

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO. 103 OF 2019

CHRISTOPHER SSOZI :: APPLICANT

VERSUS

1. ATTORNEY GENERAL

2. SAFINA ::RESPONDENTS

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This was an application brought under the provisions of Article 20,23,24,26,44 and 50(1) of the Constitution of the Republic of Uganda,1995, for the following reliefs;

- (i) A declaration that the stripping naked, flogging and beating of the applicant by officers of Uganda People’s Defence Force operating as Wembley Officers and officers of the Uganda Police Force was a violation of the applicant’s freedom from cruel and inhuman treatment contrary to Article 24 of the 1995 Constitution of the Republic of Uganda.
- (ii) A declaration that the unlawful restriction and detention of the applicant by the agents of the respondents was a violation of the applicant’s right to personal liberty contrary to Article 23 of 1995 Constitution of the republic of Uganda.

- (iii) A declaration that the unlawful possession and deprivation of the applicant's shoes, belt, cell phone (Erikson 1018) and his wallet containing Ushs 320,000/= by the agents of the respondents was a violation of the applicant's right to property contrary to Article 26 of the 1995 Constitution of the republic of Uganda.
- (iv) A declaration that the Attorney General is vicariously liable for the actions of the officers of Uganda People's Defence Forces operating as Wembley Officers and Officers of Uganda Police Force acting in the course of their employment.
- (v) An Order that the respondent pay to the applicant punitive and general damages for the violation of the applicant's fundamental rights.
- (vi) An Order of Interest of 20% on (v) until payment in full.
- (vii) An order that the respondents pay costs of the suit.

The application is supported by the affidavit of Christopher Ssozi the applicant herein which contains the grounds upon which this application is premised but briefly the grounds are;

- (i) That in 2002 the applicant was employed by the 2nd defendant to construct a house at Ntinda Minister's Village and completed the construction works and was left with a balance of 56,000/=
- (ii) That on 26th day of October 2003, the applicant was called on her mobile number for another job by a man at Ntinda Shell Petrol Station along Bukoto road.
- (iii) That while he went at the said venue was surrounded by people armed with AK 47 rifles and pistols and about 4 of them were dressed in military fatigues.

- (iv) That the applicant was put on gun point and asked to sit down, remove and hand over his shoes, belt, cell phone (an erikson 1018) and wallet containing 320,000/=
- (v) The men later called Ms Safina the 2nd respondent who came in motor vehicle registration on the UEA 044K a Prado red in colour. He was bundled into the car and some of them men introduced themselves as they demanded that he produces Ms Safina's door bell or else he will be dead.
- (vi) That the applicant was later driven towards nakawa direction past Ntinda Stage where he was tied up kicked and forced into another boot of Toyota Corolla Registration No. UAB 673F where he found a one Byaruhanga Bosco (store keeper) lying unconscious.
- (vii) That the two were taken to a place called "Liverpool" where he was stripped naked, beaten repeatedly and rolled in sewage like substance. He stayed in this place for about 12 days with about 150 and he was given food only at night and was given water for the rest of the day.
- (viii) That he was tortured at intervals and once he there were two blocks tied on his penis and testicles with a sting. He was threatened with death by shooting and ordered to move.
- (ix) That the applicant was later taken to Kiira Police station to take a statement and later was taken to Central Police Station where he was held for 4 days and later taken to Jinja Road Station and was released on 16th day of November 2002.
- (x) The applicant filed a supplementary affidavit where he contended that he had filed an application in 2004 but the same was

dismissed for using a wrong procedure and was advised to file an ordinary suit to recover compensation on 22nd August 2013.

- (xi) That the applicant never filed another as directed by court but rather in 2019 he filed another Miscellaneous Cause in after 6 years.

The 1st respondent filed an affidavit in reply opposing the application stating that it is an abuse of court process contending that;

1. The applicant filed the main application in June 2004 seeking redress from court over the alleged torture and detention by officers of the Uganda Police Force operating as Wembley.
2. That on 22nd August 2013, His Lordship Learned Hon. Justice Benjamin Kabiito (as he was then) dismissed the application and ordered the applicant to seek redress by filing an ordinary suit.
3. That on 22nd August 2014 filed civil suit No. 290 of 2014 Christopher Ssozi v AG & Ms Safina on the same facts and seeking the same remedies.
4. That on November 2015, Civil Suit No. 290 was dismissed for failure to serve summons.
5. The applicant on 7th March 2016 filed an applicant seeking to reinstate civil suit No. 290 of 2014.
6. That on 8th April 2016 the said miscellaneous application seeking reinstatement was allowed and civil suit No. 290 was re-instated.

