

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HCT-00-CV-CS-0052-2008
(CIVIL DIVISION)

1. NAKITYO MILIAM
2. TIISA MARIAM
3. NAMIREMBE SARAH
4. NABULYA JOYCE

..... **PLAINTIFFS**

VERSUS

1. JACKSON MULEELE
2. ALENI NAKANDI
3. EDWARD MUWANGA
4. NOLA NAKALYOWA
5. SOLOME KIGONGO
6. SILVIA BABIRYE
7. PLOSI NAKATO &
8. GRACE KIZZA

..... **DEFENDANTS**

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

JUDGMENT

The plaintiffs are the Administrators of the Estate of the late George William Ssenkubuge and the defendants and Administrators of the Estate of the late Eriya Tegawoma. The plaintiffs' cause of action against the defendants is for breach of lease agreement, loss of income and general damages for trespass.

From the plaint and the testimony of PWI Mariam Tiisa (2nd plaintiff), the plaintiff's father executed a lease agreement with the defendants' father in respect of Plot 147 at Najjanankumbi for a period of 49 years with effect from 17th August 1959. A copy of the Land Title is on record as Exh. P2. Following the death of their father, George William

Ssenkubuge, they (the plaintiffs) applied for Letters of Administration and continued honouring the terms and covenants of the lease agreement. When the said Eriya Tegawoma also died, the defendants applied for letters of administration. Then on or around 30/08/2003, in breach of the said agreement, the defendants entered upon the suit premises thereby causing loss of income to the plaintiffs. It is the plaintiffs' case that as a result of the defendants' re-entry, the plaintiffs suffered loss and damage of which the defendants are held liable.

Summons to file a defence were issued to the defendants on 13/11/2006. Upon failure of personal service on the defendants, the plaintiffs applied for and obtained an order for substituted service. On 9th February, 2007 the defendants were served by substituted service through the New Vision Newspaper a copy of which is also on record. The defendants still failed to file a defence in the matter. Thereupon the plaintiffs applied for judgment in default and dropped their claim for general damages for trespass. Judgment in default of the defence was entered against the defendants by the Registrar of this court on 6th May, 2008. The file was put before me for formal proof only.

I have already indicated that following the defendants' failure to file a defence an interlocutory judgment was entered against them. It is settled law that failure to file a defence raises a presumption of a constructive admission of the claim made in the plaint. The story of the plaintiffs in the absence of a defence to contradict it, must in such circumstances be accepted as the truth. See: **Agadi Didi vs James Namakajjo HCCS No. 1230 of 1988** and **Tindimwebwa Narisi vs Mutebi Salim HCT-00-CV-CA-0057-2007** (unreported).

The question whether the plaint discloses a cause of action against the defendant is determined upon the perusal of the plaint alone, together with anything attached to form part of it. It is also determined upon the assumption that any express or implied allegations of fact in it are true. A defendant who seeks to challenge the plaintiff's story files a defence. Accordingly, the issue as to whether or not the defendants are liable was

in the instant case determined upon the defendants' failure to file a defence and upon the interlocutory judgment being entered against them.

According to PW1 Mariam Tiisa, there was a building on the land and there was a tenant named Sam Wamala who was paying the plaintiffs Shs.1,500,000/= per month, payable three months in advance. Copies of the receipts issued to the tenant were tendered in evidence and are on record as Exh. P4. PW2 Sam Wamala testified that he was a tenant of the plaintiffs in respect of the suit property; that the premises comprised a building with 8 rooms. He said that between 2001 and 2003 he used to pay Shs.1.5m and that around March 2003 one Grace Kizza, one of the defendants herein, chased him out of the building for and on behalf of the other defendants. From that time the defendants repossessed the building.

From the records, since the tenancy was for 49 years effective 17/08/1959, it would run till 17/08/2008. By the time the defendants re-took possession, the lease was left with four years, eleven and half months to expire.

It is pleaded that the cause of action arose on 30/08/03. However, PW2 Sam Wamala's evidence is that he was chased out of the premises in March 2003. I attribute the discrepancy to lapse of memory and go by the pleaded month of August 2003. Given that the eviction was on 30/08/03, the tenant had no reason not to pay up to end of August 2003. Therefore, I would calculate the lost income to run from September 2003 to 17th August 2008, a period of four years and eleven and half months or 59.5 months and not 48.5 months as calculated by learned counsel for the plaintiffs, Mr. Lumweno. This means that for the period of 59.5 months, lost income to the plaintiffs was Shs.89,250,000/= (that is Shs.1,500,000/= x 59 months plus Shs.750,000/= for the half month). Learned counsel's calculation that puts it at Shs.72,750,000/= is in my view faulty and misleading. It is corrected accordingly.

In the final result, judgment is entered for the plaintiffs against the defendants jointly and severally in the sum of Shs.89,250,000/=. The plaintiffs shall also have the taxed costs of the suit.

Orders accordingly.

Yorokamu Bamwine

JUDGE

30/09/2009

30/09/09

Mr. Lumweno for plaintiffs

Jolly Kauma – Clerk

Court:

Judgment delivered.

Yorokamu Bamwine

JUDGE

30/09/09