THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIALCOURT)

CIVIL SUIT NO. 299/2011

K AND V LIMITED ---------- PLAINTIFFS

VS

THE REGISTERED TRUSTEES OF ARYA PRACTINIDIHI SABHA EASTERN AFRICA ---------- DEFENDANTS

BEFORE JUSTICE FLAVIA SENOGA ANGLIN

JUDGMENT

The Plaintiff a private limited liability company, carrying on business as a building contractor brought this suit against the Defendant Trustees, the owners of Arya Primary School, Kololo. The Plaintiff seeks to recover **Shs. 30,828,900/-** as money had and received by the Defendant; special damages of Shs. 27,415,000/-; loss of profits amounting to USD 189; general damages for breach of contract and costs of the suit.

The Plaintiff's case is that on or about the 16. 03. 04, they offered to renovate the Defendants school premises at Kololo at the cost of USD. The proposal was accepted by the Defendant s, who further agreed to lease the renovated building to the Plaintiff for a period of 5 years; with effect from September, 2004, at a yearly rent of USD 16800 or its equivalent of **Shs. 30, 828, 900/-** at that time. This money was paid by the Plaintiff as it was a precondition set by the Defendant for the Plaintiff to begin renovation work. The Defendant was thereafter to draw up a memorandum of understanding or a tenancy agreement which was to be reduced into a formal written contract as per the negotiations.

The Plaintiff claims to have spent a further Shs. 27,415,000/- to purchase materials for renovation; which were kept at the premises.

The Plaintiff also states that, as a result of the Defendants' said refusal, the Plaintiff Company suffered financial loss and hence this suit to recover the total amount of money expended. That is, Shs.58, 243,900/- as money had and received by the Defendants for no consideration, as special damages; plus loss of profits as general damages, interest and costs.

Denying the Plaintiff's claim, the Defendants aver that the negotiations that took place were between the Plaintiff and Arya Samaj Uganda, an unincorporated body. And that the Defendants a corporate body under the Trustees Incorporation Act, were not privy to the negotiations and or transaction between the Plaintiff and Arya Samaj Uganda; and are not liable under the contract.

It was the Defendants' contention that without prejudice to the foregoing, that even the negotiations between Arya Samaj Uganda and the Plaintiff did not result into any binding contract; since before the initial discussions could be reduced into a written Memorandum of Understanding and /or lease agreement, the Plaintiff requested for changes in the proposed terms and when new terms were offered in writing, they were not accepted.

The Defendants further assert that the Plaintiff declined to sign the contract and instead went ahead to vandalize the premises; thereby occasioning the Defendants a loss of Shs. 60,000,000/-; which sum they seek to recover the amount by way of counter claim.

The following facts were agreed by the parties:

- There is no written agreement between the Plaintiff and the Defendants.
- The Plaintiff paid **Shs. 30, 828, 900/-** to the Bank account of Arya Samaj Uganda.

The agreed issues are:

1. Whether there was a legally binding contract to renovate the Defendants 8 houses and sublet them to the Plaintiff.

2. If so, whether the Defendants were privy to the said contract.
3. Whether the Defendants are in breach of the contract.
4. Whether the Plaintiff is liable for any vandalization of the Defendants' houses.
5. What remedies are available to the parties?

The issues shall be dealt with in that order.

Whether there was a legally binding contract to renovate the Defendants' 8 houses and to sublet them to the Plaintiff: In arriving at a decision on this issue, court bears in mind the principle established by decided cases that determines if a contract has been made. The principle is that, ***"if there has been an offer to enter into legal relations on definite terms and that offer is accepted, the law considers that a contract has been made".-*** **See JK PATEL VS SPEAR MOTORS LTD SCCA NO. 04/1991.**

The offer becomes a promise by acceptance. It includes acts or documents constituting or evidencing the promises and the legal relations resulting there from. The promises of each party must be supported by consideration or some other factor which the law considers sufficient"- *See* **Halsbury's Laws of England Vol. 1 (Re Issue) Para 60 and 603.**

In the present case, the Plaintiff entered into negotiations with Arya Samaj Uganda (hereinafter referred to as **ASU**) through a series of letters. By letter dated 16.03.04(A1); the Plaintiff made a proposal to ASU to renovate Arya Primary School premises and to have a sublease or tenancy agreement granted to them in return.

