

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA HCLDCS**  
**NO. 57 OF 2006**  
**MINAZ KARMALI:..... PLAINTIFF-**  
**VERSUS-**  
**FABIAN M. RWALINDA:..... DEFENDANT**

**BEFORE: HON. JUSTICE MARY I.D.E. MAITUM**

**JUDGEMENT**

This matter came up for formal proof, the Registrar having entered an interlocutory Judgement. The Defendant make a written Statement of Defence but not within the time stipulated under 0.9 r 1 CPR and did not apply for leave to file a WSD out of time.

At the commencement of the hearing the following issues were framed for resolution.

Whether there was a tenancy agreement between the parties.

1. Whether there was a breach of the Memorandum of understanding concerning civil works expenses.
2. Whether the Defendant is indebted to the Plaintiff.
3. Remedies available.

There were two other witnesses called by the Plaintiff a part from himself.

PW1 Minaz Karamali, the Plaintiff, testified that the Defendant had an unfinished property which the Plaintiff wished to move into and rent. The Property is situated at Plot 49 Kyandondo Block 268. Not only was the lease agreement signed but there was a Memorandum of understanding between the parties to the effect that the Plaintiff would finish and renovate the building and that the Plaintiff would be reimbursed by the Defendant, the Land Lord.

PW1 testified that the terms of the tenancy agreement were that it would last for 3 years i.e. up to 28/2/2008, among other terms.

PW1 further testified that the contents of which were that the renovations would be separate from the tenancy agreement. According to PW1's testimony, the payment of rent was to be on a quarterly basis from 1<sup>st</sup> March. The 1<sup>st</sup> payment made was for USD 1400 and 1500 USD would be payable monthly for the remaining quarters. PW1 paid USD 17700 immediately on signing the tenancy agreement. So that the Defendant could finish the building. The Defendants was to install electricals, water, tiling of the floor, doors and windows, the water heating systems and plumbing. In a Paragraph of the Tenancy agreement the Defendant undertook to clear utility bills e.g. ground rents, water and electricity.

On 1/3/05 the Plaintiff entered the premises with no main door, no water, no electricity, no burglar proofing etc. The total sum for putting all these anomalies right was shs 6,346,695/=. The Defendant agreed to let the Plaintiff put the house in a habitable state in a Memorandum of Understanding to reimburse the Plaintiff for making the house habitable. The Memorandum of Understanding (MU) was between the Plaintiff, his wife on the one hand and the Defendant on the other. It was dated 26/9/05. The Plaintiff expended shs. 6,346,695/= on renovations and was not reimbursed by the Defendant who gave three (3) cheques to the Plaintiff. The cheques were dishonoured. The Defendant reimbursed only 900,000/= (nine hundred thousand) in cash.

The Plaintiff paid for the bills for the utilities for which the Defendant, promised, but did not pay, as stipulated in the Tenancy agreement. The Plaintiff approached the Defendant to do other rehabilitation works amounting to shs 3,312,850 but the Defendant informed him that the house was being sold and wanted the Plaintiff to approach the new landlord who refused to pay. The Plaintiff paid shs. 1,825,949/= for illegally connected water the bill of which came to that amount. A further reconnecting fee of 117,000 was paid by the Plaintiff reconnecting electricity power was 292,500/= and the actual power bill was shs 521,120/=. A new electricity metre cost the Plaintiff 90,000/= and a reconnecting fee 100,000/=.

The Defendant's indebtedness to the Plaintiff came to shs. 13,763,614/= PW2 and PW3 corroborated what PW1 had testified to.

The Plaintiff prayed for:

- i) a declaration that the sale of the house be subjected to the tenancy agreement by the Defendant.
- ii) Reimbursement of shs. 13,763,614/= with interest at 30% per annum.
- iii) General damages for the breach of the tenancy agreement and for any other relief the Court saw fit to grant.

The Defendant, as mentioned above did file a WSD out of time and did not apply for leave of Court to do apply out of time.

All the documents, i.e. The Tenancy Agreement, the Memorandum of Understanding, bounced cheques, estimates of renovations and receipts for reconnecting water, electricity were produced as exhibits P.1 -7.

On issue number one as to whether there was a tenancy agreement between the parties, P.W.1 produced Exh. P.1 which is a Tenancy Agreement between Fabian M. Rwalinda, the Defendant and Mr. Minaz Karmali, the Plaintiff. The Agreement was duly signed by both parties and was admitted by the Defendant in an invalid WSD in paragraph 4. As was held in:

**Mukisa Biscuit Manufacturing Co. -y- West End Distributors (NO.2)**

**1970 E.A 469...**The terms of the Tenancy agreement were clear and certain and it was fully executed by the parties when they appended their signatures to it. Issue No. 1 is answered in the affirmative. The Plaintiff paid the rents as requested in the Agreement but the Defendant did not deliver to him habitable or tenantable premises as agreed.

On issue No. 2 whether there was a breach of a Memorandum of Understanding concerning Civil works expenses, PW1 testified that he expended a total of 13,763,614/= on renovations, repairs, previous utility bills and reconnections. It is to be noted that though the previous utility bills were paid in the names of the land lord it was the tenant who made the actual payments and was never reimbursed save for 900,000 paid to him by the Defendant.

Consequently there was a breach of the Memorandum of Understanding.

**No Issue No. 3:**

Since the Defendant has not reimbursed the Plaintiff for all the expenditures he incurred to make the property habitable, he is indebted to the Plaintiff to the extent of the funds used for renovations, payments for previous utilities.

**On Issue No. 4:**

The remedies for breach of Contract are damages. Damages is compensation in money for loss of that which the Plaintiff would have

received had the contract been performed.

In the instant case the Plaintiff lost over 13 million shillings which he could have used to do something else **John Nagenda -Y- Sabena Belgian World Airlines [1992] KALR 13.** A part from interest on the money expended on renovation, it is not possible to quantify and award damages for disappointment, hurt feelings etc. I shall therefore order interest of 18% percent per annum to be paid on the shs 13,763,614 (thirteen million, seven hundred sixty three thousand six hundred and fourteen from the date of the Memorandum of Understanding signed on 26/9/2005.

The defendant is condemned to pay costs for this suit. The interest of the tenant to be considered in the purchase price for the suit premises.

Mary I.D.E. Maitum **JUDGE 24/9/2007**

Judgment read in the presence of:

Mambuka Deogratiuous - was sent by Counsel Kasumba Patrick to receive Judgement. He is a representative of the Plaintiff.

E. Namutebi - Court Clerk.