

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[COMMERCIAL DIVISION]**  
**CIVIL SUIT NO. 719 OF 2020**

**1. MR.MICHEAL NJOROGЕ NGANGA**  
**2. MRS.PATRICIA NYAMURWA NJOROGЕ:.....:PLAINTIFFS**

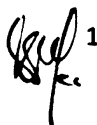
**VERSUS**

**1. CORNERSTONE TOURS AND TRAVEL (U) LTD**  
**2. BRIAN ARIMPA:.....:DEFENDANTS**

**BEFORE: HON. JUSTICE DUNCAN GASWAGA**

**JUDGMENT**

- [1] The plaintiff sued the defendants for special damages of Ugx 50,496,830 arising out of breach of contract; general damages for inconvenience; interest on (a) and (b) at 1.8% per month from the date of breach of the tenancy agreement till payment in full; costs of the suit and any other remedy court shall find appropriate in the circumstances.
- [2] The background of this suit is that the plaintiffs who are registered proprietors of land comprised in Plot 4 Buku Road, Entebbe in Uganda and all developments thereon acquired the property by way of mortgage from Housing Finance Uganda Ltd and remit payments of the loan from

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the proceeds of rent got from the premises. The plaintiffs rented the said land and buildings thereon to cornerstone Tours and Travel Uganda Ltd and Brian Arimpa on 01/09/2019 for two years i.e. beginning from 01/10/2019 to 01/10/2021. The premises rented were for commercial purposes and specifically to house or accommodate the defendant's clients due to its strategic location. The agreed monthly rent payment was USD 2,200 payable 3 months in advance from 01/10/2019. It was agreed that the defendants were to pay utility bills without fail and should the utilities be disconnected for nonpayment, the disconnection fee would be paid by the defendants. It was further agreed that the defendants would keep the plaintiff's fixtures found in the house in good and decorative repair and any damage caused to the building would be made good by the defendants. The defendant then fundamentally breached the terms of the agreement by not paying rent as expected and the rent arrears now stand at USD 10,400. The defendants have also not paid utility bills as expected and to date the arrears of water and electricity bills stand at Ugx 3,050,830/= and consequently the same have been cut off by service providers for nonpayment of the bills to which reconnection fees and fines are all due including charges for emptying the septic tank. The defendants further caused damage on part of the buildings and the repairs and renovations shall cost Ugx 3,926,000. The defendants wrote to the plaintiffs promising to make good the breach but to date they haven't yet during the country wide lockdown business was as usual but the defendants willfully neglected to pay rent. The plaintiff's interest rate on the loan used to purchase the premises from Housing Finance Bank continue to



accumulate and the property is under threat of being foreclosed by the bank, the reason for this suit.


- [3] On 27/05/2021, the parties entered a partial consent with the following terms; that the defendants owe the plaintiffs rent arrears of USD 8,200 (United States Dollars eight thousand two hundred), utility bills of USD 872 (United States Dollars eight hundred seventy two) and costs so far at the time of the partial consent USD 572 (United States Dollars five hundred seventy two). By request of the defendants, they were to start making payments to the plaintiffs as follows;

1. USD 1,429 (United States Dollars one thousand four hundred twenty nine) together with USD 572 (United States Dollars five hundred seventy two) of the then costs on 05/07/2021;

2. The 2<sup>nd</sup> payment of USD 1,429 was to be made on 05/09/2021, subsequent monthly payment of USD 596 starting from 31/10/2021 up to 31/08/2022. The above payments were to be made without any breach or default and such would fall due at 8% per annum and execution to ensue.

3. It was further agreed that the contested issues would be put before the Judge for assessment and determination as soon as the consent is entered and the same would form part of the judgment sum payable at once not later than 31/07/2022.

- [4] During the hearing of the case on 18/08/2021 the defendants did not turn up and without excuse at all. The plaintiff sought and obtained leave to proceed with the case *ex parte*. Only one witness, the plaintiff was called to testify.


