

UGANDA / JUDGMENT

Karegyeya v Mugabi T/A Ssemanda and Sons EST (Civil Suit 753 of 2019) [2023]

UGCommC 92 (29 September 2023)

[2023] UGCommC 92

COURT

Commercial Court of Uganda

BEFORE

Abinyo, J

CASE / FILE NUMBER

Civil Suit 753 of 2019

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5 THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****(COMMERCIAL DIVISION)****CIVIL SUIT No. 0753 OF 2019****10 KAREGYEYA GEOFFREY PLAINTIFF****VERSUS****MUGABI INNOCENT****T/A SSEMANDA & SONS EST DEFENDANT****BEFORE: HON. LADY JUSTICE SUSAN ABINYO****JUDGMENT****Introduction**

- 20 The Plaintiff brought this suit against the Defendant for breach of a Tenancy Agreement, and seeks the following remedies:- a declaration that the Defendant breached the oral tenancy agreement, recovery of UGX 3,000,000(Uganda Shillings Three Million only) being rent paid to the Defendant for a period of two months, and business good will, recovery of properties unlawfully held by the

- 25 Defendant worth UGX 52,810,000(Uganda Shillings Fifty Two Million, Eight Hundred Ten Thousand only), special damages for loss of business from July, 2018 till payment in full, general damages, interest, and costs of the suit.

Facts

That on the 17th day of February, 2018, the Plaintiff entered into an oral tenancy 30 agreement with the Defendant to rent the Defendant's house located in Ndeeba for UGX 1,000,000(Uganda Shillings One Million only) monthly, and that on 17th February, 2018, the Plaintiff made payments of UGX 2,000,000(Uganda Shillings Two Million only) to the Defendant, as rent for a period of two months starting from 15th April, 2018 to 15th June, 2018.

- 5 That the Plaintiff further paid UGX 1,000,000(Uganda Shillings One Million only) to the Defendant as business good will that he is to manage, use, sub rent, and or utilise the said house in a manner that he wishes. That the Plaintiff was to have vacant possession of the house on the 15th day of April, 2018, since the house had another tenant at the time he entered into the agreement with the Defendant.
- 10 That towards the end of the month of April, 2018, the Plaintiff went to the said premises with the permission of the Defendant to install bakery, and confectionery equipments, paint the house so as to make it suitable for business and commercial purposes.

That on the 9th day of July, 2018, when the Plaintiff went to open the house to start

- 15 normal business, he was in utter shock, and dismayed to find that another tenant was in occupation of the house, and all the equipments that he installed were missing. That he tried to inquire from the Defendant as to why he breached the oral agreement, and took a way the properties without giving him notice or warning but the Defendant assaulted him. That the Plaintiff reported the case to
- 20 Ndeeba police station vide SD Ref: 33/09/07/2018 of theft and assault against Mugabi Innocent.

The Defendant filed his written statement of defence, in which he denied the allegations made by the Plaintiff, and contended that the Plaintiff shall be put to strict proof thereof. The Defendant averred that at the time the Plaintiff 25 approached him, he did not have the required documents such as the National Identity Card, or LC 1 letter, which are the basic requirements for executing a tenancy agreement with the intended tenant.

That indeed the Plaintiff paid UGX 3,000,000 however, the Plaintiff failed to bring the said documents, which the Defendant was to use to execute the tenancy 30 agreement. That the Plaintiff was informed that the tenancy commenced upon payment of the sums above, but the Plaintiff neither returned nor produced the said documents.

That the Defendant reported the matter to the LC1 Chairperson of Kironde Zone, who advised him to make an announcement through the radio, which the

- 35 Defendant did but after the expiration of two weeks, the Defendant returned to the LC1 Chairperson, and reported the matter to police, who went with the Defendant to the house, and the Defendant opened the house in their presence. That upon opening the house, the Defendant only found wooden shelves, a glass display counter, microwave, a jerry can, a bucket, wooden stool, refrigerator, and
- 40 a vacuum machine.

