THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL COURT)

CIVIL SUIT NO. 436 OF 2001

CHARLES KABUGO MUSOKE ……..…..……..PLAINTIFF

VERSUS

ATTORNEY GENERAL ……..……DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE JAMES OGOOLA

JUDGMENT

Facts:

1. The Plaintiff avers that he entered into a tenancy agreement with the Internal Security Organisation ("ISO") of the President's Office. The original agreement (Exhibit P1) was signed on 27/02/97; and a renewal thereof (Exhibit P2) was signed on 01/01/999. The tenancy involved the Plaintiff (as the Landlord) letting out to ISO his residential property at Plot No. 5 Coppice Road, Kololo, Kampala. The terms of both agreements were stated to have been identical, and to have, among other things, required the Tenant to yield up the suit premises in tenantable repair and condition at the determination of the tenancy. The Plaintiff, testifying as PW1, averred that on 23/09/99, the ISO sent him a written notice of their intention to vacate the suit premises by 30/12/99. PW1 added that contrary to their notice, ISO did not vacate the premises at end-December; and were only compelled to leave in July 2000 when forcefully evicted. Moreover, the Plaintiff added, ISO did not pay any rent for the months of April, May, June and July 2000; nor did they effect any repairs to the leased premises. Accordingly, the Plaintiff sought from the Tenant payment of rent arrears of Shs.4m/-; eviction costs of Shs. 1m/-, general damages of Shs.95m/-, and of the costs this suit.

2. For their part, the Defendants contended in the written submissions of their counsel that there did not exist any tenancy agreement between the Plaintiff and the Government, as alleged by the Plaintiff. In essence, the Defendant disowned the alleged tenant/occupier of the suit premises —

one Princess Komuntale — as not being either an agent or a servant of the Government. In short, the Princess was on a frolic of her own, and should be held personally liable. Furthermore, the Defendant contended that if any tenancy agreement existed at all, it was invalid and unlawful, in as much as it was not executed in conformity with, inter alia, the provisions of the government's Standing Orders, requiring the endorsement by the Permanent Secretary of the line Ministry or Government Department. In the instant case, the Defendant contended that the Officer who executed the alleged tenancy agreement, lacked competence and capacity to execute the contract; and that, therefore, the contract if any was void and not binding on the Government.

3. Existence of a Tenancy Agreement

I find that the existence of a tenancy agreement between the Plaintiff and ISO has indeed been satisfactorily proved. **First,** the Plaintiff produced two exhibits of the tenancy agreement — namely: Exhibit P1, executed on 27/02/97, and Exhibit P2, executed on 01/01/99. The terms of both agreements are identical. They both provide for:

(a) the Landlord to let out to the Tenant the suit premises, initially for two years and subsequently for one extra year;

(b) the Tenant to pay rent in the amount of Shs. 1m/- p.a., payable one year in advance;

(c) the Tenant to keep the premises and all installations and fixtures in tenantable repair (fair wear and tear excepted); while the Landlord was to keep the structure and exterior of the building in good and tenantable condition (except in so far as the Tenant shall be responsible for the same);

(d) the Tenant to permit the Landlord and his authorised agents to enter upon and examine the condition of the premises and carry out necessary repairs and renovations.

4. **Second,** the Tenancy Agreement was expressly acknowledged by Ms Caroline Mayanja — **a** representative of the Attorney-General. In her letter of 21/08/98 to the Plaintiff, Ms Mayanja wrote as follows:

> *"Reference is made to the above Notice by which you intend to sue the Attorney-General. We contacted the relevant Ministry with regard to the above mentioned matter and we have been informed as follows: Whereas it is true that a tenancy Agreement was entered into between your Mr. Kabugo and the President's Office in respect of Plot 5, Coopice*

Road, Kololo-Kampala, it is not true that the President's Office owes Mr. Kabugo 15 million Shillings.

