



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

COMPLAINT UHRC 900/2000

DAMULIRA ABUBAKER ET AL COMPLAINANTS

-AND-

ATTORNEY GENERAL RESPONDENT

DECISION

The complainants brought this complaint against the respondent seeking compensation for alleged violation of their right to protection from torture, cruel, inhuman and degrading treatment. The 1st complainant is a 32 year old –teacher at Pioneer Infant and Primary school Kireka. The 2nd complainant is a 34 year old-self employed and a resident of Zone B. Kireka. The 3rd complainant is a 30 year old-teacher at Pioneer School, Kireka. The 4th complainant is a 32 year old-driver and a resident of Kireka.

The complainants testified that in 2000 while in detention at Nakifuma Prison, they were subjected to torture, cruel, inhuman and degrading treatment. That they were given little or no food, ordered to dig large areas and beaten severely if they did not keep up the pace wanted by the officer-in-charge. They further alleged that they

were denied visitors. They argued that the actions allegedly committed against them by the said Officer-In-Charge Nakifuma Prison amounted to violation of their right to protection from torture, cruel, inhuman and degrading treatment for which they hold the respondent vicariously liable.

The respondent through his representative Ms Nabakooza Margaret denied the complainants' accusations.

ISSUES

1. Whether the respondent's agents/servants violated the complainants' right to protection from torture, cruel, inhuman and degrading treatment.
2. Whether the complainants are entitled to compensation.
 - (i) Whether the respondent's agents/servants violated the complainant's right to protection from torture, inhuman and degrading treatment;

The Macmillan School of Dictionary at page 779 defines 'torture' as:

'Extreme physical pain that someone is forced to suffer as a punishment or as a way of making them give information'.

It further defines 'to torture' as:

'to hurt someone deliberately in a very cruel way as a punishment or in order to make them give information'.

The Convention Against Torture (CAT) and other Cruel, Inhuman and Degrading Treatment or Punishment, 1984 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 of having committed or intimidating or coercing him or a third person for any reason based on discretion 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”.

The words ‘cruel, inhuman and degrading treatment or punishment’ are added to extend to the widest possible protection against abuse whether physical or mental. The constitution of the Republic of Uganda under article 24 prohibits the violation of an individual’s right to freedom from torture, cruel, inhuman and degrading treatment or punishment. It was also emphasized in ATTORNEY GENERAL VS SALVATORI ABUKI Constitutional Appeal No.1/1998 that the freedoms enshrined under article 44 (a) of the constitution are non derogable which include freedom from torture, cruel, inhuman and degrading treatment or punishment.

Torture is further outlawed by several international human rights instruments to which Uganda is signatory. (See Articles 4 and 5 of the African Charter on Human and Peoples Rights (ACHPR), and Article 7 of the International Covenant on Civil and Political Rights (ICCPR).

The actions committed against the complainants would constitute 'torture' if the same were proved.

Damulira Abubaker testified that they reached the prison at 10:00am. That the following day, their sister brought for them food and water. The Officer-In-Charge, Namusisi gave it to other prisoners.

He added as follows:

“The next day in the morning, Namusisi ordered us to get out. She ordered the Prisoners who had stayed longer and the Local Defense Unit (LDU) to beat us. They beat us with sticks randomly. We were standing. I was beaten on the back and right arm. We first stood then later squatted in lines. We were beaten also while squatting. I was beaten for almost 30 minutes. I can not count the strokes. They were too many.”

Damulira Abubaker further testified that the following morning they were beaten the way they had been beaten the previous day. That it was on orders of the Officer-In-Charge. That they were singled out for torture because they were accused of destroying food.

Damulira added as follows:

“We were taken to the garden. On arrival the O/C ordered us to lie down. She ordered other prisoners to cane us. We were given 5 strokes each. We dug up to 4:00pm. When we arrived the prison, we were given very dirty

water to bathe with. We were ordered to undress and bathe in the open (outside the ward within the prison compound). We complied. As we bathed, they beat us. In Islam it is not allowed to show one's nakedness to the public. The bathing in the public went on daily”.

Nsiko Yusuf testified that in 2000, they were remanded to Nakifuma Prison and Namusisi was the Officer-In-Charge then. That they stayed there around one week and were denied visitors. That they arrived at the prison during morning hours and in the afternoon they were taken to the garden to dig at Nalubabwe.