5 That the Defendant never assaulted the Plaintiff, and that he rented the house to another tenant in July, 2018, after the tenancy period for which the Plaintiff had paid for the house had lapsed.

Representation

The Plaintiff was represented by Counsel Hillary Kabiswa of M/S Tebusweke 10 Mayinja, Okello & Co. Advocates while the Defendant was unrepresented.

The agreed facts are that the Plaintiff paid UGX 2,000,000 (Uganda Shillings Two Million only) to the Defendant and that the Plaintiff never occupied the house for business.

Issues for determination

- 15 The following issues were agreed upon for Court's determination during the scheduling proceedings.
- 1. Whether there was a tenancy agreement between the parties?
- 2. Whether there was breach of the tenancy agreement, if so by who?
- 3. What remedies are available to the parties?

20 Evidence

Counsel for the Plaintiff complied with the Court's directive to file the Plaintiff's witness statement, which was adopted on record as his evidence in chief. The Defendant, who later appeared to be unrepresented was directed to proceed by viva voce evidence. The evidence of the parties herein will be evaluated

25 hereunder.

Issue No.1: Whether there was a tenancy agreement between the parties?

It was the Plaintiff' evidence that on 17th February, 2018, he made payment of UGX 2,000,000(Uganda Shillings Two Million only) to the Defendant, as rent for a period of two months starting from 15th April, 2018 to 15th June, 2018, and was

- 30 issued a receipt (PE1) by the Defendant. That the Plaintiff was to have vacant possession of the house on the 15th day of April, 2018, since the house had another tenant at the time he entered into the agreement with the Defendant. That towards the end of the month of April, 2018, the Plaintiff went to the said premises with the permission of the Defendant to install bakery, and confectionery
- 35 equipments, paint the house so as to make it suitable for business and commercial purposes.
- 5 The Defendant stated that he did not know the Plaintiff, and that he did not rent the shop to him; that the person he rented the shop to was called Kalegeya Godfrey, and not the Plaintiff. That he informed Kalegeya Geoffrey of the required procedure to enter into a tenancy agreement with the administrators however, Kalegeya did not bring his National Identity Card or LC 1 Letter.
- 10 The Defendant stated further that his role was just to help Kalegeya get in touch with the Administrators, and that he issued a receipt in respect of the sum of UGX 2,000,000(Uganda Shillings Two Million only) paid by the Kalegeya Geoffrey.

Decision

The well-established principle is that for a contract to be valid, and legally

- 15 enforceable there must be; capacity to contract, intention to contract, consensus ad idem, and valuable consideration. *(See section 10 of the Contracts Act, 2010,* and the case of *Greenboat Entertainment Ltd Vs City Council of Kampala HCCS No. 0580 of 2003*, cited with approval in *Harry Sempa Vs Kambagambire David HCCS No. 0408 of 2014,* relied upon by Counsel for the 20 Plaintiff in support of his submission that the parties entered into an oral tenancy
- agreement, upon which the Plaintiff paid rent.

Section 114 of the Evidence Act, Cap 6 provides as follows: -

114. Estoppel

When one person has, by his or her declaration, act or omission, intentionally 25 caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or she nor his or her representative shall be allowed, in any suit or proceeding between himself or herself and that person or his or her representative, to deny the truth of that thing. [Emphasis is mine]

30 I have taken into consideration the agreed facts that the Plaintiff paid UGX 2,000,000 (Uganda Shillings Two Million only) to the Defendant, and that the Plaintiff never occupied the house for business, to find that the Defendant is estopped by his conduct from denying that he does not know the Plaintiff.

For the foregoing reason, I find that there was an oral tenancy agreement 35 between the Plaintiff, and the Defendant.

Issue No.2: Whether there was breach of the tenancy agreement, if so by who?

In the instant case, it was the Plaintiff's evidence that towards the end of the month of April, 2018, the Plaintiff went to the said premises with the permission of 5 the Defendant to install bakery, and confectionery equipments, paint the house so as to make it suitable for business and commercial purposes.

