

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HCT-02-CV-CS-0056-2001

WILLIAM ABURA :::PLAINTIFF

VERSUS

ATTORNEY GENERAL::: DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE AUGUSTUS KANIA

JUDGMENT:

The Plaintiff William Abura, brings this claim against the Attorney General seeking for general, special and exemplary damages for unlawful arrest, false imprisonment and torture.

According to the plaintiff, the facts constituting the cause of action are that on the 27th day of June 2000, soldiers of the Local Defence Unit/UPDF stationed at Omoro barracks in Moroto county, Lira District unlawfully arrested the plaintiff from his home at Abukamola, Moroto County, Lira District. He was taken to Omoro barracks and forwarded to Orum barracks where he was detained for 10 days. He was later transferred to Lira barracks where he was detained for a further 10 days. It is alleged that while so detained he was caned three times with 30 strokes each time and made to do hard labour all on grounds that he was in possession of a gun. On the 31st day of July 2002 the Plaintiff was released without any charge being preferred against him in any Court of law. The plaintiff alleges that the above arrest and detention caused him untold suffering, damage, loss and embarrassment at the hands of soldiers who were employees and servants of the Government of Uganda acting in the course and within the scope of their employment. Hence this suit.

The defence in his Written Statement of Defence denied the averments of the plaintiff and denied liability for the suffering, loss, damage and embarrassment, the plaintiff alleges he underwent.

At the commencement of the hearing of this suit the following issues were framed for determination namely:-

1. whether the plaintiff was arrested and detained by soldiers.
2. whether the arrest and detention was lawful
3. whether the soldiers were acting in the course of their employment.
4. whether the Attorney General is vicariously liable.
5. whether the plaintiff suffered any damages or loss.
6. what remedies are available to the plaintiff if any.

The plaintiff called two witnesses in support of his case namely PW1 Alfred Odongo and the plaintiff himself PW2 William Abura. The defendant did not call any witnesses.

PW1 Alfred Odongo testified that at the time of the incident he was the LCI Secretary of Akai/Debe village where the plaintiff was also a resident. On the 27th day of June 2000 soldiers at Omoro detach lodged a complaint with him that the plaintiff was in illegal possession of a gun, left at his home by a soldier. It was his evidence that specifically this complaint was lodged by a soldier No.UD 3131 Charles Ojara. The witness accordingly wrote a letter summoning the plaintiff to explain the accusation against himself. When the plaintiff reported to him, the soldiers arrested him, he was taken to his home, his home was searched and though nothing was found he was taken to Omoro detach and then forwarded to Orum barracks. PW1 Alfred Odongo further testified that when he tried to visit the plaintiff at Orum barracks, the soldiers chased him away. He next saw the plaintiff on 6/8/2000 when he reported to the witness after being released from detention. The plaintiff informed PW1 Alfred Odongo that he had been severally tortured while in detention and the witness saw the plaintiff walking with the aid of a stick and limping.

PW2 William Abura, the plaintiff testified that on 2000, he received a letter dated 27th June 2000 signed by PW1 Alfred Odongo summoning him to answer allegations that one Ogwal a soldier of Omoro military detach had left his gun with him. When he reported to PW1 Alfred Odongo he was arrested by 15 soldiers who took him to his home and searched it for a gun. He testified that

when no gun was found he was taken to Omoro barracks where he was beaten with sticks in an attempt to make him confess to the illegal possession of a gun.

It is PW2 William Abura's evidence further that he was taken to Orum, military barracks the same day where he was again beaten and thrown down. As a result of this assault he broke his hip and while detained there he slept on grass and a wet floor and was fed on badly cooked beans and maize meal once a day. After having been detained for twenty days at Orum barracks he was transferred to Gulu but taken the same day to Lira barracks from where he was released on the 6/8/2000. He also testified that on his release he was unable to walk as a result of the injuries he sustained.

With regard to the first issue whether the plaintiff was arrested by soldiers PW1 Alfred Odongo testified that following a complaint by soldiers stationed at Omoro military detach that the plaintiff was in possession of a gun he summoned the plaintiff. When the latter reported in compliance with the summons he was arrested by 15 soldiers who took the plaintiff to his home and had it searched but found no gun. He testified that the main complainant against the plaintiff was a soldier (MD 3139 Ogwal Charles). It was also his evidence that the plaintiff was then taken to Omoro barracks and the same day transferred to Orum barracks and eventually to Lira military police barracks. When he tried on two occasions to visit the plaintiff in Orum barracks the soldiers chased him away. The evidence of PW2 William Abura with regard to the fact of his arrest is identical to that of PW1 Alfred Odongo. Hon. Omara Atubo learned counsel for the plaintiff invited me on the strength of the above evidence to find that the plaintiff was arrested and detained by the soldiers of the Government of Uganda.

