

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 493 OF 2018

BANDONDA NICHOLAS ::: PLAINTIFF

VERSUS

1. CAPTAIN INVESTMENTS LIMITED

2. ATTORNEY GENERAL ::: DEFENDANTS

BEFORE: HON. JUSTICE BONIFACE WAMALA

JUDGMENT

Introduction

[1] The Plaintiff brought this suit against the Defendants jointly and severally seeking the following reliefs;

- a) A declaration that the Plaintiff's detention by Uganda Police without any charge in court was illegal and unconstitutional;
- b) A declaration that the 2nd Defendant is vicariously liable for the illegal and unconstitutional actions committed by the police in connivance with the 1st Defendant's officers;
- c) An order of compensation for breach of the Plaintiff's constitutional rights;
- d) General and punitive damages; and
- e) Interest and costs of the suit.

[2] The brief facts according to the Plaintiff are that on 5th May 2015, the Plaintiff and 1st Defendant executed a hire purchase agreement for the purchase of Motor Vehicle Registration Number UAA 046D at an agreed purchase price of UGX 34,000,000/=. The Plaintiff made part payment and continued making payments in installments until December 2015 when his driver disappeared with the vehicle. Efforts to trace the same were in vain. On

6th September 2018, the Plaintiff was called by a staff of the 1st Defendant to meet at Mapeera House for a discussion over the outstanding debt. Upon proceeding to the agreed venue, the Plaintiff found the 1st Defendant's officer with police officers from Jinja Road police station who arrested the Plaintiff without giving him any reason for his arrest. The Plaintiff was then taken to the 1st Defendant's car bond at Nakawa from where the police officers and the 1st Defendant's officers menacingly demanded for return of the vehicle in issue. The Plaintiff was thereafter taken to Jinja Road police station where he was detained and remained in custody until 11th September 2018 when he was discharged without any criminal charge. While at the police station, the Plaintiff was served with a copy of a summons from Nakawa Chief Magistrates Court in a civil suit that had been opened by the 1st Defendant over the same matter. The Plaintiff averred that his arrest and detention were illegal as the dispute between the 1st Defendant and himself was purely commercial and civil in nature. The Plaintiff further stated that owing to such conduct on the part of the Defendants' agents or officers, he suffered grave inconvenience and loss in relation to his business and studies. The Plaintiff therefore brought the present suit for the claimed reliefs.

[3] Both Defendants were served with summons to file a defence and despite sufficient evidence of service of process, neither defendant filed a written statement of defence (WSD) as required under the law. The Court therefore allowed the Plaintiff to proceed ex parte against both defendants under Order 9 rule 10 of the Civil Procedure Rules (CPR). When the suit was fixed for hearing, the Defendants were also served with a hearing notice but neither appeared in court when the matter came up for hearing.

Representation and Hearing

[4] At the hearing, the Plaintiff was represented by Mr. Bwesigye Enock and Mr. Okol Ivan. As already stated above, the hearing proceeded ex parte against the Defendants. The Plaintiff led evidence of one witness, the Plaintiff, who testified

as PW1. Counsel for the Plaintiff then filed written submissions which have been duly adopted by this court and relied upon in determination of the matter.

Issues for Determination by the Court

[5] In the Joint Scheduling Memorandum, Counsel for the Plaintiff proposed four issues but on proper scrutiny, issue 2 as raised is unnecessary as it is part of issue 1. Similarly, what was issue 3 (now issue 2) has been rephrased. Three issues are, therefore, up for determination by the Court, namely;

- a) Whether the actions of the Defendants, jointly and severally, were illegal and an infringement of the Plaintiff's constitutional rights?**
- b) Whether the Defendants are vicariously liable for the actions of their officers or agents?**
- c) Whether the Plaintiff is entitled to the remedies sought?**

Resolution of the Issues

Issue 1: Whether the actions of the Defendants, jointly and severally, were illegal and an infringement of the Plaintiff's constitutional rights?

[6] 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 provides that no person shall be deprived of personal liberty except in any of the circumstances set out under that provision. The exception relevant to the instant case is provided for under Article 23(1)(c) 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 the person has committed or is about to commit a criminal offence under the laws of Uganda*".

[7] 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 his or her right to a lawyer of his 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 possible but in any case not later than forty-eight hours from the time of his 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).

