

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 208 OF 2016

KABAYIZA. R BRIAN:.....PLAINTIFF

VERSUS

UGANDA REVENUE AUTHORITY:.....DEFENDANT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiff stated in his plaint that in about the month of August 2012, the defendant's agents and or employer arrested the plaintiff illegally, detained him and tortured him. The plaintiff was not only illegally detained and tortured, but also his personal items and properties were taken and his home raided, household items and goods stored at his home confiscated on allegation of violation of tax laws.

The Defendant contended that she received information that the Plaintiff had smuggled an unspecified number of used electronics which were still under customs control at Kenfreight ICD. Upon tracking the said smuggled goods, the Defendant's Revenue Intelligence Team intercepted the Plaintiff and two other persons in Ntinda in Motor Vehicle UAE 660S carrying Television sets which the two passengers had bought from the Plaintiff.

The Plaintiff admitted he was the owner of the goods and opened the house where the goods were. In the process of carrying the goods to the pickup point, the Plaintiff attempted to escape, fell in a trench and suffered injuries. The intercepted goods and the persons who were arrested were taken to the Defendant's Head Quarters. The Plaintiff recorded a statement and later took the Defendant's officials to his home in Namugongo where more goods were recovered from the Plaintiff's house and others from a Mercedes Benz UAP 765Q. The Defendant was taken to hospital.

The defendant filed a defence denying all liability.

The parties filed a joint scheduling memorandum where the following facts and issues were agreed for court's determination;

Agreed facts

The agents/employees of the defendant arrested the plaintiff. The plaintiff's goods were seized by the defendant's agents/employees. The plaintiff's goods are still in possession and custody of the defendant.

Issues

1. *Whether the plaintiff's Constitutional rights and freedom were violated.*
2. *Whether the plaintiff's goods/property were lawfully seized*
3. *What remedies if any.*

The defendant did not produce their witnesses and the court proceeded under Order 17 Rule 4 to determine this suit.

Issue one

Torture or Cruel, Inhuman degrading treatment or punishment

The plaintiff's counsel submitted that, the **Constitution of Uganda, 1995 in Article 24** recognizes and upholds respect for human dignity and protection from inhuman treatment.

The Article provides that no person shall be subjected to any form of torture or cruel, inhuman degrading treatment or punishment. This guarantee is absolute and in fact prohibitory. Consequent upon **Art.24** Parliament enacted the Anti-Torture Act.

The plaintiff herein pleaded and led evidence of torture occasioned to him by the agents/employees of the defendant herein. In his testimony, **PW1** indicated that while at his brother's home in Ntinda where he had gone to pick goods for a client while at the gate, he was hit hard on the head with a pistol by a one Alora, an agent of the defendant causing him to fall on the ground. Alora who was in company of a group of soldiers, kicked him while forcing him to confess while

others were beating him to the extent that his upper jaw got broken and he lost his teeth. Despite the state he was in, they dragged him around, which force was uncalled for since the plaintiff was in the first place unarmed.

Article 44(a) of The Constitution of The Republic of Uganda states;

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

- a) Freedom from torture and cruel, in human or degrading treatment or punishment.”

Freedom from torture is a non derogable right under the constitution

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.

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

The plaintiff testified and described the particulars of torture as follows;

- i. Being hit with a pistol on his head.
- ii. Holding the plaintiff at gun point
- iii. Beating him.
- iv. Kicking him.
- v. Slapping him.

- vi. Jumping at the plaintiff causing him to lose consciousness.
- vii. Spraying the plaintiff with pepper on his wet and wounded body.
- viii. Stripping him naked.
- ix. Putting pepper in his eyes
- x. Threatening to kill him
- xi. Stepping on his back.
- xii. Cutting out his tongue with a metal.
- xiii. Dumping him in a trench
- xiv. Compelling him to confess.
- xv. Confining him.
- xvi. Threatening his family.
- xvii. Searching his home.
- xviii. His front teeth were removed.

PW1 tendered a medical report which was admitted as PE4 where in Dr. Ojara Santo a police surgeon during her examination made the following findings;

- i. That the suffered multiple laceration wounds on the scalp ranging from 3 centimeters long to 6 centimeters long.
- ii. Confusion arising from the frontal scalp.
- iii. Fractures of the right ribs.
- iv. Sutured wound on the tongue which was 8 centimeters long.
- v. Sutured would on upper lip which was 2 centimeters long.
- vi. Dislocation of the left lower finger.
- vii. Hemorrhage of the left eye.
- viii. Broken tooth and denture- left upper tooth.

