

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. 64 of 2021**

**1. THE UGANDA JOURNALISTS ASSOCIATION
2. TIMOTHY MURUNGI
3. HENRY SEKANJAKO ::: APPLICANTS**

VERSUS

**1. THE ATTORNEY GENERAL
2. THE CHIEF OF DEFENCE FORCES
3. LT. COL. NAMANYA NAPOLEONE
4. CAPT. JESSY ODWENYI
5. L/CPL ZIRIMENYA KASSIM
6. CPL. NIMUSIIMA JUSTINE
7. PTE WASSWA PETER
8. PTE TSAME IMRAN
9. PTE KISAKYE VICTORIA
10. PTE OPIYO ISAAC ::: RESPONDENTS**

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

[1] The applicants brought this application by Notice of Motion under Article 50 of the Constitution of the Republic of Uganda, Sections 3, 4, 6 & 9 of the Human Rights Enforcement Act, 2019 (now Cap 130), Rules 7 & 8 of the Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules, 2019 and Section 98 of the CPA seeking for the following declarations and orders;

a) Declarations that the respondents violated the following rights and freedoms of the 2nd and 3rd applicants;

(i) The right to freedom of the press and other media under Article 29(1)(a) of the Constitution of the Republic of Uganda.

(ii) The right to dignity and freedom from torture, inhuman and degrading treatment under Articles 24 and 44(a) of the Constitution of the Republic of Uganda.

- (iii) The right to freedom of movement, speech, conscience, opinion, assembly and association under Article 29(1) of the Constitution of Uganda.
- (iv) The right to practice their profession and carry out their lawful occupation, trade or business under Article 40(2) of the Constitution of Uganda.

b) Orders for;

- (i) Compensation, damages, restitution/ rehabilitation of the 2nd and 3rd applicants by providing medical and psychological care.
- (ii) Cessation of the continued violation of the human rights and freedoms of the 2nd and 3rd applicants and other journalists.
- (iii) Verification of the true facts of the matters involved in this case and a public disclosure of the truth by and at the cost of the respondents.
- (iv) A public apology including acknowledgement of the facts and acceptance of responsibility by the respondents.
- (v) Guarantees of non-repetition.
- (vi) Costs of the application.

[2] The grounds upon which the application is based are summarized in the Notice of Motion and also set out in the affidavits in support of the application deposed by Timothy Murungi (the 2nd applicant) and Henry Sekanjako (the third applicant). In his affidavit, **Timothy Murungi** stated that he is a journalist working with the New Vision as an Assistant Visual Editor and a member of the Uganda Journalist Association. He stated that he is the manager of the photo desk at the New Vision and as part of his duty, he is required to go to the field to cover stories and to contribute at least 10 photographs per day. On 17th February 2021, he was deployed to cover a story about the former presidential candidate, Mr. Kyagulanyi Sentamu Robert, who was going to present a petition to the United Nations Human Rights Office in Kampala about the abductions and disappearance of his supporters. The deponent and other journalists went to the United Nations offices and found Uganda police officers having formed a cut-off point/road block and stopped

them from proceeding beyond. He decided to take photos from the cut-off point as he waited for Mr. Kyagulanyi to return from the meeting. After about 15 minutes of taking photos, a military police car arrived and officers of the UPDF including the 4th-10th respondents jumped off the car and started assaulting the individuals who were at the cut-off point including him and the other journalists. Immediately after, Lt. Col. Namanya Napoleone who was the commander of the officers issued instructions to the 4th -10th respondents to beat the deponent and the other journalists.

[3] Timothy Murungi further stated that during the fracas, he was chased down by officials of the UPDF, who assaulted him, hit him on the head using a baton and he sustained serious bodily injuries. He stated that after running for a few meters, he started feeling weak, dizzy and out of breath. His fellow journalists asked him to sit down after noticing that he was bleeding profusely. Due to the brutal assault and injuries sustained on the head and at the back, he was rushed to hospital for urgent medical attention. He stated that up to the date of filing the suit, he still suffered from constant headaches, body pain, scary flashbacks, night mares and insomnia. He averred that the actions of the UPDF soldiers were inhuman, cruel and degrading to his dignity and person as a journalist. He also averred that there have been consistent and systematic attacks and assault of journalists which are aimed at intimidating them and preventing them from freely practicing their profession. He finally averred that if the said acts are not condemned and guarantees of non-repetition given, the respondents shall continue with their illegal and wrongful acts. He concluded that it is in the interest of justice and fairness that the application is granted.

