

MISCELLANEOUS CAUSE NO. 72 OF 2021

- 1. ATTORNEY GENERAL**
- 2. COL. KAKA BAGYENDA**
- 3. MUKASA BASHIRU**
- 4. CPL ATALIWUWE RICHARD**
- 5. CPL APUNYA JOSEPH**
- 6. OPUSI JOSEPH**
- 7. SSERUNJOGI PADDY DICKENS**
- 8. ROKANI OBULEJU**
- 9. SSEMUJU MUSA**
- 10. NSANGIRANABO ERASMUS JACK**
- 11. OKURUTU DAVID**
- 12. MUSABE SHABAN**
- 13. NAHURIRA APOLO**
- 14. ALI MAYANJA**
- 15. BUKOMERO**
- 16. KABERENGGE :::::::::::::::::::: RESPONDENTS**

RULING

(ii) The unlawful arrest and detention of the Applicant at Kyengera base 1 safe house and later transfer to Lwamayuba Island in Kalangala District for 14 months violated the Applicant's constitutional right to liberty under Article 23(2) of the Constitution.

(iii) The forced labour, slavery, brutality, humiliation and embarrassment meted out on the Applicant amounted to inhuman and degrading treatment under Article 25 and 44 of the Constitution.

b) Orders for;

(i) Payment by the Respondents of compensatory and punitive damages for violation of the Applicant's rights and freedoms.

(ii) Payment of the sum of UGX 5,000,000/= being the cost of repair of Motor Vehicle Reg. No. UAL 942C Toyota Premio grey in color which at the time of the Applicant's release was still parked at Kyengera safe house.

(iii) Refund of UGX 53,000,000/= taken from the Applicant at the time of his arrest by the operatives that effected the arrest.

(iv) Payment of general and exemplary damages for the psychological torture, mental anguish and emotional stress suffered by the Applicant.

(v) Payment of interest and costs of the suit.

[2] The grounds of the application are summarized in the Notice of Motion and also set out in the affidavit in support of the application deposed by the Applicant and two further affidavits deposed by Ali Kasujja and Shk. Badru Nkalubo. Briefly, the grounds are that on 5th August 2018, the Applicant was arrested at a washing bay at Katokota Nansana by armed plain clothed operatives who detained him at Kyengera safe house base 1 of the Internal Security Organization (ISO) and was later transferred to Lwamuyaba Island in Kalangala District for a total period of 14 months. The Applicant stated that during his arrest, he was in possession of UGX 53,000,000/= which he had obtained from selling land at Naluvule to a one Sempa which was taken by the operatives who effected the arrest. During the arrest and detention, he was tortured, denied access to his relatives and medical treatment, forced to clear and cut down forests together with other detainees. As a result, the Applicant was deprived of his business and his 5 children had to forfeit school due to

lack of school fees. He concluded that it is just and equitable that his application is allowed and he is granted the reliefs claimed.

3] The 1st Respondent opposed the application through an affidavit in reply deposed by **Jones Rugumya**, the Director for Operations at the Internal Security Organization (ISO), in which he denied all the allegations and stated that the function of ISO is to collect, receive and process internal and intelligence data on the security of Uganda. He stated that no officer or employee of ISO has power to arrest, detain or confine any person and it is a serious offence for any officer or employee to do so. He further stated that ISO did not arrest, detain, torture or subject the Applicant to forced labour and the entity does not own any detention centers or islands and any of its operational facilities have never been used to detain the Applicant, torture him or force him to work.

[4] The 2nd to 16th Respondents did not file any reply to the application and neither did they appear for hearing despite sufficient evidence of service of process. The Applicant prayed for and the Court allowed the hearing of the application to proceed ex parte as against the said Respondents.

Representation and Hearing

5] At the hearing the Applicant was represented by **Mr. Kakeeto Denis** from M/s Denis Kakeeto Advocates while the 1st Respondent was represented by **Mr. Mugisha Moses**, State Attorney from the Chambers of the Attorney General. Counsel agreed to make and file written submissions which were duly filed and have been considered while determining this matter.

