

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

CIVIL SUIT NO. 175 OF 2017

CHARLES TWINOMUGISHA ::: PLAINTIFF

VERSUS

- 1. ATTORNEY GENERAL**
- 2. RO/04809 MAJ. EDWARD BAGUMA**
- 3. RO/09700 CAPT. G.K. BARUGAHARE ::::::::::::::::::::::: DEFENDANTS**

BEFORE: HON. JUSTICE BONIFACE WAMALA

JUDGMENT

Introduction

[1] The Plaintiff brought this suit against the Defendants jointly and severally seeking for declaratory orders, general, exemplary and punitive damages owing to alleged unlawful arrest, detention and malicious prosecution, and for interest and costs of the suit.

[2] The brief facts according to the Plaintiff are that the Plaintiff joined the Uganda Peoples Defence Forces (UPDF) in 1991 and served diligently till he was promoted to the rank of Captain. In 2005, the Plaintiff was admitted to a Bachelors' Degree in Commerce (B. Com) of Makerere University. In 2006, the Plaintiff, who was based at Kaweweta Training School in Bombo (the Unit), applied for and was granted study leave to pursue the Bachelors' Degree in Commerce. The study leave was partial in that the Plaintiff continued serving UPDF as the Loans/ Production & Welfare Officer of the Unit at the same time as he pursued his studies. The Plaintiff showed that this arrangement was endorsed by his supervisors. The Plaintiff successfully completed his course and graduated on 22/07/2011. In July 2011, the Plaintiff also applied for and was admitted for a Masters' Degree in Business Administration (MBA) of Makerere University. He again applied for and was granted study leave to pursue his Masters' Degree under the same

arrangement. The arrangement was that he would attend to his studies between Monday and Thursday; and attend to his work duties from Friday to Sunday of every week for the duration of the study leave.

[3] The Plaintiff stated that on 18/07/2012, the 2nd Defendant (who was the Intelligence Officer of the Unit), maliciously sent an internal UPDF radio message calling the Plaintiff to report to the Unit immediately, well knowing that Plaintiff was on study leave at Makerere University Business School. On 31/07/2012, the 3rd Defendant (who was the Records Officer in the Unit) in conjunction with the 2nd Defendant, sent another internal radio message requesting the Plaintiff to go back to the Unit but even upon his arrival, the message of his arrival was never communicated. The Plaintiff avers that as a result of the said messages, the Plaintiff's salary and allowances were withheld from the month of August 2012. The Plaintiff further avers that in an attempt to cover up the above misdeeds, the 2nd Defendant arrested the Plaintiff and framed him with an offence of desertion. On 23/03/2013 the Plaintiff was arrested by the 2nd Defendant and detained in a dark grass thatched house for two months without food, water, beddings and light. Upon complaint by other fellow officers, the Plaintiff was later transferred from the said dark grass thatched house to his own hut within the Unit and was put under house arrest for 3 weeks.

[4] On 26/06/2013, the 2nd Defendant in connivance with the 3rd Defendant got an army ambulance vehicle Reg. No. H4DF 799, handcuffed the Plaintiff and bundled him in the ambulance under the pretext that he was being transferred to the Chieftaincy of Military Intelligence in Mbuya, Kampala. The Plaintiff was however diverted to Bombo Barracks and detained there until 23/07/2013 when he was released on "Open Arrest". He kept reporting to the Special Investigations Branch Office in Bombo Barracks until the 15/08/2013 when he was arraigned before the Division Court Martial at Bombo and charged with the offence of desertion contrary to Section 146 (1), (2)(e) and (3) of the UPDF Act, and was accordingly remanded in custody. On 29/04/2014, the Plaintiff was granted bail. On 3/11/2015, the Plaintiff was

discharged by the Division Court Martial upon a *Nolle Prosequi* being entered by the Prosecution. It is upon that background that the Plaintiff brought this suit upon the particular claims and reliefs set out in the amended plaint filed on 25/07/2018.

