

**THE UGANDA HUMAN RIGHTS COMMISSION
AT GULU**

COMPLAINT NO. G/05/2003

AKENA JOHNSON ::::::::::::::: COMPLAINANT

- VERSUS -

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

JUDGEMENT

Mr. Anyena Rose of Kaloguru village, Pabbo sub-county, Kilak county, Gulu district, brought this complaint to the Commission on 6th January, 2003 alleging that her husband, Akena Johnson, was arrested on 7th December, 2002 near Lacor hospital by Uganda People's Defence Forces soldiers attached to Pabbo army barracks. She further alleged that Akena was taken to and detained at the 4th Division headquarters, Gulu. When she went to the 4th Division Quarter Guard on 12th December, 2003 she was denied access to her husband, and she went back home.

She prayed the Commission:

- Help her trace the whereabouts of her husband;
- To ensure that her husband is treated in accordance with the law.

Upon receipt of this complaint the Commission wrote to the Uganda People's Defence Forces 4th Division Commander vide UHRC/G/5/2003

dated 7th January, 2003 putting the allegation to him and asking him to respond to the allegations. No response was made at all.

A reminder was sent to the same Uganda People's Defence Forces Commander on 29th March, 2003 under the same reference requesting him to respond to the allegations within two weeks. Still no response was made.

Having cause listed the matter for Tribunal hearing on 18th March, 2004 the Attorney General was properly served on 19th February, 2004 as a respondent in his vicarious responsibility.

There was no appearance by the Attorney General's representative at the hearing. The Tribunal invoked Rule 18(1) of UHRC Procedure Rules 1998 and proceeded in the absence of the respondent.

Substitution:

Since the victim of alleged arrest and detention, Mr. Akena Johnson, was free from detention and was present at the hearing, the Tribunal granted a prayer by the Lead Counsel that Ms. Anyena Rose be substituted by Mr. Akena Johnson as the complainant in accordance with Rule 10(1) of UHRC Rules of Procedure 1998.

The complainant testified that: On 7th December, 2002 he went to Gulu town for the launching of Kalangala Action Plan with a friend called Obwoma David. They spent the nights of 7th and 8th in Gulu town.

On 9th December, 2002 as they rode back to Pabbo at around 10.30 a.m. he was arrested at Lacor Trading Centre by two Uganda Peoples Defence Forces soldiers, namely;

- Sgt. Okello Benson; and
- Private Alaba.

He knows them by names because they were from Pabbo Army barracks. They took away his bicycle from him, tied him together with another person they had arrested from Pabbo whose name he did not know, and took them to Lt. Col. Otema Awany the 4th Division Intelligence Officer.

From there they were then taken to the 4th Division Quarter Guard. Soldiers at the Quarter Guard asked Sgt. Okello why they had arrested Akena who was their informer and Sgt. Okello told them to wait for the LC3 Chairman Pabbo to come and he would be released.

The Chairman never came and the soldier at the Quarter Guard told Akena that they had tried to ring the LC3 Chairman Pabbo several times but had failed to get him.

On 15th January, 2003 Sgt. Okello came to the Quarter Guard and got him released telling him that he had no case to answer. During his detention he was never tortured.

He prayed the Commission to:

- order for his compensation for detaining him for nothing for 38 days.
- Order for the replacement of his bicycle No.1495 Road master which was taken away from him by Sgt. Okello and has never

been given back to him. He had bought it on 7th January, 2002 for Sh.120,000/= He produced a receipt for it as evidence.

The complainant informed the Tribunal that Sgt. Okello was later arrested and jailed for robbery. He does not know where Private Alaba is but he hears he was sent on a course.

The complainant called three witnesses, namely:

- Obwoma David
- Ochan Benson and
- Anyena Rose.

They all testified affirming the complainant's allegation of detention at the Uganda People's Defence Forces 4th Division Quarter Guard from 8th December, 2002 to 15th January, 2003.

Obwana testified that as they rode back to Pabbo from Gulu town on 9th December, 2002 at Lacor Trading Centre two soldiers one in uniform and the other in civilian clothes stopped them and arrested Akena. He knew one of the soldiers as Private Alaba because he was from Pabbo army barracks.

Akena gave him his bicycle to take home but the soldier in uniform, whose names he did not know, turned his gun on him threatening to shoot him. He then left Akena's bicycle and rode his off.

He had seen Akena again in Pabbo on 15th January, 2003 after his release from detention.

