

of the Prevention and Prohibition of Torture Act, 2012 for orders and declarations that;

- 1. A declaration that the torture, brutality and violence unleashed onto the applicant by the combined forces of the Internal Security Organisation (ISO) and other militia amounted to a violation of his constitutional rights and freedom from torture, cruel, inhuman and degrading treatment under Article 24 and 44 of the Constitution of Uganda.*
- 2. A declaration that the unlawful arrest and detention of the applicant at Kyengera base 1 and 2 safe house and later transferred to island of Lwamayuba Kalangala district for 18 months amounted to a violation of the applicant's constitutional right to liberty guaranteed under Article 23(2) of the Constitution of Uganda.*
- 3. A declaration that the brutality, humiliation and embarrassment meted out onto the applicant amounted to inhuman and degrading treatment under Article 44 of the Constitution.*
- 4. A declaration that the forced labour, slavery brutality, humiliation and embarrassment meted out onto the applicant amounted to inhuman and degrading treatment under Article 25 and 44 of the Constitution.*
- 5. An Order for refund of 20,000,000/= that the applicant had at the time of his arrest and the same was taken away from him at the time of his arrest.*
- 6. An Order that the respondent pays compensatory and punitive damages for the violation of the applicant's constitutional rights and freedoms.*
- 7. An Order for the award of general and exemplary damages for the psychological torture, mental anguish and emotion stress suffered by the applicant.*

8. An Order that the respondent pays interest of 20% p.a on the awards and costs of this cause.

The grounds upon which the application is based are contained in the affidavit in support of the application deposed by the applicant but briefly they are;

- a) That on 27th May 2018, the applicant was arrested from Kyengera towards Nabingo at around 9pm by armed plain clothed security operatives who rushed and detained him at ISO Safe house base 2 and later base 1 at Kyengera Wakiso District from where he was joined with other inmates and taken to island of Lwamayuba Kalangala District for undisclosed offence detained for 17 months without any charge preferred.
- b) That during the arrest, the applicant was torture by among others Muksa Bashiru, Cpl Ataliwuwe Richard, Cpl Apunya Joseph, Oposi Joseph, Sserunjogi Paddy Dickens, Rokani Obuleju, Ssemujju Musa, Nsagiranabo Erasmus Jack, Okurutu David, Musabe Shaban, Kaberenge, deo, Musoga, Ddiba, Jamada, Junior and Nsubuga who harangued and arrested the applicant in a cruel, inhuman and degrading manner, without being informed of the offence against him which amounted to a violation of his Constitutional rights.
- c) That immediately after arresting and handcuffing the applicant, his property motor vehicle registration No. UAY 353J Toyota Alion grey in colour and Ug Shs 20,000,000/= being his working capital as a broker was taken. But later the motor vehicle was released to his sister-Namanda Jesca and Wife Shamim Nalugo.
- d) That the applicant was detained for 17 months up to 11th September 2019 without being allowed to see any of his relatives or to get medical treatment for the sickness that arose during the cruel and degrading treatment during his arrest.

- e) That during the time of detention at Lwamayiba island in Kalangala district, at the hands of ISO Operatives, at no pay was forced to clear and cut down forests together with others and clear bushes for pineapple farming for use and utilization of ISO Operatives.
- f) That during his detention for 17 months, the applicant was deprived of business and his children had to forfeit school going due to lack of school fees and parental care and love being the sole bread winner.
- g) That during the said detention, the Director General of ISO Col. Kaka Bagyenda could visit them at Lwamayuba Island Kalangala district and addressed them on several issues regarding their detention.
- h) That during his detention at ISO Safe House base 1 and 2 at Kyengera and later at Lwamayuba Kalangala District, his health deteriorated as a result of torture which was inflicted upon the applicant and he was denied access to medical treatment for the entire period.
- i) That during his detention at ISO safe houses base 1 and 2 at Kyengera and Lwamayuba Island the applicant was tortured in the following ways;
 - (i) Making the applicant sleep in dirty water flooded room while on handcuffs and leg cuffs during day and night.
 - (ii) Beating the applicant every morning, during the day and at night leading to breaking of his left hand and joints for which he spent 10 months at Kyengera safe house.
 - (iii) Blindfolding the applicant throughout the day while at safe house at Kyengera Wakiso district.
 - (iv) Making the applicant sleep on grass while on hand chain buffered.
- j) That the applicant upon release from illegal detention appeared in Parliament of Uganda as a witness of torture in the Report of the Committee on Human Rights on Alleged Torture in Ungazetted Detention Centres in the Country.