By letter dated 12.05.04 (A13) ASU accepted the proposal in principle but suggested some changes thereto and made counter proposals to some terms and conditions.

In a letter of 24.05.04 (A2) the Plaintiff also made counter proposals to the terms and conditions with regard to lease period and rent payable to ASU. This was followed by further negotiations.

On 15.06.04 ASU replied to the Plaintiffs letter of 25.05.04, noting that after the discussions that followed receipt of that letter, it had been agreed that a total of USD 108 was to be paid from the 1st to the 5th year, with effect from 01.09.04. However that, the rent for the 1st year amounting to USD 16,800 or Shs. 30,828,000/- was due and payable immediately.

On 11.06.04 the Plaintiff informed ASU by letter that they had deposited USD 16,800 at the agreed exchange rate onto Bank of Baroda A/C No. 012054207301, Kampala Road. In total the Plaintiff deposited Shs. 30,825,000/-. Of that total amount Shs. 21,800,000/- was cash and Shs. 9,028,000/- was by cheque dated 11.06.04.

By making that deposit, the Plaintiff had fulfilled the pre-condition of payment of rent for the 1st year in advance. ASU was accordingly requested by the Plaintiff to confirm the deposit and issue a receipt. ASU confirmed receipt of the cheque and the earlier amount paid in cash.

It was then agreed that the memorandum of understanding, sublease or tenancy agreement would be prepared and executed by the parties soon after. Further that all other terms and conditions stated between the parties prior to the letter of 15.06.04, were to form part of the contract and would be spelt out in the memorandum of understanding. The plaintiff company was then authorized to commence work, obtain the necessary permission, if any, from the authorities and confirm the same.

From the evidence available, it is apparent that the relationship between the Plaintiff and ASU was based on the series of letters referred to above and the discussions that ensued thereafter.

The principle established by decided cases is that ***“if on examination of all the communication between the parties, it appears that at***

some point they reached an agreement by exchanging a valid offer and acceptance, a contract will be held to exist even though one or both parties privately intended to raise further matters before proceeding to performance. The fact that negotiations continue after the contract has been concluded will not, therefore affect the existence of the contract, unless of course they indicate a rescission or variation of it". – See **Cranleigh Precision Engineering Ltd Vs Bryant [1964] 3 ALL ER** and **Perry Vs Suffield Ltd [1916] 2 Ch. 187**

Under the provisions of **S. 10 (1) (2) and (3) of the Contract's Act** of Uganda, *"**letters constitute a binding contract"*.** See also the cases of **Kennedy Vs Lee (1817) MER 441 and 451;** and **Lockett Vs Norman Wright [1925] 1 Ch. 56**

Bearing those decisions and provisions of the law in mind, and upon careful consideration of the letters exchanged between the Plaintiff and ASU, as well as the discussions that ensued thereafter, court finds that there was offer and acceptance and intention to create a legal relationship.

The Plaintiff offered to renovate the school premises managed y ASU and it was accepted. The parties further agreed that the Plaintiff sublets the premises. Rent payable for 5 years was agreed upon and the Plaintiff paid rent for one year as a precondition, and receipt of the rent was acknowledged by ASU. The memorandum of understanding and the lease agreement was to be drawn up later by ASU incorporating all the agreed terms; for the parties to sign later. This state of affairs is confirmed by the evidence of PW1 and annextures A2, A14 and A3.

While it is contended for the Defendant that the Plaintiff accepted the terms of the letter of 15.06.14 from ASU but on 16.06.04, sought to change the terms of the commencement date of the lease and time of payment of the annual rent; and that ASU never accepted the proposed changes. At the same time Counsel refers to the letter of 10.11.04 (A4)

from ASU to the Plaintiff where ASU complained of the delay by the Plaintiff to commence work, contending that it constituted breach of contract. That was the basis for ASU to refuse to instruct its lawyers to draw up the memorandum of understanding.