He said;

“While in the garden, the Officer–In-Charge ordered us to remove our clothes and remain only in under wear. We worked while in underwear throughout. We were beaten as we worked. At the prison, they would single us out for beating. The O/C ordered a fellow prisoner called Oyango to beat us. Even her self also beat us. She beat especially Kavuma so badly. When we lodged this complaint, here we all had wounds on the back and hands. Our hands were swollen due to too much work and beatings. We were beaten daily. They beat us whenever they felt like. At one time I fell sick and requested for drugs but I was instead beaten. When our sister brought us food, it was given to other prisoners. Other prisoners were allowed to receive visitors and their food was never removed from them. We were later acquitted.”

Nsiko Muhammad testified that in September 2000 they were remanded to Nakifuma Prison and in the evening when they got out for food, the O/C Ms Namusisi instructed her gunmen to tight mark them. She referred to them as “Bibanja men.” That on arrival at the prison, his spectacles were removed from him for custody. That he tried to explain to the authorities that he needed them throughout to enable him see properly but he was ignored. He said:

“While in the field, each one of us was allocated a supervisor armed with a stick. Oyango was one of them. These men ensured that we dug throughout. Whenever we took a break we were caned. We had to dig at a pace dictated by them. Those who were deemed to be digging slowly were beaten until they speeded up. All of us were beaten. We dug from 6:00am to 10:00am. Our clothes had been confiscated. Kavuma was left only in the pant. The rest of us had trousers with shirts confiscated. Oyango confiscated them on the orders of the O/C Ms. Namusisi. At 12:00 noon we were taken to another garden to dig. We were very thirsty and hungry. We dug again under the same circumstances exactly. We were monitored by men as we dug. Other prisoners were not treated this way. We were beaten occasionally as we dug. At some point I fainted and became unconscious. I regained consciousness while at Nakifuma Health Centre. It was around 6:00pm. I realised I was on drip being guarded by a Kyaki called Aziz.”

Nsiko Muhammed further testified that he could move with the aid of a stick. That he had pain in the eyes and back and since then he can't read for more than 30minutes. That whenever he reads beyond 30minutes, he feels pain in the eyes

and eventually dozes and the doctor told him that this resulted from the working under the scorching sun.

Kavuma Samuel testified as follows:

“We were tortured throughout our stay there. We were beaten by the Officer-In-Charge Ms. Namusisi and warders. The O/C referred to us as bibanja men. We were taken to the garden to dig. We were beaten if we dug slowly. The following day at 6:00am, we were taken back to the garden. We dug under the same circumstances exactly. Those who dug slowly were beaten. We were beaten randomly with sticks especially on the backs. On Sunday our sister Lydia Nalunga brought us food but it was given to other prisoners. On Saturday we dug from 6:00am up to 9:00am. At 10:00a.m. we were taken to a different garden and dug till 6:00pm. We dug as we were beaten. We used to eat only at night and we were weak. Nsiko fainted from there. His spectacles were removed from him yet he could not see properly. My clothes were taken away from me but were returned to me as I went to the garden I dug in trousers because I was not given a shirt. We were beaten everyday until we left. We were guarded more strictly than other prisoners. We were given food but it was bad. Whenever we failed to eat we were accused of being wiseacres and beaten. Whenever I returned from the garden my trousers were removed from me and I remained in a pant. We were beaten as we went to bathe. I do not know why they discriminated us that way. I suffered wounds on the back, swollen buttocks, a wound on the right hand and I feel pain on the back, buttocks and chest.”

The testimonies of the complainants were consistent and appeared credible while testifying. During cross examination by learned counsel for the respondent Ms Nabakooza Margaret, the complainants maintained consistency. Their evidence was strengthened by the testimonies of CW5 Nalunga Lydia, and CW6 Dr.Barungi Thaddeus.

Nalunga Lydia (CW5) testified as follows:

“In 2000 I went to Nakifuma Prison to see my brothers who had been detained there. It was around lunch time. I had taken for them food and drinking water. I found there the Officer-In-Charge ,Ms Namusisi Cissy.I told her I wished to see my brothers. She gave me four plastic plates and asked me to pour food there for them but I told her that the plates were very dirty. I requested for water to wash them first. She said, “I will give this food to other prisoners. You are a wiseacre.” She made good her threat. She called out prisoners and gave them all the food and water I had taken for my brothers. She returned my utensils and I left. I never went back to the prison because she blocked me from seeing them again.”