[8] Under Section 23(1) of the Police Act Cap 303, a *“police officer may, without a court order and without a warrant, arrest a person if he or she has reasonable cause to suspect that the person has committed or is about to commit an arrestable offence”*. An *“arrestable offence”* is defined under Section 1(a) of the Police Act as *“an offence which on conviction may be punished by a term of imprisonment of one year or more, or a fine of not less than one hundred thousand shillings or both”*. Under Section 25(1) of the Police Act, a *“police officer on arresting a suspect without a warrant shall produce the suspect so arrested before a magistrate’s court within forty-eight hours unless earlier released on bond”*.

Absence of a criminal offence or reasonable cause for arrest of the Plaintiff

[9] On the case before me, the first complaint by the Plaintiff is that he was arrested in respect of an allegation that did not constitute a criminal offence but rather was a purely civil commercial dispute. It was shown in evidence by the Plaintiff that he had entered into a contract for purchase of Motor Vehicle Reg. No. UAA 046D Toyota Hiace for conduct of transport business. The

Plaintiff adduced the agreement and receipts of instalment payments that were admitted on record as PE2 and PE3 respectively. The Plaintiff further showed that the 1st Defendant was aware that the matter was a civil dispute and had, in fact, instituted a civil suit in the Chief Magistrates Court of Nakawa at Nakawa. The Plaintiff adduced a copy of the summons and the plaint in Civil Suit No. 432 of 2018 of Nakawa Court which was admitted in evidence as PE5. The Plaintiff further stated that a bare copy of the summons had been served on him by an officer of the 1st Defendant immediately he arrived upon arrest at Jinja Road Police Station on 6th September 2018. It was submitted by Counsel for the Plaintiff that the above evidence clearly shows that the dispute between the Plaintiff and the 1st Defendant was purely a commercial matter which the police ought to have known from the outset.

[10] According to the position of the law as set out above, a person may only be deprived of personal liberty by way of arrest and detention upon reasonable suspicion that the person has committed or is about to commit a criminal offence under the laws of Uganda. Criminal offences are a creature of statute, particularly the Penal Code Act and all other statutes that contain penal provisions. It is a known principle under criminal law that a person cannot be charged of a criminal offence that is not expressly prescribed under the law. Article 28(12) of the Constitution expressly provides that *“Except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed by law”*. On its part, Article 28(7) provides that *“No person shall be charged with or convicted of a criminal offence which is founded on an act or omission that did not at the time it took place constitute a criminal offence”*.

[11] The above provisions and principles of the law underpin the fact that before a police officer can hold any reasonable suspicion that a person has committed, is committing or is likely to commit an offence, the act that the police officer apprehends must be one that discloses a known offence. It is not

expected that the police officer would first arrest and then goes to establish whether the act disclosed an offence. A police officer must or ought to know what is and what is not a criminal offence before he/she effects a lawful arrest. Secondly, he/she must base on reasonable suspicion.

[12] According to **Mubiru J.** in ***Ochwa vs Attorney General, HCCS No. 41 of 2012***, reasonable suspicion under the law connotes more than bare suspicion. It is something more than an inchoate and un-particularised suspicion. It requires facts or circumstances that give rise to more than a bare, imaginary, or purely conjectural suspicion. Reasonableness is that point at which the public interest advanced by a particular arrest outweighs the loss of individual liberty. Having "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as "reasonable" will however depend upon all the circumstances. The known facts and circumstances should be sufficient to warrant a person of reasonable prudence to believe that a person has engaged or is about to be engaged in criminal activity. It requires a particularised and objective basis for suspecting that the person has engaged in, is engaged in or is about to be engaged in criminal activity.

[13] The Learned Judge in ***Ochwa vs Attorney General (supra)*** further stated, and I entirely agree, that there is no power to arrest and detain a person merely to make enquiries about him or her. The Constitution does not permit an arrest for the purposes of interrogation in the hope of getting enough information to ground a charge.

