

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 699 OF 1995**

ORIWELD LIMITED & OTHERS :::::::::::::::::::: PLAINTIFFS

VERSUS

**DIDAS KATAIHWAHO T/A M/S KEY AGENCIES AND AUCTIONEERS &
ANOTHER. :::::::::::::::::::: DEFENDANTS**

Before The Hon. Mr. Justice E. S. Lugayizi

JUDGMENT

This judgment is in respect of a suit the plaintiffs filed against the defendants seeking Court's orders listed below,

- (a) special damages amounting to shs.32,391, 500/=;
- (b) interest on (a) at the rate of 28% p.a. from the date of eviction until payment in full;
- (c) general damages;
- (d) costs of the suit; and
- (e) any other relief Court may deem fit.

In their Written Statement of Defence the defendants denied the above claim and prayed Court to dismiss it with costs.

Subsequently, the late Honourable Mr. Justice Mukanza fixed the suit for hearing and partly heard it. On his demise I took over the hearing of the suit. In all, the plaintiffs called one witness, namely, Chand Rakal K. Patel (PW1). The defendants also called one witness whose name was Didas Kateihwaho (DW1).

In very brief terms the plaintiffs' case was as follows. In mid 1990s the 1st plaintiff who was looking for business premises came across the suit premises (i.e. Plot 3/5 Bombo Road). The 1st defendant was managing the suit premises on behalf of the 2nd defendant. The 1st plaintiff liked the suit premises and signed a tenancy agreement in respect thereof. It proceeded to pay shs. 11m/= as goodwill to the, then, sitting tenant who, in turn, gave it vacant possession of the suit premises. It also paid 3 months rent for the suit premises and embarked upon repairs to make the place suitable for the intended business. It spent shs. 11m/= on those repairs, but before completing them the defendants evicted it from the suit premises. Hence this suit in which the plaintiff and its directors are claiming redress for that wrong.

On the contrary, the defendants' defence is that although it is true the 1st plaintiff rented the suit premises and paid some money on it as rent, it embarked upon the renovation of the Suit premises without the defendants' authority. That breached the tenancy agreement in question. To crown the matter the 1st plaintiff later vanished from the suit premises. It is not true that the defendants evicted it from the suit premises. Consequently, the defendants cannot be held answerable for the 1st plaintiff's departure from the suit premises. For those reasons the defendants called upon Court to dismiss the suit.

Initially, when the late Hon. Mr. Justice Mukanza presided over the suit he fixed the following issues for determination.

1. Whether there was breach of the tenancy agreement and if so by whom?
2. Whether re-entry of the suit premises was lawful?
3. Whether the summary levy of distress by the defendant against the properties of the 1st plaintiff was lawful?
4. The available remedies.

After going through the evidence on record, Court has found it necessary to adjust the above issues with a view to making them more relevant to the contents of the record. It is satisfied that none of the parties will be prejudiced by this new development. Instead, they will benefit from the clearer manner in which the case will be disposed of. Be that as it may, below are the amended issues.

1. Whether the defendants breached the tenancy agreement in question?
2. Whether the defendants lawfully re-entered the suit premises?
3. The available remedies.

Court will deal with the amended issues in the order in which they occur above.

With regard to the first issue, that is to say, whether the defendants breached the tenancy agreement in question, both sides were at variance on this matter. The plaintiffs' witness (Mr. Chand Rakal K. Patel (PW 1)) insisted that the defendants breached the tenancy agreement in question by evicting the 1st plaintiff from the suit premises for no good cause. It had fully paid rent for a substantial part of 1995 and was not in default in respect of rent obligations.

The defendants' witness Mr. Kateihwaho did not agree with the plaintiffs' version. In his evidence he stated that the plaintiffs were not up to date with their rent payments by the time they left the suit premises. He further pointed out that in any case, the defendants did not evict the plaintiffs from the suit premises. The plaintiffs simply vanished after taking away their belongings from the suit premises sometime in 1995.

The law is very clear in sections 100, 101 and 102 of the Evidence Act (Cap. 43). It provides that he who alleges the existence of certain facts must prove them if he is to succeed. In the instant case the plaintiffs are alleging unfair or unlawful eviction of the 1st plaintiff from the suit premises. Therefore, the onus to prove what they allege squarely lies upon them. The question to answer is whether the plaintiffs have discharged that burden? Court doubts that the plaintiffs have discharged the said onus. Firstly, the plaintiffs' only witness Chand Rakal K. Patel who is an absentee director of the 1st plaintiff does not seem to be sure of what actually transpired, for when the events in question took place he was outside the country. He does not know exactly when the plaintiff was evicted from the suit premises nor does he know whether or not any rent for the suit premises was outstanding at that time. Obviously, with that type of evidence on record Court has no choice but to hold that the plaintiff miserably failed to prove, on a balance of probabilities, that the defendants evicted the 1st plaintiff unfairly or unlawfully from the suit

premises if at all they did so. In turn that means that the plaintiffs failed to prove the alleged breach of the tenancy agreement. Court has therefore resolved the first issue in favour of the defendants.

With regard to the second issue, that is to say, whether the defendants lawfully re-entered the suit premises, Court has this to say. The 1st plaintiff is no longer in possession of the suit premises and Court has decided above that it was not unfairly or unlawfully evicted from it. Consequently, it is difficult to fault the defendants (who are the owners of the suit premises) for having taken possession of the suit premises when the 1st plaintiff left it. For that reason, it follows that the defendants lawfully re-entered the suit premises. Court has also resolved the second issue in favour of the defendants.

With regard to the third issue, that is to say, the available remedies, because Court has resolved the first two issues in favour of the defendants it means that the plaintiffs' suit has not succeeded. Therefore, the only remedy Court can grant is to dismiss the plaintiffs' suit with costs; and it hereby ordered so.

Read before: At 9.23 a.m.

Mr. Senabulya c/clerk

(Judge)

13/9/2002