[5] Only the 1st Defendant (the Attorney General) filed a Written Statement of Defence (WSD). The 2nd and 3rd Defendants neither filed any WSD nor appeared in answer to the claims levelled against them. Because it was not denied by the 1st Defendant that the 2nd and 3rd Defendants were its servants, it was taken by the Court that the latter were as well represented by the 1st Defendant and no ex parte order was passed against the two said Defendants. In its WSD filed on 20/06/2019, the 1st Defendant denied the allegations set out in the plaint and particularly stated that the Plaintiff, being an officer of the UPDF and subject to military law and orders, had not exhausted all the internal mechanisms of the UPDF in addressing his grievances before bringing the instant suit and, as such, the suit was premature, frivolous and vexatious. It was further averred by the 1st Defendant that the Plaintiff's arrest and detention were lawful since he was arrested on reasonable grounds/suspicion for commission of an offence and was accordingly detained for questioning on the accusation of desertion. The 1st Defendant averred that the arrest, detention and prosecution of the Plaintiff was neither false, malicious, perverse nor unreasonable. The *Nolle Prosequi* entered, withdrawing the charges against the Plaintiff and discharging him, did not act as a bar to subsequent proceedings against the Plaintiff and does not amount to a judgment declaring the Plaintiff innocent, and neither is it a sign that he was maliciously or falsely prosecuted. The 1st Defendant denied being vicariously or jointly liable for the alleged acts and averred that the Plaintiff's claims were entirely and purely speculative. The 1st Defendant prayed that the suit should be dismissed with costs.

Representation and Hearing

[6] At the hearing, the Plaintiff was represented by Ms. Namuddu Janet Katende while the Defendants were represented by Mr. Ojiambo Bichachi, a

State Attorney from the Attorney General's Chambers. Both Counsel made and filed a Joint Scheduling Memorandum. Evidence was agreed to be led by way of witness statements. The Plaintiff led evidence of one witness whose witness statement was filed and adopted by the Court. The witness (the Plaintiff himself) was cross examined by Defence Counsel. The Defendants, on their part, neither filed any witness statements as agreed nor produced any evidence. After closure of the Plaintiff's case and on the date fixed for defence hearing, Defence Counsel neither appeared nor offered any explanation for his absence. The hearing of the matter was, therefore, closed upon the application of Counsel for the Plaintiff in accordance with the provision under Order 17 rule 4 of the CPR. The Court ordered for filing of submissions. Both Counsel made and filed written submissions which I have reviewed and considered during the determination of the issues before the Court.

Issues for Determination by the Court

[7] Three issues were agreed upon for determination by the Court, namely;

- a) Whether the Plaintiff's arrest, detention and prosecution were lawful.**
- b) Whether the 1st Defendant is vicariously liable for the alleged Plaintiff's arrest, detention and prosecution.**
- c) Whether the Plaintiff is entitled to the remedies sought.**

The Evidence

[8] The Plaintiff gave a detailed testimony which is contained in his witness statement. I do not intend to reproduce the content of his evidence here but I will refer to it as and when appropriate. Suffice to note, however, that the evidence is a further break down of the facts of the Plaintiff's case which are already set out herein above. As already stated, the Defendants led no evidence in the matter.

Resolution of the Issues by the Court

Issue 1: Whether the Plaintiff's arrest, detention and prosecution were lawful.

[9] The lawfulness or not of an arrest and detention is governed by the provisions of the Constitution of the Republic of Uganda under Article 23 thereof which makes provision for protection of personal liberty. Article 23(1) of the Constitution gives the exceptional circumstances under which a person may be deprived of his/her liberty. The relevant exception in the instant case is provided for under Article 23(1)(a) of the Constitution under which a person may be arrested and detained *“for the purpose of bringing that person before a court in execution of the order of a court or upon reasonable suspicion that that person has committed or is about to commit a criminal offence under the laws of Uganda”*.

[10] When a person is so arrested, restricted or detained, he or she shall be kept in a place authorized by law (Article 23(2) of the Constitution). The person so arrested, restricted or detained shall be informed immediately of the reasons for the arrest, restriction or detention and of his or her right to a lawyer of his or her choice (Article 23(3) thereof). When the person is 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, he/she 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 (Article 23(4)(b) thereof). In addition, the person is entitled to be accessed by a next of kin, lawyer and a medical doctor or access to medical treatment (Article 23(5) thereof).

[11] On the case before me, the evidence by the Plaintiff is that the Plaintiff was sporadically arrested and detained four (4) times. On 23rd March 2013, he was arrested from his home in Kaweweta Barracks and detained for two (2) months in a grass thatched hut near the Training School (Unit) Quarter Guard. On or about 29th May 2013, he was transferred to his own hut

within the Unit and put under house arrest for about three (3) weeks while being guarded during day and night. On 26th June 2013, he was taken by a military ambulance to Bombo Barracks detention centre where he was detained until 23rd July 2013 when he was released on Open Arrest; that is, 27 days under detention. On 15th August 2013, his bond was cancelled and he was re-arrested and detained and his trial commenced.