2nd Witness Ochan Benson testified that he is a bobaboda cyclist based at Lacor Trading Centre.

On 9th December, 2002 two Uganda People's Defence Forces soldiers from Pabbo arrested Akena at Lacor Trading Centre. They were in a white pick-up. In the absence of the Chairman of Bodaboda Lacor stage the soldiers asked him to keep Akena's bicycle until they came for it. Sgt. Okello came and collected Akena's bicycle from him on 10th December, 2002 and told him that Akena had been arrested because he was a rebel collaborator. He identified himself as Sgt. Benson Okello and his colleague as Pte. Ojok Onakalet Alaba.

The 3rd witness Anyena Rose testified that the complainant is her husband. She was informed about her husband's arrest on 9th December, 2002 by one David Olok Obwona with whom her husband had travelled to Gulu town on 7th December, 2002.

When she went to visit Akena at the Uganda People's Defence Forces 4th Division Quarter Guard on 12th December, 2002 she was denied access to him. She never went back to visit him again since she had been told that Akena was not at the Uganda People's Defence Forces 4th Division Quarter Guard. She saw Akena again when he was released from detention on a date she cannot recall. She could not even estimate the time between when she went to visit Akena at the 4th Division Quarter Guard but was denied access and the time he was released.

The witness testified further that during her husband's detention, she suffered from lack of transport as their bicycle was confiscated by the soldiers who arrested him. She got her leg swollen due to walking from Pabbo to the Uganda Human Rights Commission Regional Office in Gulu, first to report the detention and later to follow up the complainant, which she did six times. Her swollen leg was medically treated at Pabbo

Health Unit, but she did not produce any medical document for the treatment. She also testified that while she came to Gulu on a number of occasions her property was stolen in Pabbo IDP camp. They stole food stuff including all cassava which had just been harvested from a garden measuring 50 by 15 metres. She, however never produced any evidence to that effect.

After all the testimonies by the complainant's witnesses, the case was closed and the hearing was adjourned to 22nd April, 2004 to enable the respondent give his defence.

On the adjourned date the Attorney General's representative never appeared nor was any valid reason for absence sent. Evidence was produced before the Tribunal to the effect that the respondent had been properly served on 1st April, 2002. It was strongly argued by the Lead Counsel that giving the Attorney General another date would be injustice to the complainant as justice delayed is justice denied. Accordingly the case was closed and the hearing adjourned for a decision today.

Issues:

Issues to be resolved by this Tribunal are:

- i. Whether the respondent's servants/agents violated the complainant's right to personal liberty.
- ii. Whether the respondent's servants /agents violated the complainant's right to property.
- iii. Whether the complaints is entitled to any remedies.

Issue 1: Whether the respondent's servants/agents violated the complainant's right to personal liberty.

The right to personal liberty is protected by the Constitution of the Republic of Uganda, various international human rights instruments and the law of tort under the tort of false imprisonment. The law is now settled that once a complainant proves the fact of his/her imprisonment the burden of proof that the imprisonment was justified shifts to the respondent. Since the respondent was not represented the Tribunal took the liberty to also cross examine the witnesses.

RICHARD CLAYTON and HUGH TOMLINSON in their book “*The Law of Human Rights*” Vol. 1 at page 455 write as follows:

“The tort of false imprisonment is committed by someone who intentionally subjects another to total restraint of movement either by actively causing his confinement or preventing him from exercising his privilege of leaving the place where he is. Any interference with liberty is unlawful unless the person responsible for the imprisonment can show that it is justified”.

The same has been held in a number of cases (see *SEKADDU v SSEBADUKA* 1968 E.A. 212; *SAATI KIWANUKA v KAMULI DISTRICT ADMINISTRATATION* (1994-1995) HCB 74; *EDIRISA SEMAKULA v ATTORNEY GENERAL* HCCS NO.6/1975 etc.).

Article 23(1) of the Constitution of the Republic of Uganda provides for circumstances under which a person's liberty may be lawfully restricted.

Article 23 (1) of the constitution provides in part:

“No person shall be deprived of personal liberty except in any of the following cases-

(c)for the purpose of bringing that person before the court...upon reasonable suspicion that that person has committed or is about to commit a criminal offence under the laws of Uganda”.

Under Article 23(2):

“A person arrested restricted or detained shall be informed immediately in a language that the person understands of the reasons for the arrest, restriction or detention and of his or her right to a lawyer of his or her choice”.