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[5] Issues framed;

1. **Whether the defendants are liable to pay renovation costs**
2. **What are the remedies available for the parties**

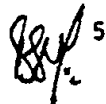
**Issue 1: Whether the defendant is liable to pay the utility costs that accrued before they left the premises**

- [6] The defendants were required to keep the premises in decorative tenable repair as they were found and make good any damage caused as a result of removal of their things. This they did not do and all the repair expenses were borne by the plaintiff. These were; **Main house paint; Ugx 1,160,000/=, Main house fittings; Ugx 1,492,000/=, Boys quarter paint; Ugx 1,259,000 all totaling to Ugx 3,911,000/=.** The plaintiffs also incurred Labor (Renovation and Utility Reconnection) to the tune of Ugx 2,050,000/=.
- [7] From the proof presented by the plaintiffs, it is indeed apparent that the defendants defaulted on a number of items as listed above in contravention with the earlier agreed on position in the rental agreement. No evidence whatsoever was brought by the defendants to contradict this position save for their failure to honor their word on payment of the outstanding sums agreed upon by way of consent. In the circumstances therefore, the defendants are liable to pay the utility costs of Ugx 3,911,000/= and Ugx 2,050,000/= respectively that accrued before they left the demised premises. The first issue is answered in the affirmative.

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**Issue 2: What are the remedies available to the parties?**

- [8] With regard to the remedies available, the plaintiff prayed for general damages judicially measured in the circumstances to atone the plaintiffs; reconnection, renovation and labor fees of Ugx 7,621,000/=; principal amount of USD 9,072; costs so far incurred at the time of the execution of the partial consent USD 572; 8% interest p.a from the date of the breach of the partial consent until full and final settlement; costs for prosecuting the contested issues and incidental costs incurred; any other remedy court deems fit.
- [9] As for general damages, it was submitted for the plaintiff that the defendants did not pay for utility services at the time they left the premises and the same were disconnected. The plaintiffs went ahead to incur all these expenses. The water and plumbing fees accrued to Ugx 524,000 and Electricity and electrical requirements accrued to Ugx 1,136,000 both totaling to Ugx 1,660,000/=. The defendants further defaulted on rent and as per the agreement, a penalty of 1.8% per month was to be charged on the outstanding rent which the defendants have not paid to date. The defendants further left the premises abruptly without giving the required 3 months' notice to the plaintiffs. That the proceeds from the said premises were servicing a loan acquired from Housing Finance Bank, rental tax was charged on the same and the plaintiff has made numerous trips to Kampala from Nairobi to attend to this trial. See Stroms Vs Hutchinson (1905) AC 515; Addis Vs Gramophone Co. Ltd (1909) AC 488
- [10] It should be noted that general damages are compensatory in nature in that they should restore some satisfaction, as far as money can do, to

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the injured plaintiff. See. Takiya Kashwahiri & Anor Vs Kajungu Denis, C.A.C.A No. 85 of 2011. It is apparent that the plaintiff has faced enormous inconvenience and suffering due to the actions of the defendants for failure to honor the rental agreement. This has in effect greatly affected the plaintiffs. In light of the applicable principles of law, I shall award Ugx 20,000,000/= general damages as a suitable and sufficient sum to atone for the injury and inconvenience occasioned to the plaintiff. I believe this will restore some satisfaction to the plaintiff.

[11] The plaintiff has also prayed that court awards him interest at the rate of 8% per annum from the date of the breach of the partial consent until full and final settlement.

[12] In Premchandra Sheno 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"*

Following the above discourse and guidance, the court finds a rate of interest of 6% on the sums awarded herein to be just and fair and is



accordingly imposed. The rate shall apply to the outstanding balance and on the general damages claimed and awarded.


- [13] The plaintiff has succeeded on all issues in the case and court sees no compelling and justifiable reasons for not awarding him costs of the case. See National Pharmacy Ltd (supra) and Jennifer 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 prosecuting the contested issues.

- [14] **Resultantly**, upon the plaintiffs proving their case, on a balance of probabilities, judgment is accordingly entered against the defendant and the court hereby makes the following orders;

- i. **that the defendants pay to the plaintiffs the principal amount in the sum of USD 9,072 (United States Dollars nine thousand seventy two)**

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- ii. that the defendants pay to the plaintiffs a sum of Ugx 7,621,000 (Uganda shillings seven million six hundred twenty one thousand) for reconnection, renovation and labor costs incurred by the plaintiffs
- iii. that the defendants pay to the plaintiffs a sum of Ugx 20,000,000/= (Uganda shillings twenty million only) as general damages;
- iv. that the sums awarded in (i), (ii) and (iii) above shall each attract an interest rate of 6% from the date of Judgment till payment in full;
- v. that the defendants pay costs of this suit.

**Dated, signed and delivered at Kampala this 6<sup>th</sup> day of April, 2022**



**Duncan Gaswaga**

**JUDGE**