

**THE REPUBLIC OF UGANDA**

IN THE HIGH COURT OF UGANDA AT KAMPALA

**CIVIL SUIT NO. 621 OF 2007**

**CALEB ALAK**

**TRENATO KANIA t/a**

**ALAKA AND CO.**

**ADVOCATES :::::::::::PLAINTIFFS**

**VERSUS**

**METROPOLITAN PROPERTIES LTD:::**

**DEFENDANTS**

**BEFORE: HON JUSTICE KIBUUKA-MUSOKE**

**JUDGEMENT**

**Pleadings:-**

The plaintiff, both advocates of this court, sued the defendant for retinue and conversion and prayed court to grant them the following remedies:-

- a) Shs. 60,000,000/= for loss of earnings;
- b) Shs. 15,990,000/= as compensation for their damaged property;
- c) an order compelling the defendant to release the detained property;
- d) general damages for inconveniences suffered;

- e) aggravated damages;
- f) interest on the awards in paragraphs (a) and (b), above at the commercial bank rate of 28% p.a., from the date of the cause of action till payment in full;
- g) interest on the awards in paragraph (d) and (e) above at court rate, from the date of judgment till payment in full; and
- h) costs of this suit.

In its written statement of defence and counter-claim, the defendant denied the plaintiffs' claim and insisted that the plaintiffs owed it a sum of Shs. 6,729,000/=. It averred that the money arose as a result of the plaintiff's failure to give the defendant a 3 months' notice before terminating their tenancy with the defendant. In reply to the defence, the plaintiffs re-affirmed their claim under the plaint and denied the counter-claim. At the time of hearing the case, the plaintiffs relied solely on the evidence of Mr. Caleb Alaka (PW1).

### **Plaintiff's Case.**

Briefly, Mr. Alaka's testimony was that In January, 2005, he and his partner, Mr. Renato Kania were

practicing law as Alaka & Co. Advocates. They entered into a tenancy agreement with the defendant. Under that tenancy agreement they rented the defendant's rooms at Metropole House along Entebbe Road, for a period of 3 years for their law chambers. The rooms were on the 5<sup>th</sup> Floor of the building. The plaintiffs did their business, at the suit premises, normally until they felt they needed to move somewhere else.

On 30<sup>th</sup> April, 2007, as per tenancy agreement, they claim to have served 3 months written notice upon the Managing Director of the defendant indicating their desire to terminate the tenancy. The managing Director denies that any notice was ever served upon him. They intended to vacate the suit premises on 30<sup>th</sup> August 2007. However, because that day fell on a working day, the plaintiffs did not wish to interrupt other tenants' businesses at the suit premises. For that reason, they decided and negotiated to vacate their place of work the following week-end on Saturday 4<sup>th</sup> August, 2007. On that day, the plaintiff's employees and agents collected all their masters'

property and took it down stairs near the entrance. They heaped them in boxes, ready for final transfer to their new place of work at Kamu Kamu Plaza. At this point, the defendant's Property Manager Khamis Issa Ddimba, DW1, came and stopped the plaintiff's employees and agents from taking away the property.

When Mr. Alak got wind of what had happened, he quickly went to the scene. He learnt that Mr. Ddimba had stopped the exercise because he alleged that the plaintiffs had not given the defendant a three months' notice to vacate. Much as Mr. Alaka pointed out that the plaintiffs had served the requisite Mr. Ddimba refused to listen. Mr. Ddimba and the defendant's other agents, then, decided to ferry back all the plaintiffs' property to the fifth floor and locked it up.

On 6<sup>th</sup> August, 2008, Mr. Alaka talked to the Managing Director of the defendant, Mr. Somani Haider, DW3, with a view of sorting out the matter amicably. He produced evidence that the plaintiff did not owe the defendant any rent arrears. Mr.

Alaka further pleaded with the M.D. to allow him to access the plaintiff locked up property. He wanted to show him that the plaintiffs had duly served the defendant with a three months' notice to vacate the suit premises. Mr. Haider refused to grant Mr. Alaka's request. The defendant stuck to retaining the plaintiffs' properties. In turn, Mr. Alaka reported the matter to police. In December 2007, the plaintiffs' decided to file a Civil Suit against the defendant.

### **Defence Case**

To support their defence and the counter-claim, the defendant led evidence from Messrs Khamis Issa Ddimba, DW1, Kisalita Peter, DW2, and Somani Haider, DW3.

