

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

CIVIL SUIT NO.383 OF 2007

NABAGALA ANITAH:.....: PLAINTIFF

VERSUS

DRAKE LUBEGA:.....:DEFENDANT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

JUDGMENT:

The plaintiff Nabagala Anita through her lawyers M/s. Matovu and Matovu Advocates filed this suit against the defendant, Drake Lubega represented by M/s. Semuyaba Iga and Co. Advocates. The cause of action is for breach of tenancy, conversion, detention of goods, special damages, general damages as well as costs of the suit.

According to the Amended Complaint, the cause of action arose as follows:-

- (a) On about 25th October 2006, the plaintiff and defendant allegedly entered into an oral contract whereby the defendant agreed to rent out his premises located at Qualicel Bus Terminal No.1 for 1,050,000/= (one million fifty thousand shillings) per month. The plaintiff was required to pay three months on the opening of the tenancy and thereafter she would pay monthly.

- (b) The plaintiff avers that on 25th of October 2006, she paid a total of Ugs. 4.800.000= which she deposited on Account No. 0144070423700 provided by the defendant.
- (c) That in spite of being fully paid up as a tenant and without any color of right, the defendant by his agents locked up the plaintiff's premises thereby breaching the tenancy agreement.

The plaintiff outlined the particulars of breach of tenancy as:

- i. Locking up the plaintiff's premises which tenancy was subsisting.
- ii. Denying the plaintiff access to the premises while fully paid up as a tenancy subsists.(sic)

The plaintiff further avers that as a result of locking up the plaintiff's premises, the defendant took wrongful possession and control of the plaintiff's business and personal items which she used to run her restaurant namely:- Four crates of soda, Crates of beer, 50kg of maize flour, 2 fridges, one box of mineral water, a colored TV, table, chairs. Cutlery, cooker, filter, two warmers, toaster, blender, kettle, a sack of charcoal, flasks, saucepans, two gas cookers, two speakers, a chimney, empty jerrycans and empty crates of both beer and soda.

That the defendant has now removed the plaintiff's properties described above and taken them to an unknown location where they are now converted to his use, control and/or possession.

According to the plaintiff, the defendant is liable for unlawful possession, control and removal of the plaintiff's properties and occasioned loss of income and damages. Particulars of special damages were listed as;

- i) Loss of items in the restaurant valued at 30 million.
- ii) Loss of income for three months (in lieu) of notice 18.000.00/=.
- iii) Loss of income for two days at the rate of 200,000 per day --- 400,000.
- iv) Lost items of spoilt purchased perishables i.e. tomatoes, meat, chicken, oil, onions valued at 350, 000/=

The grand total for special damages is put at 48,750,000/=.

Consequently, the plaintiff prays that judgment be entered against the defendant for:

- a) A declaration that the defendant's actions were illegal.
- b) Interest at 25% on (c) and (e) from the date of breach of contract or conversion till payment in full.
- c) Special damages of 48.750.000/=.
- d) Punitive damages
- e) General damages
- f) Costs of the suit.

In their Written Statement of Defence and reply to the amended plaint, the defendant denies in toto the plaintiff's claims and avers that;

1. The defendant has never entered into a tenancy agreement with the plaintiff and has never received any money as a result from the plaintiff as alleged and the plaintiff shall be put to strict proof thereof.
2. The defendant contends that the plaintiff is not entitled to any of the damages prayed for.
3. The defendant contends that there is no cause of action disclosed against him by the plaintiff and would raise preliminary objection against the plaintiff's suit for being fatally defective for non disclosure of the cause of action at the trial.

At the commencement of the trial, three issues were framed for determination in this suit. These are:-

1. Whether the plaintiff entered into a tenancy agreement with the defendant.
2. Whether a tenancy agreement if any was breached.
3. Remedies.

At the same time two preliminary objections/points of law were raised as follows:-

1. That the plaint discloses no cause of action against the defendant.
2. That under S. 3 of the Contracts Act before it was repealed, no suit may be brought in a case such as this because the suit is based on the tenancy agreement since from the pleadings there is no evidence of a tenancy agreement.