[12] Counsel for the Plaintiff submitted that the Plaintiff was arrested in absence of reasonable cause or suspicion of having committed an offence since he was away on duty upon official leave having been granted to him. Counsel referred the Court to Exhibits P11(i) and P11(ii) which are the documents that were duly endorsed by the Plaintiff's supervisors granting the Plaintiff a leave of absence on particular days of the week. Counsel prayed to Court to find that the Plaintiff's arrest and detention was unlawful.

[13] It is important to recall that the Defendant did not lead any evidence to controvert the facts adduced by the Plaintiff. The Plaintiff's evidence in that regard remains unchallenged. In their submissions, Counsel for the Defendants submitted that the Plaintiff, being an officer of UPDF, was subject to the UPDF Act, Regulations, orders or instructions issued from time to time within the UPDF. Counsel submitted that the permission granted to the Plaintiff to go on study leave did not exempt him from the said law, regulations, orders and instructions in place; and he was still bound by the same. Counsel submitted that the army unit had justifiable cause for the arrest, detention and prosecution of the Plaintiff and the same were within the confines of the law.

[14] From the foregoing, there is uncontroverted evidence by the Plaintiff that upon being arrested on the first two occasions, the Plaintiff was detained in a grass thatched house near the Unit Quarter Guard and in his own house under house arrest respectively. These are not gazetted places for detention or confinement of persons. This made the arrest and detention

illegal within the meaning of Article 23(2) of the Constitution. Further evidence is that on three of the occasions, the Plaintiff was not informed of the reason of his arrest and his right to a lawyer of his choice. This too made the arrest and detention illegal in accordance with Article 23(3) of the Constitution. It was also shown by the Plaintiff that on the first three occasions, when the Plaintiff was arrested and detained, he was not produced before any court within forty-eight hours from the time of his or her arrest. This equally made the arrest illegal in accordance with Article 23(4)(b) of the Constitution. Finally, on all the four occasions when the Plaintiff was arrested and detained, he was not accorded an opportunity to be accessed by a next of kin, a lawyer and a medical doctor or medical treatment. As a matter of fact, the Plaintiff shows that during the detention, he suffered from dental illness and in the end had to lose two of his teeth owing to them being attended to belatedly. This was in contravention of Article 23(5) of the Constitution, and thus illegal.

[15] In effect, therefore, the Plaintiff has established on a balance of probabilities that his arrest and detention on all the four occasions was marred with certain illegalities; and was thus unlawful as claimed by the Plaintiff.

[16] Regarding the allegation of malicious prosecution, in law, the tort of malicious prosecution is constituted when the following essential elements are established;

- a) the proceedings must have been instituted by the defendant;*
- b) the defendant must have acted without probable and reasonable cause;*
- c) the defendant must have acted maliciously; and*
- d) The proceedings must have terminated in favour of the plaintiff.*

See: ***Mugabi John vs Attorney General, HCCS No. 133 of 2002; Attorney General V. Haji Adam Farajara [1977] HCB 29; Lutaaya v. Attorney General, HCCS No.147 of 1992.***

[17] On the present case, it is not disputed that the proceedings in the Division Court Martial were instituted by officials of Government who, under the law, are represented by the Attorney General, the 1st Defendant. The first element is, therefore, satisfied.

[18] The second element is that **the defendant must have acted without probable and reasonable cause.** “Reasonable and probable cause” was defined in *Attorney General v. Haji Adam Farajara (supra)* as;

“...an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the accused, to the conclusion that the person charged was probably guilty of the crime imputed.”

[19] In the instant case, the Plaintiff has led evidence to show that he was charged with the offence of desertion contrary to Section 146(1), (2)(e) & (3) of the Uganda Peoples Defence Forces Act, 2005. The evidence by the Plaintiff shows that at the time he was arrested, detained and eventually prosecuted, he was officially on leave and his supervisors, the very persons who caused and effected his arrest, were aware of this fact. The Plaintiff adduced before the Court two documents that contained information over this state of affairs. In a letter dated 26th June 2006 (on record as Exhibit P7), the Plaintiff requested for study leave to pursue his degree in Commerce at Makerere University Business School. In the request, he proposed that he could be allowed to use the days Monday to Thursday for his studies and Fridays to Sunday for his work. His Supervisor endorsed on the letter “Allowed”. The Plaintiff followed the arrangement until he completed his Bachelor’s degree in May 2011.

