**Nsubuga v Attorney-General**

**Division:** High Court of Uganda at Kampala

**Date of judgment:** 16 May 1973

**Case Number:** 842/1971 (103/73)

**Before:** Kantinti J

**Sourced by:** LawAfrica

*[1] Constitutional Law – Fundamental rights – Personal liberty – Detention order – Minister’s order*

*not challengeable.*

*[2] False imprisonment – Crime suspect not taken before magistrate – Not a wrong of political nature –*

*Damages awarded.*

*[3] Damages – False imprisonment – Twenty-one days in bad conditions – Shs.* 40,000*/- awarded.*

*[4] Damages – Personal injuries – Quantum – Partial loss of hearing – Shs.* 60,000*/- awarded.*

**JUDGMENT**

**Kantinti J:** In this suit the plaintiff claims general damages for wrongful arrest and illegal detention and trespass to person, assault and battery resulting in injuries and pain and suffering. The plaintiff gave evidence and said that on 15 December 1970 he was arrested. He was then working in Kenya with the East African Cargo Handling Service as a shed supervisor. The police looked for him some time in Mombasa. He was in Dar es Salaam at the time. After receiving information that he was wanted by the police, he came to Kampala and consulted an advocate. He and the advocate went to Parliament Buildings on 15 December 1970 and saw Mr. Kayondo a police officer, who took them to a room and saw another police officer whom he later found was Mr. Mugamba. The latter sent away the advocate, saying that the plaintiff was under arrest. Mr. Mugamba asked the plaintiff whether he had Mr. H. Kiwanuka’s money amounting to Shs. 100,000/- which was part of the money which had been stolen from Kabale which Mr. Kiwanuka had told them that he knew nothing about the money because he was in Mombasa. The plaintiff went on to say that Mr. Mugamba ordered him to be taken to another room to make him talk. He found about eight people there. He was handcuffed and was beaten with chairs and he was kicked with boots. When he fell down he was stepped on. When he said that he knew nothing about the money, his trousers were removed and his private parts were tied to an electric appliance. After he had received a beating for about an hour he bled from the nose and ears. He heard one of the policemen telling the others to stop beating him lest they kill him. He became unconscious. He regained consciousness at Katwe police station where he was locked up. At Katwe police station, he felt great pain and he was bleeding from the ears and eyes. The next day three policemen collected him from Katwe police station and took him to Parliament Building, where he was again asked about the money. He told them that he knew nothing about it. Mr. Wagaba again ordered the policemen to take him through the previous exercise and he was again beaten as before. The policemen were not in uniform but he understood them to be policemen by the way they were being addressed. One of them, Mr. Olal, introduced himself to him as a police officer and he was the one who had told the others to stop beating him on the second occasion. He continued bleeding from the nose and ears as before. At about 1 p.m. to was taken back to Katwe police station and he was locked up in a cell. He could not sit down and felt great pain all over. He asked the policemen who were guarding him to help him to get medical assistance. The officer in charge asked some people to take him to Mulago hospital. One of those people was Mr. Katiya. He was examined and X-rayed and was told to return to hospital the next day. The next day he asked to be taken back, but was told that the police had received an order from headquarters not to take him to hospital. His condition became worse and he could not walk to the toilet. He could not see and blood and pus were coming out of his ears. He was assisted by policemen to go to the toilet. He was released on 28 January 1971. Between 15 December 1970 and 28 January 1971 he spent most of that time at Katwe police station. At other times he was at headquarters being interrogated about the money. At Katwe police station the conditions were appalling. He slept on the floor without a blanket and there were about fifty people in one small cell. After a week the police told his people to bring warm water to treat his wounds. He was told by policemen that Obote’s Government had been overthrown and that the new leader had given an order for the release of the prisoners who were innocent. Prior to his release on 6 January 1971 he was served with a notice Exh. P.1. Apart from this notice, he was never served with any document outlining the reasons for his arrest. He was never charged with any offence or taken before a magistrate. He never took part in the theft of the money at Kabale and he denied ever receiving Shs. 100,000/- or any part of it from Kiwanuka. He never heard that Mr. Kiwanuka was charged with theft of the money. He suffered pain in his back, eyes, ears and jaws. He finds difficulty in hearing in his left ear and hears whistling noises sometimes. On 19 May 1972 he was sent to Mulago hospital and was examined by Mr. Sali a specialist. Mr. Kazibwe is the policeman who took him to hospital on the first occasion. The Defence called Mr. Mugamba the then Assistant Commissioner of Police C.I.D. Buganda, who has since retired. He said that in July 1971, he was head of that department. Prior to that, he was senior Superintendent of Police in charge of Buganda Region C.I.D. and was engaged in detection of crime and general administration. He knew the plaintiff. Towards the end of 1970, when the witness was investigating a fraud case involving about a million shillings at Kabale, he came to know him. One of the suspects confessed that he had given his share of the fraud to the plaintiff. The plaintiff was at the time living in Mombasa. The witness went there