[14] In the present case, the police officers did not bother to ascertain whether any criminal offence had been committed. It is clear from the facts that no criminal offence had been committed. Even if I were to assume that the 1st Defendant had misrepresented the facts to the police officers, there is evidence

from the Plaintiff that when he was questioned about the motor vehicle in issue, he informed the police officers that he had purchased the vehicle and had handed it over to a driver who had disappeared with it; and he was being tracked. Such facts were sufficient to alert the police officers of existence of a commercial transaction. They should have tasked the Plaintiff to prove the fact of purchase which the Plaintiff would have done. There is no possibility that a person who has evidence of part payment of a motor vehicle can be criminally liable for its disappearance. It is obvious that the complainant's remedy lay in lodging a civil claim for recovery of the outstanding balance; which action the 1st Defendant had in fact commenced.

[15] As such, even if the 1st Defendant had misrepresented the facts to the police officers, it is obvious that from the Plaintiff's preliminary explanation, a prudent police officer would have been in position to establish that the need to preserve the Plaintiff's liberty far outweighed the need to address any commission of a criminal offence. In the circumstances, I find that the Plaintiff was arrested not only in absence of a reasonable suspicion of having committed an offence but, indeed, in circumstances that clearly showed that no known offence could have been committed by the Plaintiff.

[16] I should also point out that as stated by the Plaintiff's Counsel, the practice by police of effecting arrest of citizens for purely civil disputes ought to be discouraged. I do not want to believe that any police officer worth the title cannot make a difference between crimes and civil disputes. Sacrificing personal liberty at the altar of gratifying complainants who wish to make legal short cuts ought not to be tolerated in this day and age. In the circumstances therefore, the Plaintiff has satisfied the Court that his arrest and detention were illegal on the ground that the arrest was effected in absence of either existence of any criminal offence or any reasonable suspicion of having committed or being likely to commit a criminal offence. The action by the police officers therefore contravened the provisions of Article 23(1)(c) of the

Constitution and Section 23(1) of the Police Act and amounted to a tort of false imprisonment.

Detention beyond the 48 hours and Denial of Police Bond

[17] According to the evidence on record, the Plaintiff was arrested and detained on Thursday 6th September 2018 and released on Tuesday 11th September 2018. The Plaintiff further showed that despite his request and that of his relatives, the police unjustifiably denied him police bond. Counsel for the Plaintiff submitted that such detention was contrary to Article 23 of the Constitution of the Republic of Uganda. Counsel also submitted that the denial of police bond was contrary to Section 17 of the Criminal Procedure Code Act Cap 116.

[18] It has already been found that the detention of the Plaintiff was illegal on account of having proceeded from an illegal arrest. But assuming that the arrest had been lawful, I will proceed to consider the legality of the detention on account of the 48-hours rule under Article 23(4)(b) of the Constitution and Section 25(1) of the Police Act. The evidence is that the Plaintiff was arrested on 6th September and released on 11th September 2018. According to *Section 34(1)(a) of the Interpretation Act Cap 3*, a period of days from the happening of an event or the doing of any act or thing is deemed to be exclusive of the day in which the event happens or the act or thing is done. This means that Thursday 6th September is excluded and the days began running on Friday 7th September 2018. However, 8th and 9th September 2018 were Saturday and Sunday respectively, thus weekends. Under Section 34(1)(b) of the Interpretation Act, *“if the last day of the period is a Sunday or a public holiday (which days are in this section referred to as “excluded days”), the period shall include the next following day, not being an excluded day”*.

[19] I would also subscribe to the view expressed by **Mubiru J.** in ***Ochwa vs Attorney General (supra)*** that **“the 48-hour period applies to ordinary**

working court hours and days and excluded weekends and public holidays. If the 48 hours expire outside ordinary court hours, or if it is interrupted by a weekend, or on a day which is not an ordinary court working day, then by necessary implication those days will be excluded and time will end on the first court day after the expiry of the 48 hours”.

[20] In that regard, if Saturday and/or Sunday were excluded, the latest the Plaintiff would have been produced in court or released was 5.00 pm on Monday 10th September 2018. Evidence shows that he was only released on Tuesday 11th September 2018. Continued detention beyond 5.00 pm on Monday therefore constituted illegal detention. However short the period exceeded was, it remains an illegality under the law. However, the shortness of the illegal detention is an important factor to the court when assessing any damages that may be awarded in a particular matter. In the circumstances, I find that the detention of the Plaintiff beyond the period of 48 hours and the refusal to release him on police bond was in contravention of the Plaintiff's right to liberty under Article 23(4)(b) of the Constitution, Section 25(1) of the Police Act and Section 17(3) of the Criminal Procedure Code Act and was therefore unlawful. This also constituted a tort of false imprisonment.

