THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[CIVIL DIVISION]

MISCELLANEOUS CAUSE NO.25 OF 2021

NO. 64861 PC ATUSASIIRE DAIRUS::::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

1. **ACP OKALANY JOHN WILLIAM**
2. **D/CPL MANGENI AFROS**
3. **ATTORNEY GENERAL ::RESPONDENTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This application was filed under Articles 20, 24,23(3), (5), 50(1), 119(4)(c) of the 1995 Constitution of the Republic of Uganda seeking orders /declarations that;

1. *The actions of the officers of the Uganda Police Force breached the applicant's right to freedom from torture, cruel, inhuman and degrading treatment guaranteed under Article 24 of the Constitution, when they beat the applicant with a pistol forcing him to sign a document.*

2. *The actions of the officers of the Uganda Police Force breached the applicant's right to personal liberty when they detained the applicant without informing him the reason for the detention, denying him access to his lawyer and relatives.*

3. *The 3rd respondent is vicariously liable for the actions of the officers of Uganda Police Force.*

4. *An order directing the respondents to pay to the applicant general damages and punitive damages for the breach of his constitutional rights.*

5. *Costs of this application.*

The applicant was a public servant serving under the Uganda Police Force and it was during the course of his duty that he was arrested and detained in Railways police station without informing him of the charges, denied him access to a lawyer and relatives, the doctor and assaulted by fellow members of the Uganda Police Force using a pistol as a way of forcing the applicant to sign a document whose contents he did not know.

As result, the applicant sustained injuries in his mouth or broken tooth and was subjected to mental anguish and torture while at police custody in Railways police station.

He contended that due to the alleged beating he was had to undergo medical treatment for the injured gum of the tooth and pain in the head. He alleges to have lost a tooth as well.

The 1st respondent filed an affidavit in reply and denied entirely all the allegations of torture since he was not stationed at Uganda Railways Police station but rather he was at Professional Standards Unit. He acknowledges that the applicant was reported to Professional Standards Unit by a one Racheal Nsenge and was accordingly summoned to answer the issues of professional misconduct.

The 1st respondent instructed another officer Cpl Mangeni Afros to register the complaint against the applicant and investigate the same. The applicant responded to the summons whereupon it was discovered that the applicant had also made another complaint or made a counter accusation of minor assault against the said Racheal Nsenge. The applicant's file or complaint at police was called and merged with the Professional Standards Unit complaint to be jointly managed.

The 1st respondent denied ever being at Uganda Police Railways and never supervised the alleged torture and denied ever holding any ammunition or pistol during that period since he last held a gun or AK 47 rifle in 1999. The applicant made several complaints against the 1st respondent to different offices (Inspector General Police, PSU, Anti- Corruption Unit of State House and Directorate of Crime Intelligence, Naguru) and the same files or complaints have been found to lack merit.

The 2nd respondent filed an affidavit in reply and contended while he was at the Deputy IGP's office he was called and told to take the complainant-a lady called Nsenge Racheal to the Professional Standards Unit to record her complaint of assault against the applicant. The 2nd respondent was instructed to investigate the matter and report accordingly.

The 1st respondent stated that he discovered that the applicant had made a counter accusation of assault at CPS and the file was called and merged or managed together. He summoned the applicant and was duly informed of the reasons why he was summoned and he recorded his statement.

The respondent was detained at Uganda Railways Police and the 2nd respondent is not responsible for the facility since it is under the management and control of officers of that Unit. He was not aware that the applicant ever required or requested to have services of the lawyer or medical doctors or member of the family as he alleges.

The two files were called by the Office of DPP and were accordingly forwarded for direction and legal guidance. In the mean-time the Managing Director of NSSF intervened and requested that the two files should not settled. The applicant and the complainant were called to the office of the MD of NSSF and the applicant was compensated with a sum of 1,500,000/= as full and final settlement of the matter and both files closed by directive of the DPP. The applicant filed an additional statement withdrawing the assault case against said Racheal Nsenge.

The 2nd respondent contended that the allegations of assault against the applicant are totally false and baseless. The same allegations were investigated by the office of IGP and were found to be devoid of merit.

The 3rd respondent filed an affidavit through Principal State Attorney Wanyama Kodoli wherein he contended that the 3rd respondent is not liable for the actions and omissions of torture committed by police officers. Therefore, the 3rd respondent is not vicariously liable for the alleged actions of the 1st and 2nd respondent.

The applicant was represented by *Ms Nakiggudde Winnie*, whereas the 1st & 2nd respondents were represented by *Mr. Katongole Arthur*, and the 3rd respondent by *Ms Nabaasa Charity*, the SSA for AG.

The matter was set down for hearing on four issues.