Under Article 23(4)(b):

“A person arrested or detained upon reasonable suspicion of his or her having committed a criminal offence under the law of Uganda shall if not earlier released be brought to court as soon as possible but in any case not later than 48 hours from the time of his or her arrest”.

The evidence by the first and second witnesses does corroborate with that of the complainant very well. The date and place of arrest and the identity of the arresting officials are all well corroborated. A soldier in uniform has been identified as Sgt. Okello Benson by both the complainant (victim of arrest) and the second witness – Ochen Benson – whom Sgt. Okello left with Akena’s bicycle when they arrested him on 9th

December, 2002. When Sgt. Okello came to collect the bicycle from the 2nd witness on 10th December, 2002 he identified himself as Sgt. Okello Benson and his colleague as Ojok Onekalet Alaba.

The first witness did identify the soldier in civilian clothes as Private Alaba from Pabbo army detach.

On the basis of this evidence and since there is no cause to the contrary this Tribunal has no doubt that Akena Johnson was arrested on 9th December at Lacor Trading Centre by Sgt. Okello Benson and Private Alaba.

The complainant testified that he was detained at the Uganda People's Defence Forces 4th Division Quarter Guard from 9th December, 2002 to 15th January, 2003 thus for 38 days. This evidence was not contradicted through either commission or omission by any of his witnesses.

Although the first witness never came to visit the complainant at the 4th Division Quarter Guard, he never saw him again after his arrest on 9th December, 2002 until 15th January, 2003 the day he claims he was released.

The second witness testified that:

- (a) when Sgt. Okello came to collect Akena's bicycle from him on 10th December, 2002 he told him that Akena had been arrested because he was a rebel collaborator;
- (b) he next saw Akena after a long time when he came to Lacor looking for his bicycle. However, he could not recall the exact date.

The third witness, who is the complainant's wife, did testify that:

- (a) on 9th December, 2002 Ochan, with whom her husband had gone to Gulu town, came and told her that her husband (the complainant) had been arrested by soldiers at Lacor Trading Centre;
- (b) she next saw him on 15th January, 2003 when he was released;
- (c) her husband told her that he had been detained at the Uganda People's Defence Forces 4th Division Quarter Guard all that time.

This evidence is not contrasted with any other.

From this evidence therefore, this Tribunal is convinced that the complainant was detained at Uganda People's Defence Forces 4th Division Quarter Guard from the time he was arrested on 9th December, 2002 up to 15th January, 2003 when he was released without any charges being preferred against him.

Issue 2: Whether the respondent's servants /agents violated the complainant's right to property.

All the complainant's witnesses have testified in full affirmation that when the complainant was arrested by UPDF soldiers at Lacor Trading Centre on 9th December, 2002 he had a bicycle.

The first witness did testify that Sgt. Okello Benson, the one who was dressed in army uniform, took away the complainant's bicycle at the time of arresting him. The complainant had wanted to give his bicycle to the

first witness to take it home, but Sgt. Okello had threatened shooting him which made him abandon the bicycle and ride his off.

“Johnson gave me his bicycle to take it home, but the soldier in uniform turned his gun on me threatening to shoot me. I then left the bicycle but took away the clothes from the bicycle.” The first witness stated.

The second witness, Ochen Benson, a bodaboda cyclist based at Lacor Trading Centre, testified that after arresting Akena Johnson at Lacor Trading Centre, where he was about only six metres away from the scene of arrest, the two soldiers wanted to keep Akena’s bicycle with the Chairman Bodaboda Lacor stage until they came back to collect it later but the Chairman was not around. The soldier in uniform had then asked him to keep the bicycle until he came back to collect it, which he did. Sgt. Okello Benson came back on 10th December 2002 and took away the bicycle from him. Sgt. Okello told the second witness that he was Sgt. Okello Benson and the other soldier with whom they arrested Akena Johnson was Private Ojok Onekalet Alaba. He also told him that they had arrested Akena because he was a rebel collaborator.

The second witness also stated that a young man called Okumu, who has a shop at Lacor Trading Centre, witnessed Sgt. Okello taking away the bicycle from him.

He also testified that he next saw Akena after a long time thereafter, and he told him that he was looking for his bicycle. He, however, could not recall the exact date when he met Akena.

The third witness testified that during Akena's detention she developed a swollen leg as a result of walking long distances for lack of transport as their bicycle had been taken away by soldiers during Akena's arrest.

In view of these testimonies, which have not been challenged, this Tribunal has no doubt that Sgt. Okello Benson took away Akena's bicycle when they arrested him, and has never given it back to him.