k) That the actions of the ISO operatives in the course of execution of their duties as full time employees of the Uganda Peoples Defence Forces greatly injured his credit, character and reputation and he has suffered severe mental anguish, pain, embarrassment and inconvenience for which he seeks general damages, punitive damages and Exemplary damages.

The 1st respondent opposed the application by an affidavit of Jones Rugumya-Director for Operations at Internal Security Organisation contending inter alia;

1. That if the applicant was indeed arrested, detained, tortured and subjected to forced labour, it was not at the hands of Internal Security Organisation Operatives.
2. That if at all the mentioned safe houses they existed, they were not used as detention centres or used for purposes of torturing occupants.
3. That if at all the applicant suffered torture, cruel and degrading treatment and forced labour, it was not at the hands of security operatives as alleged.
4. That it is in the interest of justice, good conscience, equity, good governance and accountability that the orders sought herein against the 1st respondent should not issue.

The applicant served the 2nd to 15 respondents by way of substituted service in the Daily Monitor Newspaper of 18th May 2021 but none of them responded or filed any affidavit in reply.

At the hearing, the applicant was represented by *Counsel Dennis Kakeeto* and *Counsel Nsereko Joseph* while the 1st respondent was represented by *Counsel Sam Tsubira (SA)* & *Counsel Namakula Elizabeth (SA)*

The court gave directives for filing of submissions, which were duly filed by both parties and have been considered in making this ruling. The court shall proceed to determine the issues as presented by the applicant.

DETERMINATION

Preliminary Considerations

The 2nd to 15th respondents never filed any affidavit in reply, so the court would deem it that what was pleaded against them in the affidavit in support is admitted.

In the case of ***Basajjabalaba Hides & Skins Ltd v Bank of Uganda & Anor HCMA No. 738 of 2011***, quoting the case of ***Samwiri Massa v Achen [1978] HCB 297***, it was held; *Where certain facts are sworn to in an affidavit, the burden to deny them is on the other party and if he does not, they are presumed to have been accepted.*

It is a principle of law that uncontroverted facts contained in an affidavit are taken as true and only minimal proof is required of such evidence. Every affidavit constitutes evidence; where one party fails to counter the evidence called the other party, unless the evidence is not of probative quality, the court would be justified to rely on the fact and use it to settle the issue in controversy, if the asserted fact(s) is plausible. ***See Fortune International Bank Plc v City Express Bank Ltd (2012) 14 NWLR (pt 1319); Adebisi v Umar (2012) 9 NWLR (pt 1305) 279 (CA)***

The applicant's facts as set out in the affidavit in support are deemed true and admitted by the 2nd to 15th respondents who never filed any reply.

ISSUES

- 1. Whether the applicant was subjected to torture and brutality?*
- 2. Whether the applicant was unlawfully arrested and detained?*
- 3. Whether the applicant was subjected to inhuman and degrading treatment?*
- 4. Whether the applicant is entitled to the remedies claimed?*

Determination of issues

Whether the applicant was subjected to torture and cruel, inhuman or degrading treatment or punishment?

Counsel for the applicant submitted that for an act to amount to torture not only must there be certain severity in pain and suffering, the treatment must be intentionally inflicted for the prohibited purpose and this is what happened to the applicant as set out in his evidence set out in the affidavit.

