THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

(CIVIL DIVISION)

CIVIL SUIT NO. 33 OF 2013

1. **NTALE MATHIAS**
2. **ZIWA MUSA**
3. **WILSON MAWEJJE**
4. **NALUBEGA MARY** ========== **PLAINTIFFS**
5. **SEGUYA PAUL**
6. **MWIZINI MUTALEMWA**
7. **MATOVU RONALD**
8. **KASULE TWAHA**

Versus

ATTORNEY GENERAL ========== **DEFENDANT**

BEFORE: THE HON MR. JUSTICE MICHAEL ELUBU

JUDGMENT

The Plaintiffs in this matter instituted this case against the Attorney General, who is the Defendant seeking general and exemplary damages and costs of this suit.

The facts constituting the Plaintiffs' Cause of action/claim against the Defendant as contained in Plaint are that:

The plaintiffs allege that in the month of May 2011, the Defendant's agents attached to the Central Police Station (CPS) in Kampala maliciously and without reasonable cause, arrested them from their respective places of employment. They were then detained at CPS. The Plaintiffs were charged and remanded in Luzira Prison where they stayed until they were released on bail. That the Defendant's agents/servants tortured the Plaintiffs resulting in some requiring hospitalization and others medication. That in May 2011 the Defendant's agents maliciously prosecuted the Plaintiffs in in the Chief Magistrates Court of Buganda Road by laying false charges of Incitement to Violence contrary to Section 83 (1) of **the Penal Code Act Cap. 120**. That later, all the Plaintiffs were released on non-cash bail. The charges were eventually dismissed.

The Plaintiffs state that during their arrest they were beaten indiscriminately and injured which affected their work life. That from the time of their arrest and detention they lost earnings. That valuable property like shoes, clothing and money were also lost owing to the conduct of the Defendant's agents.

That at this time, the Plaintiffs who are married lost love, affection and conjugal rights from their spouses. The Plaintiffs contend that the Defendant is vicariously liable for the actions of its servants, the police officers, who, at the time, were acting within the scope of their employment.

The defendant denied all the Plaintiffs allegations in its Written Statement of Defence. It is stated that the Defendant's agents have never arrested the Plaintiffs. However, if the arrests took place, then they were based on reasonable suspicion that the Plaintiffs had committed or were about to commit offences. That the Defendant's agents carried out thorough investigation into the alleged criminal activities of the Plaintiffs and they were prosecuted on that basis. That the Defendant's agents are

legally and constitutionally mandated to prevent, detect, investigate and contain crime or potential criminals and their perceived actions and the actions against the Plaintiffs were done along that line.

Seven of the eight plaintiffs testified. The Defendant, on the other hand, did not call any witnesses.

Ntale Mathias, was PW 1. He stated that he was a trader and dealer in hardware with a shop called Emble Hardware located at Nakasero Market Street. That on the 29th of April 2011, he was in the shop with Nalubega Mary, Matovu Ronald, Kisitu John, Ssekidde Isaac, Mutalemwa and Naluyinda Hajarah. This was the day of the walk to work protests. That Uganda Police and Military Police officers entered and ordered them out of the shop. They were tied with ropes, beaten and matched to the CPS. At CPS, they were again beaten by Uganda police officers. That they were then taken to the cells where they spent 2 hours. That they were thereafter produced before Buganda Road Court vide Bug Road Case No. 406 of 2011 which remanded them in Luzira Prison. After 4 Days they were produced and granted bail. That he (Ntale) and the other plaintiffs continued reporting to Court until the case against them was dismissed. PW1 stated that he lost several properties including 3 buckets of paint that were poured as they were being arrested. PW1 seeks compensation for his property.