Further in the medical report, the doctor noted that some of the injuries inflicted upon the plaintiff were caused by a **blunt object**.

In his report, Dr. Ojara Santo also classifies the injuries sustained by the plaintiff as **grievous harm**. He further observed that the plaintiff sustained severe soft tissue injury in his chest and back, loss of consciousness, injury on his left wrist, palm and thumb finger, that he could not eat solid food. The doctor recommended that a CT scan was required.

The doctors findings are further corroborated by exhibit **PE4 (1)** being photographs of the plaintiff pictured with some of his visible injuries.

The medical report is collaborated with the medical report from The Total Care Clinic and Lab Services Namugongo, which indicates that the plaintiff was checked into their clinic at 3:30 am in the morning with multiple wounds caused as a result of assault. The history in the report indicates that the plaintiff was checked into the clinic at 3:30 am with multiple wounds on the head and tongue but he was not drunk.

The plaintiff's counsel further submitted that, the excessive force that was used by the agents/employees of the defendant upon the plaintiff was unnecessarily overwhelming for him and was definitely not required. 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 guarantee of freedom from torture is elaborated 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.

Freedom from torture is absolutely guaranteed and cannot be justified under whatever circumstances, that withstanding the defendant never pleaded justification. Thus we pray that you find that the plaintiff's constitutional freedom from torture under Article 24 of the Constitution was violated by the agents/employees of the defendant.

The defendant's counsel submitted that the allegations are denied by the Defendant in paragraph 6 (v) of the Written Statement of Defence where the Defendant states that her officials and never held the plaintiff on gun point, never threatened to shoot the Plaintiff, never hit, beat, jumped at, assaulted or sprayed the Plaintiff with red pepper. Further that the Defendant never cut the Plaintiff's tongue or stripped him naked in the gaze of his family.

According to counsel, it is clear that the evidence of the parties regarding the sequence of events or occurrence is conflicting. So how should court determine which version is truthful?

Sakar's Law of Evidence, 14th ed offers very good guidance at page 924 to 925 thus:

*"... There is no better criterion of the truth, no safer rule for investigating cases of conflicting evidence, where perjury and fraud must exist on the one side or the other, to consider what facts are beyond dispute, and to **examine which of the two cases best accords with these facts, according to the ordinary course of human affairs and the usual habits of life.** The probability or improbability of the transaction forms a most important consideration in ascertaining the truth of any transaction relied upon."*
(Emphasis added)

It is their submission that the version of the Defendant is more in consonance with "*the ordinary course of human affairs and the usual habits of life*". And this is demonstrated here below:

Although the Plaintiff alleges that he was beaten, assaulted and tortured by agents of the Defendant, he produces no evidence of any of the injuries suffered. There was no medical report or medical form admitted into evidence as alleged in the Plaintiff's submissions. The Plaintiff is asking this honorable court to merely believe his naked statement and in consequence grant him the prayers sought. We pray that the Plaintiff's submissions on medical documents which were never admitted into evidence are of no consequence and we pray that the same be disregarded by this honourable court.

Moreover, the purported authors of the Medical Reports which are attached to his Plaint did not appear in court to give evidence of injuries, if any, suffered by the Plaintiff.

Counsel strongly disagree and maintain that these allegations are made in bad faith and are only meant to divert the Defendant from enforcing upon the Plaintiff his duty to pay taxes.

On the other hand, the account of the Defendant to the effect that the Plaintiff sustained injuries when he attempted to escape is more believable. The Plaintiff was found with uncustomed goods and consequently arrested. There was no need to subject hi to the alleged torture.

Right to Privacy

The plaintiff's counsel submitted that the plaintiff's home was searched on several occasions with no search warrant by agents of the defendant and his property seized and in addition to that, he was stripped naked before his own family.

Article 26 (1) of the Constitution, provides that every parson has a right to own property either individually of in association with others. **Article 27** provides that;

1. No person shall be subjected to –
 - (a) Unlawful search of a person, home or other property of that person; or
 - b) Unlawful entry by others of the premises of that person.
- (2) No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property.

