

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 136 OF 2014

NTWATWA JACKSON=====PLAINTIFF

-VERSUS-

1. ATTORNEY GENERAL

2. MOHAMED HAMID LATIF

3. WATUWA ISONGONI MUSTAFA

4. AYA INVESTMENTS (U) LTD=====DEFENDANTS

BEFORE: HON. MR. JUSTICE PHILLIP ODOKI

JUDGMENT

Introduction:

[1] The plaintiff filed this suit against the defendants seeking for general and exemplary/ aggravated damages for unlawful arrest, illegal detention and battery occasioned to him by the defendants.

Plaintiff's case:

[2] The plaintiff's case is that on the 20th of October 2012 he was unlawfully arrested by agents of the 1st defendant (UPDF and police officers) while acting in collusion and tacit approval of the 2nd defendant (managing director of the 4th defendant) and the 3rd defendant (legal officer of the 4th defendant). He was illegally detained up to the 24th of October 2012 when he was handed over to Central Police Station, Kampala and charged with the offence of forgery/ uttering a forged court order to freeze the account of the 4th defendant. He was detained and later released on police bond. He was required and he did report daily for up to 60 days. The Director of Public Prosecution consequently directed that the file be closed.

[3] On the 20th May 2013 at around 9.00am he was re-arrested on the same allegation of forgery / uttering a forged court order. He was detained by servants of the 1st

defendant in collusion and tacit approval of the 2nd and 3rd defendants who were employees of the 4th defendant. He remained in detention up to 7.00pm of that same day when he was released on police bond which elapsed after 90 days. While at Central Police Station, he was assaulted by agents of the 1st defendant who were acting in collusion and tacit approval of the 2nd and 3rd defendants who were employees of the 4th defendant.

[4] The plaintiff contended that his arrest was unlawful because there was no criminal offence committed by him to warrant his arrest and he was never prosecuted of any criminal offence. According to him, his arrest was only intended to deny him to enjoy the fruits of his judgement in Mengo Chief Magistrates Court Civil Suit No. 348 of 2011. He further contended that his detention was unlawful since he was detained for more than 100 hours in excess of the constitutional 48 hours. He further contended that as a result of his unlawful arrest, illegal detention and battery; he lost income and personal property which stolen from him (laptop, phone, cash), his health deteriorated, he suffered mental anguish for which he claims general and exemplary/ aggravated damages and holds the defendants jointly liable.

The 1st defendant's case:

[5] The 1st defendant denied knowledge of the tortious acts of unlawful arrest, illegal detention and battery of the plaintiff. The 1st defendant further contended that if the arrest and the detention took place, it was because the 1st defendant's agents were acting on reasonable suspicion and information that the plaintiff had committed an offence.

The 2nd and 4th defendant's case:

[6] The 2nd and 4th defendants denied knowledge of the tortious acts of unlawful arrest, illegal detention and battery of the plaintiff. They contended that other than reporting to the police in regard to a court document forged by the plaintiff while attempting to defraud the 4th defendant, the 2nd and 4th defendants had no power and /or control over government agencies in the execution of their mandate and thus cannot be liable for the alleged acts.

The 3rd defendant's case:

[7] The 3rd defendant denied having any role in the arrest, detention and battery of the plaintiff. He contended that the plaintiff has no cause of action against.

Issues:

[8] The parties filed a joint scheduling memorandum in which they agreed on the issues for the determination of the court. On the 15th April 2021 when the matter came up for hearing, the court examined the agreed issues as against the pleadings of the parties and found that they do not properly reflect the material proposition of law or facts affirmed by one party and denied by the other party. The court amended the issues to read as follows.

1. Whether the plaintiff was unlawfully arrested and if so by who.
2. Whether the plaintiff was illegally detained and if so by who.
3. Whether the plaintiff was assaulted or battered and if so by who.
4. Whether the 1st defendant is vicariously liable for the actions of Frank Ataho, Eric Kagina and Asimwe.
5. Whether the defendants are jointly and severally liable for the tortious acts.
6. What remedies are available to the parties.

Legal representation:

[9] At the hearing, the plaintiff was self-represented. The 1st defendant was represented by Ms Kampire Genevieve. The 2nd and 4th defendants were represented by Ms. Atugonza Flavia Ann. The 3rd defendant was represented by Mr. Yusuf Betunda.

