

THE REPUBLIC OF UGANDA
THE UGANDA HUMAN RIGHTS COMMISSION
COMPLAINT UHRC NO. 128/1997

MR. WALUSIMBI SSEBAGALA ::::::::::::::: COMPLAINANT

AND

ATTORNEY GENERAL ::::::::::::::: RESPONDENT

DECISION

Complaint No.128/97 was lodged at the Commission on 1st August, 1997 by Walusimbi Ssebagala (now deceased). He alleged that on 17th March, 1997 he was arrested from Ishaka bus stage by two Bushenyi Local Administration Police. He was detained at Bushenyi Local Administration Police cell for a night. The following day i.e. 18th March, 1997 he was taken to the District International Security Officer (DISO) Mr. Charles Kateeba who, with the help of District Administration Police tied and put him on a vehicle Reg. No. UC 1703 and drove along Ishaka-Kasese road. They picked another suspect at Kayunga Police Post and went to Ryeru Sub-County headquarters where they were off-loaded and he was made to surrender cash amounting to Sh.760,000=, his identity card and graduated tax tickets. They were beaten by LDUs on the orders of Mr. Charles Kateeba, and he also participated in the beating and he kicked the complainant making him unconscious. After one week he was transferred to Katunguru military detach where he was detained up to 4th April, 1997 and then transferred to Bushenyi Police Station. Two weeks later he was released i.e. on 17th April, 1997 after police interrogation and investigations proved that he had no case to answer. However, he was very sick and frail and the following day he went to Ishaka hospital where his left kidney was found damaged and treated.

The complainant claimed that the DISO Bushenyi – Mr. Charles Kateeba, who was acting in the course of his employment, was responsible for all that befell him.

The complainant prayed that the Commission awards him special damages, punitive or exemplary damages, and general damages for unlawful detention, and torture.

This Tribunal therefore had the following issues to settle:

1. **Whether the respondent's servants violated the complainant's right to liberty.**
2. **Whether the respondent's servants violated the complainant's right from torture, cruel, inhuman and a degrading treatment.**
3. **Whether the complainant was deprived of his right to property.**
4. **Whether the complainant is entitled to any remedies.**

The complainant named the following witnesses:

1. Mr. Nyohora – a security agent who has an office on Kabirisi Road in Ishaka town where the complainant was first taken when he was arrested by the LDUs.
2. Byarugaba Abdul of Kakanju, Bushenyi who was in Ryeru sub-county cell when the complainant was brought there. The two were transferred together to Katunguru military detach, and were also detained together at Bushenyi Police Station and were released on the same day.
3. Patrick Walendo – a Local Defence Unit askari in Mbale town who was transferred together with the complainant from Bushenyi to Ryeru Sub-County cell. He again met the complainant and were detained together at Katunguru military detach and at Bushenyi Police Station, and released on the same day.

The complainant in this matter died before it was heard by this Tribunal. Following the death of the complainant, his wife Hasifa Walusimbi and his sister Shilla Nakimuli got letters of Administration and the two were substituted as the legal representative of the deceased complainant – late Walusimbi Ssebagala - and they became the complainants. During the hearing of this complaint the respondent's representative sought to invoke order 28 rule 1 and 2 of the Civil Procedure Rules to reject Hasifa and Shilla to represent the deceased complainant. Counsel for the Commission advised that the Tribunal was an Administrative Tribunal which should not be restricted by the Civil Procedure Rules but by the Commission's own Rules of Procedure 1998. And because of this therefore there was no need for such an application by the respondent's representative. In the circumstances I had ruled that the Tribunal was to consider Hasifa and Shilla as substituted parties to the deceased complainant under Rule 11(2) of the Commission's Rules of Procedure 1998.

