

THE REPUBLIC OF UGANDA
IN THE HIGH COURT HOLDEN AT MASINDI
CIVIL SUIT NO. 14 OF 2018

VICTORIA EQUIPMENT ::::::::::: PLAINTIFF/COUNTER RESPONDENT

VERSUS

1. ANADAN AMYAN AMARASHIBHAI

2. ANDANIS AHILKUMAR AMARAHIBHAI

**3. HENRY MUGANWA KAJURA ::::::::::: DEFENDANTS/COUNTER
CLAIMANTS**

BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

JUDGMENT

Introduction

- [1] In the amended plaint dated 12th April 2021, the plaintiff's claim against the defendants is damages for breach of contract and or in alternative, a permanent injunction restraining the defendants and or their agents from committing acts of trespass on the suit land comprised in **plot 34 Bugahya, Block 20, land at Buhikya**, quiet possession, mesne profits, special and general damages and costs of the suit. In the alternative, compensation for all the developments on the suit land amounting to **Ugx 300,000,000/=**.
- [2] The plaintiff contended and averred that it holds a sublease on the suit land having leased the same from the 3rd defendant for a renewable term of 8 years. That the plaintiff duly fulfilled all the

requirements of the lease and was enjoying quiet possession of the same until on or about the 8th/2/2018 when the plaintiff received a notice purported to have been written by the 3rd defendant requiring the plaintiff to vacate the suit premises.

- [3] As regards the 1st and 2nd defendants, that they attacked the plaintiff's workshop and its installations and attempted to grade it with a tractor thereby cutting off its water supply and blocking employees from accessing their quarters while claiming that they purchased part of the suit land from the 3rd defendant.
- [4] The defendants on the other hand, denied the plaintiff's allegations and contended that the 3rd defendant is the registered proprietor of the suit land comprised in **LRV HT 810, Folio 4, plot 34 measuring 3.8200 ha** and that out of the entire land, he sold **1.327 ha** to the 1st & 2nd defendants (excluding the fenced land he leased to the plaintiff). That at the time he sold the portion of the suit land to the 1st & 2nd defendants, the portion was being used by squatters who had crops thereon and were duly compensated.
- [5] The defendants filed counter claims claiming inter alia, a declaration that the 3rd counter claimant lawfully sold part of his suit land to the 1st and 2nd defendants and therefore, they are rightful owners of the suit land, a declaration that the counter Respondent/plaintiff is a trespasser on the suit land and an order for the removal of the caveat wrongfully lodged on the 3rd defendant's certificate of title.
- [6] In their respective counter claims, the defendants/counter claimants averred that the counter Respondent/plaintiff adamantly refused to vacate the premises which does not form part of their tenancy/lease, an action that render the counter Respondent/plaintiff a trespasser.

Secondly, that the counter Respondent/plaintiff unlawfully lodged a caveat on the suit land without any justified cause because it has no registrable interest in the suit land.

Counsel legal representation

- [7] The plaintiff was represented by **Counsel Sebowa Solomon** of **M/s Katende, Ssempebwa & Co Advocates**, Kampala while the 1st and 2nd defendants were represented by **Counsel Mwebaza Christopher** of **Mwebaza & Co Advocates**, Hoima. The 3rd defendant was represented by **Counsel Simon Kasangaki** of **M/s Kasangaki & Co Advocates, Masindi**. Both counsel filed their respective written submissions as permitted by this court.

ISSUES

- [8] The following issues were agreed upon by all the counsel in the suit during their joint scheduling as recorded in the joint scheduling memorandum.
1. Whether there was any breach of the lease agreement dated 1/1/2013 (as amended), and if so, by who?
 2. Whether the land sold by the 3rd defendant to the 1st and 2nd defendants forms part of the land rented by the plaintiff?
 3. Who of the parties is a trespasser?
 4. What are the remedies available to the parties?

