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

CIVIL SUIT NO. 767 OF 2015

JESANI INVESTMENTS LTD::PLAINTIFF

VERSUS

LEAF TOBACCO & COMMODITIES LTD::::::::::::::::::::::::DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI.

JUDGMENT:

The Plaintiff, Jesani Investments Ltd sued the Defendant Leaf Tobacco and Commodities (U) Limited for recovery of UGX 75,762,380, interest thereon at 2.5%pm, general damages for breach of contract and costs.

The facts as discerned from the pleadings are quite straight forward. The Plaintiff owns ware houses at Plot 266 Bweyogere Namanve.

On the 20th August 2013 the Defendant rented ware houses 5, 6, and 7 and on 1st September 2013 rented ware houses 1, 2, 3 and 4 all from the Plaintiff. These tenancies were for two years each at a cost of USD 6.25 per square meter.

The Plaintiff averred that the Defendant undertook that at the termination of the tenancy she would leave the rented premises in good and tenantable repair condition as at the time of occupancy.

That at the time the Defendant left both the external and internal walls needed painting, the door shutters which had been knocked by a forklift needed repair, the PVC downfall pipes had also been damaged by a forklift, the yard and pavers thereon had been damaged.

That the Plaintiff asked the Defendant to repair but she refused causing the Plaintiff to do the repairs herself at the cost of UGX 75,762,380/=.

After the repairs the Plaintiff asked the Defendant to refund the money spent but the Defendant refused.

On her part, the Defendant denied liability and contended that she handed the property back to the Plaintiff in the state it had been given to her.

She averred that it was a term of the agreement that "*reasonable wear and tear of the premises was excepted.*"
That for those reasons she was not liable for any repair costs.

The issues for resolution are;

1. Whether the Defendant was obliged to carry out repairs of the occupied premises at the determination of the tenancy with the Plaintiff.
2. Whether the Defendant is liable to refund UGX 75,772,380/= or any money at all to the Plaintiff on account of money extended to repair the warehouse.
3. Remedies.

On the issue of whether the Defendant was obliged to carry out repairs of the premises at the determination of the tenancy, one has to look at the tenancy agreement that was entered into by the parties, Exhibit P1 and P2.

Clause 1(n) provides as follows;

> "*To deliver to the Landlord on determination of the tenancy the demised premises plus the buildings thereon in such a state of repair and condition as the*

tenants found them, reasonable nature wear and tear accepted."

Under clause 1(o) Defendant undertook;

> *"to make good any damage, injuries or losses caused to the demised premises by bringing in, removal or shifting by the tenants of any furniture, goods, or other articles into or out of the premises of any damage whatsoever caused by the tenant or their agents arising from negligence or non-natural use of the demised premises."*

It was also the Defendant's undertaking to repaint and re-varnish the building. Under that head clause 1(q) provided;

> *"During the last month of the said term (however determined) to paint or varnish in a proper workmanship manner all the inside walls, wood, iron and other parts hereto for or usually painted or varnished and the leased premises with two good coats of paint or varnish of suitable quality or colour approved in writing by the Landlord."*

As for the fixtures the parties agreed and provided in clause 1(r) of Exhibit P1 in these words;

> *"Yield the leased premises at the expiration or the termination and the term with fixtures and fittings thereof in good and tenantable repair and condition as it was at the time of occupancy."*

DW1 stated that by the time they entered the premises, it had damages and leakages here and there.

I find this difficult to believe because there is nothing in the agreement that indicates that by the time they entered the agreement there were defects to be repaired by the Plaintiff.

The absence of such a clause can only be because everything in the warehouses was in good order. The intention to repair by the Defendant was because they were responsible for the damage.

These provisions make it obligatory for the tenant to make good whatever damage or unnatural wear and tear that would be occasioned to the premises. For example it was obligatory for the tenant to repaint the walls after the term because there was no way one could use it for storage for tobacco leaves as in this case and leave after two (2) years without the walls having been affected.

The evidence of PW1, PW2, and PW3 is clear on the point of repairing the premises on termination of the tenancy. In fact this requirement as provided for in clause 1(n), (o), (q) and (r) was well understood by the Defendant because DW1 makes it clear that they were going to do the necessary repairs and in fact offered UGX. 20,000,000/= for them.

Going by Exhibits P1, P2 the evidence of PW1, PW2 and PW3 and that of DW1 leaves no doubt that under the agreement, the Defendant was obligated to carry out repairs to the premises on determination of the tenancy.

