

**THE REPUBLIC OF UGANDA
THE UGANDA HUMAN RIGHTS COMMISSION
AT MBARARA**

COMPLAINT No. UHRC/MBA/06/2004

LOYCE NAKABUGO COMPLAINANT

-AND-

ATTORNEY GENERAL RESPONDENT

DECISION

The complainant brought this complaint against the respondent seeking compensation for alleged violation of her right to personal liberty. She told the tribunal that she is aged 29 years, a businesswoman based at Kisenyi, Kakoba, Mbarara. She is a widow and a mother of four (4) children.

She testified that on August 5, 2002 her husband Bulasio Kamugisha died suddenly. She was not with him at the time of his death. His relatives accused her of killing him so that she takes his property.

Ms. Loyce Nakabugo testified that on January 5, 2004 while at her home she was arrested by the Criminal Investigations Department (CID) officer, South Western Region and two other policemen. They accused her of the murder of her husband. She was taken to Mbarara Police Station where she was detained for one day. She was then released on bond.

Upon her release she went straight home. She had hardly spent there 20 minutes when the Regional CID Officer again arrived in the company of two

policemen. He said that he had been instructed by the office of the President together with the Director of Public Prosecutions (DPP) to arrest her. They rearrested and took her back to Mbarara Police Station where she was detained for eleven (11) more days.

The complainant stated that she was released on bond on January 16, 2004 when she reported back at Mbarara Police Station. The CID officer told her that the State Attorney had advised them that there was no case against her. She was set free.

The complainant contends that the actions of the police violated her right to personal liberty for which she holds the respondent vicariously liable. She prayed for compensation.

Mr. Jeffrey Atwine for the Attorney General denied the complainant's claims.

Issues:

The issues for determination by this tribunal are:

- (i) Whether the respondent's servants/agents violated the complainant's right to personal liberty.
- (ii) Whether the complainant is entitled to compensation.

1st Issue: 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.

RICHARD CLAYTON & 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”.

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 purposes of bringing that person before a court ... upon reasonable suspicion that, that person has committed or is about to commit a criminal offence under the Laws of Uganda”.

And under Article 23(4)(b) of the Constitution:-

“A person arrested or detained upon reasonable suspicion of his or her having committed 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 48 hours from the time of his or her arrest”.

In the instant case the complainant testified that she was arrested and detained on January 5, 2004. She was released on January 6, 2004 and about 20 minutes later rearrested and detained for a further 11 days. She was therefore detained for 12 days.

The complainant tendered in evidence a letter written by the Regional CID Officer, South Western to the Uganda Human Rights Commission dated March 11, 2004. The contents of this letter are a complete admission of the complainant's claims.

It reads in part: “The suspect was arrested on January 5, 2004. Since the Resident State Attorney had not sanctioned the charge against her I immediately instructed D/C Barigye to release the suspect on bond. After the release of the suspect complaints were raised to the highest office in the land to the effect that we had released a murderer. I was instructed to re-arrest the suspect the same day January 5, 2004. The suspect stayed in custody until January 16, 2004 when instructions were received from the DPP directing her release for lack of evidence”.

The complainant further tendered in evidence a letter written by the DPP to the Regional CID officer dated January 15, 2004 in which she described the evidence against the complainant as “speculative and very weak”. In this letter the RSA recommended that Nakabugo be set free.

The two exhibits above were conclusive evidence of the arrest and detention of the complainant at Mbarara Police Station for 12 days.

In *Sekaddu v Ssebaduka 1968 EA 212*, it was held by *Sheridan J*,

“Once the detention or imprisonment is established, the onus shifts to the defendant to show that it was justified”.

In the instant complaint the arrest and detention of Nakabugo was proved. The state had a duty to show that her imprisonment was justified. This was never done. The Attorney General’s representative Mr. Jeffrey Atwine neither adduced any evidence nor made any submission to justify her arrest and detention.

Consequently I make a finding of fact on the balance of probabilities that the state violated the complainant’s right to personal liberty. The respondent is vicariously liable therefor.

2nd Issue: Whether the complainant is entitled to compensation:

The first issue having been resolved in favour of the complainant she is definitely entitled to compensation. That wrongs should be redressed, that

reparation should be made to the injured person, is the most venerable and most central of legal principles. I now proceed to assess general damages for violation of the complainant's right to personal liberty.

I will consider that the complainant was wrongfully arrested on two occasions, i.e. on January 5, 2004 and on January 6, 2004. She was illegally detained for 12 days.

Although Article 23(4)(b) of the Constitution allows the police to hold a suspect up to 48 hours the detention must be premised upon "reasonable suspicion of his or her having committed a criminal offence".

