

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
IN THE MATTER OF AN APPEAL UNDER ARTICLE 53(3) OF THE 1995 CONSTITUTION
CIVIL APPEAL NO. 65 OF 2004
(ARISING OUT OF UGANDA HUMAN RIGHTS TRIBUNAL COMPLAINT NO. 176/1997)
ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

SSENGOMWAMI SSEMANDA DICK :::::::::::::::::::::::::::::::::::::::RESPONDENT

BEFORE: HON. AG. JUDGE REMMY K. KASULE

JUDGMENT

This Judgment is in respect of an appeal against the decision of the Uganda Human Rights Commission (Presiding Commissioner Fauzat .M. Wangadya (Mrs) dated 3rd November 2004.

In the decision, the appellant Attorney General, and one Sam Ndawula, were ordered to pay the Respondent shs.7,000,000/= compensation, in such away that after apportioning liability, the said Sam Ndaula being responsible to pay Shs.200,000/= of the total compensation sum.

The Attorney General being aggrieved by the said decision lodged this appeal.

Sam Ndaula, the first Respondent did not, though duly served, attend the hearing before the Uganda Human Rights Commission. He thus never appealed against the decision made against him.

The appeal by the Attorney General is based on six (6) grounds, namely:-

1. The Learned Commissioner misapplied wrong evidence to the facts and arrived at the wrong conclusion.

2. The Learned Commissioner erred in law and fact when she held that the law of limitation does not apply to Human Rights cases.
3. The Learned Commissioner erred in law and fact by holding that Human Rights cases or causes of actions are not torts but Human Rights violations.
4. The Learned Commissioner erred in law and fact when she denied the appellant a chance of further re cross-examining the complainant.
5. The Learned Commissioner misdirected herself by admitting Medical evidence without calling the author of the Medical document to identify it.
6. The Learned Commissioner misapplied the law of damages to the complainant's case and awarded an exorbitant amount.

The appellant prays that the appeal be allowed, set aside the decision of the Uganda Human Rights Commission, dismiss the case against the Government and allow costs to the appellant.

The appellant Attorney General is represented in this appeal by Kasujja Vincent, State Attorney, while the Respondent is represented by advocate Abaine Johnson.

Before the Uganda Human Rights Commission, the Respondent lodged a complaint and adduced evidence to the effect that one Sam Ndaula and Bweyogerere police post police officers had violated his rights to personal liberty and to protection from torture, cruel, inhuman and degrading treatment or punishment. He thus sought compensation.

Respondent testified in person and called one witness, Rose Semanda, his wife.

The appellant adduced no evidence at the trial of the complaint.

The Respondent's evidence was that he was aged 63 years, had two wives, and had residences at Kakajjo, Bweyogerere, and at Kevina Katwe.

On 5th July, 1997, he attended a house warming party of a friend, one John Turyamureeba after which he was driven back home at Kakajjo, Bweyogerere, by Sam Ndaula in a Saloon Motor-

vehicle. Sam Ndaula had been requested by the host, John Turyamureeba, to drive back home the Respondent.

As the vehicle reached complainant's home, Ndaula did not follow complainant's instructions. He drove in a direction different from that pointed out by complainant. This led to an exchange of unpleasant words, the complainant remarking to Ndaula: "Are you stupid?" Ndaula managed to reach complainant's home where he left the complainant.

Twenty (2) minutes thereafter, Ndaula returned to complainant's home with two (2) policemen, one of whom was in uniform and armed with a pistol. The other was in civilian clothes and had a sisal rope.

The policeman in civilian clothes stated to the respondent that he was under arrest for having damaged the motor-vehicle wind screen of Mr. Ndaula.

Respondent hands were tied and fastened with the sisal rope by this police man.

Respondent tried to resist arrest, but the two policemen in the presence of Ndaula pulled and dragged him to Ndaula's Motor-vehicle, he was forced to enter, and the vehicle was driven to Bweyogerere police post, Ndaula drove the vehicle while the two policemen kept him under arrest.

At Bweyogerere Police post, respondent was tied to a post, was assaulted all over the body, particularly at his back by the policeman who had a rifle who used the baton of the rifle as the weapon of assault. Respondent spent eight (8) hours tied on the pole.