[20] Further evidence is that in July 2011, the Plaintiff was admitted for a Masters’ degree in Business Administration at Makerere University. The

Plaintiff by letter dated 5th July 2011 [on record as Exhibit P11(i)] applied for leave under the same arrangement as before and his Supervisor endorsed his request as “Granted”. The Plaintiff, therefore, continued attending to both his studies and his work in the same manner he had done during his Bachelor’s degree. Then on 18/07/2012, the 2nd Defendant sent an internal UPDF radio message calling the Plaintiff to report to the Unit immediately, well knowing that Plaintiff was on study leave at Makerere University Business School. On 31/07/2012, the 3rd Defendant in conjunction with the 2nd Defendant, sent another internal radio message requesting the Plaintiff to go back to the Unit but even upon his arrival, the message of his arrival was never communicated. Subsequently, the 2nd and 3rd Defendants declared the Plaintiff Absent Without Official Leave (AWOL) and had his salary and allowances withheld from the month of August 2012. The Plaintiff was later charged with the offence of desertion.

[21] It was submitted by Counsel for the Plaintiff that there was no reasonable cause for arresting a man who was on study leave and was fully abiding by his leave work schedule, yet the information about the Plaintiff’s whereabouts was readily available at his workstation.

[22] In defence, the Defendants led no evidence to controvert the above evidence. Counsel for the Defendants submitted that the arrest and prosecution of the Plaintiff was within the confines of the law and was neither false nor malicious since the Plaintiff was arrested on suspicion of having committed a capital offence of desertion contrary to provisions under the UPDF Act.

[23] In view of the above evidence, it is clear that an objectively minded person would not have caused the arrest, detention and prosecution of the Plaintiff in presence of clear information as to why the Plaintiff was not attending to work on every day of the week. If the 2nd and 3rd Defendants were disagreeable to the leave that had been granted to the Plaintiff, the option they had was to cancel the leave and effectively notify the Plaintiff.

The said Defendants had no right to declare the Plaintiff AWOL when he, in fact, was officially absent. This was clearly unreasonable and unjustifiable. That the Defendants went ahead and subjected the Plaintiff to prosecution under such circumstances is even more unreasonable since there was no reasonable or probable cause for such prosecution. Within the meaning of the law, the circumstances in the case in issue do not disclose an honest belief in the guilt of the 'accused' based upon a full conviction, founded upon reasonable grounds of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the accused, to the conclusion that the person charged was probably guilty of the crime imputed. The Defendants therefore acted without probable and reasonable cause in occasioning the prosecution of the Plaintiff.

[24] The next element is that **the defendant must have acted maliciously**. "Malice" in a case such as this is proved upon indicating that the defendant was actuated either by spite or ill-will towards an individual or indirect or improper motives, although these may be wholly unconnected with any uncharitable feeling toward anybody. See: ***Attorney General of Uganda Vs Farajara (Supra) at p. 30 and Mugabi John vs The Attorney General of the Republic of Uganda (Supra) at pages 6-7***. The **Black's Law Dictionary, 8th Edition** also defines "malice" as the "... intent, without justification or excuse, to commit a wrong act, reckless disregard of the law or person's legal rights". It has also been said that criminal proceedings are malicious where they are instituted with an improper purpose or when actuated by improper motives. See: ***Mbowa vs East Mengo Administration (1972) EA 352 at 354 and Hannington Mpala & Others vs The Attorney General, HCCS No. 116 of 2012***.

[25] In view of the evidence in the present case, it is clear to me that the prosecution of the Plaintiff in the Division Court Martial was actuated with improper motives on the part of the 2nd and 3rd Defendants. It was done without justification or lawful excuse, and in reckless disregard of the law

and/or the Plaintiff's legal rights. The Defendants' action was, therefore, malicious.

[26] The final element of the tort of malicious prosecution is that **proceedings must have terminated in favour of the plaintiff**. It is not in dispute that on 3rd November, 2015, a *Nolle Prosequi* was entered under Section 134 of the Trial on Indictments Act withdrawing the charges against the Plaintiff and discharging him. What is disputed by the Defendant is that such a withdrawal amounted to termination of the proceedings in the Plaintiff's favour. Counsel for the Defendants argued that it did not, since the same did not act as a bar to subsequent proceedings against the Plaintiff and did not amount to a judgment declaring the Plaintiff innocent of the charges. Counsel reasoned that the charges could still be reinstated. On his part, Counsel for the Plaintiff submitted that the Plaintiff had shown in evidence that since the said discharge until he was forced into early retirement, no subsequent charges or criminal proceedings had been commenced against him.