with detectives and they traced his place of work and residence. He heard that C.I.D. Headquarters were also already looking for him. The plaintiff was absent and they left a message with the Kenya police that if they traced him, they should inform them. Eventually the plaintiff surrendered himself to the Police Headquarters Uganda and was detained under Emergency Regulations 1969. This could be done at that time. He could be detained indefinitely. The witness continued with his investigations. He denied ever ordering any exercises by way of beating or electrical shock and said that he did not know what went on at C.I.D. Headquarters. It is contrary to police regulations to assault prisoners and said that if it is done, then it is unlawful. He said that he saw the plaintiff together with other suspects several times. He did not remember seeing any signs of torture on him. He never gave instructions that he should not be taken to hospital and added that even murderers are taken to hospital. He thought there were detention orders for all the suspects. He identified the Detention Order in the official *Gazette* Exh. D.1 which included the plaintiff’s name. The issues for decision are whether the plaintiff is entitled to damages for (*a*) assault and (*b*) false imprisonment. Starting with (*b*) above the evidence is that after the plaintiff who was then in Mombasa had heard that he was wanted by the Uganda police he came to Kampala and he with his advocate went to police headquarters in Parliament Buildings on 15 December 1970 and saw a police officer Mr. Kayondo who took them to a senior officer Mr. Mugamba, who was investigating a crime committed at Kabale in which the plaintiff was a suspect. He was there and then arrested. This is not denied by the defence. It is the plaintiff’s contention that at the time of his arrest, he was arrested as a suspect for a known crime. This is also not denied by the defence. Mr. Kayondo for the plaintiff was not told that he was arrested and detained under Emergency Regulations until he was served with the Minister’s order Exh. P.1 on 6 January 1971 and that therefore from 15 December 1970 to 6 January 1971 he was falsely imprisoned Mrs. Katende for the defendant suggested in her submission that the plaintiff was arrested on 15 December 1970 and detained under the Emergency (Powers of Arrest and Search) Regulations 1969. Regulation 1 (1) provides: “Any police officer, any person upon whom the powers of a police officer have been conferred and any person authorised by the Minister to act under this regulation may arrest without warrant any person whom he has reasonable grounds for suspecting is about to commit or has committed an emergency offence.” Regulation 1 (3) provides: “Any person detained under the powers conferred by this Regulation may be detained in a police station, prison or a detention camp established under these Regulations and shall be deemed to be in lawful custody when detained in any such place and when being conveyed from or to any such place.” Regulation 5 (*b*) defines an “emergency offence” to include an offence under the Penal Code. Mrs. Katende submitted further that Regulation 2 above was deleted by Statutory Instrument 241/69 giving power to the police to detain anyone indefinitely. A person arrested under these Regulations could be detained by the Minister under Statutory Instrument No. 237/69. She said that the plaintiff was arrested on 15 December 1970 and detained under Statutory Instrument 236/69 and subsequently detained by the Minister under his order of 6 January 1971 under Statutory Instrument 237/69 after 21 days had elapsed. She said that there were two detentions involved; one by the police from 15 December 1970 to 6 January 1971 and the second from 6 January 1971 to 28 January 1971 under the Minister’s order. Under Statutory Instrument 236/69 the police had power to arrest and detain the plaintiff and that an order made by a Minister was not questionable. This seems to be in order according to the then existing law. But what is the evidence? According to Mr. Mugamba the then Assistant Commissioner of Police C.I.D. who was investigating a fraud crime committed at Kabale in which the plaintiff was a suspect, the plaintiff was arrested under Emergency Regulations. The defence, however, did not produce evidence to prove that this was so. No order under the Regulations was served on him. No other evidence was adduced to show that the plaintiff was arrested and detained under the Emergency Regulations. If he was not so arrested and detained, then he must have been arrested and detained under s. 30 of the Criminal Procedure Act. S. 30 (1) of this Act which is still in force provides: “When any person has been taken into custody without a warrant for an offence other than murder, treason or rape, the officer in charge of the Police Station to which such person shall be brought may in any case and shall, if it does not appear practicable to bring up such person before an appropriate magistrate’s court within twenty-four hours after he was so taken into custody, inquire into the case and, unless the offence appears to the officer to be of a serious nature, release the person on his executing a bond with or without sureties, for a reasonable amount to appear before a magistrate’s court at a time and place to be named in the bond; but where any person is retained in custody he shall be brought before a magistrate’s court as soon as practicable. Provided that an officer in charge of a police station may discharge a person arrested on suspicion on any charge when, after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with a charge.” The plaintiff was arrested on 15 December 1970 because, according to Mr. Mugamba, he was suspected of having been involved in a crime. He was taken to Katwe