

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

COMPLAINT No. UHRC 141/2004

LUKWAGO MUSA ET AL :.....: COMPLAINANT

-AND-

ATTORNEY GENERAL :.....: RESPONDENT

DECISION

The four complainants namely Lukwago Musa, Amanywa Moses, Mugerwa and Kanata Sulaiman filed this complaint through M/s Ambrose Tebyaza and Company Advocates. They allege that on April 15, 2002 the complainants were all arrested by the police which subsequently detained all of them at Mpigi Police Station for a period of 61 days before they were eventually produced and charged in court on June 17, 2002 with robbery contrary to Section 272(2) of the Penal Code Act. They were later committed to Kigo Government Prison where they were detained for 15 months before the Director of Public Prosecutions withdrew the charges against them on July 18, 2003.

On the date fixed for hearing of the complaint the Attorney General as the Respondent sent no representative. Evidence of service on the Attorney General was tendered before the Tribunal which upon satisfying itself that the service had been effectively delivered to the respondent ordered for the hearing to proceed *ex parte* in accordance with Rule 18(1) of the Uganda Human Rights Commission (Procedure) Rules 1998.

The four complainants testified before the Tribunal starting with Lukwago Musa. Lukwago's evidence was that on April 15, 2002 police officers arrested him from his home and had him detained at Mpigi Police Station for two months after which he was charged in Mpigi Court. He was informed by the police that he was arrested for robbery but claims that the police told him that after he had spent two months in police custody. He says he was later remanded to Kigo Prison where he spent 15 months and was discharged because he had no case to answer. He produced a Notice of Withdrawal of charges against the four complainants by the DPP (Exhibit I). Lukwago further testified that he was tortured in prison, and that prison conditions were poor as he slept on bare cement floor without blankets. He told the Tribunal that he was fed on bad meals which he described as porridge once a day and at times with bad beans full of insects (weevils). Warders at Kigo he said caned prisoners including him. They cleared human faeces with bare hands.

The second complainant Amanywa Moses testified about his arrest by policemen on April 15, 2002 at about 2.00 a.m. The policemen forced their way into his house and carried out a search. He testified that the police beat him, and kicked him. He was detained at Mpigi Police Station for a period of two months and one day. He said he was detained from April 15, 2002 till he was taken to court on June 17, 2002 that is a period of 61 days. He claimed in his evidence in chief that for all the 61 days the police never told him the reason for his arrest which he got to know when he was taken to court. After being taken to court he was detained at Kigo Prison for 365 days and released after the Director of Public Prosecutions withdrew the charges against him.

Amanya told the Tribunal that at the police he was tortured, was not given beddings and that food was bad. At Kigo Prison he was taken to the fields everyday to dig adding that he was used by the prisons to cultivate everyday yet he had committed no crime. Food was also poor – i.e. beans infested with weevils. On top of that he says he slept on bare cement floor without blankets for the 15 months he was at Kigo. He prayed for U.Shs50,000,000= (Fifty Million) as compensation for illegal detention and violation of his human rights. He claimed in his testimony that he lost his manhood because of torture but that he never raised that in his complaint to the Commission.

The third complainant Asadu Mugerwa testified about his arrest on July 15, 2002. He said the police arrested him from Bula and took him to Mpigi Police Station where he was detained for two months and 1 day. He asked the police why he was arrested and detained but got no explanation. He got to know the reason for his arrest on June 17, 2002 when he appeared in Mpigi Court. At the time of his arrest which he put at around 2.00 a.m. the police had come with Lukwago and Amanya. He testified also that the police beat him up during the arrest. After appearing in court in Mpigi he was remanded in Kigo Prison where the warders tortured him. He was also forced to work on the prison farm for the duration he was at Kigo Prison which was 15 months.