PW1 led evidence to show that agents of the defendant in company with soldiers dressed in army uniform went to the plaintiff's brother's home in Ntinda and with no search warrant, beat him severely and dragged him inside the garage where the goods were stored.

While compelling a confession from the plaintiff, the stripped him naked despite his age and poured water on him, followed by spraying pepper all over his body.

The plaintiff further submitted that while he was in his underwear pants he was taken to shamefully face his children and wife at his home in Namugongo, simply because they wanted to search his home, despite his pleas to have his clothes back so that his children don't see him naked but the defendants agents declined to head to his pleas. And indeed at the plaintiff's home, his children, wife and driver were in much shock to see him naked.

Right to Property

Article 26 (1) of our Constitution provides that: “Every person has a right to own property either individually or in association with others.”

PW1 led evidence to show that by the year 2007, he used to buy old fridges, radios and cookers and repair them for sale together with his partner the Late Francis Kinyera. The plaintiff latter on left for UK, where he would now send used electronics to his deceased partner until he met his demise in 2009.

However immediately before his partners demise, PW1 had already sent goods through Mirage Logistics vide exhibit **PE1** and **PE2** , although they had not yet reached in the hands of his partner who was unwell at the time. The goods were thus received by PW1’s wife, a one Presilla Baguma. The goods sent through Mirage Logistics on the 09/01/2009 and on the 07/03/2009 were all paid for by the plaintiff.

The defendant’s agents issued a notice of seizure for the said goods including the car despite him having its registration book exhibited as **PE61** claiming that he had smuggled it into the country.

It was the plaintiff’s submission that the actions of the agents of the defendant were merely intended to unlawfully deprive the plaintiff of his right to own property contrary to Article 26 (1) of the Constitution.

The plaintiff’s property and belongings are estimated at a value of **UGX. 600,000,000/=** and it is thus our humble prayer that this court be pleased to award the plaintiff the above mentioned value as compensation for the goods lost.

The defendant’s counsel submitted that the goods which were taken from the garage in Ntinda and from the Plaintiff’s home in Namugongo are listed in paragraph 6 (v) of the Written Statement of Defence. The said goods were uncustomed goods and the Defendant’s agents were well within their right to seize the same. All the items seized are listed in the Seizure notices

The allegations that other items such as a brief case, 2 baby bicycles, 1 baby buddy, old spade, old slasher among others were also taken are simply untrue.

The Defendant contended in the Written Statement of Defence that she received information that the Plaintiff had smuggled an unspecified number of used electronics which were still under customs control at Kenfreight ICD. Upon tracking the said smuggled goods, the Defendant's Revenue Intelligence Team intercepted the Plaintiff and two other persons in Ntinda in Motor Vehicle UAE 660S carrying Television sets which the two passengers had bought from the Plaintiff.

The right to liberty is not an absolute right. It can be taken away where a person is arrested. The Plaintiff in this case was arrested and detained for contravening the provisions of the East African Community Customs Management Act, 2004 by having uncustomed goods. Therefore, his arrest was lawful.

Article 17 (g) of the Constitution provides that it is the duty of every citizen of Uganda to pay taxes. Therefore, the Plaintiff must pay taxes when required to do so unless exempted by the law. This position was strongly held in the case of **Uganda Projects Implementation and Management Centre Vs URA where Lady Justice Kitumba** stated;

“According to Article 17 of the Constitution a citizen has a duty to pay taxes and to do so promptly, so that government business can go on.”

Under **Section 223(a)** of the EACCMA the onus of proving the place of origin of any goods or the payment of the proper duties of any goods shall be placed on the person prosecuted or claiming anything seized under the Act. The Plaintiff had the burden prove to the Defendant and to this Honorable court that the duties for the seized goods were paid. The Plaintiff admitted in cross examination that he had no evidence of payment of taxes for the goods.

According to **Section 210 (c)** of the EACCMA, unaccustomed goods are liable to forfeiture.

The Plaintiff merely stated in his evidence that he had a Bill of Lading. My lord, a bill of lading is merely evidence of the contract of carriage entered into between the carrier and the shipper or cargo owner in order to carry out the transportation of the cargo. It is not in any way proof of payment of the requisite taxes on the goods.

On the other hand, as stated in the Written Statement of Defence, the Plaintiff's goods were seized upon the Defendant receiving information that the said goods had been smuggled into the country without paying duty. The goods in question were seized in the presence of the Plaintiff. The Defendant went ahead and issued seizure notices which were attached to the Plaintiff as "PE5", "PE6" and "PE7".