1. ***Whether the applicant's freedom from cruel, inhuman and degrading treatment was violated by the 1st and 2nd respondents?***
2. ***Whether the applicant's right to personal liberty was violated by the 1st and 2nd respondents?***
3. ***Whether the 3rd respondent is vicariously liable for the actions of the 1st and 2nd respondents?***
4. ***What remedies are available?***

DETERMINATION OF ISSUES

Whether the applicant's freedom from cruel, inhuman and degrading treatment was violated by the 1st and 2nd respondent?

Counsel for the applicant submitted that freedom of torture is a universally recognized human rights and stated that it is seen as something that is harmful to mankind. counsel cited the case of ***Issa Wazemba v AG Civil Suit No. 154/ 206***, Ireland v United Kingdom ECHR Application No. 5310/71). Counsel further submitted that the applicant proved the existence of the

infringements complained of and are entitled to the reliefs sought in his application.

Article 44 (a) of the Constitution of Uganda provides for no derogation from the enjoyment of the rights of and freedoms from torture and cruel in human degrading treatment. Further is also a signatory to other human treaties like Universal declaration of human rights among others. **Section 2 of the Prevention and Prohibition of Torture Act, 2012** defines torture to mean; 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;

i) Obtaining information or a confession from the person or any other person;

ii) 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

iii) Intimidating or coercing the person or any other person to do, or to refrain from doing, any act.

The applicant was arrested and detained and forced to sign a document whose contents he did not know. The applicant came to know the document as one that was meant to withdraw his charges against a lady he had allegedly assaulted.

To force the applicant to sign the document he was hit with a pistol on the jaw which caused too much pain to the applicant, and the applicant adduced medical evidence to that effect. This is against section 2 of the Prevention and Prohibition of Torture Act, 2012.

The respondents in their submissions contended that the applicant had failed to prove the alleged torture since the evidence is very unconvincing and the applicant does clearly show anywhere how he was assaulted and

lost the alleged tooth. The doctor in his testimony does not allude to the alleged tooth lost or tooth gap.

The applicant's allegations of torture are unfounded as under section 2 of the Prevention and Prohibition of Torture Act.

Analysis

Article 44(a) of The Constitution of the Republic of Uganda provides;

"*Notwithstanding anything in this constitution, there shall be no derogation from enjoyment the following rights and freedoms-*

(a)Freedom from torture and cruel, inhuman or degrading treatment or punishment."

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

Section 2 of the Prevention and Prohibition of Torture Act, 2012 defines torture to *mean 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.*

For an act to amount to torture, not only must there be a certain severity in pain and suffering, but the treatment must also be intentionally inflicted for the prohibited purpose.

Freedom from torture is one of the most universally recognized human rights. Torture is considered so barbaric and incompatible with civilized society that it cannot be tolerated. Torturers are seen as the 'enemy of mankind'. The ban on torture is found in a number of international treaties, including Article 2 of the United Nations Convention Against Torture and Article 3 of the Human Rights Convention and Article 5 of the Universal Declaration of Human Rights and Article 5 of the African Charter on Human and People's Rights.

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

The courts should apply a very strict test when considering whether there has been a breach of an individual's right to freedom from torture or inhuman or degrading treatment. Only the worst examples are likely to satisfy the test. There are no exceptional circumstances whatsoever to justify torture.

The applicant claimed he was tortured when he was allegedly hit with a pistols and it broke his tooth and later the said tooth was removed. He alleges that this was done by the respondents. He alleges he was hit with a pistol on the left side of the head by the 2nd respondent on instructions of the 1st respondent on 11th-12-2018.

The applicant appears to have reported or made his first complaint of assault with a pistol in a complaint dated 20th December 2019 and served on IGP

office on 30th -12-2019. The complaint against the respondents came after the applicant had amicably settled matters with Racheal Nsenge upon intervention of the Managing Director of NSSF and was paid 1,500,000/= on 20th July 2019 and after he had made an additional statement while at NSSF dated 15/02/2019.

The 1st and 2nd respondents denied being in possession of any ammunition or signing for the same from the armoury during this period. The motive of the applicant is not clear and this created a doubt as to the true occurrence of the events.

The applicant claims that he was surprised when he was informed that his criminal file was closed with documents which he had been forced to sign at PSU. But the evidence on record shows the applicant signed a withdraw of the criminal case while at office of NSSF Managing Director (see annex F) and therefore the basis was not the documents signed at PSU.

The applicant opted to go to a private clinic at Salaama instead of a major hospital nearby at Kiruddu hospital. He was advised or directed to go to Kiruddu hospital which he declined although he claims they refused or declined to treat him.

It is a basic principle of the law of evidence that a party who bears the burden of proof is to produce the required evidence of facts in issue that has the quality of credibility short of which his claim may fail. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more probable than its non-existence.

