

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

CIVIL SUIT NO. 006/2002

**KASULE TWAHA :::::::::::::::::::::::::::::::::::::::
PLAINTIFF**

VERSUS

MS BADRU J. MUGERWA AND SONS

HAJJI ABDALA MUGERWA

**SABANE LUGOBE :::::::::::::::::::::::::::::::::::::
DEFENDANTS**

BEFORE: HON JUSTICE MUSOKE-KIBUUKA

JUDGEMENT

The plaintiff sued the defendants claiming the following reliefs:-

- Shs. 11,721,000/= as special damages
- Interest at 40% per annum, on special damages from the date of eviction till payment in full;
- General damages; and
- Costs of the suit.

The plaintiff's case was that during the year 1980, the plaintiff obtained authority from the Departed Asians Properties Custodian Board to erect a commercial structure on plot 18, Grant Street, within Masaka

Municipality. He claims to have spent a total of Shs. 846,000/= on that undertaking. He then operated his business at the premises paying rent to the Board.

During the year 2000, the first defendant obtained a lease on plot 18, Gant Street. The plaintiff paid rent to the first defendant at shs. 20,000/= per month. However, on 7th August, 2001, the second and 3rd defendants, evicted the plaintiff and took away the plaintiff's stock totaling to Shs. 10,875,000/=, rent payment receipts and a log book for Toyota Corona 355 UEE.

A joint defence was filed on behalf of all 3 defendants by Messers Mulindwa and Company, Advocates. Mr. Mulindwa appeared in court on behalf of the defendants. He however, later withdraw from the suit. In the defence, the defendants stated that the registered owner of the property at plot 18 Grant Street was Badru Jjumba Mugerwa who during all material times, resided in the United States of America. The defendants denied any knowledge of breaking into the plaintiffs, structure and taking away his merchandise. On the contrary, the defendants pleaded that the plaintiff of his own decision, following a request to do so, did remove his own goods from his shop in order to allow the defendants carry out repairs and renovations. The defendants also pleaded that the goods, which the plaintiff removed from his shop, were of such inferior quality and quantity that they could

not be of the value of shs. 10, 875,000/ as claimed by the plaintiff in his plaint.

This case had remained on the court register for a very long time. The defendants found good excuse in the fact that Badru Jjumba Mugerwa was residing in the United States Of America as did the third defendant. The second defendant who, was the father of the first and third defendants claimed that he had lost contact with both the first and third defendants. Court, however, eventually ordered that since Mr. Mulindwa was representing all the defendants the plaintiff would present his case.

ISSUES:

Only two issues were agreed upon for determination. They are:-

- a) whether the defendants evicted the plaintiff and took away his merchandise; and
- b) whether the plaintiff is entitled to the reliefs he seeks in the plaint.

Whether The Defendants Evicted The Plaintiff And Took Away His Property.

The plaintiff gave evidence as PW1. He appeared in person as the plaintiff. He called Zaina Muwonge, PW2 and Kusaini Lwese, PW3, to support his evidence. He also presented PW4, Mayanja Charles, whose only evidence was to show that the plaintiff had been a tenant of the

Departed Asians Property Custodian Board and used to pay rent to the Board through the law firm of Messers Matovu and Kamugunda Advocates, in which PW4 was a law clerk.

The case for the plaintiff as born out by the evidence given by him and his three witness was that on 7th August, 2001, when his business premises were entered and his merchandise removed he was not present. On 8th he went to those premises only to find the 2nd and 3rd defendants in his shop. He had not previously received any notice requiring him to move away and give way to renovations. But PW2, who was an RDC, Rakai District received a telephone call from the plaintiff who was her brother. The plaintiff reported to PW2 that his shop had been broken into and all his merchandise taken away. PW2 contracted her RDC counter part at Masaka. She was Rose Mutonyi at the time. The two RDCs went to the plaintiff's shop. They met the 2nd defendant at the shop who told PW2 that the plaintiff being a poor man could not proceed with the defendants who were rich persons.

PW3, who was a Total Pertol Station attendant just opposite plot 18, grant street. On 7th August 2001, he saw the 3rd defendant at about 10.00 a.m, come to the plaintiff's shop with two mechanics who cut the lock off the plaintiff's shop. The two mechanics together with the 3rd defendant ferried the merchandise from the shop. Later the 3rd defendant brought a vehicle (Fuso lorry) and

took away the merchandise. The plaintiff was not at the shop that day.

The only evidence for the defence was given by the 3rd defendant. He appears on record as DW1. He denied knowledge of the case stated it was his two sons and the plaintiff who were involved in the transaction.

From the evidence on record especially that of PW1, PW2 and PW3, court is satisfied that the plaintiff was a tenant operating some kind of shop at plot 18, Grant Street and that his shop was closed by the third defendant on 7th August, 2001 and all his merchandise taken away by the third defendant. Court found all the three witness credible witnesses in that regard.

The second defendant's denial of knowledge about the case is a mere attempt to escape liability. He was the one who told RDC Zaina Muwonge that the plaintiff, being a poor man, could proceed against him and his sons who were rich persons. In any case, it is Hajji Mugerwa who, all along been in charge of the property.

Court would, therefore, answer the first issue in the affirmative.

Whether The Plaintiff Is Entitled To The Relief He Seeks.

The plaintiff sought an order for special damages as below:-

- shs. 846,000/= compensation for construction carried out by him;
- shs. 10,875,000/= being the monetary value of the merchandise removed from the shop; and
- shs. 100,000/= for replacing the log book.

The law relating to special damages remains that special damages must be both specifically pleaded and strictly proved. **Nordin Charamia Walji Vs. Drake Ssemakula, SC Civil Appeal No. 40 of 1995** (unreported). Whereas the plaintiff made efforts to plead the three sets of special damages he, nevertheless, made no similar efforts during the hearing of the case to prove his claims strictly or at all. The contents of both Annextures A and C to the plaint remain not strictly proved or even proved at all. Court cannot be certain that the items or their quantities were as specified in those annextures or that those items were in the plaintiff's shop on 7th August, 2007 and were removed by the defendants.

Accordingly, the three claims with regard to special damages fail for lack of strict proof.

With regard to general damages, court is satisfied that the plaintiff was and has since been very serious inconvenienced by the illegal actions of the third defendant in particular. There is no doubt that the

plaintiff in the circumstances under which the defendants placed him suffered mental anguish shame and humiliation, under which he has continued to live for a long time.

In those circumstances, court would award Shs. 7,000,000/= to the plaintiff as general damages against the second defendant. The award of general damages shall carry interest at 18% per annum, from the date of judgment till payment in full. The award is made against the second defendant in particular because he is the one resident in Uganda and is in charge of the property on behalf of his sons.

Court also thinks that the first defendants had no capacity to sue or be sued. The real defendant is Badru Mugerwa.

The plaintiff shall recover this costs of this suit from the second defendant.

V.F. Musoke-Kibuuka

(JUDGE)

12.10.12.