

UGANDA / JUDGMENT

Volcano Limited v Board of Governors Old Kampala Secondary School (Civil Suit 436 of 2018) [2024] UGHCLD 297 (19 December 2024)

[2024] UGHCLD 297

COURT

HC: Land Division (Uganda)

BEFORE

Nkonge, J

CASE / FILE NUMBER

Civil Suit 436 of 2018

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

CIVIL SUIT NO. 436 OF 2018

PLAINTIFF VOLCANO LIMITED.

VERSUS

BOARD OF GOVERNORS,

OLD KAMPALA SECONDARY SCHOOL DEFENDANT

Before: Judge Alexandra Nkonge Ruqadaa

<sup>10</sup> JUDGMENT

Introduction:

The defendant executed a tenancy agreement for property comprised in plot 79 Namirembe Road (suit land) with the plaintiff on 22nd July, 2016 which was due to commence on 1st October, 2016.

¹⁵ The agreement was for 10 years for the plaintiff to establish and operate a bus terminal upon which the defendant received Ugx 240,000,000/=, being rent for 4 years in advance and thereafter handed over vacant possession of the suit land to the plaintiff.

20 Upon handing over, the plaintiff applied to KCCA Directorate of Physical Planning to obtain a permit to carry out minor renovations and tailor the property to a bus terminal.

On 19d August, 2016 KCCA Directorate of Physical Planning permitted the plaintiff to carry out minor renovations including repair of leakages in the roof structure, reinstating the collapsed areas of the existing chain link fence.

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on 15dt September, 2016 and 11th October 2016 the KCCA Directorate of Physical Planning immediately halted all construction works done by the plaintiff and on 14m October, 2016 revoked the permit it had earlier granted to the plaintiff having realized that the plaintiff carried out work beyond that allowed under permit; and which works lacked architectural plans and designs.

The defendant on its part filed a counterclaim seeking vacant possession of the suit property; an order of eviction; general damages and mesne profits of Ugx 7,000,000/=, among others.

It was the defendant's claim that due to the fraudulent acts by the plaintiff while taking part in the bidding process and towards the execution of the contract the PPDA Appeals Tribunal had annulled the procurement process and the tenancy agreement arising therefrom. 10

That on or about 16 March, 2018 the defendant refunded the sum of Ugx 240,000,000/= earlier received from the plaintiff at time of execution of the agreement from the plaintiff as payment for rent of 4 years.

On 30e October 2018 defendant. the plaintiff handed over the suit property to the

Representation:

20 The plaintiffs were represented by M/s KSMD Advocates while the defendant was represented by M/s Naganaa Associated Advocates. At the scheduling, the following issues were agreed upon:

- 7. Whether or not there was fraud. committed by the plaintiff in the events leading up to the tendering contract between the parties;
- 2. Whether the defendant breached the contract with the plaintiff;
- 3. Whether the defendant is liable for the sums claimed by the plaintiff;

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4. Whether the defendant is entitled to the reliefs sought in the counterclaim;

5. What remedies available to the parties;

Issue No. 2 Whether the defendant breached the contract with the plaintiff:

The plaintiff's case rested on the evidence of two witnesses, Mr. Agusse Kalimba 10 Resident Director of the company testifying as pwl and, pw2, Mr. Vianney John Mary Nshiyimana, the Managing Director of the plaintiff company.

The defendant on its part presented only one witness James Mulomi, headmaster of the defendant school who testified as Dwl who took over the school in 2017.

The law:

15 Since the questions relating to termination and/or breach are pegged onto the issue as to whether or not there was a valid contract, this court has to deal with that issue first as a preliminary matter.

Section 9(1) of the Contracts Act defines a contract as an agreement made with free consent of parties with the capacity to contract, for lawful object, with the intention to be legally bound.

For a contract to be valid and legally enforceable, there must be capacity to contract, intention to contract, consensus ad. idem; valuable consideration; legality of purpose; and sufficient certainty of terms.

If in a given transaction any of these is missing it could as well be called something else. (Ebbzworld. Ltd & Anor as Ruto, Kiruta Civil Suit. lvo. s9g of 2013).

The general principle is that when a document containing contractual terms is signed, then in the absence of fraud, or misrepresentation the party signing it is

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bound by its terms. (See: William Kasozi versus DFCU Bank Ltd High Court Civil Suit No.1326 of 2000).