Later he was untied from the pole and led into a wooden cell where he remained without being allowed to ease himself; until the following day when he was taken out and allowed to ease himself. He was given no food.

At 11.00 a.m., of that following day Respondent's daughter Christine, brought him some food, paid shs.40,000/= to the police, whereupon he was brought out of the cell and told to go back home. He was not given any document of release.

On being released he sought medical treatment, and then later lodged the complaint.

As the first appellate Court, the duty of this Court, while determining the appeal is to re-evaluate the evidence adduced at the hearing of the complaint before the Human Rights Commission, determine whether or not, the conclusions arrived at in the decision of the Commission, that is the subject of the appeal are justified. In so undertaking this task, this Court, is conscious of the fact that it did not have the opportunity to see and observe the demeanour of those who testified before the Commission: See **SCCA No. 32 of 1994: SHOKATAL ABDULLA DHALLA VS. SADRUDIN MERALI**, unreported, and also **High Court at Gulu, Civil Appela No. 12 of 2006: KIRINYANGA CONSTRUCTION (K) LTD VS. RAMI GOLAN**, both cases unreported.

Grounds 1, 4 and 5 of the Memorandum of Appeal were argued first and together by the appellant. Court will thus consider them first and together.

It was submitted for the appellant that the learned Human Rights Commissioner failed to consider the major contradictions in the testimonies of the respondent and his witness, but instead just took their evidence as wholly truthful.

Amongst the contradictions, that were not resolved, are that in the complaint it was alleged that complainant had been coerced to pay shs.250,000/= for broken windscreen. But no evidence of this came up. Respondent's witness and wife Rose Ssemenda claimed to be a resident of Lugazi, while Respondent claimed to reside in Bweyogerere.

The Respondent referred to the host of the party as John Turyamureeba, while his wife called him John Kabalega. While Respondent asserted he was released without a police bond, his witness claimed Respondent was ordered to report back to police. Respondent never explained

who owned the vehicle UAV 745 and did not name the police officers who arrested him. Respondent described his injuries as wounds whereas his witness called them bruises.

At page 19 of the decision of the Commissioner, after considering and reviewing the evidence adduced the Commissioner held:-

“The tribunal accepted as truthful the complainant’s evidence that he was beaten and subjected to various forms of torture. He struck me as a truthful and honest witness who did not exaggerate any situation. For example he quickly admitted without being probed that he resisted arrest. He also admitted on cross examination that he never paid any money to one Robert, a medical assistant who administered to him First Aid before seeking further treatment at Wellspring Clinic. More so, there was no other evidence to controvert Sengomwami’s evidence.”

Earlier in the decision, at page 18, the Learned Commissioner had considered and evaluated the evidence of the Respondent’s witness Rose Semanda:-

“The complainant’s testimony was corroborated by the evidence of CW2, Rose Semanda who said that when she saw Sengomwami at the police post his body was full of bruises. She was among the people who took Sengomwami for medical treatment.”

From the above two extracts, it is clear to this Court that the Learned Commissioner evaluated the evidence before reaching the conclusion that she reached.

There is nothing by way of alleged contradictions pointed out by the appellant that go to prove that the conclusion reached by the Learned Commissioner was not justified.

The Respondent did not write the Uganda Human Rights Commission letter of January, 24, 2002, where the allegation of being coerced into paying shs.250,000/= is contained. At the hearing of the complaint, Counsel for appellant did not question the respondent about this allegation. The same therefore cannot be taken as a contradiction.

This Court sees no contradiction in Rose Semanda stating that she resides in Lugazi, while her husband, the respondent resides in Bweyogerere. Appellant's Counsel did question Rose Semanda or the Respondent about this matter. There is thus no justification for appellant to refer to it as a contradiction.

As to whether the host of the party was John Turyamureeba (according to respondent) or John Kabalega (according to Rose Semanda) the misnaming, if any, does not go to the merits of the complaint. The Respondent and his witness were not questioned about it by appellant's Counsel. The same cannot be taken as a major contradiction to warrant this Court to interfere with the findings of the Learned Commissioner.

This Court sees no contradiction in the evidence of Respondent that he was released by police without police bond; and that of his witness, Rose Semanda, that Respondent was told to report back to police. Even one not given a written police bond may be asked to return to police. There is no material contradiction in this.

