

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT No. 411 OF 2016
(Formerly Nakawa High Court Civil Suit No. 419 of 2014)

HENRY DUSHIIME ::::::::::::::::::::::::::::::::::: PLAINTIFF

Versus

LAKE SIDE COLLEGE LUZIRA ::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

JUDGMENT:

The facts giving rise to this suit are that on or about the 13th day of April 2001 the plaintiff entered into a tenancy agreement with the defendant where the plaintiff rented his house situate at Luzira known as Plot 2387 Block 243 Lake Side Ward that was to be used by the defendant as students' dormitories. Thereafter the defendant took possession of the building and security of the same upon the consent of both parties. That the monthly rent payable to the plaintiff was UGX.1,750,000/= per month subject to increment upon the consent of both parties. Unfortunately the premises caught fire and was extensively damaged.

However, by the time the plaintiff's building caught fire, the defendant was paying UGX.2,500,000/= as monthly rent. That on the 6th day of April 2010, the house caught fire and the same was extensively damaged during the tenancy of the defendant.

That by letter dated 10th November, 2010 the defendant denied any breach thereof but undertook to give the plaintiff UGX.30,000,000/= as a gesture of courtesy but gave him only UGX.17,000,000/=. That on the 20th day of February 2011 the plaintiff called his Engineers to assess the condition of the building before commencing the renovation.

Upon inspecting the premises the plaintiff was told that the building is no longer fit for human habitation and the bill of quantities for replacement of a new house and refurbishment of the adjacent premises was assessed at UGX.251,180,547/=.

The plaintiff demands the same from the defendant. The plaintiff avers that the defendant was in breach of the implied terms of the agreement by failing to keep the rented premises in a good and habitable state thereby subjecting the plaintiff to loss. That the plaintiff avers that the defendant paid him UGX.17,000,000/= as compensation which was not sufficient compensation.

The plaintiff therefore prays that Judgement be entered against the defendant in the following terms.

- i) *Payment in monetary value of the damaged house reflected in the bill of quantities and refurbishment of the adjacent premises.*
- ii) *General damages for breach of contract.*
- iii) *UGX.2,500,000 as loss of rent/income from 6th April 2010 till payment of the sum in i) above.*
- iv) *Interest of 25% per annum ii) above from the date of judgement till payment in full.*
- v) *Costs of the suit.*

On the other hand, the defendant in their written statement of defence briefly stated;

- i) *That the defendant shall aver that the plaintiff has no cause of action against her since the parties legal obligations under the said agreement had been extinguished on formation of a new agreement and the plaintiff shall be put to strict proof thereof.*
- ii) *That when the building caught fire most of the defendant's property was destroyed and that when a distress call was made to the fire brigade the fire was put out and police*

commenced investigations as to the cause of the fire and up to now the investigation report has never been furnished to the concerned parties.

- iii) That the defendant shall aver and contend that the said letter written to the plaintiff was so endorsed and delivered by the defendant and was received and accepted by the plaintiff in satisfaction and discharge of the plaintiff's claim.*
- iv) That the plaintiff accepted a payment of UGX.30,000,000/= to which the defendant part paid with the full consent and authority of the plaintiff as per annexure B to the defence.*
- v) That the defendant shall aver and contend that the plaintiff has never issued a cheque to the defendant as alleged.*

It is important to state that the defendant did not attend court hearing despite being served. The plaintiff was allowed to proceed exparte;

These were the issues raised by the parties for court's determination.

- 1. Whether there was a valid tenancy agreement between the plaintiff and the defendant.***
- 2. Whether the defendant breached the implied terms of keeping the plaintiff's premises in a good and habitable state.***
- 3. Remedies available to the parties.***

RESOLUTION OF THE ISSUES:

ISSUE ONE:

Whether there was a valid tenancy agreement between the plaintiff and the defendant:

Counsel for the respondent stated that the plaintiff entered a valid tenancy agreement with the defendant and the same was voluntary without duress. That PW1 Henry Dushime in paragraph 5 stated that on the 13th day of April 2001, the defendant entered a tenancy agreement with him where he rented his residential house to the defendant with the intention of using it as a hostel for students.

The plaintiff exhibited a tenancy agreement dated 13th April 2013 which was signed by him as the land lord and Mr. Paul Wadege who was the Head master of the school. That the defendant in paragraph 5 makes a general denial to the effect that the agreement had lapsed yet he was continuing to stay in the plaintiff's premises.