On the second issue whether the Defendant was liable to refund UGX 75,722,380/=. PW1 stated that after the Defendant left, they were required to make good whatever damage had taken place. There was necessity to repair the external walls of the warehouse using weather guard paint and also the inside using silk vinyl paint. What was also required of the Defendant was to repair the sliding door shutters and

the hollow section guards to PVC downfall pipes both of which had been knocked for a forklift which was under the control of the Defendant.

In addition to the foregoing there were depressed areas in the parking yard which included pavers just outside the main gate depressed by the heavily loaded trucks of the Defendant

The Plaintiff claimed that this amounted to UGX 75,762,830/=.
In this she relied on Exhibit P4.

The Plaintiff submitted Bills of Quantities, Exhibit P4 dated 21st June 2014 to the Defendant but the Defendant did not repair nor provide money. That because of the failure to respond by the Defendants, a notice of demand was made on 4th November 2015, Exhibit P5 requiring the Defendant to refund the money because the Plaintiff had now gone ahead and done the repair herself.

On their part, the Defendant denied in Exhibit P6 dated 11th November 2015 that they owed any money and that they had not done any damage to the building that would warrant repair.

Counsel Isaac Bakayana for the Defendant wrote on 11th November 2015 in reply to the demand letter of the Plaintiffs which in part reads;

> *"The content to your letter to ours is noted. Our client contests that it owes yours the claimed sum or at all. The buildings were only subjected to the "reasonable nature wear and tear" as envisaged within the provisions which you refer to in yours."*

During the trial however, the denial of counsel above mentioned was watered down by Mr. Wilfred Okurut who appeared as the Defendant's DW1. He conceded that there were repairs to be done and that they had offered UGX 20 million in that regard.

He however did not show anything in writing of that counter proposal. The necessity to repair is also seen in DW1's evidence in which he stated that they were going to repair but when they went back to do so they found that the Plaintiff had already repaired.

This on its own indicates that there had been damage done to the property and that they were aware of the need to repair.
While PW1 lists what had been damaged, DW1 doesn't state what items were to be repaired.

In essence therefore he doesn't contradict or rebut the damage that had been mentioned by the Plaintiff.

It is for those reasons that this court therefore believes that the damage that had been done is the one that had been listed in Exhibit P4.
The Plaintiff did not however produce receipts of how much each of these cost but the testimony of the Plaintiff's witnesses clearly described the damage through their engineering section headed by PW2 Bulega Erick who had gone to the properties, assessed the work to be done and prepared the Bills of Quantities.

It will be noted that no repairs were done until after two months when PW2 ordered for the materials which PW3 ensured were delivered.
Special damages must be specifically pleaded and strictly proved. This position has however misled many a lawyer to think that to prove special damages you must have a written document.

This is a matter of law that has come up in Courts of law several times.

In my view special damages can be proved without a written document as long as the witnesses give a proper description of the items, their quantities and cost.

In ***Gapco (U) Ltd vs. As Transporters Ltd***, while dealing with the foregoing situation their Lordships observed as follows;

> *"In my opinion, the principal governing an award of special damages is clear. Special damages must be pleaded and proved. These were so pleaded and the learned Justices of Appeal found evidence to prove part of the lost income and made the award. Special damages however need not always be proved by production of documentary evidence. Cogent verbal evidence can also do. The Learned Justices of Appeal found the evidence of PW1 credible on this point and made the award."*

Also see ***Kampala City Council vs. Nakaye [1972] E.A 446***.

In the instant case PW1 and PW2 who was an engineer, took stock of what had been damaged, assessed it, quantified it and priced it according to the market forces then.

The Defendant who was of the view that the Bills of Quantities were too high did not submit any document in support of his averment.

The evidence as to how much was spent was given to court by PW2 who was a construction engineer and I have no reason to disbelieve him. Moreover the Defendants who allege that the money was overstated were given a chance to go and do repairs by the Plaintiff as provided for in clause 1 (n), (o), (q) and (r) but the Defendants did not go.

In my view they did not go to do the repairs because they realized there was no saving to make. That is why for two months they stayed away from the premises which if only 20 million was required to repair they would have gladly rushed to do so.

For those reasons I find that the Plaintiff has proved to the required standards of a legal proceeding the sums expended in the repair of their warehouses to the tune of UGX 75,762,380/= and the Defendant is held liable to refund the same.

The Plaintiff also contends that the Defendant's failure to repair the premises and put it in order made them miss other tenants who would have entered. That because of the state of this repair no one came by to seek tenancy. She contended that the repairs were supposed to have been finished on 23rd September 2014. This deadline of completion of repair was not disputed.

In the last months of occupancy the Defendant was supposed to paint, varnish and do repairs it is not in dispute that the repairs were not done. It is also clear from evidence that the doors of the warehouse were in disrepair.

