

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO 228 OF 2008

JOYCE BIKYAHAGA

NAMATA:.....:PLAINTIFF

VERSUS

ATTORNEY

GENERAL:.....:DEFENDANT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

BACKGROUND

The plaintiff is the mother of the late Ronald Bikyahaga who died in police custody at Nabbingo Police Post in the police cells. The plaintiff's case is that on the 15th October 2007, Ronald Bikyahaga was in a film hall at Nabbingo when he was arrested by the police. He was violently beaten by the police and dragged into the police cells with several injuries on his body and was resultantly found dead the next morning.

The plaintiff claims that the actions of the police officers were wrongful, unlawful and a violation of human rights. It is the plaintiff's claim that the defendant is vicariously liable for the actions of the police officers since their actions were in the course of their employment.

The statutory notice of intention to sue was duly communicated to the defendant. The plaintiff prayed for judgment against the defendant for general damages, special damages, interest and costs of the suit as well as any other relief as this court may deem fit.

The defendant filed a written statement of defence denying plaintiff's claim and prayed that this court dismisses the same with costs.

ISSUES FOR DETERMINATION

The plaintiff filed conferencing notes wherein she raised 3 issues to be determined by this court;

1. Whether the deceased died at the hands of the police
2. Whether the police officers acted in the course of their employment so as to make the defendant liable on the basis of master-servant relationship
3. Remedies if any

This court has found and framed two issues necessary for the disposal of this suit. That is:

1. Whether the defendant is vicariously liable for the actions of the errant police officers?
2. Whether the plaintiff is entitled to any remedies.

The parties were directed by the court to file written submissions but none of the parties filed the same by the time this judgment was written but the plaintiff counsel later filed the same.

Court will therefore proceed to determine this matter basing on the abovementioned issues.

COURT'S DETERMINATION

Issue 1: Whether the defendant is vicariously liable for the actions of the errant police officers?

The plaintiff avers that the deceased Ronald Bikyahaga was arrested on the 15th October 2007, severely beaten, dragged and left in the police cells where he was eventually found dead the following morning.

PE-3 which was a condolence message issued by the former Inspector General of Police Kale Kayihura on the 17th October 2007 intimated;

“...The management of the Uganda Police Force was disturbed by the fact that preliminary investigations show the death occurred at the hands of three policemen who had gone to effect an arrest of the late...”

This is uncontroverted evidence that indeed the deceased's death occurred at the hands of the police hence proving the plaintiff's claim that her late son died while in police custody.

According to **the *East African Cases on the Law of Tort* by E. Veitch (1972 Edition) at page 78**, an employer is in general liable for the acts of his employees or agents while in the course of the employers business or within the scope of employment. This liability arises whether the acts are for the benefit of the employer or for the benefit of the agent. In deciding whether the employer is vicariously liable or not, the questions to be determined are: whether or not the employee or agent was acting within the scope of his employment; whether or not the employee or agent was going about the business of his employer at the time the damage was done to the plaintiff. When the employee or agent goes out to perform his or her purely private business, the employer will not be liable for any tort committed while the agent or employee was on a frolic of his or her own.

An act may be done in the course of employment so as to make his master liable even though it is done contrary to the orders of the master, and even if the servant is acting deliberately, wantonly, negligently, or criminally, or for his own behalf, nevertheless if what he did is merely a manner of carrying out what he was employed to carry out, then his master is liable (**see *Muwonge v. Attorney General [1967] EA 17***)

In the instant case, the errant police officers were effecting the arrest of the deceased when they severely beat him resulting in to his untimely death. Effecting arrests is within the scope of employment of police officers hence making the Uganda police force vicariously liable despite the fact that the police officers deliberately and illegally tortured the deceased which is unconstitutional.

Issue 3: Available remedies

Our constitution under Article 22 and 24 respectively guarantees and protects the life of every citizen in this country as well as the right against torture, degrading and inhumane treatment. The errant police officers violated the non derogable rights of the deceased against torture and his right to life which accordingly calls for compensation.

According to **Wing Commander Danladi Angulu Kwasu vs Republic of Nigeria** (Community Court Of Justice Of The Economic Community Of West African States (Ecowas) Holden in Abuja, Nigeria) it was held that

“The right to life is protected in the core- regional and universal human rights instrument including the African Charter on Human and Peoples’ Rights (Article 4). Disregard for civilian loss of life

may also involve violations of the right to life. The right to life has been widely recognized as a fundamental right without which other rights cannot be implemented or realized. It is the fulcrum of all other rights. It is non – derogable and applies to all persons at all times including institutions of Government. The Charter imposes responsibility on State parties to prevent arbitrary deprivations of life caused by its own agents as well as protect individuals and groups from such deprivation at the hands of others.”

The court orders the Defendant to pay the Applicant compensation for the arbitrary and unlawful deprivation of the right to life of the Applicant’s son.

The plaintiff is therefore awarded compensation of UGX 25.000.000 for the unlawful deprivation of the life of her son. The award shall attract interest of 12% from the date of Judgement. The plaintiff is awarded costs.

I so order.

SSEKAANA MUSA

JUDGE

28th/06/2019