[27] The position of the law is that entering a *nolle prosequi* by the prosecution amounts to proceedings terminating in the accused's/ plaintiff's favour provided no fresh proceedings are brought against the Plaintiff in respect of the same facts. In ***Egbema Vs West Nile District Administration (1972) EA 60*** cited in ***Hannington Mpala vs Attorney General H.C.C.S. No. 116 of 2012***, the court stated that;

"It is enough that the criminal proceedings have been terminated without being brought to a formal end. The fact that no fresh prosecution has been brought, although five years have elapsed since the appellant was discharged, must ... be considered equivalent to an acquittal, so as to entitle the appellant to bring a suit for malicious prosecution".

[28] In the instant case, it is not disputed that the proceedings were never reinstated against the Plaintiff from the 3rd November 2015 to date. That

amounts to a termination of the proceedings in the Plaintiff's favour. For all intents and purposes, the Defendants had no reasonable or justifiable cause to prosecute the Plaintiff. There is therefore no possibility that they could reasonably have reinstated the charges after the same were discontinued. This element is, therefore, also satisfied by the Plaintiff. The tort of malicious prosecution has, therefore, been established by the Plaintiff.

[29] In all, therefore, on issue one, the Plaintiff has satisfied the Court on a balance of probabilities that his arrest and detention were unlawful and his prosecution was malicious.

Issue 2: Whether the 1st Defendant is vicariously liable for the alleged Plaintiff's arrest, detention and prosecution.

[30] It was pleaded and submitted on behalf of the Plaintiff that the 1st Defendant is liable for the acts of the 2nd and 3rd Defendants. The 1st Defendant did not deny that the 2nd and 3rd Defendants were its servants or agents; or that they were acting in the course of their employment. The 1st Defendant only argued that the arrest, detention and eventual prosecution of the Plaintiff were within the confines of the law, given that the Plaintiff was lawfully arrested on suspicion of commission of a capital offence to wit desertion contrary to Section 146 of the UPDF Act. Counsel for the 1st Defendant submitted that there was no malice on the part of the 1st Defendant nor its agents in so far as the officers were carrying out duties mandated by the law in their ordinary course of business. Counsel argued that the Plaintiff cannot be allowed to dictate as to how the UPDF should have arrested, investigated, detained, charged and tried him. The 1st Defendant maintained that the officers were carrying out their mandate in accordance with Section 118 of the UPDF Act.

[31] The position of the law is that where a servant acting in ordinary course of his or her employment does or omits to do an act which leads to injury, damage or loss on the part of another, the employer or the master is liable. Section 3(1)(a) of the Government Proceedings Act Cap 77 provides that the

Government shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject in respect of torts committed by its servants or agents. It is not disputed that security personnel particularly members of the UPDF are servants or agents of Government and, therefore, the Attorney General is vicariously liable for their actions provided that the same were done in ordinary course of their employment. A plethora of decided cases have settled this position to the effect that the government is vicariously liable for acts of its security personnel whether the said acts are done negligently, wantonly, criminally or unlawfully. See: ***Kaggwa Vincent vs Attorney General H.C.C.S. No. 391 of 2014 (unreported) p.6; Hannington Mpala & 2 Ors vs Attorney General (supra) p.8; Mugabi John vs The Attorney General of the Republic of Uganda (Supra) at pages 10-11; Uganda Commercial Bank vs Kigozi [2002] 1 E.A. 305 at 306; Mugenzi vs Attorney General [1984] H.C.B. 64; and Attorney General of Uganda Vs Haji Adam Farajara (Supra).***

[32] On the case before me, it has already been found that the arrest and detention of the Plaintiff was unlawful and that the prosecution was malicious. There is uncontroverted evidence that the arrest, detention and prosecution were occasioned by the 2nd and 3rd Defendants who are servants or agents of the 1st Defendant. The 1st Defendant agrees that the 2nd and 3rd Defendants were acting in the course of their employment; and actually attempts to defend their actions as having been done within the confines of the law. The said actions having been found to have been unlawful and malicious, it follows that the 1st Defendant is vicariously liable for the said acts of the 2nd and 3rd Defendants. The 2nd issue is, therefore, answered in the affirmative.