Breach of contract on the other hand has been defined in the case of **Kabagambe Mathias vs Kahire Nobert** in HCCS No. 386 of 2016 as a situation where one party to a contract fails to carry out a term of the said contract.

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In an earlier case however, Nakana Trading Co. Ltd vs Coffee Marketing Board Civil Suit No.137 of 1991 as cited by counsel for the defendant, breach was defined as one where one or both parties fail to fulfil their obligations.

A breach nevertheless occurs when a party neglects, refuses or fails to perform any part of its bargain or any term of the contract, written or oral, without a legitimate legal excuse.

While submitting on the issue of the alleged breach, counsel for the plaintiff claimed that the defendant unilaterally and prematurely terminated the contract (**PExh 1**) which was signed between them for a ten-year term because of its own

failures/misrepresentation/wrong-doing, following on the decision of the PPDA 15 Appeals Tribunal.

That several correspondences and reports were admitted in evidence which give proper context of the terms of the understanding between the parties which the defendant had breached, and in respect of which damages were sought.

- From the said documents, it was implied that the plaintiff company was 20 contracted by the defendant school to customize the suit property into a bus terminal as shown from the advert **DExh 3**, by which bids were invited for the hiring of space for bus parking lots, and in respect of which the plaintiff had emerged as the best bidder.
- The plaintiff also referred to the letter by the Director of Physical Planning dated 25 15th August, 2016, **PExh 50** permitting the plaintiff to carry out repairs on the suit premises to make it suitable for the business, which in this case was a bus terminal for use during the period of the tenancy.

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Based on that understanding the plaintiff undertook the various repairs as the existing premises were very old and condemned by the Auditor General in its report of 18th June, 2015 (**PExh 48**), as no longer habitable. That the renovations were done without any objection from the defendant.

Counsel further argued that the revocation of the permit by KCCA which the S defendant alluded to did not provide any justifiable ground to terminate the contract.

As per KCCA's letter, **DExh 2** which halted the renovation, the architectural plans were to be presented by the plaintiff for consideration by the Physical Planning Committee and for the plaintiff to regularize contestable concerns on the scope of the works undertaken.

Citing the tribunal's decision **DExh 6** rendered on 15th August, 2016, the tribunal condemned the defendant for incompetently and illegally undertaking the procurement process without clearance from the Solicitor General and directed re-tendering of the process if the defendant was still interested in the

procurement activity.

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The plaintiff therefore faulted the defendant for representing that the transaction had been lawfully executed whereas not, as deduced from the ruling which compelled the defendant to terminate agreement based on its own misrepresentation and failures.

Referring to PExh 46, PExh 47, PExh 49, and PExh 59, the plaintiff's counsel argued that the appeal to the PPDAs Appeals tribunal instituted by the defendant's old student's association, (OKOSA) had been made in bad faith, selfinterest and in concert with area local authorities, to frustrate the plaintiff's

interest. 25

> The defendant however in response to the above contentions denied having committed any breach, maintaining that the plaintiff did not disclose to this court any specific clause of the contract which was breached.

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That it was the plaintiff's duty to comply with the provisions of any legislation/regulation but instead the company acted in violation of several terms of the tenancy agreement. After revocation of the permit, the plaintiff never made any efforts to obtain another permit.

That the plaintiff also admitted having made renovations beyond the minor $\$S$ repairs which were authorized by KCCA; and that nowhere was it agreed that the intention between the parties was to customize the property into a bus terminal as alleged.

Having failed to adhere to any laws and regulations in place in regard to the suit property, the plaintiff should be liable for its own illegal actions.

Analysis by court:

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I will not repeat all the arguments and points raised in the submissions but I have carefully perused each of them together with the pleadings and the evidence, taking every one of these into consideration.

Suffice to state that from the evidence, the relationship between the parties was 15 created initially based on an advert made in the papers by the defendant, calling for bids for the hiring of the school space that can be used as a parking lot for buses.

It is therefore also not in dispute that the defendant had upon application earlier obtained consent from the Uganda Land Commission on 18th April, 2016, to 20 change user for the suit premises from private dwelling to commercial use, granted subject to the approval of the planning authority. (PExh 56 and 57)

Being a Government school and therefore a procurement and disposal entity, it had an approved budget from Government and was required to observe the procedures governing procurement as spelt out under the PPDA rules.