We have also been informed that the President's Office has not refused to vacate the said premises. That rent is being paid while at the same time alternative accommodation is being sought and that Mr. Kabugo is aware of that. "[emphasis added]

5. Thirdly, and in the same vein, the tenancy agreement was acknowledged yet a second time by a Lt. Dr. Kagoro Kaijamurubi in his letter to the Plaintiff dated 23/09/99 (Exhibit P3) — who stated that:

"The above mentioned property [Plot 5 Coppice Road, Kololo, Kampala] presently occupied by President's Office refers:-

This is to notify you of our intention to vacate your premises at the end of this tenancy (36 December 1999).

Rent arrears to you will be settled as soon as possible and the necessary renovations will be handled by our Housing Officer."

6. From the above two letters of Ms Carol Mayanja (Defendant's counsel) in paragraph 4 above; and of Lt. Dr. Kaijamurubi (ISO's Director of Resource Management), it is patently clear that the Defendant did expressly and categorically acknowledge the existence of the tenancy agreement between the Plaintiff and ISO with regard to the suit premises. Accordingly, the Defendant's belated disavowal of the existence of the tenancy agreement is not only idle, but mischievous as well. I dismiss it with the contempt that it deserves.

7. Validity of the Tenancy Agreement

The Defendant's argument on this issue was to the effect that the alleged tenancy agreement was executed by somebody purportedly from the Legal Desk in the President's Office. That such execution was contrary to Article 174 of the Constitution of Uganda and Chapter 1 of the Uganda Government Standing Orders, F.B 3 and 4. In effect, the Defendant's contention was that for the Government to be contractually bound, the contract must be endorsed or authorised by the

Permanent Secretary who is the Accounting Officer in the line Ministry or Government Department concerned; and that, in the instant case, the Officer who executed the tenancy agreement on behalf of the Government was not competent to do so by law and that therefore the tenancy agreement was not valid or enforceable, and not binding on the Government.

8. I must say at once that the Defendant's arguments in paragraph 7 above are misconceived. **First**, the Constitution paints the large picture and sets out a macro plan for the good governance of the different Governmental Ministries and Departments. It cannot be contended that the Constitution sets out the detailed minutiae of who is authorised to sign Government contracts. All that Article 174 of the Constitution prescribes is that each Governmental Ministry or Department is to be under the overall supervision of its Permanent Secretary, who is the Accounting Officer of such Ministry/Department. **Second,** the Government 's Standing Orders are internal rules for the Government. They do not bind — or even apply to — non Governmental persons (i.e. private individuals, such as the Plaintiff in the instant case). But even if such Standing Orders were somehow held to bind outsiders, the particular Standing Orders which were relied on by the Attorney-General, are irrelevant to the case at issue. Order 3 and Order 4 do not even as much as mention the authority for entering into contracts. Those Standing Orders limit themselves to the following:

(a) Order 3, limits itself to policy matters and the responsibility of a Permanent Secretary;

(b) Order 4, limits itself to the responsibility and functions of Accounting Officers — namely, their general duty to account to Parliament; and their specific duty to make proper accounting to the Public Accounts Committee of Parliament.

In none of these Standing Orders is there mention of which officer in a Ministry or Department is authorised and competent to execute contracts on behalf of the Government.

9. In addition to the above, it is trite law that a party cannot plead in its defence breaches of its own internal rules. In the instant case, the Defendant is in effect pleading the alleged legal incompetence of its own officers as a defence against the Plaintiff's claim. The question of which officer of the Government is competent to sign Government contracts, was an internal matter for the Government to sort out. The Government cannot visit its own shortcomings on an

innocent party. It was the Government (not the Plaintiff) who had the duty to adhere to its own internal rules. The law on this point has long been firmly settled — see especially this Court's Ruling of 11/07/2003 in the case of **Management Committee of Shimoni Demonstration** School v **Royal Comp-Enterprises Ltd, Miscellaneous Application No. 811 of 2002 (unreported).**