That on the 9th day of July, 2018, when the Plaintiff went to open the house to start normal business, he was in utter shock, and dismayed to find that another tenant was in occupation of the house, and all the equipments that he installed were

- 10 missing. That he tried to inquire from the Defendant as to why he breached the oral agreement, and took a way the properties without giving him notice or warning but the Defendant assaulted him. That the Plaintiff reported the case to Ndeebe police station vide SD Ref: 33/09/07/2018 of theft and assault against Mugabi Innocent.
- 15 The Defendant contended that he did not enter into a tenancy agreement with the Plaintiff because he failed to bring his National Identity Card or LC 1 Letter, which are the required documents for entering into a tenancy agreement.

The Defendant denied the Plaintiff's allegations of theft and assault, and stated further in cross examination that the properties in the shop were removed in the

20 presence of the LC1 Chairperson, and police, and that they kept the said properties, and not police.

Decision

The Courts have established in a plethora of cases that parties are bound by the terms of the contract that they execute. A breach therefore occurs, where that

25 which is complained of, is breach of duty arising out of the obligation undertaken under the contract. *(See the Court of Appeal decision in Behange Vs School Outfitters(U) Ltd (2000)1 E. A 20; Barclays Bank of Uganda Limited Vs Howard Bakojja H. C. C. S No. 53 of 2011, Nakawa Trading Co. Ltd Vs Coffee Marketing Board H. C. C. S No. 137 of 1991[1994] 11KALR 15),* and *United Building Services* 30 *Limited Vs Yafesi Muzira T/A Quickset Builders and Co. H. C. C. S No. 154 of 2005)*

The proposition of the law is that, whoever alleges a given fact, and desires the Court to give judgment on any legal right or liability dependent on the existence of any fact, has the burden to prove that fact unless, it is provided by law that the proof of that fact shall lie on another person.

(See sections 101 and 103 of the

35 *Evidence Act, Cap 6*, and *Jovelyn Barugahare Vs Attorney General, SC Civil Appeal No. 28 of 1993[1994] KALR 190)*

I find the Defendant's contention that he did not enter into a tenancy agreement with the Plaintiff because he failed to bring his National Identity Card or LC 1 Letter, the prerequisites for entering into a tenancy agreement is untenable, since 5 the Defendant issued a receipt for the consideration of UGX 2,000,000 (Uganda Shillings Two Million only), that was paid by the Plaintiff; the Defendant was therefore bound by the terms, and obligations of the oral agreement.

The Plaintiff's evidence that he was to have vacant possession of the house on the 15th day of April, 2018, since the house had another tenant at the time he 10 entered into the agreement with the Defendant, and that towards the end of the month of April, 2018, the Plaintiff went to the said premises with the permission of the Defendant to install bakery, and confectionery equipments, paint the house so as to make it suitable for business and commercial purposes, was unchallenged by the Defendant.

15 This Court finds therefore, that the Plaintiff has discharged the burden of proof against the Defendant to the required standard in civil cases, which is on a balance of probabilities. *(See Muller Vs Minister of Pensions [1947] 2 ALLER 372)* Accordingly, this issue is answered in the affirmative.

Issue No.3: What remedies are available to the parties?

20 Having found issues 1, and 2 above in the affirmative, this Court further finds that the following remedies sought for by the Plaintiff are available.

Section 61(1) of the Contracts Act, 2010 provides that where there is breach of contract, the party who suffers the breach is entitled to secure compensation for any loss or damage caused to him or her.

25 In the given circumstances of this case, I find that the Plaintiff is entitled to UGX 3,000,000 (Uganda Shillings Three Million only) from the Defendant for breach of the oral agreement.

Its trite law that special damages must be specifically pleaded and strictly proved. *(See the cases of Kyambadde Vs Mpigi District Administration [1983] HCB*

30 *44; Bonham – Carter Vs Hyde Park Hotel [1948] 64 TLR 177, and Ronald Kasibante Vs Shell (U) Limited, H. C. C. S No. 542 of 2006)*

The Plaintiff adduced a delivery note (PE5) dated 1st March, 2018, in respect of a deep fryer, food carrier, and other items, and a delivery note dated 3rd April, 2018 in respect of the listed goods therein however, the proforma invoice (PE3) dated

35 19th August, 2018, does not correspond with the dates of the delivery notes, and also when the Plaintiff allegedly installed the equipments at the shop in the month of April, 2018.