[4] In his affidavit, **Henry Sekanjako** (the third applicant) stated that he was a senior journalist working with the New Vision and a member of the Uganda Journalists Association. He stated that he was deployed to cover former presidential candidate, Kyagulanyi Sentamu, who was going to present a petition to the United Nations Human Rights Office about the abductions and

disappearances of his supporters. Upon arrival to the UN Offices, he and the other journalists were blocked by military police from accessing the said offices whereof he decided to wait from outside the premises. While waiting from outside, the deponent saw a military police patrol vehicle making several rounds of the area. The vehicle then approached where the deponent and other journalists were waiting from and ordered them to vacate the premises. At this point, the 4th to 10th respondents descended upon the deponent and other journalists under the direct command of the 3rd respondent. They were attacked with tear gas and were battered indiscriminately with batons and other unknown objects.

[5] The deponent (Henry Sekanjako) further stated that during the said scuffle, he was brutally beaten up and he sustained several injuries on his right hand and the back. He was rushed to hospital for urgent medical attention. He was also mentally tortured by the occurrence. He further stated that his rights as a journalist were abused. He averred that the said actions by the security operatives were high handed, unjustified and done in an attempt to curtail and illegally stop him from performing his constitutional mandate and duty of covering news for the general public. The actions therefore violated his fundamental rights and freedoms guaranteed under the law; which actions ought to be condemned and stopped by the Court. He concluded that it is in the interest of justice and fairness that the application is granted.

[6] The respondents opposed the application through an affidavit in reply deposed by **Col. Moses Wandera**, a Deputy Chief of Legal Services, Uganda Peoples Defence Forces (UPDF). He stated that the application was defective on account of the 1st applicant's lack of a representative order or a formal resolution to institute the suit on behalf of other individuals. He averred that the UPDF and other security agencies were not engaged in any systematic assault of journalists in Uganda and that it was in the interest of justice, good

conscience and equity that the orders sought against the respondents should not issue.

Representation and Hearing

[7] At the hearing, the applicants were represented by **Mr. Kaganzi Lester, Mr. Owiny Michael** and **Mr. Muwanga Isaac Earnest** jointly from M/s Kaganzi & Co. Advocates and M/s Ochieng Associated Advocates & Solicitors. The respondents were represented by **Mr. Uwizera Franklin**, a State Attorney from the Chambers of the Attorney General. It was agreed that the hearing proceeds by way of written submissions which were duly filed by both counsel. I have considered the submissions in the course of determination of the matter before Court. In their submissions, Counsel for the respondents raised preliminary points of law which I will first deal with.

1st Preliminary Objection: There is no evidence of service of court process on the 3rd – 10th Respondents

Submissions

[8] It was submitted by Counsel for the respondents that the applicants offended the provision under Order 5 rules 2 and 3 of the CPR by failing to serve court process on the 3rd – 10th respondents yet they seek orders against them. Counsel prayed to Court to dismiss the application with costs as against the 3rd – 10 respondents.

[9] In response, Counsel for the applicants stated that when the matter came up for hearing on 26th May 2021, the State Attorney, Franklin Uwizera appearing for the Attorney General and accompanied by a legal officer from the Ministry of Defense, Ms. Carol Binomugisha, confirmed to court that the Attorney General was representing all the respondents. Indeed, the Attorney General (1st respondent) went ahead to file an affidavit in reply on 16th June 2021 which did not specify that it was for a particular respondent. Counsel

submitted that this left one conclusion that the reply was filed on behalf of all the respondents.

