

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

**ORIGINATING SUMMONS NO. 03/2015**

**IN THE MATTER OF TERMINATION OF TENANCY AT GARDEN CITY SHOPPING  
AND LESISURE CENTRE BETWEEN GOLF COURSE HOLDINGS LIMITED AND  
HUB ENTERTAINMENT LIMITED**

**AND**

**SALE OF PROPERTY AT GARDEN CITY SHOPPING AND LEISURE CENTRE FOR  
RECOVERY OF RENT ARREARS PURSUANT TO THE TENANCY AGREEMENT**

**BETWEEN**

**GOLF COURSE HOLDINGS LIMITED ..... PLAINTIFF**

**VERSUS**

**HUB ENTERTAINMENT LIMITED ..... DEFENDANT**

**BEFORE: LADY JUSTICE FLAVIA SENOGA ANGLIN**

**JUDGMENT**

The Plaintiff brought this suit by way of originating summons, contending that there existed a tenancy between itself and the Defendant for premises comprised in LRV 2528 Folio 24, Plot 64 - 86, Yusuf Lule Road at Garden City Shopping and Leisure Centre. When the Defendant breached its rent payment obligations, the Plaintiff terminated the tenancy and reposed the premises, retaining the property of the Defendant in the premises.

It is the Plaintiff's further assertion that under clause 5 (g) (iii) of the said tenancy agreement, the parties had agreed that upon termination of the tenancy and re-entry; the Plaintiff (Landlord) would be empowered to sell the property of the Defendant (Tenant) located in the premises, so as to recover all its dues, costs and expenses.

Upon re-entry of the premises for failure of the Defendant to pay rent, the Plaintiff filed this suit claiming interest in the proper construction of its right to sell the property under the agreement with the Defendant.

5 The Plaintiff sought for determination of the following questions:

a) Whether the Plaintiff has a right to sell the Defendant's property at the repossessed premises to recover rent monies due from the Defendant after termination of the tenancy, as provided for under the tenancy agreement.

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b) Whether the Plaintiff is entitled to an order allowing the Plaintiff to sell the said property.

c) Whether the Plaintiff is entitled to costs of the suit.

15 The summons was supported by an affidavit deposed by Amit Talreja, the General Manager of the Plaintiff Company with Annexures A-E.

The application to issue the summons was heard by court on 12.02.15 and was allowed. Court directed that the Originating Summons be served upon the Defendant/Respondent and hearing of  
20 further arguments of the parties was fixed for 04.03.15.

On 04.03.15, when the suit was called, Counsel for the Plaintiff / Applicant together with the Representative of the Plaintiff /Applicant Company were present. However, the Defendant /Respondent and its Counsel were absent.

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There being an affidavit of service on record indicating that the summons had been served on the Defendant Company on 13.02.15 and on Counsel for the Defendant Company on 17.02.15, respectively, and were duly received, Court directed hearing to proceed exparte.

30 The summons had been acknowledged by stamp and signature of both the Defendant Company and the Defendant Company's Advocates. No reasons were advanced for their failure to attend court.

Counsel for the Plaintiff then submitted that the grounds for the application were well laid out and court should refer back to the submissions upon which court issued the summons. He referred to the affidavit in support of the summons paragraphs 10, 11, 12, 14, 18 and 19, and  
5 Annexure A – the lease agreement, paragraphs 5 (e) and 5 g (3).

He asserted that the purpose of requiring the Defendant to appear in court was to prove to court if there was any objection to the facts or circumstances or correctness and sufficiency of the facts set forth in the affidavit and summons as required under 0.37 r. 10 C.P.R.

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That the Defendant not having filed any affidavit in reply and not having appeared in court signifies that they do not dispute the sufficiency and accuracy of the facts in the application.