Provision of insufficient meals during detention

[21] It was stated by the Plaintiff that he was given one insufficient meal per day for the five days he was in detention. Counsel for the Plaintiff conceded that there is no express right to food but made reference to the provisions under Article 25(1) of the Universal Declaration of Human Rights (UDHR) and Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which make specific provision for the right to food and are justiciable under our law. Counsel relied on the decisions in ***Hon. Elijah Okupa vs Attorney General, HC MC No. 14 of 2014*** and ***Godfrey Nyakana vs Nema & Others, SCCA No. 05 of 2011*** and invited the Court to find that

denial of sufficient meals to the Plaintiff was a contravention of his right to food.

[22] As conceded by the Plaintiff's Counsel, the right to food is not one of the fundamental or other rights expressly enshrined in our law. However, it is true that it is one that is justiciable in light of Uganda's obligation under international law. It is further important to note that the rights provided for under the International Covenant on Economic, Social and Cultural Rights are subject to progressive realization by member states. It is recognized under the instrument that their implementation cannot be achieved at once and immediately by state parties to the Covenant. As such, the right to sufficient meals during detention in all detention places in Uganda cannot be guaranteed. The State attempts to provide such meals as are within the budgetary capacity of the institutions. It then becomes necessary that the institutions ensure that where a suspect can access food from their relatives or friends, they are not unreasonably blocked.

[23] In the instant case, although it is regrettable that the Plaintiff was given one insufficient meal a day, there is no basis for the court to determine whether the police station had capacity to provide more. There is evidence, though, that the Plaintiff was accessed by friends and relatives. There is no evidence that they were blocked from providing to the Plaintiff more meals than the police station could provide. In the circumstances, if the Plaintiff's detention had been found to be lawful, it would not have been made illegal on account of failure by the police station to provide sufficient meals.

[24] In all, therefore, in answer to issue one, the Plaintiff has satisfied the Court on a balance of probabilities that his arrest and detention was unlawful and constituted an infringement of his rights under the constitution and other enabling laws. A tort of false imprisonment has been proved. The Plaintiff has

further proved that the arrest and detention was initiated by officers of the 1st Defendant and effected by police officers from Jinja Road police station.

Issue 2: Whether the Defendants are vicariously liable for the actions of their officers or agents?

[25] In the scheduling memorandum, Counsel for the Plaintiff had raised this issue as to “whether the 2nd defendant is vicariously liable for the actions of its officers at Uganda Police, Jinja Road Police Station”. It appears Counsel had assumed that the 1st Defendant is directly liable for the alleged actions. This was a wrong assumption given that the 1st Defendant is an artificial person who can only act through its officers, agents or employees. As such, a finding of vicarious liability is also necessary in regard to the 1st Defendant. That is the reason I rephrased issue 2 to read as stated above.

[26] The position of the law on vicarious liability is that where a servant or agent 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. The Principal or employer cannot be held liable unless the agent or employee is liable. In relation to Government, Section 3(1) 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.

[27] Vicarious liability of the principal or employer is thus founded on the primary or direct liability of the agent or employee. Under that doctrine, the principal or employer is thus a joint tortfeasor with the agent or employee. The liability arises whether the acts are for the benefit of the employer or for the benefit of the servant or agent. In deciding whether the employer is vicariously liable or not, two questions are to be determined, namely; whether or not the

employee or agent was acting within the scope of his employment; and whether or not the employee or agent was going about the business of his employer at the time the damage was done to the plaintiff. On the other hand, when the employee or agent goes out to perform his or her purely private business, the employer will not be liable for any tort committed while the agent or employee was on a frolic of his or her own. (See: **Veitch E.** in **East African Cases on the Law of Tort (1972 Edition) at page 78.**)

[28] An act may be done in the course of employment so as to make a principal or master liable even though it is done contrary to the orders of the master, and even if the servant or agent is acting deliberately, wantonly, negligently, or criminally, or for his own behalf; nevertheless, if what he did is merely a manner of carrying out what he was employed to carry out, then his master is liable (See: **Muwonge v. Attorney General [1967] EA 17; Kaggwa Vincent vs Attorney General H.C.C.S No.391 of 2014(Unreported); Hannington Mpala & 2 Ors v Attorney General H.C.C.S No.116 of 2012; Mugabi John vs Attorney General H.C.C.S No. 133 of 2002; Uganda Commercial Bank v Kigozi [2002] EA 305 at 306; Mugenzi V Attorney General [1984] HCB 64; and AG V Hajji Adam Farajara [1977] HCB 29.**)

