

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO. 752 OF 1997**  
**Group Four Security Ltd. ::::::::::::::::::::: Plaintiff**  
**versus**  
**N.J. Radia ::::::::::::::::::::: Defendant**  
**Before: Hon. Mr. Justice J.H. Ntabgoba- Principal Judge**  
**JUDGEMENT**

The suit was commenced as a summary suit under order 33 of the Civil Procedure Rules by which the plaintiff was claiming a sum of UG Shs. 9,303,948/=. It was supported by the affidavit of Mr. John Komu Gathuku who later testified as the plaintiff's witness PW1. In the affidavit Mr. Gathuku deponed that the defendant had no defence to the suit. The defendant applied for and was granted unconditional leave to appear and defend the suit, on the grounds that (a) the defendant had a counter claim, (b) the plaintiff had claimed three different figures, namely, Shs. 8,177,846/=:, Shs. 6,846,400/ and Shs. 9,303,948/=:, and therefore it was not certain as to which of the three figures was the liquidated sum subject of a summary suit.

The background to the case is that Mr. N.K. Radia, the defendant engaged Group Four Security Limited Uganda, the plaintiff to provide guard services at different premises, which included a house at Old Kampala described as

“Evicted House Old Kampala”. The contract document with regard to the guard services at this house, which I will hereafter refer to as the suit premises, is the document headed “Temporary Works Order” and bearing serial number 0207 (It was, at the trial exhibited as D5 in its original form and as Exhibit D8 in a photocopy). According to it the order was made by the defendant on 3/4/95. The plaintiff was to provide One unarmed day guard and one unarmed night guard, effective from 3/4/95 ‘UFN’ (meaning until further notice). The contract sum was UG shs. (195,000/= + 15% CTL)X2 giving a monthly total of UG Shs. 449,000/=.

It has not been disputed that the services were rendered, and therefore that is not an issue. The issues are:

- (1) Whether the services were paid for,
- (2) If they were not paid for what is the damages. In other words, how much is outstanding for payment.
- 3) Whether the plaintiff is liable to the defendant as regards the counter claim.

The issue of counter claim arises in the defendants' WSD, in paragraph 3 as follows: -

“Save that the defendant and specifically contracted with the plaintiff for a fee, that the plaintiff should guard the defendant's premises, the plaintiff instead failed to guard the premises as agreed and/or in breach of contract used the same to house four of its employees with effect from 1<sup>st</sup> April, 1995 up to about December 1995 and the defendant is accordingly not liable to pay for the alleged guard services and will instead counter claim from the plaintiff.”

The particulars of the counter claim were given as follows: -

“4. Without authority, in breach of contract and/or without any or due supervision of its employees, the plaintiff, instead of guarding the premises as agreed, failed to guard the same and/or instead caused its employees to use them as their residence and the defendant claims as mesne profits and/or damages for breach of contract the sum of Shs. 300,000/= per month for the period of use and/or breach of contract.”

Regarding this counter claim, on 26/8/96 the defendant wrote to the plaintiff a letter headed “Re: A/c No. GS. 168”. It stated:

“I have recently visited the premises at Old Kampala and met one of your employees. He confirmed that four of your staff are using the premises as residence for a considerable time. Your responsibility is to guard the premises but it seems your employees have been using them for their personal residence. Your company will be charged rent of Shs. 300,000/= per month as from 1<sup>st</sup> April 1995 and the rent due up to 31<sup>st</sup> August 1996 amounts to Shs. 5,100,000/ and request you to remit your cheque at the earliest date.”

In reply to the above letter, the plaintiff did, on January 9, 1997 write:-

“We refer to your letter dated 26/8/96 which we received on 8/1/97 and are surprised to note that you are claiming 5.1 million allegedly for accommodating our employees. Please pursue the matter with the alleged employees as group 4 Security is not aware of this matter. Further Group 4 Security Limited did not enter into any tenancy agreement with your company. We therefore see no justifiable grounds for your claim and must therefore deny any and all Liability in respect of this matter. When can we expect our payment of UG Shs.  
6,846,400/=?”