Summary of the evidence adduced:

[10] The plaintiff testified as PW1. He did not call any other witness. He testified that in 2007 he was employed by the 4th defendant as a construction supervisor at its project of Kampala Hilton Hotel. In 2008 he got injured while at work. He demanded for compensation from the 4th defendant who refused to give him. He filed Civil Suit No. 348 of 2011 before Mengo Chief Magistrates against the 4th defendant. Judgement was given in his favor. The 4th defendant was ordered to pay him compensation of UGX

35,723,970/= and costs of the suit of UGX 3,099,570/=. The Execution Division of the High Court subsequently issued a garnishee order nisi attaching all accounts of the 4th defendant in Orient Bank Uganda Limited. When the 2nd defendant got to learn of the attachment, he telephoned him (the plaintiff) to meet him in his office at Hilton Hotel Nakasero to pick a cheque to satisfy the decree. When he reached the office of the 2nd defendant, the 2nd defendant went out of his office and later returned and started slapping him. The 2nd defendant was shortly joined by; the 3rd defendant, Kagina Eric (who he later came to learn was a UPDF officer attached to Special Forces Command at Nakasero), Frank Atuhho (also a UPDF officer attached to Special Forces Command, Nakasero) and other men some in army uniform and others in plain clothes. They assaulted him while forcing him to go and remove the garnishee order and if not, he would be killed. They detained him in one room at Hilton Hotel Nakasero.

[11] On the 20th of October 2012 at 11.00am, while he was on Nakasero Road near Sheraton Hotel, he was again arrested by a group of people led by Frank Atuhho, Eric Kagina and the 3rd defendant who tortured him, stole his money, phone and other items in his possession and detained him in a room at Hilton Hotel Nakasero up to the 24th October 2012 when Kagina Eric took him to Central Police Station, Kampala on allegation that he (the plaintiff) was grabbing a gun from security. He was detained and later charged with the offence of forgery/ uttering forged court documents. He was subsequently released on police bond since he was very weak and needed medical attention. He was directed to report on police bond daily. He testified that he reported on bond for a period of 60 days. He complained to the Director of Public Prosecutions who later called the file and directed that the police should close the file since the case had no merit. According to the plaintiff, his arrest on 20th of October 2012 was upon the instructions of the 2nd defendant.

[12] The plaintiff further testified that on the 20th May 2013 while he was at the Civil Division of the High Court at Twed Towers attending the hearing of High Court Miscellaneous Application Number 207 of 2013 which was seeking to stay the execution of the garnishee order, he was again arrested by Frank Atuhho, Asimwe (a

police officer) and other unidentified men who were led by the 3rd defendant. He was driven in a car belonging to the 4th defendant and taken to Hilton Hotel Nakasero where he was slapped and punched by Kagina Eric in the company of Frank Atahu. He was later taken to Central Police Station Kampala and charged with the same offence of forgery /uttering forged documents, which offence the Director of Public Prosecution had already found not having merit.

[13] The plaintiff further testified that after the decision of the High Court in High Court Miscellaneous Application Number 207 of 2013, he delivered the order to the manager Orient bank. The manager called the 2nd defendant who immediately sent Frank Atuha, the 3rd respondent and one Mugisha (a police detective attached to central police station) who arrested him, detained him at Central Police Station claiming that he was trying to steal the 4th defendant's money. He again complained to the Director of Public prosecution who directed the police to close the file. He further testified that he was not prosecuted in any court of law which according to him proves that his arrest was unlawful.

[14] The 1st, 2nd and 4th defendants did not give any evidence despite the fact that they were duly served to appear in court to give their defense on numerous occasions.

[15] The 3rd defendant testified as DW1. He did not call any other witness. He stated that he was employed by the 4th defendant on the 16th November 2012 as a legal officer. He denied arresting, assaulting or battering the plaintiff. He testified that on the 20th October 2012 when he was alleged to have participated in the illegal arrested, unlawful detention and battery of the plaintiff, he had not started working for the 4th defendant.

[16] On the allegation that on the 20th May 2013, while at the Civil Division of the High Court, he led a group of police officers and army officers to arrest him, PW3 testified that on that day, he was at the court for the hearing of an interim application for stay of execution. He came to know of the arrest of the plaintiff much later. He stated that he

did not know how the army officers came to the court. He denied informing them of the court hearing.

