

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO.0122 OF 2021**

HAJARA NAKITTO ::: APPLICANT

VERSUS

ATTORNEY GENERAL ::: RESPONDENT

BEFORE: HON.JUSTICE. SSEKAANA MUSA

RULING

The Applicant brought this application by notice of motion under Article 50 of the Constitution of the Republic of Uganda, 1995, section 33 of the Judicature Act Cap 13 and Rule 3, 5(1) (a) and (d), 6(1) (2), 7(1), 8, 9, 10, 11 and 2 of the Judicature Fundamental Rights and other freedoms (Enforcement Procedure) Rules 2019 and other enabling laws for declaration;

- 1. That the Respondent's soldiers/officers' shooting and killing of the Applicant's son on the 19th day of November 2020 was arbitrary, illegal, unlawful violated the deceased's fundamental human right to life guaranteed by Articles 20 (2) and 22, of the Constitution of the Republic of Uganda, 1995.*

- 2. That the Respondent's soldiers/officers' shooting and killing of the Applicant's son on the 19th day of November 2020 constituted inhuman, degrading treatment or torture of the deceased contrary to Articles 24 and 44 (a) of the Constitution of the Republic of Uganda, 1995.*

3. *That the Respondent's soldiers/officers' shooting at and killing the Applicant's son on the 19th day of November 2020, was a negation of their obligation to protect the deceased's life, human rights and dignity vide Articles 20 (2) and 221 of the Constitution of the Republic of Uganda, 1995.*
4. *That the Respondent's soldiers/officers' shooting at and killing the Applicant's son on the 19th day of November 2020 inflicted mental torture and suffering on the Applicant.*

The Applicant sought the following orders;

1. *An order directing the Respondent to pay substantial GENERAL DAMAGES for the human rights violations and transgressions, inconvenience, physical and mental anguish inflicted on the deceased and his mother.*
2. *An order directing the Respondents to pay PUNITIVE/EXEMPLARY DAMAGES for the high-handed, oppressive and unconstitutional conduct of its officers.*
3. *An order directing the Respondent pay costs of the application.*

This application was supported by the affidavit sworn by Hajara Nakitto herein the applicant whose grounds were briefly that;

1. The applicant is a business woman and mother to the deceased, "Ssegawa Amos" who was shot and killed by the Respondent's soldier/officers at Conner stone plaza in Kampala on the 19th day of November 2020 at about 12:00pm while on their way home from work.
2. The Respondent is the legal representative of Government of Uganda and is vicariously liable for the impugned human rights violations of its agents, officers and employees. The Government of Uganda and its agents, officers and employees are duty bound to ensure that they promote, uphold and protect the Applicant's rights.

3. The Respondent's soldiers/officers violated the Applicant's fundamental human rights and freedoms and those for of her deceased son including freedom of movement, protection of right to life, human dignity, children rights, right to work and right to motherhood among others.
4. The Respondent's officers/soldiers' shooting of the Applicant's son occurred in the context of a security crackdown on the demonstration.

ISSUES FOR DETERMINATION

The applicant raised the following issues for determination of court are;

1. *Whether the Respondent's soldiers/officers' shooting and killing of the Applicant's son violated the deceased's fundamental right to life, contrary to Articles 20 (2) and 22 of the Constitution of the Republic of Uganda, 1995.*
2. *Whether the Respondent's soldiers/officers' shooting and killing of the Applicant's son constituted cruel or inhuman or degrading treatment or torture of the Applicant's son contrary to Articles 24 and 44 (a) of the Constitution of the Republic of Uganda, 1995.*
3. *Whether the Respondent's soldiers/officers' shooting and killing of the Applicant's son in her presence constituted cruel or inhumane or degrading treatment or torture of the Applicant contrary to Articles 24 and 44 (a) of the Constitution of the Republic of Uganda, 1995.*
4. *Whether the Respondent's soldiers/officers' shooting and killing of the Applicant's son was a negation of their obligation to protect the deceased's life; the and human rights and dignity of the Applicant and the Applicant's son contrary to Articles 20 (2) and 221 of the Constitution of the Republic of Uganda, 1995.*
5. *Whether the Respondent is liable for the actions of the soldiers/military officers.*
6. *Whether the Applicant is entitled to the remedies sought.*

The applicant was represented by *Eron Kiiza and Acak Carol* while the respondent was represented by *Sam Tsubira (State Attorney)*

The parties filed submissions which I have considered in this ruling.