As a condition precedent, the parties also had to first secure the approval of the Attorney General before signing any contract, which in this case was never done.

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After the two had endorsed a tenancy agreement, the PPDA Appeals tribunal however received a petition against the selection of the plaintiff as the best bidder.

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In its ruling, the tribunal declared the contract null and void and gave its reasons.

From the perspective brought forth by the plaintiff, the termination of the contract was premised on the defendant's failure to secure the approval of the Attorney General, which was a condition precedent.

In paragraph 4.6 of the submissions by the plaintiff, it was argued as follows::

Contrary to the defendant's assertion therefore, the truth of the matter \$10\$ based on the trail of evidence on record, is the defendant was compelled to take the decision to terminate the tenancy contract with the plaintiff with the plaintiff following the decision of the PPDA Appeals Tribunal rendered on \$15\$ th August, 2017 vide DExh 6. This decision faulted and condemned the defendant for incompetently and illegally undertaking the procurement 15 process without clearance from the Solicitor General and directed the cancellation and re-tendering of the procurement process if the defendant was still interested in the procurement activity.

Article 119 (5) of the Constitution regulates transactions that require government approval. 20

As declared by the tribunal, under both article 119 (5) of the Constitution and Regulation 7(1) (f) of the PPDA (Contracts) Regulations, 2014 S. I No. 14 of 2014, no agreement, contract, treaty, convention or document by whatever name called to which government is a party or in respect of which the Government has an interest shall be concluded without legal advice from the 25 Attorney General, except in such cases and subject to such condition as Parliament may by law prescribe.

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Parliament as correctly stated in that ruling, through its powers delegated to the Ministry responsible for finance prescribed under **Regulation 7(1) of the PPDA (Contracts) Regulations, 2014, S. I No. 14 of 2014**, that a procuring and disposing entity shall not issue a contract document, purchase order or other communication in any form, conveying acceptance of a bid that binds a procuring and disposing entity to a contract with a provider, until all relevant agencies, including the Attorney General make the necessary approval of the contract.

The said article 119 (5) of the Constitution (Attorney General's clearance) and the regulations are couched in mandatory terms, such that a contract shall not \$10\$ be issued or entered into with a provider before approval of the Attorney General.

Initially, the approval had to be sought in respect of contracts entered into by **Constitution** *Ugx* 50,000,000/=. However, the Government beyond (Exemption of Particular Contracts) from Attorney Generals Legal Advice

(Amendment) Instrument 2014 (which has to be read together with the above 15 provisions), was passed, increasing the threshold from the original sum of \$Ugx\$ 50,000,000/=. to two hundred million. This followed an increment of the procurement threshold by PPDA Guidelines 1/2014.

Based on the fact that the tribunal had not seen any discretion under these provisions given to the Attorney General to clear a contract retrospectively and 20 its firm view that the Solicitor General lacked legal power to clear a contract that was signed in contravention of the law, it ruled that the said contract entered into between the two parties to this suit was void.

Counsel for the defendant on his part also referred to **DExh 6**, the decision by PPDA Appeals Tribunal at pages 71-72, wherein the tribunal pointed out the 25 procurement irregularities committed by the plaintiff and stated as follows:

> Volcano Bus Company the best evaluated bidder (BEB) i. submitted a tax clearance certificate addressed to KCCA Instead of the entity as required by URA;

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- The BEB did not include a valid trading licence at the time of ii. submission of the bid but instead submitted a city operator identification number (COIN);
- The BEB was already indicating plot 19 as its registered iii. address even before the procurement process commenced as evidenced on the successful bidder's investment license granted by the Uganda investment Authority and on the application for a trading license (COIN)

The tribunal relying on the above irregularities accordingly found the events leading to considering the plaintiff as the successful bidder and thereafter \$10\$ executing the tenancy contract were tainted with fraud.

As correctly pointed out by counsel in their submissions, the PPDA indeed retains the right to terminate a contract where it is established that corrupt practices were committed. That comes out clearly in **DExh 1**. (Ref: Section 1: clause 3.3 of instructions to bidders).