In brief the three witnesses testimony boiled down to this:-

The plaintiffs' suit had no merit. This was because the plaintiffs' breached the tenancy agreement for the suit premises. They did so by failing to give

the defendant a three months notice before terminating the tenancy in question. As a result, the defendant was justified in holding the plaintiffs' property as security for the payment of a sum of Shs. 6,729,000/= in lieu of the notice to terminate the tenancy. In addition, the defendant's witnesses denied that they damaged any of the plaintiffs' property.

The parties also to the following facts:-

1. that the plaintiffs' were the defendant's tenants for the suit premises from 2<sup>nd</sup> January, 2005 to 4<sup>th</sup> August, 2007; and
2. that the defendant stopped the plaintiffs from taking away their property from the suit premises on 4<sup>th</sup> August, 2007

The parties herein also agreed to admit the following documents:-

1. a ledger account for rent from the plaintiffs exhibit P.1.
2. receipts for furniture etc, exh. P.2. to P.6; and
3. the tenancy agreement in question, exh. D.1.

In addition, the parties agreed upon four issues for determination by court. After hearing the evidence however, court thinks that it would easily resolve the entire dispute under only 3 of those issues namely:-

1. Whether the defendant was justified to retain the plaintiffs' property
2. Whether the plaintiff suffered any loss and damages; and
3. What remedies are available to the parties?

Accordingly, court has, under Order XV rule 5, of the Civil Procedure Rules, amended the issues as indicated above. **Odd jobs Vs. Mubia [1970] and Victoria Tea Estate Vs. James Bensa & another SCCA No. 49/96.** Court will now deal with the issues in the order in which they are presented.

### **FIRST ISSUE:**

**Whether The Defendants Was Justified To Retain The Plaintiffs' Property.**

According to the plaintiffs' witness, Mr. Alaka, the defendant was not justified to retain the property in question. This was so because the plaintiffs had, by 30<sup>th</sup> July, 2007, fulfilled all their obligations under the tenancy agreement Exh D1. For example, they had given the defendant the three months' written notice to vacate the suit premises. They did not owe the defendant a coin in terms of rent for the suit premises.

The defendant's version was different. It believed that it was justified to retain the plaintiffs property. As far as it was concerned, the plaintiffs did not give it a three months' notice before they sought to terminate the tenancy in question on 30<sup>th</sup> July, 2007.

From the evidence on record, it seems to be undisputed that up to this day there are certain properties that the defendant has not yet returned to the plaintiff. In his evidence Mr. Alaka pointed out, time and again, that those properties included the plaintiffs' administrative file in which they kept important documents such of their copy of the



three months notice which they claim to have given to the defendant before terminating the tenancy in question.

Much as the defendant's witnesses denied having received the above notice, their denial seemed to be unconvincing. For, it did not shake or contradict Mr. Alaka's very firm and consistent testimony that the plaintiffs gave the defendant the requisite three months' notice to terminate the tenancy in question. Indeed, one might even say that the probable reason why the refused defendant to release the plaintiffs' documents was that those documents would clearly contract its case in as far as whether the plaintiffs had given the requisite notice or not. Indeed, the plaintiffs were lawyers. Matters to do with tenancy agreements were very well known to them because they deal with them on daily basis. There is no reason given to why the plaintiffs would have wished to escape from the premises secretly, without giving the requisite notice to their landlord. In any case their intended new premises were a stone's throw away from the suit property.

Even if there was any credible reason on claim the defendant wished to lay against the plaintiffs' it cannot say it would not find them subsequent to their departure.

It is, indeed, trite law that in an action for detinue or wrongful retention of the possession of any chattel or chattel, in order to succeed, the plaintiff must prove two basic elements, namely,

- that the plaintiff was entitled to immediate possession of the chattel and, if there is any defect on his or her right, to possession he or she must fail; and
- that the defendant detained the chattel after demand had been made for its restoration by the plaintiff.

See ***Bishops Gate Motor Finance Corporation Ltd. Vs. Transport Brakes Ltd. [1949] 1 All ER37 and Charles Douglas Cullen Vs. Porsron And Hansraj [1962] E.A. 159.***

There is no doubt at all, in the mind of court upon the evidence on record, that those two elements were duly met by plaintiffs in the instant case.

For the above reasons, therefore, court is satisfied that the plaintiffs proved, on a balance of probabilities that they served the defendant with the requisite notice of those months before they sought to vacate the suit premises. Court is equally satisfied that the plaintiffs did not owe the defendant any money in unpaid rent. Indeed, the defendant failed to lead any evidence their claim in the counter claim.