That based on the above evidence, the said agreement that was made was voluntarily entered by the parties and that there was a valid tenancy agreement between the plaintiff and the defendant.

Having looked at the above evidence, I will go ahead and resolve this issue.

It is undisputed that on or about the 13th day of April 2001 the plaintiff entered a tenancy agreement with the defendant with the purpose of renting his house to be used as a hostel for students. This is confirmed by Annexure "A" which is a memorandum of understanding between Henry Dushime who is the plaintiff and Mr. Paul Wadege who was the former Head master of the defendant school.

It is further provided in the agreement that as contained in one of the clauses that;

“Any party wishing to discontinue with this memorandum will give three months notice otherwise the agreement will be renewable every December every year and shall run from 1st January to December 31st of every year”.

This implies that on the 6th day of April 2010 when the premises caught fire, the tenancy agreement was still running between the plaintiff and the defendant because there is no evidence that the above contract was terminated by either party.

Therefore this issue is answered in the affirmative that there was a valid tenancy agreement between the plaintiff and the defendant.

ISSUE 2:

Whether the defendant breached the implied terms of keeping the plaintiff's premises in a good and habitable state:

On this issue, counsel for the plaintiff submitted that there are obligations the land lord and tenant have which may not be set down in the agreement but which are given by law and are implied into all tenancy agreements.

That one of these is to take proper care of the accommodation or premises of the landlord. That the defendant was obliged to keep the premises in a good habitable condition which was an implied term that the defendant failed to honour. That in absence of any natural causes like lightening having caused the fire, the defendant is in breach of the same.

It is true that there is an implied obligation to keep the premises in a good tenatable condition by the tenant. In this case, it is only mentioned by counsel for the plaintiff that the defendant failed to keep the premises in a good habitable condition but the wrong committed by the defendant for not keeping it in a good condition is not mentioned.

According to Annexure "B" which is a letter from the defendant to the plaintiff, paragraph 2 states that;

“when the matter was reported to police, together with the officials from the Ministry of works, investigations began into the possible causes of fire and the initial investigations suggest it was an act of arson and the arsonist may have taken advantage of the fact that the perimeter wall around the building was incomplete. It was further asserted that until the matter is thoroughly investigated and the case brought to a logical conclusion the school assumes and accepts no liability whatsoever”.

This implies that according to the initial investigations, the probable cause of the fire was because of an arsonist which act cannot be visited on the defendant and until the investigations are concluded should it be confirmed that the defendant was to blame for the fire which gutted the plaintiff's building.

Therefore this court finds that according to the initial investigation and evidence available, the defendant cannot be blamed for the fire that gutted the plaintiff's building since all sources point to an arsonist.

Furthermore, when the incident happened, the defendant through its Board of Governors made a decision to extend a helping hand and contribute towards the reconstruction of the plaintiff's building by paying a sum of UGX.30,000,000/= which money was to be paid to the plaintiff on a termly basis at a rate UGX.10,000,000 per term with effect from term I, 2010.

This offer was gladly welcomed by the plaintiff. According to one of the annexures as attached by the defendant dated 29th November 2010, the defendant accepted the schools contribution of UGX.30,000,000/=. Therefore the sum calculated by the Quantity Surveyor of UGX.251,180,517 /=- cannot be paid by the plaintiff since the investigations are still underway to establish the cause of fire.

The plaintiff also waived his right when he first accepted the defendant's contribution of UGX.30,000,000/=. Therefore he cannot turn around and claim for another sum of money which was not agreed upon by the parties.

ISSUE 3: REMEDIES:

Because this court has found that the investigations have not established that the defendant was blame worthy for the fire that gutted the building, the plaintiff cannot be granted any remedies as prayed by counsel for the plaintiff.

This suit is consequently dismissed with costs.

I so order.

Stephen Musota

J U D G E

14.11.2017

14.11.2017:-

Mr. Wakabala Herbert for plaintiff.

Plaintiff present.

Defendant absent.

Ms. Ejang Docus Clerk.

Mr. Wakabala:-

This matter is for judgment and we are ready to receive the same.

Court:-

Judgment read and delivered in open court. Right of Appeal explained.

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Sarah Langa Siu

DEPUTY REGISTRAR

14.11.2017

JUDGMENT