

**+THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[LAND DIVISION]**

**CIVIL SUIT NO. 470 OF 2011**

**MAURICE PETER KAGIMU KIWANUKA ::::::::::::::::::::::::::::::: PLAINTIFF**

**VERSUS**

**AMON BAZIRA ::: DEFENDANT**

**BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO**

**JUDGMENT**

The Plaintiff **Maurice Peter Kagimu Kiwanuka** brought this suit against the Defendant **Amon Bazira** for payment of General Damages, for breach of contract and negligence; an order that the Defendant pays to the Plaintiff the sum of money adequate to repair/renovate/restore the suit premises to the original state or tenantable state acceptable to the Plaintiff; an order to vacate the suit premises and vacant possession thereof; in the alternative, an order for eviction of the Defendant from the suit premises; payment of mesne profits or any rent arrears at the date of vacating or eviction; interest at the rate of 35% per annum and costs of the suit.

The brief facts giving rise to the cause of action can be summarised as follows:-

The Plaintiff is a registered proprietor of the two residential houses on Plots 537 and 538 at Wagaba Zone, Kabuusu, Rubaga Division. On 12/6/2009 the Plaintiff executed a Tenancy Agreement with the Defendant in respect of the above houses. They were to be used for residential and commercial purposes.

Both parties agreed at Shs.1,000,000/= (shillings one million) as monthly rent for each house payable 3 months in advance and in any case not later than 21 days from the due date.

The Plaintiff allowed the Defendant to retain rent for 4 months for the necessary repairs of the two houses. The Defendant effected major modifications without approval or consent of the Plaintiff and in the process caused extensive damages to the suit houses. The Defendant also defaulted in the payment of rent and gave the Plaintiff unwarranted begging and hustling to receive the rent. The damage caused required huge sums of money to restore the premises to their original tenantable state assessed by a quantity surveyors. The Defendant was notified to pay for the damages and vacate the premises but ignored. Hence this suit.

The Defendant was served with the Court process as per affidavit of service but refused and or neglected to file a defence within the statutory period required by law. The Plaintiff applied for and obtained default judgment against the Defendant on 13/3/2012 having got satisfied that the Defendant was duly served and that this is not a matter where the Defendant would be allowed to proceed under **Order 9 Rule .... of the Civil Procedure Rules** as if a defence had been filed.

Accordingly, the matter was fixed for formal proof with the following issues for determination:-

***(1) Whether the Defendant was negligent in effecting major modifications on the two suit premises.***

***(2) Whether the Defendant breached the contract.***

***(3) Whether the Plaintiff is entitled to the remedies sought in the plaint.***

**Issue No. I: Whether the Defendant was negligent in effecting the modification on the two houses.**

It is trite law that, the burden of proof is on whoever alleges the existence of a fact to prove it on the balance of probabilities in order to secure a judgment of Court.

The Plaintiff pleaded and testified that the two (2) suit houses were in a very good and tenable state before letting them to the Defendant. He relied on a photograph which was admitted as **exhibit P<sub>4</sub>**. The said photograph depicts the 2 (two) suit houses as beautiful, clean and tidy in an attractive tenable state before they were let to the Defendant.

The Plaintiff testified that both houses were of the same design. He testified that the Defendant was expected to effect minor repairs on the house at Plot 537 by way of painting and on house at Plot 538 by replacing the internal ceiling and painting. The said works were funded by the Plaintiff by allowing the Defendant to retain 4 months' rent. The Plaintiff testified that the Defendant without the consent, knowledge and approval of the Plaintiff, effected major and extensive modifications on both houses by breaking the walls, removing the original doors, leaving many gaping holes in the main houses and servants quarters. The Defendant also extensively damaged the internal walls of both houses and converted some bedroom into toilets and urinals. He built inside extra walls without a formal approved design and removed the roofing tiles on many rooms of the main houses and boys' quarters and never replaced them back. The gaping holes in the roofs made the suit houses prone to damage by weather vagaries. Furthermore, the Defendant put up wooden structures in form

of huts, in the compound thatched with grass. The Defendant also turned the suit houses into lodges for prostitutes to do their trade therein and the compound as resting bars by the patrons.