The 4th complainant Sulaiman Kanata also testified of his arrest on April 15, 2002 by the police after they forced their way into his house. He said he asked the police to tell him the reasons for his arrest and he was told he would find out later. He was taken to Mpigi Police where he met Lukwago, Asadu and Moses Amanya. Although he used to see them before they were

not friends. He asked the three why they were arrested and they told him they had no idea. All four of them spent two months and one day at Mpigi Police Station without knowing exactly the reasons for their detention. They asked the police but got no explanation. On June 17, 2002 the four of them were charged before Mpigi Court and remanded to Kigo Prison. His evidence was that at Kigo he was treated badly which he explained as poor food and drinks which food was “rotten posho and beans”. He claimed that as a result of the bad food he got the disease which now afflicts him i.e. ulcers, headaches and sweats. He said warders made him work in shambas and kicked him.

At the close of the evidence of all the complainants no other witnesses were called. Mr. Dyadi representing the complainants was given up to September 16, 2005 to make a written submission on his request. That deadline passed without him making the submissions so this decision is written without the benefit of his submissions.

On the basis of the testimonies the following issues require determination:

1. Whether the complainants’ right to liberty was violated by the respondent’s agents.
2. Whether the complainants were subjected to torture, cruel, inhuman and degrading treatment or punishment.
3. If any of the above is answered in the affirmative, whether the complainants are entitled to compensation and if so how much.

The right to liberty is protected under Article 23(1) of the Constitution which first prohibits deprivations of personal liberty and then stipulates the circumstances under which liberty may be taken away. Accordingly one's liberty can only be lawfully taken away if the reason falls within the exceptions listed under Article 23(1). Any action which takes away the liberty of a person but falls outside the exceptions would constitute a violation of the right to liberty.

Article 23(2), (3), (4), (5) and (6) prescribe procedural guarantees which enhances the protection of the right to personal liberty under Article 23. A violation of any of these procedural guarantees would also constitute a violation of the right to personal liberty.

Given the above understanding of the meaning of the right to personal liberty, it remains to examine whether the evidence before the Tribunal supports the allegation that the complainants' right to liberty were violated. I have no doubt in my mind that all the complainants were arrested by the police on April 15, 2002. I also accept the evidence that they were detained at Mpigi Police Station till June 17, 2002 when they first appeared before a court in Mpigi. In total therefore each of the complainants were detained at the Police Station for at least 61 days – without first appearance in court. This was clearly in violation of Article 23(4)(b) of the Constitution which, to protect the right to liberty, demands that persons suspected of crime must be charged before a court of law as soon as possible but in any case not later than 48 hours from the time of arrest. On this score alone the policemen continuously violated the personal liberty of the complainants for 60 days.

The complainants also claimed in their evidence that the police never told them the reasons for their arrest and detention which they all came to learn on June 17, 2002 when they appeared in court. It is true that failure or refusal by the police to inform the complainants why they were arrested would be contrary to Article 23(3) of the Constitution. This would be a breach of this important procedural guarantee of the right to personal liberty. I do not however accept the claim of the complainants that for 61 days the police never told them why they were detained. It is highly unlikely that the police would detain persons for 61 days without interrogating them. On questioning by the Tribunal, Complainant No.3 Asadu Mugerwa admitted that a CID Officer questioned them about three times. He also admitted that the police told them they were arrested because of armed robbery. It is therefore my finding that the complainant's right to liberty was not violated on this ground.

The second issue for me to consider and make a decision is whether the complainants were tortured or subjected to cruel, inhuman and degrading treatment or punishment. Torture, cruel, inhuman and degrading treatment or punishment is strictly prohibited under Article 24 of the Constitution. Article 44 of the Constitution in addition absolutely prohibits derogation from freedom from torture, cruel, inhuman and degrading treatment or punishment. This freedom however is not defined by the Constitution or any other law in Uganda. The only legal instrument which defines torture, cruel, inhuman and degrading treatment or punishment is the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 1984. Uganda is a party to this Convention and its provisions are binding on the country at least at the international level. She is under obligation to implement the provisions within Uganda. On the basis of this, the Tribunal

following several other decisions of the Tribunal has adopted and accepted the definition in Article I of the Convention which defines “torture” as:

“An act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession punishing him for an act he or a third person has committed or suspected to have committed or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or any other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

Musa Lukwago the first complainant told the Tribunal that he was “tortured” at Kigo Prison. He did not tell the Tribunal what the warders did to him to enable me arrive at a conclusion that he was tortured. I take note of the fact that Ugandans tend to use the word “torture” randomly for acts which may not fit within the definition of torture above. In the absence of facts proving what the warders did to Lukwago, I am unable to make a finding that Musa Lukwago was tortured.