The applicant stated that his health deteriorated because of torture and he was denied access to medical care for the entire period he was under detention.

The applicant further submitted that he was subjected to forced labour while he was at Lwamayuba Island at Kalangala district and was subjected to inhuman and degrading treatment while at the said island.

The 1st respondent's counsel submitted that the applicant has not proved any alleged torture since there was no independent evidence or that the allegation were not supported by cogent evidence to prove the claims of torture and brutality.

The 1st respondent counsel further submitted that section 2(2) of the Security Organisations Act, defines ISO as a government department whose function is inter alia, to collect, receive and process internal intelligence on the security of Uganda. It was their contention that ISO operatives never subjected the applicant to forced labour.

The 1st respondent contended that this court should take judicial notice of the fact that ISO does not engage in any forestry or farming activities based on their duties as provided under the Security Organisation Act. They denied the photograph which the applicant attached to his application showing the Director General of ISO visiting the applicant and other detainees at a farm.

Analysis

Respecting the rights of others begins with each of us. We all want to be free to make our own decisions about what we say or do, but of course the limit to our freedom is when our actions or words start to cause harm to others.

However, it is not just up to individuals to work out what is right and wrong or how to deliver on the promise of human rights-our government should be

instrumental in respecting and fulfilling human rights. All the three arms of government-(Executive, Parliament and Judiciary) and all public authorities have the primary responsibility to promote, protect, respect and fulfill human rights.

Torture is never acceptable under any circumstances-there is no justification for it whatsoever and it is strictly forbidden in any form.

Article 24 of the Constitution of the Republic of Uganda provides for freedom from torture or cruel, inhuman and degrading treatment. Article 44 of the Constitution of the Republic of Uganda prohibits derogation from that right.

Freedom from torture is a non derogable right under the constitution

The right to freedom from torture, inhuman and degrading treatment is also provided for in the **Universal Declaration of Human Rights** under Article 5 thereof which provides;

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

The right to freedom from torture is also envisaged in the **International Covenant on Civil and Political Rights**, Article 7 thereof provides;

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

The **African Charter on Human and People’s Rights** provides for freedom from torture, inhuman and degrading treatment under Article 5 which states;

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

Article 5 prohibits not only torture, but also cruel, inhuman or degrading treatment. This includes not only actions which cause serious physical and psychological suffering, but which humiliate the individual or force him or her to act against his/her will or conscience. See **International Pen and Others (on behalf of Saro-Wiwa) v Nigeria (2000) AHRLR 212 (ACHPR 1998)**

Inhuman treatment or punishment is treatment which causes intense physical or mental suffering. It includes:

- serious physical assault
- psychological interrogation
- cruel or barbaric detention conditions or restraints
- serious physical or psychological abuse in a health or care setting, and
- threatening to torture someone, if the threat is real and immediate.

Section 3 of the Prevention and Prohibition of Torture Act, 2012 provides:

Notwithstanding anything in this Act, there shall, be no derogation from enjoyment of the right to freedom from torture.

Freedom from torture is one of the most universally recognized human rights. Torture is considered so barbaric and incompatible with civilized society that it cannot be tolerated. Torturers are seen as the 'enemy of mankind'.

Torture is considered one of the most serious crimes against humanity because of its profound violation of the moral and physical integrity of the individual.

In ***Ireland vs United Kingdom ECHR Application No.5310/71*** Court explained the distinction between Torture and inhuman or degrading treatment lies in the difference in the intensity of suffering inflicted. In deciding whether certain treatment amounts to torture, the court takes into account factors of each individual case, such as the duration of treatment, its physical and mental effects, and age, sex, health and vulnerability of the victim.

The suffering and humiliation must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment, as in for example, measures depriving a person of their liberty. See ***Wainwright v United Kingdom Case No. 12350/04, ECHR***

Torture; it must inflict pain that is difficult to endure. Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, pain or suffering to amount to torture it must result in significant psychological harm of significant duration.

