

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 391 OF 2018

BERWANAHO CHARLES =====PLAINTIFF
-VERSUS-
ATTORNEY GENERAL=====DEFENDANT

BEFORE: HON. MR. JUSTICE PHILLIP ODOKI
JUDGMENT

Introduction:

[1] The Plaintiff instituted this suit against the Defendant, seeking for special, general and punitive/exemplary damages; interest; and costs of the suit, arising from his unlawful arrest, illegal detention, battery and torture by agents of the Defendant.

The Plaintiff's case:

[2] The Plaintiff alleged (in the plaint) that on the 26th June 2017 a one Sunday Benson Kigotho went to the Central Police Station (CPS) in Kampala, in the company of Herbert Muhangi (the Commandant Police Flying Squared Unit) and Lt. Kakiga Didas (a soldier attached to the Chieftaincy of Military Intelligence) and opened up a frivolous and vexatious case against him, vide GEF 158/2017. They alleged that he (the Plaintiff) had forged receipts/delivery notes and stamp for a company called Babenny investments.

[3] The police file was allocated to D/IP Musinguzi Edward (a police detective attached to CPS) to carry out the investigation. The complainants refused to cooperate with the investigating officer by, among others, producing the original stamp and the receipts/delivery notes alleged to have been forged for verification by experts.

[4] On the 15th December 2017 the commandant Kampala Metropolitan Police (CP Mwesigwa Frank) authorized Herbert Muhangi and Lt. Kakiga Didas to effect his arrest.

CP Mwesigwa Frank assigned Ahamad (a police officer attached to Kampala Metropolitan Police) to join the team to effect his arrest. The team was further joined by C/ASP Bamusiime Bruno upon the instructions of Kiira Road Division Police Commandant (ASP Nansamba Peace).

[5] On the 16th December 2021, the above-mentioned officers arrived at Kabwohe, in Sheema District. They requested Kabwohe Division Police Commander (a one Santos) for more man power and a police pickup to effect the arrest. Santos assigned two police officers (CPL Naigaga and C/ASP Tonny) to join the above-mentioned officers to effect the arrest.

[6] On the same day (16th December 2017) while he (the Plaintiff) was at his home in Shema Municipality, Sheema District, making preparations for the giveaway function of his daughter, the above named officers unlawfully arrested and bundled him in the police pickup, took him to Sheema Police Station and later transferred him to Kyengera, Wakiso District where he was detained at a safe house belonging to Internal Security Organization (ISO).

[7] While at the safe house, he was tied on a pole at the balcony using handcuffs at an oblique angle with his body towards the left side, up to the 17th December 2017 when he was interrogated and tied again in the same manner until the 18th December 2017. On the 19th December 2017, he was taken to CPS Kampala where he was detained up to the night when he was released on police bond.

[8] Meanwhile, the complainant (Benson Sunday Kigotho) disappeared. The police file was submitted to the office of the Director of Public Prosecution but no charges were preferred against him. The investigating officer made a report that the complainant did not follow up the case.

[9] The Plaintiff contended that as a result of his arrest, detention and the torture he was subjected to, he suffered several medical complications, including blood clot and he

spent UGX 204,289,500/= in medical expenses. He spent UGX 212,310,000/= in transport expenses to and from the hospital. He incurred UGX 243,311,000/= for special meals between October 2018 – 30th September 2020. Because of unending threats to kidnap him by the Defendant's agents, he spent UGX 198,650,000/= in personal security between the 29th September 2018 – 30th September 2020. Since December 2017, due to his medical complication, he has not been able to continue with his business of dealing in agricultural produce and supplies thereby causing him to suffer loss of earnings of UGX 41,000,000/= per month which translates to UGX 492,000,000/= per annum. He lost UGX 313,700,000 which he spent to organize the giveaway function of his daughter which had to be halted after his arrest. During his unlawful arrest, UGX 230,000/= was forcefully removed from him. In order to obtain a copy of the police report on the case against him, he spent UGX 63,300,000/= which he paid to Uganda Police Force. For all the above losses, the Plaintiff claimed special damages from Defendant.

[10] The Plaintiff further contended that the actions of the agents of the Defendant were high handed, malicious, committed without utter regard of his human rights, caused him great mental, emotional and phycological trauma for which he seeks from the Defendant general and exemplary/ exemplary damages.