Issue 3: Whether the Plaintiff is entitled to the remedies sought.

[33] The reliefs sought by the Plaintiff in sub-paragraphs (a) and (b) of the last paragraph of the amended plaint are stated as Orders. They ought, however, to have been claimed as declarations. Since the same have been

established, I will grant them as declarations in the matter. As such, the Plaintiff having established his case on a balance of probabilities, I accordingly issue declarations that the Plaintiff's arrest and detention was unlawful; and that the Plaintiff's trial amounted to malicious prosecution.

[34] Regarding the claim for general damages, the law on general damages is that the damages are awarded at the discretion of the court and the purpose is to restore the aggrieved person to the position they would have been in had the breach or wrong not occurred. See: ***Hadley v. Baxendale (1894) 9 Exch 341***; ***Charles Acire v. M. Engola, H. C. Civil Suit No. 143 of 1993*** and ***Kibimba Rice Ltd v. Umar Salim, S. C. Civil Appeal No. 17 of 1992***. In the assessment of general damages, the court should be guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered. See: ***Uganda Commercial bank v. Kigozi [2002] 1 EA 305***. Under the law, general damages are implied in every breach of contract and every infringement of a given right. In a personal injuries claim, general damages will include anticipated future loss as well as damages for pain and suffering, inconvenience and loss of amenity.

[35] In the present case, the Plaintiff claimed for a range of general damages which he broke down into a number of categories. I have found it unnecessary to deal with each category laid down by the Plaintiff under the respective sub-headings and, for the reasons I will state, I have decided to deal with the claim for general damages as one unit under the claim for pain, suffering, economic loss and loss of amenity occasioned to the Plaintiff.

[36] The Plaintiff claimed and showed in evidence that he lost 2 teeth (one molar and one premolar) while under detention when he fell sick and no treatment was provided and neither was he allowed to seek medical attention outside the barracks. The Plaintiff adduced documentary proof of this loss in form of UPDF Medical Services Forms, which are on record as

Exhibit P23A, Exhibit P23B and Exhibit P23C. The Plaintiff also showed that he suffered trauma and economic loss for the period he spent without salary or any other emoluments. The Plaintiff was also denied the freedom to supervise his farm and personal businesses which occasioned him psychological pain and economic loss. The Defendants, on their part, opposed the damages claimed by the Plaintiff on the ground that they are entirely speculative.

[37] Having found that the Plaintiff was unlawfully arrested and detained; and maliciously prosecuted, it follows that the Plaintiff is entitled to damages for the said wrongful conduct of the Defendants. This is because of the settled legal position that general damages are the direct natural or probable consequence of the act complained of. The only dispute that remains is as to the extent of the harm occasioned to the Plaintiff and the assessment of the appropriate damages to be awarded to the Plaintiff. On the present facts, the evidence by the Plaintiff of the pain he suffered while under detention has not been rebutted by the defence. The fact that the Plaintiff stayed for prolonged periods under detention as clearly set out in paragraph 11 herein above is clear evidence of the physical and psychological pain suffered by the Plaintiff. According to the evidence, the Plaintiff spent around 60 days under illegal detention on the first occasion he was arrested; around 21 days on the second occasion; and around 27 days on the third occasion. This totals to 108 days of illegal detention.

[38] It should be noted that during that period, the Plaintiff was not paid any emolument despite the fact that he was not on interdiction. As a matter of fact, if he had been put on interdiction, he would, at least have been entitled to be paid half of his salary. But because of the unlawful nature of the Defendants' action, the Plaintiff suffered severer pain and loss. This, in my view, constitutes sufficient evidence of pain, suffering, anticipated future economic loss and loss of amenity. Damages for loss of amenity are to cater for the prevention of the Plaintiff from participating in activities he would have indulged in had the restriction not been imposed on him.

[39] In deciding what sum constitutes fair and reasonable compensation, I am aware that comparable cases, when available, should be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. However, I also take cognisance of the fact that damages for pain, suffering and loss of amenities present serious difficulty of assessment with precision. I am equally aware that comparing the magnitude of pain and suffering in concrete terms with comparable past cases is sometimes difficult to assess on the strength of monetary awards. This is more so in a situation, like in the present case, where most of the suffering is on account of emotional or psychological pain occasioned by illegal arrest and detention plus malicious prosecution and suffered over prolonged periods of time.

