

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

CIVIL SUIT NUMBER 352 OF 2013

S & A CONSULTANTS LIMITED}.....PLAINTIFF

VERSUS

CRANE MANAGEMENT SERVICES LIMITED}DEFENDANT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Plaintiff brought this action against the Defendant for declarations, an order of compensation, damages for trespass, defamation and for breach of contract, special damages, aggravated damages, general damages and costs of the suit. The Plaintiff seeks the following declarations against the Defendant namely:

- a) A declaration that the Plaintiff entered into a contractual relationship with the Defendant and the Defendant is in breach of the contract.
- b) A declaration that the Defendant unlawfully and illegally trespassed into the Plaintiff's property and distressed the Plaintiff's property.
- c) A declaration that the Defendant committed an illegal conversion in holding onto the Plaintiff's stock in trade.
- d) Damages for loss of user of the Plaintiff's property in the business that was a going concern.
- e) An order to refund the three months advance payment made in 2007 as security at the commencement of the tenancy which has not been refunded.
- f) An order that the Defendant pays three months payment in lieu of notice for termination of the agreement without any notice whatsoever.
- g) An order of a permanent injunction restraining the Defendant from continuing to act illegally to continue to hold onto the Plaintiffs property, barring Plaintiffs access to its property, other stock in trade and other office effects.
- h) An order that the Defendant restores the Plaintiff's office and returns the stock in trade and office effects it is illegally holding onto.

Briefly in support of the Plaintiff's case, the Plaintiff averred that it is a tenant of the Defendant on Plot 8 Colville Street office number 1 and dutifully paid its rent since January 2007. At the time of assuming the tenancy the Plaintiff was charged a security deposit of US\$1800 which was

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equivalent to 3 months rent. The Plaintiff is a professional trading as an accounting and auditing firm. The Plaintiff averred that it continued paying its rent as agreed and by April 2013 it had paid a total of US\$24,845.18. On 25th April 2013 the Plaintiff's managing director received a 48 hours ultimatum from the Defendant to immediately vacate the premises. The basis of the ultimatum was that the Plaintiff was indebted to the Defendant. The Plaintiff asserts that its rental obligations were fully paid-up. The Plaintiff protested the action through its lawyers and one day after, the Defendant on 26th April, 2013 before the expiry of the 48 hours, proceeded to execute its illegal threat by locking out the Plaintiff. As a result thereof the Plaintiff was put out of business and had nowhere to go yet it still had a valid subsisting tenancy with the Defendant. The Defendant still keeps the Plaintiff's property stock in trade without any legal justification thereby depriving the Plaintiff of the use thereof to make profit and practice its profession.

The Defendant contests the suit and contended among other things that the Plaintiff was given notice for being in default of its rental payments. That the Plaintiff was required to pay three months advance rent and therefore the Defendant relies on the terms of the tenancy agreement. Furthermore the security deposit was for purposes of carrying out any necessary repairs in the premises or paid for any arrears outstanding at the end of the tenancy. The Defendant denied evicting the Plaintiff.

Written Submissions of Counsels

1. Summary of written Submissions of the Plaintiff's Counsel

In the Plaintiff's written submissions, the facts are that the Plaintiff was a tenant of the Defendant in property comprised in Plot 8, Colville Street Office No. 1 and dutifully paid its rent dues since 2007 and at the time of assuming the tenancy, the Plaintiff was charged a security deposit of US\$ 1,800 being the equivalent of 3 months' rent in case the Plaintiff ever defaulted in its rent payments. The Plaintiff continuously paid the agreed rent but on 25th April, 2013, the Plaintiff's managing director was rudely addressed as Mr. Steve Jessera Tumusiime (trespasser) in a 48 hour ultimatum to vacate the premises without any prior notice to terminate the tenancy which was fully paid. Besides the tenancy, the Plaintiff had never entered into any other financial commitments nor had any other financial obligation with the Defendant though the Defendant defamed the Plaintiff as a criminal by falsely alleging that its Managing Director had broken the Defendant's Debt Collectors Padlocks which was not the case. Even before the expiry of the ultimatum, the Defendant executed its illegal threat by locking up the Plaintiff's office premises and impounding its stock in trade and office effects as a result of which the Plaintiff was put out of business. When the premises were opened after the court order for re-opening, the Plaintiff's stock-in-trade was found missing and the Defendant's officials who participated in the joint opening of the suit premises declined to sign the Joint opening report ordered by Court which was duly signed by other witnesses.

The Plaintiff raised two preliminary points of law:

1. That the Defendant filed a Witness Statement of Joe Joseph who was not brought for cross examination and that the same be struck out with costs under Order 17 rule 4 of the CPR.
2. That the Defendant was in contempt of court as they disobeyed the court order made on 30th August, 2016 permitting the Applicant into the premises and for the inventory to be filed in court.

In response to the preliminary objections raised by the Plaintiff, Counsel for the Defendant submitted that on the question of the witness statement of Joe Joseph, there is nothing for the Court to settle because it was not admitted as evidence in chief and that Order 17 rule 4 is irrelevant in the circumstances and on the question of contempt of court submitted that the Defendant substantially complied with the order of Court and prayed that court dismisses the preliminary points with costs as they are devoid of merit.

The Plaintiff's Counsel raised the following issues for determination:

1. Whether the Defendant evicted the Plaintiff from the Tenancy
2. Whether the Defendant issued any notice to vacate to the Plaintiff
3. Whether the Defendant breached the terms of its tenancy with the Plaintiff
4. Whether the Plaintiff was a trespasser on the Defendant's property
5. Whether the Plaintiff's proprietary rights were violated, there was trespass and malicious damage to property, conversion of assets and property of the Plaintiff by the Defendant
6. Whether the Defendant's officials were highhanded and oppressive in locking the Plaintiff out of her business, evicting her from her valid and subsisting tenancy and taking her stock in trade
7. Whether the Plaintiff was entitled to be paid the security deposit when she was evicted
8. Whether the Defendant defamed the Plaintiff
9. What remedies are available to the parties

In the written submissions, the Plaintiff's Counsel opted to resolve **Issue 1-4 and 7** together and submitted that the Defendant evicted the Plaintiff from the tenancy illegally yet the Plaintiff in compliance with the tenancy agreement had dutifully paid its rent dues since January 2007 and also paid a security deposit which was kept on a separate account. Counsel submitted that PW2 testified that the Tenancy Registration form was altered by the Defendant in whose custody it was and the Defendant also issued the 48 hour ultimatum to the Plaintiff for vacation of the premises alleging that he was a trespasser yet he had paid rent on 24th April, 2013 a day before vide Receipt No. 17/062. Counsel further submitted that there were no debt collectors and the Plaintiff did not break any padlocks as alleged as such the Defendant's actions were without prior notice to the Plaintiff. Security stopped the Plaintiff from accessing the premises and before the ultimatum could expire, the Defendant locked the Plaintiff's premises and impounded their stock in trade without any prior notice of terminating the tenancy and also went ahead to tag the Plaintiff as a criminal alleging that he had broken the padlocks whereas not. He also made reference to the cross-examination of DW1 John Sebutinde who testified that he did not sign in the Plaintiff as a tenant and was also not in charge of receiving rent which means his evidence was hearsay and thus inadmissible as he is not the one who received the rent from the Plaintiff

and also did not disclose the source of his information. Counsel for the Plaintiff also submitted that DW1's testimony was full of inconsistencies and contradictions as in his testimony he testified that the nails were removed with a hammer yet in their lawyer's letter to the Plaintiff they say that the Plaintiff opened the door with keys. Counsel for the Plaintiff prayed that court find that the Defendant breached the terms of the tenancy agreement and that the Plaintiff was entitled to be paid the security deposit when she was evicted as they were not trespassers.