Background

- [9] On the **1st day of January 2013**, the 3rd defendant who was the registered proprietor of the suit land comprised in **LRV HT 810, Folio 4 Block 20, plot 34 land at Buhikya** measuring **3.8200 ha**

leased out a portion/part of the suit land comprised of buildings useable as a workshop and offices to the plaintiff who wished to establish and operate a workshop, offices etc for motor vehicles, water pumps, construction equipment, Diesel generators etc for a renewable term of 8 years. **The agreement and the addendum to lease workshop and grounds at Buhikya, Hoima is dated 1/1/2013.**

- [10] The tenancy agreement however, did not specify the acreage of that portion of land that was rented out though there was a provision that required the land lord to demarcate by erecting a demarcation fence, the area of grounds that were to be let to the tenant.
- [11] Upon conclusion of the tenancy agreement, the plaintiff occupied all the structures on the suit land and operated a mechanized workshop thereon.
- [12] On the **25th of October 2017**, the 3rd defendant sold a portion/part of the suit property measuring **1.327 ha** to the 1st and 2nd defendant at a consideration of **Ugx 215,000,000/=** and accordingly, on **8/2/2018** he wrote to the plaintiff notifying it of the sale and the need to vacate and hand over the residential units within the part sold out. This was followed by subsequent other notices for termination of the tenancy dated 23rd Oct/2018, 15th Nov/2019 and 5th Jan/2020.
- [13] By Notice of termination of the tenancy to the plaintiff dated **15th Jan/2015**, the plaintiff was advised not to deposit any money on the 3rd defendant's bank account without permission in respect of the tenancy. As a result, on 4/2/2020, the plaintiff filed **H.C.M.A No.11 of 2020** seeking leave to deposit the rent in court pending the

determination of the suit and leave was on 31/3/21 granted by consent of both counsel.

- [14] It is the defendants' case that the part of the suit land sold by the 3rd defendant to the 1st and 2nd defendant excluded the portion leased by the 3rd defendant to the plaintiff.
- [15] On record, there is an amended defendants' joint Written Statement of Defence and counter claim dated and filed by the defendants on **16/4/21**. This W.S.D and counter claim is neither sealed and or endorsed by the registrar of this court nor was it served upon the plaintiff. It offended **O.9 r.1** and **O.8 r.8 CPR** and therefore, ought to be struck off the record. Indeed, the plaintiff had only filed a reply to the 1st and 2nd W.S.D and counter claims. I accordingly strike out the offensive amended defendants' joint Written Statement of Defence and counter claim dated and filed by the defendants on **16/4/21**.

RESOLUTION OF ISSUES

Burden of proof

- [16] In the case of **NSUBUGA VS KAVUMA [1978] HCB 307**, it was held that;

"In civil cases the burden lies on the plaintiff to prove his or her case on the balance of probabilities."

See also **Section 101 of the Evidence Act** which provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist and the burden of proof lies on that person.

- [17] For court to decide in favour of the plaintiff therefore, it has to be satisfied that the plaintiff has furnished evidence where level of probability is such that a reasonable conclusion is that for which the plaintiff contends; **SEBULIBA VS COOP.BANK LTD [1982] HCB 130.**
- [18] This court found issues No.1 and 2 inter related and therefore opted to resolve them together.

Issue No.1 and 2

1. Whether there was any breach of the lease agreement dated 1/1//2013, and if so, by who?
2. Whether the land sold by the 3rd defendant to the 1st and 2nd defendants forms part of the land rented by the plaintiff?

Submissions by counsel

- [19] Counsel for the plaintiff submitted that it was the 3rd defendant who breached the lease agreement that was entered into between himself and the plaintiff on the 1st day of Jan/2013 and its addendum. That these were valid contracts that fulfilled all the requirements for a valid contract enumerated by **Section 10(1) of the Contracts Act 2010.** He also relied on the authority of **GREENBOAT ENTERTAINMENT LTD VS CITY COUNCIL OF KAMPALA H.C.C.S. No.580 of 2003.**
- [20] The plaintiff contended that at all material times fulfilled his end of the bargain by complying with all the terms of the tenancy agreement. The plaintiff's obligations under the impugned tenancy agreement included paying rent, electricity and water charges, rehabilitation/renovating the premises and keeping the premises

interior and fittings in good repair and condition among others. That the plaintiff promptly paid the agreed rent for the premises at all times and was not in arrears by the time the 3rd defendant purported to terminate the tenancy. That in fact, none of the notices of termination of the tenancy that were issued by the 3rd defendant complained about non-payment of rent or the breach of any contractual term.