police station, and detained in a cell which he shared with fifty other people. He was not charged with any offence and he was not taken before a magistrate as provided above, neither was he released on bond or discharged. He remained there, apart from the times that he was wanted at police headquarters for interrogation, until 6 January 1971 when he was finally served with a Detention Order of the Minister under Statutory Instrument No. 237/69. It appears that during those 21 days he was being detained unlawfully. There is no evidence as to who arrested the plaintiff under Statutory Instrument 236/69. I find the ingredients of false imprisonment of the plaintiff by the defendant, his servants or agents, proved during that period of 21 days. Mr. Kayondo further submitted that on 6 January 1971 a police officer purported to serve the notice Exh. P.1 under Statutory Instrument 237/69 on the plaintiff. Regulation 1 (1) of these Regulations provides: “Whenever the Minister is satisfied that for the purpose of maintaining public order it is necessary to exercise control over any person, the Minister may make an order against such person directing that he be detained and thereupon such person shall be arrested and detained, etc.” He said that there was no evidence that the plaintiff was a danger to public order and submitted that the detention order was also unlawful. He referred to Art. 123 (4) of the Constitution and said that the plaintiff was not arrested under the five categories (*a*) to (*e*) of that Article which give immunity to the Minister’s Order. He said that the purpose of serving the order on 6 January 1971 was an attempt to cover up the illegal arrest and detention of the plaintiff. The only reason the plaintiff was arrested was because he was suspected of having committed a crime. There were other people who were arrested for the same crime and were prosecuted. In reply to this Mrs. Katende for the defendant said that an order made by a Minister is not questionable. She referred to the writ of Habeas Corpus in High Court Miscellaneous Cause No. 26 of 1969 in an application by D. Ibrahim and 77 others. She continued to say that the court has no power to look behind the Minister’s order. The detention referred to in Art. 21 of the Constitution is detention by the Minister and there was no contravention of the Constitution. The detention by the Minister was effected on 6 January 1971 and when the plaintiff was released, two months had not elapsed. A notification was published in the *Gazette* on 15 January 1971 which was within the required 28 days. Three months had not elapsed when the tribunal would have been in force. The plaintiff was served with a detention order which did not specify the grounds. She continued to say that it has been held that this was not fatal to his continued detention and referred to High Court Miscellaneous Application No. 83 of 1966. I have read the relevant articles of the Constitution and the cases cited. I am in agreement with the submissions of Mrs. Katende with regard to the detention of the plaintiff from 6 January 1971 when he was served with the Minister’s order to the period when he was released on 18 January 1971. Art. 10 (2) of the Constitution states: “Any person who is arrested, detained or restricted shall be informed as soon as reasonably practicable, in a language he understands, of the reasons for his arrest, detention or restriction.” Art. 21 (6) (*a*) of the Constitution states: “. . . he shall as soon as reasonably practicable, and in any case after not more than two months after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying the grounds upon which he is detained.” It is clear from this that a detainee can be kept for not more than two months from the date of his detention without furnishing him with a statement in writing specifying the grounds on which he is kept. I accordingly find that the detention of the plaintiff from 6 January 1971, when he was served with the Minister’s Order to 18 January 1971 when he was released was lawful and within the provisions of the Constitution. The only period therefore proved by the plaintiff for false imprisonment is the period of 21 days from 15 December 1970 to 6 January 1971 when he was finally served with the Minister’s order. With regard to the claim in (*a*) above for trespass to the person, assault and battery resulting in injuries and pain and suffering there is the evidence of the plaintiff himself supported by other witnesses. [The judge considered the evidence and continued.] I have no doubt, on the evidence that the plaintiff was assaulted and beaten and tortured in the manner described by him and the witnesses and suffered injuries and pain and suffering as a result. Mr. Sali a consultant surgeon for ears, nose and throat of Mulago hospital also gave evidence and said that he examined the plaintiff on 19 May 1972 and made a report. He found that he was aged about 34 years. The request concerned the examination of his ears. The plaintiff told him that he had been assaulted on 15 December 1970 and subsequently and had injuries to his ears which caused loss of hearing. The witness found that there were signs of scars on the membrane. The ear drums were not perforated, but the scar on the eardrum indicated that there must have been an injury which had healed. He found that the plaintiff had lost 35% hearing, more in the left than the right ear. He considered the loss to be permanent. The scars could have been the result of an assault on him. As a result of this loss of hearing, he is at a disadvantage, as he is likely to become deafer earlier than would be normal at his age. There are two aspects of this suit which I will only briefly mention since one of them was not raised by counsel for the defendant. The first is vicarious liability. There