Counsel further submitted that PW1 testified that he was a tenant in the same Defendant's premises for five years and left between 2010 and 2011 which is the same tenancy period as the Plaintiff. He testified that the tenants were not paying uniform rent and that the rates of the premises always changed according to the Dollar rate which is arbitrary which is the reason he left the premises. He further submitted that PW1 is the only independent witness that testified in this case and through cross examination of PW1 the Defendant's Counsel made no mention of PW1's entire witness statement already admitted by court as his evidence in chief and thus prayed that court take the unchallenged testimony in the witness statement of PW1 following the case of **Domaro Behangana & Anor Vs AG. Constitutional Petition No. 53 of 2010 and Massa vs. Achen (1978) HCB 279** in regard to unrebutted evidence.

Counsel also submitted that Exhibits P2 and P1 clearly prove that the Defendant was always paid rent by the Plaintiff. The months of April 2013 had five days to end thus it could not be overdue money as alleged as such the Plaintiff who had just paid could not have been described as having broken padlocks which the debt collectors had placed on the door as alleged in Exh P4 which accusation was not proved by the Defendant by adducing evidence. The premises have security and there is no way Plaintiff could break without any hindrance or report made to police to prove the false accusations and no single witness was produced from the alleged Debt collectors to positively confirm the false accusations of breaking their padlocks and doors for this court to rely on which was a clear falsehood that is incredible and unreliable as in the case of **Alex Atuhaire Vs. Makerere University Misc. Cause No. 94 of 2006**.

He thus prayed that the money paid 3 months in advance be refunded to the Plaintiff and court find that the Defendant evicted the Plaintiff from the Tenancy illegally as the Defendant never issued any notice to vacate to the Plaintiff and as such the Plaintiff was entitled to be paid a security deposit when she was evicted as the Plaintiff was not a trespasser on Defendant's property.

The Plaintiff's Counsel further addressed the court on **Issues 5 and 6 on whether the Plaintiff's proprietary rights were violated, whether there was trespass and malicious damage to property, conversion of assets and property of the Plaintiff by the Defendant and on whether the Defendant's officials were highhanded and oppressive in locking the Plaintiff out of her business, evicting her from her valid and subsisting tenancy and taking her stock in trade.**

In resolving those issues, Counsel for the Plaintiff submitted that the 48 hour ultimatum and sealing the door of a paid up Plaintiff as a tenant with nails without indicating any nature of indebtedness yet the Plaintiff had never entered into any financial obligation with the Defendant

was inconsistent to her right to quiet and peaceful possession of its tenancy thus a violation of their proprietary rights. Apart from their tenancy which was fully paid up, the Plaintiff had never entered into any other financial commitments nor had any other financial obligation with the Defendant. Counsel for the Plaintiff submitted that the Defendant closed the Plaintiff and its workers out without conducting an inventory of what was left in the office. More still, the nails in the door were removed by the Defendant's caretaker which implies that the Defendants remained in full control all the time. DW1, who alleged that if he knew about the inventory, he would have signed it, later admitted knowing about it. Counsel thus submitted that there was inconsistency on oath which clearly implies that John Sebutinde was either telling falsehoods or the Lawyer Mr. Bwayo Richard did not avail the inventory Exh. P5 and thus made reference to the case of **Commissioner Customs URA vs. Kayumba Emile Ogane T/S ETS Ogane Company Civil Application No. 62 of 2014**, where Court of Appeal held on page 10 that it is important that parties coming before courts of law be truthful and that this Court will not take lightly untruthful statements of litigants.

Counsel further submitted that this act of putting nails while the Plaintiff had its keys was meant to deny the Plaintiff access to its offices and property and that the Defendant be found to have violated the Plaintiff's proprietary rights, trespassed onto his office without any lawful excuse and maliciously damaged the property which it nailed. There was also conversion of assets and property of the Plaintiff by the Defendant which at the time of the joint opening of the office ordered by Court were not found in the office and the Defendant could not show any inventory. Counsel further submitted that the Defendant was highhanded in evicting the Plaintiff from her valid and subsisting tenancy and taking her stock-in-trade.

In resolving **Issue 8 on whether the Defendant defamed the Plaintiff**,

Counsel for the Plaintiff submitted that this was vivid when the Defendant referred to the Plaintiff as a trespasser and also tagged the Plaintiff's MD a criminal by falsely alleging that he had broken the Defendant's unnamed Debt collectors Padlocks whereas not which was humiliating yet the debt being claimed was unspecified. The admissions by DW1 on how the office was nailed and how the Defendant Lieutenant Caretaker removed them betrayed the accusations against the Plaintiff for breaking Padlocks which was libel against the Plaintiff. Counsel thus invited court to resolve this issue in the Plaintiffs favour and grant the appropriate remedies.

In regard to **Issue 9 on what remedies are available to the parties**, Counsel for the Plaintiff submitted that in paragraph 16 of the plaint and paragraph 21 of PW2's witness statement they asked for special damages as a result of lost business opportunities due to the Defendant's actions which caused untold financial losses and that the Plaintiff also incurred losses by paying the lawyers 2M to challenge the ultimatum. Counsel also submitted that the Plaintiff being professionals earn money by doing work and invoicing and thus it was affected by lack of office desks, calculators, tables etc. and that absence of the same would lessen professionalism. They also claimed for loss of prospective income amounting to **Ugx. 300,000,000/=**, loss of income amounting to **Ugx. 550,000,000/=** because of lack of the receipt books, basing on the Plaintiff's

projected turnover of 450 Million, loss of good will estimated at **UGX. 300,000,000/=** and that the entire total of special damages is **UGX. 1,938,180,000/=** and made reference to the case of **Beachside Development vs. NFA Court of Appeal Civil Appeal No. 80 of 2009.**

Counsel also prayed for general damages at an amount of **UGX. 733, 560,000/=**, punitive damages amounting to **UGX.800, 000,000/=**, interest at a rate of 32% from date of ultimatum till payment in full and costs.

Summary of written submissions in reply of the Defendant's Counsel

In the Defendant's written submissions in reply, Counsel for the Defendant making reference to the facts and the 4 agreed issues as framed in the joint scheduling memorandum and also some of those issues by the Plaintiff came up with the following issues;

1. Whether the Defendant breached the terms of its tenancy with the Plaintiff
2. Whether the Plaintiff was a trespasser on the Defendant's property
3. Whether the Defendant defamed the Plaintiff
4. What remedies are available to the parties

In reply to the Plaintiff's written submissions on **whether the Defendant breached the terms of its tenancy with the Plaintiff**, Counsel for the Defendant submitted that in DW1's testimony in chief he testified that the Plaintiff was a tenant of the Defendant from 1st January, 2008 and that it became a tenant by signing the Tenant's Registration Form. Counsel also submitted that on the aspect of Notice, DW1 testified that he authored Exhibit P4 and personally left it at the Plaintiff's premises on 25th April, 2013. In answer to the question of illegal eviction Counsel submitted that DW1 denied any eviction of the Plaintiff and also submitted that the Plaintiff did not allege any office break in by the Defendant or anybody and also the issue of who put the nails in the door remained a mystery as Plaintiff did not officially write to Defendant as Landlord asking for an explanation or reporting to police about the same. It only came up when the suit was filed. On the aspect of the security deposit, Counsel referred to DW1's testimony that the security deposit dubbed Rental deposit of UGX. 2,041,000/= was paid on 30th November, 2009 and that its purpose was to carry out any repairs on the premises at the end of the tenancy and to pay for any arrears of rent at the end of the tenancy. And since the tenancy had not been ended, the security deposit was not refundable at that stage, that's why it was not refunded. On the aspect of recording of payments of rent, Counsel for the Defendant submitted that all the rent payments were recorded as they were received as cheques.

