



dignity and fair treatment guaranteed under Articles 22(1) and 21(1) of the Constitution of Uganda.

(c) A declaration that the act of the Respondent's agents and/or servants in refusing to hand over the body of the said deceased person to his relatives or next of kin for a decent or dignified burial in conformity with his Luo customs and/or spiritual rituals at his ancestral grounds violated his right to decent burial as well as the rights of the deceased's loved ones as enshrined under Article 37 of the Constitution of Uganda.

(d) An order directing the Respondent's agents and/or servants to exhume and hand over the body or the remains of the said deceased person to his relatives for a dignified and/or a decent burial at his ancestral grounds in accordance with his Luo customs, cultural and/or spiritual rituals.

(e) An order awarding a sum of UGX 85,000,000/= as compensation to each of the victims, being the subject persons named above, for the unconstitutional acts, mental anguish and inconvenience meted out by the Respondent's agents and/or servants in the course of their employment.

(f) An order awarding a sum of UGX 75,000,000/= as punitive and exemplary damages to each of the named subject persons to deter the Respondent's agents and/or servants from committing similar highhanded, arbitrary and unconstitutional acts.

(g) An order awarding a sum of UGX 200,000,000/= as general damages to the named subject persons for their affected sentimental feelings, mental anguish, agony, misery, inconvenience and grief caused by the Respondent's agents and/or servants owing to the unlawful killing of their relative and denying them a right to accord him a decent and/or dignified burial.

(h) An order for interest on the awarded sums at the rate of 25% pa. from the date of judgment till full payment.

(i) Costs of the application and interest thereto.

[2] The grounds of the application are summarised in the Notice of Motion and also set out in an affidavit sworn in support of the application by the Applicant and another supplementary affidavit by the same deponent. Briefly the grounds are that the Applicant is a cousin/ nephew to the subject persons named in paragraph 1 above who are currently in prison. The Applicant states that on 24<sup>th</sup> April 2021, the subject persons were brutally arrested from their home at Wigweng village, Awio parish, Iceme sub-county in Oyam District by soldiers from Lira Garrison and police officers from Oyam Central Police Station. In the course of the said arrest, the said officers shot dead one Remizio Okello (the deceased person) and thereafter took away his body to an unknown place. Upon arrest, the subject persons were not informed of the reasons for their arrest and consequent detention, and were not granted prompt access to a lawyer or next of kin. Rather they were detained *incommunicado* until they were taken to court ten days later (on 4<sup>th</sup> May 2021) upon charges of aggravated robbery. The Applicant stated that the subject persons suffered torture, severe mental anguish and pain during their arrest and detention and owing to the refusal of the Respondent's agents and/or servants to release the body of the named deceased person for a decent burial.

[3] The Respondent opposed the application through an affidavit sworn by **ACP Dinah Kyasiimire**, an Assistant Commissioner of the Uganda Police Force in the Directorate of Human Rights and Legal Services. In her affidavit, the deponent states that the application is *res judicata* given that the Applicant had before filed HCMA No. 466 of 2021 and HCMC No. 136 of 2021 before this Court in which the Applicant sought similar remedies upon which the Court pronounced itself. She further states that the subject persons have been guaranteed a fair trial having been indicted, committed and are awaiting their day in Court. As such, the said persons have not been deprived of their rights and no damages have been suffered by them. She prayed that the application be struck out with no order as to costs.

[4] The Applicant filed an affidavit in rejoinder whose contents I have also taken into consideration.

### **Representation and Hearing**

[5] At the hearing, the Applicant was represented by Mr. Bafirawala Elisha of Marlin Advocates while the Respondent was at one instance represented by Mr. Ebila Hillary Nathan appearing on brief for Mr. Twinomugisha Mugisha from the Attorney General's Chambers. On subsequent occasions, however, when the matter came up, the Respondent was not represented in Court despite sufficient notice, and no explanation was offered to Court. The hearing therefore proceeded ex parte. Counsel for the Applicant filed written submissions. I have considered the evidence on record and the submissions of the Applicant in the course of determination of the matter.