[11] According to the Plaintiff, the officers who participated in his unlawful arrest, illegal detention, battery and torture were employees and/or agents of the Defendant. The Defendant is therefore vicariously liable for their actions.

Defendant's case:

[12] The Defendant denied all the allegations of the Plaintiff. The Defendant contended that the criminal case which was opened against the Plaintiff was not frivolous and vexatious. The Defendant denied that the Plaintiff was battered and/or tortured during his arrest and detention as alleged. According to the Defendant, the Plaintiff is not entitled to the remedies sought.

Issues:

[13] The issues for the determination of the court are;

1. Whether the Plaintiff was illegally arrested and unlawfully detained by the Defendant's security agents.
2. Whether the Plaintiff was battered by the Defendant's security agents.
3. Whether the Plaintiff was tortured, by the Defendant's security agents.
4. Whether the Defendant is vicariously liable for the action of its security agents.
5. What remedies are available to the parties.

The evidence adduced:

[14] Dr. Wilson Gude (a personal physician of the Plaintiff) testified as P.W.1, the Plaintiff testified as P.W.2 and D/AIP Musinguzi Edward (the investigating officer in GEF 158/2017) testified as P.W.3. In addition, the Plaintiff adduced several documents which were admitted in evidence as PX1 – PX32. The Defendants did not adduce any evidence.

Legal representation and submissions:

[15] The Plaintiff was represented by Mr. Swaib Chemisto, Paul Rutisya and Owen Mulangira of M/s LSA Advocates, M/s Kasirye, Bryaruhanga & Co. Advocates and Oasis Advocates respectively. The Defendant was represented by Ms. Charity Nabasa from the Attorney General's Chambers. The court gave counsel directives to file written submission, which directives were duly complied with. I have given the submissions the requisite consideration.

Burden and standard of proof:

[16] 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 illegally arrested and unlawfully detained by the Defendant’s security agents.

[17] 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).

[18] In Uganda, 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 exceptions relevant to the instant case are provided for in Article 23(1)(c) and 23(2) of the Constitution. Article 23(1)(c) of the Constitution provides, *inter alia*, that a person may be arrested upon reasonable suspicion that he or she has committed or is about to commit a criminal offence under the laws of Uganda. Article 23(2) of the Constitution provides that a person arrested, restricted or detained shall be kept in a place authorized by law.

[19] In this case, the Plaintiff testified that he was arrested on the 16th December 2017 by a group of four people who included Lt. Didas Kakiga, C/ASP Bruno Bamusiima,

Cpl. Naigaga and another person he could not recall his name. He further testified that the people who arrested him were employees and/or agents of the Defendant. This evidence was not challenged by Defendant. Counsel for the Defendant, in her submissions, conceded that the Plaintiff was arrested. Therefore, it is common ground that the Plaintiff was arrested on the 16th December 2017. What is however in contention is whether the arrest of the Plaintiff was upon reasonable suspicion that he had committed an offence (whether the arrest was illegal/unlawful) and whether the detention was in a gazetted place (whether the detention was illegal/ unlawful).

Illegal/unlawful arrest:

[20] An arrest without reasonable suspicion that a person has committed an offence is unlawful. 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.” Underlined for emphasis.

[21] 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.” Underlined for emphasis.

[22] The burden is on the Plaintiff to prove that he 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**).

[23] In this case, as I have already stated in paragraph 20 above, it is common ground that the Plaintiff was indeed arrested on the 16th December 2017. The Plaintiff therefore discharged its legal burden. The Defendant on the other hand did not adduce any evidence to prove that the arrest of the Plaintiff was on reasonable suspicion that he had committed or was about to commit a criminal offence. P.W.3 (D/AIP Musinguzi Edward), who was the investigating officer, testified that the complainant, Sunday Benson Gigotho, reported a case of forgery of receipts/delivery notes and stamp of a company called Babenny investment Company limited against the Plaintiff and a GEF 158/2017 was opened. He was instructed to carry out the investigations into the alleged offence. However, during the investigations, the complainant refused to cooperate with him by, among others, producing the original stamp and the receipts/delivery notes alleged to have been forged for verification by experts. He further testified that the file was submitted to the office of the Director of Public Prosecution who found that allegations were aimless and not guided by any known objective. The office of the Director of Public Prosecution consequently directed that the file be closed (PX22).