It was further testified by the Plaintiff that the Defendant turned some of the servants' quarters into dog kennels for his dogs (**exhibit P<sub>5</sub>**).

Lastly the Plaintiff testified that both house were in appalling state and shambles. That the suit houses were extensively damaged with some rooms being used as rubbish pits for dumping all the used materials by the patrons.

In light of above overwhelming evidence, I am satisfied that there were modifications of the houses and that the houses were extensively damaged and abused by the Defendant. I accordingly find that the Plaintiff has proved to the satisfaction of the Court that the Defendant was negligent contrary to the terms in paragraph 4 and close 1 (c) of the Tenancy Agreement.

### **Issue No. 2: Whether the Defendant breached:**

In his evidence, the Plaintiff stated inter alia that he executed a Tenancy Agreement with the Defendant (**exhibit P<sub>1</sub>**) on 12/6/2009 for a duration of ten years whereof he let out his two houses for residential and commercial purposes at a monthly rent of Shs.1,000,000/= for each house totalling Shs.2,000,000/= payable 3 months in advance and in any case not later than 21 days from the due date.

The Plaintiff testified that the Defendant breached the Tenancy Agreement as provided by paragraph 4 and close 1 (c) of the agreement by not paying rent on time. The Plaintiff had to force the Defendant to pay him after a long period of

default beyond the due date and even long after the expiry of the grace period of 21 days. That the Defendant issued to the Plaintiff bounced Cheque which led him to refer the matter to the Police for the arrest of the Defendant. It was at the Police that the Defendant paid off the rent arrears. The Defendant used to give the Plaintiff endless and empty promises to pay the rent to no avail. The above circumstances clearly show that the Defendant was in breach of the agreement. In **Nakawa Trading Company Limited v Coffee Marketing Board, HCCS 137 of 1991, Byamugisha J.** (as she then was) held that a breach of contract occurs where one or both parties fail to fulfil the obligations imposed by the terms of the contract.

In the instant case, the Defendant failed to pay the rent according to the terms embedded in paragraph 4 and close 1 (a) of the agreement thereby breaching the contract.

In the premises, I resolve the above issue in the affirmative.

**Issue No.3: Whether the Plaintiff is entitled to the reliefs sought in the plaint.**

**(a) General damages for negligence.**

General Damages is one which Court may award without pointing out any measure by which they are to be assessed basing on the opinion and judgment of a reasonable man: See: **Hajji Asuman Mutekanga v Equator Growers (U) Ltd, SCCA No. 7 of 1995.**

In the instant case, it was the Plaintiff's evidence that the Defendant effected unapproved extensive modifications which led to very serious damages on the

two suit houses rendering them dilapidated and unfit for human occupation. That, the Defendant allowed his workmen to demolish the walls, remove roof tiles, disorganise the electric wiring system, converted some rooms into urinals and toilets and many other unwarranted activities which must be paid for by way of damages. Under the law, negligence arises where the Defendant who owes a duty of care to the Plaintiff breaches that duty of care: See **Donoghue v Stevenson (1932) A. C. 562**.

In the instant case the Plaintiff claimed general damages in the tune of Shs.30,000,000/= (Shillings thirty million). In my view the above sum is on the higher side and grossly unreasonable and unjustifiable. In my view a sum of Shs.5,000,000/= (Shillings five million) would be just and fair in the circumstance.

