THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CS-119-2000

RT. REV. DR. WILLIAM RUKIRANDE…… PLAINTIFF

VS

FAR OUT (U) LTD…… DEFENDANT

BEFORE; THE HON. MR. JUSTICE P. K. MUGAMBA

JUDGMENT

The plaintiff in this suit seeks the following remedies from the defendant:

a) An order terminating the lease contract/agreement between the plaintiff and the defendant for fundamental breach of the lease agreement/contract.

b) An order for forfeiture by the defendant for non-payment of rent and nonobservance of covenants.

c) Payment of rent for the year 2002 in the sum of US$2000.

d) An order for repossession of the suit land with all immovable developments made thereon.

e) A permanent injunction restraining the defendant from claiming the suit property.

f) Damages for breach of the lease contract/agreement.

g) Costs of this suit.

h) Any other remedy deemed fit and necessary.

While these are the prayers as contained in the plaint a shorter version of the prayers is contained in the written submissions and lists them as:

i. recovering of the rent arrears

ii. termination of this lease contract for breach

iii. repossession of the island

iv. a permanent injunction.

v. General damages for breach and costs.

This suit has its genesis in a lease agreement signed between the plaintiff and the defendant company on 3 September 1996 in which the plaintiff leased Bethel Island in Lake Bunyonyi to the defendant for a period of *25* years on agreed terms. The relevant agreement was submitted as an exhibit and is Exhibit P.1, One of the terms of the agreement, paragraph 2, required the defendant as lessee to pay a sum of US$ 2000 to the plaintiff annually in August. The defendant had complied with that term until August 2002 when it defaulted. Hence this suit.

At the time this suit was filed the defendant entered his defence. Neither the defendant nor a representative of the defendant were available to attend court despite summons by ordinary and later substituted service. Consequently hearing proceeded ex parte. At the hearing two witnesses were called on behalf of the plaintiff PW1 was the plaintiff, Rt. Rev. Dr. William Rukirande while PW2 was Amos Tumushabe. In his evidence PW1 testified that he had leased the island to the defendant for 25 years and that the defendant had since the year 2002 defaulted in paying the USS 2000 as required under the lease agreement. PW2's evidence was more or less similar to that of PW1. Exhibit P.1 was proffered for effect.

Three issues were identified by counsel for the plaintiff for resolution as:

1. Whether the plaint is bad in law.
2. Whether the defendant breached the lease contract.
3. Quantum of damages if any.

The first issue relates to the propriety of the plaint given that in the agreement of lease there is reference to arbitration. Counsel seems to have been persuaded to relate to this because the statement of defence mentioned it saying recourse should have been taken to arbitration first. I find no merits in such a view. First there was no known arbitrator named and secondly this court is not precluded from entertaining this suit. Certainly the defence never pursued that view. All in all my answer to this issue is in the negative.

The next issue is whether the defendant breached the lease agreement. Failure to perform a contract leads to breach. However not every breach entitles the innocent party to treat the

contract as discharged. It must be shown that the breach affects a vital part of the contract. It must be a breach of condition rather than a breach of warranty. Such condition includes where the contract fixes a date and whether or not the contract makes performance on that date a condition. Paragraph 2 of the lease agreement provides:

‘In consideration of the aforesaid lease the lessee shall pay 2,000 US Dollars per annum. Payment shall be effected in August, each year.’

The emphasis above is added hut clearly from the paragraph the picture emerges that US$ 2000 was to be paid every year and that the sum was to be paid in August every year. Needless to say the provision is mandatory. Given that the defendant did not comply with those provisions I am not in doubt that by such non-compliance it breached the contract. My answer to this issue therefore is in positive.

Having come to the conclusion I have I must next turn to the third issue. Court will normally award damages for pecuniary loss. However on occasion court will make an award which takes account of inconvenience and disappointment. See *Devshi Samat Shah vs Budhram Mohanlal (1951)* 18 EACA 79. It was the evidence of PW 1 that default was first made in 2002 and that there has been no payment for subsequent years of 2003 and 2004. It was his evidence that since the year 2002 no activity has taken place at the premises in issue and that he sought damages for the loss. It has been held that the innocent party to a breach should as far as possible mitigate its loss. See *Lever vs Dunkirk Colliery Co* (1880) 43 L.T. (N.S.) 706 (C.A.). In the circumstances a reasonable man in the ordinary course of business would, after considering the contract as at an end following the breach, look for alternative prospects for the property. See *Livio Carli vs Geom R. Zompicchiati* [1961] EA 101. While I find apt the claim for US$ 2000 for the year 2002 I do not find it reasonable to award the sum for the subsequent years. It has not been shown in evidence that the plaintiff took some steps to mitigate his loss as he should. I have received no assistance from the plaintiff concerning general damages but taking everything into account such as anxiety and disappointment, I find a sum of Shs. 2,000,000/— reasonable as general damages.

The plaintiff is also entitled to costs of this suit as the successful party.

P. K. Mugamba

Judge

3rd February 2004