Counsel then submitted that, in the circumstances, the three questions put before court and  
15 supported by the evidence in the supporting affidavit had not been controverted. It was prayed that the questions be answered in the affirmative and the orders prayed for granted. And that the Applicant be allowed to use the services of a court appointed auctioneer to conduct sale in a lawful and transparent manner. He also prayed for the costs of the application to be taxed in the manner costs in an ordinary suit would be taxed.

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The issues for court to determine are **whether the Plaintiff has a right to sell the Defendant's property at the repossessed premises to recover the rent monies due from the Defendant and whether it is entitled to an order to that effect; and to costs of the application.**

25 Court finds that the uncontroverted affidavit evidence indicates that there existed a tenancy agreement between the Plaintiff and the Defendant in respect of premises at Garden City Shopping and Leisure Centre. - Annexure A to the summons.

Under clause 5 (g) (iii) of the agreement, the Plaintiff was entitled to re-entry of the premises upon failure of the Defendant to pay the rent during the period of the notice.

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The Defendant began defaulting in payment of rent in May, 2013, and despite discussions with the Plaintiff and demand letter of 04.07.14 to clear outstanding sums, the Defendant did not rectify the situation, and it resulted into re-entry on 26.09.14.

- 5 The Defendant had locked up premises until the padlocks were removed by Plaintiff at the end of January, 2015. Even then, the outstanding rent had not been cleared by the Defendant. – See paragraphs 5-9 of the supporting affidavit.

10 Under clause 5(g) (iii) of the said agreement the Landlord (Plaintiff) was entitled to issue a final notice to the tenant granting the tenant a further period of fourteen(14) days within which to pay the **outstanding rents or monies** or to remedy the applicable breaches.

The said notice in the present case was given by letter of the Plaintiff's Advocates dated 28.01.15 which was received on the same date as indicated by a signature thereon.

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The Originating Summons was filed on 06.02.15 and issued on 12.02.15, and to date there is no indication that the Defendant has paid the outstanding rental dues.

20 Clause 5 (g) (iii) of the said agreement further provides that, ***“upon re-entry, the landlord (Plaintiff) shall be at liberty to sell the property of the Tenant located in the premises to recover all its dues, costs and expenses or to recover such sums as may be necessary or required to remedy the relevant breach or breaches of covenants/obligations, provided always that sale referred to herein before shall take place no sooner than seven (7) days after re-entry”.***

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It is clear from the provisions of the above clause that the Plaintiff upon re-entry is at liberty to sell the properties of the Tenant (Defendant) located in the premises, to recover the rent due and is accordingly entitled to an order in that respect. The provision is mandatory.

30 Consequently, the court answers both issues in the affirmative and declares that the Plaintiff is at liberty to sell the Defendant's property at the repossessed premises to recover the rent monies due from the Defendant and an order to that effect shall issue.

**Costs:** Decided cases have established that costs follow the event unless for good cause court directs otherwise. - **See S.27 CPA.** The Defendant in the present case was given notice and ample time after default to pay rent dues, but to no avail, which prompted the Plaintiff to file this  
5 suit.

For those reasons the Plaintiff is entitled to taxed costs of the application.

**Services of Court Bailiff:** In his submissions, Counsel sought orders of this court allowing the Plaintiff to use services of a court approved auctioneer to conduct the sale of the Defendant's  
10 properties in a lawful and transparent manner. The order is allowed. The Plaintiff's Counsel to take up the matter with the Execution Division to provide the auctioneer required to conduct up the sale.

Judgment is accordingly given in the following terms:-

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- 1) It is declared that the Plaintiff is entitled to sell the properties of the Defendant located in the reposed premises to recover the rent due.
  - 2) An order allowing the Plaintiff to sell the said property to issue.
  - 20 3) Costs of the suit are granted to the Plaintiff, to be taxed in the ordinary manner.
  - 4) The Plaintiff to take up the matter with the Execution Division to approve and avail an auctioneer to conduct the sale of the Defendant's said properties.
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30 **FLAVIA SENOGA ANGLIN**  
**JUDGE**  
**04.03.15**