 of 2012** and **Kazooba Francis Vs M.K Creditors and 2 Ors H.C.M.A No. 3/2016 and No. 539/2016**.

[10] It is the 1<sup>st</sup> Respondent's case that this application violates the provisions of **O.49 r.2 CPR**. It provides thus;

*"All orders, notices and documents required by the act to be given to or served on any person shall be served in the manner provided for service of summons" (emphasis)*

The procedure for service of summons is governed by **O.5 r.1, 2 CPR** which provides thus:

*“service of summons issued under sub rule (1) of this rule shall be effected within twenty-one days from the date of issue; except that the time may be extended on application to the court made within fifteen days after the expiration of the twenty-one days showing sufficient reasons of the extension.”*

[11] In **Michael Mulo Mulaggussi Vs Peter Katabalo (supra)** Hon. Justice Henry I. Kaweesa while facing a similar application observed that this provision means that the reference to the procedure of service of summons under **O.5 r.1(2) (2) CPR** applies to service of hearing notices and applications for purposes of the provisions relating to the issuance and service.

[12] This court is not ready to depart from the above proposition because the Supreme Court authority of **Edison Kanyabwera Vs Pastori Tumwebaze (supra)** which held that this rule is of strict application is binding on this court. I don't have any reason to depart from the above decision. The claims in **R.H.K Ddungu Vs The Co-op.Bank Ltd (supra)** that the legislation did not intend service of motion or chamber summons to be made within 21 days of the issuance and in **Kazooba Francis Vs M.K Creditors & 2 Ors (supra)** that it has to be first shown that the aggrieved party was inconvenienced by the service and therefore the omission to serve in the prescribed time should be treated as a mere technicality are not convincing. I decline to follow the propositions made in these 2 authorities.

[13] In this case, the Notice of Motion was duly endorsed by the Assistant Registrar of this court on **18/9/2018** and service upon the 1<sup>st</sup> Respondent having been effected on **17<sup>th</sup>/3/2020** after a period of 1

year and 6 months from the date the application was endorsed by the Assistant Registrar, service was definitely outside the prescribed time and since this was conceded by the applicant and there was no application for extension of time, this renders this application liable for dismissal and I would accordingly dismiss it with costs to the 1<sup>st</sup> Respondent. However, for purposes of completeness of the application I proceed to handle and tackle the remaining issues.

**Issue No.2: Whether the Applicant's right to freedom from torture, cruel, inhuman or degrading treatment were violated by the agents of the Respondent.**

**Burden and Standard of proof**

[14] According to **Sections 101 and 102 of the Evidence Act**, the burden of proof lies upon a party who wishes court to believe in the existence of facts and the standard of proof is on a balance of probabilities.

[15] In this case, the Applicant has a duty to prove that the facts asserted exist and under this duty, the applicant has to satisfy this court the allegations that his rights to freedom from torture, cruel, inhuman and degrading treatment were violated by the agents of the Respondent that is the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents.

[16] In his bid to discharge the said burden, the Applicant gave evidence by way of affidavit and in **paras.7-19 in his affidavit** in support of the application, he deponed as follows:

*"7. ...on 16/3/2018, I was at port Road Masindi after having lunch, seated in my car, the said bailiff pulled me by my trousers, and had my car starting and commanded that I proceed with her to court..."*

8. *I requested the bailiff to allow me first proceed to my work place at Masindi hospital such that I could talk to my bosses and she obliged.*
9. *The 2<sup>nd</sup> Respondent- a police officer stopped the car at around the taxi park of Masindi, forcefully entered, and we continued with him to Masindi hospital.*
10. *At the hospital, the two refused to get out of my car before they were joined by the 3<sup>rd</sup> and 4<sup>th</sup> respondents. **The hospital office Administrator Mr. Baguma** called us to his office where we discussed the issue of rent arrears.*
11. *Upon stepping out of the office, the bailiff ordered the police officers to thoroughly beat me up which they did. I was thoroughly and wantonly beaten up using batons by the 2<sup>nd</sup> -4<sup>th</sup> respondents while the bailiff was cheering on.*
12. ....
13. *After thoroughly torturing me while I was in a semi-conscious state, in deep pain and bleeding profusely, the 2<sup>nd</sup>-4<sup>th</sup> respondents carried me to **Masindi Chief Magistrate's court...**and the **Magistrate Grade one** signed my committal warrant to civil prison.*
14. *I was taken to Masindi prison while I was crawling and still bleeding profusely with open wounds and on reaching Masindi prison, I was taken to the sick bay of the prison.*
15. *The O/C prison was informed about my condition...*
16. ....
17. ....
18. ***Good Samaritans** called the administrator of Masindi hospital where I work and my boss arrived shortly and drove me off to Masindi police station and talked to the Officer in Charge about*