10. In the **Shimoni case** *(supra,),* this Court observed that it would be strange for the Defendant (i.e. the Government in this instant case) to complain of the unauthorised or improper signatory. The rules and Standing Orders cited govern the Government and not the Plaintiff (who was an outsider). It was for the Government to provide the proper signatory. If the Government neglected to provide the proper signatory or otherwise failed to ensure adherence by its own officials to the requirements of its own internal rules and regulations, it cannot now plead its own failure as a defence against the outsider. This principle is succinctly articulated in the following two analogous areas of our law:

11. **First,** the principle is all too well-known in our Company Law — namely, that a company cannot hide behind a breach of the provisions of its own internal rules (i.e. the Memorandum and articles of Association) against outsiders who deal with that company in good faith: see, in particular, **Royal British Bank v Turquand (1856) E & B 327;** as approved by the House of Lords in **Morris v Kanssen t19461 AC *459* at 474,** in which LORD SIMONDS held that:

> "*... persons contracting with a company and dealing in good faith may assume that acts within its constitution and powers have been properly and duly performed and are not bound to inquire whether acts of internal management have been regular."*

12. **Second,** the above principle is reiterated in the area of tax matters, in which it is trite law that a taxpayer cannot resist an assessment by setting up his own wrong — hence taxes may be assessed even on unlawful gains: see **Halsbury's Laws of England, (4th Edn., reissue 1995), Vol. 44(1), para 1453,** in which the following cases are cited: **Minister of Finance v Smith E1927] AC 193 at 197, PC; Mann v Nash [1932] 1 KB 752;** and **Collins v Mulvey [1956] IR 233.**

13. Although the cases cited in paragraphs 11 and 12 above discuss company matters and fiscal matters, respectively, I find the principles enunciated therein wholly pertinent to the present case. The Government cannot set up its own wrong as a defence against outsiders with whom it executes business contracts. To allow that, would work gross injustice against *bona fide* transactors and offend against basic tenets of fairness. The outsider dealing in good faith with the Government in a business transaction (i.e. without notice of any irregularity or shortcoming in the Government's requirements), is entitled to assume that the Government officials transacting business with him are duly clothed with the requisite authority and competence to do what they are doing.

14. Moreover, in the instant case, even if the Government were right in its contention that its signatories to the suit tenancy agreement lacked proper authority to sign for the Government, still the Government agency involved (ISO) did reap beneficial fruits from the contested contract. ISO officials entered the suit premises pursuant to the tenancy agreement, and stayed there for a considerable period of time. Indeed, they even paid part of the agreed rent. In these circumstances, the Government cannot now turn around and renounce the agreement. To do so would be manifestly contrary to the well know principle of restitution under quasi-contract — see **Banssevain v Weil [19501 AC 327** In this regard, **Jowitt's Dictionary of English Law (2' Edn, 1977), Vol. 2, p.1478** defines the concept of quasi-contract as:

"liability, not exclusively referable to any other head of law, imposed upon a particular person to pay money to another particular person on the ground that non-payment of it would confer on the former an unjust benefit. One of the main heads of quasi-contract is money had and received by the Defendant for the use of the Plaintiff, <u>including money paid under an illegal contract."</u> [emphasis added]

15. **Damages**

The Plaintiff has claimed an amount of Shs.95m/= in general damages on the grounds that the Tenant had vandalized the suit property, and occasioned damage to it as a result of recklessness. Moreover, given the very sorry state in which the Plaintiff found his house after the eviction of the ISO tenant(s), he commissioned a valuer (PW2) to carry out a valuation of the suit premises.