[29] In the present case, it is not in dispute that the process that led to the arrest and detention of the Plaintiff was initiated by the 1st Defendant. The 1st Defendant acted through its officer whose name is not disclosed in evidence. The officer called the Plaintiff for a meeting at Mapeera House from where the Plaintiff was arrested. The Plaintiff was first taken to the premises of the 1st Defendant from where the officers of the 1st Defendant menacingly demanded for the motor vehicle in issue. When the Plaintiff was eventually taken to Jinja Road Police station, the same female officer who had brought police officers to arrest the Plaintiff served onto the Plaintiff a bare copy of the summons in a suit that the 1st Defendant had instituted at Nakawa Chief Magistrates Court.

The Plaintiff alleged that the same officer of the 1st Defendant went to police to oppose his release on bond.

[30] It is clear from the above evidence that the Plaintiff's arrest and detention was precipitated by officers, agents or employees of the 1st Defendant. The 1st Defendant is, therefore, vicariously liable for the unlawful arrest and detention of the Plaintiff.

[31] Regarding the 2nd Defendant, evidence before the Court is that the Plaintiff was arrested by police officers who first took the Plaintiff to the 1st Defendant's business premises and later to Jinja Road Police Station where he was detained between 6th and 11th September 2018. He was released on 11th September without any criminal charge. It is not disputed that police officers are servants or agents of Government. It is also not disputed that they were acting in the ordinary course of their employment. Whether the police officers acted lawfully or unlawfully, negligently or wantonly, the Government through the 2nd Defendant is vicariously liable for the said acts of the police officers.

[32] Given the finding that the arrest and detention of the Plaintiff were unlawful, the Plaintiff has proved that the Defendants are vicariously liable for the actions of their officers, agents or employees. The second issue is answered in the affirmative.

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

[33] The Plaintiff sought for a number of declarations as indicated in paragraph 1 herein above. From my findings above, the Plaintiff is entitled to a declaration that his arrest and detention were unlawful and constituted an infringement on his right to personal liberty. The Plaintiff is also entitled to a declaration that the Defendants are vicariously liable for the actions of their officers, agents or employees.

[34] The Plaintiff further claimed for orders of compensation for breach of his constitutional rights by way of punitive and general damages. 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 assessing damages arising out of a constitutional violation, although infringement of a person's liberty per se imputes damage, a plaintiff needs to prove some damage suffered beyond the mere fact of unlawful arrest or detention; otherwise, the mere breach may only entitle a plaintiff to nominal damages. In **Ochwa v Attorney General (supra)**, the court held that *"it would trivialize Article 23(4) (b) of the Constitution of the Republic of Uganda to hold that detentions under these conditions, even for a few hours beyond the 48 hours, is always actionable no matter how unlikely it was that the person was exposed to the risk of ill treatment, torture and cruel, inhuman or degrading treatment by such detention"*.

[36] In the instant case, it was stated by the Plaintiff that when he was released, he had to attend to doctors for medical review as he was sick. During detention, he missed his university lectures. He also could not attend to his

business or provide food for his family. The Plaintiff also stated that he suffered from hunger and became weak as a result of being fed on one insufficient meal per day. He also suffered from embarrassment amongst his peers who thought that he had stolen a vehicle.

[37] Counsel for the Plaintiff proposed a sum of UGX 350,000,000/= as general damages in the present case. Counsel referred the Court to two decisions which the Court ought to make reference to when assessing general damages in the present case, namely; ***Mugwanya Patrick vs Attorney General, HCCS No. 154 of 2009 and Mugabi John vs Attorney General, HCCS No. 133 of 2002 [2013] UGHCCD 29.*** In ***Mugwanya Patrick vs Attorney General (supra)***, the plaintiff was In-charge Security Uganda Revenue Authority (URA) Eastern Region was arrested for alleged disappearance of a motor vehicle belonging to his employer (URA). As the supervisor, after conducting investigations and upon reasonable suspicion, the plaintiff had caused the arrest of the driver of the lost motor vehicle and the convoy leader who were taken to police. Surprisingly and without informing the plaintiff, the two were released without recording statements and instead the plaintiff was arrested. While in detention, the OC CID ordered the other detainees in the police cells to beat up the plaintiff who sustained injuries. The plaintiff stayed in detention for about 8 hours. On proof of a case of unlawful arrest and false imprisonment, the court awarded the plaintiff a sum of UGX 15,000,000/= as general damages.