7. That the parties were directed to file a joint scheduling memorandum and trial bundles and the matter was fixed for hearing on 11th October 2016 for scheduling and conferencing.
8. That the applicant has never bothered to prosecute civil suit No. 290 of 2014, instead he abandoned the same and filed the present Miscellaneous Cause seeking the same remedies.
9. That the applicant filing several miscellaneous applications and causes over the same matter is an abuse of court process which should not be condoned by court.

The following issues were framed for determination by the court:

1. *Whether the application is an abuse of court process?*
2. *Whether the fundamental rights and freedoms of the applicant were infringed upon by the respondents.*
3. *What remedies are available to the parties?*

The parties filed written submissions that were considered by this court.

The applicant was represented by *Counsel Nakigudde Winnie* while the 1st respondent was represented by *Ojambo Bichachi (State Attorney)*

Whether the application an abuse of court process?

The 1st respondent counsel submitted that the present application is an abuse of court process since the applicant has abandoned the main civil suit and opted to file a fresh application. Counsel relying on the Supreme Court of Nigeria in *R-Benkay Nigeria Ltd v Cadbury Nigerian PLC SC 26 of 2006* contended that abuse of court process is imprecise. But it is will arise in instituting a multiplicity of action on the same subject matter against the same opponent on the same issue.

Analysis

The applicant filed this application without making any disclosure of the previous applications and suits filed in this court over the same subject matter. When the 1st respondent filed an affidavit in reply, then the applicant filed a rejoinder contending that the main suit had been referred to a court without jurisdiction.

The applicant's counsel had a duty to court as an officer of court to avoid filing multiple suits or applications over the same facts in pursuit of justice otherwise the conduct would indeed be an abuse of court process.

The concept of abuse of court process is imprecise as it involves circumstances and situations of infinite varieties and conditions. But common of it is the improper use of judicial process by a party in litigation to interfere with the due administration of justice. The circumstances which will give rise to abuse of court process include:

- (a) Instituting a multiplicity of action on the same matter against the same opponent on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action:
- (b) Instituting different action between the same parties simultaneously in different courts, even though different grounds.
- (c) Where two similar processes are used in respect of the exercise of the same right.
- (d) Where an application for adjournment is sought by a party to an action to bring an application for leave to raise issues of facts already decided by the lower court.
- (e) Where there is no law supporting a court process or where it is premised on frivolity or recklessness.

- (f) Where a party has adopted the system of forum-shopping in the enforcement of a conceived right.
- (g) Where an appellant files an application at the trial court in respect of a matter which is already subject of an earlier application by a respondent at the court of appeal. When the appellant's application has the effect of over-reaching the respondent's application.
- (h) Where two actions are commenced, the second asking for a relief which may have been obtained in the first.

See Male Mabirizi K Kiwanuka v Attorney General HCMA No.916 & 921 of 2021: R. Benkey (Nig) Ltd v Cadbury (Nig) Plc (2012) 9 NWLR (pt 1306) p. 596: Chief B. A. Allanah & Ors v. Mr. Kanayo Kpolokwu & Ors N.W.L.R. Part 1507 Page 1; Billy George Ng'ong'ah v Khan & Associates HCCA No. 47 of 1996(HCK) Male Mabirizi Kiwanuka v Attorney General HCMA No. 17 of 2021: National Bank of Kenya Ltd v John Odowa Olouch Kisumu HCCC No. 205 of 2007

The duty of court is to safeguard its dignity and authority in order to stop errant applicants or legal busybodies from clogging the court system with hopeless and baseless applications. The duty extends to court to jealously guard and protect its process from abuse and will not allow any litigant to abuse its process.

Parties and their respective counsel should ensure that all necessary steps are taken to safeguard the integrity of the judiciary and to avoid a multiplicity of suits or applications likely to abuse its process. It has always been the policy of the law to avoid multiple suits or applications dealing with more or less similar subject matter and issues.

Parties must show that they are acting in good faith and not merely delaying a cause or wasting valuable judicial time. Bad faith will be imputed where a party tries to obtain similar orders to those sought in an

earlier application or suit which he has since abandoned without prosecution like in the present case.

It bears emphasis however, that where there is a glimpse of abuse of court process, the court must examine the merits because different conditions would affect the conclusion that could be reached as to whether or not an abuse exists. The applicant has been in court since 2004 when the first application was filed and dismissed by court. The same applicant as directed by court filed a suit as directed by court in 2014 which he has since abandoned and later filed the present application in 2019 after a period of 18 years since the cause of action arose.

Where a court comes to the conclusion that its process is being abused, the appropriate order to make is that of dismissal of the process.

The application is dismissed with no order as to costs.

I so order.

SSEKAANA MUSA

JUDGE

5th May 2023