Determination by the Court

[10] It is correct as submitted by Counsel for the applicants that the record indicates that when the State Attorney representing the 1st respondent appeared in Court when the case first came up on 26th May 2021, he represented to Court that he was representing all the respondents. He conceded that the respondents had been served, explained why they had not yet filed a reply and asked for time to explore a negotiation between the parties. Indeed, when an affidavit in reply was filed, it was made in a manner that did not specify that it was for any particular respondent(s). As such, upon such representation, the 1st respondent is estopped from shifting goal posts. I am convinced that the service of process upon the Attorney General was sufficient service upon the respondents who were all represented in court by the office of the Attorney General. This preliminary point of law is therefore devoid of merit and is accordingly overruled.

2nd Preliminary Point: The 1st Applicant does not have locus to institute the application.

Submissions by Counsel for the Respondents

[11] Counsel for the respondents submitted that an application in public interest cannot be lodged as a human rights enforcement application and ought to be in the Constitutional Court. Counsel argued that the 1st applicant having lodged this application seeking orders affecting all journalists, it is an application to enforce rights of all journalists and was therefore brought in public interest. Counsel cited the case of *Muhindo Morgan v Uganda Communications Commission & AG HCCM No.130 of 2021* to the effect that applications in public interest should be handled by the Constitutional Court under Rule 7(2) of the Human Rights (Enforcement) Rules 2019. Counsel submitted that the 1st applicant did not have the requisite locus to bring an

action for human rights enforcement because it is not a natural person; and secondly, enforcement of rights on behalf of others ought to be made to the Constitutional Court.

[12] On the second leg of the objection, Counsel for the respondents argued that the 1st applicant lacked authority to institute the present action. Counsel submitted that it is trite law that a suit instituted in the name of a company without authority of the directors is incompetent. Counsel cited the decision in *Bugerere Coffee Growers Ltd v Ssebadduka & Anor [1970] 1 EA 147* where it was held that when companies authorize the commencement of legal proceedings, a resolution or resolutions have to be passed either at a Company or Board of Directors meeting and recorded in the minutes. Counsel submitted that although the 1st applicant's president deposed an affidavit in rejoinder stating that the 1st applicant had the requisite authority to institute the suit through a resolution marked B, he never annexed the said resolution and the same was never served onto the respondents. Counsel argued that the net effect was that there was no authority to institute the suit. Counsel prayed for dismissal of the suit on that account.

Submissions by Counsel for the Applicants

[13] In a response contained in the applicants' submissions in rejoinder, Counsel for the applicants submitted that Section 3(1) of the Human Rights (Enforcement) Act 2019 provides that in accordance with Article 50 of the Constitution, a person or organisation who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened may, without prejudice to any other action with respect to the same matter that is lawfully available, apply for redress to a competent court. Counsel submitted that the orders sought in the instant application are provided for under Section 9 of the Human Rights (Enforcement) Act, 2019. Counsel argued that Article 50 coupled with Sections 3 & 9 of the Human

Rights Enforcement Act give the 1st applicant locus to bring the instant application for the orders prayed for.

[14] Regarding the proof of authority to institute the application, Counsel for the applicants submitted that in the affidavit in rejoinder, the president of the 1st applicant, who has capacity to represent the association, averred that the 1st applicant authorized and/or ratified the institution of the action. Counsel relied on the decision in *Robert Asiimwe Akanga & Anor v Attorney General & 2 Others HCMA No. 7 & 8 of 2022* for the view that cases of human rights are not subjected to the strict rules of procedure and evidence; and courts are mandated to examine substance and not mere form when dealing with fundamental human rights of citizens. Counsel prayed that the objection be overruled.

Determination by the Court

[15] The first contention by Counsel for the respondents under this objection is that since the 1st applicant was bringing this application on behalf of other persons, it followed that they were bringing the application in public interest and they ought to have filed the application in the Constitutional Court. Counsel placed reliance, for this argument, on the provision under *Rule 7(2) of the Judicature (Fundamental and Other Human Rights and Freedoms (Enforcement Procedure) Rules 2019*. I am unable to appreciate as to why Counsel for the respondents attempted to fish out a provision under Rules despite the clear presence of relevant provisions under an Act of Parliament; the *Human Rights (Enforcement) Act Cap 12*.