DETERMINATION OF THE ISSUES

Whether the respondent's soldiers/officers shooting and killing of the applicant's son violated the deceased's fundamental rights to life contrary to article 20(2), and article 22 of the Constitution of the Republic of Uganda 1995.

The applicant states that “after carrying out daily business duties at around 11am soldiers firing bullets aimlessly being as political campaign season, as we approached the Cornerstone building around clock tower, I saw a green military police vehicle with officers dressed in army green uniforms coming from Mengo heading to clock tower as they pointed guns to the people who started running for their lives., I looked behind to tell my son to run with me, my son has been shot by the ruthless soldiers, I jumped on the other side and fell down looking at my fallen son, I saw he was bleeding an unconscious, he did not survive the bullet because it had penetrated and shattered the right side of his neck and he died as soon as he reached the hospital.

The above affidavit evidence by the applicant and the mother of the deceased clearly shows that Ssegawa Amos was unlawfully deprived of his constitutionally guaranteed right to life and no justifiable reason was given by the respondent's military soldiers for shooting aimlessly at a law abiding citizens such as the deceased and the applicant and shooting to death is a form of extra judicial killing which is a serious violation of the right to life.

Basing on the above, the applicant prays that this Honorable Court finds this issue in the affirmative and declare that the respondent's soldiers/officers shooting and killing of the applicant son violated the deceased's fundamental right to life contrary to Article 20(2) and 22 of the Constitution of the Republic of Uganda 1995.

This court is in agreement with the argument of the submission and I find this issue affirmative.

The respondent counsel in his submissions contended that the applicant did not adduce any evidence to impute liability on the respondent. There is no evidence led by the applicant alluding to the identification of any soldier or police officer shooting stray bullets to cause the death of the deceased. Therefore, the respondent is not liable for the death of the deceased.

Analysis

Article 22(1) of the 1995 Constitution of the Republic of Uganda provides that; *No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by highest appellate court.*

The right to life is a basic human right that underpins all other rights as without the right to life all other rights become meaningless.

Article 20(2) of the Constitution of the Republic of Uganda 1995, provides that the *rights and freedom of the individuals and groups enshrined in that chapter shall be respected, upheld and promised by all organs and agencies of the government and by all persons.*

Article 3 of the ***Universal Declaration of Human Rights*** emphasizes that *everyone has a right to life, liberty and security of a person.*

Article 6(1) of the ***International Covenant on Civil and Political Rights*** and Article 4 on the African Charter on Human and people's rights provides that every human being has inherent right to life and this right shall be protected by the law., and no one shall be arbitrary deprived of his life.

In the case of **Wing Commander Danladi Angulu Kwasu Vs Republic of Nigeria (community court of justice of the economic community of East African States)**(ECOWAS) holden in Abuja in Nigeria.

It was held that:

That the right to life is protected in the core regional and universal human rights instruments including African Charter on Human and People's rights., Article 4 of the same charter above disregards civilian laws of life and may also involve violation of the right to life.

The charter further imposes responsibility on state parties to prevent arbitrary deprivation of life caused by it's own agents as well as groups from such deprivation at the hands of others.

Violence violates the right to life by taking away an individual's ability to live, causing physical and psychological harm, limiting their freedom and creating an environment of fear and insecurity therefore, it is the duty of the state to protect citizens from violence and the right to life is inalienable under article 22 of the Constitution of the Republic of Uganda 1995, therefore any action that results in the loss of life unless legally executed for instance in self-defence, judicial sanctioned death after due process including shooting to death is a clear violation of this right.

This court agrees with the submission of applicant's counsel that indeed the applicant's son died as a result of the stray bullet which could have been fired by either the soldiers or police in an attempt to quell or stop the riots in Kampala. The respondent did not file any meaningful defence apart from mere denials by an advocate in the respondent's chambers.