Determination

Article 44(a) of The Constitution of The Republic of Uganda states;

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

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

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- obtaining information or a confession from the person or any other person;
- 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.

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

PW1 tendered a medical report which was admitted as PE4 where in Dr. Ojara Santo a police surgeon during her examination made the following findings;

- ix. That the suffered multiple laceration wounds on the scalp ranging from 3 centimeters long to 6 centimeters long.
- x. Confusion arising from the frontal scalp.
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Further in the medical report, the doctor noted that some of the injuries inflicted upon the plaintiff were caused by a **blunt object**.

In his report, Dr. Ojara Santo also classifies the injuries sustained by the plaintiff as **grievous harm**. He further observed that the plaintiff sustained severe soft tissue injury in his chest and back, loss of consciousness, injury on his left wrist, palm and thumb finger, that he could not eat solid food. The doctor recommended that a CT scan was required.

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'.

Torture is considered one of the most serious crimes against humanity because of its profound violation of the moral and physical integrity of the individual.

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 suffering and humiliation must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment, as in for example, measures depriving a person of their liberty. See ***Wainwright v United Kingdom Case No. 12350/04, ECHR***

Torture; it must inflict pain that is difficult to endure. Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, pain or suffering to amount to torture it must result in significant psychological harm of significant duration.

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 worst examples are likely to satisfy the test. See ***Issa Wazembe vs Attorney General HCCS No. 154 of 2016***

The court's basis of imputing torture in different cases should be understood and based on methods of inflicting suffering which have already been overtaken by the ingenuity of modern techniques of oppression. Torture no longer presupposes violence, a notion to which the public understands it to be in most cases.

Torture can be practiced and is indeed practiced-by using subtle techniques developed in multidisciplinary laboratories/centres which claim to be scientific. By means of new suffering that have little in common with the physical pain caused by conventional torture it aims to bring about, even if only temporarily, the disintegration of an individual's personality, the shattering of his mental and psychological equilibrium and the crushing of his will.

There are no exceptional circumstances whatsoever to justify torture. The court cannot be a silent spectator where stinking facts warrant interference in order to serve the interest of justice. Tolerance of URA actions as in the instant case, would amount to acceptance of systematic subversion and erosion of the rule of law.

I am inclined to partly believe the evidence of the plaintiff that indeed he was tortured but some claims of torture were exaggerated and as a result of such torture harm was inflicted on him although the defendant's servants tried to justify it since he was attempting to run away from them.

I agree with the plaintiff's counsel that the excessive force that was used by the agents/employees of the defendant upon the plaintiff was unnecessarily overwhelming for him and was definitely not required.

This issue is resolved in the affirmative.

Right to Privacy

The plaintiff contended that his right to privacy was violated when they searched his home twice without a search warrant and he was allegedly stripped naked before his family.

Article 27 provides that;

(b) No person shall be subjected to –

(a) Unlawful search of a person, home or other property of that person; or

(b) Unlawful entry by others of the premises of that person.

(2) No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property.

Right to privacy is an important of personal liberties. Human life is not complete without right to privacy. It strengthens human dignity and other values. Now a day, privacy has become one of the most important human rights of modern age and it has been recognized around the world.

Privacy means-state or condition of being alone undisturbed or free from public attention, as a matter of choice or right; freedom from interference or intrusion.

An important aspect of privacy is the ability to exclude others from premises.

Right to privacy also means as the right of the individual to determine when, how and to what extent he or she will release personal information.

Right to privacy is a generic term encompassing various rights recognized to be inherent in concept of ordered liberty, and such rights prevent government interference in intimate personal relationships or activities, freedoms of individual to make fundamental choices involving himself, his family and his relationship with others.

The right to privacy thus has been held to protect a private space in which man may become and remain himself. Privacy recognizes that we all have a right to a sphere of private intimacy and autonomy. By protecting this this private and intimate sphere, we are allowed” establish and nurture human relationships without interference from the outside community.

It is the duty of the court to determine whether the person claiming that his or her privacy was infringed could reasonably expect his or her privacy to be protected in the particular circumstances.