It follows that the defendant was not justified to retain the plaintiff property after the requisite notice had been served and the plaintiffs had cleared all rent dues and other charge by the time they sought to vacate the suit premises.

Court, accordingly, resolves the first issue in favour of the plaintiffs.

## **SECOND ISSUE**

### **Whether The Plaintiff Suffered Any Loss And Damage**

In his evidence Mr. Alaka, PW1 pointed out that the plaintiffs suffered loss in that they were unable to go about their business for a very long time. This was mainly because the defendant had unduly retained most of the plaintiffs' tools of trade e.g. chairs, desks, law books, computers, important documents such as court files, wills and even their professional attire. Mr. Alaka further testified that some of the plaintiffs' furniture and computers were damaged as they were thrown about carelessly by the defendant's agent and were not properly kept.

Mr. Alaka also lamented that their reputation, as advocates, was seriously dented during the whole saga. Some of their client, whose wills or court files were retained decided to report them to the Law Council. In that respect, Mr. Alaka explained that they became some kind of laughing stock among their colleagues and the general public.

The defendant did not directly or to any degree, deny those claims. Indeed, court understood their defence, in this area, to be one of justification. For, if in their opinion, the plaintiffs were in breach of the

tenancy agreement by failing to give the requisite notice before termination then, they could not be heard to complain of the consequences of that breach.

However, since court resolved the first issue by making a finding that the plaintiffs had proved, upon the balance of probabilities, that they gave the defendant the requisite notice, it means, that the defendant was not justified to detain the plaintiffs' property. There was no jurisdiction at all.

The defendant made no attempt to dispute the plaintiffs' evidence that they suffered loss and damage. The plaintiffs' evidence stands unchallenged. Court is satisfied that the plaintiffs proved, upon the balance of probabilities, that they suffered loss and damage. Court, answers issue number two in favour of the plaintiffs.

### **THIRD ISSUE**

#### **What Remedies Are Available To The Parties**

Since the first two issues have been determined in favour of the plaintiffs', it means that the plaintiffs'

suit has succeeded and the defendant's counter - claim has failed. The counter claim must be and is, indeed, dismissed.

The plaintiffs made the following claims reliefs:-

**(a) Loss Of Earnings Of Shs. 60,000,000/=**

In their pleadings, the plaintiff claimed Shs. 60,000,000/= as special damages for loss of earnings. As a rule, special damages must be specifically pleaded and strictly proved. **Ratcliffe Vs. Evans (1892) 2 QB. 24 And Nordin Chorania Walji Vs. Drake Ssemakula SCCA No. 40/1995** (unreported). However, court agrees that strict proof does not necessarily always require documentary evidence. With respect, I agree with the observation by this court per **Mwondha J. in Kyambadde Vs. Mpigi Adm. (1983) HCB 44, to that effect.**

In his evidence Mr. Alaka testified that the plaintiffs lost earnings of Shs. 60m/= between 4<sup>th</sup> August and 4<sup>th</sup> December, 2007. He explained that their firm of experienced advocates would make between shs. 2m to 4m/= per day. However, he pointed out that

their audited books of accounts which would show the above earnings were among some of the documents the defendants refused to release to them.

The defendant did not challenge Mr. Alaka's evidence in that regard. However, court could not quite understand the mathematics behind the figure of shs. 60m/=. The period of loss according to the pleadings was between 4<sup>th</sup> August to 6<sup>th</sup> December, 2007. That is a total of about 90 working days. If the loss was shs. 2,000,000/= per day, as was pleaded then the loss would be shs. 180,000,000/= and not shs. 60/=m. It is clear that the rule of strictly proving special damages would close the door in the face of the plaintiffs in this case no award can be made to them as special damages upon that evidence and none is made to them.

