



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

COMPLAINT NO. UHRC/JJA/66/2006

IRENE NAKIMERA COMPLAINANT

-AND-

ATTORNEY GENERAL RESPONDENT

DECISION

The complainant is a 60-year-old peasant of Namalembe, Iganga. She brought this complaint as a widow of the late Sebastian Walujo who died on May 12, 2006. She testified that on May 11, 2006 at 10.00 p.m. policemen from Kaliro Police Station went to the deceased's home to effect the arrest of his son John who was suspected to have defiled Oburu's daughter – Awori Victo. Sebastian Walujo "protested" the police action. One of the policemen shot him in the head. Walujo died the next day at 6.00 p.m. at Iganga Hospital.

The complainant contended that the actions of the policemen were deliberate, intentional and unlawful and amounted to violation of Sebastian Walujo's right to life. She further contended that at all material times the policemen were acting in the course of their employment as servants of the state. She holds the respondent vicariously liable for their actions. She sought compensation.

The respondent's representative Ms. Gorretti Arinaitwe denied liability.

It was the complainant's duty to prove her claim against the respondent on a balance of probabilities.

Issues:

The issues for determination by the tribunal are:

- (i) Whether the respondent's agents violated Sebastian Walujo's right to life;
- (ii) Whether the complainant is entitled to compensation.

I will resolve the issues in the order in which they are arranged.

- (i) Whether the respondent's agents violated Sebastian Walujo's right to life:

The right to life is protected by various international human rights instruments to which Uganda is signatory.

Under Article 6 of the International Covenant on Civil and Political Rights (ICCPR):

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.

Under Article 4 of the African Charter on Human and Peoples Rights (ACHPR):-

“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”.

For the complainant to sustain a case of violation of Walujo's right to life she had to prove that the respondent's agents caused his death and that the said death was caused unlawfully.

It should be noted here that the respondent admitted the killing of Sebastian Walujo by state agents. Indeed the District Police Commander (DPC), Iganga then Assistant Superintendent of Police (ASP) Bishanga Katungi informed the family of the deceased that their officers Yogera Vincent and Habib Lagol were facing Manslaughter charges in Iganga Chief Magistrates Court in respect of the death of Walujo. The state could not have prosecuted its own agents if it was not convinced that they killed Walujo. And further in written submissions to the tribunal, the respondent's counsel Ms. Arinaitwe admitted the killing of Walujo but argued that the said killing was not intentional but accidental.

First of all, Nakimera having proved that her husband died at the hands of policemen, the burden shifted to the respondent to prove that his killing was accidental. And further, it is the view of this tribunal that even if the killing of Walujo is found to have been accidental, the said killing would remain unlawful if the policemen were negligent.

Negligence is conduct falling below the standard demanded for the protection of others against unreasonable risk of harm. This standard of conduct is ordinarily measured by what the reasonable person of ordinary prudence would do in the circumstances. (See The Law of Torts by John G. Fleming, 9th Edition).

The questions I would then ask myself would be: Did the Policemen owe a duty to Walujo to be careful? What precisely was required of them to discharge that duty?

What would a reasonable man of ordinary prudence have done in the circumstances? Was the killing of Walujo reasonably foreseeable by the policemen as they went about their business the way they did?

But there was overwhelming evidence that the shooting and eventual death of Sebastian Walujo was not accidental as argued by Ms. Arinaitwe. It was a deliberate and intentional act whose motive was not clear. The killing of Walujo was an execution in fact. This was an act of sheer impunity. So the question of negligence does not even arise.

From the testimonies of Irene Nakimera, CW2, David Walyani, and RW1 Police Constable (P/C) Yogera Vincent, Walujo's son Walujo John had been accused of defilement of Oburu's daughter Awori Victo. Earlier in the day the policemen went to Walujo's home and arrested Walujo's son David Walujo instead of the actual suspect John Walujo. At around 9.00 p.m. the policemen returned to Walujo's home with David who showed them John. The policemen arrested John but decided not to release David. Walujo protested this action.

P/C Yogera Vincent testified among others:

“We left the station at 9.00 p.m. and reached Walujo's home at 9.30 p.m. When Walujo saw us with his son he asked, ‘You came during the day and arrested David, now who do you want to arrest?’ The boy earlier arrested was a brother to the culprit. David Walujo showed us John. We arrested John. We did not release David. The Officer-in-Charge decided that we take both John and David. Walujo shouted at me saying ‘You are not going with my boys’.”