The country was in a state of confusion as a result of riots in different parts of the country and yet it was a campaign period of the 2021 elections. It could not be possible for the applicant or her deceased son to identify who fired a stray bullet

which ended his life. This court could not place such a heavy burden to prove the shooting was either by a soldier or policeman.

I hereby find this issue in the affirmative and declare that Respondent's soldiers/officers' shooting and killing of the Applicant's son violated the deceased's fundamental right to life contrary to Articles 20 (2) and 22 of the Constitution of the Republic of Uganda, 1995.

The rest of the issues are arising out of the 1st issue and therefore redundant and baseless.

Whether the Applicant is entitled to the remedies sought?

The applicant's counsel submitted that Article 126 (2) (c) of the Constitution of the Republic of Uganda, 1995 and Section 9 (1) of the **Human Rights Enforcement Act, 2019** provides that adequate compensation shall be awarded to victims of wrongs.

Counsel further cited the General Comment 31 of the Human Rights Committee on the International Covenant on Civil and Political Rights, to which Uganda is a party, which provides that:

Article 2, paragraph 3 requires that, in addition to effective protection of Covenant rights, state parties must ensure that individuals also have accessible and effective remedies to vindicate those rights...without reparations to individuals whose covenant rights have been violated, the obligation to provide an effective remedy which is central to the efficacy of Article 2, paragraph 3 is not discharged.

The applicant's counsel contended that where infringement of fundamental right is established must give compensatory relief to the victim, not way of damage only as a civil action by way of compensation.

The applicant's counsel sought 200,000,000/= as compensation for loss of life and 5,000,000/= as punitive damages.

The respondent's counsel submitted that in cases where the cause of action is death, damages awardable to the applicant are for loss of expectation of life of the deceased. These damages are awardable for the loss of the prospective happiness of the person whose life is gone.

Analysis

The reckless or negligent killing of citizens strikes a blow at the rule of law and therefore becomes a sacred duty of the court as the "custodian and protector of the fundamental and the basic human rights of persons" to deter violations through police cold blood killings and torture.

The court where infringement of fundamental right is established must give compensatory relief to the victim, not by way of damage only as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the government of not protecting the fundamental right to life of the citizen. *"To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience"* ***D.K Basu v State of West Bengal [1997] AIR SC 610***

This court has a duty to give a suitable monetary compensation to represent a *solatium* for the mental pain, distress, indignity, loss of liberty and death. ***See Akech Rose vs Attorney General HCCS No. 368 of 2018***

The court orders the Defendants to pay the Applicant compensation for the arbitrary and unlawful deprivation of the right to life of the plaintiff's son.

In assessment of the compensatory damages to award the applicant the court should or must consider several factors and be mindful not to give exorbitant awards.

Honourable Justice Remmy Kasule (as he then was) in the case of ***Odongo Cypriano versus Attorney General HCCS No. 0015 of 2006*** where a 15-year-old was shot dead observed as follows;

“In case of a young person, these damages tend to be reduced because there is so much uncertainty about this young person’s future that no confident estimate of a prospective happiness can be made. A young person has as yet no settled prospects, has not yet passed the risks and uncertainties of childhood, and has, as yet, acquired an established character and firmer hopes to make his or her future more definite. The extent to which good fortune may probably attend to him/her becomes less incalculable. The compensation is not being given to the person injured, for that person is dead. Thus, damages which would be proper for a disabling injury tend to be greater than those for deprivation of life. The principal function of awarding damages for expectation of life is to provide an indirect way to award damages for bereavement particularly in Uganda context, because under the common law, no claim for solitude or bereavement could be entertained; See Uganda Electricity Board vs G.W Musoke [1997] HCB 23(SC)”

This court guided by the principles and observation in the above suit and the general circumstances surrounding the shooting and killing of the applicant’s son awards a compensation of UGX 50.000.000 for the unlawful deprivation of the life of her son.

The applicant has not made out any justification for the award of punitive damages and the court is equally mindful of the fact that it was a riotous atmosphere as the soldiers’ policemen were trying to keep law and order in the city.

The applicant is awarded costs.

I so order.

SSEKAANA MUSA

JUDGE

22nd September 2023