Issues for Determination by the Court

[6] Two issues were agreed upon for determination by the Court, namely;

- a) *Whether the alleged conduct of the Respondents was in violation of the Applicant's rights?*
- b) *Whether the Applicant is entitled to the remedies claimed?*

Resolution of the Issues

Issue 1: Whether the alleged conduct of the Respondents was in violation of the Applicant's rights?

[7] Every person is entitled to enjoyment of fundamental rights and freedoms deriving not only from natural law but also as provided for under international and national legal instruments starting with the Universal Declaration of Human Rights of 1948, followed by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, among other later instruments. The Constitution of the Republic of Uganda in Chapter Four thereof elaborately provides for these rights. Under Article 20(1) and (2), the Constitution provides that; *"Fundamental rights and freedoms of the individual are inherent and not granted by the state" and the "rights and freedoms of the individual and groups enshrined in this chapter shall be respected, upheld and promoted by all agencies of government and all persons"*.

[8] Under Article 50(1) of the Constitution, *"Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation"*. Consequently, Section 3(1) of the Human Rights (Enforcement) Act 2019 provides that; *"In accordance with article 50 of the Constitution, a person or organisation who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened may, without prejudice to any other action with respect to the same matter that is lawfully available, apply for redress to a competent court in*

accordance with this Act”. In this case, the Applicant claimed breach of several rights and freedoms. I will handle each claim under a particular sub-heading.

Freedom from torture, cruel, inhuman and degrading treatment

Submissions by Counsel for the Applicant

[9] It was submitted by Counsel that the Applicant was subjected to torture, cruel, inhuman and degrading treatment while in detention. Counsel pointed out that the Applicant was electrocuted, beaten, blindfolded and was made to sleep in a room full of dirty water while on handcuffs and leg cuffs. Counsel relied on a medical report from the African Centre for Treatment and Rehabilitation of Torture Victims as proof that the Applicant was tortured and his health had deteriorated. Counsel relied on the provisions under Articles 24 and 44(a) of the Constitution, and Section 2 of the Prevention and Prohibition of Torture Act 2012 to argue that the conduct by the Respondents amounted to torture, cruel, inhuman and degrading treatment.

Submissions by Counsel for the 1st Respondent

[10] In reply, Counsel for the 1st Respondent submitted that the Applicant was neither tortured nor assaulted by any servants or agents of the 1st Respondent as alleged. Counsel cited the case of *Felix Cuthbert Esoto & Ors v Attorney General, HCMC No. 42 of 2019* to the effect that for an act to amount to torture, there must be severity in pain and suffering and the treatment must be intentionally inflicted for a prohibited purpose. Counsel submitted that there was no such evidence in the instant case and the medical report relied on by the Applicant as proof of torture shows normal findings on the Applicant.

Determination by the Court

[11] Article 24 of the Constitution guarantees freedom from torture, cruel, inhuman or degrading treatment or punishment. This right is non-derogable and is absolute according to Article 44(a) of the Constitution. Under Section

2(1) of the Prevention and Prohibition of Torture Act 2012, torture is defined as *“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 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 intimidating or coercing the person or any other person to do, or to refrain from doing, any act”*.

[12] According to Section 2(2) of the Prevention and Prohibition of Torture Act, “severe pain or suffering” means the prolonged harm caused by or resulting from the intentional infliction or threatened infliction of physical pain or suffering; or the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; or the threat of imminent death; among others. Under Section 2(3) of the Act, the acts constituting torture shall include the acts set out in the Second Schedule to the Act. These include physical acts such as systematic beating, head banging, punching, kicking, striking with truncheons, rifle butts; electric shocks; being tied or forced to assume a fixed and stressful body position; harmful exposure to the elements such as sunlight and extreme cold; among others. They also include mental or psychological kind of torture such as blindfolding; threatening the victim or his or her family with bodily harm, execution or other wrongful acts; confining a victim incommunicado, in a secret detention place or other form of detention; confining the victim in a solitary cell; among others.

