

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)

CIVIL SUIT NO. 226 OF 2015

- 1. YAHAYA LUKWAGO**
- 2. ABYETE ALEX**
- 3. SIMON OKIA**
- 4. EMUIT JOHN MICHEAL**
- 5. WALIMBWA YUSUF ::: PLAINTIFFS**

VERSUS

- 1. JAMES AISO**
- 2. MOSES ODOTO**
- 3. COMMISSIONER GENERAL OF PRISONS**
- 4. ATTORNEY GENERAL ::: DEFENDANTS**

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

BACKGROUND

The Plaintiffs allege that between 2002 and 2014, they were convicts serving their respective sentences in respective government prisons in Uganda namely; Luzira Upper prison, Kirinya Government prison and Soroti prison where in they were subjected to intense torture, cruel and inhuman degrading treatment under the supervision of the 1st and 2nd defendants. They claim that as a result of the said torture, the plaintiffs suffered permanent injuries, impaired immobility, inability to work, past traumatic disorders and psychological torture hence this suit seeking for compensatory general and punitive damages.

The Defendants however, denied all the said allegations made by the Plaintiffs and further claimed that the suit was devoid of merit, frivolous, vexatious and an abuse of court process.

The plaintiffs were represented by *Counsel Ladislaus Rwakafunzi* whereas the defendants were represented by *Counsel Josephine Kiyingi*.

Court ordered that the torturers be added as parties to the case who were later added as the 1st and 2nd Defendants. These were served with hearing notices to appear before the court but however did not. Court therefore proceeded against them under O.17, r.4 of the Civil Procedure Rules.

The following issues were framed for determination by this court;

- 1. Whether the plaintiffs' rights to freedom from torture, cruel, inhuman and degrading treatment were violated by the Defendants.*
- 2. Whether the 4th Defendant is liable.*
- 3. What remedies are available to the parties?*

The parties were ordered to file written submissions and accordingly filed the same. Both parties' submissions were considered by this court.

DETERMINATION OF ISSUES

Issue 1

Whether the plaintiffs' rights to freedom from torture, cruel, inhuman degrading treatment were violated by the defendants.

Submissions

Counsel for the Plaintiffs submitted that the Constitution of the Republic of Uganda 1995 under Article 24 guarantees freedom from torture, cruel, inhuman degrading treatment of punishment and this guarantee is absolute under Article 44 (a).

Counsel stated that PW1, the 1st Plaintiff led evidence that was never challenged by the Defendants to the effect that while serving his sentence at Luzira Prison, he was handcuffed by the prison wardens and seriously beaten for one hour before being locked up in Boma cell where he spent 14 days. That he was made to roll on the floor flooded with urine, starved for several days and later fed on rotten food. During the said torture, his fellow prisoner Abdul Karim dropped dead. He further testified that as a result of the said torture, he sustained bodily injuries, pain, mental disorders, joint pains which pain has persisted for years. This testimony was corroborated by PW6 Dr. Ronald Lubega who examined and managed the plaintiffs' post torture condition and further tendered his medical report marked PE1.

PW2, Abyete Alex testified that while serving his sentence, he was subjected to 45 days of extensive beating by the prison wardens while under handcuffs. He was starved for several days, and also witnessed the death of a fellow prisoner due to the same torture. His testimony was corroborated by PW6 who testified before court having examined the witness and made a report which was exhibited in court as PE1.

PW3, Simon Okia also led evidence that he was tortured while serving his term in 2009 in the prisons where he was tied up and beaten. His testimony was

unchallenged by the defence during their cross examination and was also corroborated by the evidence of PW6 who examined the witness and found that indeed he was a victim of torture.

PW4, Emulit John Micheal also testified as to the torture he underwent that included beatings from the warden. This was corroborated by PW6's evidence having examined the witness and further made a medical report that PW4 had suffered multiple scars, pale irregular hypos pigmented lesions, soft tissue injury and post-traumatic stress disorder.

PW5, Walimbwa Yusuf also testified that he was tortured while in prison together with PW1-PW4 and subjected to beatings by the prison wardens. He further stated that they were also starved.

Counsel further submitted that the plaintiffs were tortured by the 1st and 2nd Defendants who are the prison officials and the 3rd defendant the head of the prisons services and the overall supervisor of the 1st and 2nd defendant who is held accountable for the torture. Counsel invited court to find that the plaintiffs had been tortured by the prison wardens while in custody which was a violation of Article 24 and 44(a) of the Constitution.