In reply to the issue on **whether the Plaintiff was a trespasser on the Defendant's property**, Counsel for the Defendant submitted that in his testimony, DW1 testified that they required the Plaintiff to always pay rent in three months advances and there are Rent Demand Notices to that effect but the Plaintiff denies them because he did not comply with them yet Plaintiff acknowledged Exhibit D3 an invoice reflecting such payments in their affidavit in rejoinder under paragraph 9. Counsel for the Defendant invited the court to consider the affidavit evidence basing on the authority of **Francis Lukooya Mukoome and Anor. vs. The Editor in Chief of Bukedde Newspaper and 2 others, High Court Civil Suit No. 351 of 2007** where court held

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that an affidavit in one proceeding is admissible in evidence a subsequent proceeding as proof of the facts stated therein, against the party who made such affidavit or against the party on whose behalf it was made, on it being shown that he knowingly made use of it. The Plaintiff was served with rent demand notices though he did not sign on them however they admitted that they only stamp on Accounting reports and Statutory Notices which explains why the rent demand notices were not stamped. The Plaintiff was in arrears of USD 600 and the rental deposit does not take away the fact that there was a liability and non compliance with the required mode of payment and that the reference to Mr. Tumusiime as trespasser accords with the case of **Tumushabe and Anor vs. M/S Anglo-African Ltd and Anor** where court held that in circumstances where a tenant refuses to pay rent or act against the will of the landlord, then such tenant becomes a trespasser and since in this case it's the tenant who had refused to pay rent as testified by DW1, he was the trespasser.

In reply to Issue 8 on whether the Defendant defamed the Plaintiff, Counsel for the Defendant submitted that a claim of defamation is a characteristic claim that should ordinarily constitute a distinct cause of action and the defamatory publication must be reproduced verbatim and then made reference to the case of **Captain Kibuuka Mukasa vs. The New Vision Publishing Company Ltd, High Court Miscellaneous Application No. 148 of 2013** where it was held that;

'The law governing cases of libel has been clear for a long time. The statement of claim must set out verbatim the libel complained about. It is not enough to set out its substance or affect as the precise words of the document are themselves material. Words take their meaning from the context, and if the context and background is not provided or the full statement reproduced, their malicious or defamatory effect may not be easy to discover. The particulars of the statement also enable the Defendant to know what case he or she has to meet and defend. In the instant case, it was not good to merely describe the substance of the articles complained of in one paragraph. The law requires the very words in the libel to be set out in order that court may judge whether they constitute a ground of action. The Plaintiff has not done this.'

Counsel thus submitted that the plaintiff did not disclose a cause of action in relation to the claim of defamation and that assuming there was any libel, which is denied, there was no publication of any of it as to afford the Plaintiff a cause of action. That DW1 confirmed in his testimony that he served the alleged defamatory letter to only Mr. Tumusiime Stephen who acknowledged receipt but never served it the Protectorate SPC or the Police as alleged and that the contents of the alleged defamatory letter were true and thus prayed that this ground fails.

In reply to Issue 9 on what remedies are available to the parties, Counsel for the Defendant submitted that the Plaintiff failed to provide any material to support the claim of special damages and that it should as such be dismissed. On general and punitive damages, Counsel submitted that Plaintiff did not make out a case deserving of any grant of the same. On costs and interest, Counsel submitted that the Plaintiff does not deserve any award of a monetary sum and has not discharged the required burden and standard of proof as sought and should thus be dismissed.

Summary of written submissions in rejoinder of the Plaintiff's Counsel

In rejoinder, Counsel for the Plaintiff submitted that the Defendant in its submissions abandoned her earlier pleading that the Plaintiff lacks a cause of action which is an admission that the Plaintiff discharged its burden of establishing its claim but the submission is contradictory. He submitted that the self-explanatory ultimatum was copied to the security Firm guarding the Protectorate SPC and the Division Police Commander and Central Police Station Kampala for action which made it a defamatory notice. Counsel submitted that the Plaintiff's keys as testified by both PW2 and DW1 and inventory Exhibit P5 could not open the office because of the existence of nails and that the Defendant bases on outright lies to attempt to downplay the failure to give the Plaintiff notice having admitted that this constitutes breach of a covenant in the tenancy agreement and that the 48 hour ultimatum served on 25th April, 2013 at 4.00pm and closure being effected in less than 15 hours the following morning was unreasonable and miserably fell short of the legally required notice. A 48 hour ultimatum given to the Plaintiff is not Notice given to the Tenant. Counsel made reference to the case of **Sh. Deep Chand vs. Kulanand Lakhera & others C.R.P No. 21/2002** where it was stated that:

"The possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical and that possession is protected by statute. There is a clear and sharp distinction between a trespasser and an erstwhile tenant. Whereas the trespasser's possession is never juridical and never protected by law, the possession of an erstwhile tenant is juridical and is protected by law."

And thus submitted that the Plaintiff's rights were more superior as she was not even an erstwhile tenant but a continuing tenant and prayed that the Defendant be overruled and Plaintiff's submissions that there was breach of the terms of the tenancy by the Defendant be upheld.

Furthermore **in rejoinder to issue 2**, Counsel for the Plaintiff submitted that Exhibit D3 had concoctions and that DW1 who admitted that he was never involved in serving had no locus standi to testify that they were always served although not signed on and no other dependant testimony of the process server or independent writing exists alleging so. And thus it's just an unfounded submission. That the burden remains with the Defendant to deal with the bitter truth of Failing to serve rent demand notices and that Defendant's Counsel ought to have directly put the question on PW2 on whether or not they acknowledge documents as signing and other endorsements are also used and prayed that they be overruled as they are not credible.

In rejoinder to issue 3, Counsel submitted that on the effect of the publication, the defamatory Exhibit P4 speaks for itself and was published to third parties like Police, Protectorate SPC among others without hesitation and invited court to overrule the Defendant and find the Plaintiff's ground of defamation successful.

In rejoinder to Issue 4 on remedies, Counsel for the Plaintiff submitted that in regard to special damages, there was ample evidence that the Defendant took over the Plaintiff's office including

stock-in-trade without making any inventory and this was not found in at the time of opening the nails and invited court to overrule the Defendant and uphold the Plaintiff's submissions in the main.

On costs and damages, Counsel submitted that the Defendant having agreed with the cases submitted on costs, she is estopped from duplicating the academic/hypothetical reasons which we have already dispelled as preposterous and non justiciable to support its unfounded submission that the Plaintiff should be denied its deserved costs and prayed that court strike out the Defendant's submissions as they do not show who drew them.

In conclusion, Counsel prayed that the Defendant be overruled and court finds that the Plaintiff discharged the required burden and deserves the remedies sought.