"A reasonable and probable cause" was defined by *Lady Justice Mpagi Bahigine* in *Steven Semugoma v Magidu Mafuge & 5 Others (1994) II KALR 108* as-

"An honest belief in the guilt of the accused based upon full conviction founded upon reasonable grounds for the existence of a state of circumstances which assuming them to be true would reasonably lead any ordinary prudent and cautious man placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime implied".

In the instant case there was no such honest belief in the guilt of Nakabugo based upon full conviction founded upon reasonable grounds for the existence of a state of circumstances that would lead any ordinary, prudent and cautious person to the conclusion that she was probably guilty of murder. From the Resident State Attorney's letter to police the evidence

against Nakabugo was “speculative and very weak”. Her arrest and detention was therefore unjustifiable.

In any case the death of Nakabugo’s husband occurred on August 5, 2002. She was arrested on January 5, 2004 i.e. more than 1½ years later. Nakabugo was all along available. The state had ample time to carry out thorough investigations of her husband’s death before deciding whether or not to arrest her.

Since the arrest and detention of the complainant was totally unjustifiable, even the initial 48 hours detention was unlawful. The complainant therefore spent 12 days in illegal detention.

Further in assessing general damages, I will take into consideration that she was mistreated while in detention. Her relatives were blocked from visiting her throughout the 12 days of her detention. She said that she was not allowed to be brought food from outside the police. She could not eat the posho supplied to suspects by the police. She suffered from malaria and was not given any medication whatsoever.

It was painful enough that the complainant had lost her husband. It was even more traumatizing that the state later accused her of murdering him and went ahead to imprison her. Nakabugo said, “I lost more than anybody else did”.

Considering all the circumstances in this case I consider a figure of U.Shs4,000,000= (Uganda Shillings Four Million) only adequate compensation for violation of her right to personal liberty.

Exemplary Damages:

The law and circumstances under which courts in Uganda award exemplary damages has been authoritatively set out in many cases. I will quote in part the judgment of *Odoki Ag. J* in *Ongom & Anor v Attorney General & Others* 1979 HCB 267 where he held:

“Exemplary damages are awarded over and above the compensatory damages where aggravating circumstances have been created such that due to the conduct or intention of the defendant the plaintiff is a victim of arbitrary, oppressive and unconstitutional behaviour at the hands of a government official. Exemplary damages are not intended to enrich the plaintiff but to punish the defendant and deter him from repeating his wrongful conduct”.

I am satisfied that the circumstances of this complaint call for award of exemplary damages. The arrest and detention of the complainant was oppressive, arbitrary, highhanded and unconstitutional. There was no reasonable or probable suspicion that she had murdered her husband.

It is extremely disturbing that upon her release on bond “the highest office in the land” intervened to have her immediately rearrested and detained. The Regional CID officer informed the Deputy Director of CID, Mr. Okoth

Ochola and the Deputy DPP Mr. Ngolobe that the suspect was likely to overstay in the cells if they rearrested and detained her but this was considered insignificant. He wrote, (Exh.C1) “I did not believe that the file could be taken to the DPP and read and a decision made in 48 hours. I was however advised to keep the suspect in custody until a final decision is made by the DPP”.

I believe “the highest office in the land” referred to by the Regional CID officer is President’s office. But Article 120(6) of the Constitution provides:

“In the exercise of the functions conferred on him or her by this article, the DPP shall not be subject to the direction or control of any person or authority”.

The words “any person or authority” means and includes every person or office even if that person or office is the President or Office of the President.

Having taken the decision to release the complainant on bond, the DPP acted unconstitutionally when he allowed himself to reverse it on account of intervention by the President’s office. The DPP is sufficiently protected under the Constitution and must never succumb to this kind of pressure. Cancellation of Nakabugo’s bond just 20 minutes after her release without any lawful reason was cruel, harsh, arbitrary, arrogant, unacceptable and must attract punitive damages.

Having due regard to all the above I award the complainant a sum of U.Shs1,000,000= (Uganda Shillings One Million only) as exemplary damages.

ORDER:

- (i) The complaint is allowed.
- (ii) The respondent is ordered to pay to the complainant a sum of U.Shs5,000,000= (Five Million) as follows:

- General damages for violation of her right
to personal liberty - 4,000,000=
 - Exemplary damages - 1,000,000=
- TOTAL - 5,000,000=**

- (iii) The U.Shs5,000,000= (Uganda Shillings Five Million) will carry interest at court rate from todate until payment in full.

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

DATED at Mbarara this 13th day of April 2006.

FAUZAT MARIAM WANGADYA (Ms.)
COMMISSIONER