Defendants' submissions

Counsel for the Defendants submitted to court that the plaint is vague and does not disclose a cause of action against the Defendants. She further submitted that the plaintiffs allege that at the 1st and 2nd defendants were prison wardens stationed at the prisons to torture the plaintiffs but did not adduce evidence to

prove it. Counsel further stated that at time, the plaintiffs were held in three different stations and that there is no way the 1st and 2nd defendants could have committed the atrocities they are accused of in a station where they were not deployed and that it is not possible for an officer to be in charge of three stations at a given time.

Counsel submitted that the suit does not disclose a cause of action against the defendants and that the plaintiffs were never tortured by any employee of the Uganda Prison services and that this issue be answered by this court in the negative.

Counsel for the Plaintiffs in his rejoinder reiterated his submissions

Court findings;

The **Constitution of the Republic of Uganda, 1995** under **Article 24** guarantees freedom from torture, cruel, inhuman degrading treatment or punishment. **Article 44 (a)** of the Constitution and also under Section 3 of the Prevention and Prohibition of Torture Act of 2012 state that this right is non derogable under The Constitution under **Article 20** also stipulates that human rights are inherent and not granted by the state. One whose rights have been violated is entitled to petition to court for redress under Article 50(1).

The responsibility of the prisons is for the custody of the prisoners and for the protection of society against crime and its fundamental responsibilities for promoting the well being and development of all members of society.

All prisoners shall retain the human rights and fundamental freedoms set out under the Universal Declaration of Human Rights.

In a correctional environment, prisoners' rights can be restricted due to the need to balance security and prisoners' welfare. Prisoners are mostly entitled to the same rights as other citizens, but unlike citizens, prisoners are required to possess those rights in a way that is consistent with the good order, management and security of the prison or correctional facility.

Counsel for the defendants submitted that the plaintiffs do not have a cause of action before this court.

As rightly stated by the defendants' counsel, a cause of action is disclosed when it is shown that the plaintiff enjoyed a right, that the right was violated and that the defendant is liable. *See Tororo Cement Co. Ltd vs Frokina International Ltd (Civil Appeal No.2 of 2001)*. In the facts at hand, the plaintiffs enjoyed a right of freedom from torture, cruel, inhuman and degrading treatment or punishment while serving their sentence in the prisons. As seen from the evidence given by PW1, PW2, PW3 and PW4 before this court, it is clear that the plaintiffs were victims of torture during the time of service of their sentences. The plaintiffs adduced evidence of having been beaten by the 1st and 2nd defendants, starved and tortured by the prison wardens. This evidence was corroborated by PW6 a doctor to ACTV who examined the plaintiffs and made a report ascertaining the injuries that had been sustained at the time. This evidence was never challenged by the defendants who cross examined the witnesses during the hearing of the case. The witnesses were so consistent with their evidence and the perpetrators of the torture who were the 1st and 2nd defendants working as prison warden at the prisons where the plaintiffs served their sentences.

These sets of facts therefore show that indeed the plaintiffs enjoyed a right to freedom from torture and cruel inhuman behavior which was violated by the defendants at the time of service.

As submitted by counsel, **Section 101 of the Evidence Act** provides for the burden of proof and states;

“ (1)Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he or she asserts must prove those facts exist”

Counsel also rightly cited the case of **Kailash Mine Limited vs B4S Highstone Limited HCCS No.139 of 2012** where court stated that;

“....even though the suit proceeded ex parte, the burden of proof still remained on the plaintiff which was required to prove its case on the balance of probabilities”

In the circumstances above, the plaintiffs gave evidence of the torture which was corroborated by the medical doctor PW6 who examined and managed the plaintiffs post torture condition which evidence seemed reliable to this court and was never challenged by the defendants or their counsel in cross examination.

As submitted by the counsel for the defendants, all organs of government must respect, uphold and promote the rights and freedoms of all individuals enshrined in the Constitution.

The Basic Principles for the Treatment of Prisoners provides that; All prisoners shall be treated with respect to their inherent dignity and value of human rights.

Adopted and Proclaimed by General Assembly Resolution 45/111 of 14th December 1990

The Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment equally applies to prisoners. The State party-Uganda has a duty to take effective legislative, judicial and other measures to prevent acts of torture.

The mere detention does not deprive the convicts of all the fundamental rights enshrined in our Constitution.

This court therefore finds that plaintiffs' rights to freedom from torture, cruel, inhuman and degrading treatment were violated.

Issue 1 is resolved in the affirmative.

Issue 2

Whether the 4th Defendant is liable vicariously.

Submissions

Counsel for the Plaintiffs submitted that the principle of vicarious liability makes masters responsible for the actions of its agents. Counsel cited the case of *Muwonge v Attorney General (1967) EA 17*, where Newbold stated

"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 though the servant acting deliberately, wantonly, negligently or criminally

for his own benefit, if what he did is merely a manner of carrying out what he was employed to carry out, then his master is liable."