PW2 in his testimony before the Court stated that his valuation established the value of the needed repairs to amount to *Shs.26,305,000/=* and the value of the house to amount to Shs.150m/- (as at 2000). These amounts were not at all contradicted — let alone challenged — by the Defendant (who did not, in any event, lead any evidence), On the contrary, the letter of Lt. Dr. Kagoro Kaijamurubi dated 23/9/999, stated quite explicitly that "the necessary renovations will be handled by our Housing Officer". This was ISO's own Director of Resource Management speaking. There could be no better corroboration of the Plaintiff's claim for repairs than the Lt. Doctor's above statement. I accordingly find that indeed the Plaintiff has proved his claim for repairs. Nonetheless, the quantum claimed is problematic. The Plaintiff's claim is for Shs 95m/- as general damages. Yet the specific repairs to the suit premises as established by the Plaintiff's own professional valuer were only Shs.26,305,000/-. It is quite evident, therefore, that the Plaintiff's omnibus claim did not distinguish between specific damages, and general damages.

16. Even more importantly, the Plaintiff's claim did not address the repair responsibilities assigned by the Tenancy Agreement to the Landlord on the one hand, and to the Tenant on the other. As reiterated in paragraph 3(c) above, repairs were to be shared between the Tenant and the Landlord. The Tenant was "to keep the premises and all installations and fixtures in tenantable repair (fair wear and tear excepted)". The Landlord, on the other hand, was "to keep the structure and exterior of the building in good and tenantable condition (except in so far as the Tenant shall be responsible for the same)." I must admit that I find the difference between the two responsibilities quite nebulous. Nonetheless, that is beside the point. The important point is that the burden of proof as to exactly what was required of the Tenant by way of repairs, rested squarely on the Plaintiff's shoulders, in as much as the burden rests on he who asserts a fact (see sections 97 and 98 of the Evidence Act). I am not satisfied that that burden was fully discharged in this particular case.

17. In the premises, it would be fair and just to get out the value of repairs established by the valuer (i.e. Shs.26, 305,000/-), from the Plaintiff's total claim of Shs.95m/-. I therefore award the Plaintiff Shs.68, 695,000/- only in respect of his claim for damages. As indicated in paragraph 18 below, this amount also caters for elements of loss in the value of the Plaintiff's house.

18**, Loss in value of house**

The Plaintiff also claimed the loss in the value of his house — given the above vandalisation and non-repairs. Specifically the claim, as I understood it, was that the Plaintiff was eventually forced to sell the house for only Shs.55m/- (instead of the Shs.150m/- for which it was valued in 2000) — hence the difference (or loss) of Shs.95m/- - which I have partially dealt with in paragraphs 15, 16 and 17 above. I cannot agree with this argument in the absence of satisfactory justification there for. The sale price of a property does not always reflect the true value of that property. The two are not necessarily coterminous. The sale price depends on so many variable factors. Notable among these variables are: (I) whether the sale is a forced sale or not; (ii) the vigour and success of the negotiations between the individual buyer and seller; (iii) the equality or non-equality between the buyer and seller; (iv) other market forces (such as, for example, the prevailing interest rates, availability of mortgage facilities, supply-and-demand, etc). None of these factors was pleaded — let alone proved — by the Plaintiff. Moreover, the full price of Shs.150m/- would not be realised unless the house was in a perfect condition of repair. In the premises, the Court finds that the claim of a loss of Shs.95m/-, at the very least, be reduced by the amount of the necessary repairs of Shs.26,305,000/- by way of the Plaintiff's mitigation of his overall loss. Accordingly, this Court finds the Plaintiff's loss to amount to no more than Shs.68,695,000/-.

19. In light of all the above, judgment is hereby entered for the Plaintiff:

(a) in the amount of Shs.68,695,000/- as general damages and loss of value of his suit property;

(b) in the amount of Shs.4m/-, being the rent arrears for the months of April, May, June and July 2000;

(c) in the amount of Shs. lm/-, being the Court brokers' expenses that Plaintiff incurred in forcibly evicting the Tenant(s) from the suit property in July 2000; and

(d) the costs of this suit.

Ordered accordingly.

James Ogoola

JUDGE

22/12/2003

DELIVERED IN OPEN COURT, BEFORE:

Lumweno, Esq — Counsel for the Plaintiff

Malinga, SA — Counsel for the Defendant (Attorney-General)

J.M. Egetu — Court Clerk

James Ogoola

JUDGE

22/12/2003