

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

CIVIL SUIT NO. 761 OF 2001

C. D. MINDRA ::: PLAINTIFF

VERSUS

ATTORNEY GENERAL ::: DEFENDANT

BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGMENT

The Plaintiff Mindra C. D. Sued the Attorney General in his representative capacity claiming special and general damages. The Plaintiff is a registered proprietor of a residential house comprised in Plot 87, Block 243 Luzira, Nakawa Division. By a tenancy agreement with the Ministry of Defence, the Plaintiff let the said house to the Ministry of Defence from 1st May 1998 to 30th June, 1999 at a monthly rent of Shs.700,000/= . The house was occupied by Major Jero Bwende (RIP), a senior UPDF Officer.

After the expiry of the tenancy, the occupant (Major Bwende) refused to vacate the house until he was evicted from the same on 30th June, 2000. The Defendant failed to pay the reserved rent at Shs.700,000/= per month. The occupant of the house did not pay water utility bills to the tune of Shs.3,529,871/=. In addition, the house was not left in a tenable condition which made the Plaintiff incur costs in renovating the same to the tune of Shs.4,000,000/= (four million only).

At the commencement of the hearing the following issues were agreed.

(1) Whether the Defendant breached the terms of the tenancy agreement.

(2) If so, whether the Plaintiff suffered any loss or damage as a result of the breach.

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

Resolution of Issues:

It was the Plaintiff who gave a sole testimony in his cause. The Defendant failed to adduce evidence neither did they file submissions in reply to that filed by Counsel for the Plaintiff.

Issue No. 1: Whether the Defendant breached the terms of the tenancy agreement.

It was the Plaintiff's evidence which was not disputed that on the 1st May 1998, the Plaintiff and the Ministry of Defence entered into a tenancy agreement in respect of the Plaintiff's house comprised in Plot 87, Block 243, Luzira, Nakawa Division. The tenancy agreement was adduced in evidence as **exhibit P₁**.

By clause 3 of that agreement, the tenant agreed with the landlord (Plaintiff) as follows:

- (a) To pay the rent reserved at the rate and in the manner spelt out in the agreement i.e. Shs.700,000/= (seven hundred thousand) per month payable yearly in advance.*
- (b) To pay all the charges for electricity and water consumed on the premises.*
- (c) To keep the interior of the premises and fittings therein and all the doors, window-glasses and electrical light fittings in good repair and condition as at commencement of the said term fair, tear and wear excepted and at the determination of the said term, to deliver up the premises to the land lord in good repair and condition as aforesaid.*
- (d) To permit the landlord or his agents at all reasonable times of the day during working hours with or without workmen or other to enter upon the premises and view the state of repair and condition thereof....*

In his evidence the Plaintiff testified inter alia that he was never paid the reserve rent by the Defendant. He stated that the tenancy was for one year from 1st May 1999 up to 30 June 1999. However, the Defendant held onto the house after the expiry of the tenancy until 30th June 2000. However before vacating the house, the Defendant vandalised the same as a result of which the Plaintiff had to incur a sum of Shs.4,000,000/= (four million only) on renovations and repairs. The invoices and receipts for money incurred in the renovations and repairs were tendered in evidence and marked **exhibit P₃**.

The Plaintiff also testified further that the Defendant vacated the demised premises and left unpaid water bill of Shs.3,529,871/= (three million five

hundred twenty nine thousand, eight hundred seventy one Shillings only). The water bill was tendered in evidence as **exhibit P₄**. Consequently the Plaintiff was harassed by the debt collectors as seen in **exhibit P₅** and his name was actually advertised in the New Vision Newspaper of 24/12/2000 (**exhibit P₆**). The Plaintiff testified that he was forced to make good the water bill by paying the same to National Water and Sewerage Corporation (**exhibit P₇**).

The Defendant failed and/or neglected to produce any evidence to controvert the Plaintiff's evidence. I accordingly find that the Defendant breached his tenancy agreement by not paying the reserve rent and failing to clear water bills which accumulated.

Issue No. II: Whether the Plaintiff suffered any loss or damage as a result of the breach.

