

Last Updated: 12 July 2007

Ephraim Kabaija V Ronald De Smet-HCT-00-CC-CS -0300-2004 [2007] UGCommC 36 (30 April 2007)

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL COURT DIVISION)**

**HCT-00-CC-CS -0300-2004**

Ephraim Kabaija Plaintiff

Versus

Ronald De Smet Defendant

**30 April 2007**

**BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE.**

**J U D G M E N T:**

The plaintiff brought this suit against the defendant for the recovery of US\$ 3,500 as rent arrears and Shs.372,696/= being utility costs for electricity bills.

The case for the plaintiff is that the defendant entered into occupancy of the plaintiff's premises situated at Plot 14 Erica Magala Road Entebbe (hereinafter called "the house") without the consent of the plaintiff or his letting agents M/s Alika Company Ltd. It is alleged that the defendant connived with an ex-employee of M/s Alika Company one Tom Ayeny to enter into the house on paying him a monthly rent of US\$450 instead of US\$700 per month. Despite a notice of eviction and request to the defendant to regularize his tenancy, the defendant left the house without paying rent or the cost of utilities.

The defendant in his defence denies that he illegally occupied the said house. He pleads that he signed a tenancy agreement with the plaintiff's letting agents, paid its operations manager Mr. Ayeny US\$1000 as advance rent and a further US\$100 for which he obtained acknowledgements. It is also the case for the defendant that he effected repairs on the said house which he allegedly agreed with the letting agent's operations manager would be offset against any outstanding rent. The defendant further pleads that if there was a problem with the tenancy then by the plaintiff allowing him to stay in the house for more than 3 months amounted to a rectification by conduct.

At the scheduling conference the parties agreed to the following facts that;

- 1- M/s Alika Co. Ltd was the property/letting agent in charge of the suit premises.
- 2- There was a tenancy agreement executed and signed by the defendant and one Tom Ayeny dated 15<sup>th</sup> December, 2003.
- 3- Tom Ayeny was an employee of Alika Co. Ltd at the material time.
- 4- The defendant paid US\$1,100 to Tom Ayeny (The plaintiff later without prejudice conceded this claim with a view to legally pursuing Tom Ayeny for the said amount).
- 5- The defendant occupied the suit premises from 15<sup>th</sup> December 2003 up to June 2004.

- 6- There was a request dated 12<sup>th</sup> March, 2004 made by the defendant to Alika Company, to extend the tenancy for three (3) months.
- 7- The defendant is willing to pay US\$1,600 plus utility bills as per the executed tenancy.

A protracted attempt to settle this case out of court failed and the matter came to trial. Judgment on admission was entered on the admitted sum of US\$1,600- for outstanding rent and Ug.Shs.372,969/= as utility costs.

The parties then agreed to the following issues for trial.

- 1- Whether there was a tenancy agreement between Alika Compaly Ltd on behalf of the plaintiff and the defendant.
- 2- Whether payments were made to Alika Co. Ltd by the plaintiff.
- 3- Remedies available to the parties.

Mr. Daniel Rutiba appeared for the plaintiff while Mr. Joseph Kasozi appeared for the defendant. The defendant called no witnesses at the trial.

**Issues No. 1: Whether there was a tenancy agreement  
between Alika Co. Ltd on behalf the plaintiff and the  
defendant ?**

It was admitted that the defendant and one Tom Ayeny an employee of the letting agent signed an agreement dated 15<sup>th</sup> December 2003 Exh. P2. The said letting agent had the power to let the said house by virtue of a power of attorney made by the plaintiff dated 1<sup>st</sup> June 2000 Exh. P1. Mr. Godfrey Kiggwe PW1 an Assistant Property Manager with Alika Co. Ltd testified that he met with the defendant some time 2003 when the defendant was looking for a house to rent. Mr. Kiggwe told the defendant that they had houses with rents ranging from US\$500 – 1000. They however failed to agree on any rent as the defendant wanted a cheaper house. Mr. Kiggwe however testified that the defendant took possession of the said house and that he got to learn of that on the 24<sup>th</sup> December 2003. Mr. Kiggwe testified that the defendant entered into the said house after colluding with one of their employees Tom Ayeny and signing a tenancy agreement dated 15<sup>th</sup> December 2003 outside the known structures of the company. Mr. Kiggwe further testified that he asked Mr. Ayeny to tell the defendant to leave the house as the agreement was illegal but Mr. Ayeny did nothing. He testified that the defendant all along knew that the rent for that house was US\$700 and not US\$450 as indicated in the said agreement. Mr. Kiggwe testified that as a result of this they through their lawyers on the 20<sup>th</sup> January 2004 wrote an eviction letter to the defendant and threatened him with arrest for criminal trespass Exh. P5.