**(b) Shs. 15,990,000/= as compensation For Damaged Property**

In his evidence Mr. Alaka testified that, among other things, the following properties were broken while being handled by the defendant:-

- (i) 3 large desks valued at Shs. 3,600,000/=
- (ii) 2 book shelves, glass was broken; and
- (iii) An aquarium, with ornamental fish, valued at Shs. 1,570,000/=

Although the defendant did not specifically deny the above evidence, court has failed to see how the plaintiffs attached the figure of shs. 15,990,000/= to those properties. Court will therefore, allow the plaintiffs' to recover a total sum of only Shs. 7,170,000/= under this claim. Shs. 3,600,000/= is in respect of 3 large office desks, Shs. 1,570,000/= for the aquarium and Shs. 2,000,000/= for two books shelves. The plaintiffs did not strictly prove the rest of their claims to make up the figure of Shs. 15,990,000/=

**(c) An Order Compelling The Defendant To Release Plaintiffs' Property That It has Unlawfully Detained.**

According to Mr. Alaka, up to date the defendant still retains a number of the plaintiffs' properties e.g. a set of Subsidiary Laws of Uganda, 2000 Revised



Edition, 3 Books, 3 computers, a multiplicity of documents, etc. The defendant witnesses did not deny the evidence that Mr. Alaka gave in that regard.

Consequently, court is satisfied that the plaintiffs proved on a balance of probabilities that the defendant still retain of the plaintiffs' properties. Therefore, it issues the order sought by the plaintiffs in that regard.

**(d) General Damages For Inconvenience Suffered:-**

Mr. Alaka testified that because of the illegal acts that the defendant committed in August, 2007, the plaintiffs' were not able to settle down and carry out their legal business properly until December, 2007. they lacked the necessary tools e.g. furniture, equipment, law books, stored information in the computers and a variety of documents.

As a result of the foregoing, some of the plaintiffs clients e.g. Messes Asinga Onapito Ekomoloit and Aniku Toto decided to drag the plaintiff to the Law Council. The defendant witnesses did not deny or contradict the plaintiffs' evidence set out above.

Court, therefore, is satisfied that the plaintiffs proved upon the balance of probabilities, that they suffered tremendous inconveniences as a result of the defendant's illegal act of detaining their property.

Considering all, the factors circumstances, court thinks that a sum of Shs. 60m/= is the right award to atone such prolonged disruption, professional embarrassment, humiliation and general inconveniences. That sum is awarded to the plaintiffs.

(e) **Aggravated Damages**

The plaintiffs prayed for aggravated damages. There appears to be, in law, a distinction between aggravated damages and exemplary or punitive damages. The latter are punitive in nature and are awarded where the evidence shows that the defendant has acted in unconstitutionally, oppressively or in a high-handed manner. They are more often thought not exclusively awarded against the conduct of governmental or public officers. They are purely punitive. **See Rookes Vs. Bernartd**

**(1964) A.C. 1128 And John Ngura Vs. AG, HCCS No. 50 of 1980** as per Allen J, as he then was.

Aggravated damages, on the other hand, although the principles upon which they are awarded are more or less the same as exemplary or punitive damages, are by nature not entirely punitive. They are awarded over and above the ordinary compensatory damages where the evidence shows arbitrary, oppressive, reckless or wanton conduct. The authorities of the **Supreme Court Of Uganda in Esso Standard (U) Ltd. Civil Appeal No. 3 of 1993** (unreported) and **Bank of Uganda Vs. Betty Tinkamanyirte, Civil Appeal No. 12 of 2007** (unreported) in which the supreme court held to the effect in cases of breach of contract or unlawful dismissed, the appropriate method of showing court's disapproval would be by awarding aggravated damages and not punitive or exemplary damages, clearly show the essential different between the two court reliefs.

In the instant case, the records bears out the glaring fact that the defendant acted in an illegal, arbitrary

and oppressive manner, when it detained the plaintiffs' properties and tools of their trade and persisted for a very long time upon its refusal to release them. Indeed such high handedness require some firm redness so that other land-lords would pick hint. Considering all the facts and circumstances, court awards Shs. 6,000,000/= to the plaintiffs as aggravated damages in this case.

#### **(f) Interest**

Court grants the plaintiff interest on the awards in items (b), (d) and (e), above at 8% per annum, from the date of judgment until payment in full

#### **(g) Costs**

The defendant will bear the costs of the suit and defending the counter-claim.

#### **RESULT**

Judgment is entered in favour of the plaintiffs against the defendant. The following orders are made:-

- a) an order dismissing the defendant's counter-claim
- b) an order awarding Shs. 7,170,000/= to the plaintiffs as special damages;
- c) an order awarding Shs. 60,000,000/= as general damages
- d) an order awarding Shs. 6,000,000/= as aggravates damages;
- e) an order awarding interest on (b), (c) and (d), above, at 8% per annum, from the date of judgment to the date of payment in full; and
- f) an order awarding the costs of this suit to the plaintiffs.

**V.F. Musoke-Kibuuka**

**(JUDGE)**

**24/04/2012**

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