Court finds that the complaint by ASU of breach of contract is in essence an admission that there was a contract entered into by the parties. This is fortified by the payment of rent in advance by the Plaintiff; which payment was acknowledged by ASU.

The assertion by ASU that no agreement was signed but parties engaged in another round of negotiations cannot not also be sustained; for the reason that these were post contractual negotiations. As already specified in this judgment analysis of the course of correspondence shows that acceptance had taken place. And according to decided cases, ***in such circumstances the contract will stand, unless the post contractual negotiations made an attempt to rescind the contract.-*** Refer to **Perry Vs Subfields' Ltd [1916] 2 CH. 187.** In the present case there is nothing in the series of the letters that culminated into the contract, that show that the post contractual negotiations made attempt to rescind the contract.

Court therefore reiterates the earlier finding that there was a binding contract between the Plaintiff and ASU. The specified terms in the letters were made with the intention that they become binding as soon as they were accepted by the Plaintiff to whom they were addressed. And indeed they were accepted.

The signing of the tenancy or sublease agreement was a condition subsequent. There was consideration from both parties. The plaintiff was to renovate the premises in return ASU would sublet the premises at agreed rentals for a period of 5 years; and the Plaintiff would pay rent in advance for the first year, which was done and was acknowledged by ASU.

The next issue for determination is **whether the Defendant was privy to the said contract:**

I wish to point out from the outset that ***"The doctrine of privity of contract is that a contract cannot confer rights or impose those obligations arising under it, on any person except the parties to it".*** – See **Doctrine of Privity of Contract & Exceptions to the Rule, Provided by Kenna & Associates and Tweedle Vs Atkinson (1861) 1 B and S 398; Dunlop Pneumatic Tyre Co. Ltd Vs Selfridge & Co [1915] AC 847 and Wakiso Cargo Transporters Ltd Vs Wakiso District Local Government & Attorney General HCCS70/04**

In the present case the contract to renovate the premises of the school was between the Plaintiff and ASU and on the face of it, the doctrine of privity would apply. However, it has been established that there are exceptions to the rule that recognize third parties. According to Kenna and Associates ***"today the law has recognized that with the increasingly complex world of commerce there must be some changes to accommodate certain exceptions to the general rule and guarantee restitution to the aggrieved. Growing consumer rights questions including warranty claims have contributed to this amendment of approach". -*** See **Doctrine of Privity of Contract & Exceptions to the Rule (supra)**

Counsel for the Plaintiff in this case contends that the Defendant falls within the exceptions under the provisions of its Constitution. This is also confirmed by the evidence of DW2 who admits that the Defendants appointed ASU as Managers of the property in question and are therefore part of the Defendants and the Defendants' agents.

On the other hand, Counsel for the Defendants maintains that the people who represented ASU were not officers of the Defendant and that ASU were not agents of the Defendant and there is no evidence that Defendants' negotiated with the Plaintiff.

The arguments of Counsel for the Defendant are belied by the evidence of DW2 referred to above, where it was clearly admitted that the Defendants appointed ASU as managers of the School and are therefore part of the Defendants and Defendants' agents. This evidence puts to rest the question as to whether or not ASU acted on their own behalf or not.

The court accordingly finds that the Defendants were privy to the contract between the Plaintiff and ASU. The Defendants as owners of the property also stood to benefit from the renovation contract and the sublease agreement. I am fortified in my finding by the fact that it has been recognized that ***"The status and vicarious liability issues of an agent also create exceptions to the rule of privity. When an agent negotiates a contract between his principal and a third party, it is generally regarded as being between the principal and the third party". –*** **Kenna and Associates (Supra).**

This takes us to the issue as to **whether ASU was an agent of the Defendants for purposes of carrying out the transactions in issue:** This issue has been resolved by the findings in the above issue but I will comment more about it. Under S. 118 of the Contract's Act 2010, ***"an agent is a person employed by the principal to do any act for that principal or to represent the principal in dealing with a third person".***
The Defendants' witness number two having admitted that ASU was part of the Defendants and was their agent, managing the school on their behalf, it follows that ASU was representing the Defendant in dealing with the Plaintiff. As already pointed out earlier, this issue is answered in the affirmative. ASU was an agent of the Defendant for purposes of carrying out the transactions.