[38] In ***Mugabi John vs Attorney General (supra)***, the plaintiff was arrested, charged and prosecuted for an offence of obtaining money by false pretenses arising from a motor cycle that he had purchased from the complainant. The complainant alleged that the plaintiff had obtained the motor cycle through fraud. The motor cycle was impounded and kept at police. The plaintiff (then accused) produced proof of purchase of the motor cycle, was acquitted of the charges and his motor cycle was returned to him. In a suit for malicious

prosecution, the court found that the plaintiff has been maliciously prosecuted and his motor cycle had been unlawfully impounded. The court awarded the plaintiff a sum of UGX 3,000,000/= as general damages and UGX 15,000,000/= as exemplary damages.

[39] In another case, ***Cpl. Opio Mark v. Attorney General, H.C. Civil Suit No. 611 of 2006***, the plaintiff sued the defendant for recovery of general and exemplary damages for unlawful arrest and false imprisonment for thirteen days, running from 8th March, 2002 up to 21st March, 2002. The court found that the plaintiff's arrest was lawful since it was based on a reasonable suspicion. The Court however found that his detention in police custody beyond the 48 hours was unlawful by reason of being contrary article 23(4) of the Constitution of the Republic of Uganda, 1995 and Section 25 of the Police Act. He was awarded UGX 5,000,000/= as general damages and UGX 1,000,000/= as exemplary damages by reason of the fact that during his detention, he slept on bare cement, was attacked by lice and other insects, and the cell was dark throughout. He was dressed in a shirt and under-pant. He ate cell food since food from his family was not allowed in. While police personnel did not harass him, the inmates in the cell did so. While in detention, he was depressed, humiliated and psychologically tortured.

[40] In the present case, it is clear that the Plaintiff's liberty was infringed upon without any just cause and he had to remain in prison for approximately four days including two weekend days. However, there is no evidence of any kind of torture that was meted on the Plaintiff. The Plaintiff only claimed that he was fed on one insufficient meal a day and was denied police bond. He also claimed that he suffered embarrassment over the false allegations and imprisonment. Although the Plaintiff claimed that he had to seek medical attention after he was released, there is no medical evidence indicating how the detention substantially affected his life. There is also no evidence that the treatment of the Plaintiff while in police detention was of a nature that can be described as

wanton, arbitrary or deliberately malicious as to call for a very high award in general damages. In the circumstances, and owing to passage of time since the above cited cases were decided, I find a sum of UGX 15,000,000/= sufficient as general damages in favour of the Plaintiff against each Defendant severally. I award the said sum accordingly against each defendant severally.

[41] Regarding the claim for exemplary damages, the Plaintiff claimed for punitive damages in the form exemplary damages to punish the rampant practice of the police of engaging into enforcement of commercial and civil disputes as criminal offences. Counsel for the Plaintiff prayed for exemplary damages to the tune of UGX 500,000,000/=.

[42] In law, 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’ ...**”

[43] 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.

[44] In the present case, I have come to the conclusion that although the practice by the police to enforce civil transactions as constituting criminal offences is deplorable, the present case does not disclose evidence of serious ill-treatment of the Plaintiff while in police detention such as can be described as wanton, arbitrary or deliberately malicious. For the psychological torture and embarrassment suffered by the Plaintiff, I believe the general damages awarded will suffice to meet the ends of justice. A caution will also suffice to the police force to avoid the negative practice of attempting to enforce civil disputes through invocation of criminal sanctions. I have therefore made no award in exemplary damages.

[45] On the claim for interest, I will award interest on the general damages at the rate of 8% p.a. from the date of judgement till full payment. The Plaintiff is also awarded the costs of the suit in accordance with Section 27 of the Civil Procedure Act.

It is so ordered.

Dated, signed and delivered by email this 5th day of December, 2022.

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

Boniface Wamala
JUDGE