The plaintiff's argument that there was an informal understanding between the parties before the procurement process by which the administrative officer of the defendant authorized the plaintiff to use the address in issue when applying for the trading licence/ tax certificate was evidence which was not controverted at

the trial. 20

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In the view of this court however, the above explanation offered by the plaintiff even if court were to accept it as plausible, (which it does not), ought to have been given to the tribunal itself.

It comes as weak, too little and too late, given the mandatory nature of the above

provisions; and it is not the task of this court to alter that stand and redeem the 25 situation since the tribunal had already correctly made the pronouncement.

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This court also noted that there were a series of developments, in the transactions which inextricably, made some correspondences an integral part of the tenancy agreement between the two parties.

The parole evidence rule under section 92 of the Evidence Act, as correctly cited by the defence, prevents parties from introducing external evidence to alter, amend, contradict or vary the terms of an agreement.

The rule assumes that the formal writing reflects the parties' mind at the point of maximum resolution, where the duties and restrictions that do not appear in the written contract even though accepted earlier were not intended by the

parties to survive. (Aida Atiku vs Centenary Rural Development Bank Ltd) 10

The above provisions are however not cast out of stone. The defendant cannot be seen to deny that the intention of the parties in this suit as deduced from the advert and bid was to enter into a commercial venture; and to modify part of the school into a bus parking lot though this was not included in the final contract

between the two. 15

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The two parties signed the tenancy agreement with that in mind. The advert and bidding process were the preliminary and vital components of the agreement between them.

The arrangement with all due respect, was two-fold, not intended to restrict the parties to a mere tenant-landlord relationship. It went further as it required to 20 make adjustments to the settings to make the premises suitable as the parking lot for buses, which adjustments the defendant agreed to before the contract was declared void.

The defendant was faulted on its part for failing to secure the approval of the Attorney General. The implied agreement between the two for the customizing 25 the premises to a bus terminal reflected the intention of the parties, a fact which cannot be denied by the defendant as doing so would imply that the defendant school advertised for one creating a bus terminal but ended up signing instead

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a tenancy agreement intended for a different purpose. The two aspects of the contract in my view could not therefore be severed as that was never what had been intended..

This undertaking was reinforced by one of the provisions of the contract, clause 2(iv) thereof which reads:

> The tenant hereby agrees... with the land lord and during the said term the tenant will.....

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iv) construct temporary structures as shall be agreed upon by the landlord and approved by the controlling authority. (emphasis added);

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ix) Not without the consent in writing of the landlord first had and obtained, 15 which consent shall not be unreasonably withheld... make any alterations or additions whatsoever, structural or otherwise in or to the demised premises.

In column 15 of the agreement it also comes out clearly that the permitted use of the premises was strictly for operating a bus terminal.

The above if read together with the advert and bid documents, indicates a segmented type of contract which was intended by the parties to operate a bus terminal.

I could not agree more with the plaintiff's argument therefore that the parole

evidence rule gives room for exceptions where the party to a contract can be 25 allowed to adduce extrinsic evidence to clarify the intention of the parties.

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The intention of the parties was therefore crystal clear from the beginning though what turned out later was a simple tenancy agreement, **PExh 1** which however together with other documents presented as correspondences from the various authorities could not be read in isolation from the bid requirements, as it were,

which gives the main purpose as originally intended. $\$ \mathit{S} \$$

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It also goes without saying that by virtue of clause 2 viii) of the same agreement, the plaintiff had to comply with the provisions of any legislation or regulation and by-law and every notice or direction made thereunder so far as shall affect the demised premises.

- The plaintiff as advised under the tribunal ruling could have re-submitted by 10 presenting a valid tax clearance certificate and trading licence but nevertheless did not take any step to demonstrate its interest to pursue that course of action, thus confirming the tribunal's concerns of its eligibility and qualifications to resubmit, as it probably had nothing else to offer.
- It is critical to note however that in compliance with the agreement, authority 15 was sought by the plaintiff for the renovation of the premises which lasted for less than three months when the KCCA decided to suddenly halt the plaintiff's activities.

Under those circumstances, there is no way the defendant could have proceeded with enforcing an agreement which had failed the test of a valid document and 20 in respect of which the plaintiff was partly to blame.

As correctly submitted by counsel for the defendant, the decision of the tribunal as a quasi-judicial body has never been set aside and/or contested by the plaintiff.