The next issue is **whether the Defendant is in breach of contract:** Breach of contract is ***"the violation of a contractual obligation by failing to perform one's promise, by repudiating it or interfering with another party's performance". -*** See **Black's Law Dictionary, 8th Edition, p.200.**

Under the terms of the contract in the present case, ASU was to prepare the memorandum of understanding and the tenancy or sublease

agreement; after the Plaintiff had made advance payment of the rent for 1 year. The advance payment of rent was a pre-condition for ASU to hand over the premises for renovation works to start. The rent was paid by the Plaintiff and acknowledged by ASU. By failing to cause preparation of the memo of understanding, and the sublease agreement for signing by both parties; ASU violated its contractual obligation. Instead of fulfilling its obligations under the terms of the letter of 15.06.04, ASU instead asked for further payment of rent for the 2nd year in its letter of 25.07.05. This forced the Plaintiff to abandon the premises although some materials had been placed on the site. ASU breached the contract and by implication the Defendant.

The fourth issue is **whether the Plaintiff is liable for vandalization of the Defendants' premises/houses:**

The Defendants filed a counter claim where they claimed special damages from the Plaintiff for vandalization of their premises. The burden of proof was thus upon the Defendant to prove that vandalism of its property was occasioned by the Plaintiff. Refer to **S. 101 and 102 of the Evidence Act and the case of Sebuliba Vs Co-operate Bank Ltd [1982]**

The Defendants in the present case did not adduce any evidence to show that it was the Plaintiff who vandalized their premises. It was during the submissions that Counsel for the Defendants argued that it was not too late for one Mr.I.S. Panesar, the author of a report dated 23.05.14 to appear and testify in respect of the vandalization of the premises. The report was attached to the submissions.

Considering that the suit was filed on 26.08.11, and the defence was filed on 22.09. 11; and the reply to the written statement of defence on 12.10.11; the report made in 2014, after hearing took off could not be relied upon. The principle established by decided cases is that ***"preparing a report two and half years after the defence was filed and after hearing evidence was an afterthought which court***

should not rely upon"- See **Banco Arabe Espanol Vs Bank of Uganda, SCCA No. 08/1996.**

In those circumstances, it would not have been appropriate to allow the author of the report to testify. The report was never attached to the pleadings as it was not in existence at the time pleadings closed; neither was leave of court sought for it to be produced as required under **O. 6 r. 2 of the Civil Procedure Rules.** The purpose of attaching documents to pleadings is ***"to avoid a situation in which parties ambush their opponents with matters not contemplated". –*** See **Richard Mwirumubi Vs Jada Ltd HCCS No. 978/1996**

There is no evidence adduced by the Defendants to show that it was the Plaintiff who vandalized their property. Essentially, the evidence on record in form of a report dated 12· 02.04 (A11), authored by Pancon Engineers Ltd the same company that authored the rejected report; recommended that ***"to protect the building until repair work commences, it should be boarded off to prevent any more theft and vandalism".*** This signifies that the theft and vandalism occurred before the premises were handed over to the Plaintiff. There is no report to show the state of the premises at the time it was taken over by the Plaintiff.

Consequently, the Plaintiff cannot be held liable for vandalization of the Defendants' property. This issue is answered in the negative for those reasons.

The final issue to determine is **what remedies are available to the parties?**

The remedies sought by the parties include special damages, general damages, interest and costs.

SPECIAL DAMAGES:

In their counter claim, the Defendants sought to recover special damages of Shs.60, 000,000/- as value of the property vandalised plus costs of the

counter claim. But it was submitted for the Plaintiff that the Defendants had not proved the claim against the Plaintiff; and prayed for the counter claim to be dismissed.

The law is that "***special damages have to be specifically pleaded and strictly proved".*** **- See Uganda Telecom Ltd Vs Tanzanite Corporation [2005] 2 EA 331 at P.341**
In the present case, court finds that though the Defendants claimed the special damages they failed to prove that it was the Plaintiff who vandalized the property and that the damage was worth Shs. 60,000,000/-. The claim not having been proved to the required standards cannot be granted by court. For those reasons, the Defendants' counter claim fails and is dismissed.