PW2 was **Ziwa Musa**, a plumber. That on 22nd day of a month he could not recall in 2014 or 2015 he was in a Makindye bound taxi going home. On that day there was a riot. That he was put in a police truck and taken to CPS where he and others were beaten with sticks and batons. That during the beatings, they were informed that the reason for the beatings was because they were involved in the "walk to work" riots. After 2 hours, they were moved from CPS and produced in Buganda Road Court which remanded them in Luzira Prison. After 4 days he was produced in court with the others and granted cash bail of Ugx 500,000/-. That at the time of his arrest,

PW2 lost his work tools including a PPR Machine that connects pipes worth Ugx 240,000/, 3 size 14 pipes each worth 30,000/- and a threaded machine worth Ugx 180,000/=.

Kasule Twaha was PW3, a driver, who stated that on the 29th April 2011 he was at Marvid Pharmaceutical on Luwum Street where he worked as a driver. He did not know that there were demonstrations in the city that day. The shop was closed and he was ordered to go home. that the Police arrested him as one of the people who were demonstrating. That with others, they were taken to Old Taxi Park Police Post and beaten. That they were transferred to CPS and taken to Court and remanded. They ended up appearing 11 times with no prosecution witness testifying. The Magistrate stated that they did not have a case to answer. Kasule prayed for compensation for his arrest which was without just cause, and for time he lost while reporting to and from Court.

Nalubega Mary testified as PW4. That on the 29th of April 2011, she was in the same hardware shop at Nakasero Market street with PW 1 and the other witnesses, when military men came in and beat them severely. The soldiers also destroyed merchandise in the shop. As they took them to CPS they were subjected to more beatings with batons. That they were detained at CPS for a whole day and then taken to Buganda Road Court which remanded them in Luzira Prison. That some of their properties were also taken. PW4 stated the was traumatised by the detention, and the beatings caused her high blood pressure. That she seeks compensation for malicious prosecution, the beatings, financial loss suffered as a result of the shop items spoilt.

PW5 was **Wilson Mawejje.** It was his evidence that at 9.30 am on the 29th of April 2011, he was walking to Kisenyi Market to buy goats for an introduction ceremony when military and Uganda police men stopped him and inquired why he was on the road. Before he could explain himself, he was beaten with sticks and taken to the Police booth in Kikuubo near the Old Taxi Park. There, the beating continued. At

the time of his arrest, PW5 had Uganda Shillings 907,500/= which was taken by the military and the police officers. He was then transferred to CPS and again beaten some more. His Shoes worth 100,000/=, a belt worth 50,000/- and other properties were taken. He was produced before Buganda Road Court and remanded in Luzira Prison. Later he was granted bail and continued reporting to court as directed by Buganda Road Court. PW5 sustained injuries and used Uganda Shillings 102,500/= for medical treatment. He seeks compensation as highlighted in the plaint.

Mwidini Mutalemwa testified as PW6. He stated that he was a businessman dealing in hardware in a shop at Nakasero Market. That on the 29th of April 2011, while at his hardware shop at Nakasero, PW6 saw people running by the street. Others entered his shop. That at the same time, military men in army uniform entered his shop and started beating him together with the 1st, 4th, 6th, 9th and 10th Plaintiffs who also worked in the same shop. The military men destroyed their supplies and items which included paint, glasses, oxidize, powder and jess toilet wash. In the process, some of their properties were lost or taken. That the military personnel chased them out of the shop while subjecting them to severe beatings causing a lot of pain to various parts of the body. That the Military men handed them to a group of 8 police officers who took them to CPS. That while being taken to CPS, they were subjected to more beatings using batons. That they were detained at CPS and then taken to Buganda Road Court which remanded them in Luzira Prison. After 3 days PW 6 was granted bail. That on 7th March 2012, the case against them was dismissed for want of prosecution. That he suffered financial loss in his hardware business seeks compensation for malicious prosecution, the beatings, the financial loss suffered and for his supplies and items which were spoilt.