Complainant one – Hasifa Namuddu Ssebagala did state that:

Ssebagala was her husband and that they had been married for 13 years. On 17th March, 1997 he left home (Ishaka) for Kampala. Later in the day her brother-in-law Ishima sent a bodaboda rider to inform her that her husband had been arrested. When she went to find out what exactly had happened to her husband she was told that he had been taken to Bushenyi town. At Bushenyi Police Station she was told that her husband was not there. Since she did not know who had arrested him she went back home. The next day when she went back to Bushenyi Police Station and she was told her husband had been taken to Bunyaruguru at a place called Ndekye. She went to Bunyaruguru the following day and at the quarterguard they denied having Ssebagala in their cells. She bribed a soldier with 5,000/= and his 'boss' with 10,000/= and she was able to see her husband whom she found in a bad condition because he had been badly beaten by soldiers and he had marks on his body. Her husband told her that he had been brought here and handed over to soldiers by DISO Bushenyi. She visited her husband the next day but was told that he had been transferred to Katunguru army detach. She proceeded there but was denied access to him. When she went again the next day she was led to a small room where she found him. He told her that he was suspected to be a rebel collaborator. He sent her to Kampala to inform his employers (URC) about his arrest and detention. She went to Kampala and came back with a letter from URC whose contents she did not know, and she took it to Katunguru army detach. The next day she was informed that her husband had been brought to Bushenyi Police Station where she went and found him.

When her husband was released on 18th April, 1997 he was very sickly passing out blood in his urine. She took him to Ishaka hospital where she was informed that his kidneys had been damaged and gave him treatment. He did not have money to continue with medical treatment so he sold his kibanja and went to Kyamuhunga hospital where he was told the same thing – damaged kidneys, broken ribs. He was treated. His condition improved a bit and he went to Kampala, and while there his condition deteriorated and he was admitted at Nsambya hospital. By the time she arrived there he could not speak, and he passed away four days later.

During cross-examinations Hasifa said she did not know who had arrested her husband until a police officer at Bushenyi Police Station told her that it was DISO who had left instructions that no one should see him.

Counsel for the Respondent's Submission:

Issues:

1. Whether the complainant's arrest was unlawful.
2. Whether the complainant's allegations of torture can be sustained.
3. Remedies available to the complainant, if any.

Resolution of Issues:

1. Hasifa Namudu (PW1) stated she does not know who arrested the complainant.

- That even her husband (deceased) did not know who had arrested him.

This is not true because in his statement of complaint, the complainant stated that he was arrested by two Bushenyi Local Administration Policemen who transferred him to Mr. Nyohora a Security Officer who has an office on Kabirisi Road in Ishaka town, from where he was taken to Bushenyi Local Administration Police cell where he was locked-up for one night. The next day he was transferred to Ryeru Sub-County Headquarters where he stayed for a week before being transferred to Katungulu Military detach.

- Byaruhanga Abudu (PW3) also stated that the complainant was arrested by Bushenyi Local Administration Police.
- Charles Kateeba (PW2) stated that he informed the police about the complainant's involvement in ADF rebel collaboration and police arrested him.
- Exhibit 3 vide 28/97 tendered in by Mr. Oyo Nyeko Benson (PW1) indicated that the complainant was arrested as a rebel collaborator and detained at Bushenyi Police Station.

1. Article 23(1) - No person shall be deprived of personal liberty except in any of the following cases:
 - (a) In execution of the sentence or order of a court, whether established for Uganda or another country or of an international court or tribunal in respect of a criminal offence of which that person has been convicted; or of an

order of a court punishing the person for contempt of court;

- (b) in execution of the order of a court made to secure the fulfilment of any obligation imposed on that person by law;
- (c) for the purpose of bringing that person before a court in execution of the order of a court or upon reasonable suspicion that that person has committed or is about to commit a criminal offence under the laws of Uganda.
- (d) for the purpose of preventing the spread of an infectious or contagious disease;
- (e) in the case of a person who has not attained the age of eighteen years, for the purpose of the education or welfare of that;
- (f) in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of the care or treatment of that person or the protection of the community;
- (g) for the purpose of preventing the unlawful entry of that person into Uganda, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Uganda or for the purpose of restricting that person while being conveyed through Uganda in the course of the extradition or removal of that person as a convicted prisoner from one country to another; or
- (h) as may be authorised by law, in any other circumstances similar to any of the cases specified in paragraphs (a) to (g) of this clause.

2. Section 23(1) of the Police Act Cap.303 empowers a police officer to arrest a person without a court order or warrant, if he/she has reasonable cause to suspect that the person has committed or is about to commit an arrestable offence.
3. Section 10(a) of the Criminal Procedure Code Act empowers a police officer to arrest without warrant any person whom he/she suspects upon reasonable grounds of having committed or is about to commit a cognisable offence.