The Plaintiff testified inter alia, that as a result of the breach of the tenancy agreement he suffered loss and damage as follows:

- (a) Unpaid rent from 1st May 1998 to 30th June, 2000 at a rate of Shs.700,000/= per month totalling Shs.18,200,000/= (eighteen million, two hundred thousand only).*
- (b) Shs.3,529,871 being money expended on clearing the unpaid water bill.*
- (c) Shs.4,000,000/= being money expended on renovations and repairs.*
- (d) Apart from the above monetary loss, the Plaintiff testified that he was put to great inconvenience by the Defendant. He had to visit the Ministry of Defence Headquarters several times over the issues. The Defendant put*

the Plaintiff in an anxious position by hanging on to the premises after the expiry of the agreement until 30/6/2000. The Plaintiff was even denied access to his own house and could not carry out any periodic inspections as envisaged in the tenancy agreement.

From the above overwhelming evidence it is clear that the acts of the Defendant did occasion monetary loss and damages to the Plaintiff. The Plaintiff suffered economic inconvenience and emotional loss.

ISSUE NO.3: Remedies available:

The Plaintiff sought the following remedies:-

(a) Special damages of Shs.25,729,871/=.

(b) Interest on above at 30% from 30/6/2000 until payment in full.

(c) General damages.

(d) Cost of the suit.

(e) Interest on the decretal amount at Court rate from the date of Judgment until payment in full.

SPECIAL DAMAGES:

As far as special damages is concerned, the Plaintiff adduced evidence to show that he incurred a sum of Shs.3,529,871/= to clear an outstanding water bill left unpaid by the Defendant. The Plaintiff also proved that he incurred a

further sum of Shs.4,000,000/= on repairs of the demised premises after it was vandalized and left in untenable state of repair.

The Plaintiff further claimed rent arrears for the period when the Defendant unlawfully stayed in occupation after the expiry of the tenancy agreement. The tenancy agreement was from 1st May 1998 to 30th June 1999. However, the Defendant stayed in unlawful occupation of the house until 30th June 1999 covering a period of 11 months. The law clearly allows the Plaintiff to recover rent from the Defendant for the extended 11 months. In **Christopher Sebuliba v Attorney General, Supreme Court Civil Appeal No. 13 of 1991**, the Supreme Court held inter alia that where a tenancy expires and the tenant continues in occupation, the landlord is entitled to be paid rent and such rent should reflect the market rental.

From the above holding of the Supreme Court, the Plaintiff is entitled to be paid his rent for the 11 months the Defendants held on to the house. The Plaintiff decided to recover the same at the rate in the tenancy agreement. In total the Defendant was in occupation of the house for 23 months making a total rent-arrears at Shs.18,200,000/=. When the above sum is added to the sum incurred in water utility bill and costs of renovation a sum of Shs.25,729,871/= is realised by way of special damages. I accordingly award the same to the Plaintiff.

General Damages:

General damages are those the law would presume to arise from direct natural or probable consequences of the act complained of by the victim. They follow the ordinary course and relate to all other items of damages. Whether pecuniary or non-pecuniary, general damages would include anticipated future

loss as well as damages for paid loss and suffering: See **Uganda Commercial Bank v Deo Kigozi {2002} IEA 293**.

The Plaintiff testified that the Defendants prevented him from checking on the ordinary condition of his house. He lost tenants because of the unpaid water bills. He was advertised in the New Vision Newspaper of 24/12/2000 as a water bill defaulter. The Plaintiff was forced to frequent the Defence Headquarters to assert his rights. All those were direct consequences of the Defendants breach of the tenancy agreement.

In his submissions, Counsel for the Plaintiff suggested a sum of Shs.10,000,000/= (ten million) as general damages. In my view a sum of Shs.5,000,000/= (five million only) would redress the Plaintiff.

Interest and Costs:

The law allows Court to award interest and costs to a successful litigant. See **Section 26 and 27 of the Civil Procedure Act** respectively: See **Sietco v Noble Builders (U) Ltd, Supreme Court Civil Appeal No. 31 of 1995**.

In the instant case I would award the Plaintiff interest on special damages at Court rate from 30th June 2001 until payment in full and interest on the decretal sum at Court rate from the date of judgment until payment in full. The Plaintiff is also entitled to costs of this suit.

HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGE

24/4/2012

27/4/2012

Both Counsel absent.

Court: The matter was cause listed. There are no reasons why parties are absent.

Judgment read in absentia.

HON. MR. JUSTICE RUBBY AWERI OPIO

JUDGE

27/4/2012.