PW7 was **Matovu Ronald**. He stated that on the 29th of April 2011, he was in the same hardware shop at Nakasero Market street with the other witnesses when the military men came in and beat them severely. They also started destroyed

merchandise in the shop. They were ordered out of the shop. That as they were taken to CPS, the officers beat with batons. That they were detained at CPS for a whole day and then taken to Buganda Road Court which remanded them in Luzira Prison. He stated that after 3 days they were granted bail. On the 7th March of 2012, the case against them was dismissed for want of prosecution. PW7 states that he was psychologically tortured and suffered financial loss in his hardware business. He seeks compensation for malicious prosecution, the beatings, for the financial loss suffered as a result of the shop items spoilt.

Determination

Issues

The parties in this matter were granted leave to file written submissions although it was only the plaintiff who responded.

The issues for determination in this suit are:

1. Whether the Plaintiffs were maliciously prosecuted.
2. Whether the Plaintiffs were subjected to torture, cruel and inhuman treatment.
3. Whether the Respondent is vicariously liable
4. Whether the Plaintiffs are entitled to the remedies

Burden and standard of proof

Sections 101 and 102 of the **Evidence Act** place the burden on the plaintiffs to prove the allegations contained in their Plaint.

Secondly, in civil cases such as this, the settled degree or standard of proof is on a balance of probabilities as stated in **Miller vs Minister of Pensions [1947] 2 All ER 372**:

> That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that

the tribunal can say: "We think it more probable than not," the burden is discharged but, if the probabilities are equal, it is not.

Issue 1

Whether the Plaintiffs were maliciously prosecuted.

The Plaintiffs submission was that the tort of malicious prosecution is committed where there is no legal reason for instituting criminal proceedings. That ***Odunga's Digest on Civil Case law and Procedure at page 5276*** states that the tort of malicious prosecution is proved when these four essential ingredients are proved:

1. The Criminal proceedings must have been instituted by the Defendant.
2. The Defendant must have acted without reasonable or probable cause.
3. The Defendant must have acted maliciously
4. The Criminal Proceedings must have been terminated in the Plaintiff's favour.

It is argued that there is no doubt that criminal proceedings were instituted against the Plaintiffs and were terminated in the Plaintiffs' favour. That this alone proves two ingredients of the tort of malicious prosecution. That the only ingredients for which a determination by this court were required were firstly, whether the Defendant acted without reasonable or probable cause and secondly, whether the Defendant acted maliciously.

That the test for whether the Defendant acted without reasonable or probable cause is stated in **Dr. Willy Kaberuka vs AG Civil Suit No. 160/1993 [1994]11 KALR 64** where it was held:

> "The question as to whether there was a reasonable and probable cause of the prosecution is primarily to be judged on the basis of an objective test and that is to say, to constitute reasonable and probable cause, the totality of the material within the knowledge of the prosecutor at the time he instituted the prosecution whether that material consists of facts discovered by the

prosecutor or information which has come to him or both must be such as to be capable of satisfying an ordinary, prudent and cautious man to the extent of believing that the accused is probably guilty".

The plaintiff submits that, had investigations been conducted by the prosecutor, he would have arrived at the conclusion not to arrest, detain and charge the Plaintiffs. Regarding the ingredient of malice, the Plaintiffs contend that malice is established from the failure of the Defendant to consult the law and or act prudently and cautiously following the arrest, detention and charge of the Plaintiffs, against who the defendant had no cause to do so. That this argument is supported by the decisions in **Gwagilo vs AG [2002]2 EA 381 (CAT)** and **Mugabi vs AG Civil Suit No. 133 of 2002**. That the evidence on the court record shows that both the police and the prosecutor did not carry out investigations or consult the law and did not act prudently when arresting, detaining and charging the Plaintiffs.

The Defendant did not file written submissions.

Determination

At paragraph 20–005 in the 19th Edition of ***Winfield and Jolowicz on Tort***, the elements of the tort of malicious prosecution are stated to be:

1. that the defendant prosecuted him;
2. that the prosecution ended in the claimant's favour;
3. that the prosecution lacked reasonable and probable cause; and
4. that the defendant acted maliciously.