The plaintiff was therefore also negligent in relying on advice offered by a person 25 (who according to him worked with the defendant school), to use the defendant's address in the bidding documents, without thinking about the likely and serious

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consequences of such advice. It is also blamed for its failure to carry out its own independent search, prior to the bidding process as expected of a diligent bidder'

In response therefore to issue .IVo. I in the events leading up to the tenancy contract between the parties, the clearance by the Attorney General was a condition precedent to the contract.

Although it was incumbent upon the defendant to secure the said clearance before signing the tenancy agreement, the two sides had to ensure first before committing themselves to the contract that such clearance had been obtained from the Attorney General.

The above coupled with the reasons in the ruling by which the plaintiff lost its bid, there was no doubt that the bidding process by which the plaintiff was selected as the best bidder had been flawed. 10

In response to the issue No. 2 therefore, a breach cannot arise out of a void or an illegal contract, since there were no enforceable rights created. That decision

by the PPDA Appeal tribunal which nullified the contract was never challenged by either side. 15

The Court of Appeal in its decision of *Jogee Nakagima & 3 others v Nalumansi Kalule and 2 others* CACA No. 111 of 2019, declared that a transaction conducted without proper authority cannot be executed against any of the parties.

A court of law cannot sanction what is illegal and once the illegality is brought to the attention of court it overrides all questions of pleadings including any admissions thereon: (*Crane Bc:nk tts Nipun Naratta v Bhatia*: Civil Appeal No. 2 of 2014).

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Issue IV. 7: Whether or not there was fraud committed by the plaintiff in the events leading up to the tenancy contract between the parties:

"Fraud" as defined in *FJT (Zaabute v. Orlerr Bank & 5 Others)* SCCA No. 4 of 2008 (at page 28) is an intentional perversion of truth for purposes of inducing

5 another to part with some valuable thing belonging to him/her, or to surrender a legal right.

It is also defined as a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury.

It is anything calculated to deceive, whether by a single act of combination or by suppression of truth or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth or look or gesture amounts to fraud-

- Counsel for the defendant referred to instructions to bidders, paragraph 3.1(a) (ii) DF, of the defendant open bidding document, dated April, 2015 which defines fraudulent practice as any act or omission including a misrepresentation, that knowingly or recklessly misleads or attempts to mislead a party to a financial or other benefit or to avoid an obligation. 15
- In clause 3.3 thereof, the tribunal is given power to cancel a contract if at any time it determines that corrupt fraudulent collusive or coercive practices were engaged in by representatives of the procuring and disposing entity. 20

Based on the several irregularities, the tribunal came to the conclusion that the events leading to considering the plaintiff as the successful bidder and thereafter executing the tenancy contract were tainted with fraud.

In relation to the events that followed, the defendant also alluded to fraud committed by the plaintiff during the renovations, contrary to the permission

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granted for the exercise to the plaintiff by the Directorate of physical planning of KCCA, vide Renovation permit dated 19e August, 2016. (pdxh 21.

According to the defendant, the renovations were major and went beyond the scope of what was authorized under the KCCA permit and in respect of which the allegations of fraud were raised.

It was the plaintiffs explanation however inferred from the several correspondences, that before revocation, as per letter dated 14tr,october, ²⁰¹⁶ (DExh 2)' the defendant was fully aware of the renovation works that were being undertaken on the suit property and never raised the issue that the works were beyond the scope of the permit or agreement which the defendant was privy to.

Consid.eration blt court:

It is not in dispute that as per the advert placed in the papers for the procurement, the defendant sought for establishment of a bus terminal. on 19u August, 20 16 KCCA Directorate of physica planning upon application, permitted

the plaintiff to carry out minor renouations incruing repair of reakages in the roof structure; reinstate tlrc collopsed areas of the existing chain-link fence; painting cleaning and g eneral beautification. 15

PExh 2 was the renovation permit granted by KCCA, authorizing the plaintiff to make minor renovations for three months from date of issue, specifica y to: repair of leakages in the roof structure; reinstate the cofiapsed. areas of the existing chain-link fence; painting cleaning and. general beautification.

In poragraph 8 of PExh 2, no other works apart from those authorized by this permit was to be done, before obtaining further pennission from the authoritg.