I concede to the fact that the arrest of Walusimbi Sebagala by either police or Bushenyi Local Administration Police or by Local Defence was therefore lawful.

In his written submission the respondent's Counsel omitted mentioning it either deliberately or did not think it important to do so.

However, it is alleged that the complainant was detained at Katunguru Military detach from the time he was arrested on 17th March, 1997 up to 4th April, 1997 when he was transferred to Bushenyi Police Station – thus for a period of 18 days. He was detained in a military detach contrary to Article 23(2) – A person arrested, restricted or detained shall be kept in a place authorised by law.

He was also held much beyond 48 hours before being arraigned in a court of law contrary to Article 23(4)(b) of the Constitution thus making his over 30-day detention illegal.

2. **Counsel for the respondent submitted that complainant in his statement had alleged that he had been tortured during the time he was detained. It was alleged by Sifa Namudu (PW1) and PW3 Byaruhanga Abdul.**

Almost the whole of page 5 of the complainant's statement of complaint gives details of activities of torture by the LDU at Ryeru Sub-County Headquarters.

1. DISO – Mr. Kateeba (PW2) ordered the LDUs: **Nyinyiyote kuja hapa. Piga uyu number moja.** Following this order about six LDUs descended on the complainant and started beating him with sticks.
2. Kateeba himself also joined in the beating and kicking.
3. He then ordered one LDU:

Valisa yeye kofia

The LDU wrapped a polythene bag over his head covering up to his neck and tied it on him causing him to fail breathing. This was repeated several times.

4. They then resumed beating him. He was kicked hard on his left side by Kateeba. He vomited and fell unconscious.

He regained consciousness the following morning.

Although photocopies of records of medical treatment of the complainant at Ishaka Hospital are on file, they could not be admitted in evidence as exhibits because the photocopies did not have the name of the doctor who signed them and the original copies could not be traced.

5. PW3 Abdul Byaruhanga's evidence is that Sebagala was brought to Bushenyi Local Administration Prison by two Local Administration Policemen and found him there as a prisoner. That the next day i.e. 18th March, 1997 Mr. Charles Kateeba – DISO Bushenyi – came in a vehicle Reg. No. UC 1703, with four men dressed in Local Administration Police uniform. They took the four of them, namely Sebagala, Karim, Walendu and Byaruhanga on the vehicle to Ryeru Sub-County headquarters via Kayanga Police post where they picked one prisoner. Byaruhanga stated that at 3.00 a.m. the DISO put Sebagala and Walendu on the vehicle and took them away to where he later came to know - was Katunguru military detach. The DISO then came back at 5.00 p.m. on 19th March, 1997 and took Karim and Byaruhanga to Bushenyi Police Station. On 4th April, 1997 the DISO brought Sebagala and Walendu to the same station. Sebagala was in a bad shape – swollen left rib, strained hand, and he could not sit. They were all released by OC CID on 18th April, 1997.

PW1 – Hasifa said that Sebagala left home on 17th March, 1997 for Kampala. But later on the day Sebagala's brother – Ishima – sent a bodaboda man to inform her that her husband had been arrested. She went to Bushenyi Police station where she expected to find him but she was told that Sebagala was not there. She came back home. The next day when she went back to Bushenyi Police Station she was told Sebagala had been taken to Ndekye in Bunyaruguru. She went to Ndekye the next day and after giving a bribe to a military boss of the Station, she was allowed to see her husband – Sebagala.

The evidence by the two witnesses conflicts.

Defence Counsel asserts that Byaruhanga's own evidence conflicts too. He stated that Sebagala and Walendu were separated from them at Ryeru Sub-County headquarters. Sebagala and Walendu brought by four men dressed in Local Administration Police uniform later found Byaruhanga in Bushenyi Police Station cell but he was however, able to see all that was happening at the counter.

