

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO 765 OF 1994.**

**JAMES WILLIAM ISIKO t/a JWIS & CO. ::::::::::::::: PLAINTIFF**  
**VERSUS**  
**RAIMER ESTABLISHMENTS LTD ::::::::::::::: DEFENDANT**

**BEFORE: THE HON. LADY JUSTICE M.S.ARACH-AMOKO.**

**J U D G E M E N T.**

The Plaintiff is a certified Accountant, practicing under the name and style of JWIS & CO; the successor in title to P.K. Bahemuka & Co.

The Defendant is a limited liability company. The Plaintiff instituted this suit against the Defendant to recover:

- a) Shs 4, 700,000 as special damages
- b) General damages
- c) Costs
- d) Interest at the rate of 20% per annum..

In the plaint, the Plaintiff made the following allegations:-

By a tenancy agreement made on or about the 1<sup>st</sup> January, 1991 lasting 1 year, the Defendant let to the Plaintiff's predecessor in title, P.K. Bahemuka & Co., office premises in Geogiadis Chambers. After the expiry of the tenancy agreement, the Plaintiff continued to occupy the demised premises on the same terms as the expired agreement, with the exception of the rent, which was revised in 1993 to Shs 200,000 from Shs 170,000. The Defendant provided security guards for the whole building prior to the Plaintiff's tenure and continued to do so even during the Plaintiff's tenure. It was also an express and /or implied term of the tenancy agreement that the Defendant would keep the demised premises in good and tenantable repair condition.

On June 6<sup>th</sup>, 1994, thieves broke into the demised premises through the ceiling and stole the Plaintiff's properties. On June 14<sup>th</sup> 1994, the Plaintiff wrote to the Defendant to effect repairs on the damage caused by the thieves, but the Defendant never did so.

Quietly and without any warning to the Plaintiffs, and / or in breach of contract and /or to the Plaintiff's detriment, the Defendant wrote to Securico (U) ltd, on the 22<sup>nd</sup> September, 1994, discontinuing the services of the security guards upon the building in question.

Because the building was neither repaired nor guarded, thieves broke into the premises again on the night of 25<sup>th</sup> September, 1994, and stole the more of the Plaintiff's properties, particularised in the plaint amounting to Shs 4, 700,000.

They were:

a) 1 HP Vectra 486,25 MHz 4 MB RAM Computer (inclusive of all power cable	Shs 3,090,000
b) APC Smart UPS 600 VA	900,000
c) Voltage regulators	250,000
d) 5 desktop calculators	350,000
e) 1 box of black diskettes	40,000
f) power extension cables	40,000
g) wall clock	<u>25,000</u>
<b>TOTAL</b>	<b>- <u>4,700,000.</u></b>

The Plaintiff also alleged that he not only lost data, but he also lost the use of his data and equipment.

In its written statement of defence the Defendant admitted the tenancy agreement but denied the rest of the allegations in the plaint. The Defendant averred that the premises were managed by M/S Kasirye Byaruhanga & Co. Advocates on behalf of the registered proprietor, with effect from 1992. It prayed for the dismissal of the suit.

Five issues were agreed on for determination by the court:

- 1) Whether it was a term of the tenancy agreement that the Defendant would keep the premises in good and tenantable repair.
- 2) Whether the Defendant was supposed to provide security services for the premises.
- 3) If so, whether the Defendant breached any of the above.
- 4) If so, whether the Plaintiff's loss was due to the breach.
- 5) Reliefs, if any.

The Plaintiff was represented by Dr. Byamugisha, and Mr. Kiggundu appeared for the Defendant. They called one witness each.

Let me start with the first issue; that is, whether it was a term of the agreement that the Defendant would keep the premises in good and tenantable repair condition, or not. PW1, James Isiko testified that he had a tenancy agreement with the Defendant in respect of Plot 6, Geogiardis chambers, Kampala Road. He got the agreement from Kasirye & Byaruhanga and company Advocates, who were the agents of the Defendant. The agreement was between P.K. Bahemuka & Co. Certified Accountants their pre-decessor, and the Defendant. PW1 started his own practice in 1992. He kept the same premises and landlord. He notified the Defendant of the change in name. He tendered the Tenancy

agreement and the notice of change of name as Exhibits P1, 2 and 3. Clause 4 (b) of the agreement provided that:

“4. THE LANDLORD HEREBY COVENANTS WITH THE TENANT AS follows:

a) .....

b) To repair and keep the main structure and exterior of the demised premises including the main walls and ceilings in good and tenantable repair condition and to properly maintain drains down pipes and a water supply system during the term hereby demised”

The tenancy agreement describes the Defendant as the land lord and P.K. Bahemuka & Co, the pre-decessor as the Tenant. Clause 4 of the tenancy agreement is clear. The answer to the 1<sup>st</sup> issue is therefore in the affirmative.

The 2<sup>nd</sup> issue is, whether the Defendant was supposed to provide security for the premises. There is no express provision in the tenancy agreement that the Defendant would provide security for the premises. The Plaintiff also said so in his testimony. He testified however that this was implied in the revised terms of the tenancy agreement dated 26/8/93 (Exhibit P4) which provides among others, a service charge of 3% of the rent. PW1 stated that the service charge was to cater for cleanliness and security. The land lord provided security at

night by hiring night watchmen from one of the security companies. Mr. Kasirye (DW1) on the other hand testified that the 3% service charge was to cater for water, electricity and the caretaker/cleaner. That the tenants had no separate metres of electricity and water initially. That it is not correct that the service charge was initially meant to cater for security because each tenant, especially those on the ground floor had their own security guards. The only security guards for which they were responsible were at the Forex Bureau, which belonged to karim Hirji, the landlord. When he was shown a letter dated 22/9/94 (Exhibit P7) he admitted having written it. He said:

“This is a letter I wrote to Uganda Securico LTD, terminating their services. The guard service we had engaged at the Forex bureau had proved unreliable, as the guards were not reporting for duty in the evening.”