The courts should apply a very strict test when considering whether there has been a breach of an individual's right to freedom from torture or inhuman or degrading treatment. Only worst examples are likely to satisfy the test. See ***Issa Wazembe vs Attorney General HCCS No. 154 of 2016***

In the instant case basing on the evidence from the applicant, the applicant was kept incommunicado at some place at Kyengera at Wakiso district. His evidence is corroborated by the Parliamentary report on torture where he stated as follows;

"He stated that while in Kyengera, when the detained people tried to make an alarm, they were blindfolded and beaten when the police officers of Nsangi and Kyengera showed up. Food was also thrown at them like dogs"

The applicant further stated that;

- j) That during his detention at ISO safe houses base 1 and 2 at Kyengera and Lwamayuba Island the applicant was tortured in the following ways;*
 - (v) Making the applicant sleep in dirty water flooded room while on handcuffs and leg cuffs during day and night.*
 - (vi) Beating the applicant every morning, during the day and at night leading to breaking of his left hand and joints for which he spent 10 months at Kyengera safe house.*
 - (vii) Blindfolding the applicant throughout the day while at safe house at Kyengera Wakiso district.*
 - (viii) Making the applicant sleep on grass while on hand chain buffered.*

In the cases of violation of rights through torture, the parties make all manner of allegations of torture and the same usually remain extremely controversial since it is the 'case your word against my word'. The court will need to have cogent and credible evidence before it arrives at the decision that a person was tortured or subjected to inhumane and degrading treatment.

The applicant has substantiated his claims of torture, cruel and inhuman and degrading treatment while he was detained at Kyengera and Lwamayuba Island at Kalangala island. The applicant's evidence remained uncontroverted by the 2nd to

15th respondents who were specifically joined to the application as the violators of the applicant's rights.

This court cannot be a silent spectator where unchallenged facts of the applicant point to acts of torture by the 2nd to 15th respondents who inflicted the torture, cruel and inhuman and degrading treatment of the applicant for a period of 17 months.

Whether the applicant was unlawfully arrested and detained?

The Applicant counsel submitted that the applicant was arrested on 27th day of May 2018 while heading from Kyengera to Nabingo by plain clothed security operatives. The security operatives never informed him of any reason why he was arrested and detained at the safe house and later at Lwamayuba island.

The applicant contended that he was never informed of any reason for his arrest and the subsequent detention for the 17 months and he was never allowed to see his relatives, lawyers or get medical treatment for the injuries and pain.

The applicant was arrested and detained beyond the mandatory 48 hours which is contrary to the constitution and there was no justification for the said arrest and detention.

Analysis

Arrest is carried out where there is reasonable ground for suspicion of guilt. The test to be applied is that the onus of proof is on the person making the arrest to justify his conduct, must be that of a reasonable person acting without passion or prejudice. An arrest properly made by the police cannot amount to breach of fundamental rights.

An arrest pending investigation is unconstitutional. The position of the law presupposes that while the security organ or police has a duty to infract a person's right based on allegation of crime, it must first investigate such allegation and establish a prima facie evidence that will tantamount to either the commission of the same or reasonable suspicion of the commission of crime which is the universally accepted practice among policemen.

This universal stance of the law is emphasized in order to obviate cases where mendacious, vindictive and vengeful persons raise spurious and malicious allegations. Although the evidence acquired in the course of police investigation may be used in criminal proceedings and become decisive of their outcome but that does not make the investigation itself criminal proceedings. A stage should be reached in an investigation where it might look, from the evidence, that there is sufficient cause to believe that an accused has emerged or discovered. It is usually at that stage that he is arrested, charged and cautioned.

In the instant case the Applicant was arrested without an arrest warrant and that he was detained beyond the mandatory 48 hours and the 1st respondent merely denied the arrest or made no meaningful response to the allegation of arrest. The rest of the respondents' never made any reply to the applicant's evidence.