### **Preliminary Objection**

[6] In their affidavit in reply to and in opposition of the application, the Respondent indicated that they would raise a preliminary objection to the effect that this application is res judicata. I will therefore begin by considering this objection. The doctrine of res judicata is provided for under Section 7 of the Civil Procedure Act which provides as follows;

*“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit in which such issue has been subsequently raised, and has been heard and finally decided by that court.”*

[7] The position of the law on this matter has also been succinctly put by the Court of Appeal in **Ponsiano Semakula Vs Susane Magala & Ors, 1993 KALR 213** which was cited with approval in the latter case of **Maniraguha**

**Gashumba Vs Sam Nkundiye, CA Civil Appeal No.23 of 2005** where the court stated that;

**“The doctrine of res judicata, embodied in S.7 of the Civil Procedure Act, is a fundamental doctrine of all courts that there must be an end to litigation. The spirit of the doctrine is succinctly expressed in the well-known maxim: ‘nemo debet bis vexari pro una et eada causa’ (no one should be vexed twice for the same cause). Justice requires that every matter should be once fairly tried and having been tried once, all litigation about it should be concluded forever between the parties. The test whether or not the suit is barred by res judicata appears to be that the plaintiff in the second suit is trying to bring before the court in another way and in the form of a new cause of action, a transaction which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. If so, the plea of res judicata applied not only to points upon which the first court was actually required to adjudicate but to every point which properly belongs to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”**

[8] From the foregoing legal position, the essential elements of the doctrine of res judicata are:

- a) There was a former suit between the same parties or their privies;
- b) The matter was heard and finally determined by court on its merits;
- c) The matter was heard and determined by a court of competent jurisdiction; and
- d) The fresh suit concerns the same subject as the previous suit.

(See: **Bithum Charles vs Adoge Sally, HCCS No. 20 of 2015** which relied on **Ganatra v Ganatra [2007] 1 EA 76; Karia & Another v Attorney General & Ors [2005] 1 EA 83 at 93-94** and **Attorney General & Anor vs Charles Mark Kamoga MA 1018 of 2015**)

[9] On the case before me, two previous matters concerning the same subject persons were earlier filed in this Court, namely; Miscellaneous Cause No. 136 of 2021 and Miscellaneous Application No. 466 of 2021. M.C 136 of 2021 was an application for habeas corpus and seeking release of the body of the deceased Remizio Okello. This application was heard and granted. M.A 466 of 2021 was an application for orders that the Respondents in M.C 136 of 2021 were in contempt of the court orders. Although in M.A 466 of 2021 the Applicant sought for damages, they were claims based on contempt of the court orders and not for enforcement of the subject persons' human rights. The present application is an application for human rights enforcement. The issues in the present application have never been before the Court for consideration. They could be related but such does not invoke the doctrine of res judicata. The elements of the doctrine have been aptly set out above and the present case does not come anywhere near to meeting those elements. Counsel for the Respondent was therefore misguided in thinking that the doctrine of res judicata was applicable to the present case. The preliminary objection is, therefore, wholly devoid of merit and is rejected.

### **Issues for Determination by the Court**

[10] Three issues were agreed upon for determination by the court, namely;

- a) Whether the named rights and freedoms of the victims were violated as alleged in the application?**
- b) Whether the Respondent is vicariously liable for the violation?**
- c) What remedies are available to the Applicant/Victims?**

### **Resolution of the Issues by the Court**

**Issue 1: Whether the named rights and freedoms of the victims were violated as alleged in the application?**

[11] Every person is entitled to enjoyment of fundamental rights and freedoms deriving not only from natural law but also as provided for under international and national legal instruments starting with the Universal Declaration of

Human Rights of 1948, followed by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, among other later instruments. The Constitution of the Republic of Uganda in Chapter Four thereof elaborately provides for these rights. Under Article 20 (1) and (2), the Constitution provides that; *“Fundamental rights and freedoms of the individual are inherent and not granted by the state”* and the *“rights and freedoms of the individual and groups enshrined in this chapter shall be respected, upheld and promoted by all agencies of government and all persons”*.