According to the plaintiff, by necessary implication the company was required to establish structure and amenities like public toilets shower rooms, passenger shade and parking ground.

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PExh 5o was indeed a letter dated 15th August, 2016 by the defendant,s head teacher to the Director physical pranning KCCA by which the headmaster expressly consented to the ptaintiff to carry out renouations on the eisting structure and repairs suitable for its peiod of tenancy.

5 court noted that permission was granted by the KCCA some four days later, however, clearly restricting the renovations repairs to repairing leakages; reinstating collapsed areas of the existing chain-link fence; painting and general beautification.

what the plaintiff did however was to undertake the works involving preparation 10 of architectural plans, overall grading of the site for the bus terminal, cutting tree stamps and disconnection of high voltage power, earth works, installations of draining systems for storm water management, erection of public toilets, shower rooms construction of shade and parking lot and renovation of offices to suit the business whose scope was also largely informed. To this court these 15 could not have been minor repairs.

in paragraph 8 the KCCA permit made it clear that no other work beyond what was authorised under the permit could be done without obtaining further permission from KCCA.

It was also another requirement by the KCCA for the plaintiff to give notice of inspection for commencement of work which had to be given to the area building inspector, at least 24 hours before any work started. There is no evidence however to prove that those requirements were met and the said premises inspected. 20

As per a letter dated 13th September, 2016, paragraph 4g, the defendant had written to the Director Physical Planning KCCA of 13th September 2016 and confirmed that the existing structures within the plot were very old and had been condemned by the Auditor General in its report of 1st June 2015 as the structures were no longer habitable. 25

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on 1st September, 2016 the plaintiff's activities on the renovation were halted by KCCA, despite the explanation by the headmaster of the defendant school about the state of the premises.

5 KCCA did not stop at that, on 14th October, 2016 it revoked the permit on the ground that the plaintiff had carried out works beyond the scope of works within the permit that was issued and that the additional works included alterations of the existing building, construction and addition of a shade, (paragraph 2).

The plaintiff did not make any follow up thereafter or challenge the decision of the KCCA revoking the permit. It instead turned the tables against the defendant which it claimed had breached the contract, having been fully aware of the developments on the ground.

The plaintiff's argument tends to ignore that the support initially given by the defendant in the plaintiff's activities had always been met with resistance by other actors and factors beyond the defendant's control.

This is demonstrated by the number of correspondences that were made by the defendant through its Headmaster. The defendant in the first showed commitment when it signed the tenancy agreement, which was however later declared void under the law. 15

In the process of execution (before the cancellation of the contract), it was the defendant, not the plaintiff company, which wrote to KCCA requesting for authority to develop the premise, though with a key rider: without breaching the physical planning guidelines. The said request to KCCA was made on the basis that the premises had already been condemned by the Auditor General as no longer habitable. (PEXh 48). 20

when the LC authorities by their letter dated 21st September, 2016 addressed to the Director, Education and Social Services at KCCA, (pEXh 52, complained about the structural works undertaken by the plaintiff (whom they referred to in that correspondence as the strange developer), it was the defendant, s head 25

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teacher who on 22nd September, 2016 as per letter PEXh 49' wrote back to question the LC authorities' concerns, voicing support to the developments undertaken by the Plaintiff.

When the plaintiff set out to work on the renovations it was therefore based on mere presumption that establishing a structure and amenities like public toilets, shower rooms, passenger shade and parking ground were minor repairs aligned within the permit, the defendant's interests and which by necessary implication the company was required to do

According to the plaintiffs ProI and Pu2 these were minor and necessary to meet the regulatory licensing demands of Transporting Licensing Board TLB for operation of a bus terminal. 10

It was indeed the plaintiff's duty to comply with the provisions of any legislation and every directive made thereunder; and to secure prior approvals from the relevant authorities as a vital component of the renovation'

- Under sections g and gg(4) of the Physical Planning Act' Cap' 742' no person is to carry out any development within a planning area without obtaining development permission from the physical planning committee. section 33(2) therefore makes it an offence to carry out any such development without permission. 15
- In alignment with clause 2 (ix) of the tenancy agreement: PEXh 7' no approval of the major works was obtained from the Physical Planning Authority and no evidence was presented to show that the requirements for specific facilities on the suit land by the Transport Licensing Board as alleged by the plaintiff' were availed during the trial. 20
- The plaintiff thus embarked on an assignment without ensuring that the basic 25 requirements equipping the company renovation were met. with the authority to carry out the

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It took on structural repairs before the architectural plans were approved; and never sought another renovation permit after the previous one had been halted and later revoked. In the process, the plaintiff committed irregularities when it failed to adhere to the requirements of the instructions as guided by the law.