The decision whether, reasonably speaking, a person has a legitimate expectation to privacy may depend on whether the interference was of the ‘inner sanctum’ of personhood or not. The effect of this view regarding privacy is that in the ‘inner sanctum’ of a person’s life, in his or her ‘truly personal realm’ like his or her bedroom, there would be a far greater likelihood that a person’s expectation of having his or her privacy respected is reasonable. See ***Bernstein and Other v Bester NO and Others (CCT23/95)[1995] ZACC 2; 1996 (4) BCLR 449***

Privacy is therefore viewed as a continuum with more intense protection at its core and less intense protection on the periphery. Privacy becomes more intense the closer it moves to the intimate personal sphere of life of human beings and less intense as it moves away from that core.

Privacy is a fundamental human right recognized in the UN Declaration of Human Rights, the International Convention on Civil and Political Rights and other Regional treaties like African Charter on Human and Peoples Rights.

It should be noted however, that the right to privacy is not absolute. It should be considered on a case-by-case basis or development. It should be subject to regulations. If the scope of the right to privacy is widened beyond limit, it may

interfere with governance of state or other person's constitutional rights. Similarly, if the contours of the right to privacy are too narrowed, it dilutes a person's fundamental rights.

Whenever an invasion of privacy is claimed, there are usually competing values at stake. Privacy may seem paramount to a person who lost it, but that right often clashes with other rights and responsibilities that we as society deem important.

The right to privacy is not unlimited and can be limited where there it is fair and justifiable in open and democratic society. Therefore, the law allows searches and seizures where there is probable and reasonable cause or reasonable basis for suspicion in order to facilitate criminal investigations.

In the present case, the plaintiff was suspected to be a smuggler who had goods which had not paid taxes. The defendant is allowed under the law to search and seize such uncustomed goods.

The East African Community Customs Management Act provides for search of the person vehicle or premises;

Section 153(1) provides;

An officer may, if he or she has reasonable grounds to believe that any vehicle is conveying uncustomed goods whether or not in transit, or being transferred from one partner state to another, stop and search any such vehicle; and for the purpose of that search, that officer may require any goods in that vehicle to be unloaded at the expense of the owner of the vehicle.

Section 155(1) Provides;

An officer may, if he or she has reasonable grounds to believe that any person has in his or her possession, whether upon his or her person or in his or her baggage, any uncustomed goods, search that person; and the officer may, for that purpose, use reasonable force.

Section 157(1);

A proper officer may, if he or she has reasonable grounds to believe that there are on any premises any uncustomed goods or documents relating to uncustomed goods, enter upon and search such premises by day or by night; and for such purpose the proper officer may use all reasonable force and may require the assistance of, and take with him or her another officer or a police Officer.

The search conducted by the defendant's officers was justified and was made in accordance with the law. Therefore there was no violation of the plaintiff's right to privacy as contended.

Right to property

The plaintiff's counsel submitted that the Right to property is guaranteed in **Art.26(1)** of the Constitution.

"Every person has a right to own property either individually or in association with others."

The plaintiff contended and led evidence to prove that he used to buy old fridges, radios and cookers and sale the same. The plaintiff's property and belongings are estimated at a value of **UGX. 600,000,000/=**.

Upon tracking the said smuggled goods, the Defendant's Revenue Intelligence Team intercepted the Plaintiff and two other persons in Ntinda in Motor Vehicle UAE 660S carrying Television sets which the two passengers had bought from the Plaintiff.

The defendant's agents issued a notice of seizure for the said goods including the car claiming that he had smuggled them into the country.

It is clear that the plaintiff's property had been seized as smuggled goods and would only be liable for release upon payment of taxes.

Section 213(1) of the East African Community Customs Management Act provides;

An officer or a police officer or an authorized public officer may seize or detain any aircraft, vessel, vehicle, goods, animal or such thing liable to forfeiture under this Act or which he or she has reasonable ground to believe is liable to forfeiture; and that aircraft, vessel, vehicle, goods, animals or other thing may be seized and detained regardless of the fact that any prosecution of an offence under this Act which renders that thing to be liable to forfeiture has been or is about to be instituted.

The plaintiff was issued with 3 notices of seizure on the 17th September 2012 and the same were duly received by the plaintiff's counsel. Refer to Exhibit PE1-3.