It is also clear that the yard had been damaged and the pavers had curved in and that the walls both in and out needed painting. These were things that would prevent a tenant and did indeed deprive the Plaintiff the chance to let out the warehouses. Because of the Defendant's failure to comply with the tenancy agreement which they breached by not repairing and preparing the warehouses for the next tenant, the Plaintiff suffered loss of earning which in my view can accurately be computed based on the rent that the Defendant was paying. The rent in this case will be a computation of the period between 3rd September 2014 and December 2014 when the repairs were completed which is 3 months. The number of months can be explained by the dilly-darling of the Defendant who did not take steps to repair when actually he had been reminded several times.

The Plaintiff then waited for them to do repairs but did not which prompted the Plaintiff to do repairs herself and finished them in December 2014.

For those reasons the Plaintiff only lost 3 months of rent which ought to be compensated.

The conclusion one gets from the above is that for 3 months the Plaintiff was incapable of getting a tenant.

Exhibits P1 and P2 show that warehouses 1, 2, 3 and 4 occupied by the Defendant measured to 2,956 square meters and ware houses 5, 6 and 7 measured 3200 square meters. This gives a total of 6,156 square meters.
Since each square meter fetched 2.65 USD this would result in to rent of USD 16,313.4 per month.

So three months would be USD 48,940.2. This being the rent that the Plaintiff lost as a consequence of the Defendants omission. The later is found liable to pay it and it is ordered.

The Plaintiff also sought general damages.

It is a settled position of the law that these are awarded at the discretion of court and are presumed to be the natural and probable consequences of the Defendant's act or omission. ***James Nsubuga vs. Attorney General HCCS No. 13 OF 1993***.

A Plaintiff who suffers damage due to the wrongful act of the Defendant must be put in a position he or she would have been in had she or him not suffered the wrong.
When assessing the quantum of damages, Courts are guided by the value of the subject matter, the economic inconveniences that a party may have been put through and the nature and extent of the breach;

Kibimba Rice Ltd vs. Umar Salim SCCA No. 170 of 1993, Uganda Commercial Bank v. Kigozi [2002] 1 EA 305.

In the instant case the Plaintiff as a Landlord had constructed his warehouses for purposes of profit. The failure to repair deprived him of tenants for 3 months which was certainly an inconvenience.
The Defendant kept the Plaintiff in suspense causing her officers to undertake Bills of Quantities and exert their time on refurbishing the place which cost them time, money and anguish.

Considering all the circumstances I find an award of UGX 20,000,000/= appropriate as general damages.

The Plaintiff prayed for interest. It is settled law that interest is awarded at the discretion of court, but like all discretions it must be exercised judiciously taking into the circumstances of the case; ***Uganda Revenue Authority vs. Stephen Mabosi SCCA No. 1 of 1996.***

An award of interest is based on the fact that the Defendant kept the Plaintiff out of use of his or her money, had use of it him or herself. So he or she ought to compensate the Plaintiff accordingly; ***Harbutts Plasticine Ltd vs. Wyne Tanks Pump Co. Ltd [1970] 1 Ch B 447.***

The Plaintiff asked for interest of 2.5% per month basing it on the clause 3 (iii) of Exhibit P1 which provides that;

> *"Any rent paid after the 14 days aforesaid shall attract interest at the rate of 2.5% per month till the full sum is paid."*

I must say this claim based on this provision cannot stand because the money the Plaintiffs spent on repairing the premises was not delayed rent.

However considering that the Plaintiff was deprived of the use of her money which he used to repair the damage done by the Defendant, she deserves interest and being a commercial entity, an interest of a commercial nature.

For those reasons I find an award of interest of 20% p.a on the award special damages UGX 75,762,380/= appropriate.
This interest will accrue from December 2014 the time the money was spent on repair until payment in full.

As for the general damages, they will attract interest at 6% p.a from date of judgment till payment in full.

The costs of this suit shall be borne by the Defendant.

The sum total is that judgment is entered in favour of the Plaintiff against the Defendant in the following terms;

a) The Defendant to pay the Plaintiff UGX 75,762,380/=.
b) The Defendant to pay the Plaintiff USD 48,940.2 equivalent to 3 months' rent.
c) The Defendant to pay UGX. 20,000,000/= as general damages
d) Interest on (a) above at the rate of 20% p.a from December 2014 till payment in full and on (b) and (c) at 6%p.a from date of judgment till payment in full.
e) Costs of the suit.

Dated at Kampala this.....24th.....day of .....Aug.....2021.

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HON. JUSTICE DAVID WANGUTUSI
JUDGE