Judgment

I have carefully considered the Plaintiffs case as disclosed in the pleadings, the defence as disclosed in the pleadings as well as the evidence and submissions of Counsel. Several inter related issues were raised for resolution of the controversies in this suit. These are:

1. Whether the Defendant evicted the Plaintiff from the Tenancy?
2. Whether the Defendant issued any notice to vacate to the Plaintiff?
3. Whether the Defendant breached the terms of its tenancy with the Plaintiff?
4. Whether the Plaintiff was a trespasser on the Defendant's property?
5. Whether the Plaintiff's proprietary rights were violated, there was trespass and malicious damage to property, conversion of assets and property of the Plaintiff by the Defendant?
6. Whether the Defendant's officials were highhanded and oppressive in locking the Plaintiff out of her business, evicting her from her valid and subsisting tenancy and taking her stock in trade?
7. Whether the Plaintiff was entitled to be paid the security deposit when she was evicted?
8. Whether the Defendant defamed the Plaintiff
9. What remedies are available to the parties

I agree with the Plaintiff's Counsel that issues 1, 2, 3, 4, and 7 are related and deal with the central factual controversy as to whether the Plaintiff was a fully paid up tenant at the time of the ultimatum. Secondly, the court has to establish the facts of the lock up of the premise. Resolution of the factual controversies would resolve the question of whether the Defendant was in breach of the tenancy and whether the Plaintiff was a trespasser on the Plaintiff's property. Issue number six depends on the resolution of fact as to what happened after the ultimatum and whether it was highhanded and oppressive. The issue of security deposit depends very much on whether the Plaintiff was a fully paid up tenant at the time the premises were locked up hence whether the Defendant had no claims against the Plaintiff when the tenancy came to an end.

The starting point in resolving the controversies raised for resolution of the suit is to establish the facts leading to the cause of action disclosed in the plaint and the defence disclosed in the written statement of defence. The Plaintiff adduced the evidence of two witnesses namely PW1 Mr. Chris Bigirwa a tenant at Plot 8 Colville Street Office No 10 to testify about systems and modalities of rent payment by Crane Management Services Ltd and PW2 Mr. Stephen Tumusiime the Plaintiff's Managing Director. On the other hand the Defendant adduced evidence through DW1 Mr. John Sebutinde the Property Manager of the Defendant. In the joint scheduling memorandum endorsed by Counsels of both parties there are facts which are not in dispute namely:

The Plaintiff is a tenant of the Defendant on plot 8 Colville Street in Kampala. The Plaintiff paid a security deposit. Thirdly, the security deposit is kept on a separate account by the Defendant. Fourthly, the Defendant on 25th April, 2013 issued a 48 hours ultimatum to Tumusiime Steven Jaffers for immediate vacation. The Plaintiffs lawyer's wrote a letter and served it on the Defendant.

The gist of the evidence of Chris Bigirwa is that as a tenant of the Defendant and throughout the period of its tenancy, the rental rates of the premises would change according to the dollar rate. He was denied a tenancy agreement by the Defendant. He was paying monthly rent and there was no arrangement for every tenant to pay rent three months in advance. Because of the unpredictable monthly rent payment, he decided to leave the premises and relocate his business. In cross examination he only confirmed his testimony that the tenants were not paying uniform rates of rent and there was no union of tenants. Furthermore he did not help the Plaintiff to negotiate for his rent. He never got to see the Plaintiff's tenancy agreement. He got to know about issues affecting other tenants because there were issues dealing with the house rent and they used to sit as tenants but did not have a trade union. He had been away for about three or four years from the premises.

PW2 Mr Tumusiime Steven, the managing director of the Plaintiff testified that the Plaintiff is a tenant of the Defendant as pleaded in office number 1 and used to pay its rent since January 2007. At the time of assuming the tenancy the Plaintiff deposited a security deposit of US\$1800 which was equivalent to 3 months rent. The Plaintiff carries on the business and professional trade of accounting and auditing from the office premises which they rented from the Defendant. He testified that the annual income of the Plaintiff is over 450,000,000/=. The gist of the issue is that the Plaintiff continuously paid the rent as agreed and by April 2013 had paid a total of US\$24,845.18. He testified that he was shocked when on 25th April, 2013 he received from the Defendant a 48 hours ultimatum letter ordering him/the Plaintiff to immediately vacate the premises. The ultimatum falsely claimed that the Plaintiff was indebted without specifying or demanding or indicating the nature of the indebtedness. He testified that the Plaintiff's tenancy was fully paid-up and the Plaintiff had not entered into any other financial commitment or obligation with the Defendant and the undisclosed indebtedness was far-fetched. Secondly, the

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document/ultimatum contained defamatory material in that it implied that the Plaintiff's managing director was a criminal by falsely alleging that he had broken the Defendant's debt collector's padlocks. Thirdly, the ultimatum and actions of the Defendant were without any prior notice, written or verbal, about plans to terminate the tenancy or indicating dissatisfaction with the Plaintiff's tenancy.

The testimony of PW2 further is that on 26th April, 2013 before the expiry of the 48 hours ultimatum, the Defendant proceeded to execute its illegal threat by blocking the Plaintiff's premises in the absence of the Plaintiff and impounding the stock in trade of the Plaintiff and office effects and to date the premises remained locked without access to the Plaintiff. The Plaintiff was not able to access its property or offices and get the refund of its security deposit despite seeking the same from the Defendant. In the premises, the testimony of the managing director of the Plaintiff is that the Plaintiff was put out of business and had nowhere to go while it still had a valid subsisting tenancy with the Defendant. The Plaintiff's property and stock in trade was kept away from the Plaintiff without any legal justification or reason depriving the Plaintiff of the ability to make profit by practising its trade/profession. By consent of the parties after the Plaintiff filed an action and on 30th August, 2013 the Defendant was ordered to reopen the Plaintiff's business in the presence of the party's representative and this was done on 2nd September, 2013 on a date appointed by the court. The court ordered an inventory to be made of the Plaintiff's property found in the premises and it was to be signed by all parties and their representatives but the Defendant never signed. The Plaintiff accordingly claims loss of property over several items and claims the value of the property.

PW2 was also cross examined on his testimony. According to him the monthly rental was Uganda shillings 653,000/=. They had paid a deposit of US\$1800. The Plaintiff paid in dollars. The Uganda shillings 653,000/= was according to the agreement they signed. Thereafter they were made to pay US\$1800 and were given a receipt. The Plaintiff sued the landlord to compel the landlord to act ethically because he mistreated the Plaintiff with an ultimatum of 48 hours to vacate the premises. He reiterated the testimony that rent was paid up, up to April 2013. He received the ultimatum on 24th April, 2013 at around 4 PM at the business premises. The response to the ultimatum was written on 25th April, 2013. The office was not closed on 25th April, 2013. He further clarified that they last accessed the premises on 25th April, 2013 and the lawyers wrote on 25th April 2013. The premises were closed from April 2013 until there was an order to reopen it in September 2013.

PW2 was re-examined and he testified that according to the exhibit admitted in evidence he was supposed to vacate the premises the next day. He found this to be hostile and sought legal advice. They did not break any padlocks. He locked the premises but on 26th April Protectorate Services prevented the Plaintiff's officials from accessing the premises. The Plaintiff was further re-examined on particular documents and this will be the subject of scrutiny by the court in due course.

DW1 Mr John Sebutinde testified that the Plaintiff company became their tenant by signing a tenant's registration form which outlines all key terms about the tenancy and also by paying rent. The form has the rent to be paid as well as the VAT payable on the rent. Rent is payable three months in advance and the form indicates the invoicing period to be three months. Furthermore he testified that other matters are verbally agreed upon. This included reminders to pay rent, hygiene and general good relationship with other tenants. Rent demand notices followed the invoicing period and require the payment of rent three months in advance at any one time. According to him the rent payable by the Plaintiff was 680,000/= inclusive of VAT of 18%. They paid a total of Uganda shillings 4,082,000/= for three months as well as security deposit equivalent to 3 months rent. The amount paid is reflected on the tenants registration form and a receipt was issued to that effect. The currency for the payment of rent eventually was changed to US dollars.