*my torture.*

19. *The O/C station summoned the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents for interrogation...*

20. *...the O/C station thereafter directed that I should be taken to Masindi hospital, where I was admitted on the 16<sup>th</sup> day of March 2018, given medication and discharged on the 19<sup>th</sup> March of 2018.” (emphasis)*

The Applicant attached to his affidavit in support of the application copies of this treatment notes, discharge form and photos depicting his plight.

[17] I do agree and subscribe to the phrase as put across in the submissions of counsel for the Applicant that **“Freedom from torture is one of the most universally recognized human rights. Torture is considered so barbaric and incompatible with civilized society that it cannot be tolerated. Torturers are seen as the ‘enemy of mankind’ ”** and indeed, according to **Article 44(a) of the Constitution of Uganda “freedom from torture and cruel, inhuman or degrading treatment or punishment”** is a non-derogable right. There are no exceptional circumstances whatsoever to justify torture; **Asp. Mugarura Steven Vs CP. Herman Owomugisha & Anor H.C.Misc. Cause No.419 2017(Civil Division).**

[18] The Applicant however has a duty to prove that the facts asserted exist as per **S.101 of the Evidence Act.** In the instant case, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed affidavits in reply denying the allegations contained in the affidavit in support of the application. The denials were not challenged as no affidavit in rejoinder were filed. Considering the detailed account of the alleged torture as deponed by the applicant, it is inconceivable that his people, relatives and friends must have not got concerned and come out to witness the incident especially at



Masindi hospital, the alleged scene of torture, at Masindi Chief Magistrate's court where he was committed to prison and in prison and at the Masindi police station.

[19] No one from any of the above scenes came out to swear an affidavit to support and or corroborate the Applicant's account of his alleged torture. Neither his boss, the **Masindi hospital office Administrator, Mr. Baguma** who allegedly drove him from prison to police where he was referred to Masindi hospital for hospitalization nor any of the **Good Samaritans** who were allegedly concerned about his plight and called the Administration of Masindi hospital to rescue him, surely appeared to swear an affidavit to support and corroborate his allegations of torture! Not even any of those who may have followed him at court. As correctly submitted by counsel for the 1<sup>st</sup> Respondent, the copies of the medical treatment notes, the photographs when contested, remain hearsay and inadmissible in the absence of the authors, the medical doctor who examined and treated him and the photographer's affidavits; **S.66 of the evidence Act and Tenywa Vs Uganda [1967] E.A 102.**

[20] Torture being considered as one of the most serious crimes against humanity because of its profound violation of the moral and physical integrity of the individual, the allegations of torture are grave and therefore, the applicant is required to adduce cogent evidence to prove such claims. In this case such evidence is lacking. As a result, in the premises, I find that the Applicant has not on the balance of probabilities proved the alleged violation of his rights to freedom from torture, cruel, inhuman and degrading treatment by the agents of the 1<sup>st</sup> Respondent.

**Issue No.3: Remedies available to the parties**

[21] The Applicant has failed on both **issues 1 and 2** and therefore is not entitled to any of the reliefs sought. The Application is concluded with the following orders:

- a) The Application was served outside the prescribed time from the date it was endorsed by the Registrar without any application for extension of time and as a result, it is liable for dismissal.
- b) The Applicant has not on a balance of probabilities proved the alleged violation of his rights to freedom from torture, cruel, inhuman and degrading treatment by the agents of the 1<sup>st</sup> Respondent.
- c) The application is in the premises dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

**Dated at Masindi this 7<sup>th</sup> day of July, 2022.**

.....

**Byaruhanga Jesse Rukyema**

**JUDGE.**