

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]

CIVIL SUIT NO. 960 OF 2017

NDAGANO KAIJA FLORENCE:.....PLAINTIFF

VERSUS

- 1. MIIRO JULIAN**
- 2. BETTY NAMUBIRU**
- 3. MILLY MIREMBE**
- 4. GEOSPATAL PROFESSIONALS LIMITED:.....;...;DEFENDANT**

BEFORE: HON. JUSTICE DUNCAN GASWAGA

JUDGMENT

[1] The plaintiff sued the defendants for Ugx 30,000,000/= being the estimated market value of the confiscated business stock and business tools; Ugx 200,000,000/= being the lost business income, Ugx 1,000,000,000/= being compensation for the plaintiff's permanent loss of business and loss of reputation; a declaration that the confiscation of the plaintiff's business tools by the defendant is unfair and unlawful; an



order that the defendants forthwith reopen the plaintiff's business premises and for costs of the suit.

- [2] The background of this suit is that the plaintiff, a business woman engaged in dealerships of cotton waste, pillows and cotton entered an agreement with Geospatial Professionals Limited and Miiro Julian on 31/08/2016 to pay the sum of Ugx 1,200,000/= which was the ground rent for the premises she had rented for her business. The plaintiff paid all the sums agreed in the arrangement of 31/08/2016. However, on 18/02/2017, she was surprised by an eviction notice from Geospatial Professionals Limited, Miiro Julian and Betty Namubiru indicating that she had an outstanding debt amounting to Ugx 1,200,000/= in ground rent, yet to her knowledge, her ground rent had been fully paid up front. On the same day, the said defendants proceeded to lock up the plaintiff's workshop together with all her operational stock, machinery, materials and her operational cash. They thereafter locked up the plaintiff's restaurant together with her personal belongings.
- [3] During the hearing of the case on 07/04/2021 the defendants did not turn up without excuse at all. This was not the first time. The plaintiff sought and obtained leave to proceed with the case *ex parte*. Only one witness, the plaintiff, was called to testify.
- [4] The following issues were framed for determination by this court;

- 1. Whether the defendants are justified in continuing to lock up the plaintiff's business premises and confiscation of the plaintiff's business stock and business***
- 2. Whether the actions of the defendants occasioned the plaintiff commercial loss***

3. Whether the plaintiff is entitled to the reliefs sought?

Issue 1: Whether the defendants are justified in continuing to lock up the plaintiff's business premises and confiscation of the plaintiff's business stock and business

- [5] It was submitted for the plaintiff that the defendants are unjustified in continuing to lock up the plaintiff's business premises and confiscation of her business stock and business tools despite the plaintiff's payment of the ground rent. That the 1st, 2nd and 4th defendants illegally evicted the plaintiff from the premise yet the plaintiff in compliance with the memorandum of understanding (PE1) between the parties had dutifully paid all her rent dues amounting to Ugx 1,200,000/= see PE3. That it was indeed a surprise to the plaintiff when on 18/02/2017 she was served with an eviction notice with a claim that she had rent arrears of Ugx 1,200,000/= and subsequent closure of her working premises. That this conduct on the part of the defendants was unjust since the plaintiff was not given ample time to remove her belongings yet she had not been given reasonable notice of the eviction. See the case of **S & A Consultants Limited Vs Crane Management Services Limited, HCCS No. 352 of 2013** Further that the locking up of the plaintiff's premises was unfair since she had no outstanding rent dues. See **S & A Consultants Limited Vs Crane Management Services Limited (supra)** The plaintiff invited this court to find that the defendants were unjustified in their actions.

- [6] A perusal of the attached receipts indeed confirms that the plaintiff paid all the rent dues as and when they fell due. No contrary view has been presented by the defendants in support of their actions and their assertion that the plaintiff owes them Ugx 1,200,000/=. In the circumstances therefore, I find that the actions of the defendants towards the plaintiff of evicting the plaintiff and locking up the demised premises was unjustified and illegal. Additionally, the defendant's continued detention of the plaintiff's stock is equally illegal. Issue one is answered in the affirmative.

Issue 2 : Whether the actions of the defendants occasioned the plaintiff commercial loss

- [7] It was submitted for the plaintiff that the defendants proceeded to execute their threats by locking the plaintiff's premises thereby denying her access to her business premises, stock and tools. That this was done without any legal justification or reason and consequently depriving her of the ability to make profit through practicing her trade. The plaintiff has consequently failed to meet the day to day supply demands of her established clientele which has resulted into loss of her clientele to her business rivals and thereby collapsing her entire business and reputation. That despite the eviction from and closure of her business premises, the defendants proceeded and confiscated the goods of the plaintiff amounting to Ugx 30,000,000/= which has resulted in grave business loss.
- [8] From the evidence presented by the plaintiff, it is indeed apparent that commercial loss was occasioned to her by the defendants. This is evidenced by forceful eviction, the closure of her business premises,

loss of clientele to competitors and also confiscation of her goods for which they must atone. Resultantly, I find that the defendants indeed occasioned business loss to the plaintiff.

Issue 3 Whether the plaintiff is entitled to the reliefs sought?