As far as the factual controversies I have outlined above are concerned, DW1 testified that while rent was payable in three months advance payment, the Plaintiff started paying one month and sometimes two months and as such started falling into intermittent arrears. From late 2008 to date, the Plaintiff had not complied with the requirements as to the payment of rent. Various demand notices were issued to the tenant but the tenant did not pay heed which factor constrained the relationship between the parties. He testified that by the time he issued 48 hours ultimatum, the tenant had become a big problem because it was not paying rent as required but also the interpersonal relationship with the landlord and other tenants on the premises were reported to be very poor. All demand notices and verbal calls for the tenant to pay rent fell on deaf ears. The tenant refused to leave the premises after being requested to do so and the Plaintiff was in arrears up to US\$600. Instead they wrote a threatening letter through their lawyers to the Defendant and the tenant did not come to the Defendant's offices to complain about any unfairness but instead went to lawyers. With the threat from lawyers, the Defendants ceased to take any further action.

Mr John Sebutinde was extensively cross examined about his written testimony. I will particularly make reference to the cross examination and re-examination on particular matters of whether the Plaintiff was in arrears of rent and what actually transpired from the time of the ultimatum and the time when the premises were reopened.

As I noted earlier, the major factual controversy is whether the Plaintiff was in arrears of rent or whether rent was fully paid up by the time the Plaintiff received an ultimatum to vacate the premises. This is based on a statutory covenant under the Registration of Titles Act applicable to leases. This provision is also applicable to rental payments. Section 102 of the Registration of Titles Act provides as follows:

“102. Covenants to be implied in every lease against the lessee.

In every lease made under this Act there shall be implied the following covenants with the lessor and his or her transferees by the lessee binding the latter and his or her executors, administrators and transferees—

(a) that he or she or they will pay the rent reserved by the lease at the times mentioned in the lease;

(b) that he or she or they will keep and yield up the leased property in good and tenantable repair, damage from earthquake, storm and tempest, and reasonable wear and tear excepted.”

This covenant is applicable to tenancies and therefore the tenant undertakes to pay the rent reserved whenever there is a tenancy. What the court should establish is agreement as to the mode of payment. Once this is established the rights of the parties will be determined, as far as the tenancy is concerned on the basis of whether such an implied covenant had been breached at all. PW2 was cross examined and re-examined on this issue as well. Particularly he was examined on exhibit P2 which is an account statement. He testified that a document dated 24th of April 2013 is a received/tax invoices 17602 being payment of US\$600. Thereafter and the following day they received an ultimatum to vacate the premises on grounds of failure to pay rent. The account statement of the Defendant was up to February 2013/March 2013 and did not capture what had happened up to that point. The account statement left out the receipt dated 24th of April 2013. Secondly, he testified that he had not previously received such accounts. It was only after opening the premises in September after the court order that he received the documents. No documents had been received on the invoice for rent. Exhibit P1 was payment of US\$1000 issued by the Plaintiff. It was paying rent and is dated 11th March, 2013. The cheque was received on 9 March 2013. Another cheque of 3rd of October, 2012 is received on 1st October, 2012. He contended that the received stamp is a concoction of the Defendant. He conceded that he filled the tenant registration form upon obtaining a tenancy with the Defendant. This form was tendered in evidence as exhibit D3. PW2 was further re-examined about exhibit D1 which is an invoicing document and testified that the words in the document "three months in advance" was a concoction. The rent payable was Uganda shillings 680,000/= plus VAT and by the time the Plaintiff's premises was closed, it was fully paid up in rent.

The testimony in cross examination of DW1 is that at the time the premises were closed, the Plaintiff was in arrears by US\$600. Secondly the security deposit was meant to deal with the repairs when the tenant leaves. On the question of why the Defendant issued an ultimatum, DW1 testified that there was a total breakdown of relationship between the Plaintiff and the Defendant and failure to pay rent. He further testified that the security deposited is not concerned with the rent. DW1 was extensively cross examined on the 25th of March, 2015 on the issue of the rental account of the Plaintiff. I have summarised the evidence in cross examination below:

Exhibit P1 are cheques drawn on Standard Chartered Bank and comprises payments made to the Defendant Messrs Crane Management Services. They include a cheque dated 24th April, 2013 for US\$ 600. Another for US\$ 1000 dated 11th March, 2013. A cheque dated 16th January, 2013 for US\$ 1000. Cheque dated 21st Nov, 2012 for US\$ 550. Cheque dated 27th Nov, 2012 for US\$ 550. Cheque dated 3rd Oct, 2012 for US\$ 550. Tax invoice/receipt dated 17th May, 2012 for US\$ 500. Invoice dated 18th April, 2012 for US\$ 550 US\$. Receipt dated 24th April, 2013 for US\$ 600. DW1 testified that all payments were reflected in the Plaintiffs account exhibit P1. He did not receive the above documents personally but the documents were received by the Principal Accountant of the Defendant Mr. Faisal Muhammad who was not called as a witness. Regarding cheque dated 24th of April, 2013 for US\$ 600 it has two stamps on the photocopy thereof, one of High Court and another of Crane Management services? The cheque of US\$ 1000 dated 11th March, 2013 could have been post-dated. It is possible that the cheque was post-dated. The cheque dated 16th Jan, 2013 is for US\$ 1000 and bears the Defendant's stamp. Other cheques are dated 21st Nov, 2012 for US\$ 550, 27th Nov, 2012 for US\$ 550, 3rd Oct, 2012 for US\$ 550. DW1 confirmed that the Plaintiff issued a cheque dated 24th April, 2013 and whether it was reflected in the account statement exhibit P2 and is the last entry on that statement. Similarly payment of 21st of Nov, 2012 is reflected as the 5th entry from the bottom dated 27th Nov, 2012 of exhibit P2. The money receipted on 21st Nov, 2012 is reflected in line 5 from the bottom.

DW1 was further cross examined on receipts and their narrations in the account statement. The receipt dated 17th May, 2012 for 500 US\$ has a narration of being payment of rent plus VAT for part of April, 2012. The Narration for the invoice of 18th April 2012 for 550 US\$ is payment of rent for part of April, 2012 and was 500 US\$. The rent for March, 2012 was for 500 US\$ and included VAT. Rent was 543.59 US\$. For 18th April, 2012 rent was US\$ 473 US\$ but there was no narration recorded. Some payments were equal to a month's rent and some were not equal to rent. The payment of 18th of April was in excess while the monthly rent was US\$ 543.19 inclusive of VAT.

On the 25th of May, 2015 DW1 was again cross examined on the rental account of the Plaintiff. He testified in summary as follows: The monthly rent was US\$ 460.33 per month and VAT charged on top of it which gives a total of US\$ 543.19 per month. All payments were included in the account statement. By the time the statement was issued the outstanding for March 2013 was US\$ 600.57. Exhibit D2 which is a receipt number 16863 of 11th March, 2013 shows that it is for part payment of rent being full rent for February, 2013 and part payment of March, 2013. Payment of US\$ 1000 was for February and part of March, 2013. He testified that it was an error to write rent up to Feb and part March 2013. At the bottom of the receipt he wrote that the Plaintiff paid for Jan 2013 up to part February 2013. The receipt was issued by one Jamvi (a young lady). The matter was subsequently explained to the Plaintiff. The question was whether the Plaintiff could pay rent for Feb 2013 twice on different invoices and this seemed to be reflected by the documents.