[16] Section 3 of the Human Rights (Enforcement) Act clearly provides as follows;

“(1) In accordance with article 50 of the Constitution, a person or organisation who claims that a fundamental or other right or freedom guaranteed under

the Constitution has been infringed or threatened may, without prejudice to any other action with respect to the same matter that is lawfully available, apply for redress to a competent court in accordance with this Act.

(2) Court proceedings under sub-section (1) may be instituted by –

- a) a person acting on behalf of another person who cannot act in their own name;*
- b) a person acting as a member of, or in the interest of a group or class of persons;*
- c) a person acting in public interest; or*
- d) an association acting in the interest of one or more of its members.”*

[Emphasis added]

[17] In light of the above clear provision of the law, it is clear to me that the argument by Counsel for the respondents under this point of objection is not only totally devoid of merit but is also raised out of context. Under the existing legal regime for enforcement of human rights and freedoms, a person has *locus standi* to bring an action on behalf of another who cannot act on their own behalf; as a member of a group or in the interest of a group or class of persons; or as an association acting in the interest of one or more of its members. The applicant does not have to be a natural person; it may be an organization or association. What matters is that such organization or association is registered and thus exists in law.

[18] Consequently, and contrary to the argument of learned Counsel for the respondents, it is clear that the 1st applicant did not have to commence public interest litigation in the Constitutional Court if it were to properly bring an action for enforcement of the rights and freedoms of its members. It was clearly within their rights to bring the present action; which is properly before the Court. Similarly, the 1st applicant did not need to be a natural person to commence the present proceedings. Thirdly, they did not need a specific resolution to bring the action. It was established according to the evidence on

record that the 1st applicant was registered as a company limited by guarantee. It follows, therefore, that as an association, it has ostensible authority under the law to bring an action for enforcement of the human rights and freedoms of any of its members. The question of authority to bring the action could only arise if there was an internal disagreement over the matter; that is, if the filing was contested by one or some of the members of the association.

[19] In any case, it is provided for under Section 6(5) of the Human Rights (Enforcement) Act than no “*suit instituted under this Act shall be rejected or otherwise dismissed by the competent court merely for failure to comply with any procedure, form or any technicality*”. As such, even if I were to find that the 1st applicant required evidence of a specific resolution authorizing the filing of this action, I would still have found such as a matter of form or technicality that could not defeat the action. In all, therefore, the second preliminary point of objection is totally devoid of merit and is rejected.

Issues for Determination by the Court

[20] Three issues are up for determination by the Court namely;

- a) *Whether the named rights of the 2nd and 3rd applicants were violated by the respondents?*
- b) *Whether the respondents are liable for the violation?*
- c) *What remedies are available to the applicants?*

Resolution by the Court

Issue 1: Whether the named rights of 2nd and 3rd applicants were violated by the respondents?

[21] The allegation by the applicants is that a number of their fundamental rights and freedoms were violated, namely; the right to freedom from torture, cruel, inhuman and degrading treatment, the right to freedom of the press and media, and the right to practice their trade or profession. Fundamental rights

and freedoms are embedded in a country's constitution and the international bill of rights. In Uganda, Chapter 4 of the Constitution contains the bill of rights. Article 20 of the Constitution of Uganda provides as follows;

- 1) Fundamental rights and freedoms of the individual are inherent and not granted by the state.
- 2) The rights and freedoms of the individual and groups enshrined in this chapter shall be respected, upheld and promoted by all agencies of government and all persons.

[22] Under Article 50(1) of the Constitution, "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". Consequently, Section 3(1) of the Human Rights (Enforcement) Act Cap 12 provides that; "In accordance with article 50 of the Constitution, a person or organisation who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened may, without prejudice to any other action with respect to the same matter that is lawfully available, apply for redress to a competent court in accordance with this Act".

[23] With the above legal background, I will now proceed to investigate as to whether any of the named rights of the applicants were violated as alleged.