Before I took over this case, the then presiding judge ruled that the objections were to be determined after all evidence had been received in court because the issues framed covered the objections.

After hearing this case and comprehending the sum total of the evidence adduced by both the plaintiff and defendant, I will go ahead and start by determining the preliminary points of law as promised before delving into determining the issues of the suit finally in case it will be necessary.

From the pleadings and evidence adduced by the plaintiff; it is apparent that her claim is based on a verbal tenancy agreement. PW1 Nabagala Anita confirmed this in her testimony when she stated that;

“I know the defendant Drake Lubega. I knew Drake Lubega when I was looking for premises to run a restaurant. On 25th October, 2006 I went to his office situated on street opposite the Old Tax Park. The office of Lubega has a label of ‘TESCO INTERNATIONAL’. I met the defendant in his office. I asked him for a place on his building. The building known as Qualicel Bus Terminal, he gave me a place on this building. We did not make an agreement in writing when he gave me a place, he gave me an account number on which to deposit the rent. I deposited the money on the said account. I first paid a month’s rent, and the account was in Crane bank in the name of Steven Kiyingi. I first paid 4.800.000/=. This was on 1st May 2007..... I do not have the original document. All my documents were locked up in the restaurant.....”

The law governing such contracts/ agreements was in the repealed Contracts Act Cap 73 which enacted under S. 3 thereof that:-

“S. 3(1) No suit shall be brought whereby to charge the defendant upon any special promise to answer for a debt, default or miscarriage of another person unless the agreement upon which the suit is brought or some memorandum or note of the agreement, is in writing and signed by the party to be charged with it or some other person lawfully authorized by him or her to sign it”.

By the wording of this section, it is apparent that it is mandatory to reduce an agreement like the one allegedly entered into between the plaintiff and the defendant into writing to found a basis for filing a suit in case of any breach thereof. No suit is maintainable in case of a tenancy agreement unless the same is in writing and signed by the party chargeable in this case the defendant.

Without appearing to imply that it happened between the plaintiff and the defendant herein, a mere demand for rent is not sufficient to create a relationship of Landlord and Tenant, which is a matter of contract assented to by both parties. If A finds B in occupation of his land and being quite willing to treat him as a tenant makes a demand for rent, the demand for rent is at most an offer of a tenancy and the tenancy is not necessarily constituted.

In the instant case, no terms/conditions of the alleged tenancy agreement are revealed. No consequences in case of breach are mentioned anywhere. The terms for payment of rent and the amount of rent are not written anywhere. According to the plaintiff, although she

was fully paid up as a tenant, the defendant by his agents locked up the plaintiff's premises thereby breaching the tenancy agreement. But the written tenancy agreement is non-existent and the date of reentry by the landlord is not disclosed.

In her prayers, the plaintiff also prays for interest of 25% on (c) and (e) from the date of breach of contract or conversion till payment in full. However a look at paragraphs 4(c) and 4(e) shows that the said claims cannot be liquidated to attract interest. This claim is therefore redundant.

Therefore apart from the suit being contrary to the law, all indications are that the plaintiff does not disclose any cause of action.

A cause of action is the heart of the complaint, which is a pleading which initiates a law suit. Without an adequately stated cause of action the plaintiff's case can be dismissed at the outset. It is not sufficient merely to state that certain events occurred that entitle a plaintiff to a relief. All the elements of each cause of action must be detailed in the complaint. The claims must be supported by facts, the law, and conclusions that flows from the application of the law to those facts.

Since the plaintiff's claim is prohibited by law, then this plaintiff discloses no cause of action under O. 7 r 11(a) & (d) of the Civil Procedure Rules, the plaintiff shall be rejected where it discloses no cause of action and/or where the suit appears from the statement in the plaintiff to be barred by any law.

I will consequently reject this plaintiff for having been filed contrary to S. 3 of the Contract Act.

With this conclusion, I need not write a judgment regarding the issues framed. Costs to the defendant.

Stephen Musota

J U D G E

26.03.2014