

Reference No. 17 of 2019 Moses Ishimwe v. The Attorney General of the Republic of Uganda

Coming up for hearing: on 31st March, 2023

Reference filed: on 5th August, 2019.

Articles: 5(3), 6(d), 7(1) (2), 8(1) (a) (c), (4) and (5) of the Treaty

Rules: 25 of the EACJ Rules of Procedure, 2019.

Subject matter: Alleged arbitrary arrested, detention, torture and deportation.

The Applicant alleges that he was wrongfully arrested, tortured and detained by agents of the Respondent. That throughout his illegal detention, he was interrogated about his links to the Rwanda Defence Forces and his spying activities conducted on behalf of the Government of Rwanda. His denial of espionage and any links to the Rwanda Defence Forces attracted more extreme torture from his captors. That he was charged, prosecuted for illegal entry and was on 6th June 2019 found not guilty of the charge. He is now getting medical care to deal with the effects of torture he was subjected to while in detention in Uganda.

The Applicant alleges that the Respondent as a Partner State of the EAC and a signatory of the African Charter on Human and Peoples' Rights had an obligation to uphold and safeguard principles enshrined in the respective instruments of which it did not and therefore was vicariously liable for the unlawful actions of its security agencies, organs and or personnel.

The Applicant therefore seeks declaration that the arrest, detention and torture is an infringement and in contravention of Articles 5, 5, 7, 76 and 104 of the Treaty and; in violation of Articles 2, 3, 4, 5 and 6 of the Common Market Protocol with regard to free movement, establishment, residence and trade in the Republic of Uganda, a partner State.

The Applicant also seeks an order that compelling the Respondent to pay damages to the Applicant for grievous bodily harm, as well as emotional and psychological trauma arising from the illegal detention and torture inflicted on him plus costs of the Reference.

The Respondent denies the allegations and states that the Government of Uganda, its agents and /or servants have not committed any of the alleged crimes against the Applicant.

The Respondent further states that the Applicant is a Rwandan national who holds National Identity Card No. 1198580197685165 and he was lawfully arrested by security forces in Uganda after it had been established that he had illegally entered and stayed in Uganda. That the Applicant was subsequently charged with illegal entry and illegal presence in Uganda in accordance with the provisions of the Uganda Citizenship and Immigration Control Act Cap 66 of the laws of Uganda.

The Respondent contends that the Applicant was arraigned before the Nakawa Chief Magistrates Court and charged in accordance with the laws of Uganda hence the Applicant's allegations of torture are unfounded, ill-conceived, an afterthought and in bad faith.

Finally, the Respondent states that this Court does not have jurisdiction to entertain human rights violations as contained in the Statement of Reference and hence the entire Reference be dismissed with cost.

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