[13] On the case before me, the evidence by the Applicant according to his affidavit is that he was made to sleep in a room flooded with dirty water while on handcuffs and leg cuffs, he was beaten, blindfolded and electrocuted. He

was also held incommunicado and for some time in a solitary cell. These allegations have not been rebutted by the Respondents. I have found the following facts as proved by the Applicant, namely; that the Internal Security Organization (ISO) operated safe houses as at the time, going by the Report of the Parliamentary Committee on Human Rights attached as Annexure “F” to the affidavit in support of the application; that the Applicant was arrested and detained in safe houses operated by ISO at Kyengera base 1 and at Kalangala Island; that severe pain was inflicted onto the Applicant for part of the period of 14 months from the time of his arrest until he was released. The medical report produced by the Applicant (Annexure “E” to the affidavit in support of the application) showed some non-specific scars on his dorsal aspect of his right foot and non-specific musculoskeletal pain. The other aspects of examination revealed normal findings.

[14] In my view, these findings do not rule out the possibility of torture in the particulars described by the Applicant. Most of the methods allegedly used were incapable of leaving more obvious marks on the Applicant’s body beyond those disclosed by the medical examination. In any case, the period spent in detention was said to be 14 months which is long enough for any torture marks to fade. I am therefore satisfied on a balance of probabilities that the Applicant was subjected to torture, cruel, inhuman and or degrading treatment while in detention in the particulars alleged.

[15] Let me also pronounce myself at this juncture on the contention raised by the 1st Respondent’s Counsel regarding the fact that the medical report adduced by the Applicant, like the other documents attached to the affidavit in support, were copies in the form of secondary evidence. I need to point out that where evidence is led by way of affidavit, when the affidavit is admitted and adopted by the Court without any party raising any reservations, it is deemed that the documents attached thereto are equally admitted since they form part

of the depositions in the affidavit. If the opposite party intended to raise objections to any of the attached documents, they would have had to do so at the time of hearing so that the applicant is availed with an opportunity to correct any anomaly and the court to test the veracity of the objection raised. Where the documents are already admitted as part of affidavit evidence, the opposite party is estopped from raising objections to such evidence at the time of making submissions. This contention by Counsel for the 1st Respondent is therefore devoid of merit and is overruled.

[16] On evidence, therefore, the allegations of torture, cruel, inhuman and or degrading treatment meted upon the Applicant have been made out on a balance of probabilities.

The right to personal liberty

Submissions by Counsel for the Applicant

[17] It was submitted by Counsel for the Applicant that when the Applicant was arrested by security operatives attached to ISO, he was never informed of the reason for his arrest and was detained in a safe house at Kyengera base 1 and later at Lwamayuba Island for a total of 14 months; he was not allowed to see his relatives, access his lawyers or get medical treatment for the injuries he sustained.

Submissions by Counsel for the Respondent

[18] Counsel for the 1st Respondent submitted that ISO did not arrest, detain, torture or subject the Applicant to any forced labour. Counsel stated that ISO does not own detention centers or islands and that there was no evidence that the persons who arrested the Applicant were officers of ISO. Counsel also submitted that no police report was made about the alleged kidnap of the Applicant and neither was any application for Habeas Corpus made by the

Applicant's relatives. Counsel further submitted that ISO does not engage in farming activities or own Islands as alleged by the Applicant.

Determination by the Court

[19] The lawfulness or not of an arrest and detention is governed by the provision under Article 23 of the Constitution of Uganda for protection of personal liberty. Article 23(1) thereof gives exceptional circumstances under which a person may be deprived of his or her liberty. The relevant exception in the instant case is provided for under Clause (1)(c) of Article 23 to the effect that a person may be arrested and detained *“for the purpose of bringing that person before a court in execution of the order of a court or upon reasonable suspicion that the person has committed or is about to commit a criminal offence under the laws of Uganda”*.