[40] I have not come across any cases that are proximate to the nature and extent of injuries suffered by the Plaintiff in the present case from which I could derive any meaningful guidance. I have thus not attempted to compare the un-comparable. But in view of the evidence and circumstances before me, I find a sum of UGX 300,000,000/= (Uganda Shillings Three Hundred Million only) appropriate as general damages and I award the same to the Plaintiff.

[41] I will now make comments on the other range of general damages claimed by the Plaintiff under different sub-headings. The Plaintiff claimed for **UGX 500 million for lost opportunity to complete the Masters (MBA) programme** due to his arrest and detention during examinations period and his release after the lapse of the 2 years of coursework. The Plaintiff had paid tuition for the Masters programme. As submitted by Counsel for the Defendant, this claim is speculative and not based on evidence. At best, the Plaintiff would have claimed for refund of the fees he paid as money actually incurred which he ought to have claimed as a special damage. Short of that,

the claim can only be considered under the broader category of loss of amenity, which aspect has already been incorporated into the sum awarded under paragraph 40 above.

[42] The Plaintiff claimed for **UGX 72 million as damages arising from his inability to supervise his Farm** in Nyakagyeme -Rukungiri which sits on 198 acres of land leading to loss of 48 Friesian head of cattle each valued at 1.5m by then. This sum cannot be claimed and awarded as general damages. The Plaintiff had to claim it under the category of financial loss which, under the law, has to be claimed as a special damage that must be specially pleaded and specifically pleaded in evidence. The Plaintiff had to specifically plead the loss incurred under a separate head and lead evidence and proof not only of the loss of the said 48 Friesian cows but also the cost price of the said animals. Because the Plaintiff purported to claim the alleged loss as a general damage, he never complied with the rule of pleading and proof of the claim as a special damage. This claim cannot, therefore, be awarded in the circumstances. The same principle applies to the claim for **UGX 500 million for loss of 10-acre banana plantation** among other plants and crops valued at 50m per acre due to the Plaintiff's detention and restricted movements. This claim also fails on account of the failure to plead and prove it as a special damage.

[43] The Plaintiff also claimed for **UGX 500 million for lost opportunity to pursue the Company** and Commanders Course, Junior Officers Military Course and the Senior Command and Staff Course during the time the Plaintiff was arrested and detained and, as a result, he lost the opportunity to be promoted to the ranks of Major and Lieutenant Colonel and to have an enhanced salary. He further claimed for **UGX 500 million for lost military pensions and early retirement because of** having been off the payroll for 3¹/₂ years. The Plaintiff was prematurely laid off at a lower rank of Captain because of having missed the above military courses. These claims fall under the category set out herein above under paragraph 41 that has been found to be speculative and not awardable as a general damage beyond its

being factored in under the category of loss of amenity. These two claims also fail on account of the same reason.

[44] The Plaintiff further claimed for **UGX 18,000,000/= being arrears of Professional Allowance of UGX 350,000/=** per month totalling to 18,000,000/= for the 56 months that he was not paid. This claim ought to have been claimed as a special damage since the Plaintiff needed to prove not only entitlement to payment of professional allowance but also the accrual of the claimed sum during the time when the Plaintiff was under detention and trial, and thus not working. Those aspects could only come in issue and be proved if the Plaintiff had set out the claim as a special damage. This claim is also not awarded to the Plaintiff.

[45] The Plaintiff made other claims of UGX 300 million for living a life of a typical destitute for all the 3^{1/5} years; UGX 500 million for lost Investment opportunities of the withheld salary; UGX 100 million for financial embarrassment due to the Plaintiff's inability to service the Salary loan that he had obtained to finance his MBA; and UGX 400 million for loss of ability and constitutional right to parent and care for his four children. These claims cannot be awarded going by the principles set out herein above particularly in paragraphs 41 and 43. The claims also accordingly fail.

[46] All in all on the claim for general damages, I have awarded the Plaintiff a sum of UGX 300,000,000/= (Uganda Shillings Three Hundred Million Only).

[47] The Plaintiff further claimed for award of Exemplary damages. Exemplary damages are not compensatory but are rather punitive or exemplary in nature. They represent a sum of money of a penal nature in addition to the compensatory damages given for the loss or suffering occasioned to a plaintiff. The rationale behind the award of exemplary damages is to punish the defendant and deter him from repeating the wrongful act. They should not be used as means to enrich the plaintiff.