The Plaintiffs were under duty to show whether, on a balance of probability, each of these elements were established in their claim. I will examine each in turn.

1. **that the defendant prosecuted him.**

In **Martin vs Watson [1995] 3 ALL E.R. 559**, it was held that:

> "A person who in substance was responsible for a prosecution being brought against the plaintiff was liable to the plaintiff for malicious prosecution if the other essentials of the tort were fulfilled".

The above holding provides a useful guide for determining the first element on who is held liable or accountable in a cause of action for malicious damage.

The Plaintiffs were charged at Buganda Road Chief Magistrates Court with the offence of incitement to violence contrary to Section 83 of **the Penal Code Act** vide **Buganda Road Court Criminal Case No. 406 of 2011**. The person (authority) that levelled charges against the claimant is liable for malicious prosecution if all the other elements of the tort be present. There was no individual complainant named but incitement to violence being an offence against public order, a private individual as a complainant was not required to establish the commission of the crime. The state could institute the proceedings based on availability of cogent evidence.

The record of proceedings in Buganda Road Chief Magistrates Court Criminal Case No. 406 of 2011 (PE 2) and the charge sheet relied on by the prosecution (PE 1) would be sufficient to show whether there were charges levelled against the plaintiffs.

In the charge sheet, PE 1, the Plaintiffs are named as accused persons in the following order:

1. Ntale Mathias – A26
2. Ziwa Musa - A3
3. Wilson Mawejje - A17
4. Nalubega Mary - A27
5. Seguya Mary - A11
6. Mwidini Mutalemwa – A25

7. Matovu Ronald - A24
8. Kasule Twaha - A2

The Charge was signed by the Uganda Police who instituted the proceedings on behalf of the state. The proceedings show that all took plea in the matter. From all these, it is evident that the Plaintiffs were prosecuted. Accordingly, I find that the first element of the tort of malicious prosecution is proved.

2. that the prosecution ended in the claimant's favour

In ***Street on Torts (13th Edn, Oxford University Press, 2012)*** at page **619** it is stated:

> "In order to sue, the proceedings upon which the claim is based must have terminated in the claimant's favour. Even though the claimant has been convicted of a lesser offence, or has had his conviction quashed on appeal or has been acquitted on a technicality (for example, a defect in the indictment) this requirement is satisfied ... If, however, the conviction of the claimant stands, there is no possibility of obtaining a remedy in this tort. As regards demonstrating a favourable termination of proceedings, the claimant seems to satisfy the test if he proves that the defendant has discontinued the proceedings (but he cannot sue while the proceedings are still pending)".

The record of proceedings, PE 2, shows that the charges were dismissed for want of prosecution on 7th of March 2012. A dismissal is a termination of proceedings in the favour of the claimants. Therefore, when Buganda Road Chief Magistrates Court Criminal Case No. 406 of 2011 was dismissed for want of prosecution it meant the that the prosecution ended in the claimant's favour, thereby satisfying the second element of the tort of malicious prosecution.

3. **that the prosecution lacked reasonable and probable cause**

When determining this issue this court will be guided by the holding in **Hicks vs Faulkner (1878) 8 Q.B.D. 167 at 171** which described reasonable and probable cause as:

> "An honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed."

The position above was followed and in **Kagane and others vs Attorney-General and another [1969] 1 EA 643 (HCK)** where it was observed that:

> "whether there was reasonable and probable cause for the prosecution is primarily to be judged on the objective basis of whether the material known to the prosecutor would satisfy a prudent and cautious man that the accused was probably guilty (Hicks v. Faulkner (1) adopted);
>
> ...
>
> If it is shown to the satisfaction of the judge that a reasonable prudent and cautious man would not have been satisfied that there was a proper case to put before the court, then absence of reasonable and probable cause has been established.

