

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT MASAKA**

**MISCELLANEOUS APPLICATION NO. 115 OF 2023**

**(ARISING FROM CIVIL SUIT NO. 049 OF 2023)**

**ATC UGANDA LTD ..... APPLICANT**

**VERSUS**

**KALINZI JULIAN ..... RESPONDENT**

**RULING**

*Hon. Lady Justice Victoria N. N. Katamba*

**BACKGROUND**

The Respondent instituted civil suit No. 49 of 2023 against the Applicant by way of a summary suit for an eviction order against the Applicant from Block 119 plot 77 land at Nakasenyi, Kikondeka village in Sembabule district. It is undisputed that the Respondent is the registered proprietor to this land and that 15 years ago, he leased it out to the Applicant's predecessor, Celtel Uganda Limited. The Applicant later acquired the lease from Celtel Uganda Limited by virtue of the agreement of the parties that permitted transfer of the lease to a 3<sup>rd</sup> party.

In his plaint filed on 11/05/2023, the Respondent stated that on 20<sup>th</sup> August 2009, he signed a lease agreement with Celtel (U) Ltd for land comprised in Mawogola Block 119 plot 77 at Kikinduka village for fifteen years. The Applicant further pleaded that it was the agreement of the parties that the lease period would be renewed for a further fifteen years, which option was to be exercised in writing by the lessee in no less than 3 months, prior to the expiry of the initial period.

The Applicant also pleaded that prior to the lease period coming to an end, his Advocates wrote to the Respondent on 02/02/2023 stating that since the latter had not exercised the option to renew the lease, it was required to vacate the suit land on or by 31<sup>st</sup> March 2023.

In its Application for leave to appear and defend the suit, the Applicant states that it has a *bonafide* defence to the summary suit. That the Respondent is seeking an eviction yet the Order under which his suit was brought provides for recovery of the suit.

The Applicant further states that it has a legal triable issue of whether this dispute that arises from the lease agreement in which is a requirement that disputes arising from it must be instituted before an arbitrator, is properly before this court.

### **Representation**

The Applicant was represented by **M/s KTA Advocates**.

The Respondent was on the other hand represented by **M/s Greystone Advocates**.

### **SUBMISSIONS FOR THE PARTIES.**

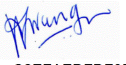
On the day of hearing, the parties made oral submissions through their respective Advocates and they have been considered in writing this Ruling. The details of the said submissions are on record.

### **DETERMINATION BY COURT.**

I have carefully considered the pleadings of the parties and their submissions and below are my findings on the issue for determination.

The Application was brought by way of *Notice of motion under Order 36 rules 3 and 4, Order 52 rules 1,2 and 3 of the Civil Procedure Rules and S.98 of the Civil Procedure Act.*

The facts and submissions raise one issue for determination;

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***Whether the Application discloses any triable issues to warrant grant of leave to appear and defend suit?***

The Applicant argued that its pleadings demonstrates a reasonable defence that raises triable issues which ought to be determined at the trial. In particular, the Applicant submitted that clause 16 of the lease agreement between the Respondent and the Applicant's predecessor in title provides that any dispute stemming from the agreement shall be referred to a single Arbitrator.

The Applicant contends that since the dispute was not referred to the said Arbitrator, the main suit is incompetent and that this Honourable Court does not have jurisdiction to try the matter.

The Applicant further argues that *Order 36 r2 (b) of the Civil Procedure rules* under which the suit was brought provides for recovery of land yet the Respondent instituted an action for eviction. The Applicant argues that the foregoing state of affairs, makes the suit to be improperly before this Honourable court.

Lastly, the Applicant also argued that since the parties were still negotiating on the terms for renewal of the lease, the suit was premature and brought in bad faith.

In reply, it was argued for the Respondent that the lease which expired on 07/03/2023 was no longer binding on the parties and that as such there was no need to file the dispute before an arbitrator.

On the aspect of ongoing negotiations over renewal of lease, the Respondent submitted that there are no such negotiations as the same were closed in an email correspondence with the Applicant dated 18/04/2024.

Regarding the order under which the suit was brought providing for recovery yet the suit that was brought seeks an eviction order, the Respondent argued that eviction is the end result of recovery of land.

In sum, the Respondent argued that the Application does not disclose any triable issue.

In rejoinder the Applicant maintained that this dispute stems from the lease agreement of the parties and thus had to be referred to an arbitrator. It also reiterated that its amenable to engaging in further negotiations as demonstrated in its conduct of attaching its draft agreement to the affidavit in support of the Application.

***Order 36 r 2 (b) of the Civil Procedure Rules, provides that all suits being actions for the recovery of land, with or without a claim for rent by a landlord against a tenant whose term has expired may at the option of the Plaintiff be brought by summary procedure and accompanied by an affidavit verifying the cause of action and that in the belief of the deponent to the affidavit, there is no defence to the suit.***

I am inclined to agree with the Respondent that when the lease agreement of the parties terminated on the 8<sup>th</sup> March 2023, the parties ceased to be bound by any of the terms of the said lease agreement. This also includes the clause of referring any dispute arising from or connected to the

lease agreement. Not even the clever, draftsman skill work, that is evident in clause 16 on the requirement for the parties to refer disputes on the agreement to arbitration, can keep the parties bound to an agreement, whose shelf life has come an end.

Moreover, the Applicant had an opportunity to exercise its right to renew the lease by communicating an intention to renew the lease three months before the expiry date but they either neglected or omitted to do so. I refer to clause 1.2 of the parties' lease agreement.

The Respondent attached annexure "A" dated 18<sup>th</sup> April 2023 to his affidavit in reply. This annexure is his Advocates' final communication to the Applicant that since the parties had failed to agree on the terms of payment, the negotiations had failed. I find it pointless that the Applicant should argue negotiation as a triable issue.

I understand negotiation to be the same as mediation. Neither mediation nor its outcomes, unless the same is court accredited, can ever be said to have any stretch of lawful authority over the parties. In the instant case, the negotiations clearly hit a dead end. This does not amount to a triable issue because by the time it was undertaken, the agreement had long expired and the Applicant had lost its opportunity to communicate an intention to renew the lease within the timeline set by the parties.

Lastly, as regards the *Order 36 r2(b) of the Civil Procedure Rules*, providing for recovery of land and not eviction, I do not find any substantive flaw in the use of the word eviction instead of recovery of land. I agree with the Respondent that just like graduation is the end result of a dedicated period of study, eviction is the end result of a suit diligently prosecuted for recovery of land.

In sum, the Respondent has barely disclosed any single triable issue to warrant a justification to be granted unconditional leave to appear and defend the main suit.

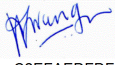
Accordingly, the leave sought to appear and defend the main suit is hereby denied. A default Judgment is accordingly entered in favor of the Respondent/Plaintiff in the main suit. The instant Application is dismissed with costs to the Respondent. The Applicant is also given a notice of eviction in this ruling. The eviction shall only take place after a six months' period from the date of delivery of this Ruling and the Decree of the Court in the main suit.

I so order.

Orders;

1. The Application for leave to appear and defend the main suit is hereby dismissed with costs to the Respondent.
2. A default Judgment is accordingly entered in the main suit for the Respondent/Plaintiff.

Dated this 09<sup>th</sup> day of April, 2024

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**HON. LADY JUSTICE VICTORIA NAKINTU NKWANGA KATAMBA**