According to the dictum of **Lord McCardie J.** in ***Butterworth v Butterworth & Englefield [1920] P 126***, “... *Simply put, the expression exemplary damages means damages for ‘example’s sake’ ...*”

[48] According to **Lord Devlin** in the landmark case of ***Rookes V. Barnard [1946] ALL ER 367 at 410, 411***, there are only three categories of cases in which exemplary damages are awarded, namely:

- a) where there has been oppressive, arbitrary, or unconstitutional action by the servants of the government;
- b) where the defendant’s conduct has been calculated by him to make a profit which may well exceed the compensation payable to the plaintiff; or
- c) where some law for the time being in force authorizes the award of exemplary damages.

[49] In law, when considering the making of an award of exemplary damages, three matters should be borne in mind, namely;

- a) the plaintiff cannot recover exemplary damages unless he or she is the victim of punishable behavior;
- b) the power to award exemplary damages should be used with restraint; and
- c) the means of the parties are material in the assessment of exemplary damages.

See: ***Rookes V. Barnard (supra)***; ***Kiwanuka v. Attorney General of Uganda EACA No. 19 of 1965 (C.A)***; ***Obongo & Another v. Municipal Council of Kisumu [1971] EA 91***; ***Kyambadde v. Mpigi District Administration [1983] HCB 44***; ***Nsaba Buturo v. Munansi Newspaper [1982] HCB 134***; ***Ntabgoba v. Editor-in-chief of the New Vision & Another [2004] 2 EA 234***; ***Bhadelia Habib Ltd. v. Commissioner General, URA [1997-2001] UCL 202***; and ***Fredrick J. K. Zaabwe v. Orient Bank & Others, Supreme Court Civil Appeal No. 4 of 2006***.

[50] In the instant case, the Plaintiff showed in the pleadings and in evidence that the 2nd and 3rd Defendants acted in a high handed manner,

without accountability for their actions and as if they were not responsible to anyone. Evidence has shown that the Plaintiff was under illegal detention for 108 days. This is by all means gross abuse of the Plaintiff's rights and an obvious sign of impunity. It has also been established that the Plaintiff was fully stripped of his pay contrary to the set down rules under the Public Service Standing Orders where he ought to have been interdicted and put on half pay. The rationale as to why a public servant should not be stripped of his/her her full pay needs no emphasis. Equally, the pain caused onto such a public servant stripped of his full pay is obvious. The 2nd and 3rd Defendants knew or ought to have contemplated these implications. They however chose to ignore the same and acted with impunity. Such is conduct that calls for an award of exemplary damages going by the well-established principles set out above.

[51] On the evidence and circumstances before me, I award the Plaintiff a sum of UGX 100,000,000/= (Uganda Shillings One Hundred Million Only) as exemplary damages.

[52] The Plaintiff also made a claim for punitive damages. In law, I do not need to make any further consideration for award of punitive damages since the purpose of punitive damages is served by the award of exemplary damages. Thus, the award made above suffices to meet the ends of justice.

[53] The Plaintiff claimed for interest on the awarded sums of damages. In accordance with Section 26 of the Civil Procedure Act, I award interest on the general and exemplary damages awarded above at the rate of 10% p.a. from the date of judgment until payment in full. The Plaintiff is also awarded the costs of the suit.

[54] In all, therefore, judgment is entered for the Plaintiff against the Defendants jointly and severally for the following declarations and orders:

(a) A Declaration that that the Plaintiff's arrest and detention was unlawful; and the Plaintiff's trial amounted to malicious and prosecution.

(b) Orders that;

(i) The Defendants pay a sum of UGX 300,000,000/= (Uganda Shillings Three Hundred Million Only) as general damages to the Plaintiff.

(ii) The Defendants pay a sum of UGX 100,000,000/= (Uganda Shillings One Hundred Million Only) as Exemplary damages to the Plaintiff.

(d) The Defendants pay interest on the sums in (i) and (ii) above at the rate of 10% p.a. from the date of the judgement until payment in full.

(e) The Defendants pay the taxed costs of this suit to the Plaintiff.

It is so ordered.

Dated, signed and delivered by email this 19th day of July 2022.

A handwritten signature in blue ink, appearing to read 'Boniface Wamala', with a long horizontal flourish extending to the right.

Boniface Wamala

JUDGE