The tenancy agreement Exh. P2 provided in clause 2 for a rental period of 3 months from the 15<sup>th</sup> December, 2003 with an option to renew for a further period subject to negotiations. Clause 2 of the same agreement provided for rent of US\$450 for 3 months.

An attempt by the defendant's lawyers in Exh. P3 to extend the tenancy after the initial 3 months was rejected by the lawyers of the letting agents in Exb. P3.

Counsel for the plaintiff submitted

"...it is clear that the defendant legally occupied the rental premises for only 3 months and continued illegally in the same for another 3 months..."

Counsel for the defendant choose not to submit on this, I suppose because no tangible evidence was brought to rebut the allegations.

However, I find that the submissions of counsel for the plaintiff are some what at variance with his pleadings and the evidence adduced.

The evidence before court is that the plaintiff does not agree that his premises was at any time legally occupied by the defendant let alone 3 months. The plaintiff considers the agreement illegal and signed without authority.

On this point in the absence of any thing else, I am inclined to believe the evidence of DW1 Mr. Kiggwe. I think that is why a letter was written to the defendant (through his lawyers) on the 20<sup>th</sup> January, 2004 Exh. P4 about one month after the agreement was entered evicting the defendant (even though the defendant none the less continued to live in the house for another 5 months).

To my mind the defendant must have known that his situation in the house was not tenable but simply choose to ignore or contest this. His lawyers on the 12<sup>th</sup> March 2004 Exh. P3 wrote to the letting agents and stated;

Our client would have sought force longer period but has been discouraged by the conduct of Mrs. Okweyo Alice within this short stay to wit;

a) There was an attempt to unlawfully terminate the contract on 6<sup>th</sup> January 2004.

b) The criminal summons of trespass that were commenced against our client were made in bad faith and misconceived as the tenancy was subsisting on the date of complaint and therefore improper in law" (emphasis mine)

Whatever the sequence of events it is clear that from early January 2004 less than a month after he entered the house attempts were made by the letting agents to get him out.

I therefore find on the evidence that the tenancy agreement signed on the 15<sup>th</sup> December, 2003 Exh. P2 was not valid. However, since the defendant did occupy the house irrespective of that finding, I further find that this created an "**obligation quasi ex contractu**" a latin phrase that means a quasi contract. This quasi contract according to Orborn's Concise Law Dictionary 6<sup>th</sup> Ed is

*"...an obligation not created by, but similar to that created by contract, and is independent of the consent of the person bound."*

## **Issue No. 2: Whether any payments were made to Alika Company Ltd by the plaintiff.**

It is an admitted fact that US\$1,100 was received by Tom Ayeny from the defendant. The issue now is whether that payment to Tom Ayeny amounted to payment to Alika Company Ltd. Clearly exhibits B1 and B2 show that Tom Ayeny acknowledged receipt of US\$1,100 on hand written pieces of paper not by the official receipts of the letting company.

The evidence therefore shows that the letting company did not receive this money. However, at the scheduling the plaintiffs generously conceded the period 15<sup>th</sup> December 2003 to 14<sup>th</sup> March 2004 as money to be pursued from Tom Ayeny at a different forum.

In light of the above concession I now find that no money was paid to the plaintiff as rent for the subsequent period 15<sup>th</sup> March 2004 to 14<sup>th</sup> June 2004.

### **Issue No. 3: Remedies**

In light of my findings above it is clear that the defendant owed the plaintiff rent as a result of a quasi contract/agreement at a rate of US\$700 per month and not US\$450 per month under the invalid agreement. With the greatest of respect to counsel for the defendant there is no evidence that the plaintiffs at any stage of this transaction ratified the rent of US\$450.

I therefore accept the computation of the plaintiff as follows;

- i) December 15, 2003 - March 14, 2004 US\$450 x 3 = US\$1,350
  - ii) March 15m 2004 – June 14, 2004 US\$700 x 3 = US\$2,100
  - iii) Less many advance to Tom Ayeny = US\$1,100
- US\$2,350

The sum due is US\$2,350 for rent to be adjusted against the sum of US\$1,600 where judgment was given on admission if it has been paid. The sum of Ug.Shs.372,969/= for utilities where judgment on admission was given is also due if it has not already been paid.

This is a suit brought under summary procedure no claim was made for an indeed argued for general damages save that it is to be awarded in the discretion of court.

Given the manner in which this tenancy was entered into, I will in my discretion award nominal damages of US\$500.

I also award interest at the rate of 8% on the rental sum and utility costs due from the date of filing of the suit until payment in full and further interest of 8% on the nominal damages from the date of this judgment until payment in full.