[21] Counsel for the plaintiff submitted further that on the other hand, unlike the plaintiff who kept its end of the bargain, the 3rd defendant repeatedly breached the tenancy agreement by failing to or deliberately refusing to fulfill various obligations imposed on him under the said agreements;

1) Clause 1 of the tenancy agreement provides that the land lord/ the 3rd defendant would demarcate the area which was being let to the tenant by erecting a demarcation fence. That this was a pertinent clause of the tenancy agreement which required the 3rd defendant to fulfill. That when the 3rd defendant refused or failed to do so, the plaintiff's business was conducted under constant security threats to its property and staff not until the plaintiff fenced off part of the workshop to protect it with clients' vehicles which evidence was confirmed by **Mr. Muleke Godfrey** (PW2) during the hearing.

2) It was a clear breach of the contract for the 3rd defendant to sell the suit land subject to a subsisting tenancy agreement with the plaintiff, to the 1st and 2nd defendants without the plaintiff's consent. It is the plaintiff's contention that the land which was sold to the 1st and 2nd defendants was part of the land leased /rented to the plaintiff

and therefore the 3rd defendant is at fault for having breached his lease/tenancy agreement.

[22] It is plaintiff's submission therefore that these actions of the 3rd defendant amounted to breach of the contract.

[23] On the other hand, the counsel for the defendants submitted that the lease agreement dated 1/1/2013 and its addendum was breached by the plaintiff and that the land sold by the 3rd defendant to the 1st and 2nd defendants does not form part of the rented land by the plaintiff. That in any case, after the expiry of the lease agreement on **30/1/2021**, the plaintiff's cause of action if any existed, was overtaken by events. That therefore, in whatever angle one approaches this matter, the plaintiff's suit should be dismissed.

[24] It is the defendants' submission that **victor Muganwa Kajura** (DW1), son to the 3rd defendant **Henry Muganwa Kajura**, the registered proprietor of the suit land, testified that the rented fenced area occupied by the plaintiff is what was leased to it. That the land beyond or outside the fence enclosing the workshop was not rented out to the plaintiff and it is this land that the 3rd defendant sold to the 1st and 2nd defendants. That the rent agreement therefore did not relate to the entire of the 3rd defendant's land.

[25] Counsel submitted further that the plaintiff breached the tenancy agreement by claiming the 3rd defendant's land which was not part of their lease or rent agreement and by failing to pay the rent reserved when it fell due. That the plaintiff was not renting the whole land although the actual size of the land rented was not mentioned. The plaintiff knew the boundaries of the rented land and they fenced it. They wrongly claimed the entire 9 acres of the land lord's land.

That otherwise, the 1st and 2nd defendants have never interfered with the portion of the land rented by the plaintiff and they have never filed an application for distress for rent against the plaintiff in any court as alleged.

Determination by court

[26] According to the amended plaint dated **12/4/2021**, the plaintiff complained of alleged actions of violation of the lease agreement (breach) and trespass by the defendants being as follows;

1. On about the **8th day of Feb/2018**, the plaintiff having duly fulfilled all the requirements of the lease and was enjoying quiet possession of the same, received a notice purported to have been written by the defendant requiring the plaintiff to vacate the suit premises (**para.4 vii**).
2. That the 1st and 2nd defendants attacked the plaintiff's workshop, their installations and grounds and have since been trying to grade (with a tractor) the same and have further cut off the water supply and blocked the employees quarters claiming that they purchased part of the suit land from the 3rd defendant (**para.4 x**).
3. The 1st and 2nd defendants filed an application for distress for rent against the plaintiff vide **Hoima M.C No.003 of 2018**.

[27] It is the plaintiff's case that the plaintiff has fully fulfilled its rent obligations and has a running sublease agreement with the 3rd defendant expiring on the **3rd day of Jan, 2021** subject to renewal. That the plaintiff has not in any way consented to the sale and

neither party has terminated the lease agreement between the plaintiff and the 3rd defendant.

[28] The plaintiff averred that as a result of the illegal eviction conducted by the defendant, it has incurred costs for repairs of the properties on the suit land for which it claims special damages amounting to **Ugx 101,000,000/=**.