I am further strengthened in my decision by the holding in the case of *FRED MUFUMU Vs UGANDA ELECTRICITY BOARD 82(1996) V KARL .KITYO .J*, where the defendant's electricity cable fell on the plaintiff's house and destroyed it together with all his property therein. The plaintiff sought among others, recovery of the destroyed household items, which he itemised as special damages. He valued the property at U.Shs.28,600,000=. It was held by Kityo J, that:

“The plaintiff's claim is under two heads. The first being special damages as a result of the destruction of a long list of property totalling to the sum U.Shs.28,600,000=. The award for each item in the list annexed to the plaint can only be made on proof of the value claimed but in the absence of conclusive proof no award can be made.”

The complainant gave conclusive and convincing evidence to this tribunal that Sgt. Okello Benson took away Akena's bicycle when they arrested him, and has never given it back to him.

Issue 3: Whether the complaints is entitled to any remedies.

Having held that the respondent servant/agents violated the complainant's right to personal, it follows that he is entitled to compensation by the respondent.

Under Article 50 (1) of the Constitutional of the Republic of Uganda 1995;

'any person who claims that a fundamental or other right or freedom guaranteed under this constitutional has been infringed or threatened is entitled to apply to a competent court for redress which may include compensation'

And under article 53(2) of the Constitution;

'The Commission may, if satisfied that there has been an infringement of a human right or freedom order

- a)*
- b) Payment of compensation or*
- c) any other legal remedy or redress'*

Am satisfied that there has been an infringement of Akena's right to personal liberty. I now proceed to assess the necessary compensation.

Assessment of general damages for violation of the complainant's right to personal liberty:

The complainant's right to liberty as provided under Article 23 of the Constitution was violated. The complainant was detained at the Uganda

People's Defence Forces 4th Division Quarter Guard from 8th December, 2002 to 15th January, 2003. I will concede that the complainant was detained for 38 days.

In the case of *MATSIKO SILAGI BERNARD & MBANGUKIRA PETER Vs ATTORNEY GENERAL 9 CONSOLIDATED CIVIL SUIT NO.383 OF 2002 & 429 OF 2002*) where the first complainant was unlawfully arrested and detained for 36 days, while the second plaintiff was unlawfully arrested and detained for 5 days. Both plaintiffs were detained in un-gazetted places. Yorokam Bamwine J. awarded Uganda Shillings 10,000,000/= and Uganda Shillings 5,000,000/= respectively for unlawful arrest and detention.

Guided by the above case the complainant would be entitled to a slightly higher amount than Ug.Shs.10,000,000= having been detained for 2 days extra.

In *ABDU MAKI Vs JINJA DISTRICT COUNCIL HCCS NO. 60 OF 2000*, the plaintiff in this case was illegally detained for 7 days. Yorokam Bamwine J, awarded him U.Shs.2,000,000=.

Since in the instant case Akena was illegally detained for approximately 6 times the period in MAKI, he would be entitled to 6 times of his award that is Ug.Shs.12,000,000=.

I deem a figure of Ug.Shs.12,000,000= adequate compensation to the complainant for deprivation of his right to personal liberty.

I so award.

Assessment of Special damages for violation of the complainant's right to personal liberty:

Sgt. Okello Benson on 10th December 2002 took away Akena's bicycle and never returned it. Akena stated that his bicycle road master model was sold at Ug.Shs.120,000=.

The above figure appears to be very reasonable to me.

WHEREFORE I deem a figure of Ug.Shs.120.000= adequate compensation to the complainant for deprivation of Akena's right to property.

I so award.

Order:

1. Allow the complaint.
2. The Attorney General is hereby ordered to pay to the complainant a sum of Shs.12,000,000= as general damages for illegally depriving him of his right to liberty for 38 days contrary to provision of Article 23(4) (b) of the Constitution of the Republic of Uganda.
3. I also order the Attorney General to pay to the Complainant a sum of Shs.120,000= as special damages for the latter's bicycle which Okello Benson took away from him at the time of his arrest and had never given it back to him.
4. Each party shall bear their own costs.

The Uganda Shillings 12,120,000/= will carry interest at court rate from to date until payment in full.

Either party not satisfied with the decision may appeal to the High Court of Uganda within 30 days from the date hereof.

DATED at Gulu this ____15th ____ day of ____June,____2004.

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Constantine K. Karusoke

PRESIDING COMMISSIONER