The right to freedom from torture, cruel, inhuman and degrading treatment.

Submissions by Counsel for the Applicants

[24] Counsel for the applicants cited the provision under Article 24 of the Constitution which prohibits treatment that would amount to torture, cruel, inhuman and degrading treatment and Article 44 of the Constitution which makes the right non-derogable. Counsel also cited Section 2(1) of the Prevention and Prohibition of Torture Act, 2012 which defines torture. Counsel referred to the affidavits in support of the application wherein it was stated that

the UPDF officers assaulted and injured the 2nd and 3rd applicants in a manner that amounted to inhuman and degrading treatment.

Submissions by Counsel for the Respondents

[25] Counsel for the respondents submitted that the applicants were not tortured by the officials of the UPDF as alleged. Counsel submitted that the annexures to the affidavits in support are opinions of experts in the science of medicine and contain hearsay evidence of experts who have not sworn affidavits to prove their opinions and cannot be the basis of the court's finding. Counsel also submitted that the applicants have not demonstrated or proven in evidence that there is a systematic conduct targeting journalists in the country.

Determination by the Court

[26] Article 24 of the Constitution of Uganda guarantees freedom from torture, cruel, inhuman or degrading treatment or punishment. This right is non-derogable and is absolute according to Article 44(a) of the Constitution. Under Section 2 of the Prevention and Prohibition of Torture Act Cap 130, torture is defined as *“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 consent or acquiescence of any person whether a public official or other person acting in an official or private capacity for such purposes as – (a) obtaining information or a confession from the person or any other person; (b) punishing that person for an act he or she or any other person has committed or is suspected of having committed or planning to commit; or (c) intimidating or coercing the person or any other person to do, or to refrain from doing, any act”*.

[27] According to Section 2(2) of the Prevention and Prohibition of Torture Act, “severe pain or suffering” means the prolonged harm caused by or resulting from the intentional infliction or threatened infliction of physical pain or suffering; or the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to

disrupt profoundly the senses or the personality; or the threat of imminent death; among others. Under Section 2(3) of the Act, the acts constituting torture shall include the acts set out in the second schedule to the Act. These include physical acts such as systematic beating, head banging, punching, kicking, striking with truncheons, riffle butts; electric shocks; being tied or forced to assume a fixed and stressful body position; harmful exposure to elements such as sunlight and extreme cold; among others. They also include mental or psychological kind of torture such as blindfolding; threatening the victim or his or her family with bodily harm, execution or other wrongful acts; confining a victim incommunicado, in a secret detention place or other form of detention; confining the victim in a solitary cell; among others.

[28] On the case before me, the evidence adduced by the 2nd and 3rd applicants is that while they were covering and taking photographs over the occasion of Mr. Robert Kyagulanyi's presentation of a petition to the United Nations Human Rights Office in Kampala about the abductions and disappearances of his supporters, they were brutally attacked, battered indiscriminately, and assaulted by officers of the UPDF causing them to sustain bodily injuries. The applicants attached copies of photographs showing the injuries sustained by the 2nd and 3rd applicants. The photographs show the 2nd and 3rd applicants in a blood-stained state. The applicants further adduced evidence that they were rushed to hospital for medical attention. They attached copies of medical documents as proof of the injuries found to have been sustained and of the treatment given to them. This evidence was not controverted by the respondents.

[29] From the above evidence, it has been established that security officers that included the 4th to 10th respondents, under the command of the 3rd respondent, intentionally inflicted physical pain upon the 2nd and 3rd applicants. It is ascertainable from the present facts that the purpose of infliction of such pain was to intimidate or coerce the said applicants or any

other persons to refrain from doing coverage of the occasion taking place at the UN Human Rights Office. This evidence places the acts by the security officers within the ambit of torture, inhuman or degrading treatment in accordance with the provision under Section 2(1), (2) and (3) of the Prevention and Prohibition of Torture Act. This ground of the application is therefore made out.

The right to freedom of speech and expression.

