

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HCT-00-CV-CS-0651-2001

AMIRALI JAFFER ::: PLAINTIFF

- VERSUS -

1. K-PAC LTD }
2. RAJKET } ::: DEFENDANT

BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO

J U D G M E N T:-

The plaintiff brought this suit against the defendants for payment of US \$14.400 or its equivalent in Uganda shillings as rent arrears, special and general damages, interest and costs of the suit. It is the plaintiff's claim that by tenancy agreement dated 8th February 1999, the first defendant took on rent the plaintiff's premises on plot No. 6 Prince Anne Drive, Bugolobi at a monthly rent of US \$1.200 for one year expiring on 7th March 2000. At the end of the tenancy the first defendant did not vacate the premises nor inform the plaintiff of its intention not to continue renting the premises and the second defendant continued in occupation.

The defence on the other hand contended that there was a tenancy agreement between the plaintiff and the first defendant for a fixed period of one year from 8th February 1999 to 7th March 2000 and rent for that period was fully paid. The defence contended further that after the expiry of the tenancy on the 7th March 2000 the second defendant took over the suit premises on the basis of a mutual understanding between him and the plaintiff and the rent payable was to be US \$800 per month. That the second defendant paid rent at the agreed rate until he was evicted by the plaintiff in February 2001 when he was away in Nairobi on that account the defendants contended that the plaintiff has no cause of action.

Issues for determination:

- (1) Whether the first defendant remained in occupation of the premises after the expiry of the tenancy.
- (2) Whether the second defendant was a tenant of the plaintiff.
- (3) Whether the plaintiff is entitled to any remedies and from which defendant.

The plaintiff called one witness Mr Suresh Mashru (PW1) while the defendants never called any witnesses.

Suresh Mashru PW1 testified that the plaintiff was his client. He stated that he has been doing business of property management in Uganda since 1987. He stated that by powers of Attorney (exhibit P1) he was the one managing the plaintiff's property at Plot No.6 Princess Drive Bugolobi.

In that capacity he knew the first defendant as his tenant the first defendant rented the said premises for the second defendant who was their managing director from 8th March 1999 to 7th March 2000 (exhibit P2). Under that agreement the first defendant paid rent for the period between 8th March 1999 to 7th March 2000. From 7th March to 24th October 2000 the 2nd defendant paid rent on behalf of the first defendant (exhibit P3). Since it was the second defendant who was paying on behalf of first defendant he made receipts in his name. After 24th October 2000 he demanded rent from the second defendant who promised to pay after coming back from Nairobi in January 2001. The second defendant failed to come back in January nor in February 2001. He decided to deploy security guard to ensure that the second defendant did not leave the premises without clearing the rent arrears. After waiting for so long he decided to write to second defendant on 22/9/2000 demanding rent arrears US \$4220 (exhibit P4). He received no reply from the second defendant. In mid October 2001 he decided to remove the defendants' property from the premises to give vacant possession for someone else to rent it.

He hired a store and shifted the defendant's property there. He made an inventory of the property in the presence of chairman local council and his vice, secretary for defence, security guard labourers and a police officer among others (exhibit P6). He took the property to 6th street where he paid a monthly rent of shs.454,000 per month for four months. The property which he shifted belonged to first and second defendants. Those which belonged to first defendant included motor vehicles, toilet paper machinery set, and coffee processing machinery. The rest were personal properties of second defendant. He tendered four receipts as evidence of payment of rent (exhibit P6). He stated that he incurred expenses in relocating the defendants property in the form of hiring fork lights and labourers (exhibit P7 and P8). He incurred other expenses in paying two guards to keep the properties (exhibit P9).

Because the rent at 6th street was very high, he decided to shift the properties to Plot 10 Clement Road where he was to pay rent at 350,000/= per month. Again he incurred expenses in shifting (exhibit P10 and P11). The motor vehicles were parked at a different place on plot 15 Shimon Road at a fee (exhibit P12).

Lastly PW1 testified that he was entitled to recover the money which he paid for water and electricity bills consumed by the defendants which were left unpaid

exhibit P13 and P14). He concluded that the defendants have never gone back to reclaim their properties. The only property which reclaimed was the coffee processing plant which was reclaimed by court bailiffs through a court order (exhibit P15).

DETERMINATION:

ISSUES:

Issue No 1 whether the first defendant remained in occupation of the premises beyond the expiry of the tenancy.

According to the evidence of Surish Mashru (PW1) the tenancy between the plaintiff and first defendant was for one year commencing on 8th March 1999 and ending on 7th March 2000 at the monthly rent of US \$1.200 – (exhibit P2).