So much for the background to the counter claim and I deem it more appropriate to start with the third issue as to the counter claim. It appears to me that the employees of the plaintiff entered and occupied the suit premises was proved. In the first place the defendant testified that the premises were open, tending to show that the plaintiff’s employees could not have had difficulty entering. This is what the defendant (Mr. N.K. Radia as DW1) stated:-

“This is Exhibit D5. I signed it at their office to confirm my instructions to them (plaintiff) to guard my premises at plot 99 Block 2 at Old Kampala. That is the same the guards used as a residence. The lounge was open and so also the other rooms because the previous tenants had not surrendered the keys to us. We provided padlocks and chains for the front gate.”

Muhamad Kasule, DW2, categorically stated that he was LCI in charge of Security at the village and as such he used to patrol the area at night. He said that the plaintiff's security guards not only occupied the house of the defendant but that they also used it to sell and consume Enguli. In fact according to the witness, the security guards of the plaintiffs brought tenants into the defendants' house. This is what he said in part:-

“At one time I came to disagreement with them. They brought tenants and they started themselves living in the house having brought their belongings all the occupants started selling waragi and the place became almost a bar. They were selling waragi inside and outside the house. I approached Group 4 Supervisors for the area because I did not like the behaviour and the din. Residents including teachers of Old Kampala could not sleep...”

Mr. Kasule says that when, instead of the Supervisor assisting, he also joined the guards in drinking the waragi, he went to report to the headquarters of Group 4 Security. “After two months, they removed them.” (i.e. the guards).

I have, in view of the above evidence no doubt that the plaintiff's guards entered the defendants' house, resided therein and therein sold and consumed waragi, and they turned the house into almost a Bar and their behaviour became a nuisance to the neighbouring residents. The unanswered questions are many and sundry: In the first place, how did the guards enter the suit premises on 1/4/95 prior to the conclusion of the Temporary Works Order (Exhibit D5) which was signed on 3/4/95? Secondly, it was neither pleaded nor proved in evidence that the defendant wanted to hire out the suit premises and because they were occupied by the guards, tenants shunned them. Thirdly, nothing is there either in the WSD or in evidence that because the guards occupied the premises damage was done to them which depreciated the value of the house or caused expense to the defendant by way of repairs and/or renovations. Fourthly, it is not clear how the defendant arrived at the figure of Shs. 300,000/= per month as rent (or mesne profits). Since the guards were to ensure that no damage was done to the premises and no theft took place therein, and since neither damage to nor theft at, the premises has been proved, I dismiss the claim to the sum of Shs. 5,100,000/= in the counter claim. In the counter claim there is also a prayer for “general damages for breach of contract or mesne profits”. I have dismissed the claim to mesne profits. What about the claim for

general damages? This raises some other question. The defendant claims he declined to pay the indebtedness under the contract because he requested for an account which the plaintiff could not render. The plaintiff, in its letter dated 7 February, 1997 stated, inter alia, "In view of your stated intention to raise a further claim for the alleged use of your premises, it is becoming increasingly apparent that you have no intention of settling the long outstanding account.... The matter is now the subject of legal proceedings."

In its letter (Exhibit D1) dated 9 January, 1997, the plaintiff had insisted on payment of Shs. 6,846,400/=. The defendant having declined to pay, the plaintiff withdrew its guards. Mr. John Komu Gathuku, DW 1 testified that his company, the plaintiff stopped guard- services at the defendant's suit premises on 18/12/96. He says:

"There are payments he has not made. He owes us Shs. 7,641,507/= in respect of guard services. After writing several letters to demand payments, we decided to withdraw our services on 18/12/96. We referred the matter to our lawyers."

The claim by the defendant to general damages for breach of contract was certainly pleaded in the counter claim. On the other hand, the plaint (amended) did not raise the issue of breach of contract. I will decide this issue therefore in favour of the defendant for the obvious reason that the plaintiff filed no reply to the counter claim. While therefore I could not allow the counter claim as to the specific amount of Shs. 5,100,000/= because there was no proof thereof, I cannot disallow a claim to damages which were alleged in the counter claim and not denied in a reply to such counter claim. But to award general damages some damage must be proved to have been occasioned. I confess I have had no evidence of such damage or at all, and I award no damages.