[24] Although counsel for the Defendant submitted that the arrest was based on reasonable belief that the Plaintiff had committed an offence, that submission is not founded on any evidence adduced in court. I therefore find that there was no reasonable suspicion that the Plaintiff had committed or was about to commit any criminal offence. His arrest was therefore illegal/unlawful.

Illegal/unlawful detention:

[25] The Plaintiff testified that upon his arrest, he was detained at a safe house belonging to Internal Security Organisation (ISO) situate at Kyengera, from the 16th December 2017 up to the 18th December 2017 when he was transferred to CPS Kampala. This evidence was not challenged by the Defendant. A safe house is not a place authorized by law for detention a person arrested. Therefore, the detention of the Plaintiff in the safe house was in contravention of Article 23(2) of the Constitution and therefore illegal.

Issue 2: Whether the Plaintiff was battered by the Defendant' security agents.

[26] According to **Winfred & Jolowicz on Torts 14th Edition at 58;** battery is the intentional and direct application of force to another person. 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. The legal basis was stated in **Collins versus Wilcock (1984)3 All ER 374,** where Goff L.J. held that:

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

[27] The Plaintiff testified that on the 16th December 2017 while at his home in Kabwohe, he was violently grabbed, lifted off the ground and bundled in a waiting police patrol car by security agents of the Defendant. He was handcuffed, blindfolded and taken to ISO safe house at Kyengera where he was detained. While at the ISO safe house, he was handcuffed on one of the poles at the balcony at an oblique angle with

his body towards the left side up to the 17th December 2017 when he was interrogated and tied again in the same manner until the 18th December 2017. That evidence of the Plaintiff was not challenged by the Defendant. It clearly shows intentional and direct application of force on the Plaintiff and therefore amounts to the tort of battery.

Issue 3: Whether the Plaintiff was tortured by the Defendant's security agents.

[28] Article 24 of the Constitution guarantees the freedom not to be subjected to any form of torture or cruel, inhumane or degrading treatment. Article 44(a) of the Constitution prohibits the derogation from the enjoyment of the freedom from torture.

[29] The Prevention and Prohibition of Torture Act, 2012 which was enacted by Parliament to, among others, give effect to Articles 24 and 44(a) of the Constitution, in Section 2(1) it defines torture as follows:

“(1) In this Act, torture means 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 the consent or acquiescence of any person whether a public official or other person acting in an official or private capacity for such purposes as—

- (a) obtaining information or a confession from the person or any other person;*
- (b) 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*
- (c) intimidating or coercing the person or any other person to do, or to refrain from doing, any act.”*

[30] The acts that constitute torture are enumerated in the 2nd schedule to the Prevention and Prohibition of Torture Act. Physical torture includes being tied or forced to assume a fixed and stressful body position. Mental or psychological torture includes blindfolding, confining a victim incommunicado, in a secret detention place or other form of detention.

[31] In this case, the Plaintiff testified that after his unlawful arrest, while in transit from Kabwohe to Kyegera, he was blindfolded. In addition, when he was at the ISO safe house at Kyengera, he was handcuffed on one of the poles at the balcony at an oblique angle with his body towards the left side up to the 17th December 2017 when he was interrogated and tied again in the same manner until the 18th December 2017. The evidence of the Plaintiff was not challenged by the Defendant. His evidence was corroborated by the evidence of P.W.1 Dr. Wilson Gide, his personal physician, who testified that as a result of the being tied in an oblique angle to the body allowing little blood flow, the Plaintiff developed blood clots in the left lateral chest wall. I therefore find that the Plaintiff proved to the required standard that the Defendant's security agents tortured him.

Issue 4: Whether the Defendant is vicariously liable for the action of its security agents.

[32] In Muwonge V. Attorney General [1967]1EA 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.” Underlined for emphasis.

[33] 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.”*

[34] The Plaintiff testified that his arrest, detention and torture was by Uganda Police Force (UPF) officers, Uganda Peoples Defense Force (UPDF) soldiers, Internal Security Organization (ISO) and Chieftaincy of Military Intelligence (CMI) operatives who are employees and/or agents of the Defendant and the Defendant should be held liable for their actions. The Defendant did not contest that the officers who arrested and detained the Plaintiff are employed by the Government of Uganda and were indeed working with the aforementioned government bodies. The details of the officers were all clearly indicated in their police statements which were collectively admitted in evidence as PX24.