[20] When a person is so arrested, restricted or detained, he or she shall be kept in a place authorized by law [Article 23(2) of the Constitution]. The person so arrested, restricted or detained shall be informed immediately of the reasons for the arrest, restriction or detention and his or her right of access to a lawyer of his or her choice [Article 23(3) thereof]. The next-of-kin of that person shall, at the request of that person, be informed as soon as practicable of the restriction or detention; and person shall be allowed access to medical treatment including, at the request and at the cost of that person, access to private medical treatment [Article 23(5) thereof].

[21] On the case before me, the evidence by the Applicant is that the he was arrested from Nansana at a washing bay at Katokota by plain clothed security operatives on 5th August 2018 and detained at a safe house base 1 in Kyengera and later transferred to Lwamayuba Island in Kalangala District until 6th September 2019 when he was released; a period of approximately 13 months. The Applicant led evidence to show that he was not informed of any reason for

his arrest; and he was not allowed to see his relatives, lawyers or get medical treatment for the injuries and pain sustained by him during the arrest and detention.

[22] Despite the denial of the allegations by the 1st Respondent, I have found as a fact that the arrest and detention of the Applicant took place; he was detained in a safe house base 1 at Kyengera and at another location at Lwamayuba Island in Kalangala District for the relevant period. The two locations are not gazetted places for detention or confinement of persons. There is also further evidence that the Applicant was not informed of the reason for his arrest, of his right to a lawyer of his choice, of his right to access by a next-of-kin and the right to access medical treatment. This evidence was not rebutted by the 1st Respondent and I have found it credible. The above occurrences make the arrest and detention of the Applicant illegal and done in contravention of his right to personal liberty under Article 23 of the Constitution. These allegations are accordingly proved by the Applicant on a balance of probabilities.

The right to property

Submissions by Counsel for the Applicant

[23] Counsel for the Applicant, relying on Article 26 of the Constitution and paragraph 5 of the affidavit in support of the application, submitted that upon arrest, the Applicant's motor vehicle Reg. No. UAL 941C was seized and a sum of UGX 53,000,000/= that was in his possession, as proceeds of a sale of land, was taken from him by the operatives that effected the arrest. Counsel submitted that according to the evidence, the car was returned but badly in need of repair and the money was never returned; which actions constitute deprivation of the Applicant's right to property contrary to the law.

Submissions by Counsel for the Respondent

[24] In reply, Counsel for the 1st Respondent submitted that the Applicant's affidavit was full of falsehoods; given that while the Applicant alleges that he was arrested on 5th August 2018, the money which was said to have been taken from him allegedly arose from a sale that took place on 4th September 2018, way after his alleged arrest and detention. Counsel also pointed out that the Applicant had not adduced sufficient evidence of ownership of the car since he had produced no document of registration thereof.

Determination by the Court

[25] The right to property is guaranteed under Article 26 of the Constitution where under a person can only be deprived of his or her property under special circumstances provided for under the said provision. In the present case, it was alleged by the Applicant that he was in possession of a sum of UGX 53,000,000/= at the time of his arrest which was taken by the operatives and was never returned to him. It was alleged by the Applicant that he had obtained the said sum of money from sale of land pursuant to an agreement of sale attached to the affidavit in support as Annexure "B". However, a look at the said copy of the agreement shows that the said agreement was allegedly executed on 4th September 2018 by which period other evidence has confirmed that the Applicant was already in detention. In this regard, I agree with Counsel for the 1st Respondent that this part of the Applicant's evidence constitutes a falsehood and I accordingly reject it and sever it from the affidavit in support of the application. The claim for recovery of the alleged sum of money therefore fails.

[26] Regarding the motor vehicle Reg. No. UAL 942C Toyota Premio, the agreement of purchase of the same that is on record as Annexure "A" does not show that the car is owned by the Applicant. According to the agreement, the

vehicle was purchased by one Kizito Abdul from a one Nyombi Kassim. I do not see how such a document can prove ownership of a motor vehicle by the Applicant. The claim in relation to the motor vehicle is unsupported by any evidence and is rejected. It follows, therefore, that the Applicant has not led any evidence capable of establishing on a balance of probabilities that his right to property was violated.