When Buganda Road Chief Magistrates Court Criminal Case No. 406 of 2011 came up for hearing, the prosecution called two witnesses. Both testified on the 13th of October 2011. PW 1 who was a police officer, stated that he arrested 60 people who were shouting and rioting around Hotel Equatorial. That only one (called Mwanje Paul) of those 60 persons was present as an accused person in court on that day.

The second witness was also a police officer who said that on that day he was in charge of a patrol car. That he was directed to drive to Kiseka market and transport

suspects to CPS. That he picked 8 suspects from Kisseka market and took them to CPS as instructed. It was his evidence that the 8 people he carried on that day were not in court as accused persons.

The prosecution did not call any other evidence after this, and after six more adjournments, the matter was dismissed on the 7th of March 2012 for want of prosecution.

None of the plaintiffs was pointed out by any of the prosecution witnesses nor did they mention any of the areas the plaintiffs were arrested from as being involved in the riots. The plaintiffs had testified that they were arrested in Makindye, Kisenyi and Market Street near Nakesero.

The plaintiffs here contend that the state had no reasonable grounds on which to prefer charges against them. This would mean that the state had no evidence or basis on which to suspect or charge them of any offence. In my view it was not necessary to adduce evidence in proof beyond reasonable doubt, that an offence had been committed. What was required was reasonable grounds to believe that the plaintiffs committed the crimes charged. The defendant should have offered some evidence based on the law, investigations or reasonable suspicion showing the basis for the arrest and prosecution of the plaintiffs. As it stands none was offered.

A lack of evidence in the lower court may explain why no defence evidence was brought forward in this suit.

Clearly, there were no grounds on which it could be imputed that the plaintiffs had committed any offence. In the result I find that the 3rd element of the tort of malicious prosecution, that the defendant lacked reasonable and probable cause to prosecute, has been established.

4. That the defendant acted maliciously.

The last element required to prove this tort is that the plaintiffs had the burden to show that the charges were instituted maliciously. In the **13th Edition of *Street on Torts (Oxford University Press, 2012)*** at **pages 621-622,** the learned authors state that:

> "The claimant must also prove malice on the part of the defendant. In this context, this means that he must show 'any motive other than that of simply instituting a prosecution for the purpose of bringing a person to justice".

In **Gwagilo v Attorney-General [2002] 2 EA 381** the East African Court of Appeal considered the element of malice in these terms:

> Malice in the context of malicious prosecution is an intent to use the legal process for some other than its legally appointed and appropriate purpose. The Appellant could prove malice by showing, for instance, that the prosecution did not honestly believe in the case which they were making, that there was no evidence at all upon which a reasonable tribunal could convict, that the prosecution was mounted for a wrong motive.., etc".

In **Olango Vs Attorney General & Kampala Capital City Authority Civil Suit No. 681 of 2016,** the Court held that:

> Malice in criminal proceedings can be established by looking at the peculiar circumstances of every case or inference from circumstances and cannot be proved by direct evidence. Malice means indirect and improper motive. That is to say; intent to use the legal process in question for some other than it's legally appointed and appropriate purpose. The plaintiff must show that the prosecution was "motivated not by desire to achieve justice, but for some other reason". ***Zainal bin Kuning Vs Chan Sin Mian Micheal [1996] 2 SLR(R) 858***

Malice can be established through enmity, retaliation, haste, omission to make due and proper inquiries, recklessness, harassment, personal spite, sinister motive e.t.c are some of the items which are relied upon for proving the malice".

As rightly pointed out, it is not likely that one can adduce direct evidence pointing positively to the fact that the defendant was motivated by malice. The court is left to rely on an evaluation of the circumstances. In this case the victims were picked from their shop. No evidence to rebut this was adduced. They were arrested by several officers, any of who would have testified regarding their circumstances of arrest. None was produced at their trial in Buganda Road Court. It is in the public interest that a prosecution is regarded as a serious proceeding aimed at righting a wrong, or punishing the commission of an offence. It should not be initiated or terminated casually. Where that happens, an inference may be drawn that, from inception, the prosecutor did not believe in the case that they initiated.