[35] The Plaintiff therefore proved to the required standard that there exists a relationship of employer and employee between the officers and the Defendant. The Plaintiff also proved that his illegal/unlawful arrest, Illegal/unlawful detention, battery and torture was committed by the employees of the Government of Uganda. As to whether the officers were in the course of their employment, all the officers who effected the arrest and the detention of the Plaintiff were members of UPF or UPDF, who under **The Police Act, Cap 303** and **Uganda Peoples’ Defense Forces Act, Cap 307** have a duty to arrest and detain specified categories of persons. Therefore, the arrest and detention of the Plaintiff was a manner of carrying out what they are employed to carryout, although, in the instant case, they did it wantonly and criminally.

[36] Counsel for the Plaintiff submitted that the Plaintiff should have sued the officers individually for their actions under section 10 of the **Human Rights (Enforcement) Act, 2019**. I find the above arguments of counsel for the Plaintiff misconceived. First, the acts complained of by the Plaintiff took place in 2017 and this suit was filed in 2018

long before the coming into force of the **Human Rights (Enforcement) Act, 2019**. Secondly, section 10 of the Act does not exclude the Defendant from being vicariously liable for the actions of public officers. The section provides that:

“10. 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 apportion of the compensation or restitution so ordered as shall be determined by the competent court.” Underlined for emphasis.

[37] I therefore find that the Plaintiff proved that the Defendant is vicariously liable for the action of the officers who arrested, detained, battered and tortured the Plaintiff.

Issue 5: What remedies are available to the parties

[38] The Plaintiff prayed for special, general and punitive/exemplary damages; interest; and costs of the suit, arising from his unlawful arrest, illegal detention, battery and torture by agents of the Defendant.

[39] According to **Halsbury's Laws of England, 4th Ed Vol. 12 (1) Paragraph 802** damages is defined as:

“The pecuniary recompense given by process of law to a person for the actionable wrong that another person has done to him or her.”

[40] In **Robert Cuossens versus Attorney General SCCA No. 8 of 1999** Odeur J.S.C stated that:

“The object of an award of damages is to give the plaintiff compensation for the damage, loss or injury he or she has suffered. The heads or elements of damages recognised as such by law are divisible into two main groups: pecuniary and non-pecuniary loss. The former comprises all financial and material loss incurred, such as loss of business profit, loss of income, or expenses such as medical expenses. The latter comprises all losses which do not represent inroad upon a person’s financial or material assets such as physical pain or injury to feelings. The former, being a money loss is capable of being arithmetically calculated in money, even though the calculation must sometimes be a rough one where there are difficulties of proof. The latter, however, is not so calculable. Money is not awarded as a replacement for other money, but as a substitute for that which is generally more important than money: it is the best that a Court can do, damages have to be measured in order to arrive at what compensation should be awarded.”

[41] The basic principle for the measure of damages in tort as well as in contract is that there should be *restitutio in integrum*. In **Livingstone versus Ronoyard’s Coal Co (1880) 5 APP Cas 25, 39** Lord Blackburn stated that:

“Where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at the sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he seeks compensation or reparation.”

Special damages:

[42] Special damages are the actual pecuniary losses. They include earnings which have actually been lost or expenses which have actually been incurred. They have to be specifically pleaded and proved. In **Uganda Telecom Ltd Versus Tanzanite Corporation, [2005] 2 EA 341**, Oder, JSC at page 341 held that;

“‘Special damage’ is the damage in fact caused by wrong. It is trite law that this form of damages cannot be recovered unless it has been specifically claimed and proved or unless the best available particulars or details have before trial have been communicated to the party against whom it is claimed.”

[43] The Plaintiff claimed money spent on medical, transport, special diet/food, security, the postponed give - away function and certified police report as special damages. In addition, he also claimed loss of business earnings/livelihood and money taken from him during his arrest as special damages. I shall deal with each claim separately.