[17] PW3 further testified that when he started working with the 4th defendant, his superiors brought to his attention facts that the plaintiff had forged some court documents and used it to withdraw money from the accounts of Aya and it warranted him to file a complaint to the police. As a legal officer, he was directly charged with the responsibility of making sure that legal matters like that are dealt with. He went and made a statement to the police and it was incumbent upon the police to investigate. When he was asked in cross-examination whether he had brought to the attention of the court which issued the alleged forged court documents he stated that he did not.

Burden and standard of proof:

[18] The burden of proof in civil matters lies upon the person who asserts or alleges. Any person who, wishes the court to believe the existence of any particular fact or desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts, must prove that those facts exist. (**See section 101, 102 and 103 of the Evidence Act Cap 6 of the laws of Uganda**). The opposite part can only be called to dispute or rebut what has been proved by the other party (**See Sebuliba versus Co-operative Bank (1982) HCB 129**). The standard of proof required is on the balance of probabilities. In **Miller versus Minister of Pensions (1947)2 ALL ER 372** Lord Denning stated;

“That the degree is well settled. It must carry a reasonable degree of probability but not too high as is required in a criminal case. If the evidence is such that the tribunal can say, we think it is more probable than not, the burden of proof is discharged but if the probabilities are equal, it is not.”

Consideration and determination of the court:

Issue 1: Whether the plaintiff was unlawfully arrested and if so by who.

[19] The right to liberty is one of the fundamental human rights recognized in all major international and regional human rights instruments that Uganda is party to, such as;

the *Universal Declaration of Human Rights* (Articles 3 and 9), the *International Covenant on Civil and Political Rights* (Article 9) and the *African Charter of Human and Peoples' Rights* (Articles 6).

[20] Article 23 (1) of *The Constitution of the Republic of Uganda, 1995* guarantees the right to personal liberty and prohibits its deprivation except in limited situations which are provided for in the Constitution. The exception relevant to the instant case is provided for under Article 23(1)(a) which provides that a person may be arrested upon reasonable suspicion that that person has committed or is about to commit a criminal offence under the laws of Uganda.

[21] In *Fernandes V. Commercial Bank of Africa Ltd and Another [1969] EA, 482*, the East African Court of Appeal observed that:

“The question of reasonable and probable cause depends in all cases, not upon the actual existence, but upon the reasonable bonafide belief in the existence, of such a state of things as would amount to a justification of the course pursued in making the accusation complained of no matter whether this belief arises out of the recollection and memory of the accuser or out of information furnished to him by others.”

[22] In *Ochwa Olanya Charles versus Attorney General, HCCS No. 041 of 2012* my brother Judge Stephen Mubiru held that;

“Within the context of arrests, a reasonable suspicion means more than bare suspicion. It is something more than an inchoate and un-particularized suspicion or hunch. 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 particularized and objective basis for suspecting the person has engaged in, is engaged in or is about to be engaged in criminal activity."

[23] The learned judge went on to add that;

"An unlawful arrest occurs when a person without legal authority or justification, intentionally restrains another person's ability to move freely. Any person who intentionally restricts another's freedom of movement without their consent may be liable for false arrest."

[24] The burden is on the plaintiff to prove that he or she was arrested. However, the burden is on the defendant to prove that the arrest was on reasonable suspicion that the defendant had committed or was about to commit a criminal offence (See **Dallison v. Caffrey [1965] 1 O B 348**).

[25] Applying the above principles of law to the facts of this case, the plaintiff adduced evidence, which was not rebutted, that he was arrested on the 20th of October 2012 and on the 20th May 2013. According to the plaintiff, his arrest was upon the instructions of the 2nd defendant and based on his verbal allegation to the police at Central Police Station, Kampala that he (the plaintiff) had forged/uttered forged court documents (the garnishee order). Mentioned the people who participated in his arrest as being Frank Atuho, Eric Kagina, Asimwe and the 3rd defendant. To further prove the arrest, the plaintiff adduced the Police Bond Form dated 23rd October 2012 and another Police Bond Form dated 20th May 2013 which were admitted in evidence.

[26] Although the 3rd defendant testified that his superiors brought to his attention facts that the plaintiff had forged some court documents and used it to withdraw money from

the accounts of the 4th defendant which warranted him to file a complaint to the police, the defendants did not adduce any evidence to prove any reasonable *bonafide* belief in the existence of those facts that the documents were indeed forged. In fact, when the 3rd defendant was cross-examined on whether he bothered to find out from the court if the documents were indeed forged, he stated that he did not. There was thus no scintilla of evidence adduced by the defendants which gave rise to the suspicion that the plaintiff committed any offence. I have no reason to doubt the evidence of the plaintiff that the motive of his arrest was to frustrate him from enjoying the fruits of his judgement in Mengo Chief Magistrates Court Civil Suit No. 348 of 2011.