I now turn to the first issue in the suit, namely, whether the services were provided and whether they were paid for. That the services were provided is not in question. The second leg of the issue, which is whether they were paid for seems to be the problem in this case.

The facts are that the plaintiff provided guard services for the defendant's 6 premises at:

- (a) Plot No. 19 Kyadondo Road, Kampala
- (b) Plot No. 6 Luwum Street, Kampala

- (c) Plot Nos 110/112 Seventh Street, Industrial Area, Kampala
- (d) Plot Nos 2/4 First Street, Industrial Area, Kampala
- (e) Plot No. 99, Block 2 Kibuga, Old Kampala; and
- (f) Another plot not mentioned but not material to this case.

There were exhibited in court documentary evidence about some payments made by the defendant to the plaintiff. It appears that the defendant having not made some payments, the plaintiff demanded them. This led to a meeting between Mr. Murray of the plaintiff and Mr. Radia, the defendant on 6/2/97. Following such meeting, Mr. Radia wrote Exhibit D2 to the plaintiff as follows:-

“RE: OUTSTANDING AMOUNTS

I refer to today’s meeting with your Mr. Murray and confirm that I have requested him to get three separate statement (s) of accounts copies of receipts, credit notes, and contracts in respect of the following properties:- (a) Plot 19 Kyadondo Road, Kampala  
(b) Plot 6 Luwum Street, Kampala  
(c) Plot 99 Kibuga, Block 2, Old Kampala

“Please note that I would be also claiming further sum of Shs. 1,200,000/= being charges for use of premises for the months September to December 1996.”

It is to the above letter that Mr. C.A. Murray replied Exhibit D3 to which I have already referred. It does not appear that the accounts requested by the defendant in Exhibit D2 I have referred to above was rendered. Instead, in Exhibit D3, the plaintiff concluded:

“In view of your stated intention to raise a further claim for the alleged use of your premises, it is becoming increasingly apparent that you have no intention of settling the long outstanding account... The matter is now the subject of legal proceedings.”  
(Underlining supplied by me for emphasis).

This was despite the defendants request for a further meeting. “On receipt of the above mentioned documents the date and time for the next meeting will be arranged.”

And so the defendant never received the account in respect of the suit premises. Since there is evidence of some payments made by the defendant but which does not clarify, in respect of which premises such payments were, it becomes difficult for Court in a claim of special damages to decide that no payment was made in respect of the suit premises, and/or that if no payment was made, so much was not paid. I will explain what I mean.

The counterfoil cheques indicate payments mainly in respect of Luwum Street, Industrial Area and Kyadondo Road (see Exhibits D.9, D. 10, D. 11, and D. 12). On the other hand the plaintiff’s statement of Account (Exhibit D. 13) dated 10th December 1996, shows some payments but they cannot be reconciled with the payments indicated in the counterfoil cheques. An action that commenced as a summary suit which stated in the supporting affidavit that defendant had no defence to a claim of Shs. 9,303,948/= ends up in the amended plaint with this same amount but, at the same time, alleging Shs. 6,481,360/= in Exhibit D.13, which is the statement of account; and then Shs. 6,846,400/= (see Exhibit D.1 and the evidence of PW1 in cross examination).

A summary suit is viewed as a claim for special damages which start with an averment that there is no defence; but where after leave has been granted to the defendant to appear and defend, the plaintiff must not only specially plead the claim but also he must specifically prove it. I find all the overwhelming discrepancies in the plaintiff’s case as to the amount being claimed coupled with the failure to render a consistent account are reasons for the plaintiffs’ case to be dismissed as incompetent. I dismiss them with costs.

In the result, I dismiss the suit with costs and under the counter claim I am unable to award any damages or mesne profits. It is also dismissed with costs.

J.H. Ntabgoba  
Principal Judge

Present:

Mr. Moses Ibale for the plaintiff

Mr. Charles Okoth Owori holding the brief for Dr. Byamugisha for  
the defendant.

Mr. Edward Kangaho, Court Clerk

Judgement delivered in Chambers.

J.H. Ntabgoba

Principal Judge

16/6/1999.