(a) Medical expenses:

[44] The Plaintiff pleaded that as a result of his arrest, detention and torture, he suffered several medical complications, including blood clot. He spent UGX 204,289,500/= in medical expenses between the 19th December 2017 and 30th September 2020. In his witness statement which was filed in court on the 19th November 2021 he stated that the medical expenses were UGX 277,160,645,000/=. On the 15th November 2021 when he testified, he tendered in evidence medical reports, diagnosis and treatment forms which were collectively admitted in evidence as PX25. He also tendered in evidence receipts for medical consultation, laboratory tests and medicines which were collectively marked PX26 totaling to UGX 276,335,645/=.

[45] Counsel for the Defendant argued that the Plaintiff attempted to amend his case in the witness statement by inflating the figures which were not particularized in the plaint. Counsel submitted that a party cannot be permitted to raise any new ground of claim inconsistent with the pleadings. Counsel for the Defendant further submitted that the plaintiff was already sick as was testified by P.W.1 Dr. Wilson Gide and therefore the allegation that it is the torture which caused his sickness is unfounded.

[46] On whether the Plaintiff's medical complication was as a result of the torture or was as a result of other pre-existing medical condition of the Plaintiff, P.W.1 Dr. Wilson Gide testified that the Plaintiff developed blood clots in the left lateral chest wall as a result of being tied in an oblique angle to the body allowing little blood flow. He explained that although the Plaintiff had suffered a blood clot on his leg in 2016, that time he was put on a first line drug warfarin and he was being managed well. However, as a result of the torture, the Plaintiff suffered blood clot on the left lateral chest wall and the Plaintiff was put on a second line anticoagulant drug called Zeralto. In the absence of any contrary evidence, I have no reason to disbelieve Wilson Gide. I therefore find that the Plaintiff proved to the required standard that it was as a result of being tortured, by the employees of the Defendant, that he developed the blood clot on his left lateral chest wall.

[47] On whether the medical expenses were inflated, I have evaluated the receipts which were tendered in court by the Plaintiff. I agree with counsel for the Defendant that some receipts were for expenses incurred after the amended plaint was filed on the 22nd October 2020. Those receipts appear on pages 276 – 278, 279 – 296, 306 – 310, 316 – 327 totaling to 44,802,800/=. The amount of money contained in those receipts cannot be regarded as part of the special damages claimed in the plaint. I will therefore only allow UGX 204,289,500/=:, which was pleaded, as special damages for medical expenses.

(b) Transport expenses:

[48] The Plaintiff pleaded that as a result of several medical complications he suffered as a result of his arrest, detention and the torture, he spent UGX 212,310,000/= in transport expenses to and from the hospital. In his witness statement which was filed in court on the 19th November 2021 the Plaintiff testified that he had spent UGX 272,670,000/= in special hire transport to and from the clinic. However, on the 15th November 2021 when he testified in court, he tendered in court receipts for transport hire of UGX 279,000,000/= which were collectively marked PX29. There was no

explanation why there was inconsistency in the amount in the plaint, witness statement and the receipts. I have noted that the receipts from page 95 – 120 were issued long after the amended plaint was filed and it total to UGX 60,120,000/=. I have also noted that the receipt at page 6 of PX29 of UGX 670,000/= is for special hire transport from Kampala to Kabwohe/Sheema. It has nothing to do with going to the hospital. In addition, on the 1st June 2021 the court directed that the documents which were in the trial bundles be rearranged. No order was given permitting the Plaintiff to introduce new documents. I have however noted that the receipts at pages 85-94, totaling to UGX 47,950,000/= were introduced as new documents. Their introduction in evidence was not only a violation of the court's order but also puts to question their authenticity since they did not form part of the trial bundle. I will therefore only allow UGX 163,930,000,000/= as special damages for transport expenses.

(c) Expenses on special diet/food:

[49] The plaintiff pleaded that he incurred UGX 243,311,000/= for special meals between October 2018 – 30th September 2020. In his witness statement filed in court on the 19th November 2021, he stated that he had spent UGX 332,771,000/= in special food as recommended by his doctors to minimize the medication side effects (see: PX1). On the 15th November 2021 when he testified in court, he tendered in court receipts for special diet/food of UGX 332,771,000,000/= which were collectively marked PX27. There was no explanation why there was inconsistency in the amount in the plaint and the witness statement. I have noted that the receipts from page 35 – 38, totaling to UGX 63,570,000/= were issued long after the amended plaint was filed. I will therefore only allow UGX 243,311,000/=, which was pleaded, as special damages for special meals.