The Plaintiff also sought to recover special damages of Shs**. 58, 243, 900/-** . It was claimed the sum was received as rent advance for the first year **Shs.30, 828, 900/-** and **Shs. 27, 415, 000/-** said to have been used to purchase materials for renovation, as per the receipts attached. However, it was contended for the Defendants' that the **Shs. 30,828,900/-** is not refundable since the Plaintiff abandoned and wasted the Defendants' property. It was also asserted that the materials allegedly purchased for Shs. 27, 415,000/- were never used on the Defendants' property as there is no evidence of work done.

As previously mentioned in this judgment, the Defendants acknowledged receipt of the Shs. **30, 828,900/-** as advanced payment of rent for the first year; but only claim it is not refundable for reasons stated above. The submissions of the Defendants in this respect must fail. The established principle of law is that ***"where money is received from another in circumstances such as described in the present case, the law regards the money as having been received to the use of that other person. In default, on the promise for which the money was received, the law imposes on the receiver an obligation to make***

payment to the one who paid".- See **Premchandra Shenoi & Shivam M.K.P Ltd Vs Maximov Oleg Petrovich, SCCA No.09 /2003,** where their Lordships' relied upon **Halsbury's Laws of England, 3rd Edition, Volume 8, para.408, page 235.**

For those reasons, it is the finding of this court that the contract for which the money was received having been breached by the Defendants, the Plaintiff is entitled to a refund of the **Shs. 30, 828, 900/-.** The promise for which the money was paid was never met.

The sum Shs. 27, 415, 000/- said to have been spent on purchase of building materials was supported by invoices at P.p. 23 -30 of the Plaintiffs' documents. They are dated 04.06.04, 08.06.04 and 07.06.04. The evidence of Venkatesh(PW1) is that by letter of 16th June 2004 the plaintiff was given a go ahead to commence with the renovations; whereupon the Plaintiff mobilized materials to the tune of 27,415,000/=. There is no contrary evidence to challenge that piece of evidence. Nonetheless it is apparent from the dates of the invoices that the materials are claimed to have been purchased before the go ahead to start renovations was given. This raises doubt as to whether the materials were actually purchased as claimed and lends credence to the Defendants' contention that there is no evidence that any work was done on the property by the Plaintiff.

Courts finds as a result that the Shs. 21, 415,000/- has not been proved to have been spent by the Plaintiff in respect of the works on the premises and the claim is accordingly disallowed. If the cost had been incurred after the go ahead to begin work was given, it would have been allowed as cost incurred under obligation to start work as directed.

Court now turns to the claim of USD 189,000.00: In this respect, Counsel for the Plaintiff submitted that PW1's witness statement is uncontested. As per this evidence, the Plaintiff was to renovate the premises at its own expense and was to let out the premises for five years; they budgeted for expenses, interest on any loan, maintenance,

security and profits. It was contended that they had confirmed corporate clients like the United Nations. **He relied on the case of NIS Protection (U) Ltd -V- Nkumba University, HCCS No. 604 of 2004,** where Bamwine J (as he then was) ***declined to grant a claim for anticipated profits because the Plaintiff had not led evidence on how the figures were arrived at as the Plaintiff had not shown who had paid and when.***

On the other hand, counsel for the Defendants' submitted that the claim of USD 189,000.00 is too remote and speculative. The Plaintiff did not have funds to carry out the renovations. He argued that according to Venkatesh witness statement paragraph 14, the Plaintiff was to borrow between UGX 150,000,000/= - 200,000,000/= which it did not borrow. There is no evidence that tenants would have occupied the premises and what rent was to be charged. He relied on the case of **Shell (U) Ltd –Vs Achilles Mukiibi, CACA No 69 of 2004** which is to the effect that ***"a plaintiff must understand that if they bring action for damages it is for them to prove their damages. It is not enough to write down the particulars and so to speak, throw them at the head of the court "saying" this is what I have lost; I ask you to give these damages; they have to be proved.*** Counsel further submitted that there is need to prove lost profits as emphasised in the case of **Dada Cycles Ltd -V- Sofitra S.P.R. L Ltd, HCCS No. 656/ 2005** where Lady Justice Hellen Obura held that ***"failure to prove the basis for the expected lost profits disentitles the Plaintiff to the claim".***