In the said notice of seizure, the following conditions were provided;

“ If you claim or intend to claim that the things seized are not liable to forfeiture, you should within one calendar month from the date of this notice, give notice in writing of your claim in accordance with the provisions of Section 214 of the Act. In default of such notice, the things seized will be deemed to have been lawfully condemned and will be liable to be disposed of in such manner as the Commissioner may direct.”

There is no evidence on record that the plaintiff ever contested the seizure in accordance with law within one calendar month from the date of the notice. The onus was on the plaintiff to prove that he had duly paid the required taxes.

This suit was filed on 27th March 2014 after 18 months and the plaintiff is claiming that his right to property was violated or that his property was illegally seized. The actions of the plaintiff in refusing to contest the seizure imputes an element of guilt to the extent that the goods were rightly seized for non-payment of taxes.

Under the National Objectives and Directive Principles of State Policy No.XXIX it is provided that the exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations; and, accordingly, it shall be the duty of every citizen-

(c) To contribute to the well-being of the community where the citizen lives;

In addition Article 17(1)(g) of the Constitution provides;

It is the duty of every citizen to pay taxes.

Every citizen must consider it as his/her sacred duty to pay taxes as development and welfare measures would suffer if government does not get adequate revenues. The duty is a moral and legal responsibility of a person towards a country. This civil duty is also a requirement of the law.

The plaintiff's failure or refusal to pay the taxes was equally a violation or breach of his duty and obligation towards the government. The goods seized by the defendant were taken in accordance with the law and in accordance with the Constitution.

There was no violation of the plaintiff's right to property and it was the duty of the plaintiff to pay taxes for the goods he had imported. The failure to pay taxes attracts sanctions in accordance with the law and such goods are forfeited to the state. The goods and vehicle were lawfully seized.

Whether the plaintiff is entitled to any remedies

The plaintiff's counsel submitted that **Art.50(1)** of the Constitution entitles a person who claims that his fundamental rights and freedoms have been violated to file an action in a competent court. Court in determining an application under **Art.50** may award redress to the applicant which may include compensation. Redress is wider than compensation. Redress includes orders of release for those complaining of illegal detention. Redress also includes punitive damages. Punitive damages are meant to punish the violator for violation of the Constitution.

The plaintiff sought **UGX 600,000,000/=** being the value of his business which he pleaded and proved as adequate compensation for all his property or goods seized from his home. Secondly the plaintiff sought a sum of **UGX. 200,000,000/=** being compensation for the torture and shame he was taken through.

Article 50 (1) of the constitution provides that;

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.

With regard to my rulings on issue 1 and 2, the plaintiff is entitled to redress for violation of his constitutional rights.

Freedom from torture is a non derogable right under our Constitution which however was violated by the defendant. 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.

Whereas there is a comprehensive legal regime that prevents and prohibits torture, it's evident that the violation of the right to freedom in the form of torture and cruel, inhuman and degrading treatment or punishment are still rampant in Uganda.

There is no specific formula or detail of how the damages are worked out in cases of torture or inhuman and degrading treatment; generally it is not a pecuniary loss but a loss of dignity or suffering or injury. The principal heads of damage would appear to be injury and liability, loss of time considered primarily from a non-pecuniary view-point and injury to feelings i.e the indignity, mental suffering, distress and humiliation with any attendant loss of social status. ***See Mc Gregor on damages, 14th Edition.***

In other words the whole process of assessing damages where they are "at large" is essentially a matter of impression and not addition. Per Lord Hailsham, LC in ***Cassell v Broome [1972] 1 All ER 801 at 825***

The awards reflect society's discomfiture of the wrongdoer's deprivation of the man's liberty and society's sympathy to the plight of the innocent victim. The awards, therefore are based on impression.

The plaintiff suffering was as a result of some wrong doing on his part as a smuggler. The defendant was found liable for the excessive use of force or highhandedness of its agents in effecting arrest and recovery of uncustomed goods. There was no basis for claiming an award of 200,000,000/=. This court would award the plaintiff a reasonable sum of 20,000,000/= for the torture inflicted on him during the arrest.

Punitive damages

This court awards the plaintiff shs 15,000,000/= as punitive damages for the highhanded, unconstitutional treatment occasioned to the plaintiff.

The plaintiff is awarded interest at a rate of 15% from the date of Judgment until payment in full on both awards.

The plaintiff is awarded costs of the suit.

I so order.

SSEKAANA MUSA
JUDGE
26th March 2020