[29] It is apparent from the submissions of all the counsel and the foregoing pleadings that the determination of these issues at hand will depend on how the pertinent and relevant provisions of the impugned lease agreement dated 1/1/13 and its addendum (**P.Exh.1**) are to be construed and what was the intention of the parties.

[30] The tenancy agreement did not specify the acreage of the land that was let out to the plaintiff but merely mentioned the description of the property that was being let out. So, what was the intention of the parties as regards the portion or acreage of the land that was to be or was let out? The intention of the parties is to be inferred from the terms and nature of the contract and from the general circumstances of the case. The circumstances of the case are what a reasonable person would have regarded the issue in order to give the lease agreement business meaning i.e the business efficacy to the contract.

[31] Clause 1:0 of the lease agreement titled **Agreement to lease workshop and grounds at Buhikya Hoima (P.Exh.1)** made between the plaintiff and the 3rd defendant provided as follows;

*“The landlord is the owner of **plot 34 Bugahya Block 20 Hoima**, on which stand buildings useable as a workshop and offices etc which he wishes to let to the*

tenant. The tenant has recently moved into Hoima and has a wish to establish and operate a workshop, offices etc for motor vehicles, water pumps, construction Equipment, Diesel generators etc”.

Clause 1(i) provided further thus;

“The landlord will demarcate the area of grounds that are to be let to the Tenant by erecting a demarcation fence and assist the tenant to acquire vacant possession as soon as possible for the site to be named “Muganwa workshop.”

1(ii) “The landlord will invite the Tenant to hand over the grounds and buildings ie for the tenant to assume responsibility thereafter take note of the landlord’s assets as entrusted...”

1(iii) The tenant agrees to take the premises for an initial period of 8 years paying rent annually in advance;
a) 1st year of Shs. 200,000 per month
b) 2nd year of Shs. 300,000 per month
c) 3rd year of Shs. 400,000 per month”

[32] It is clear from the above provisions of the lease Agreement that the intention of the parties was not to have the entire land of the landlord (3rd defendant) leased out as counsel for the plaintiff wants court to believe. This is explained by **clause 1(i)** which provided for the landlord to demarcate that area of the grounds that were to be let out to the tenant by erecting a demarcation fence.

- [33] It is however, the case of the plaintiff that the 3rd defendant refused and or failed to fulfill his part of the bargain to demarcate the area to be let out and fence it off.
- [34] During trial, **Muleke Godfrey (PW2)**, the manager of the plaintiff company testified that at the time, the plaintiff rented the premises, there were servants' quarters, power line connections and water plumbing. The plaintiff constructed thereon a water pump house, toilets and a bathroom. The rest of the infrastructure on the land was therefore found there by the plaintiff.
- [35] During cross examination, **PW2** explained that no size of land was indicated in the lease agreement for their occupation and the landlord ie, the 3rd defendant never erected the fence and in re-examination, he revealed that there is however a fence which was erected by the plaintiff to safeguard customers' vehicles in the parking area and this fence was erected in 2013. He concluded by explaining that the size of the land the plaintiff was renting is **9 acres – 3.8 ha** and they were utilizing the entire land.
- [36] On the other hand, **Victor Muganwa Kajura (DW1)** son of the 3rd defendant testified that the entire land is **3.8200 ha** and the 3rd defendant leased and/or rented part of his land to the plaintiff as per the lease agreement (**P.Exh.1**). That the 3rd defendant later sold the remaining part of the land to the 1st and 2nd defendants as per the sale agreement dated 25/10/2017 (**D.Exh.2**). According to the sale agreement, the portion sold to the 1st and 2nd defendants is approximately **1.327 ha**.
- [37] **DW1** explained that the 3rd defendant was to demarcate off part of the area of his land rented to the plaintiff by erecting a demarcation fence

and assist the plaintiff acquire vacant possession. That the landlord duly executed this and a fence was put in place. During cross examination, **DW1** explained that the plaintiff tenants were a mechanical company and wanted to rent a portion of a workshop. That the plaintiff erected a fence to curve off what they wanted to utilize for their mechanical operations. In re-examination, he clarified that the portion fenced off was for their workshop, protection of vehicles, staff etc and there was therefore no need for further fencing as they had done it themselves.