I must state that am persuaded by the submissions of Counsel for the Defendants. The case relied upon by Counsel for the Plaintiff supports the Defendants' case. Refer to **NIS Protection (U) Ltd -V- Nkumba University, HCCS No. 604 of 2004(Supra).** I am further fortified in my decision by the ruling of the Supreme Court that ***prospective loss cannot be awarded as special damages since it had not been sustained at the date of the trial".- Oder JSC*** in the case of **Robert**

Coussens -V- Attorney General, SCCA No. 8 of 1999. The Honourable Justice explicitly stated that ***"Pecuniary loss of a business profit is capable of being arithmetically calculated in money even though calculation must sometimes be a rough one where there are difficulties of proof...; in case of future financial loss, whether it is future loss of earnings or expenses to be incurred in the future, assessment is not easy. This prospective loss cannot be claimed as special damages because it has not been sustained at the date of the trial. It is therefore awarded as part of general damages. The plaintiff could be entitled in theory to the exact amount of his prospective loss if it could be proved to its present value at the date of the trial. But in practice since future loss cannot usually be proved, the court has to make a broad estimate taking into account all the proved facts and probabilities of the particular case..."***

Further, in the current case, the facts and evidence adduced are not solid enough to give a valid estimate of the lost rental earning capacity for the period of five years. Such solid evidence would have been proof that the Plaintiff had got tenants willing to pay the said rental amount for the entire period of five years. It is not enough to just state that clients such as the United Nations had confirmed, without evidence of confirmation, that they accepted to rent the premises. Court finds that apart from the calculations done by the Plaintiff for anticipated earnings for the five years, there is no evidence that there was any prospective tenant who had agreed to rent the premises so as to use it as benchmark to arrive at the sum of USD 189,000.00.

The principle in the case of to **NIS Protection (U) Ltd -V- Nkumba University, HCCS No. 604 of 2004(Supra),** relied upon by Counsel for the Plaintiff does apply to the circumstances of the Plaintiff's case. Although the Plaintiff calculated expected rent to arrive at USD 189,000.00, that is not the basis. ***There must be evidence that***

tenants have agreed to rent the premises at a certain sum of money when the structures are completed, even if no payment has been made so long as the terms of offer and acceptance between the parties which creates rights and obligations for each party to fulfill his or her obligations are agreed on. The Plaintiff did not prove that there was such a tenant. Court therefore reiterates that the Plaintiff is not entitled to the claim as special damages; and it is disallowed.

According to the case of Four of Heaters (Owners) Vs Fort Unity (Owners) [1961] 1 WLR 351,
In the above case, the Plaintiff owned a pleasure cruise which was damaged by the defendant's ship while it had been engaged for that season. It was held that the measure of damages was the ... estimated loss of profits for the whole season since the cruise had been fully employed for that season.

General damages:
Counsel for the Plaintiff submitted that the award of general damages is a discretionary matter as a consequence of the defendant's acts. He relied on the case of **Jamil Senyonjo Vs Jonathan Bunjo, HCCS No. 180 of 2012** where it was laid down that ***"in assessment of the quantum of damages, the court is guided inter alia, by the value of the subject matter, economic inconvenience a party has suffered and value or extent of the breach, and the Plaintiff should be compensated for the wrong suffered".*** He contended that the Plaintiff failed to realize its profits from the commercial venture when yet it looked for the potential clients. He proposed general damages in the sum of UGX 30,000,000/=.

On the other hand, Counsel for the Defendant submitted that general damages of UGX 30,000,000/= is unjustified the Plaintiff having

abandoned the site and refusing to sign the sub-lease agreement. He argued that the claim should not be allowed.