[12] Counsel for the Applicant submitted that various named rights of the victims were violated as indicated in the Notice of Motion, the affidavits in support and the supplementary affidavit. I will consider each of the allegations as set out by the Applicant.

### **The right to be informed of the reasons for the arrest and detention**

[13] Article 23(3) of the Constitution of the Republic of Uganda, 1995 requires that a person arrested or detained should be informed immediately, in a language that the person understands, of the reasons for arrest. Counsel for the Applicants relied on paragraphs 4, 9, 11, 12, 13, 16, 17 and 18 of the affidavit in support of the application and on the cases of ***Right Trumpet & 2 Ors vs AIGP Asan Kasingye & 5 Ors*** and ***Mucunguzi Abel & 9 Ors vs Attorney General and 2 Ors MC No. 17 and 003 of 2017*** where it was held that the failure by the arresting officers to inform the plaintiff of the reason for the arrest was a gross violation of his rights.

[14] In this case, the Applicant led evidence that the victims were never informed of the reason for their arrest until they were arraigned in court 10 days later. This evidence has not been denied by the Respondent. There is no justification as to why the police failed or delayed to inform the subject persons of the reasons for their arrest. This constitutes a blatant breach of the

constitutional right of the subject persons and I accordingly find that the right to be informed of the reasons for their arrest and detention was violated.

**The right to prompt access to a lawyer and notification to a next of kin**

[15] It was stated by the Applicant that the subject persons were detained *incommunicado* at Lira Police Station for ten days. They were accordingly denied access to any lawyer or notification to and access by their next of kin. Counsel for the Applicant submitted that this was in breach of Article 23(3) and 23(5)(a) and (b) of the Constitution. Having found that the Respondent's agents and/or servants held the subject persons *incommunicado*, it goes without saying that there was no opportunity for the victims to be accessed by their lawyers or next of kin. There is also no evidence from the Respondent to controvert the Applicant's allegation that there was no notification as to where the victims were being kept and that no access was given to either their lawyers or next of kin. I accordingly find that the victims' rights to prompt access to a lawyer, notification to and access by a next of kin were violated by the Respondent's agents and/or servants as guaranteed under Article 23(3) and 23(5)(a) and (b) of the Constitution.

**The right to be brought promptly to Court**

[16] Article 23(4)(b) of the Constitution of the Republic of Uganda 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, should, 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 the same spirit, Section 25(1) of the Police Act requires a police officer on arresting a suspect without a warrant, to produce the suspect so arrested before a Magistrate's court within forty-eight hours unless earlier released on bond. Counsel for the Applicant, relying on paragraph 18 of the affidavit in support, submitted that the victims were detained for 10 days before being arraigned and formerly charged in court which was a violation of this right.



There was neither a denial nor a justification by the Respondent for contravening this constitutional directive. I accordingly find that this right of the subject persons was also violated.

**The right to freedom from torture and cruel, inhuman or degrading treatment or punishment**

[17] It was stated by the Applicant and submitted by his Counsel that the rights of the victims to freedom from torture, cruel, inhuman and degrading treatment were violated. The Applicant averred in paragraphs 4 and 10 of his affidavit in support of the application that at all material times, before during and after victim's arbitrary arrest, they were subjected to inhuman or degrading treatment in spite of the fact that they were unarmed and did not put up any resistance.

[18] Article 24 of the Constitution guarantees freedom from torture, cruel, inhuman or degrading treatment or punishment. This right is non-derogable and absolute under Article 44(a) of the Constitution. Furthermore, Section 2 of the Prevention and Prohibition of Torture Act 2012 defines torture as "any 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 consent or acquiescence of any person whether a public official or other person acting in an official or private capacity for purposes such as obtaining information or a confession from the person or any other person; 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 intimidating or coercing the person or any other person to do, or to refrain from doing, any act".

