

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION NUMBER 923 OF 2016
(ARISING FROM CIVIL SUIT NO. 712 OF 2016)

ALEXIS JUBILEE:..... APPLICANT

VERSUS

JUSTICE SAMUEL W.W.WAMBUZI

YONAS GHIDEY:..... RESPONDENTS

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI.

R U L I N G:

This is an Application for a Temporary Injunction filed by Alexis Jubilee herein after called the Applicant against Justice Samuel Wambuzi and YonasGhidey herein after referred to as the Respondents.

The Applicant seeks the preservation of the status quo restraining the 1st and 2nd Respondents or their agents from locking out, increasing monthly rent payments and/evicting the Applicant from her current business premises until the determination of the main suit 712 of 2016. The Application is grounded on the following;

1. That the Applicant has filed a suit against the Respondents for recovery of UGX 414,000,000/=.
2. That this suit raises several issues that warrant judicial consideration and has a high chance of success.

3. That the 1st Respondent has served the Applicant with an eviction notice.
4. That the Applicant has never defaulted on the monthly payments.
5. That the Applicant will suffer irreparable loss if forced to vacate.
6. That the said eviction is fraudulent.
7. That the main suit will be rendered nugatory if the injunction is not issued against the Respondents.
8. And that the balance of probabilities is in favour of the Applicant.

The background to this Application is that the 1st Respondent who was the owner of a house on block 244 Plot 1652, herein after referred to as the Property located at Kisugu Kampala agreed to lease to the Applicant the said Property for five years at a monthly rental payment of US \$ 1000.

The parties entered into a Tenancy Agreement on the 26th day of May 2014, **Annexure A**. The Applicant took possession of the house and on July 2nd 2014 he sought permission from the Respondent to add a sauna and steam in the garage and change the servants' rooms into bathrooms and toilets. On the 18th of July 2014 the 1st Respondent gave permission in these words;

“In principle the Landlord will not object to the changes you proposed. However these would be done at your own cost and should be done such that the structural integrity of the buildings is not damaged, and /detrimentally impacted by these works in any way whatsoever. Additionally, if the Landlord so decides, you would be required to make good the changes made so as to return the property to its original design/position.”

Two years later on the 5th of August 2016, the 1st Respondent, through his appointed agents Ssemanda& Associates gave the Applicant notice to determine tenancy. It read in part;

“Further to our meeting this morning with the Landlord of the above property. Pursuant to section 7(e) of the Tenancy Agreement between Justice Samuel W.W. Wambuzi and M/s Alexis Jubilee dated 26th May 2014, the Landlord hereby gives notice of his wish to terminate the said agreement with effect from 5th August 2016.”

The Applicant contending that his lease was for five years, had not defaulted in rent payment and that he had made improvements to the property, objected to the eviction, filed civil suit No.712 of 2016 and this Application to stay any attempts of eviction from the Property.

The 1st Respondent in Reply contended that he had acted within the law in as much as he had strictly observed the Tenancy Agreement. The two parties in their Tenancy Agreement provided for termination. Clause 7(e) read as follows;

“Upon desire to terminate this tenancy, at any point after the first one year of the term, either party wishing to do so shall give a minimum of three months notice in writing to the other party. Which notice shall serve to negate any requirement from compensation of the party upon grounds of the terms of the agreement. Any rent paid in advance over and above the notice period shall be refunded to the tenant on the final day of the notice period less any amount deducted pursuant to any other terms of this agreement.”

Given proper interpretation, one construes two things; namely that after one year of tenancy, the Landlord can terminate it. In other words the termination of tenancy could be done on the 27th of May 2015 which was a year after the date of the tenancy agreement. The second thing that one construes from clause 7(e) is that even where the tenant had paid rent in advance whatever balance of the rent after the expiration of the three months notice would be refunded. In other words rent payment would not provide insulation against termination of tenancy.

The termination notice was given two years after the tenancy was entered into. It was the agreed position between the Applicant and Respondent that clause 7(e) would be the operating provision in terminating the tenancy. This agreement speaks for itself and it is within its four corners that the relationship of the Applicant and the Respondents should be governed. The tenancy agreement allows the termination of their relationship. For the court to import its own interpretation would be mutilation of their relationship properly agreed upon and entered into freely by adults.

The Applicant contended that she would suffer irreparable damage but she has prayed in the alternative to refund of special damages, general damages for disrupting her business, the cost of relocation to an alternative business location, punitive damages for fraudulent behavior and intentional infliction of emotional distress together with interest which in my view would do away with the issue of irreparable damage.

Since the Tenancy Agreement provided for the termination and there are remedies in the alternative, I find no reason to prevent the Respondent from exercising his contractual right of termination.

I therefore disallow the Application and vacate the interim order. This suit should be set down for mediation if not yet down and proceed with all speed to determine the alternative prayers of the Applicant/ Plaintiff.

The cost of this Application shall abide the result of the suit.

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David K. Wangutusi

JUDGE

Date: 28th March 2017