Upon cross examination by the Respondent’s counsel, the witness remained consistent and insisted on the fact that she was denied access to her brothers and also supplying their food to other prisoners.

Dr. Barungi Thaddeus (CW6) testified in respect of the medical examination and he presented the medical reports. He examined the complainants on the 18th of September 2000.The medical examination on Ddamulira Abubaker revealed:

“Three resolving whip marks on the back” which he classified as bodily harm. The Doctor further testified that Ddamulira complained of chest pain which he could not confirm. The doctor observed that the marks were caused by whipping which have a high degree of support consistent with the alleged torture and that he expected no long term effects of whipping.

More so the Medical examination on Yusuf Nsiko revealed: Carouses on his hands which he classified as bodily harm. The Doctor observed that the cause was over exertion of the hands on a hard object for example over digging with a hand hoe and that carouses could disappear over time.

Further more that when Nsiko Muhammad went to Dr. Barungi Thaddeus, he complained of having been assaulted specifically pain in the back but didn't have any physical injuries on him. He subjected him to an X-ray on his lumbosacral (lower back). The Medical report showed no abnormality and he classified it as common assault. The Doctor observed that not every assault causes physical injuries and stated that an assault is simply a threat to use force or an application of force on some body without his will. He further stated that common assault cannot have long term effects.

In addition to the above, the medical examination on Kavuma Sam revealed multiple whip marks which were about a week old on the back and both arms which he classified as actual bodily harm and said he is likely to have recovered fully. The Doctor further testified that he did not administer any treatment to the complainants.

Upon cross examination by counsel for the respondent, the Doctor stated that the harm on Ddamulira was temporary and thus there was no disability, Nsiko Muhammad may or may not have been assaulted, Nsiko Yusuf's assault was temporary and the harm on Kavuma Sam also was temporary.

The respondent called one witness, the then Officer-In-Charge of Nakifuma Prison Ms. Namusisi Cissy. She testified that in 2000 she was the O/C Nakifuma Prison and confirmed to having received all the complainants as remand prisoners on a date she did not remember. That at 5:00pm a certain lady came with food, 2 mats and bed sheets and Friday was not visitation day yet the prisoners already had mats and blankets. She said:

“I told the lady that visitation day was on Sunday. But because it was her first time to come there I let her prisoners eat the food. I cautioned her to stick to the rules the next time. It is not true that I gave the food to other prisoners other than the ones intended. The following day she defied the instructions and returned with food. I asked her to leave the food. I didn't let her give it to her relatives. I gave them the mats. I rejected the bed-sheets because they were not allowed in the wards. Prisoners had one meal a day at 4:00pm. It was potatoes and beans. They kept some of it which they ate in the morning.”

Namusisi further stated that she worked in the gardens with Cpl. Namubiru, Wardress Nampala Florence and Warder Nsubuga Lawrence. That the gardens were about 1km away and they reached by walking and the prisoners worked from 10:00am to 4:00pm daily except weekends. That they used to order them to dig

properly and the *katikiros* assisted them in the supervision. She denied having caned the prisoners.

That the complainants spent about 5days in the prison and she personally supervised them work in the compound and gardens and was sure none of them was beaten.

She further added:

“On Monday morning we left for the garden. At around 12:23pm, I noticed one of the complainants had red eyes, I asked him what was wrong with his eyes he told me that his eyes have been unwell for a long time and that when it gets very hot he doesn't see. About 10minutes later, he collapsed. I asked him what the problem was and he said that he was tired and hungry. I stopped a bodaboda cyclist and he was taken to Nakifuma Health centre with the help of wardress Nampala and a katikiro. I followed up at around 2:00pm and found that he had been admitted. He was recommended for a drip because he was dehydrated. The following day, I went back to the Health centre and was informed that the patient's brother had been there with the intention of smuggling him away. I was told he was out of danger. I took him back to the prison. That same day they were released on bail.”

Upon cross examination by Nsiko Yusuf, Namusisi totally denied having tortured the complainants, refusing to give them food, undressing them and giving them medicine. She stated that maybe the injuries were sustained from somewhere else and not the prison. When cross examined by Ms Nasuna Rebecca, Commission

Counsel, she stated that the complainants had bruises on their backs and arms and one had red eyes. That they removed their shirts and she saw the bruises but she never recorded any where that they had bruises. That she didn't know the type of food the sister brought for the complainants and all that she was concerned about was to see that every prisoner ate food.