Submissions by Counsel for the Applicants

[30] Counsel for the applicant cited the provision under Article 29(1)(a) of the Constitution of the Republic of Uganda which provides that every person shall have the right to freedom of speech and expression which shall include freedom of the press and other media. Counsel submitted that the 2nd applicant in his affidavit explained that he was required to go to the field and cover various stories, and that he had to contribute at least 10 photographs per day. The 3rd applicant also stated that he was required to contribute at least two stories for the newspaper and two online stories per day. The two applicants showed that owing to the conduct of the respondents, their freedom was violated. Counsel for the respondents made no submissions on this ground.

Determination by the Court

[31] Article 29(1)(a) of the Constitution of Uganda provides that every person shall have a right to freedom of speech and expression which shall include freedom of the press and other media. The 2nd and 3rd applicants led evidence showing that they were assaulted and sustained bodily injuries while they were covering news stories and taking photographs in the course of their business as journalists. This evidence was not rebutted by the respondents and has been found by the Court to be credible. I agree with the applicants that the conduct by the security personnel presented an attack on the applicants' freedom of the press and media and constituted a violation of the applicants' right to practice their profession as journalists. The applicants have therefore satisfied the Court on a balance of probabilities that their right to freedom of

the press and the media was violated by the security officials. Issue 1 is therefore answered in the affirmative.

Issue 2: Whether the respondents are liable for the violation?

[32] It is shown from the evidence by the applicants that the army officers that assaulted them included the 4th to the 10th respondents and were operating under the command of the 3rd respondent. There was no contrary evidence disputing this evidence of identification. According to Section 10(1) of the Human Rights Enforcement Act, a public officer who, individually or in association with others, violates or participates in the violation of a person's rights or freedoms shall be held personally liable for the violation notwithstanding the state being vicariously liable for his or her actions. The applicants have therefore satisfied the Court that the 3rd to the 10th respondents are personally liable for the offensive conduct.

[33] Regarding the 1st and 2nd respondents, it is not disputed that army officers are servants or agents of Government and therefore the Attorney General is vicariously liable for their actions provided the same were done in the ordinary course of their employment. It is a settled position of the law that the government is vicariously liable for the acts of its security personnel whether the said acts are done negligently, wantonly, criminally or unlawfully. See: *Muwonge v Attorney General* [1967] EA 17; *AG v Hajji Adam Farajara* [1977] HCB 29; *Uganda Commercial Bank v Kigozi* [2002] EA 305 at 306 and *Kaggwa Vincent v Attorney General* HCCS No. 391 of 2014.

[34] In this case, while it is clear that the Attorney General was sued as the official legal representative of the Government, it is not clear in which capacity the 2nd respondent (the Chief of Defence Forces) was sued. It is also not clear whether it was the holder of the office then that was sued or the office. What is clear is that the said office is not a legal personality and no office holder was identified and linked to the impugned conduct. The action against the 2nd

respondent falls neither under vicarious liability nor under personal liability. I have, therefore, found no proof of liability as against the 2nd respondent. On the other hand, the 1st respondent (the Attorney General) is vicariously liable for the offensive conduct of its officers, servants or agents.

Issue 3: Whether the applicants are entitled to the remedies claimed?

[35] The applicants sought a number of declarations and orders for compensation, damages, restitution/ rehabilitation of the 2nd and 3rd applicants by providing medical and psychological care. They sought further orders for verification of the facts of the matter involved and public disclosure of the truth by the respondents; a public apology including acknowledgement of the facts and acceptance of responsibility by all the respondents, plus guarantees of non-repetition. From my findings above, two declarations shall issue, namely; a declaration that the rights of the 2nd and 3rd applicants to dignity and freedom from torture, inhuman and degrading treatment under Articles 24 and 44(a) of the Constitution of the Republic of Uganda were violated by the respondents except the 2nd respondent; and a declaration that the right of the 2nd and 3rd applicants to freedom of the press and the media under Article 29(1)(a) of the Constitution of the Republic of Uganda were violated by the respondents except the 2nd respondent.