Amanya Moses testified that while at the Police, the Police “tortured” him. Like Lukwago he did not explain what the Police did to amount to torture. He claimed that he lost his manhood due to the torture. No evidence however was available to prove this neither did he complain about it when the complaint was filed. In the circumstances I am unable to make a finding that Amanya Moses was tortured. Asadu Mugerwa testified that on the day

of his arrest the police beat him up. He did not explain the nature of the beating again making it difficult for me to ascertain whether the beating amounted to torture.

Suleiman Kanata did not make any claims about being tortured.

The evidence about torture was poorly led although the complainants were represented by two lawyers. There was no attempt to prove the ingredients of what amounts to torture. Without the necessary evidence/facts I have no option but to make a finding that the allegations about torture were not proved.

The complainants all complained about the bad conditions at Kigo Prison. Lumago testified about being made to clean faeces with bare hands and being forced to carry heavy loads. Amanywa said they were made to dig everyday in the shambas where they used to cultivate crops yet he was on remand. He complained of poor food because they fed on beans infested with weevils. He further complained of sleeping on bare cement floor without blankets. Asadu Mugerwa on his part also testified about working in the prison farm for the 15 months he was in Kigo. Suleiman Kanata complained of poor food at Kigo which he said consisted of rotten posho and beans. He now has ulcers, headaches and sweats which he attributes to the bad condition at Kigo Prison. He talked of forced work in shambas.

The question to decide is whether the conditions and the treatments complained of amount to cruel, inhuman and degrading treatment or punishment. What amounts to cruel, inhuman and degrading treatment is also not defined by the Constitution or any other law in Uganda. This

however is implicitly defined under Article 16 of the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 1984 as acts which are cruel, inhuman and degrading but less severe so as not to amount to torture.

Like in the case of torture the evidence was not well led to prove cruel, inhuman and degrading treatment or punishment. What comes out are complaints about the conditions in Kigo Prison, conditions which according to the evidence were bad. I am not inclined to hold this as deliberate treatment of the complainants because the bad food and lack of beddings is a common complaint in Uganda prisons – conditions suffered by all Ugandan prisoners.

It remains for me discuss the final issue which is whether the complainants are entitled to any compensation and if so how much. It has been proved to the satisfaction on the Tribunal that the right to liberty of all the complainants were violated contrary to Article 23 of the Constitution. Article 23(7) of the Constitution provides that a person unlawfully arrested, restricted or detained is entitled to compensation from the authority that committed that unlawful act. In this complaint the police illegally detained the complainants for over two months. It follows that Government through the Attorney General must pay compensation to the complainants. The Tribunal so finds that all the complainants are entitled to compensation.

How much compensation are the complainants entitled to? The police in obvious contravention of the law kept the complainants in custody without court appearance. Without any lawful explanation as to why this was done I find that this was a deliberate act, a factor which I should bear in mind when

assessing the amount of compensation. I also take into account the fact that the accused must have been innocent having been detained in Kigo for a further 15 months and the cases against them dropped without explanation. I also take into account the period of illegal detention which is 59 days given that the police could only legally hold the complainants in their custody for no more than 48 hours. Bearing all these in mind I award each of the complainants U.Shs15,000,000= (Uganda Shillings Fifteen Million) as compensation for the breach of their right to liberty.

I also award interest at the rate of 6% payable from the date of this decision until payment in full. The following orders are therefore made:

1. Respondent to pay the sum of U.Shs15,000,000= to each of the complainants for breach of their right to liberty.
2. Interest of 6% on the sum awarded calculated from the date of this decision until payment in full.
3. Costs to be taxed by the Registrar, taking into account the performance of the advocates for the Complainants.

DATED at Kampala on _____**12th**_____ day of _____**April**_____2006.

J.M. ALIRO-OMARA
PRESIDING COMMISSIONER