Upon further cross examination by me the witness said that she studied her O'level in Bulemezi. She joined S.1 in 1983 and she held a Senior Four (S.4) Certificate from Nakifuma Vision School in 1989. She further stated that she used her P.7 Certificate to join prisons and she applied at Luwero District Service Committee and that is the way she was recruited. She said that her S.4 Certificate is at Nakifuma for she never picked it up. On addition Namusisi was further cross examined by Ddamulira Abubaker and she said that she didn't know the minimum academic qualifications for a person to be an O/C Prison. His cross examination was generally about Namusisi's academic qualifications. Namusisi said that the practice was that prisoners bathed together at once and were guarded by warders. Namusisi contradicted herself when she said that:

“It is true I blocked your sister from giving you food because I feared that she would poison you”.

Yet in examination in chief she stated that she never blocked Nalunga from bringing food to the complainants. That it was not proper for the prisoners to be beaten. On further cross examination by Nsiko Muhammad, Namusisi stated that she took her application to the Establishment officer in 1979 and learnt of the position through the Sub County Chief of Bulemezi Kalagala and that her father

worked in that office. That she underwent a six-month training at Luwero District Head Quarters but the Identity card she produced before the tribunal was issued on 3rd May 1998 and the expiry date was December 31, 1998 and bore a recent photograph. The complainant put it to her that Nakifuma Vision School did not exist in 1989. About the torture, Namusisi totally denied having beaten the complainants and that she was transferred from Nakifuma to Buikwe and insisted that it was a normal transfer. She further stated that she learnt that Prisoners had rights and freedoms in 2005. Before then she didn't know and that she learnt about it when they had one month awareness training in Luzira in 2005. I noted that during the cross examination, Namusisi's demeanor changed. She turned combative, impatient, gave more explanations than answers, was sweating and generally uncomfortable.

Upon re-examination by the respondent's Counsel, Namusisi said that she was in S.4 in 1998 and not 1989 and that she had served as an O/C in six different places without facing any disciplinary issues. She insisted that her Human Rights knowledge was only enhanced after 2005 and this indeed leaves no doubt whether the respondent's agent tortured the Complainants who were remanded in the year 2000 before Namusisi's knowledge about the rights of Prisoners.

In TOMASI VS FRANCE [1992]15 EHRR 25, the Appellant was arrested on suspicion of terrorism. Medical evidence was adduced that he had received large blows on his body. The Government did not provide an alternative explanation on how the blows had been occasioned on the Appellant. The European Court of Human Rights held that –

“In the absence of any explanation by Government for the marks, which marks he did not have at the time of his arrest, it would be presumed as acts of torture by the respondents agents for which the respondents would be held vicariously liable.”

Similarly, the respondent’s response to the allegations is not supported and is therefore a bare denial. Although most of the complainant’s complaint was about the general poor living conditions in prisons like bad food and digging, there is also proof of inhuman and degrading treatment supported by the Medical reports of the police surgeon and the consistent testimonies of the complainants.

WHEREFORE guided by the above principle, I find on the balance of probabilities that the respondent’s agents violated the complainants’ right to protection from torture, cruel, inhuman and degrading treatment or punishment and the claim by the complainants of torture in the instant complaint are upheld.

(ii) Whether the complainant is entitled to compensation:

Having held that the respondent’s servants/agents violated the complainant’s right to protection from torture, cruel, inhuman and degrading treatment or punishment, it follows that he is entitled to compensation by the respondent.

Under Article 50 (1) of the constitution of the republic of Uganda 1995:

“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.”

Further 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.”

The actions of Namusisi Cissy against the complainants were inhuman, cruel and degrading in nature. The complainants were subjected to severe physical pain when they were whipped by the O/C Nakifuma Prison and the Katikiro. They were whipped any time the Officer-in-Charge wished and were made to bathe in the presence of all other people there by not according them the respect to their privacy, were undressed and left to dig in under pants, their food was given to the other prisoners brought by their sister Nalunga, one of the complainant’s spectacles confiscated there by worsening his eye sight, refusing to give one of the complainants medicine when he fell sick etc. Such actions must be condemned by all rightful thinking people.

I will further consider the right to protection from torture, cruel, inhuman and degrading treatment is an absolute right under article 44(a) of the Constitution of the Republic of Uganda.

In light of the above, I deem a figure of U. Shs 4,000,000= (Four Million Shillings) adequate compensation to the 1st complainant Ddamulira Abubaker for violation of his right to protection from torture, cruel, inhuman and degrading treatment. I so award.