5 In the minutes of a special meeting held between old Kampala sSS Select Board ofGovernorsandDirectorsoftheplaintiffcompanyon10January,201S reference was made to a letter by the plaintiff's counsel then M/s Hilal & co' Aduocates dated 24h October,2017.

Inthatcorrespondencetheplaintiffinitiallythroughitslawyersdemandeda 10 refund and compensation ol Ugx I. Sbn (ref: PExh 45)', This was further admission by the plaintiff company that the company went beyond the limits aliowable under the Permit.

With all due respect, repairs carried out in 2016 eight years ago given the inflation rates, for t:ne repair of leakages in the roof structure; reinstate tLw 15 collapsed areas of the existing chain-tink fence; painting cleaning and general beautification costing llgx 252,693,500/= could not have, by any stretch of imagination, been minor.

In the view of this court, the decision as to what constituted minor renovations as set out in the permit and what was major renovation was not a preserve of 20 the defendant and the plaintiff, as it involved the KCCA itself, on whose terms

the parties were oPerating.

Inthepremises,andinresponsetoissuelVo. I,theplaintiffwentbeyondthe scopeoftheworkaspermittedbyKCCAandwithoutsecuringpriorapprovals fromtheappropriateauthorities,carriedoutmajorrepairsonthesuitproperty.

25 This was irregular but on its own could not constitute fraud '

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Issue No. 3.' Whether the defendant is liable for the sum.s claimed the plaintiff:

And

Issue No. 4: Whether the defendant is entitled to the re fs sought in the 5 couffterclat ,jt:

And

Issue No. 5.' What remedies available to the po,rties

^Iwill consider the three issues jointly since they are interrelated. counsel for the plaintiff submitted that the developments undertaken by the plaintiff on the suit premises were the subject of its claim for special damages'

As noted earlier, the plaintiff admittedly carried out renovations by erecting public toilets, shower rooms, passenger shade and parking ground to cover ¹⁰ buses, and operations of its transportation services on a 24-hour basis, thereby incurring expenses of tlgx 252,693,500/=, the subject of the plaintiffs claim for

compensation in the Present suit. 15

> Reference was made by the plaintiff to the minutes of a special meeting, [PEXh 45/, between Old Kampala Select Board of Governors and Directors/ Managers of Volcano Ltd, by which the HM presented a copy of the tribunal's ruling to the plaintiffs informing them that t:ne lrgx 240,000,000/= was available for the

refund and once paid, concluded the relationship between the school and the plaintiff. 20

However, based on the contents of the minutes of that meeting, the plaintiff expected more money, on account of the fact that their money had stayed with the school for more than a year. (PEXh 45).

At some point through its lawyers even went higher to ugx 7.5 blllion, without giving any basis for such assessment, yet the BoQ itself had a figure of ugx 247, 000,000/-. The disparities were not lost to court. 25

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The defendant on its part also filed a counter claim for an order for vacant possession for the suit land; an order of eviction; general damages; punitive damages; mesne profits from the date of filing the suit, until handing over the possession of the property; interest among others.

It is trite that special damages must be strictly pleaded and proved. (Supreme Court Ciuil Appeal No. 5 oJ 2077 Duncan Turydtunga RuJoio & 2 Ors us Attorneg General (unreported) and tl ganda Breuterries Limited as Uganda Railuags Corporation (SCCA IVo. 6 of 2001). and Phillip Ongotn, Capt. as Catherine Ngero Ouota (SCCA No. 14 of 2001) 5

¹⁰ In the present case these were broken down for the plaintiff company as follows:

- a) Preliminary uorks of ugx 75,323,500/=
- b) Eorhuorks of ugx 101,360,000/=
- c) Building utorks of ugx 64,682,500/

15 Paragraph 2(iul ol the agreement, PDxh I is clear expression of the intention by the parties in the tenancy agreement to construct temporary structures as shall be agreed upon bg the land lord and approued bg the controlling authority.