It is the considered view of the tribunal that the deceased was right to “protest” the arrest and detention of David. David having shown the policemen who John – the culprit was, it was wrong for the policemen to take him as well. If it was true that John had defiled Awori as alleged, John was solely responsible for his actions. It is a cardinal principle of Criminal Law that criminal responsibility is personal.

But what form did Walujo’s “protest” entail? According to P/C Yogera Vincent, Walujo shouted at him. Walujo is alleged to have said:

“I am an ex soldier. I am going to disarm you.”

P/C Yogera Vincent further testified as follows:

“The scuffle started. He tried to grab the gun from me. The Officer-in-Charge ordered, ‘Fire’. We ignored his order. The O/C was beating people around with batons. Those people were making noise – beating empty jerricans and basins. They were also throwing stones at us. I was struggling with Walujo. The situation was getting out of hand. The O/C removed the gun from me and fired once in the air. He again fired and the bullet hit Walujo in the head.”

P/C Yogera’s testimony was riddled with lies, was untruthful, unreliable and misleading. His demeanour was unimpressive. He lacked confidence and looked worried as he spewed his falsehoods. His was a desperate yet futile attempt to shift blame to the victim for the grave crimes he with his colleagues committed against him. It was like killing him twice!

The assertion that Sebastian Walujo was a retired soldier was intended to project him as a strong and skilled person capable of confronting four young armed policemen and disarming them. From the evidence of Irene Nakimera, Walujo was a retired Telephone Operator at the main Post Office in Kampala. He had never been in the armed forces. So he could not have claimed to be an ex soldier.

It should also be noted that at the time of his death Walujo was a 66-year-old man. P/C Yogera himself, on cross-examination by Ms. Nassiwa Esther Jjuko, learned counsel for the Commission stated that the deceased was of “average height, was not muscular, was wearing a *kanzu* and was an old man”. How could an ordinary old man wrestle with and disarm four young, well-trained policemen? What caliber of policemen were I/P Habib Logol, P/C Wanume, P/C Kiiza and P/C Yogera? Real men do not shoot and kill innocent, frail and weak old men. They go for thugs like Joseph Kony!

I reject the respondent’s assertion that Sebastian Walujo physically confronted the policemen. It should be remembered that these policemen had earlier in the day gone to Walujo’s home and arrested his son David. He did not confront them then. They brought him back to this same homestead ostensibly to show them the actual culprit. They then took both boys. Like any reasonable parent would have done, Walujo questioned and protested their move. He did not do so in a violent manner. This comes out clearly in the evidence of the complainant and CW2, David Walyani. The deceased never fought the policemen. He was too old to do so. The people who gathered around Walujo’s home went there as curious onlookers to see what was happening not to fight the policemen. In any case despite the presence of those people the policemen took the boys anyway. If they were violent as alleged by the respondent they would have prevented the arrest of Walujo’s sons.

And further, if those onlookers were violent as alleged by the respondent, the shooting to death of Walujo would have enraged them more. They would then have attacked and possibly lynched the policemen. They did not do this. The policemen shot Walujo and triumphantly marched away with their trophies – Walujo’s sons without resistance from anybody.

That the shooting of Sebastian Walujo was intentional and deliberate is supported by the evidence of all witnesses. Both Nakimera and Walyani testified that the Officer-in-Charge ordered his juniours, “*Piga yeye*”, meaning, “Hit him.”

P/C Yogera confirmed this when he said, “The O/C ordered, ‘Fire’. We ignored his order ... the O/C removed the gun from me and fired once in the air. He again fired and the bullet hit Walujo in the head.”

Hence, the Officer-in-Charge (O/C), Inspector of Police (I/P) Habib Logol Nelson, gave orders to shoot and kill Walujo. When his orders were not complied with he carried out that criminal act himself.

Further, from the evidence adduced by both the prosecution and the defence, there was very bright moonlight. I/P Nelson clearly saw his victim who was 2 metres away from him, aimed at him and opened fire. It should also be remembered that Walujo was standing. He was not flying somewhere in the sky. That the 2nd bullet got him shows that the barrel of the gun was pointed at him deliberately to shoot him and not to scare away alleged violent neighbours. And further the part of the body aimed at – the head shows that the intention of I/P Nelson was to kill Sebastian Walujo. He went ahead and shot him in the head thereby causing his death the next day.

Ms. Arinaitwe’s argument that the shooting and eventual killing of Walujo was accidental is not supported by any evidence whatsoever.

Wherefore, I find on a balance of probabilities that the policemen unlawfully caused the death of Sebastian Walujo. Their actions amounted to violation of Walujo’s right to life. The said policemen were at all the material time acting in the course of their employment as servants of the government. The respondent is vicariously liable for their actions.