After that period, the second defendant's managing director continued to occupy the suit property. PW1 testified that although it was the second defendant who was paying rent, he was paying on behalf of the first defendant and in doing that the first defendant became a holdover tenant. According to Black's Law Dictionary a holdover tenant is a tenant who retains possession after expiration of a lease, or after a tenancy at will has been terminated.

In the instant case after expiration of the first defendant's tenancy, there is no evidence to show that the first defendant parted possession of the suit property. Instead there is uncontroverted evidence that the second defendant for whom all the first defendant had rented the suit premises continued to occupy the same and was paying rent as per the agreement. The fact that he was paying rent in his own name did not mean that he had taken over the tenancy. The first defendant should have informed the plaintiff that the second defendant in occupation in his own right. In the absence of that the plaintiff was justified in believing that the first defendant was still in occupation. And according to the inventory exhibit P the first defendant never shifted its property from the suit property. In the above circumstances the only fair inference to be drawn is that from the conduct of the first defendant it can be safely implied that it remained in occupation of the suit property after the expiry of the tenancy agreement.

Issue No. 2:-

Whether the second defendant was a tenant of the plaintiff.

From what I have stated above, it is very clear that there was no tenancy relationship between the plaintiff and second defendant. The second defendant was in occupation of the suit property on behalf of the first defendant. It was his

official residence as its managing director. The first defendant has failed to adduce any evidence to the contrary. According to Section 102 of the Evidence Act he who alleges must prove it: See **Paul Kawanga Ssemwogerere & Others Vs Attorney General, Constitutional Petition No. 3/99.** It was upon the first defendant to prove that the second defendant was in occupation as a new tenant. In the absence of such evidence, I would believe the plaintiff's witness that the first defendant remained in occupation after the expiration of the tenancy by retaining the second defendant in the suit property. The witness was emphatic that he never agreed on any other rental terms by reducing the same to 800\$. He insisted that had that been the case the receipts dated 14/6/2000, 3/7/2000 and 14/9/2000 would have indicated that new rate at \$800 per month which was not the case. I do agree with that contention. In the premises the second issue is answered in the negative.

Issue No. 3:-

Whether the plaintiff is entitled to any remedies and from which defendant. It is trite law that a lessee who holds over has to pay rent: See **Christopher Sebuliba Vs Attorney General & Another, Supreme Court Civil Appeal No. 13/91** (unreported). In the instant case it was first defendant who was holding over tenant. There was therefore no need for new tenancy or re-negotiation of new terms. The first defendant was therefore liable to continue paying rent under the

expired tenancy agreement. See **Eastern Radio Service Vs Patel [1962] EA 818, 836 and 839.**

For reason the plaintiff is entitled to recover from the first defendant the rent arrears at US \$14.400 as claimed which accumulated from 25/10/2000 to 13/10/2001 at a value of US \$1.200 per month.

On special damages, I find that the plaintiff was right to relocate the defendant's properties to give him vacant possession for another tenant. But considering the fact that the tenancy agreement provided for distress for rent, it was senseless for the plaintiff to relocate the properties to the second location on Clement Road. That was an extravagant decision which should not go without questioning. Another claim which should be challenged is paying to Oketch John which was made on humanitarian grounds. In the interest of justice and fairplay, I would reduce the plaintiff's claim under that head to 6,000,000/= (six million shillings only).

I would also award the plaintiff damages for the inconvenience occasioned by the acts of the defendants. The acts of the defendants had put the plaintiff in great

anxiety. In redress of the same I would award the plaintiff shs.2,000,000/= (two million shillings only).

Lastly the plaintiff claimed shs.500,000/= per month from 18/12/2002 till renting for the defendants' principle is extinguished. In of what I have stated above such an award cannot be made.

In conclusion judgment is entered for the plaintiff for the recovery of rent arrears at US \$14.400 or its equivalent in Uganda shillings. The plaintiff is entitled to six million and two million in special and general damages respectively.

The plaintiff is entitled to interest on rent arrears at 15% from the date of filing the suit until payment in full and also on special and general damages from the date of this judgment until payment in full.

As to costs it is the first defendant to pay because the second defendant was joined under Order 1 rule 7 of the Civil Procedure Rules since the plaintiff was in doubt as to which defendant he was entitled to sue. That rule is designed to prevent multiplicity of suits that would arise. In any case under section 27 of the Civil Procedure Rules Court has discretion to determine which party to pay costs.

In the instant case the second defendant was the first defendant's agent. It would therefore not be wise to condemn him to pay costs: See D.T. Dobie & Co. Vs United India Fire & General Insurance Co. Ltd & Another [1964] EA 16.

RUBBY AWERI OPIO

JUDGE

26/10/2004.

26/10/2004:-

Bamwine for plaintiff

Absent – Kahima for defendants.

Court:-

Judgment read.

GODFREY NAMUNDI

DEPUTY REGISTRAR CIVIL

26/10/2004.