[38] From the foregoing, it is my view that as clearly stipulated in the lease agreement (**P.Exh.1**), the 3rd defendant did not rent out his entire piece of land comprised in **Block 20, plot 32 Bugahya**, Hoima district to the plaintiff. If it were so, then there wouldn't have been that clause in the agreement that required the 3rd defendant to demarcate off the portion let out. This was further proven by the lease agreement itself which reflected the intention of the 3rd defendant that he wished to let to the tenant that land on which stood **buildings useable as a workshop and offices** etc for motor vehicles, water pumps, construction equipment, Diesel Generators etc and the tenant (plaintiff) also, wished **to establish and operate a workshop, offices etc for motor vehicles, water pumps, construction equipment, diesel generators etc**. To compound it all, the plaintiff fenced off its area of use and the 3rd defendant never protested.

[39] For the plaintiff to claim that they rented the entire land measuring approximately **9 acres** at the rate of **shs.400,000/=** per month (in 2015), it is my view extremely unreasonable considering that the 3rd defendant sold off the remaining property measuring **1.327 ha** at a

consideration of **Ugx 216,000,000/=**. The business efficacy to the contract and the business realities of the situation on the ground really favours the defendants' version of the case. It makes the necessary sense of the dealings between the parties as to implement the lease agreement in a sensible manner.

- [40] The above is the only intention of the parties that court can find from interpreting the words used in the lease agreement itself; In **F.A TAMPLIN STEAMSHIP & CO LTD VS ANGLO-MEXICAN PETROLEUM PRODUCTS CO LTD [1916]2 AC 397** at p.403-404

“A court can and ought to examine the contract on the circumstances it was made, not of course to vary but only to explain it in order to see whether or not from the nature of it the parties must have made this bargain on the footing that a particular thing or state of things would continue to exist.”

Section 10 (1) of the Contracts Act defines a contract as;

“A contract is an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.”

The contract is breached where there is *“the breaking of the obligation which a contract imposes which confers a right of action for damages on the injured party”*; **KYARIMPA SARAH VS HARRIET NASSOZI HEWETT H.C.C.S No.794 of 2016.**

- [41] In the instant case, I find that the plaintiff has not proved the alleged acts or actions of violation of the lease agreement (breach) and trespass as pleaded in the plaint;

1. The Notice of termination of tenancy dated 8/2/2018 (**P.Exh.3**) was prompted by the plaintiff's wrongful claims and occupation and use of the portion of land outside that let out to them and having been sold to the 1st and 2nd defendants. The subsequent notices to that effect were as a result of the plaintiff's failure and ignoring to vacate the portion and insisting that it was inclusive of the rented property.
2. The 1st and 2nd defendants grading of the portion outside the rented part of the land was justified in view of the fact that they had lawfully purchased it from the 3rd defendant and the plaintiff had no interest whatsoever thereon.
3. The plaintiff's claims and allegations that the 1st and 2nd defendants filed an application for distress for rent against the plaintiff vide **Hoima M.C No.003 of 2018** is not backed by any evidence as neither copy of such or order was attached to the pleadings as claimed nor was evidence led to prove it.

[42] As a result of the foregoing, since there is no evidence that the defendants ever interfered with the portion of the land rented to and by the plaintiff, I find the 2 issues at hand in favour of the defendants. There was no breach of the lease agreement dated 1/1/2013 on the part of the defendants and the land sold by the 3rd defendant to the 1st and 2nd defendants, did not form part of the land rented to the plaintiff.

[43] On the other hand, since the land sold to the 1st and 2nd defendants did not form part of the land rented to the plaintiff and therefore did not form or constitute the subject of the lease agreement, it cannot be said or be found that the plaintiff's occupation and utilization of it constituted a breach of the lease agreement. The sold out portion of

land was never part of it and it was never a subject of the lease agreement.

Issue No. 3; Who of the parties is a trespasser?

- [44] In the celebrated case of **JUSTINE E.M. LUTAAYA VS STIRING CIVIL ENGINEERING CO.LTD S.C.C.A No.11 OF 2002**, trespass to land was defined as;

“trespass to land occurs when a person makes an authorized entry upon land, and thereby interferes, or portends to interfere, with another person’s lawful possession of the land.”