(d) Expenses for security:

[50] The plaintiff pleaded that because of unending threats to kidnap him by the Defendant's agents, he spent UGX 198,650,000/= in personal security between the 29th September 2018 – 30th September 2020. In his witness statement filed in court on the 19th November 2021, he stated that he had spent UGX 272,703,000/= in personal and

family security. On the 15th November 2021 when he testified in court, he tendered in court receipts for security services offered by private body guard (Julius Mwanda and Farouq Okia) of UGX 272,703,000,000/=. The receipts were collectively marked PX28. I have noted that the Plaintiff did not adduce any evidence to show that he registered any criminal case against the persons he alleged were threatening his life or make a formal statement with the police to that effect. The letter of the dated 20th March 2018 (PX32) addressed to the Inspector General of Police concerning threats to his life does not have details of how his life and that of his family was in danger. In addition, the letter was delivered to the OC CID Sheema District and not to the office of the Inspector General of Police. Another letter which the Plaintiff relied on was purportedly written to the Minister of Security but it was not formally received since it has no acknowledgment of receipt. There is nothing to show that the entire Uganda Police Force, which is constitutionally mandated to keep law and order, had failed to provide security to the plaintiff if at all his life and that of his family was indeed under threat. I therefore find that the expenditure on private body builders as security guards was not justified. The claim for expenses for security as special damages is accordingly rejected.

(e) Expenses on the give - away function:

[51] The Plaintiff pleaded that he lost UGX 313,700,000/= which he spent to organize the giveaway function of his daughter which had to be halted after his arrest. On the 15th November 2021 when he testified in court, he tendered in court receipts for supply of food, drinks, tents, chairs, tables, cooking utensils, serving utensil, charcoal, fuel and standby generator of UGX 46,700,000/=. He also tendered in court receipt for renovation works, sanitation, drainage, water system, compound terracing, vehicle parking, electrical and lighting systems of UGX 267,000,000/=. All the documents were collectively marked PX31. I find that the claim of UGX 267,000,000/=: which was for renovation works, is not justified since with or without his arrest he would still have to renovate his house for the postponed give – away function. I however find that the claim for UGX 46,700,000/= is justified since it directly relates to expenditure on the give -

away function which was frustrated by his arrest. I accordingly only allow UGX 46,700,000/= as special damages for expenses on the aborted give - away function.

(f) Loss of business earnings/livelihood:

[52] The Plaintiff pleaded that since December 2017, due to his medical complication, he has not been able to continue with his business of dealing in agricultural produce and supplies thereby causing him to suffer loss of earnings of UGX 41,000,000/= per month, which translates to UGX 492,000,000/= per annum. In his witness statement filed in court on the 19th November 2021, he stated that his loss of business was UGX 1,640,000,000/=. On the 15th November 2021 when he testified in court, he tendered in court receipts for supply of agricultural produce which were collectively marked PX30.

[53] On whether a claim for loss of earnings can be claimed a special damage, in **Robert Cuossens versus Attorney General SCCA No. 8 of 1999** where Oder J.S.C stated that:

“... future financial loss whether it is future loss of earnings or expenses to be incurred in the future, assessment is not easy. This prospective loss cannot be claimed as special damages because it has not been sustained at the date of the trial. It is therefore, awarded as part of the general damages. The plaintiff no doubt would be entitled in theory to the exact amount of his prospective loss if it could be proved to its present value at the date of the trial. But in practice since future loss cannot usually be proved, the Court has to make a broad estimate taking into account all the proved facts and the probabilities of the particular case.”

[54] The learned JSC further stated that:

“An estimate of prospective loss must be based in the first instance, on a foundation of solid facts; otherwise it is not an estimate, but a guess. It is therefore, important that evidence should be given to the Court of as many

solid facts as possible. One of the solid facts that must be proved to enable the Court to assess prospective loss of earnings is the actual income which the plaintiff was earning at the time of his injury.” Underlined for emphasis.