PW3 was consistent in his testimony and there is no contradiction in his evidence as the Defence Counsel would like this Tribunal to believe. He stated that late Sebagala was brought to Bushenyi Local Administration Prison by two Local Administration policemen and found him there as a suspect. He further stated that on 18th March, 1997 DISO – Charles Kateeba came in a vehicle Reg. No. UC 1703, and loaded on it PW3, Sebagala, Karim and Walendu and took them to Ryeru Sub-County Headquarters. At 3.00 p.m. the DISO removed Sebagala and Walendu from Ryeru and took them away. At 5.00 p.m. the DISO came back and took PW3 and Karim to Bushenyi Police Station. He went on to state that on 4th April, 1997 the DISO brought in PW3 and Sebagala to Bushenyi Police Station where he already was. All of them were released on 17th April, 1997 by the DPC Bushenyi. Given this testimony I find no conflict in it at all. At first Sebagala had found PW3 in Bushenyi Local Administration prison on 17th March, 1997. And on 4th April, 1997 Sebagala found him at Bushenyi Police Station. At no point in time did PW3 state that he found Sebagala in either Bushenyi Local Administration prison or Bushenyi Police Station cells.

On whether or not the complainant was taken to Bushenyi Local Administration prison. In his statement the complainant did say that while he was waiting for transport to Kampala at Ishaka stage on 17th March, 1997 two Bushenyi Local Administration policemen arrested him and took him to Bushenyi Local Administration Police cell where he spent a night. The complainant's wife – Hasifa Namuddu – stated that on learning that her husband had been arrested she went to Bushenyi Police Station on 17th March, 1997 but she was told Sebagala (complainant) was not there, and she went back home.

PW2 former DPC Bushenyi – Mr. Oyo-Nyeko Benson – in his letter to the Commission dated 20th August, 1997 (exhibit ID1) did state that the complainant was brought into his cell as a rebel suspect. After careful interrogation and verification of allegations he was released on 16th April, 1997. This is evidence enough that the complainant never left the police cell until his release on 17th April, 1997. He avoided mentioning the date the complainant was brought to Bushenyi Police Station cells.

Therefore the complainant must have been taken to Bunyaruguru and Katunguru from another official cell but not Bushenyi Police Station cells.

This shifts the burden of proof to the respondent to prove that the complainant was not detained at Bushenyi Local Administration prison as claimed by the complainant and corroborated by PW1 and PW3.

On whether or not the complainant was tortured by PW2 and any others:

The complainant did state that when they were transferred from Bushenyi Local Administration Prison to Ryeru Sub-County Headquarters the DISO ordered LDUs to beat him, and he himself joined in beating and kicked him heavily on the left rib. From Ryeru sub-county headquarters the complainant was taken to Katunguru military detach where he stayed up to 4th April, 1997 being tortured daily. The complainant was never handed over to police until 4th April, 1997 when DISO drove him to Bushenyi Police Station.

Therefore from the date the complainant was arrested on 17th March, 1997 up to 4th April, 1997 he was not in the hands of police and he was therefore being detained illegally.

PW2 – Kateeba Charles – testified that after getting information from the UPDF Operations Intelligence Officer to the effect that Walusimbi Ssebagala was among the rebel collaborators in Bushenyi having been implicated by ADF captives at Katunguru Tactical Operation Headquarters, he passed it on to the police in Bushenyi .

This matter had to do with the security of the country which is usually a preserve of the army intelligence because of the seriousness it entails. It is difficult to believe that a DISO would only entrust such very sensitive information about the security of the country with police and take no active role. It is also difficult to believe that a suspect in such a matter would only be handled by the police and be released without either taking him to court since there were ADF captives who had implicated him, or without handing him over to the army intelligence for further verification. His evidence is supported by neither anyone (witness) nor any document. I find it far-fetched and impossible to believe.

PW3 testified that at Ryeru sub-county headquarters the DISO Kateeba ordered his LDUs to beat the suspects while they were tied. DISO himself also participated in beating them. “I am going to deal with you”, he reportedly muttered. DISO kicked

the complainant on the stomach and he fainted. He also testified that when the complainant and Walendu were brought to Bushenyi Police Station where he was already, he (complainant) was in bad condition. He could not sit, his left rib was swollen and his hand was strained. The two told PW3 and other suspects that they had been tortured where they had been kept.