With regard to whether the arrest and detention of the plaintiff was lawful or not counsel invited me to look at the provisions of the Criminal Procedure Code Act relating to powers of arrest bestowed on the police while arresting civilians without an arrest warrant. He pointed out Section 10 of the Criminal Procedure Code only envisages the following conditions namely:-

- (a) Any person suspected upon reasonable grounds of having committed a cognisable offence.

- (b) Any person who commits a breach of the peace in the police man's presence.
- (c) Any person who obstructs a police officer while on execution of his duty or who has escaped or attempts to escape from lawful custody.
- (d) Any army deserter.
- (e) Any person found in the night, and who is suspected upon reasonable grounds for having committed or being about to commit a felony.

Hon. Omara Atubo submitted that since the plaintiff was arrested not by police without an arrest warrant and in the absence of the conditions laid down in section 10 of the Procedure Code Act his arrest should be found to have been unlawful. Counsel argued that even if the defendant were to argue that the plaintiff was arrested by the soldiers as private citizens under the provisions of Section 15 of the Criminal Procedure Code Act, the arrest should still be unlawful in that they did not hand over the plaintiff to a police officer but continued to unlawfully detain him for more than twenty days far in excess of the constitutional 48 hours. Counsel argued me to answer the second issue in the negative.

Apart from the defendant adducing no evidence during the trial Mr. Mwaka, the learned State Attorney did not file any submission.

As regards whether the plaintiff was arrested and detained by soldiers there is the overwhelming evidence of PW1 Alfred Odongo that the plaintiff was arrested by a group of 15 soldiers who took him to his home, had it searched and later detained the plaintiff in Omoro and Orum barracks respectively. PW2 William Obura corroborated the above evidence and only added that he was also detained at Lira Military Police barracks and taken to Gulu where the military authorities said they did not find any reason for his detention. The defence did not adduce any evidence to dispute the arrest of the plaintiff by soldiers of the Government of Uganda. I accordingly find it as a fact that the plaintiff was arrested by members of the Army of the Government of Uganda. The first issue is answered in the affirmative.

As regards the second issue of whether the arrest of the plaintiff was lawful, it is now trite that once a plaintiff has proved that he was arrested the burden is on the defendant to prove the arrest was lawful. **See Ongu Tirence vs Attorney General (unreported) Gulu HCCS No. 104.2001.**

In the instant case the plaintiff was according to the evidence on record arrested contrary to the provisions of Section 10 of the Criminal Procedure Code Act without a warrant by soldiers who in normal circumstances don't have powers of arrest of civilians. And having arrested the plaintiff contrary to the provisions of the law the plaintiff was kept in custody for up 20 days far in excess of 48 hours limit prescribed by law within which to bring a suspect arrested before a court of law. In as far as the plaintiff was arrested by soldiers without a warrant and kept in custody far in excess of the 48 hours limit within which a suspect arrested must be produced in court, I find both the arrest and the detention of the plaintiff to have been unlawful. The second issue is answered in the negative.

As regards the third issue whether the soldiers were acting in the course and within the scope of their duties, the evidence of PW1 Alfred Odongo is that the soldiers at Oromo Military detach lodged a complaint that the plaintiff was in possession of a gun left at his home by a soldier. In tracing this gun the soldiers arrested the plaintiff, had his home searched and later detained him in Omoro, Orum and Lira military barracks respectively. As this court held in **Ongu Terence vs Attorney General (supra).** The function of the army and soldiers is to provide security to all citizens of Uganda. To do this they have to ensure that there is no threat to the security of the property and persons of the citizens. This includes making sure that no unauthorised person gets hold of fire arms and more so weapons issued to the Army. In this particular case the soldiers intended to recover a gun which was military issue. In this the soldiers were acting within the scope of their employment, though they exceeded their mandate by arresting and detaining the plaintiff. I find that the soldiers who arrested and detained the plaintiff were acting in the cause and within the scope of their employment. It is now trite that once an employee or servant has been proved to be acting within the scope of his employment it is irrelevant that his acts were negligent deliberate, wanton or even criminal. **See Muwonge vs Attorney General [1967] E.A 17.** In the instant case I find the soldiers were acting in the cause of their employment though their actions against the plaintiff were tortous. I answer this issue in the affirmative.