In re-examination of DW1 on 30th November 2015 he testified that cheques in exhibit P1 are reflected in the account statement exhibit P2 and in the last entry of exhibit P2 and particularly entry for a cheque worth US\$ 600. The dates on the cheque may be post dated but cheque received on an earlier date. Finally he examined the statement in exhibit P2 for the controversial payment by cheque of 24th April, 2013 and testified that this money of US\$ 600 was received. He issued the ultimatum after receiving the US\$ 600 because there was an outstanding amount of US\$ 600.57 which is reflected at the last bottom line of exhibit P2. This was the reason for sending the Plaintiff an ultimatum and though the Plaintiff's payment of rent had been going on for a long time. The Plaintiff would always leave an outstanding balance.

The conduct of the suit did not follow the usual procedure. The question of accounts ought to have been left to referee auditors who have the expertise to determine matters relating to accounts to establish whether the Plaintiff was in arrears of rent payment. I have in the circumstances been given the uncustomary task of dealing with the specific account details of the relevant transactions to establish this very material point or controversy between the parties and will try to do the best I can while applying the law of evidence.

I have finally considered the relevant documents. The rent registration form exhibit D3 is dated 29th of November, 2007 and is admittedly the document by which the tenancy was commenced. It gives some written agreed terms of the tenancy. The tenancy commenced on 1 January, 2008. Rent was payable three months in advance. The initial rent per month was Uganda shillings 680,000/= together with 15 & 18% VAT inclusive. It also showed that a charge of Uganda shillings 122,429/= was charged as VAT and the Plaintiff paid three months rent of Uganda shillings 4,082,000/=.

I have also considered documents written by the Defendant entitled rent demand note written on various dates. These documents are contested by the Plaintiff on the ground that they were not received by it. The first document is exhibit D4 (d) and is dated 25th of November 2012. It shows that the rent was charged by the Defendant at US\$460.33 per month. VAT was 18% of the rental charge. This is replicated in the other 3 demand notices I have examined. This meant that VAT was 82.8594 US dollars per month. This gives a total amount payable of US\$543.189 per month. Furthermore I have carefully scrutinised exhibit D4. The Plaintiff PW2 testified that he never received the said demand notices. DW1 however admitted that he signed these documents. The documents are only useful for indicating how much the Defendant is claiming and for what period. They do not however prove that the Plaintiff received the demand notices. Particularly it is written at the bottom of the four documents that the Plaintiff should sign the photocopy to acknowledge receipt of the demand note. None of the demand notices received in evidence was acknowledged by the Plaintiff and the documents are not evidence that the Plaintiff received any of the demand notices. I will however use them for purposes of establishing what the Defendant purports to be the outstanding amount. Particularly two documents will be considered. The first document is dated 29th of November, 2012 and shows that the rent payable for the period starting

first of December 2012 up to 28th of February, 2013 was US\$1380.99 together with the VAT bringing the total amount to US\$1,629.57. The second document is dated 26th of February 2013 wherein the Defendant wrote that the rent payable for the period starting 1st of March 2013 up to 31st of May, 2013 was due on 1st March, 2013. It amounted together with VAT to US\$1629.57.

I have compared this document with exhibit D1 which is the account statement of the affairs of the Plaintiff. On 27th November, 2012 the Plaintiff paid US\$550. Again on 27th November, 2012 the Plaintiff paid another US\$550. Secondly on 16th January, 2013 the Plaintiff paid US\$1000. On 11th March 2013 the Plaintiff paid another US\$1000. Then on 24th April, 2013 the Plaintiff paid US\$600.

I have noted that from the Defendant's perspective and from an analysis of the demand notices and account statement, the amount which was written on the notice dated 29th of November, 2012 was supposed to be for the period starting 1st of December, 2012 up to 28 February, 2013 and was due for payment on 1st December, 2012. The demand notice purported to have been delivered on the same day. Notwithstanding the fact that it cannot be proved that it was ever delivered to the Plaintiff, the account statement attached to payments on 27th November, 2012. The demand notices never indicated that there were outstanding arrears when they were issued. If the two payments made are excluded from the period commencing on 1st December, 2012, then the Plaintiff paid on 16th January, 2013 and on 11th March, 2013 a sum of US\$2000 thereby covering the period 1st December 2012 up to 28th of February, 2013. This was supposed to be US\$1629.57. This left a balance of US\$370.43 for the next period commencing 1st of March, 2013. On 24th April 2013, the Plaintiff paid an additional US\$600 bringing its total to US\$970.43 for the period of rent commencing on 1st March, 2013. The Plaintiff therefore paid for the month of March and had made a part payment for the month of April, 2013. According to the account statement, there was a balance of US\$600.57 that was outstanding to bring the Plaintiff up to end of April 2013.

I have carefully considered the testimony of DW1 and the documents. As far as the question of outstanding rent is concerned, there seems to be some margin of error that cannot be explained. US\$970.43 plus US\$600.57 amounts to US\$1571 and is supposed to have brought the rent up to May 2013 leaving only about US\$60 outstanding to make it three months advance rent.

I have considered exhibit P4 which is a letter dated 25th of April 2013 written by the Defendants DW1 on the subject of "Immediate Vacation". It is written as follows:

"We have reminded you of your indebtedness to us over and over again, without a positive response. You have broken padlocks which debt collectors have placed on the door!!

We have reached the stage where WE DO NOT DESIRE YOUR PRESENCE THERE ANYMORE.

Please take immediate steps to vacate the premises, not later than Friday 26th of April 2013. If you do not conform to this, this matter will be handled by the police to your detriment and embarrassment.

You are warned!!!!

Yours sincerely

Crane Management Services Ltd..."

There is no evidence of any written reminder over and over again. Secondly, the Plaintiff had paid part rent for April 2013 by the time this letter was written. From the Defendant's own statement of account exhibit D1 the Plaintiff was left with a balance of US\$600.57 to be up to date up to April 2013. I found this to be inconsistent with the Defendants own demand notices and concluded that it would have brought the rent up to May 2013. Using the Defendant's own document which purported to be demand notices, the monthly rent together with VAT and amounts to approximately US\$543.18. If calculations are based on the Defendant's testimony and account statement exhibit D1 US\$600.57 brings the Plaintiff up to date and up to the end of May 2013 being 3 months for the period commencing 1st March 2013. This implies that the balance left over for April 2013 was only US\$57.39. Taking the calculations further for a period of 30 days, the daily rent is US\$18.106. By 24th of April, the Plaintiff had utilised US\$434.54 which it had paid already. If the Plaintiff was evicted, there would be no outstanding amount owing to the Defendant.

Taking the above analysis further, the Plaintiff was a tenant from 1st January, 2008 and by 2013 had been a tenant for more than five years. As far as the delay in payment is concerned, the demand notices of the Defendant clearly indicate that the Defendant would charge 10% of the rent payable for delays in payment. It follows that the demand for the Plaintiff to vacate the premises by 26th of April, 2013 was unreasonable and high-handed thereby resolving issue number 6. Issue no 6 is whether the Defendant's officials were highhanded and oppressive in locking the Plaintiff out of her business, evicting her from her valid and subsisting tenancy and taking her stock in trade.