General damages have been defined in a number of cases as ***"the pecuniary recompense payable by reason of some breach of duty or obligation imposed either by contract, general law , or legislation".-*** See **Hall Brothers SS Co. ltd Vs Young [1939] 1 KB 748, p. 756 (CA).** They are such damages as the law presumes to be ***"the direct natural or probable consequences of the act complained of. Such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering".-*** See **Kampala District Land Board & George Mitala Vs Venansio Babweyana, SCCA No. 2 of 2007 and Stroms Vs Hutchinson [1905] AC 515**

It has been observed that as a general rule, ***proof of actual damage is not essential to entitle a Plaintiff to an award of damages of breach of contract or injury to a right except in a few exceptional circumstances.***

In the instant case the sum of UGX 30,000,000/= was proposed by Counsel for the Plaintiff; while Counsel for the Defendants submitted that the sum was unjustified since the Plaintiff abandoned the site and refused to sign the sublease agreement. He prayed that the claim should not be allowed.

The court has already found that it is the Defendants who breached the contract entered into by the parties, The Plaintiff is consequently entitled to nominal damages. I find that the sum of UGX 30,000,000/- proposed by Counsel for the Plaintiff is reasonable in the circumstances of this case. It is hence awarded as general damages to the Plaintiff.

Interest:

The Plaintiff prayed for interest on the sums claimed at a rate of 25% per annum from the date of the cause of action till payment in full. Counsel submitted that payment of interest is to compensate the aggrieved party monies it would have used for its business. He cited the case of **Moir Vs Wallersteiner & Others (No.2) [1975] 1 ALL ER 849** where it was stated that ***"……In equity, interest is awarded whenever a wrong doer deprives a company of money which it needs for use in business. It is plain that the company be compensated for the loss thereby occasioned to it..."***

Counsel asserted that the Plaintiff invested UGX 58,243,900/= and it was denied use of it. Yet, Counsel for the Defendants asserted that no interest arises in the circumstances; and that without prejudice, if any interest is awarded; considering the conduct of the Plaintiff then it should attract court rate.

Under **S. 26(2) of the Civil Procedure Act**, the court has discretion to the award interest at such rate as is deemed reasonable from the date of the suit to the date of the decree. The principle for award of interest has been affirmed in a number of cases including the case of **Sietco Vs Noble Builders (U) Ltd, SCCA No. 31 of 1995**. It was stated in that case that ***"where a party is entitled to a liquidated amount and has been deprived of them through the wrongful act of another, he should be awarded interest from the date of filing the suit till payment in full".***

The Plaintiff in this case has been awarded special damages of **Shs.30, 828,900/=** which was paid as advance rent and which the Defendants acknowledged receiving; plus general damages of Shs. 30,000,000.
The interest rate of 25% prayed for by the Plaintiff is excessive and yet the court interest rate of 06% is not appropriate as the Defendants received the money for a commercial transaction and the Plaintiff has been deprived of the use thereof for all these years. This court accordingly

awards interest at the rate of 21% on both items from the date of filing the suit until payment in full.

Costs of the suit:

It was for the Plaintiff submitted that it is entitled to costs as a successful party; but Counsel for the Defendants prayed that costs should be denied.

Nonetheless Courts have repeatedly affirmed ***"that costs follow the event and a successful party should not be deprived of them".-*** See the case of **Jennifer Rwanyindo Aurelia & Another Vs School Outfitters (U) Ltd., C.A.CA No.53/1999.** This is in line with **S. 27(1) of the Civil Procedure Act** where it is provided, ***"that a successful party is entitled to costs of the suit and can only be denied for good cause".*** No good cause was established by the Defendants to deny the Plaintiff costs. The costs of the suit are therefore awarded to the Plaintiff from the date of judgment until payment in full.

In the result, the Plaintiff's suit against the Defendants' is allowed with costs; while the Defendants' counter claim against the Plaintiff is dismissed with costs. Judgment is entered for the Plaintiff in the following terms:

(a) The Plaintiff is awarded special damages of UGX **30, 828,900/-**
(b) General damages of UGX 30,000,000/-
(c) Interest on both sums at a rate of 21% from the date of filing the suit till payment in full
(d) Costs of the suit.
(e) Interest on costs at the rate of 12% from the date of judgment till payment in full.

FLAVIA SENOGA ANGLIN
JUDGE

03.09.14