With regard to whether the Attorney General is vicariously liable the position is that once the tortfeasor has been identified as the servant or employee of the defendant and proved that he was acting as the cause of his employment the employer automatically becomes vicariously liable **See Jovelyn Banigahare vs Attorney General SCCA No 28/93**.

In the instant case PW1 Alfred Odongo identified those who arrested the plaintiff as soldiers of the Government of Uganda. He specifically identified one UD 3131 Charles Omara as the soldier who lodged a complaint against the plaintiff. That those who arrested the plaintiff were soldiers is also shown by the fact that they detained him in various military barracks as testified to by both PW1 Alfred Odongo and PW2 William Abura. And having found that these soldiers were acting in the course and within the scope of their employment, I find the Attorney General in his representative capacity vicariously liable. I answer the 4th issue in the affirmative.

With regard to the 5th issue which is whether the plaintiff suffered any damages or loss the plaintiff avers that he was unlawfully arrested and wrongfully detained. He also gave evidence that while in detention he was put on a very poor diet of beans and posho which were poorly prepared, he was subjected to hard labour, had to sleep on grass on a wet floor and he was assaulted resulting in an injury to his hip which made it difficult for him to walk.

Unlawful arrest and wrongful imprisonment are both actionable torts which presuppose loss or injury. Both these were proved. The plaintiff also testified that while in detention he was assaulted which resulted in his injuring his hip. He was fed on a very poor diet once a day and he slept on dry grass for a bed and on a wet floor. The plaintiff was not cross examined on his evidence in that regard nor did the defendant adduce any contrary evidence. Because of the above reasons I draw the inferences that the evidence adduced by the plaintiff was the truth. I find that plaintiff suffered loss and damages as he testified to. This issue is answered in the affirmative.

With regard to remedies the plaintiff prays for general damages for unlawful arrest, false imprisonment and torture, exemplary damages, costs and interest at 25% from the date of the filing of the suit until payment in full.

General damages which are at the discretion of the court are intended to place the plaintiff in as good a position as possible in military terms, as he would have been had the wrong complained of not occurred **See Blackburn M. Livingstone vs Rawyards (oa) Co [1880] 5 A.C 2539.**

In **Ooja vs Attorney General & 4 Others HCCS No. 16/1996 (unreported).** The plaintiff was detained in a military detach under dehumanising conditions for two days and he was awarded Shs.12,000,000/= in general damages. In **Macarious Asubo vs Attorney General HCCS No 665/1002** the Plaintiff who was a prominent politician was wrongfully detained for 80 days and he was awarded Shs.30,000,000/= in general damages.

In the instant case though the plaintiff was an ordinary citizen, he was wrongfully detained for 20 days in military detentions. Considering the circumstances of his detention and the fact that both the above cases referred to were decided more than 10 years ago, therefore considering the effects of inflation I award the plaintiff the sum of Shs.25,000,000/= in general damages.

Exemplary damages are awarded in cases where the defendant normally an agent of Government acts oppressively, arbitrarily or unconstitutionally and in utter disregard of the rights of the plaintiff.

In the instant case, the soldiers after arresting the plaintiff without an arrest warrant, detained him, assaulted him and made him live in dehumanising conditions and subjected him to hard labour. In this the soldiers were acting arbitrarily in complete disregard of the constitution and constitutional rights of the plaintiff:

In **Macarious Asubo vs Attorney General (Supra)** the plaintiff was awarded Shs.10,000,000/= in exemplary damages while in **Ongu Terence vs Attorney General (Supra)** the plaintiff was awarded Shs.15,000,000/=. Having considered the above awards and the circumstances of the instant case I consider an award of Shs.10,000,000/= in exemplary damages will meet the justice of this case.

I also award interest at court rate on both the general damages and exemplary damages. The plaintiff will also have the costs of the suit.

In the result, judgment is entered for the plaintiff in the following terms:

- a) The defendant shall pay to the plaintiff the sum of Shs.25,000,000/= as general damages.
- b) The defendant shall pay to the plaintiff the sum of Shs.10,000,000/= as exemplary damages.
- c) The defendant shall pay interest on (a) and (b) at court rate from the date of this judgment till payment in full.
- d) The defendant shall also pay the costs of this suit.

Augustus Kania

JUDGE

14/11/08

In the presence of Ms. Rachael Nyakecho for the plaintiff.

Mr. Masongole – Court/Clerk.

Augustus Kania

JUDGE

14/11/08