[36] Regarding orders for compensation, all the claims listed by the applicants while seeking for compensation or restitution boil down to a claim for general damages. The law on general damages is that the damages are the direct natural or probable consequence of the act complained of and are awarded at the discretion of the court. The purpose of the damages is to restore the aggrieved person to the position they would have been in had the breach or wrong not occurred. See: *Hadley v Baxendale* (1894) 9 Exch 341; *Charles Acire v. M. Engola*, HC Civil Suit No. 143 of 1993 and *Kibimba Rice Ltd v Umar Salim*, SC Civil Appeal No. 17 of 1992.

[37] In the assessment of general damages, the court should be guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered. See: *Uganda Commercial Bank v Kigozi* [2002] 1 EA 305. Under the law, general damages are implied in every breach of contract and every infringement of a given right. In a personal injuries claim, general damages will include anticipated future loss as well as damages for pain and suffering, inconvenience and loss of amenity. More particularly, in the assessment of damages arising out of a constitutional violation, the court has to bear in mind that although infringement of a person's liberty per se imputes damage, a plaintiff needs to prove some damage suffered beyond, say, the mere fact of unlawful arrest or detention; otherwise, the mere breach may only entitle a plaintiff to nominal damages. This however may not be the same in the case of acts of torture, cruel, inhuman or degrading treatment whose severity may exist even without leaving physical footprints.

[38] In the present case, having found that the applicants were subjected to acts amounting to torture, inhuman and degrading treatment, and that their right to freedom of the press and the media was violated; it follows that the applicants are entitled to compensation by way of damages for such wrongful conduct on the part of the respondents. Regarding the extent of the harm occasioned to the applicants and the assessment of the appropriate measure of damages to be awarded to the applicants, I have taken into account the facts surrounding the offensive conduct and the physical and psychological pain suffered by the 2nd and 3rd applicants at the hands of the 3rd to 10th respondents, the servants or agents of the 1st respondent. In view of the evidence and circumstances before me, I find the sum of UGX 75,000,000/= (Uganda Shillings Seventy-Five Million only) appropriate as general damages to each of the two applicants and I award the same to the 2nd and 3rd the applicants respectively.

[39] The Applicant further claimed for verification of the facts of the matter involved and public disclosure of the truth by the respondents, a public apology including acknowledgement of the facts and acceptance of responsibility by all the respondents, plus guarantees of non-repetition. The applicants also sought for rehabilitation, medical and psychological care. The respondents generally denied the assertions by the applicants. The Court has made its findings of facts and the law. I do not see any potential progress in any further efforts that could be made towards achieving verification of the facts or public disclosure. Similarly, in a case of alleged violation of human rights, I do not see potential in directing a respondent that has denied the incident to apologize or acknowledge personal responsibility for the very conduct they have denied. Such apology or acknowledgment cannot be forced; it could arise if the matter was resolved amicably. In the circumstances, it is my view that given the findings by the Court, the sums awarded in damages will suffice to meet the ends of justice in this matter.

[40] In line with Section 27 of the CPA, the applicants are awarded the costs of the application.

[41] In all, therefore, the application by the applicants succeeds and is allowed against the 1st, the 3rd to 10th respondents jointly and severally for the following declarations and orders;

- (a) A declaration that the rights of the 2nd and 3rd applicants to dignity and freedom from torture, inhuman and degrading treatment under Articles 24 and 44(a) of the Constitution of the Republic of Uganda were violated by the respondents except the 2nd respondent;
- (b) A declaration that the rights of the 2nd and 3rd applicants to freedom of the press and the media under Article 29(1)(a) of the Constitution of the Republic of Uganda were violated by the respondents except the 2nd respondent.

(c) An order dismissing the application as against the 2nd respondent with no order as to costs.

(d) An order for payment by the respondents (excluding the 2nd respondent) of a sum of UGX 75,000,000/= (Uganda Shillings Seventy-Five Million Only) as general damages to each of the 2nd and 3rd applicants.

(e) Payment by the respondents (excluding the 2nd respondent) of the taxed costs of the application.

It is so ordered.

Dated, signed and delivered by email this 13th day of November, 2024.



Boniface Wamala

JUDGE