[27] On the persons who participated in the arrest of the plaintiff, the 1st, 2nd and 3rd defendant did not adduce any evidence to rebut the plaintiff's evidence that he was arrested by the 3rd defendant, Frank Atuh, Eric Kagina, Asimwe and other unidentified men. Although the 3rd defendant denied arresting the plaintiff on the 20th October 2012 since by that time he was not yet employed by the 4th defendant, he did not adduce a copy of his letter of employment to confirm his date of employment. I have also carefully considered his evidence that he did not participate in the arrest and subsequent detention of the plaintiff on the 20th May 2013. I find his evidence not convincing. Given that he was the lawyer who was in court on that day representing the 4th defendant and in which court the plaintiff was also present, it is more probable than not that he is the one who informed the army officers and the police officers to go to the court and arrest the plaintiff.

[28] My finding therefore is that there was no reasonable suspicion to warrant the arrest of the plaintiff. His arrest by the 2nd, 3rd and 4th defendants together with Frank Atuh, Eric Kagina and Asimwe was therefore unlawful.

Issue 2: Whether the plaintiff was illegally detained and if so by who.

[29] Article 23(2) of **The Constitution of the Republic of Uganda, 1995** provides that a person arrested, restricted or detained shall be kept in a place authorized by law.

Article 23 (4) (b) 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, shall, if not earlier released, be brought to court as soon as possible but in any case not later than forty-eight hours from the time of his or her arrest.

[30] In the instant case, the plaintiff testified that following his arrest on the 20th of October 2012 at 11.00am by a group of people led by Frank Atuhho, Eric Kagina and the 3rd defendant, he was detained in a room at Hilton Hotel from that day until the 24th October 2012 when Kagina Eric took him to Central Police Station and he was released on police bond. The plaintiff further testified that on the 20th May 2013 while he was at the Civil Division of the High Court at Twed Towers, he was again arrested by Frank Atahu, Asimwe, and other unidentified men, led by the 3rd defendant. He was taken to Hilton Hotel Nakasero and later to Central Police Station Kampala and he was given a police bond on the same day.

[31] The defendants did not adduce any evidence to rebut the evidence of the plaintiff that he was detained at Hilton Hotel. Hilton Hotel is not a place authorized by law for detention. The defendants did not also adduce any evidence to rebut the evidence of the plaintiff that he was detained from the 20th of October 2012 at 11.00am up to the 24th October 2012 at 11.00am when he was released on bond having spent 96 hours in detention way beyond the constitutionally permissible period of 48 hours. As I have already pointed out while determining issue 1, although the 3rd defendant denied participation in the arrest and detention of the plaintiff, the evidence of the plaintiff proved on the balance of probabilities that he participated in the arrest and detention of the plaintiff.

[32] I therefore find that the plaintiff was unlawfully detained by the 2nd, 3rd and 4th defendants together with Frank Atuhho, Eric Kagina and Asimwe.

Issue 3: Whether the plaintiff was battered and if so by who.

[34] According to **Black's Law Dictionary 2nd Edn.** battery mean;

“Any unlawful beating or other wrongful physical violence or constraint, inflicted on a human being without his consent.”

[35] At common law, battery is a tort falling under trespass to the person. It is actionable per se, which means no harm is needed to be proved for the tortfeasor to be held liable.

In **Collins versus Wilcock (1984)3 All ER 374**, Goff L.J. held that:

“The fundamental principle, plain and incontestable, is that every person's body is inviolate”

[36] In the instant case, the plaintiff testified he was assaulted by Frank Atuho, Kagina Eric and 2nd defendant. They slapped and punched him and he started vomiting blood. He further stated that when he was again arrested on the 20th May 2013, he was taken to Hilton Hotel Nakasero where he was assaulted, slapped and boxed by Kagina Eric in the company of Frank Atuho. According to the plaintiff, the 3rd defendant participated in assaulting him because he is the one who was leading the army men since they did not know him.