The nature of the applicant's evidence in proof of his claims of torture and inhuman and degrading treatment is highly questionable and in totality would not be believable against the other version of evidence of the respondents.

It is true that witnesses are weighed but not counted and that a whole host of witnesses are not needed to prove a particular point. It is trite law that in establishing the standard of proof required in a civil or criminal trial, it is not the quantity of witnesses that a party upon whom the burden rests calls to testify that is important, but the quality of the witness called. The applicant's quality of evidence is so hollow and incredible to prove a case of torture and inhuman and degrading treatment. The mere statements made were not satisfactory to this court. These were serious allegations made against the respondents and court expected serious and cogent evidence to prove them on the balance of probabilities.

The credibility of the applicant's evidence or witnesses was questionable as showed herein when the same it is tested as to its consistency with the probabilities that surround the currently existing conditions. In short, the applicant's story is not in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in those conditions. The applicant who was seriously injured to the extent of losing a tooth, never reported the serious allegation of torture for a period of one year. While on the case of an alleged simple assault by Racheal Nsenge was reported to CPS.

I have considered all the evidence before court and I am therefore inclined to believe the evidence of the respondents since the applicants did not lead sufficient evidence to prove that he was tortured and hence it is in resolved in the negative.

Whether the applicant's right to personal liberty was violated by the 1st and 2nd respondents?

The applicant submitted that Article 23(3) of the constitution states that a person arrested or detained to be informed in the language he or she understands the reason for the arrest, restriction or detention and access to the lawyer as per paragraph 30 of the applicant's affidavit in support.

The applicant in his paragraph 29 states that he was denied access to medical treatment even when he requested yet he was in a bad medical condition. Counsel for the applicant contended that, the applicant was not given an opportunity to communicate to his next of kin, and a lawyer about his arrest which right is conferred on him by Article 23 (5) of the Constitution also access to the medical doctor yet he was in a bad medical condition in which he lost his tooth.

Counsel for the respondent submitted that the applicant was granted police bond in less than 24 hours. Counsel for the applicant further submitted that the part of personal liberty of the applicant which was in fringed was his detention with explaining the reasons why and denying him the right to inform his next of kin and lawyer about his where about.

Analysis

The applicant's allegation that he was not informed of his reason of his arrest after he was summoned by the 1st respondent to appear at Professional Standards Unit. Counsel has erroneously argued that when the applicant appeared at Professional Standards Unit was instead forced to close the assault file opened at CPS.

The police file was closed after the intervention of the Managing Director of NSSF who amicably settled the matter and the applicant was paid 1,500,000/=. It is clear from the said letter or statement to withdraw, wherein the applicant stated that *"….do hereby withdraw the criminal case of assaulting a police officer on duty that I reported at Central Police Station (CPS) Kampala Vide REF: 64/27//11/2018"*

In my view the applicant was duly informed of the reason of his summoning to Professional Standards Unit and he ably gave a statement with full knowledge as it can be seen on record. His contention was that he was never informed of the reason for his detention at Railways Police Station.

The applicant was a suspect and could therefore be detained as investigations were on going. However, the applicant does not state whether he equally ever asked why he was detained and was never informed. But after making his statement at Professional Standards Unit, the investigating officer deemed it fit to have him detained pending further investigations. Although he was later released after 24 hours and investigations in the matter continued in earnest.

The applicant further contended that he was denied a right to see his lawyer or medical doctor or next of kin. It appears this was fabrication by the lawyer in order to give the application some seriousness.

A person arrested, restricted or detained shall be informed immediately, in a language that the person understands, of the reasons for the arrest, restriction or detention and of his or her right to a lawyer of his or her choice.

Some people understand on the basic level that they have a constitutional right to a lawyer if they are accused of a crime. Few realize, however, that their constitutional right to a lawyer is limited in a number of significant ways.

It is the duty of the suspected person like the applicant to assert their rights as enshrined in the Constitution under Article 23(5) by requesting or demanding that their next of kin or lawyers or medical doctors are allowed to talk or see him while in prison. The police have no duty or obligation to go around looking for the suspect's or accused's relatives, lawyers or medical doctors.

When suspects like the applicant are in custody they should not assume that the police will produce their lawyers or relatives or next of kin without them requesting or demanding for the same. The applicant should not turn around to allege that his family members or lawyers or medical doctors were never informed of his detention at police in absence of any clear request or demand.

The evidence on record does not show that the applicant ever made such a request while in detention.

I find that the applicant's right to personal liberty was never violated by the 1st and 2nd respondent.

This application fails and is dismissed with no order as to costs

I so order.

Ssekaana Musa
Judge
12th January 2024