[27] In all, therefore, on issue one, the Applicant has established breach of his right to freedom from torture, cruel, inhuman and degrading treatment and of the right to personal liberty. To that extent, issue 1 is answered in the affirmative.

Issue 2: Whether the Applicant is entitled to the remedies claimed?

[28] The Applicant sought for various declarations and orders. The reliefs were claimed against the Respondents jointly and severally. The evidence before Court is that the 2nd to 16th Respondents are officers, servants and or agents of the 1st Respondent. Apart from the general denial by the 1st Respondent that the persons that arrested the Applicant were officers or agents of ISO, no evidence was led by the 1st Respondent to establish such as a fact. On his part, the Applicant established by evidence that when he was arrested by the operatives who were in plain cloths, he was taken to two different detention facilities that were under the control of ISO and he kept seeing and interacting with the same officers or agents for over a period of 13 months. Upon such evidence, the evidential burden shifted to the 1st Respondent to lead evidence disproving the Applicant's claim. In absence of any such evidence, I am in position to believe the Applicant that the persons involved in the violation of his rights named as 2nd to 16th Respondents were officers, servants and or agents of the 1st Respondent. The 1st Respondent is, therefore, vicariously liable for the acts of the said co-respondents.

[29] Additionally, Section 10 of the Human Rights (Enforcement) Act 2019 provides for personal liability of public officers for infringement of an individual's rights and freedoms. The 2nd to 16th Respondents were served with the court process but chose not to respond to the action and/or appear for hearing. The hearing against them proceeded ex parte. The Applicant has led evidence implicating them in the violation of his rights and freedoms. The 2nd to 16th Respondents are therefore jointly and severally liable for the violation that has been established by the Court. The implication is that the Applicant will be at liberty to choose who of the Respondents to pursue for enforcement of any orders that are to be issued by the Court.

[30] In view of the foregoing and in line with the findings I have made on the merits of the matter, I will pronounce myself on the specific declarations and orders issued after making a consideration of the claims for damages as made by the Applicant.

[31] The Applicant sought for an order of general damages for the physical and psychological torture, mental anguish and emotional distress suffered by him as a result of the illegal arrest and detention, torture and deprivation of personal liberty. The law on general damages is that the damages are the direct natural or probable consequence of the act complained of and are awarded at the discretion of the court. The damages are compensatory in nature with the purpose of restoring the aggrieved person to the position they would have been in had the breach or wrong not occurred. See: *Hadley v Baxendale* (1894) 9 Exch 341; *Charles Acire v M. Engola*, HC Civil Suit No. 143 of 1993 and *Kibimba Rice Ltd v Umar Salim*, SC Civil Appeal No. 17 of 1992.

[32] In the assessment of general damages, the court should be guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered. See:

Uganda Commercial Bank v Kigozi [2002] 1 EA 305. Under the law, general damages are implied in every breach of contract and every infringement of a given right. In a personal injuries claim, general damages will include anticipated future loss as well as damages for pain and suffering, inconvenience and loss of amenity. More particularly, in the assessment of damages arising out of a constitutional violation, the court has to bear in mind that although infringement of a person's liberty per se imputes damage, a plaintiff needs to prove some damage suffered beyond the mere fact of unlawful arrest or detention; otherwise, the mere breach may only entitle a plaintiff to nominal damages. This however may not be the same in the case of acts of torture, cruel, inhuman or degrading treatment whose severity may exist even without leaving physical footprints.