It is my further finding of fact that had the Plaintiff vacated the premises by 26th of April 2013, it would not owe any rental payment to the Defendant at that point because it was fully paid-up though it had not paid up to May 2013 and which it was contractually bound to do in advance.

Pursuant to the evaluation of evidence above the first 4 issues namely:

1. Whether the Defendant evicted the Plaintiff from the Tenancy
2. Whether the Defendant issued any notice to vacate to the Plaintiff
3. Whether the Defendant breached the terms of its tenancy with the Plaintiff
4. Whether the Plaintiff was a trespasser on the Defendant's property

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Will be are resolved as follows:

The Plaintiff was locked out of the premises and therefore evicted from the premises. This is further demonstrated by the ultimatum document which alleges that the Plaintiff broke padlocks. The Defendant admitted that the Plaintiff was locked out. The Plaintiff re-entered in September by order of the court because the door had been nailed shut by the Defendant's officials according to my finding of fact. The first issue is answered in the affirmative.

The second issue has been answered. The documents issued by the Defendant have no evidence of acknowledgement of receipt and service on the Plaintiff was not proved. While a notice was issued and admitted in evidence there is no evidence that it was served on the Plaintiff and the Plaintiff denied having received it. The document by way of the Defendant's demand notices themselves required the Plaintiff's acknowledgement of receipt of the notices. There was no plausible reason for the Plaintiff not to acknowledge receipt since it kept on paying rent and though there were some delays rent was always paid.

On whether the Defendant breached the terms of the tenancy agreement with the Plaintiff, the issue is answered in the affirmative. The Defendant claimed that the Plaintiff was in arrears but the Plaintiff had paid though not in advance up to May 2013. The Plaintiff was fully paid up in April 2013 by the time the ultimatum was issued as established by the court from the Defendants own documents admitted in evidence. Furthermore, the penalty for late payment was a percentage of the rent according to documents relied on by Defendant. The Defendant is barred by the doctrine of estoppels from evicting as a penalty for late payment. Last but not least the Defendant had not been paid 3 months advance rent all at once most of the time according to the financial statement exhibit D1 in previous periods. Payments of three months were made in several short instalments in some cases. Why should a one payment for three months be imposed now? The Defendant waived its right to insist on a once payment of three months advance rent and is barred by the doctrine of estoppels imported under section 114 of the Evidence Act from asserting a strictly applied right. Last but not least the Plaintiff was entitled to reasonable notice of eviction which right was breached.

On the 4th issue, the Plaintiff was not a trespasser on the premises. The Plaintiff was fully paid up and was locked out of the premises and therefore denied access. Issues 1 – 4 are resolved in favour of the Plaintiff.

On issue number 6 whether the Defendant's officials were highhanded and oppressive in locking the Plaintiff out of her business, evicting her from her valid and subsisting tenancy and taking her stock in trade, I have already resolved it above that they were.

Issue Number 7 on whether the Plaintiff was entitled to security deposit, the Plaintiff still wanted to remain on the premises and I agree with the submissions of the Defendants Counsel that the tenancy had not ended though I must add that it had been interrupted. The Plaintiff was not yet

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entitled to the security deposit especially in light of the court order for the premises to be reopened and for the Plaintiff to resume its tenancy in September 2013.

Whether the Defendant defamed the Plaintiff?

I have carefully considered the evidence. The assertion is based on the ultimatum document in which the Plaintiff was called a trespasser and that he was accused of breaking padlocks. There is no evidence that this document was circulated to other persons. I agree with the Defendants submissions on the matter and the authority of Captain Kibuuka Mukasa vs. The New Vision Publishing Company HCMA NO 148 of 2013 that if the context and background of the precise words used is not provided, their malicious or defamatory effect cannot be determined. I particularly find that the persons who are said to have got the words which defamed the Plaintiff have not been proved. According to **Stroud's Judicial Dictionary of Words and Phrases 2000** Edition, "defamatory matter" means:

"matter which, either directly or by insinuation or irony, tends to expose any person to hatred, contempt, or ridicule"

Using a simple analogy it is essential that the person has to be exposed to other persons for the hatred, contempt or ridicule to be proved and hence for the cause of action to accrue. The evidence of these other persons who considered the Plaintiff in light of the alleged defamatory matter is also essential. There is no evidence of exposure of the Plaintiff which is a company with limited liability and a legal fiction and I agree that there is no evidence of publication of the alleged malicious words and the action for defamation of the Plaintiff fails. Issue number 8 is answered in the negative.

Remedies:

Plaintiff's Counsel on the basis of the resolution of issues claimed special damages as a result of lost business opportunities due to the Defendant's actions which caused untold financial losses and that the Plaintiff also incurred losses by paying the lawyers 2,000,000/= Uganda shillings to challenge the ultimatum. Loss of prospective income of Uganda shillings **300,000,000/=**, loss of income amounting to **Uganda shillings 550,000,000/= based on** projected turnover of 450 Million, loss of good will estimated at **Uganda shillings 300,000,000/=** and that the entire total of special damages is **Uganda shillings 1,938,180,000/=**. The Plaintiff also prays for general damages of Uganda shillings **733, 560,000/=**, punitive damages Uganda shillings **800, 000,000/= and** interest at a rate of 32% per annum from date of ultimatum till payment in full and costs.

In reply the Defendants Counsel opposed the entire claim because he submitted that the Plaintiff failed to provide any material to support the claim of special damages and it ought to be dismissed.

On general and punitive damages, the Plaintiff did not make out a case deserving of any grant of the same. On costs and interest, Counsel submitted that the Plaintiff does not deserve any award of a monetary sum and has not discharged the required burden and standard of proof as sought and should thus be dismissed.

In rejoinder the Plaintiff submitted that there was ample evidence that the Defendant took over the Plaintiff's office including stock-in-trade without making any inventory and this was not found in at the time of opening the nails and invited court to overrule the Defendant and uphold the Plaintiff's submissions in the main.

Resolution

I have carefully considered the evidence and submissions. The Plaintiff succeeded in proving that its eviction through locking the premises it rented was unjustified. The principle for assessment of damages is the same and is *restitutio in integrum*. The question is what was the loss if any to the Plaintiff on account of being kept out of its business premises for from 26th April 2013 to 2nd September 2013? The test for assessment of loss should always be an objective one.

Damages are "the pecuniary recompense given by process of law to a person for the actionable wrong that another person has done to him or her." (See Halsbury's Laws of England, 4th Edition volume 12 (1) paragraph 802). The flow naturally from the loss and according to Lord Greene M.R in *Hall Brothers Steamship Company Ltd vs. Young* (1938) 43 Com Cas 284, damages:

"imports this idea, that the sums payable by way of damages are sums which fall to be paid by reason of some breach of duty or obligation, whether the duty or obligations is imposed by contract, by the general laws, or legislation."

Special damages are those which do not arise naturally and out of the Defendant's breach and they are recoverable only where they were not beyond the reasonable contemplation of the parties. They are those that can be calculated in financial terms and must be proved (Halsbury's Laws of England, 4th Edition Re-issue Volume 12 (1) paragraph 812). Special damages must be backed by evidence and are specially proved. *Kyambadde vs. Mpigi District Administration* [1983] HCB 44, it was held that special damages must be specially pleaded and strictly proved, though it was not necessary in all case that the claim should be supported by documentary evidence.