(ii) Whether the complainant is entitled to compensation:

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.”

Consequently, Nakimera having satisfied this tribunal that her husband’s right to life was violated by the respondent’s agents, she is entitled to compensation by way of damages.

Ms. Gorretti Arinaitwe, learned counsel for the respondent, submitted in part:

“Should the Commission be inclined to award damages, we pray that the complainant be awarded nominal damages considering the circumstances

that led to the shooting; that the deceased had old children and his age should also be put into account. According to the State of the World Population, 2011, life expectancy for men in Uganda is 53 years.”

With all due respect to the learned State Attorney, this is not a case for award of nominal damages. On the contrary the circumstances of the shooting which she referred to, call for both general and exemplary damages.

It is true the deceased was an old man of 66 years. But there was no indication that his health was poor. He was useful to his family. At the time of his death some of his children were in school and he used to pay their school fees. From the evidence of the complainant those children’s education ended with their father’s death. Nakimera was deprived of her husband’s companionship and his material support. Ms. Arinaitwe should know that when rainwater falls on a lion, it sometimes looks like a cat. But that does not make it a cat. After the rain ceases and the lion is exposed to warmth, it gets out of its shell and looks what it truly is – a lion! So it is possible that Walujo still had stamina. Indeed at the time of his death his youngest child Smith Walujo was only four (4) years old. Nakimera could possibly have had another baby. She missed this. Her children were permanently deprived of a father and a friend. Walujo must have been a responsible and loving father as evidenced by his reaction when his sons were arrested that fateful night.

For purposes of this tribunal, the material wealth (or lack thereof) of the deceased is not a vital factor in assessing damages to be awarded to his family. What is important is that Walujo was a healthy normal human being with a God-given right to live. This right was recklessly taken away from him by the respondent’s agents.

Valuing his right to life in terms of poverty or riches would offend the provisions of Article 21(1) of the Constitution to wit:

“All persons are equal before and under the law in all spheres of political, economical, social and cultural life and in every other respect and shall enjoy equal protection of the law.”

I will therefore not inquire into what kind of government position Walujo held, how much money he earned, how much he spent on his family etcetera.

The right to life is the most important right without which all other rights and freedoms cannot be enjoyed. It enshrines one of the basic values of democratic societies. The shooting and eventual killing of Sebastian Walujo was an act of impunity which this court is enjoined to discourage.

In consideration of all the above, I deem a figure of U.Shs25,000,000= (Twenty-Five Million Shillings) adequate compensation to the family of the late Sebastian Walujo. I so award.

It is further the considered view of this tribunal that the circumstances of this case call for award of punitive damages. Intentional torts to the person are, as a rule also crimes.

John G. Fleming in his book The Law of Torts 9th Edition at page 271 writes as follows:

“Exemplary or punitive damages focus not on injury to the plaintiff but on outrageous conduct of the defendant so as to warrant an additional sum by way of penalty, to express the public’s indignation and need for deterrence or retribution.”

And in David Kironde v Mukono District Administration & Attorney General 122 1995 V KALR, it was held by *BERKO J*:

“Exemplary damages are awardable where the act complained of is done by a government servant oppressively, arbitrarily or unconstitutionally.”

And further, under Article 221 of the Constitution:

“It shall be the duty of the Uganda Police Force and any other police force to observe and respect human rights and freedoms in the performance of their functions.”

The actions of Inspector of Police (I/P) Habib Logol Nelson and his juniors against Wajulo were criminal, arrogant, deliberate, oppressive, arbitrary, wanton, barbaric, highhanded, unconstitutional and impossible to justify. If policemen turn their guns on innocent people they are by law mandated to protect, where will the *wanainchi* seek protection?

I accordingly award the complainant U.Shs1,000,000= (One Million Shillings) as exemplary damages.

ORDER:

- (i) The complaint is allowed.
- (ii) The respondent is ordered to pay the complainant a total sum of U.Shs26,000,000= (Twenty Six Million Shillings) as follows:
- (a) General damages for violation of Sebastian Walujo's right to life - U.Shs25,000,000=
- (b) Exemplary damages - U.Shs 1,000,000=
- Total - U.Shs26,000,000=**
- (c) The U.Shs26,000,000= will carry interest at court rate with effect from September 1, 2013 until payment in full.

EITHER party dissatisfied with this decision is advised to appeal to the High Court of Uganda within 30 days from the date hereof.

Dated at **Jinja** this 22nd day of August 2012.

Signed:

FAUZAT MARIAM WANGADYA (Ms.)
PRESIDING COMMISSIONER