PEXh 2 entitled: Permission to carry out minor renouation on plot 19 Namirembe Road. This was a letter dated 19s August, 2076 by the KCCA as the controlling authority, giving permission to the plaintiff to carry out limited renovations on

the suit property. The special damages to be awarded therefore had to fall within the brackets of what would be reasonably considered as minor repairs, not major repairs. 20

As confirmed by this court during the trial and during the locus visit, there was no denying the fact that the plaintiff had done some of the work including renovation of the toilets and wiring for the building.

Some grading of the land had also been done, a shade put up and roofed. Due to passage of time however, some results could not be readily seen. The wiremesh fence for instance was down and in need of repair; and since the land is in

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the heart of the city, this posed a security risk which the defendant has to urgently address.

The defendant indeed could have derived some benefit from the repairs made like toilet facilities. However, no photographs were tendered in court by the plaintiff to show the status of the premises before the renovations.

As also noted by court, the defendant was in occupation of the premises which have been in disuse for a long time; and the only presence on the ground were the security men who were utilizing the toilets. The structure which was formerly used as staff quarters was renovated, but not in use. The defendant's prayer therefore for vacant possession was not called for since the defendant was already in possession.

On the issue of compensation, the plaintiff tendered in a whole file of receipts and invoices: PExh 1-Paxh 44. However, a careful examination of the receipts presented by the plaintiff revealed a number of things:

In the first place, this court came across some receipts and invoices which appeared to have been duplicated: (Ref: PExh 42, PExh 43, rrrnd PExh 44)' 15

secondly, some of the receipts were issued before the said permission was granted on 19th August, 2016, while others were issued after 15th September, 2016 indicating that purchases were made even after KCCA had halted the renovations.

As an example, PExh 27 Jor 71 trips of aggregates worth UGX 2,750,000/= as per receipt dated 25th September, 2016; rrrrd PExh 37 for a sum of UGX 7,000,000/= as per receipt dated 1st October, 2016 for plastering and finishing; also under PExh 22 by which the plaintiff purported to buy pavers worth UGX 2,250,000/- (as per the receipt dated 11th October, 2016). These, among others were issued when the plaintiff's activities had been halted.

Thirdly, as pointed out by counsel, under PExh 4 in the BOQ, item K was for supply of heavy duty pavers and laying, quoted as UGX 83,250,000/= 'The

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figures on the BOQ did not however tally with those on PExh 22 (purchases of pavers) alleged to have been made by the plaintiff.

But also as duly noted, during the locus visit, neither pavers nor the roadkerbs were seen on site. The implication is that the plaintiff cannot rely on the PExh 4

(BOQ) which forms the basis of the plaintiff's claim, gives a misleadingly higher $\$$ figure of the expenses for the purchases which were to be made by the plaintiff.

In light of the above findings and observations, this court could not rule out the possibility that a number of activities did not take place as alleged since the materials said to have been purchased had not been utilized, as established at

the *locus* visit. 10

> For the above reasons, the receipts were not considered by this court as reliable pieces of evidence, leaving much to the discretion of court.

> In deciding to award compensation to the plaintiff, this court takes into consideration the fact the plaintiff vacated the premises on 30th August, 2018,

and no business was being conducted after the repairs were undertaken as had been the intention of the parties.

Secondly, the rent of *Ugx 240,000,000/=* had been paid to the defendant and even though it was refunded it remained with them for an entire year.

Decision of court:

- In the premises, the justice of the case demands that this court grants: 20
- 1) An amount of Ugx 84,000,000/=, (about one third of the entire sum claimed by the plaintiff), as special damages, payable to the plaintiff which sum would in all fairness fall within the bracket and definition of minor repairs, as authorized by KCCA.
- 2) The said amount is payable with interest at 10 per cent per annum. This amount takes into consideration the fact that the plaintiff was

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not free from the blame. It also takes into account the fact that the rent of the four years paid by the plaintiff remained with the defendant for a period of one year.

Since both parties are to blame for whatever went wrong in these transactions no damages awarded to either party.

Each party to meet its own costs.

Alexandra Nkonge Rugadya

Judge 10

$\frac{19}{12}$ December, 2024

Delivered by email

Outlong $\frac{19}{12}$ December, 2024

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