The plaintiffs implicated the 1st, 2nd and 3rd defendants for having carried out the atrocities against them. The defendants are public servants and government employees who were acting in their capacities as prison officials and no evidence was adduced by the defendants to the contrary. Counsel submitted that this therefore makes the government vicariously liable for their actions done in the course of their employment and prayed that court finds that the plaintiffs were right to sue the attorney general on behalf of government.

Defendants' submissions

Counsel for the defendants submitted that the people who are the plaintiffs claim to have subjected them to torture or cruel, inhuman or degrading treatment have never been employees/servants or agents of the government and therefore the 4th defendant cannot be vicariously liable for acts done by people who are neither employees/servants or agents of the government.

Counsel relied on **Section 3 (1) of the Government Proceedings Act, Cap77** that provides that;

"no proceedings may lie against the government in respect of any act, omission of a servant or agent of the government unless the act or omission would, apart from the Act, have given rise to a cause of action in tort against that servant or agent or his or her estate"

Counsel thus prayed that this honorable court answers this issues in the negative.

Court's finding;

The legal principles which govern the liability of the Attorney general in respect of public servants and government employees are the same as those which govern the liability of a master for the acts of his servants: **see Muwonge v Attorney General [1967] EA 17**. Both at common law and statute law, a master is liable for the tortious acts committed by his servant within the course of his employment.

In the instant case, the 1st, 2nd and 3rd defendants were prison wardens at the prisons where the plaintiffs were serving their sentence. From the evidence of the plaintiffs which was not challenged by the defendants, the prison wardens tortured the plaintiffs by beating them up, starving them for several days. The defendants did not adduce any evidence to the effect that the 1st, 2nd and 3rd defendants were not employees of the government.

I agree with the submissions of counsel for the plaintiffs that the 1st, 2nd and 3rd defendants were employees of government under prisons since there was sufficient evidence to show that these were in charge as prison wardens at the time the torture was committed and therefore the relationship of master and servant was established so as to make the 4th defendant partially liable for the acts committed by the 1st, 2nd and 3rd defendants.

This issue is therefore answered in the affirmative.

Issue 3

What remedies are available to the parties?

The plaintiffs in their pleadings prayed for

- i) General damages.
- ii) Punitive Damages
- iii) Costs of the suit.

Damages

For general damages, counsel submitted that compensatory damages may be assessed on proved loss but where the victim has also suffered assessable physical loss, dignity, intrusion on his bodily integrity, such are not the kind of loss compensations by assessable loss, damages awarded as redress are to vindicate the right or freedom violated and to deter further violation.

As far as damages are concerned, it is trite law that general damages are awarded in the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the Defendants. It is the duty of the claimant to plead and prove that there were damages losses or injuries suffered as a result of the defendants' actions.

I find that the plaintiffs have discharged this duty to prove damages and injuries as a result of the defendants' actions.

Punitive/ Exemplary damages

Counsel submitted that the prison wardens' and other wardens that were acting under them were arbitrary, wanton and unconstitutional and that court should exercise its discretion and award the plaintiffs punitive damages.

It is clear from the plaintiffs' evidence that the acts and conduct of the 1st and 2nd defendants were in violation of human rights and therefore an award of punitive damages would serve not only as a punitive measure but also as a deterrent the commission of similar acts in the future.

An award of exemplary damages should not be excessive. The punishment imposed must not exceed what would be likely to have been imposed in criminal proceedings, if the conduct were criminal. Per Spry V.P. in *Obongo Vs Municipal Council of Kisumu [1971] EA 91*.

Bearing those principles in mind I find that an award of **UGX 30,000,000** to each plaintiff sufficient as both general and punitive damages combined.

Section 10 of the Human Rights (Enforcement) Act 2019 provides for the *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 a portion of the compensation or restitution so ordered as shall be determined by the competent court.

The damages should be shared between Attorney General on one side shall pay 50% and perpetrators of the violations- 1st defendant (*James Aiso*) shall pay 25% and 2nd defendant (*Moses Odoto*) shall pay 25%.

Costs to the plaintiffs.

I so order.

Obiter dictum

Not many cases involving prisoner rights reach the High Court, due to lack of access to legal services as the primary reason for this arguable shortcoming. This matter should be an eye opener to the authorities to stop the violations. However, courts are now aware that they have an important role in protecting prisoners' rights, and will intervene in appropriate cases to protect those rights.

SSEKAANA MUSA
JUDGE
20th/12/2019