is no doubt that the policemen who inflicted the injuries on the plaintiff were in the employment of the then existing Government which is represented by the defendant. In *Muwonge v. Attorney-General of Uganda*, [1967] E.A. 17 the following passage is quoted from the judgment of Newbold, P. at page 18: “I think it dangerous to lay down any general test as to the circumstances in which it can be said that a person is acting in the course of his employment. Each case must depend upon its own facts. All one can say, as I understand the law, is that even if the servant is acting deliberately, wantonly, negligently or criminally, even if he is acting for his own benefit, nevertheless if what he did was merely a manner of carrying out what he was employed to carry out then his acts are acts for which his master is liable.” I think this passage summarises the law as it is at present. The policemen were investigating a crime in which the plaintiff was a suspect. The acts complained of were done at police headquarters in the course of their duties as policemen. Clearly the defendant is liable for their acts. Another point which was not raised by counsel for defendant is the provisions of Decree 19 of 1972. This is a Decree to prohibit institution of Legal Proceedings for recovery of damages against the Government in respect of wrongs committed by the Civilian Government for political motives. Section 1 (1) of the above provides: “Notwithstanding any written or other law no action for recovery of damages shall be instituted in any court against the Government by or on behalf of any person for or on account of or in respect of any wrongful arrest, false imprisonment, personal injury, loss of life suffered by that person or damage to his property (including its destruction) effected by or on the orders of the Government which was overthrown by the Military Government on the 25 day of January, 1971, against that person for or on account of holding receiving or imparting political opinions contrary to the political opinions of that Government or for any other cause whatsoever.” It was urged by Mr. Kayondo for the plaintiff that the words “or for any other cause whatsoever” should be construed according to the ejusdem generis rule, i.e. “Where there are general words following particular and specific words the general words must be confined to things of the same kind as those specified” *per* Lord Campbell in *R. v. Edmundson* (1859), 28 L.J.M.C. 213 at p. 215. The plaintiff in the instant case suffered injuries from the acts of the policemen who were engaged in the investigation of a crime in which he was a suspect. There is no evidence that he was holding receiving or imparting political opinions which were contrary to the then Government. The said Decree would therefore not apply here. I am fortified in coming to this conclusion by two previous decisions of this court namely *John Waiswa v. Attorney-General*, H.C.C.C. 705 of 1970 and *Joseph Keyegga v. Attorney-General of Uganda*, H.C.C.C. 774 of 1971, in which a similar interpretation was held. In any case, the matter was not raised by the defence. I now come to the difficult task of assessment of damages. With regard to the claim for damages for false imprisonment I was urged by Mr. Kayondo to award exemplary damages. I hold the view which was held by Mead, J. in *Abunyang v. Attorney-General*, H.C.C.C. No. 211 of 1969 when he said, “In my view in an action for damages for assault the award of punitive or exemplary damages is only applicable where the person causing the assault is personally sued or if the employer had expressly or impliedly authorised the assault.” With regard to the claim for damages for false imprisonment I was referred to two decisions of this court. The first was *Kitto v. Attorney-General*, H.C.C.C. 81 of 1958. In that case the plaintiff, a student at Makerere College, was falsely imprisoned for eleven hours in a police station. He was wrongly identified by the police. It was held that the police action had been high-handed and Shs. 1,000/- damages were awarded. The other case was *Eridadi Ogonya v. Attorney-General*, H.C.C.C. 418 of 1959. The plaintiff a bus conductor was wrongfully arrested and falsely imprisoned for three days. General damages of Shs. 1,500/- were awarded and also Shs. 500/- were awarded for aggravated assault. In the instant case I have already found that the only period to consider for false imprisonment is the period from 15 December 1970 to 6 January 1971, i.e. 21 days. The plaintiff was 34 years old then and at the time of his arrest, he was working as a shed supervisor with the East African Cargo Handling Services. Taking into consideration the circumstances of this case and the cases cited, I award general damages for false imprisonment of Shs. 40,000/- plus interest from to-day to the date of payment and costs. With regard to assault and battery, in the specialist’s opinion the plaintiff has lost 35 per cent. hearing more in his left than right ear. The loss is permanent. As a result of this loss of hearing, he is at a disadvantage as he is likely to become deafer earlier than would be normal at his age. The plaintiff suffered great pain and the conditions under which he was detained leave much to be desired. I was referred to a decision of this court in *Jimmy Kabasoke v. Hassani Kawosa*, H.C.C.C. 436 of 1970. In that case the plaintiff lost 40 per cent. of his hearing in the left ear. He lost his balance and treatment would continue as long as he lived. General damages of Shs. 80,000/- were awarded. I consider general damages of Shs. 60,000/- reasonable under this head to include damages for pain and suffering and I do so award with interest and costs.

*Order accordingly.*

For the plaintiff:

*HMB Kayondo*

For the defendant:

*Mrs J Katende* (State Counsel)