The applicants' were lawfully arrested and it is not a requirement of the law that a person must only be arrested with a warrant of arrest. There are different modes of arrest under the law with or without a warrant. Even an ordinary person can effect arrest and hand over the suspect to police. The applicants personal liberty by arrest was deprived in accordance with Article 23(1)(c) of the Constitution.

The applicant contended that he was held in detention for 17 months which was beyond 48 hours mandatory period under the Constitution and this according to him was a violation of their rights and freedoms. The applicant was arrested on 27th May 2018 and was released on 11th September 2019 there is no justification for such a prolonged detention in absence of any explanation. The applicant's detention for 17 months was a violation of his rights and freedoms enshrined in the constitution.

Whether the applicant is entitled to the remedies claimed?

The applicant's counsel claimed and sought to recover 20,000,000/= which he claimed was taken from him during his arrest.

The applicant sought general damages for the lost opportunities in economic and social activities due to taking of his property (20,000,000/=) and continued detention for 17 months. Counsel prayed for 900,000,000/= as general damages.

The applicant further sought exemplary damages for the actions of the respondents which were oppressive, arbitrary and unconstitutional. Counsel prayed for 900,000,000/= as exemplary damages.

The applicant also sought interest at 25% per annum on the decretal sum from the date of filing until payment in full.

Analysis

When an act is defined as a human rights violation, it has deprived one or more persons of their fundamental rights and directly contravenes the obligations and duties as set out under the Constitution and other numerous International human rights treaties and the same ought to be condemned through compensation.

Article 50 (1) of the constitution provides that;

Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent Court for redress which may include compensation.

Since this court has found that the applicant's rights and freedoms from Torture, Cruel and inhuman and degrading treatment were violated, the plaintiff is entitled to redress for violation of his constitutional rights.

Section 10 of the ***Human Rights (Enforcement) Act 2019*** provides for the ***Personal Liability for infringement of rights and freedoms.***

(1) A public officer who, individually or in association with others, violates or participates in the violation of a person's rights or freedoms shall be held personally liable for the violation notwithstanding the state being vicariously liable for his or her actions.

(2) Whenever the competent court orders for the payment of compensation or any other form of restitution to a victim of a human rights violation by the State, a public officer who is found by the competent court to have personally violated or participated in the violation of a person's human rights or freedoms shall pay a portion of the compensation or restitution so ordered as shall be determined by the competent court.

Freedom from torture is a non derogable right under our Constitution which however was violated by the 2nd to 15th respondents. Uganda is also a signatory to African Charter on Human and Peoples' Rights, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights as well as treaties on the prevention and punishment of torture and other forms of cruel, inhuman or degrading treatment or punishment. The prohibition against torture is a bedrock principle of international law.

Whereas there is a comprehensive legal regime that prevents and prohibits torture, it's evident that the violations of the right to freedom in the form of torture and cruel, inhuman and degrading treatment or punishment are still rampant in Uganda. The 2nd to 15th respondents are responsible for the torture and there is no justification for vicarious liability on the part of the 1st respondent.

The sum claimed by the applicant of 900,000,000/= as general damages is exorbitantly high, I award the applicant **UGX 100.000.000** as compensation for violation of his constitutional rights to torture and cruel and inhuman and degrading treatment and forced labour at Lwamayuba Island-Kalangala district against the 2nd to 15th respondents.

The plaintiff is awarded UGX **60,000,000/=** for the illegal detention of 17 months from May 2018 to September 2019 against the 2nd to 15th respondents.

The sum of 900,000,000/= claimed as exemplary damages is obscenely too high, the applicant is awarded **UGX 15.000.000/=** as punitive and exemplary damages against the 2nd to 15th respondents for their conduct.

The plaintiff is awarded interest at a rate of 15% from the date of ruling until payment in full. This application succeeds with costs against the 2nd and 15th respondents.

I so order.

Ssekaana Musa

Judge

30th June 2023