I deem a figure of U. Shs4,000,000= (Four Million Shillings) adequate compensation to the 2nd complainant Yusuf Nsiko for violation of his right to protection from torture, cruel, inhuman and degrading treatment. I so award.

I deem a figure of U.Shs5,000,000= (Five Million Shillings) adequate compensation to the 3rd complainant Nsiko Muhammad for violation of his right to protection from torture, cruel, inhuman and degrading treatment. I so award.

I deem a figure of U.Shs5,000,000= (Five Million Shillings) adequate compensation to the 4th complainant Sam Kavuma for violation of his right to protection from torture, cruel, inhuman and degrading treatment. I so award.

Exemplary damages:

I am of the view that the actions of the Officer-In-Charge Nakifuma Prison must attract exemplary damages.

I award each of the four complainants U.Shs 1,000,000= (One Million Shillings) as exemplary damages.

ORDER:

The complaint is allowed.

The respondent is ordered to pay the 1st complainant Ddamulira Abubaker a sum of Ug.Shs5,000,000= (Five Million Shillings) as follows:

- General damages for violation of his right to protection from torture, cruel, inhuman and degrading treatment or punishment - U.Shs 4,000,000=
- Exemplary damages - U.Shs 1,000,000=
- Total** - U.Shs 5,000,000=

The respondent is ordered to pay the 2nd complainant Yusuf Nsiko a sum of Ug.Shs5,000,000= (Five Million Shillings) as follows:

- General damages for violation of his right to protection from torture, cruel, inhuman and degrading treatment or punishment - U.Shs 4,000,000=
- Exemplary damages - U.Shs 1,000,000=
- Total** - U.Shs 5,000,000=

The respondent is ordered to pay the 3rd complainant Nsiko Muhammed a sum of Ug.Shs 6,000,000= (Six Million Shillings) as follows:

- General damages for violation of his right to protection from torture, cruel, inhuman and degrading treatment or punishment - U.Shs 5,000,000=
- Exemplary damages - U.Shs 1,000,000=
- Total** - U.Shs 6,000,000=

The respondent is ordered to pay the 4th complainant Sam Kavuma a sum of Ug.Shs 6,000,000= (Six Million Shillings) as follows:

- General damages for violation of his right to protection from torture, cruel, inhuman and degrading treatment or punishment - U.Shs 5,000,000=
- Exemplary damages - U.Shs 1,000,000=
- Total** - U.Shs 6,000,000=

The above sums of money will carry interest at court rate from the date hereof until payment in full.

PER CURIUM:

Ms. Cissy Namusisi did not join the Prisons Service on merit. She learnt of availability of the position of Wardress from her father who worked in the office of the Sub-County Chief of Bulemezi Kalagala. She then took her application to the Establishment Officer who appointed her and sent her on a brief training. She was later promoted to the position of Officer-in-Charge. She is hardly educated, unable to communicate in any other language apart from Luganda and bears forged academic documents. It is common for such people to “make up” for their illiteracy by adopting sadistic methods in execution of their functions.

Ms. Namusisi denied the complainants food, even that taken to them by their sister claiming that she feared their sister would poison them. She admitted subjecting them to hard labour ranging from 9.00 a.m. to 8.00 p.m. She casually stated on cross-examination by Nsiko, that “I learnt that prisoners have rights and freedoms in 2005. Before then I did not know. We had a one month awareness training in Luzira in 2005. That is when I learnt of human rights and freedoms for prisoners.”

Ms. Namusisi is a small tyrant who admitted on cross-examination that she blocked officials of the Uganda Human Rights Commission and the Probation/Welfare office in Mukono from accessing the prison. She is clearly ignorant of the mandate of these officers.

It was wrong enough that Ms. Namusisi was appointed to the prisons service as a wardress. But it is much worse that she was elevated to the position of Officer-in-

Charge. It is dangerous for such people to hold such positions which involve overseeing the welfare of vulnerable people under their care.

I accordingly recommend that a copy of this decision be served on the Commissioner General of Prisons with a view to take the necessary correctional steps.

Any party dissatisfied with this decision or any part thereof may appeal to the High Court of Uganda within 30 days from the date hereof.

DATED at KAMPALA this 13th day of March 2012

Signed: _____
FAUZAT MARIAM WANGADYA (Ms)
PRESIDING COMMISSIONER