[19] Section 2(3) of the Prevention and Prohibition of Torture Act makes reference to the second schedule to the Act which sets out the acts constituting torture under three categories, namely; physical, mental or psychological, and pharmacological torture. In paragraph 4, of the affidavit in support of the

application, it is alleged that during their arrest, the victims were brutally arrested, beaten viciously and later bundled onto a motor vehicle and taken to an unknown place. Under paragraph 10 of the affidavit, the Applicant alleges that the victims were subjected to cruel, inhuman or degrading treatment in spite of the fact that they were unarmed and did not put up any resistance against the arresting officers.

[20] In absence of any further evidence, it is difficult to conclude that the victims were physically assaulted at the time of arrest. However, “confining a victim *incommunicado*, in a secret detention place or other form of detention” constitutes torture of a mental or psychological nature under item 2(c) of the second schedule to the Prevention and Prohibition of Torture Act 2012. It has already been established before the Court that the victims herein were detained *incommunicado*. This constituted torture, cruel, inhuman or degrading treatment as against the victims.

**The right to enjoy the best attainable state of physical and mental health**

[21] It was stated in paragraph 18(a)(ix) of the affidavit in support of the application that the victims were denied their right to enjoy the best attainable state of physical and mental health as provided for under Article 16 of the African Charter on Human and Peoples’ Rights. Counsel for the Applicant submitted that the victims were subjected to immense anxiety and mental anguish that culminated from the manner and duration of the victim’s arrest and detention. Counsel also relied on the case of ***CEHURD & 2 Ors. V The Executive Director Mulago Hospital, HCCS No. 212 of 2013*** on the right to health and obligations of the state to respect it. Counsel further submitted that this Court, in keeping with its mandate to promote, protect, and respect the fulfilment of fundamental rights, is vested with the power to grant the applicant a remedy for the abhorrent violations suffered by the victims.

[22] On the case before me, while I agree that the above named right is justiciable under our Constitution and other enabling laws, I have not found any facts pointing to breach of this right in respect of the subject persons or of the obligation on the part of Uganda as a state party. Article 16(2) of the African Charter on Human and Peoples' Rights clearly sets out the obligation on the part of state parties in the following terms;

*“States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”*

[23] In the instant case, there is no evidence that such obligation was breached as the the right to health of the subject persons is not directly in issue herein. No breach has, therefore, been established in this regard.

### ***The right to life and custom***

[24] The Applicant averred in paragraph 5 of the affidavit in support and paragraphs 5 and 6 of the supplementary affidavit that in the course of conducting arrest of the victims, the Respondent's servants and/or agents commanded by RO08695 Lt. Col. Ayebare Nelson and RA 155856 Cpl. Basajjabalaba Sulait from Lira Garrison, and police officers attached to Iceme Police Station shot dead one Remizio Okello, took away his body and the same has never been handed over to his relatives for a decent burial in accordance with his Luo culture and customs. These averments are corroborated on record and have not been denied by the Respondent.

[25] The fact of the shooting and death of the said deceased person is not in dispute. The Court was informed that the officers of the Respondent implicated in the shooting are currently undergoing trial on murder charges. The charge sheet is on record as Annexure “C” to the affidavit in support indicating three charges of; Murder, Obstruction of Lawful Execution of Duty and Conspiracy to Commit a Felony. It is therefore not in dispute that a life was lost through

unlawful means in terms of Article 22(1) of the Constitution. Secondly, it is also not in dispute that the body of the said deceased person has never been handed over to the deceased's relatives. It is stated in the two affidavits sworn by the Applicant that he was buried under the category of "unclaimed body". Pursuant to the disposal of MC No. 136 of 2021, the Respondent was ordered to release the body to the deceased's relatives but the same has not been done and there seems to be no effort made towards that direction. In their affidavit in reply, the Respondent has not explained why the same has not been done.

[26] I find it inconceivable that the Respondent's servants and/or agents have taken this long without handing over the body of the deceased person to the relatives for a decent and dignified send off. The fact that they have not made any explanation to the Court implies that it is a deliberate act of breach of the victims' rights. It follows therefore that the right of the deceased to life under Article 22(1) of the Constitution was violated and so is the right of the Applicant and subject persons to conduct a decent burial for their relative in accordance with their right to practice one's culture and customs under Article 37 of the Constitution. This breach is also established by the Applicant. Issue 1 is therefore largely answered in the affirmative.