The letter does not refer to the Forex Bureau, but to Geogiadis chambers. It says:

“RE: DISCONTINUANCE OF GUARD SERVICES.

This is to formerly discontinue the relationship between your Agency and Geogiardis chambers.

Since the 5<sup>th</sup> September 1994 when a burglary took place on the premises occupied by Family Book Centre, we have observed the laxity of your guard service. Not only was our Burglary Report ignored by your management but even the guards have ceased to

appear in the evenings. Our Mr. Kasirye constantly checks the building between 8.30 p.m. and 10.00 p.m. to ascertain the presence of the guards. At no time is there a guard present.

We therefore request you to remove us from your list of clients and to refrain from billing us for no service rendered. We are filing a complaint at the central police station against the guards who were on duty on the night of the burglary.

Yours faithfully,"

Kasirye Byaruhanga & Co. Advocates."

The letter is addressed to the Uganda Securico Ltd., Sixth Street, Industrial Area, Kampala, for the attention of the OPERATIONS MANAGER.

Further on in the said letter, Mr. Kasirye stated:

"Our law firm relied on this company guard to give us a regular, report about the general Security of the building. This helped us to give account to the land lord"

Exhibit P 20 is another letter from PW1 to the General Manager, Securico LTD, dated 6/9/94. It says:

**RE: BURGLARY AT GEORGIAD'S CHAMBERS PLOT 6 KAMPALA ROAD.**

“ On the morning of 5<sup>th</sup> September, 1994 we reported a burglary upon the above premises at Family Book Centre. Your Operations Manager sent a Supervisor to assess the damage and loss. Subsequently the tenant has put in a claim of Shs 126,700/= in respect of this incident. We have received no plausible expression from your officials as to how the burglary took place while two (2) Securico Guards were on duty.

We wish to register a formal complaint about this matter and suspend all payments due until a report is given.

Yours faithfully

Kasirye Byaruhanga & Co. Advocates.”

One wonders why Kasirye Byaruhanga would then write to Uganda Securico LTD on behalf of Family Book Centre, if they were not responsible for security of the said building under the tenancy agreement; and if each tenant was responsible for his own security as Mr. Kasirye would like court to believe.

On the basis of the foregoing evidence, I find that the tenants at Geogiardis chambers, the Plaintiff inclusive, were paying service charge of 3%, which included the provision of security, and cleaning services. That the Defendant did provide the security through M/S Uganda Securico Ltd. When there was a



burglary at the Family Book Centre, the Defendant discontinued their services. The answer to the 2<sup>nd</sup> issue is also in the affirmative.

The third and fourth issues are whether the Defendant breached the agreement in respect of issues number one and two; if so, whether the Defendant's loss was due to the breach. The answer is again in the affirmative. He did not repair the ceiling where the thieves broke despite renewal reminders from PW1. In letters Exhibit D1 dated 12/9/94 for instance the Plaintiff said in part:

“ It is more than three months since we reported the burglary into our offices and we lost valuable equipment. On 14 June 1994 we specifically lodged in our dissatisfaction as to the delay in repairing the damage.”

The Defendant also breached the agreement in respect of providing security, to the building. The evidence on record shows that the Defendant's agents hired security guards who were lax and who ceased to appear in the evenings without notifying the Defendant. Mr. Kasirye the Defendant's agent who constantly checked the building between 8.30 PM and 10.00 PM did not find any guard on duty. Yet the Defendant did not take any step to replace the guards. The result of the Defendants breach to repair the building and to maintain guards at night led to the burglary of the Plaintiff's offices twice in one year. The Plaintiff's

loss is due to the said breach. If the building was properly maintained the burglars would not have got easy access into the building. PW1 testified that their offices were broken into, twice. On the night of the 6.6.94, the thieves gained access through the ceiling. They entered through the window leading outside where the window pane had been removed. When he discovered the breaking he lodged a complaint with Kasirye Byaruhanga & Co. Advocates. They did not effect repairs. Mr. Kasirye gave him a note to go and see Mr. Karim the land lord (Exhibit "P 6") the note is dated 8/6/94 and it says:

"Mr. Karim,

Re: Burglary At Plot 6 Kampala Road.

The bearers are your tenants whose premise were burgled and vandalised this week. Kindly attend to them".

Thieves broke into their offices again on 25/9/94 at night. They passed through the same broken ceiling and broken window pane, which had not been repaired. They took the computer, which PW1 had replaced, from the earlier theft together with other equipment. The Plaintiff lost the computer and all the data in it relating to client's records.

It is clear from the foregoing that if proper security guards had been provided, and if the building and in particular the ceiling and then windows replaced, the burglars would not have easily accessed the Plaintiff's offices.

Which brings me to the last issue, that is the Reliefs if any, available to the Plaintiff. The Plaintiff prayed for Shs 4,700,000. He produced receipts (Exhibits P 12 and P 13, P 14 and P 15) as evidence of purchase of the said equipments. The Defendant did not adduce any evidence to controvert them. The sum is therefore awarded to the Plaintiff.

The Plaintiff did not give evidence in respect to general damages apart from stating that he lost his office equipment and data. Dr. Byamugisha has not also addressed the issue in his submission. No award is made therefor.

In the result and for the foregoing reasons, judgement is entered against the Defendant in favour of the Plaintiff as follows:

- 1) Shs 4, 700,000 – special damages
- 2) Interest on (1) from date of filing till payment in full, at 20% p.a.
- 3) Costs of the suit.

M.S.ARACH-AMOKO  
JUDGE

6/3/02