[27] The 1st, 2nd and 4th defendant did not adduce any evidence to rebut the evidence of the plaintiff that he was battered. Although there was no evidence adduced by the plaintiff to prove that the 3rd defendant physically assault the plaintiff, he was part of the group which arrested, detained and battered the plaintiff. I therefore find that the plaintiff proved that he was battered by Frank Atuho, Kagina Eric, 2nd defendant and 3rd defendants.

Issue 4: Whether the 1st defendant is vicariously liable for the actions of Frank Ataho, Eric Kagina and Asimwe.

[28] In *Muwonge versus Attorney General (1967 I EA 17)*, Newbold P stated that

"An act may be done in the course of a servant's employment so as to make his master liable even though it is done contrary to the orders of the master and even if the servant is acting deliberately, wantonly, negligently or criminally or for his own benefit never the less if what he did is merely a manner of carrying out what he was employed to carryout then his master is liable."

[29] In the resent case of *Tusingwire Barahandika versus Attorney General and another CACA No. 210 of 2018* the Court of Appeal held that;

"Vicarious liability is a situation in which one party is held partly responsible for the unlawful actions of a third party. It is also a legal doctrine where a person, himself blameless, is held liable for another person's conduct. The rule is justified by the Latin maxim "qui facit per alium facit per se meaning that he who acts through another, acts himself. Under the doctrine of vicarious liability, an employer is liable for the acts of his/her employees done in the scope of that employee's duty.

Case law has held that for the doctrine of vicarious liability to apply, there must be three essential ingredients;

- *There must be a relationship of employer and employee;*
- *The Tort must be committed by the employee;*
- *In the course of business."*

[30] In the instant case, the plaintiff testified that Kagina Eric and Frank Atuhho are UPDF officers attached to Special Forces Command at Nakasero, while Asimwe is a police officer. The 1st defendant did not deny that Kagina Eric, Frank Atuhho and Asimwe were employees of government. The plaintiff therefore proved that there exists a relationship of employer and employee between Frank Atuhho, Kagina Eric, Asimwe and the 1st defendant. I have already held above that Kagina Eric, Frank Atuhho and

Asimwe participated in the commission of the tortious acts of illegal arrest and unlawful detention against the plaintiff. In addition, I have found that Frank Atuhö and Kagina Eric were responsible for battering the plaintiff. As to whether Kagina Eric, Frank Atuhö and Asimwe were acting in the course of their employment, the plaintiff, in paragraph 6(g) of the plaint stated that;

“The 1st defendant’s servants and agents involved in the civil matter which jurisdiction is not invested in it by the constitution of the 1995 but its intention was to occasion, torture to the plaintiff in collusion with the 4th defendant’s employees who are 2nd and 3rd defendants.”

[31] In his testimony, he stated that;

“My statement was clear. I said the 1st defendant’s servants and or agents were involving in civil matters which jurisdiction is not vested in it by the constitution of the republic of Uganda. They had nothing to do with civil matters apart from violating my rights.”

[32] The plaintiff thus did not plead or prove that Kagina Eric, Frank Atuhö and Asimwe were in the course of their employment when they committed the tortious act against the plaintiff. To the contrary, he pleaded and proved that the mandate of Kagina Eric, Frank Atuhö and Asimwe under the constitution does not include handling civil matters. I therefore find that the 1st defendant is not vicariously liable for the actions of the Kagina Eric, Frank Atuhö and Asimwe. The said Kagina Eric, Frank Atuhö and Asimwe at the time of committing the tortious acts were on a frolic of their own.

Issue 5: Whether the defendants are jointly and severally liable for the tortious acts.

[33] Having found that the 1st defendant is not vicariously liable for the actions of Kagina Eric, Frank Atuhö and Asimwe. The 1st defendant is therefore not jointly liable with the 2nd - 4th defendants.

[36] As for the 2nd and 3rd defendants, the plaintiff proved that they were employees of the 4th defendant. The plaintiff proved that 2nd and 3rd defendants took part in his illegal arrest, unlawful detention and battery. On whether they committed the tortious acts in the course of their employment, I am convinced that when the 2nd and 3rd defendants reported the plaintiff to the police, they were acting in the course of their employment, trying to protect the interest of the 4th defendant although without any justifiable reason. However, the subsequent arrest and detention which was done after the Director of Public prosecution had already given the opinion that there was no merit in the case, was clearly done outside the course of employment of the 2nd and 3rd defendants. The unlawful detention and battery of the plaintiff by the 2nd and 3rd defendants was, in my view, not in the course of their employment. Their employment did not certainly include unlawfully detaining and battering the plaintiff. They were thus on a frolic of their own.