[33] In the present case, having found that the Applicant was unlawfully arrested and detained; subjected to torture, inhuman and degrading treatment, and subjected to violation of his personal liberty; it follows that the Applicant is entitled to compensation by way of damages for such wrongful conduct on the part of the Respondents. Regarding the extent of the harm occasioned to the Applicant and the assessment of the appropriate measure of damages to be awarded to the Applicant, I have taken into account the facts surrounding the Applicant's arrest and detention, the pain he underwent, the period of 13 months the Applicant stayed under detention, the physical and psychological pain suffered by the Applicant. According to the Applicant's evidence, he was made to sleep in a room flooded with dirty water while on hand cuffs and leg cuffs; he was beaten, blindfolded and electrocuted; he was unable to earn any living to support his family as the sole bread winner to the extent that his children dropped out of school. This, in my view, constitutes sufficient evidence of physical and psychological pain, suffering and mental anguish. He also suffered loss of amenity given that he was prevented from participating in

activities he would have indulged in had the restriction not been imposed on him.

[34] In deciding what sum constitutes fair and reasonable compensation, I am aware that comparable cases, when available, should be used to afford some guidance, in a general way, towards assisting the Court in arriving at an award which is not substantially out of general accord with previous awards in broadly similar cases, regard being had to all the factors which are considered to be relevant in the assessment of general damages. However, I also take cognizance of the fact that damages for pain, suffering and loss of amenities present serious difficulty of assessment with precision. I am equally aware that comparing the magnitude of pain and suffering in concrete terms with comparable past cases is sometimes difficult to articulate on the strength of monetary awards. This is more so in a situation, like in the present case, where most of the suffering is on account of emotional or psychological pain occasioned by illegal arrest, detention and torture suffered over a prolonged period of time.

[35] In *Issa Wazembe v Attorney General*, HCCS No. 154 of 2016, the plaintiff was arrested by the military, was not informed of the reasons of his arrest nor did they allow him to inform his relatives. He was detained in safe houses from November 2007 to August 2008 during which period he underwent torture. He suffered physical and psychological injuries and eventually had his leg amputated as a result of untreated wounds. In a judgment delivered on 19th August 2019, the Court awarded the plaintiff a sum of UGX 120,000,000/= as general damages in respect of the violation of his right against torture, cruel, inhuman and degrading treatment; UGX 50,000,000/= in respect of violation of his right to personal liberty on account of the illegal detention; and UGX 15,000,000/= as punitive damages.

[36] In *Agaba Kenneth v Attorney General & Others*, HCCS No. 247 of 2016, the plaintiff was arrested by police officers and while in custody at Kawempe Police Station, he was subjected to severe beatings sustaining multiple injuries and fractured limbs. He sustained wounds on the knees, elbows, ruptured muscle and multiple joint swelling/ pain which occasioned permanent incapacity assessed at 75%. In this case, the plaintiff was lawfully arrested by police officers and detained in a gazetted detention facility but for a period of three months, beyond the period of 48 hours permitted under the law. In a judgment delivered on 20th December 2019, the Court awarded the plaintiff a sum of UGX 90,000,000/= as general damages and UGX 15,000,000/= as punitive damages.

[37] In *Tabisa Edisa Nakaziba v Attorney General*, HCMC No. 295 of 2018, the applicant was arrested from her home by policemen. She was beaten, tortured and detained for a period of over three months in a non-gazetted detention centre. She was beaten with sticks, some of which had nails sticking out which could tear into her flesh and blood would ooze out. She produced medical evidence to prove her injuries. In a decision delivered on 7th February 2020, the Court awarded the applicant a sum of UGX 100,000,000/= as general damages and UGX 100,000,000/= as punitive damages.

[38] In the present case, the peculiar facts are that the Applicant was arrested by plain-clothed operatives attached to ISO who detained him first at a safe house at Kyengera in Wakiso District and later at Lwamayuba Island in Kalangala District (both ungazetted detention facilities) for a period of 13 months. He was not informed of any reason for his arrest; his relatives were not informed of the arrest; he was not allowed access either by his relatives, lawyers or medical assistance. He was tortured through beatings, being blindfolded and being made to sleep in a room full of dirty water while on hand cuffs and leg cuffs. He was electrocuted, at times kept in solitary confinement

and held incommunicado. He was forced to do manual labour. On account of this evidence and the circumstances before me, I find a sum of UGX 100,000,000/= (Uganda Shillings One Hundred Million only) appropriate as general damages and I award the same to the Applicant.