As to Motor-vehicle UAU 745, the evidence of Respondent is that the vehicle was being driven by Sam Ndaula or Ndahura. It thus makes no difference to Respondent's complaint as to who the true owner of the vehicle was. Appellant's Counsel never asked respondent about this.

It was also not necessary for the Respondent to name the police officers who tortured him. He was not asked whether he knew their names. It was sufficient that the Respondent stated that he was tortured at a police post and that those who tortured him belonged to the police Force and were stationed at that police post. This evidence clearly came out of the respondent and his witness and was not controverted.

Lastly, this court finds no material contradiction in the respondent describing his injuries as wounds and his witness referring to them as bruises.

Court therefore finds grounds 1, 4 and 5 of the appeal as not substantiated.

Grounds 2 and 3 were also argued together by the appellant.

The appellant contends that the learned Commissioner erred in law and fact when she held that the law of limitation does not apply to human Right cases; and also by holding that Human Rights cases causes of actions are not torts but Human Rights violations.

It is submitted for the appellant that the complaint was barred by limitation since the cause of action arose on 05.07.97 and notice of it was served upon the Attorney General on 21.02.02; a period of 4½ years from the date it arose. The complaint was thus time barred in terms of sections 2(1) (a) and 3 (1) (a) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap. 72.

For the Respondent it is submitted that Sections 2 and 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap. 72 does not apply to a complaint before the Human Rights Commission.

This Court appreciates and notes that the Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap.72 preceded the 1995 Constitution that set up under its Articles 51 and 52 the Uganda Human Rights Commission as a means of providing more enhancement, respect and enjoyment of basic human rights and freedoms.

By its Article 2, the Constitution is the Supreme Law of Uganda; and if any law or custom is inconsistent with any of its provisions, the Constitution prevails and the law, to the extent of inconsistency, becomes void.

In Article 20, the fundamental rights and freedoms of the individual are pronounced by the Constitution to be inherent and not granted by the state. They are to be respected, upheld and promoted by all organs and agencies of Government and by all persons.

Under Article 52 and Section 7 of the Uganda Human Rights Commission Act, Cap. 24 the Uganda Human Rights Commission has as, some of its functions, to investigate, at its own

initiative, or a complaint made to it, against the violation of any human right. Under Article 53 (2), the Uganda Human Rights Commission is vested with powers, where it is satisfied that there has been an infringement of a Human Right or Freedom, to order for the release of a detainee, payment of compensation or any other legal remedy or redress. Under Section 24 of the Act, no complaint is to be brought before the Commission after the expiration of five (5) years from the date on which the alleged violation of a human right to which the complaint relates occurred.

In the considered view of this Court, to the extent that the Civil Procedure and Limitation (Miscellaneous provisions) Act, cap.72, was already in existence before the coming into force of the 1995 Constitution, therefore the same is subjected to Article 273 of the Constitution as an existing law. It has to be construed with such modifications, adaptations, qualifications and exceptions as are necessary to bring it into conformity with the Constitution.

No doubt the spirit of the 1995 Constitution is to provide greater and more comprehensive enjoyment and protection of the basic rights and freedoms of the people; given the past history of human rights violations in Uganda, highlighted in the first two paragraphs of its (1995 Constitution) preamble:-

“Recalling our history which has been characterized by political and constitutional instability;

Recognizing our struggles against the forces of tyranny, oppression and exploitation;”.

In **Ali Vs. Teaching Service Commission** a case from Guyana, reported in [1993] 3 LRC (Law Reports of the Commonwealth) page 225, Ali, a secondary school teacher commenced action in the High Court, complaining his dismissal as a teacher by Respondent, was in violation of his basic rights, contrary to the Constitution.

Ali’s claim was dismissed by the High Court of Guyana, on the preliminary objection that Ali, had not served a statutory Notice under the Justices protection Act, before seeking relief from the High Court. The provisions of the Guyana Constitution and the Justices Protection Act, were akin to our Article 50 of the Constitution; and Sections 2 and 3 of the Civil Procedure and

Limitation (Miscellaneous provisions) Act. The Guyana Court of appeal allowing Ali's appeal held:

“Article 153 of the Constitution permitted any one who alleged that his Constitutional rights were violated to apply to Court for relief and also provide Court with original Jurisdiction to determine such matters. The ability of Parliament to confer additional powers on the Court had to be understood as allowing procedures which would facilitate rather than hinder the effective vindication of any breach of the fundamental rights and freedoms protected by the Constitution. To insist on compliance with provisions of the Justices Protection Act as a condition precedent to the bringing of an action by a citizen alleging a breach of such rights and freedoms would result in their unnecessary and illegal restriction and the Act would not apply in such a case.”