[55] The method of assessment of loss of earning capacity was well stated in Mcgregor on Damages’14th Edn. in paragraph 1164 (page 797) as follows:

“The Courts have evolved a particular method of assessing loss of earning capacity, for arriving at the amount which the plaintiff has been prevented by the injury from earning in the future. This amount is calculated by taking the figure of the plaintiffs present annual earnings less the amount if any, which he can now earn annually and multiply this by a figure which, while based upon the number of years during which the loss of earning power will last, is discounted so as to allow for the fact that a lump sum is being given now instead of periodic payments over the years. This figure has long been called the multiplier; the former figure has now come to be referred to as the multiplicand. Further adjustment however, may have to be made to the multiplicand or multiplier on account of a variety of factors; viz, the probability of future increase or decrease in the annual earnings the so called contingencies of life and the incidence of inflation and taxation.” Underlined for emphasis.

[56] Discussing the “*multiplicand*” in conditions of diminution of annual earnings the learned author stated in paragraph 1168 that:

“The starting point in the calculation has long been the amount earned by the plaintiff before the injury; however, Cookson vs Knewles (1978) 2WL.R.978 (HL) in the related field of Fatal accidents would seem to confirm that now, through the stimulus of inflationary conditions, the starting point has become the amount that the plaintiff would having been earning at the date of the trial had he not been injured... What the plaintiff is earning per annum at the time of injury will generally be easy to calculate where he is employed at a wage or salary; similarly, the amount which he is capable of earning in the future is often

made clear by the terms of such post injury employment (if any) as he has entered into before his case is brought to trial” Underlined for emphasis.

[57] In the instant case, there was no evidence adduced of the actual income which the Plaintiff was earning at the time of the injury, what he can now earn, the number of years he would have been earning and any contingencies that might have to be considered. The only document which the Plaintiff attempted to tender in evidence was the projection of his loss of income. The document was not signed and its author is unknown. More importantly, it was not admitted in evidence. I cannot therefore consider it in my evaluation. The random receipts which were tendered in evidence cannot by themselves prove actual income. In my view, the Plaintiff should have obtained an audited account of his business to guide the court on his earnings from the business before his arrest and after the arrest taking into account expenses such as taxes. Given that the Plaintiff did not adduce the relevant evidence to guide the court on his income, I accordingly decline to grant the prayer for the alleged loss of business earnings.

(g) Money taken during arrest:

[58] The Plaintiff pleaded that during his unlawful arrest, UGX 230,000/= was forcefully removed from him. In his witness statement filed in court on the 19th November 2021, he stated that this money was stolen from him by the agents of the Defendant. I find that the Plaintiff proved this amount to the required standard.

(h) Fees for certified police report:

[59] The Plaintiff pleaded that he spent UGX 63,300,000/= as fees paid for a copy of the police report for the criminal case alleged against him. The Plaintiff tendered in evidence the receipt of UGX 60,000/= which he paid for the police report (PX15). I therefore find that this amount was proved to the required standard. It is accordingly awarded.

General damages:

[60] According to **Halsbury's Laws of England, 4th Edition reissue Volume 12(1) paragraph 812** general damages are defined as:

"... those losses, usually but not exclusively non pecuniary, which are not capable of precise quantification in monetary terms. They are those damages which will be presumed to be natural or probable consequence of the wrong complained of; with the result that the Plaintiff is only required to assert that damage has been suffered."

[61] In assessing the quantum of general 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**). In **John K. Kagwa versus Kototyo Wilber Willaim and another HCCS No. 273 of 2016** my brother judge Musa Sekaana held that:

"There is no specific formula or detail of how the damages are worked out in cases of torture or inhuman and degrading treatment; generally it is not a pecuniary loss but a loss of dignity or suffering or injury. The principal heads of damage would appear to be injury and liability, loss of time considered primarily from a non-pecuniary viewpoint and injury to feelings i.e the indignity, mental suffering, distress and humiliation with any attendant loss of social status. See Mc Gregor on damages, 14th Edition."