- [9] It was submitted that this court is by law empowered to grant remedies where it thinks just. The plaintiff prayed for *a declaration that the confiscation of the plaintiff's business tools by the defendants is unfair and unlawful; an order that the defendants forthwith reopen the plaintiff's business premises; an order that the defendants jointly and severally pay the market value of all the plaintiff's business tools and business stock which was unlawfully confiscated from her all estimated at Ugx 30,000,000/=; an order that the defendants pay Ugx 200,000,000/= being lost business income from the date of the cause of action; an order that the defendants pay Ugx 1,000,000,000/= being compensation for the plaintiff's permanent loss of business and loss of reputation; costs of the suit and interest on all the above at 26% per annum from the date of the accrual of the cause of action until payment in full.*
- [10] On the declarations and orders it was submitted for the plaintiff that this court, by virtue of Section 98 CPA has powers to make such orders that may be necessary for the ends of justice. The plaintiff therefore prayed that the court be pleased to make the above orders. Indeed I am satisfied with the evidence on record that the said declarations should be made.

[11] On **compensation**, it was submitted for the plaintiff that she had suffered damage due to the wrongful acts of the defendant and should therefore be put in a position as near as she should have been in had she not suffered the wrong. The court is in agreement with the plaintiff's Counsel that in assessing the quantum of damages, courts are usually guided by the value of the subject matter and the economic inconvenience that a party may have been put through. See **Kibimba Rice Limited Vs Umar Salim SCCA No. 17 of 1992**. Therefore owing to the unlawful eviction of the plaintiff and consequent confiscation of her merchandise, and pursuant to Section 33 of the Judicature Act and Section 101 of the Evidence Act, the court would make suitable awards commensurate to the inconvenience suffered by the plaintiff as a result of the defendant's transgressions. I should however quickly state that in the present case, although there was some inconvenience and loss caused, the plaintiff was not helpful to the court in adducing evidence to guide the court on the quantum of damages to be awarded under each head of claim.

[12] Apart from merely stating the figures claimed, the court was not assisted in the justification of the said figures. E.g. by stating the cost of business tools and business stock that were confiscated, how much income and profits the plaintiff was making every month which would guide the court to project the lost income during the period in question e.t.c. It would be expected that such justification is reflected in the final submissions of Counsel where evidence is referred to in support of each head or item of the claim other than merely stating the figures sought. In short it is the duty of the party that makes a claim to move

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- [12] Accordingly, the following awards are made. Under the claim of compensation for loss of business tools and business stock which was estimated at Ugx 30,000,000/= I shall award Ugx 20,000,000/=, under the claim for loss of business income estimated at Ugx 200,000,000/= I shall award a sum of Ugx 10,000,000/= and under the claim of compensation for permanent loss of business and reputation estimated at Ugx 1,000,000,000 I shall award Ugx 5,000,000/=.
- [13] The plaintiff also prayed for interest of 26% per annum on all the monies sought in the plaint until payment in full. The plaintiff relied on Harbutt's Plasticine Ltd Vs Wyne Tank & Pump Co. Ltd [1970] 1 Ch 447, to state that the basis for the award of interest is that the defendant has kept the plaintiff's money so he ought to compensate the plaintiff.
- [14] In Premchandra Shenoi and Anor Vs Maximov Oleg Petrovich, SCCA No.9 of 2003. The Supreme Court held thus:

"In considering what rate of interest the respondent should have been awarded in the instant case, I agree that the principle applied by this Court in SIETCO Vs NOBLE BUILDERS (U) Ltd (supra) to the effect that it is a matter of the Court's discretion is applicable. The basis of awards of interest is that the defendant has taken and used the plaintiff's money and benefited. Consequently, the defendant ought to compensate the plaintiff for the money. In the instant case the learned Justices of Appeal, rightly in my opinion, said that the appellants had received the money for a commercial transaction. Hence the Court rate of 6% was not appropriate and I agree with them. The rate of interest of 20% awarded by the Court of Appeal was more appropriate"

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From the above decisions and guidance, I find that a rate of 10% on the sums awarded herein will be just and fair and is accordingly imposed. This rate shall apply to the respective compensations claimed and awarded.

- [15] The plaintiff also prayed for the costs of the suit in accordance with **Section 27 CPA**.
- [16] The plaintiff having succeeded on all issues in the case, the court sees no compelling and justifiable reasons for not awarding him costs of the case. See **National Pharmacy Ltd** (supra) and **Jenniffer Rwanyindo Aurelia & Anor Vs School Outfitters (U) Ltd, CACA No. 53 of 1999**.

Section 27 (1) of the CPA is instructive on the matter and states:

"(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of the incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and give all necessary directions for the purposes aforesaid"

Accordingly, the plaintiff is also awarded costs of the suit.

- [17] **Resultantly**, upon the plaintiff proving her case on a balance of probabilities, judgment is accordingly entered against the defendants, jointly and severally, and the court hereby makes the following declaration (i) and orders (ii-vii) ;
- (i) That the continued confiscation of the plaintiff's business by the defendants is unfair and unlawful.
 - (ii) That the defendants forthwith reopen the plaintiff's business premises

- (iii) That the defendants pay Ugx 20,000,000/= (Uganda shillings twenty million only) to the plaintiff, being the market value of all the plaintiff's business tools and business stock which was unlawfully confiscated.
- (iv) That the defendants pay Ugx 10,000,000/= (Uganda shillings ten million only) being lost business income from the date of the cause of action.
- (v) That the defendants pay Ugx 5,000,000/= (Uganda shillings five million only) to the plaintiff being compensation for the plaintiff's permanent loss of business and loss of reputation.
- (vi) That the sums awarded in (iii), (iv) and (v) above shall each attract an interest of 10% per annum from the date of judgment till payment in full.
- (vii) That the defendants jointly and severally pay the costs of this suit.

Dated, signed and delivered at Kampala this 7th day of
April, 2022



Duncan Gaswaga

JUDGE