**Issue 2: Whether the Respondent is vicariously liable for the violation?**

[27] It was submitted by Counsel for the Applicant that the Respondent is vicariously liable for the above established violation of the rights of the subject persons and the deceased person. Counsel relied on paragraphs 6 (iii) of the affidavit in support and paragraphs 5 and 6 (b) of the supplementary affidavit wherein it was stated that the alleged violations that followed the arrest of the victims and shooting of the deceased persons were committed by named agents and/or servants of the Respondent. As already underlined under issue one above, some of these officers are already undergoing trial on criminal charges in this regard. It is not in dispute that the said agents and/or servants of the Respondent were acting in the course of their employment as UPDF and Police

officers as the said fact was not denied by the Respondent in their affidavit in reply. The two reports attached to the Supplementary affidavit as Annexures “A” and “D”, themselves made by the Respondent’s officers, further reinforce the Applicant’s evidence on involvement of the Respondent’s agents and/or servants in the alleged violations.

[28] 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.

[29] 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.**)

[30] 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.***

[31] In the instant case, the evidence clearly points to the fact that the team that went to effect the impugned arrest constituted officers from the UPDF and the Uganda Police Force. The UPDF team was led by RO 08695 Lt. Col. Ayebare Nelson and RA 155856 CPL. Basajjabalaba Sulait. It included one RA 255934 Pte. Ogette Emmanuel who is said to have pulled the trigger leading to the death of Remizio Okello. The police team was led by D/ASP Okoboi Amos from Oyam Police Station. There is no doubt that all these officers and men were agents and/or servants of the Respondent and were acting in the course of execution of their duties. The Respondent is, therefore, vicariously liable for the violations that have been proved under issue one. The second issue is accordingly answered in the affirmative.

### **Issue 3: What remedies are available to the Applicant/Victims?**

[32] The Applicant prayed for a number of declarations as set out in paragraph 1 herein above. Given the findings on issues 1 and 2 above, the Applicant is entitled to the said declarations as I will summarise them hereafter.

[33] The Applicant prayed for compensation and damages under separate heads. Counsel for the Applicant appears to be under the impression that the

Court will award a particular sum as compensation and another sum as general damages. This is a wrong impression. Apart from punitive damages, which usually take the form of exemplary damages, all other range of damages are intended to compensate the aggrieved person. As such, when the law states that an aggrieved person shall be entitled to compensation, such compensation is envisaged to be in form of either special, general, aggravated or such other form of damages. It is not envisaged that one will claim for a sum under the head of compensation and then also claim under the head of general damages; as Counsel for the Applicant did under paragraphs (e) and (g) of the Notice of Motion. I will therefore only consider the claim for general damages which is capable of ensuring that the subject persons are adequately compensated in the circumstances.

[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 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 HCCS No. 41 of 2012***, 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] On the facts of the present case, having found that various rights of the victims were violated through the wrongful conduct of the Respondent’s agents and/or servants, it follows that the Applicant has established that the subject persons are entitled to general damages for such wrongful acts. What remains is for the Court to determine the extent of harm occasioned to the victims and making an assessment of the appropriate quantum of damages to be awarded through the Applicant. The Applicant has led evidence showing that the victims suffered from mental anguish, agony, misery, inconveniences and grief while they were held *incommunicado* and also occasioned by the unlawful killing of their relative and the subsequent refusal to release the deceased’s body for a decent and dignified burial.

[37] While coming to a decision on a sum that constitutes fair and reasonable compensation in this regard, I take cognisance of the fact that damages for death, pain and suffering present serious difficulty in assessment with precision. I am equally aware that comparing the magnitude of pain and suffering in concrete terms with comparable past cases is quite difficult to put in terms of monetary awards. Nevertheless, in the present circumstances, I am faced with a claim made on behalf of various victims who were arrested while mourning the death of their relative that was killed by the Respondent’s agents and/or servants; and a further fact that the body has not been handed over to the relatives for over a long period of time for a decent burial and in accordance with their culture and customs. The subject persons or victims are nine in



number. The Applicant brought this claim in their interest. In the circumstances, I will award a sum of UGX 20,000,000/= (Uganda Shillings Twenty Million only) to each of the victims; totalling to a sum of UGX 180,000,000/=.