[37] My finding, therefore, is that the 2nd, 3rd defendants 4th defendant are jointly liable for the tort of unlawful arrest of the plaintiff. The 2nd and 3rd defendants are jointly and severally liable for the illegal detention and battery of the plaintiff.

Issue 6: What remedies are available to the parties.

[38] The plaintiff prayed for general and exemplary/ aggravated damages for unlawful arrest, illegal detention and battery occasioned to him by the defendants to the tune UGX 500 Million.

[39] On general damages, the position of the law is that it is awarded at the discretion of court, and is always as the law will presume to be the natural consequence of the defendant's act or omission (See **James Fredrick Nsubuga v. Attorney General, H.C.C.S No. 13 of 1993**). The objective of awarding damages that a plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been in had he or she not suffered the wrong (See **Charles Acire v. Myaana Engola, H.C.C.S No. 143 of 1993; Kibimba Rice Ltd. v. Umar Salim, S.C.C.A. No.17 of 1992**). In assessing the quantum of damages, courts are mainly guided, *inter alia*, by the value of the subject matter, the economic inconvenience that

a party may have been put through and the nature and extent of the breach (See *Uganda Commercial Bank v. Kigozi [2002] 1 EA. 305*). It is the duty of the claimant to plead and prove that there were damages, losses or injuries suffered as a result of the defendant's actions.

[40] In the instant case, the plaintiff testified that in the process of his arrest, he lost his techno phone, laptop computer Dell type, ATM and money about 15 million shilling which was taken by Ataho Frank. He estimated that the value of the properties was UGX 60Million. He stated that from 2012 up to the time of filing this suit in 2014 he could not do anything because he was running up and down. He stated that he lost business opportunities worth UGX of 40Million. The plaintiff also testified that upon his release on police bond, he was instructed to reported on police bond on a daily basis and the same went on for 60 days. He was battered and he vomited blood. He was released on police bond because he was very weak and needed attention.

[40] I find that the plaintiff has proved that he suffered inconvenience and pain. He was battered and had to endure reporting to the police for 60 days daily on an unlawful arrest. He lost his properties and money at the hands of the 2nd, 3rd and 4th defendants. I accordingly award the plaintiff general damages of UGX 150,000,000/= (Uganda Shillings One Hundred and Fifty Million).

[41] On exemplary/punitive damages, the rationale is not to enrich the plaintiff, but to punish the defendant and deter him or her from repeating similar conduct (See *Dorothy Tuma v. Elizabeth Muller & Anor C.S No. 229 of 2011*). The punishment imposed must not exceed what would be likely to have been imposed in criminal proceedings, if the conduct were criminal (See *Obongo v. Municipal Council of Kisumu [1971] EA 91*). All circumstances of the case must be taken into account, including the behavior of the plaintiff and whether the defendant had been provoked. (See *O'Connor v. Hewston [1979] Crim. LR 46 CA; Archer Brown [1985] OB 401*)

[42] In the instant case, the 2nd , 3rd and the 4th defendant were fully aware of the civil process in the court of law but decided to use draconian means to try to shut down the plaintiff from the pursuit of his rights and reaping the benefits of his judgement by continuously illegally arresting and unlawfully detaining him using security agents. Bearing in mind the above stated principles governing the award of exemplary/punitive damages, I find that an award of UGX 50,000,000/= (Uganda Shillings Fifty Million) Million is sufficient as exemplary/punitive damages in the circumstances.

[43] In the end, judgement is hereby given for the plaintiff in the following terms.

- i. The 2nd , 3rd and 4th defendants are hereby ordered to, jointly and severally, pay the plaintiff general damages of UGX 150,000,000/= (Uganda Shillings One Hundred and Fifty Million).
- ii. The 2nd , 3rd and 4th defendants are hereby ordered to, jointly and severally, pay the plaintiff exemplary/punitive damages UGX 50,000,000/= (Uganda Shillings Fifty Million Shillings)
- iii. The amount in (i) and (ii) above shall attract interest of 15% per annum from the date of judgement till payment in full.
- iv. The 2nd , 3rd and 4th defendants are hereby ordered to pay the plaintiff the costs of the suit.
- v. The plaintiff's suit against the 1st defendant is dismissed with costs.

I so order.

Dated and delivered by email this 31st day of March, 2023.



Phillip Odoki

JUDGE.