Being a decision of a Common Wealth Country applying a common law system, which Uganda also is, Ali's decision is persuasive to this Court.

It is worthy noting that Uganda's High Court has made similar decisions, like in Ali's case in a number of cases:-

High Court Miscellaneous Application No. 85 of 1993: Rwanyarare & 4 Others.

High Court Miscellaneous Application No. 124 of 1999: John Oketch Vs AG

and

High Court Miscellaneous Application Number 39 of 2001: The Environmental Action Network Limited Vs. Attorney General and Nema.

See also the decision of this Court in **Miscellaneous Causes numbers 117, 179 of 2004 and 131 of 2005**, where I followed the above stated decisions of this Court, and, with respect to Lady Justice Sebutinde, did not follow her decision in High Court Miscellaneous Application No. 886 of 2000: **ABDU KADIRI KATUMBA VS. ATTORNEY GENERAL.**

The holding of this Court is that Sections 2 and 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap. 72, did not apply to the Respondent's complaint before

the Uganda Human Rights Commission. The Learned Commissioner was right in holding as she did on this issue. Grounds 2 and 3 of the appeal do therefore fail.

The last ground to consider is number 6. In this ground, the learned Commissioner is said to have misapplied the law of damages to the complainant's case and awarded an exorbitant amount.

In the decision of the Learned Commissioner a sum of shs.2,000,000/= was awarded as general damages for the illegal detention for one day without any food. The Learned Commissioner relied on the decision of **Prof. Syed Sufderal Huq Vs. Attorney General: [1995] 11 KALR 82**. This sum was stated by the Learned Commissioner to be damages for violation of the Respondent's right to personal liberty.

Thereafter the Learned Commissioner proceeded to award another sum of shs.5,000,000/= to the Respondent as general damages for violation of the complainant's right to protection from torture, cruel, inhuman and degrading treatment.

The Learned Commissioner rightly noted that the Respondent had recovered from the ordeal he suffered. There was no permanent or recurrent physical pain, though he still suffered psychologically as he felt like crying every time he recalled the ordeal he went through. The medical evidence did not disclose any incapacitation or any percentage of disability.

On evaluation of all the evidence on this issue, Court finds that the Learned Commissioner had no justification for awarding a whole shs.5,000,000/= for violation of Respondent's right to protection from torture, cruel, inhuman and degrading treatment. This sum, in the consideration of Court, was too high and therefore erroneous. There is need to main a sense of some uniformity in the awards awarded by Courts of law and judicial bodies such as the Uganda Human Rights Commission. Looking at all the evidence of what the Respondent suffered this Court will award, one figure of damages covering the suffering and violations of basic rights that the Respondent was subjected to.

Given the status of the Respondent in society, the violent manner of his arrest, the period of one day's detention, the deprivation of food and the opportunity to ease himself, the beating he was subjected to while under arrest and detention and the humiliation he was subjected to his person and amongst his family people and members of the public, Court awards the Respondent shs.3,500,000/= general damages.

Therefore the award of the Learned Commissioner of a total of shs.7,000,000/= damages, is hereby set aside, and is substituted by an award of shs.3,500,000/= general damages to the Respondent for all that he suffered of this sum the first Respondent, Sam Ndaula or (Sam Ndahura) shall be responsible to pay Shs.200,000/=..

The general damages awarded against the Attorney General are to carry interest at Court rate from the date of the decision i.e.3rd November 2004 till payment in full.

Except as to the issue of quantum of damages awarded, which have been reduced as stated above, the rest of the grounds of the appeal fail and the appeal stands dismissed to that extent.

As to costs, in the circumstances of the outcome of this appeal, the Respondent is awarded $\frac{3}{4}$ (three quarters) of the costs of the appeal and full costs of the trial of the complaint before the Uganda Human Rights Commission as against the Attorney General.

Remmy K. Kasule

Ag. Judge

5th October, 2007