[38] The Applicant also made a claim for punitive damages in form of exemplary damages. Exemplary damages 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 by **Lord McCardle J. in *Butterworth v Butterworth & Englefield [1920] P 126***, **“Simply put, the expression exemplary damages means damages for examples sake.”**

[39] According to **Lord Devlin** in the land mark case of ***Rookes v Barnard [1946] ALLER 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 authorises the award of exemplary damages.

[40] On the case before me, the Applicant has shown that the victims’ rights were grossly abused by the Respondent’s agents and/or servants. Counsel for the Applicant submitted that in view of the arbitrary arrest and detention of the victims, the wanton killing of the deceased person, followed by the refusal to release the body for a decent and dignified burial, exemplary damages ought to

be awarded against the Respondent. It is true that the evidence before the court discloses high-handedness on the part of the concerned security agencies. There is also an allegation that the nine subject persons were arrested, detained and charged as a cover up by the security agencies after the unlawful killing of the said deceased person. This allegation is corroborated by a police report which is on record as Annexure "A" to the supplementary affidavit sworn by the Applicant. In the circumstances, I am satisfied that this is a case that merits an award in exemplary damages. On the facts, I find a sum of UGX 100,000,000/= (Uganda Shillings One Hundred Million only) appropriate as exemplary damages against the Respondent for the wanton acts of their agents and/or servants. I award the said sum in exemplary damages accordingly.

[41] The Respondent further claimed for interest on the awarded sums in damages. In accordance with Section 26 of the Civil Procedure Act, I award interest on the sums awarded in general and exemplary damages above at a rate of 10% p.a. from the date of judgement until payment in full. In accordance with Section 27 of the CPA, the Applicant is also awarded the costs of the suit.

[42] All in all, therefore, the application is allowed with the following declarations and orders;

- a) A declaration that the acts by the Respondent's agents and/or servants of arresting and detaining the subject persons or victims *incommunicado* violated their fundamental human rights and freedoms, namely; the right to be informed of the reason for their arrest and detention; the right to prompt access of a lawyer; right to notification to and access by a next of kin; the right to be brought promptly before a court of law; and freedom from torture, cruel, inhuman or degrading treatment under the respective provisions of the Constitution of Uganda.

- b) A declaration that the act by the Respondent's agents and/or servants of unlawfully killing one Remizio Okello (the deceased person) violated his right to life under Articles 22(1) of the Constitution of Uganda.
- c) A declaration that the act by the Respondent's agents and/or servants of refusing to handover the body of the late Remizio Okello to his relatives or next of kin violated the victims' right to accord the deceased person a decent and dignified burial at his ancestral grounds in accordance with his culture and customs under Article 37 of the Constitution of Uganda.
- d) Orders that;
  - i) The Respondent doth cause the exhumation and hand over of the body of the late Remizio Okello (the deceased person) to his relatives for a dignified burial at his ancestral burial grounds in accordance with their culture and customs.
  - ii) The Respondent shall pay a sum of UGX 20,000,000/= (Uganda Shillings Twenty Million only) in general damages to each of the 09 (nine) subject persons or victims named in paragraph 1 of this Ruling.
  - iii) The Respondent shall pay a sum of UGX 100,000,000/= (Uganda Shillings One Hundred Million only) as exemplary damages in favour of the Applicant and other victims.
  - iv) The Respondent shall pay interest on the sums in (ii) and (iii) above at a rate of 10% p.a. from the date of judgement until payment in full.
  - v) The Respondent shall pay the taxed costs of this suit to the Applicant.

It is so ordered.

***Dated, signed and delivered by email this 12<sup>th</sup> day December, 2022.***



**Boniface Wamala**

**JUDGE**