- [45] In the instant case, it is not in dispute that the suit land and all the developments thereon save for the water pump house, toilets and bathrooms constructed thereon by the plaintiff belong to the 3rd defendant. It is also not in dispute that the 3rd defendant sold the portion of the suit land to the 1st and 2nd defendants. This court having found that the defendants have never interfered with the portion of land rented by the plaintiff, none of them can be found as a trespasser. The 3rd defendant lawfully sold off that portion of land measuring approximately **1.327 ha** and the 1st and 2nd defendants lawfully purchased the same.
- [46] The plaintiff on the other hand, made an unauthorized entry upon that portion of land that was found outside the rented land in lawful possession of the 3rd defendant and erected thereon a water pump house, toilets and bathrooms. That act of the plaintiff constituted trespass upon the 3rd defendant’s land. The plaintiff is in the circumstances found to be a trespasser.

Issue No.4; What remedies are available to the parties?

[47] **1.The plaintiff:** This court having found that the plaintiff did not adduce any evidence to prove any act of trespass on the portion of land it rented from the 3rd defendant, it is not entitled to any damages whether special or general arising out of trespass. In any case, the specially pleaded special damages were neither proved nor justified as they were found to comprise of receipts that were merely illegally acquired for purposes of this suit as the purported issuing plumbing provider disowned them. It was incumbent upon the plaintiff to prove these kind of damages, the onus the plaintiff failed to discharge. The plaintiff's claim for both general and special damages is accordingly rejected.

2. The defendants: It is the finding of this court that the plaintiff is a trespasser on the suit land that does not form part of the tenancy/lease and was lawfully sold to the 1st and 2nd defendants. It is evident that at the time the 3rd defendant sold that portion of land to the 1st and 2nd defendants, the plaintiff was in occupation albeit wrongful occupation, in the premises, the 1st and 2nd defendants are not entitled to any damages in trespass. It is only the 3rd defendant who was in occupation by virtue of his developments thereon that is entitled to damages in trespass. The plaintiff had besides lodged a caveat on the said land without any justified cause. As a result, I find that the defendants are entitled to have it removed as it was wrongly lodged on the 3rd defendant's certificate of title.

[48] In conclusion therefore, the plaintiff's suit is wholly dismissed and the defendants' counter claims succeed with the following orders;

- a) The 3rd defendant/Counter claimant is the rightful owner and/or registered proprietor of the suit land.
- b) The 3rd defendant/Counter claimant lawfully sold part of the suit land measuring **1.327 ha** to the 1st and 2nd defendants.
- c) The plaintiff/counter Respondent is a trespasser on the suit portion of land and the 3rd defendant/counter claimant is entitled to general damages for trespass calculated at Ugx 35,000,000/= in favour of the 3rd defendant considering the plaintiff/Counter Respondent's wrongful occupation since 2017 when the suit portion of land was sold to the 1st and 2nd defendants and the inconvenience, pain and injury suffered by the 3rd defendant.
- d) An order doth issue to the Commissioner Land Registration for removal of the caveat wrongly lodged on the 3rd defendant's certificate of title for land comprised in **LRV HT 810, Folio 4, plot 34 land at Bugahya, Hoima.**
- e) An order for immediate vacant possession of the entire suit land doth issue against the plaintiff/counter Respondent and in default, an eviction order issues since the lease agreement for the portion let out expired on 30th January, 2021 and the plaintiff/counter Respondent is found a trespasser on the other portion of land that was sold to the 1st and 2nd defendants/counter claimants by the 3rd defendant/counter claimant.
- f) A permanent injunction doth issue restraining the plaintiff/counter Respondent and its agents from unlawfully interfering with the defendants/counter claimants' use and quiet enjoyment of the suit land.

- g) Recovery of rent for the period after expiry of the tenancy at the rate of Ugx 800,000/= per month as was stipulated in the lease agreement addendum.
 - h) General damages and rent arrears to carry a commercial rate of **25% per annum** from the date of judgment until payment in full. The defendants/Counter claimants did not lead any evidence to prove mesne profits and no order is therefore made regarding the same.
 - i) Costs of the suit and counter claim to be met by the plaintiff/Counter Respondent.
- Order accordingly.

Date at Masindi this 25th day of November, 2021

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Byaruhaga Jesse Rugyema
JUDGE.