[39] The Applicant further claimed for an award of exemplary damages. Exemplary damages are not compensatory but are rather punitive or exemplary in nature. They represent a sum of money of a penal nature in addition to the compensatory damages given for the loss or suffering occasioned to a plaintiff. The rationale behind the award of exemplary damages is to punish the defendant and deter him from repeating the wrongful act. They should not be used as means to enrich the plaintiff. According to the dictum of **Lord McCardie J.** in *Butterworth v Butterworth & Englefield* [1920] P 126, “... simply put, the expression exemplary damages means damages for ‘example’s sake’ ...”

[40] According to **Lord Devlin** in the landmark case of *Rookes v Barnard* [1946] ALL ER 367 at 410, 411, there are only three categories of cases in which exemplary damages are awarded, namely;

- a) where there has been oppressive, arbitrary, or unconstitutional action by the servants of the government;
- b) where the defendant’s conduct has been calculated by him to make a profit which may well exceed the compensation payable to the plaintiff; or
- c) where some law for the time being in force authorizes the award of exemplary damages.

[41] In law, when considering the making of an award of exemplary damages, three matters should be borne in mind, namely;

- a) the plaintiff cannot recover exemplary damages unless he or she is the victim of punishable behavior;
- b) the power to award exemplary damages should be used with restraint; and

c) the means of the parties are material in the assessment of exemplary damages. See: *Rookes V. Barnard (supra)*; and *Fredrick J. K. Zaabwe v Orient Bank & Others, Supreme Court Civil Appeal No. 4 of 2006*.

[42] In the instant case, the Applicant showed by affidavit that the agents of the 1st Respondent acted in a high handed manner, without accountability for their actions and as if they were not responsible to anyone. Evidence has shown that the Applicant was under illegal detention for approximately 13 months during which period he was beaten, blindfolded, electrocuted as well as being denied the opportunity to earn a living for himself and looking after his family. This was way unconstitutional, oppressive and arbitrary conduct and an obvious sign of impunity leading to gross abuse of the Applicant's rights. The 1st Respondent's agents were under duty to know or ought to have contemplated the implications attached to their conduct. They however chose to ignore the same and acted with impunity. Such conduct and circumstances certainly call for an award of exemplary damages. On the evidence and circumstances before me, I award the sum of UGX 50,000,000/= (Uganda Shillings Fifty Million Only) as exemplary damages against the Respondents.

[43] The claims by the Applicant for repair costs for the motor vehicle and for refund of UGX 53,000,000/= are not available since these claims were not proved on evidence. The Applicant further claimed for interest on the sums awarded in damages. In accordance with Section 26 of the Civil Procedure Act, I award interest on the general and exemplary damages as awarded above at the rate of 8% p.a. from the date of the ruling until payment in full. The Applicant is also entitled to the costs of the application and the same are awarded to him.

[44] In all, therefore, the application by the Applicant succeeds and is allowed against the Respondents jointly and severally for;

- (a) A declaration that the torture, brutality, humiliation, embarrassment and violence unleashed onto the Applicant during the arrest and while in detention violated his right to freedom from torture, cruel, inhuman and degrading treatment contrary to Articles 24 and 44 of the Constitution.
- b) A declaration that the arrest and detention of the Applicant was illegal and violated his right to personal liberty.
- c) An order for payment by the Respondents of a sum of UGX 100,000,000/= (Uganda Shillings One Hundred Million Only) as general damages to the Applicant.
- d) Payment by the Respondents of a sum of UGX 50,000,000/= (Uganda Shillings Fifty Million Only) as exemplary damages to the Applicant.
- e) Payment of interest on the sums in (c) and (d) above at the rate of 8% p.a. from the date of this ruling until payment in full.
- f) Payment by the Respondents of the taxed costs of the application.

It is so ordered.

Dated, signed and delivered by email this 13th day of March, 2024.



Boniface Wamala
JUDGE