Special damages, on the other hand, are such as the law will not infer from the nature of the Act. They do not follow in the ordinary course. They are exceptional in their character, and, therefore, they must be claimed specially and proven strictly. In **Musoke v Departed Asian's Property Custodian Board and another** [1990–1994] 1 EA 419 at 424 the Supreme Court of Uganda held that special damage:

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“... is such a loss as the law will not presume to be the consequences of the Defendants’ act. Such damage, as the learned editors of Onger’s Principles of Pleading and Practice (21ed) point out; (at 164):

“... depends in part, at least, on the special circumstances of the case. It must therefore always be explicitly claimed on the pleadings, and at the trial it must be proved by evidence both that the loss was incurred and that it was the direct result of the Defendant’s conduct...”

The Plaintiff had no proof that the Defendants officials took over the Plaintiff’s stock in trade. In the premises loss of goods of Uganda shillings 300,000,000/= was not proved and is disallowed.

Secondly the Plaintiff claims loss of prospective income of Uganda shillings **300,000,000/=**, loss of income amounting to **Uganda shillings 550,000,000/=** based on projected turnover of Uganda shillings 450,000,000/=, loss of good will estimated at **Uganda shillings 300,000,000/=** and that the entire total of special damages is **Uganda shillings 1,938,180,000/=**.

I have carefully considered the claim, the Plaintiff resumed its business and cannot claim loss of prospective earnings. The claim for Uganda shillings 300,000,000/= in that respect is disallowed.

Furthermore the claim for loss of good will amounting to Uganda shillings 300,000,000/- cannot be claimed as a special damage and in any case was not proved. It is disallowed

Finally the Plaintiff claims special damages under the heading of loss of income. The Plaintiff submitted that this was based on its projected annual turnover of Uganda shillings 450,000,000/=. The principles for assessment of loss of earning are the relevant principles to consider. The Plaintiff could not do business because its premises were shut by the Defendant by it being nailed shut. Some submissions were entertained about whether the Plaintiff made any attempt to have it re-opened. The objective fact is that the premises were opened by order of court on the 2nd of September 2013. Thereafter the Plaintiff had access to its goods. The Plaintiff was not working during the period of 4 months namely May, June, July and August 2013 when the premises were locked. What income was lost? The Plaintiff is a professional firm of auditors and was incapacitated from working from its premises using its tools of trade. The Plaintiff also lost the physical contact from where it could access business. The principles for establishing loss of earning are relevant. In **Foster v Tyne and Wear County Council [1986] 1 All ER 567 at 569** LLOYD LJ considered the applicable principles for estimating loss of earning when he said:

“when it comes to estimating loss of earning capacity, there is no such thing as a conventional approach; there is no rule of thumb which can be applied. It would be so much easier if there were. But there is not. In each case the trial judge has to do his best to assess the Plaintiff’s handicap, as an existing disability, by reference to what may happen in the future. As has been said so often, that is necessarily a matter of speculation;

it is necessarily a matter of weighing up risks and chances in all the circumstances of a particular case. The very fact that the approach must necessarily be so speculative means, of course, that the occasions on which this court will feel justified in interfering with a judge's assessment will be few and far between, for there is no established range or standard against which to measure the judge's award."

The question of how much business the Plaintiff would have obtained and earned is a matter of evidence. In this case the Plaintiff's records of earnings would be a relevant factor. The Plaintiff never produced evidence of its books of accounts for the court to make an assessment of what it was earning for any given period or periodically. While there may be no standard conventional approach, the onus is on the Plaintiff to prove its case on the balance of probabilities. From where did the Plaintiff's Managing Director derive an annual turnover of Uganda shillings 450,000,000/= ? While there may be no conventional or standard approach to estimate loss of earning, the Plaintiffs case is peculiar because it covers a past period when it was incapacitated. The colossal claim is a claim which can be proved from the accounting records of the Plaintiff for doing past business. The written testimony of the Plaintiff's MD in paragraph 21 of his witness statement only claims loss of income of from client's business of Uganda shillings 100,000,000/= contrary to the submissions of the Plaintiffs Counsel for Uganda shillings 300,000,000/-.

The above notwithstanding I agree with the Defendants submissions that some evidence of accounts needed to be adduced. The Plaintiff is a limited liability company and even its annual income tax return record could give the court an idea of how much income it earned annually.

In the premises the Plaintiff's claim cannot be allowed but will be considered under the claim for general damages

General damages are based on the same considerations and in the case of **Dharamshi vs. Karsan [1974] 1 EA 41** it was held that general damages are awarded to fulfil the common law remedy of *restitutio in integrum*. It means that the Plaintiff has to be restored as nearly as possible to a position he or she would have been had the injury complained of not occurred (See **Halsbury's laws of England fourth edition reissue volume 12** (1) paragraph 812 that general damages are presumed to be the natural or probable consequence of the wrong complained of with the result that the Plaintiff is required only to assert that such damage has been suffered). In **Hadley vs. Baxendale** (1854) 9 Ex 341 it was held that damages for breach of contract should be such as may be fairly and reasonably considered either arising naturally or according to the usual course of things from such breach of contract itself or may be reasonably supposed to have been in the contemplation of both parties at the time of making the contract as the probable result of the breach of it.

Doing the best I can I award the Plaintiff Uganda shillings 50,000,000/= for loss of earnings for the period of 4 months the Plaintiff was kept out of its business premises.

Punitive Damages:

According to Halsbury's Laws of England, Fourth Edition re-issue Volume 12 (1) paragraph 811, aggravated damages are awarded over and above the normal damages, by taking into account the Defendant's motives and conduct. Such damages may be (1) 'aggravated damages' which are compensatory in that they compensate the victim of a wrong for mental distress, or injury to feelings in circumstances in which that injury has been caused or increased by the manner in which the Defendant committed the wrong, or the Defendant's conduct subsequent to the wrong. Secondly exemplary damages are punitive and not intended to compensate the Plaintiff for any loss, but rather to punish the Defendant. I have considered the circumstances in which the Plaintiffs premises in which it earned a living was locked without notice and the animosity between the Plaintiff's Managing Director and Mr. John Sebutinde which was apparent throughout the trial demonstrates. In my opinion the fact that the Plaintiff wrote through its Counsel a strongly worded letter after the Defendant's ultimatum, did not warrant the Plaintiff to be treated without regard to its business interests. I have considered the argument that the Plaintiff did not make efforts to re-enter by approaching the Defendant or reporting to police.

The issue could have been handled with civility by the Defendant allowing the Plaintiff access to the premises and in the worst case scenario making a distress for rent. However, rent was not yet due. It was not a police matter but rather a case of alleged failure to pay rent. A landlord can distress for rent by seizing ascertained goods rather than locking out the Plaintiff. The Plaintiff's situation was aggravated by the acts of the Defendant and I therefore award the Plaintiff aggravated damages of Uganda shillings 20,000,000/=.

The claim for special damages for paying lawyer's fees cannot be allowed.

In the premises, the above is all that I award. Secondly interest is awarded on the total award at the date of judgment at the rate of 19% per annum from the date of judgment till payment in full.

The Plaintiff's action succeeds with costs of the suit.

Judgment delivered on the 22nd of December 2016

Christopher Madrama Izama

Judge

Judgment delivered in the presence of:

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Fox Odoi Oywelowo holding brief for Dr. James Akampumuza for the Plaintiff

Kenneth Ssebabi for the defendant

Parties are absent

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

22nd December 2016

Kenneth Ssebabi: I apply for stay of execution pending appeal

Court: You have a right of appeal and make a formal application for stay as appropriate

Christopher Madrama Izama

Judge

22nd December 2016