[62] I have already made a finding above that the Plaintiff was illegally/unlawfully arrested, illegally/unlawfully detained and tortured. Counsel for the Plaintiff prayed for general damages of 9,000,000,000/=. In **John K. Kagwa versus Kototyo Wilber Willaim and another HCCS No. 273 of 2016** where the plaintiff was detained in a filthy cell with poor ventilation, deprived of the right to a clean and healthy environment, he was not given a meal or water, thereby subjecting him to inhumane and degrading treatment, he lost weight and appetite, he was denied his passport and he could not travel to attend his daughters graduation in Canada which the court considered to be an

important milestone in the life of a parent and their children. In addition, the account of the plaintiff's law firm was blocked for 2 months, stifling his law firm's business, he was awarded general damages of UGX 100,000,000/=. In **Lt. (Rtd)George Kigundu** (supra) where the plaintiff was arrested by a soldier attached to CMI, beaten, bleed, locked up in a toilet, detained in a safe house at Kololo, spent 61 days in detention and as a result he got a skin disorder and suffered grievous harm on his leg, his counsel prayed for general damages of UGX 700,000,000/= but the court awarded UGX 50,000,000/=.

[63] In this case, the Plaintiff was arrested while preparing the give - away party of his daughter. He was no doubt subjected to enormous embarrassment. The party had to be suspended as a result of his arrest. He was blindfolded, detained in a safe house where he was tortured. As a result, he suffered blood clot which according to the report of P.W.1 Dr. Wilson Gude (PX11) the treatment can be more that 17 years and, in some case, may be a lifelong treatment. I therefore find that an award of UGX 200,000,000/= is appropriate in the circumstances as general damages.

Exemplary/punitive damages:

[64] These are damages requested for and awarded when the defendant's willful acts were malicious, violent, oppressive, fraudulent, wanton, high handed or grossly reckless. 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**).

[65] In this case, the actions of the employees of the Defendant were no doubt malicious, violent, oppressive, fraudulent, wanton, high handed or grossly reckless. They arrested

the Plaintiff without any scintilla of proof that he committed any offence. I consider that an amount of UGX 50,000,000/= as being appropriate in the circumstances as exemplary/punitive damages.

Interest:

[66] The principles applied by this court in the award of interest are clear and are set out in section 26 (2) of the Civil Procedure Act which provides that:

"Where the decree is for the payment of money, the court may in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit."

[67] The above position of the law was reaffirmed in **Lwanga vs. Centenary Bank [1999] EA 175** wherein the Court of Appeal held that;

"Section 26(2) of the Civil Procedure Act empowers the court to award three types of interest; interest adjudged on the principal sum from any period prior to the institution of the suit, interest on the principal sum adjudged from the date of filing the suit to date of the decree, and interest on aggregate sum from the date of the decree to the date of payment in full."

[68] In **Mohanlal Kakubhai Radia vs Warid Telecom Ltd HCCS No. 234 of 2011** the court stated that:

"Court should take into account the ever rising inflation and drastic depreciation of the currency. A plaintiff is entitled to such rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any further economic vagaries and

the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due.”

[69] In the instant case, counsel for the Plaintiff prayed that the court should award the Plaintiff interest at 30% on the amount awarded from the date of judgment till payment in full. I am however of the considered view that the rate proposed by counsel for the Plaintiff is way too high. In my view, interest at the rate of 15% per annum on the amount awarded to the plaintiff from the date of this judgment until payment in full is appropriate in the circumstances.

Costs of the suit:

[70] Section 27 of the Civil Procedure Act provides that:

“27. Costs

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid.

(2) The fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of the powers in subsection (1); but the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(3) The court or judge may give interest on costs at any rate not exceeding 6 percent per year, and the interest shall be added to the costs and shall be recoverable as such.”

[71] The general rule is therefore that costs should follow the events and a successful party should not be deprived of costs except for good cause. I have not found any good cause in this case why I should deny the Plaintiff the costs in this matter.

Orders:

[72] In the end, after carefully considering the merits of this case, the following orders are hereby made.

1. The Defendant to pay the Plaintiff special damages of UGX 658,520,500/= (Uganda Shilling Six Hundred and Fifty - Eight Million, Five Hundred and Twenty Thousand, Five Hundred only).
2. The Defendant to pay the Plaintiff general damages of UGX 200,000,000/= (Uganda Shilling Two Hundred Million only).
3. The Defendant to pay the Plaintiff exemplary/punitive damages of UGX 50,000,000/= (Uganda Shilling Fifty Million only).
4. The Defendant to pay the Plaintiff interest of 15% per annum on the special, general and exemplary/punitive damages from the date of judgement till payment in full.
5. The Defendant to pay the Plaintiff the costs of this suit.

I so order.

Signed, dated and delivered by email this 10th November 2023



Phillip Odoki

JUDGE