5 It is my understanding that in normal business, a proforma invoice is issued before a delivery note, and not vice versa. This is on account that a proforma invoice informs the intended buyer about the description of goods or services to be supplied, and the total payable before they are supplied.

This Court finds that in the absence of a receipt(s) for the said goods, the proforma 10 invoice dated 19th August, 2018, does not prove that the said goods were supplied to the Plaintiff, and that the Plaintiff took the goods at the shop.

For the foregoing reason, I find that the Plaintiff failed to prove to the required standard, that the properties at the shop worth the sum of UGX 52,810,000 (Uganda Shillings Fifty-Two Million, Eight Hundred Ten Thousand only), 15 was unlawfully held by the Defendant.

General damages are the direct natural or probable consequence of the wrongful act complained of, and includes damages for pain, suffering, inconvenience and anticipated future loss. *(See Storms Vs Hutchinson [1905] A. C 515)*

20 It's settled law that an award of general damages is at the discretion of Court, which should be exercised judiciously. (*See Crown Beverages Vs Sendi S. C. C. A No. 1 of 2005*).

In the case of *Uganda Commercial Bank Vs Kigozi [2002] 1 EA 305,* the factors to be considered by the Courts when assessing the quantum of general damages

25 are enunciated as follows: - 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.

Following the guidance in *Uganda Commercial Bank Vs Kigozi* above, I find that the sum of UGX 25,000,000 (Uganda Shillings Twenty-Five Million only) in general

30 damages, will suffice for the Plaintiff, who has proved that he has suffered economic loss, and inconvenience, as a result of the Defendant's failure to honor its obligation in the oral tenancy agreement.

The Courts have decided in a plethora of cases that where no interest rate has been provided, the rate is fixed at Court's discretion. *(See Crescent Transportation*

35 *Co Ltd Vs Bin Technical Services Ltd CACA 25 of 2000)*

This Court has taken into account the fact that the Defendant has deprived the Plaintiff of his money since 2018, and finds that an award of interest at the rate of 5 20% per annum on the principal sum above, is sufficient from the date of filing this suit until payment in full.

Its trite law that interest should be awarded on damages from the date of Judgment until payment in full. *(***See M*ukisa Biscuits Manufacturing Co. Ltd Vs West End Distributors Ltd No.2 [1970] EA 469)***

10 Accordingly, interest is awarded on the sum of UGX 25,000,000(Uganda Shillings Twenty-Five Million only) in general damages as above, at the rate of 8% per annum from the date of judgment till payment in full.

This Court has taken into consideration the provision of the law under subsection 1 of section 27 of the Civil Procedure Act, Cap 71 on costs, and the decision in

15 *Uganda Development Bank Vs Muganga Construction Co. Ltd (1981) HCB 35* where Justice Manyindo (as he then was) held that:

"A successful party can only be denied costs if its proved, that, but for his or her conduct, the action would not have been brought, the costs will follow the event where the party succeeds in the main purpose of the suit"

20 I find no reason to deny the Plaintiff costs and accordingly, the Plaintiff is awarded costs of this suit.

In the result, Judgment is entered for the Plaintiff against the Defendant in the following terms: -

- 1. A declaration that the Defendant breached the oral tenancy agreement.
- 25 2. An order for recovery of UGX 3,000,000(Uganda Shillings Three Million only)
- 3. General damages of UGX 25,000,000(Uganda Shillings Twenty-Five Million only)
- 4. Interest on (2) above at the rate of 20% per annum from the date of filing this suit until payment in full.
- 30 5. Interest on (3) above at the rate of 8% per annum from the date of judgment till payment in full.
- 6. costs of the suit.

Delivered electronically this 29th day of September, 2023.

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