

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBARARA

**HCT-05-CV-CS-0111-2000**

DOREEN SADRA RWAMBUYA .....PLAINTIFF

VS

STRABAG EAST AFRICA LTD .....DEFENDANT

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

**JUDGMENT**

The plaintiff seeks the following remedies from the defendants:

- (i) Special damages of Shs. 4,800,000/.
- (ii) Costs of the suit.
- (iii) Interest on (i) and (ii) above at the rate of 25%.
- (iv) Any other further relief this honourable court may deem necessary to grant.

This suit has an interesting background to it. On 1st April 1997 a tenancy agreement was executed between the plaintiff and the defendant whereby the former was to let her premises at Plot 19 Kakika Road, Mbarara to the latter for two years. Rent was agreed at Shs. 400,000/ a month payable half-yearly. However, on 1st August 1997 the defendant wrote a letter to the plaintiff terminating the agreement. The plaintiff rejected the letter of termination despite the defendant's eventual vacation of the premises. Hence this suit.

At the hearing of the suit the plaintiff did not attend but Mr. John Gaster Rwambuya was present as her attorney. Evidence of that representation was contained in exhibit P.1. The attorney testified as the sole witness for the plaintiff and in the event the single witness at the hearing. The following issues were agreed by the parties:

1. Whether or not the presence of the graves justified the defendant's vacation of the premises.
2. Whether the presence of the graves created a condition subsequent.

3. Whether or not the tenancy agreement was at an end at the time of the notice by the defendant.
4. Whether the existence of the grave amounted to frustration.
5. Remedies available.

The tenancy agreement was received in evidence as exhibit P.2. A letter dated 1st August 1997 written by the defendant giving notice to vacate the premises effective September 1997 was also received. It is exhibit P.3. Exhibit P.5 was yet another letter from the defendant to the plaintiff giving reasons why the defendant was vacating the premises. The reasons being existence of a grave within the compound of the demised premises and there being no telephone service available at the house. Needless to say, the plaintiff did not find the reasons given well founded. It was the evidence of the plaintiff that the defendant had, prior to signing the tenancy agreement, inspected the premises and found them suitable and that at the time of the inspection the grave was in situ. Furthermore the agreement was executed with the full knowledge that a telephone facility did not exist at the premises.

The defendant's counsel did not attend court on the day to which the case had been adjourned for defence. No reason was ever given for the default. In the event the case for the defendant was deemed closed and counsel for the plaintiff proceeded to make final submissions.

Regarding the first, second and fourth issues, the uncontested evidence from the plaintiff is that the premises to be let were inspected and the tenancy agreement was executed in the wake of the inspection. There is nothing to suggest the grave in the compound was not seen, nor was the contrary urged by the defence. My view therefore is that the defendant was not justified to vacate the premise since it had all along been privy to the presence of the grave. Need I add that conditions for frustration did not exist? This is because if events do occur which make the performance of the contract impossible and the frustrating events are not the fault of either party, then the contract is brought to an end with neither party at fault. In order for the doctrine of frustration to be in effect performance must be impossible, not merely difficult. See Twentsche Overseas Trading Co. Ltd vs Uganda Sugar Factory Ltd. (1949) 12 EACA 1.

As concerns the third issue, the defendant's notice while it is true to say that not every breach entitles the innocent party to treat the contract as discharged, where a vital part of the contract is affected such as where the other party has no intention of performing its contract it will be treated as such. See Hochster vs De la Tour (1853) 2 E & B 678 118 E.R. 922. Even where no expressed intention to repudiate has been given the test for repudiation is whether the conduct of a party would cause a reasonable person to come to the conclusion that the party did not intend to or was unable to fulfill its contract. See Khatijabai Jiwa Hasham vs Zenab d/o Chandu Nansi [1960] EA. 7. My answer to the issue is therefore in the affirmative.

From the foregoing I find the defendant did breach the contract and so this suit must succeed. I must now proceed to the final issue.

The plaintiff's evidence is that after the defendant had vacated her premises it took her twelve months before she got another tenant. She claims rent from the defendant for the period her premises were without a tenant in form of damages. In an action for breach of contract a plaintiff is entitled to recover only such part of the loss resulting as could reasonably be contemplated by the parties at the time of the contract. Reasonable contemplation depends on the knowledge of the parties at the time. See Woodruff vs Dupont 119641 EA 404 Victoria Laundry (Windsor) Ltd vs Newman Industries Ltd [1949] 2KB 528. In the case at hand both the plaintiff and the defendant were privy to the life of the agreement. They were privy also to the rent payable a month. Above all they were privy to the fact that during the period of the agreement the plaintiff was entitled to the certain income. Consequently for the period no income was forthcoming to the plaintiff during the life of the tenancy agreement the plaintiff was entitled to damages. I find it not disputed that the period the plaintiff received no rent from the premises was twelve months. It is not disputed either that the expected rent was Shs. 400,000/ a month. The amount due to the plaintiff as damages therefore is Shs. 4,800,000/= which I hereby award at 20% per annum from the date the suit was filed until realization in full. I would also award costs of the suit with an interest of 20% per annum from the date of taxation until realization in full.

P. K. Mugamba

Judge

3rd February 2005