Additionally, when this claim was made, the defendant did not call any rebutting evidence nor did they bother to file submissions. The circumstances here certainly point to an utter recklessness and disregard for the prosecution in the lower court or the defence in this court.

This court has already established that there was no basis for the charges, and from the circumstances as stated, it is clear that no proper inquiries were made before putting these plaintiffs on trial for a whole year. The decision to prefer charges in circumstances where no evidence has been found or even investigations carried out, in an utter disregard for the law, can safely be inferred to be malicious in the circumstances.

In the result therefore I should that the plaintiffs have proved the last element of this tort.

Issue 2

Whether the Plaintiffs were subjected to torture, cruel and inhuman treatment.

It was submitted for the Plaintiffs that torture, according to Section 2 (1) (b) of the **Prevention and Prohibition of Torture Act 2012** is 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 the consent or acquiescence of any person whether a public official or other person acting in an official or private capacity for purposes for punishing that person for an act he or she or any other person has committed or is suspected of having committed or of planning to commit. It is argued farther that Article 24 of the **Constitution of the Republic of Uganda** guarantees freedom from torture, cruel, inhuman or degrading treatment or punishment. And that under Article 44 (a) of the **Constitution**, freedom from torture is absolute and prohibited. That in the case of **Issa Wazemba vs AG HCCS No. 154 of 2016,** the Court held that:

> "For an act to amount to torture not only must there be a certain severity in pain and suffering, the treatment must also be intentionally inflicted for the prohibited purpose".

The Defendant did not file written submissions.

Determination

This court is in full agreement with the position of the law as cited by the plaintiff. The provisions show that the plaintiffs were under a duty to properly demonstrate that they suffered severe pain and suffering as a result of the actions of the defendant. The Plaintiffs testified that upon their arrests, they were subjected to beatings by the police and military personnel using batons. These beatings continued from arrest right up to their detention at the Central Police Station. The Plaintiffs stated that as

a result of the beatings, they sustained injuries and some were hospitalized while others developed complications such as high blood pressure.

Cogent evidence to prove the above allegations must be adduced. The plaintiffs state they were hospitalised after they were brutalised. None of them produced any corroborative evidence to prove those claims. In the case of **Wazembe** (supra) relied on by the plaintiffs, a medical doctor (pathologist) testified in proof of the plaintiff's claims.

Evidence of this kind, especially regarding extent of damage, must be direct and cannot be inferred. There should be a specialised assessment of the severe pain or suffering whether physical or mental allegedly suffered by the claimant.

Other than raising the allegations of torture, the Plaintiffs did not adduce other evidence (medical or otherwise) to prove their claims. In my view, the plaintiffs have fallen short of establishing, on a balance of probabilities, that any of them suffered severe pain or suffering whether physical or mental, meted on them by agents of the defendant.

In a case cited by the plaintiffs, **Ireland vs United Kingdom ECHR Application No.5310/71,** the European Court of Human Rights stated,

> the distinction between Torture and inhuman or degrading treatment lies in the difference in the intensity of suffering inflicted. In deciding whether certain treatment amounts to torture, the court takes into account factors of each individual case, such as the duration of treatment, its physical and mental effects, and age, sex, health and vulnerability of the victim.

It is clear that a properly assessed intensity of suffering indicating the extent of damage or injury inflicted or suffered is a key consideration in making a determination on whether an individual has suffered torture. I agree with the observation made in **Issa Wazemba Vs AG HCCS No. 154 of 2016** that:

> The courts should apply a very strict test when considering whether there has been a breach of an individual's right to freedom from torture or inhuman or degrading treatment. Only worst examples are likely to satisfy the test.