The complainant's wife – Hasifa Namuddu – testified that when she found her husband (complainant) at Bunyaruguru army detach on 19th March, 1997 he was in bad condition. He told her that he had been badly beaten by soldiers. She saw marks of beatings on his body. She testified further that when the complainant was released on 18th April, 1997 he was sickly and was passing out blood. She took him to Ishaka hospital and he was told that his kidneys had been damaged. He was treated but his condition did not improve. He then went to Kyamuhunga hospital where he was told the same story and that his ribs had also been broken. He was treated and his condition improved a bit. He went to Kampala and his condition deteriorated and he was taken to Nsambya hospital by his sister Nakimuli. By the time Hasifa arrived at the hospital the complainant could not talk. He passed away four days later.

Shilla Nakimuli – a sister to the complainant – testified that around June-July the complainant, who was staying at Kyadondo Road Nakasero, sent his friend to call her. When she came she found him vomiting and had diarrhoea. He asked her to take him to hospital for treatment because he had been ambushed by thugs and injected with some drug. He showed her the part where he had been injected.

Although one may easily be persuaded to believe the testimony by Hasifa, it is all hearsay. There was not a single document to affirm torture on him. She claimed she had the documents but had misplaced them. She never, at any one time, found and produced them to the Commission. In law what counts is evidence but not hearsay, however convincing it may be.

Nakimuli's testimony does raise an entirely new and different situation, namely that the complainant had been ambushed and injected with a drug by unknown thugs, and it was the likely cause of his death. This testimony has neither direct bearing nor close relevance with torture while he was in detention. It purportedly happened in Kampala long after the complainant's release from detention in Bushenyi. There is no corroborative

evidence at all that those who did it were connected in any way with those who had detained him.

In the premises the complainant and the witnesses have failed to prove torture of the complainant while he was in detention.

I therefore dismiss the claim that the complainant was tortured at Ryeru sub-county headquarters and at Bunyaruguru army detach, for lack of evidence to support it.

3. Whether the Complainant is entitled to a remedy:

Defence Counsel submitted that the complainant is not entitled to any remedy or compensation because all events pertaining to his complaint were reasonably and lawfully executed.

All witnesses including Charles Kateeba did attest to the complainant's claim that he was arrested and detained. The complainant claimed that he was arrested on 17th March, 1997 and detained over a night at Bushenyi Local Administration Police. The next day he was taken to Ryeru sub-county headquarters by Kateeba, tortured and later transferred to Katunguru military detach where he was detained up to 4th April, 1997 when he was transferred to Bushenyi Police Station. He was released from there on 16th April, 1997. None has disputed the claim that the complainant was arrested on 17th March, 1997 and released on 16th April, 1997. That is a period of 30 days in detention, and he was never charged in a court of law.

This was a clear violation of the complainant's right to personal liberty so provided in article 23(4)(b) of the Constitution of the Republic of Uganda, namely:

A person arrested or detained upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under the laws of Uganda, shall, if not earlier released, be brought to court as soon as possible but in any case not later than forty-eight hours from the time of his or her arrest.

According to PW2 – Charles Kateeba – the ADF rebel captives had implicated the complainant at Katunguru Tactical Operation headquarters in two areas, namely: recruitment and passing on information to ADF. Since the ADF captives were now witnesses to implicate the complainant, it defeats logic that:

- he was detained for 30 days and was never taken to court at all.
- Police at Bushenyi Police station did investigate this matter but could not get concrete evidence to charge the complainant. What had happened to the ADF captives?

In the circumstances I find the complainant's one-month detention illegal and unconstitutional. He therefore merits remedy for the blatant violation of his personal liberty.

Order:

The complaint is allowed and the respondent is ordered to pay to the complainant a total sum of **Ug Shs.12,000,000=** as categorised below:

1. General damages for violation of his right to liberty - **Shs.10,000,000=**
2. Punitive and or exemplary damages - **Shs. 2,000,000=**
 - i. Each party will meet their own expenses pertaining to this complainant.
 - ii. The **Sh.12,000,000=** will carry interest at court rate from todate till payment is full.
 - iii. Any party dissatisfied with this decision is free to appeal to the High Court of Uganda in accordance with provisions of article 53(3) of the Constitution of the Republic of Uganda.

I so order.

Dated at Kampala this22nd.....day ofFebruary....2005.

Constantine K. Karusoke
PRESIDING COMMISSIONER