**(b) General Damages for breach of contract.**

In **Kabona Brothers Agencies v Uganda Metal products & Enamelling Company Limited (1981) HCB 74, Ouma J.** (as he then was) quoted the rule under which a Plaintiff may recover damages for breach of contract as was laid down in **Hedley v Baxendale (184301860) ALLER 461** as follows:

*“Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it.”*

In the instant case, it was the contention of the Plaintiff that by refusing to pay the reserved rent promptly and even after the 21 days grace period, and causing all the aforesaid hustles and inconveniences to the person of a stature of an Ambassador made the Plaintiff entitled to a reasonably very high damages. In the circumstances he prayed for a sum of Shs.30,000,000/= as damages for breach of contract.

As I observe on the issue of negligence, the claim of shs.30,000,000 for breach of contract is also on the higher side and unjustified in the circumstances. I would award Shs.5,000,000/= by way of damages in this item.

**(c) Payment for Repairs:**

The Plaintiff relied on the evidence of **Mr. Ciprian Ibolot Inyalat Pw<sub>2</sub>**, a quantity surveyor who carried out assessment of damages which were occasioned by the Defendant on the two houses. The report of the assessment was marked **exhibit P<sub>9</sub>**. He explained that he assessed the wear and tear and real damages done and the alterations to the structures. He testified that his work was to assess the damage to enable the houses to be put back to a rentable status. He went room by room and assessed all the rooms, all the illegal additions which were to be removed and the compound work and came out with a report showing the total cost of repairs at shs.146,118,500/=. The above report corroborated the Plaintiff's evidence on the nature and extent of the damages complained of by the Plaintiff. In my view the above report (**exhibit P<sub>9</sub>**) constituted a reasonable assessment of the costs of the damages done by the Defendant as the costs of repairs that would put the two houses back to a tenantable state. I therefore order the above sum to be paid by the Defendant to the Plaintiff so that the two houses are accordingly restored.

**(d)Eviction Order:**

It is a matter of common sense that the best remedy for a tenant who has eluded and ignored notices to vacate the premises after being sued is to evict him by an order of Court. The Defendant has been a very slippery tenant according to the evidence adduced by the Plaintiff. To save the Plaintiff from any further embarrassment it is ordered that the Defendant be evicted from the suit houses immediately. I so order.

**(e) Mesne profits:**

**Section 2 of the Civil Procedure Act** defines mesne profits as those which the person in wrongful possession of such property actually received or ought to have with ordinary diligence received form together with interest on such profits: See **Osofraco Limited v The Attorney General {2002} KALR 519.**

It is trite law that unpaid rent constitutes mesne profits: See **CLIFTON Securities Limited v Huntley & Others {1948} 1 ALL ER 283.**

In the instant case, the Plaintiff adduced evidence to the effect that the Defendant last paid rent for the month of December, 2011. That meant that the rent due is from January 2012 up to date. The rent reserved for the two houses was Shs.2,000,000/= per month. The above sum multiplied by the 4 months default would make a total sum of rent due at Shs.8,000,000/= (eight million).

In the premises, the Plaintiff is entitled to mesne profits at Shs.8,000,000/= (eight million only) subsequent his eviction.



**(f) Interest:**

The Plaintiff prayed for interest at the rate of 35% per annum. **Section 26 of the Civil Procedure Act** empowers Court to award interest on any claim before it.

In the instant case I would award interest at Court rate from the date of Judgment until payment in full.

**(g) Costs:**

Under **Section 27 of the Civil Procedure Act** Courts are empowered to award costs and costs follow events unless Court thinks otherwise. Since the matter was not defended I would award costs to the Plaintiff as prayed for.

In conclusion, Judgment is entered in favour of the Plaintiff in terms outlined above.

**HON. MR. JUSTICE RUBBY AWERI OPIO**

**JUDGE**

**26/4/2012**

**27/4/2012**

Mr. Kazibwe present.

Plaintiff absent.

**Judgment read in Chambers as in Open Court.**

**HON. MR. JUSTICE RUBBY AWERI OPIO**

**JUDGE**

**27/4/2012**

*/gmm.*