In light of all the above, it is my finding that the plaintiffs fell short in this regard and fail on this issue.

Issue 3

Whether the respondent is vicariously liable

This issue was most relevant in regard to the question of torture. Because the plaintiff failed to prove the previous issue, I do not find it necessary to deal with this question.

Issue 4

Whether the Plaintiffs are entitled to the remedies

The Plaintiffs sought the following reliefs:

General Damages

The award of General damages is made at the discretion of court in respect of what the law presumes to be the natural and probable consequence of the defendant's act or omission (see **James *Fredrick Nsubuga v. Attorney General, H.C. Civil Suit No. 13 of 1993*** **and *Erukana Kuwe v. Isaac Patrick Matovu and another, H.C. Civil Suit No. 177 of 2003*).** The object of the award of damages is to give the plaintiff compensation for the damage, loss or injury he or she has suffered. (Refer to **Robert Coussens vs. Attorney General, SCCA No. 08 of 1999).** General damages do not need to be specifically pleaded, however, the plaintiff must plead any material facts giving rise to a claim for general damages, and must provide such evidence as is necessary and appropriate to support such a claim. The Court is alive to the

requirement that in assessment of the quantum of damages, it should be mainly 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 Vs Kigozi [2002] 1 EA 305***).

The Plaintiffs testified that during their arrests, their property which included paint, glasses, oxide powder, jess toilet wash, Plumbing Machines, pipes, tools and money were lost. The Plaintiffs also testified that they underwent psychological torture as a result of the above mentioned events.

I have taken into account the detention of the plaintiffs. They were also business persons and time away from their business endeavours to attend court must have affected their enterprises thereby visiting economic inconvenience and damage on them. They had to attend court proceedings for close to one year.

General Damages are awarded at the discretion of the Court.

In view of the damage suffered by the Plaintiffs, this court shall award each of them three million Uganda Shillings as General Damages.

Punitive Damages

Exemplary (or "punitive") damages are damages awarded against the defendant as a punishment, so that the assessment goes beyond mere compensation of the claimant.

In **Rookes Vs Barnard [1964] AC 1129 at 1221, [1964] 1 All ER 367** it was stated that:

> *"English law recognised the awarding of exemplary damages, that is, damages whose object was to punish or deter and which were distinct from aggravated damages (whereby the motives and conduct of the defendant aggravating the injury to the plaintiff would be taken into account in assessing compensatory damages); and there were two categories of cases in which an*

award of exemplary damages could serve a useful purpose, viz, in the case of oppressive, arbitrary or unconstitutional action by the servants of the government, and in the case where the defendant's conduct had been calculated by him to make a profit for himself, which might well exceed the compensation payable to the plaintiff.

The principles stated in **Rookes vs Barnard** above have been cited with approval in **Obongo & another vs Municipal Council of Kisumu [1971] EA 91** and several Ugandan cases such as **Fredrick J. K. Zaabwe Vs Orient Bank & Others Supreme Court Civil Appeal No. 4 of 2006.**

The actions in this case merit an award of exemplary damages.

Each of the Plaintiffs is accordingly awarded two million shillings as Exemplary Damages.

Interest

Section 26 (2) of the **Civil Procedure Act Cap 71** gives this court wide discretion to grant interest on a decree for payment of money.

In **Lwanga vs Centenary Bank [1999] EA 175** the Court of Appeal held that:

> "Section 26 (2) of **the Civil Procedure Act** empowered the court to award three types of interest: interest adjudged on the principal sum from any period prior to the institution of the suit, interest on the principal sum adjudged from the date of filing the suit to the date of the decree, and interest on the aggregate sum from the date of the decree to the date of payment in full"

The General and Exemplary Damages will attract an interest of 6% from the date of Judgment until payment in full.

Costs

The Plaintiffs are awarded Costs of this Suit.

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Michael Elubu

Judge

19.01.2024