THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CIVIL APPEAL NO. 017 OF 2018

(Arising from Nakawa Chief Magistrates Court Civil Suit No. 251 Of 2017)

EASTLANDS AGENCY LIMITED==========APPELLANT

VERSUS

MAKWASI BERTHA BAROZI==========RESPONDENT

BEFORE: HON. MR. JUSTICE PHILLIP ODOKI

JUDGMENT

Introduction:

[1] This appeal arises from the judgement and decree of the Magistrate Grade 1 of Nakawa Chief Magistrates Court (Her Worship Christine Nantege) dated 8th February 2018, wherein she awarded the Respondent UGX 5,500,000/= as unpaid rent arrears, UGX 3,000,000/= as general damages, interest and the costs of the suit. The Appellant being dissatisfied with the judgement and the decree appealed to this court. The Appellant prayed that, the appeal be allowed; the judgement and the decree be set aside; and it be awarded the costs of the appeal.

Background:

[2] On the 17th May 2016, the Respondent instituted Civil Suit No. 251 of 2016 against the Appellant before the Chief Magistrates Court of Nakawa. In the suit, the Respondent sought, payment of UGX 18,786,000/= as rental arrears; general and punitive damages; interest; and costs of the suit.

[3] The Respondent's case was that on 5th September 2006, she entered into a management contract with the Appellant to, among others, rent out her premises at Mbuya Kinawataka (hereinafter referred to as 'the suit premises'); collect rent from the suit premises; and carry

out basic maintenance and repairs of the suit premises from the rent collected. On the 11th November 2011, the Appellant rented out the suit premises to Blue Eye Security International (hereinafter referred to as 'the tenant') for a period of 2 years at UGX 500,000/= per month, payable 6 months in advance upon the execution of the tenancy agreement and thereafter payable 3 months in advance. In the month of February 2015, the tenant abandoned the premises leaving behind, rental arears of UGX 5,500,000/= and the premises was in a dire state of disrepair. The Appellant failed to inform the Respondent that the tenant had abandoned the suit premises. The Respondent incurred UGX 13,286,000/= to effect the necessary repairs of the suit premises. On the 16th December 2015 the Respondent's lawyers wrote to the Appellant demanding that the Appellant should remedy the situation in accordance with the management agreement but the Appellant failed to do so.

[4] In its Written Statement of Defence, the Appellant denied entering into the management agreement with the Respondent or liable for any loss occasioned to the Respondent.

[5] The parties filed a Joint Scheduling Memorandum in which it was agreed that, the Respondent is the registered proprietor of suit premises; in 2011 the Appellant let out the suit premises to the tenant; a tenancy agreement dated 11th November 2011 was executed between the Appellant and the tenant; the tenant took possession of the suit premises and paid rent through the Appellant until February 2015 when the tenant breached the tenancy agreement and abandoned the suit premises leaving arrears amounting to UGX 5,500,000/=.

[6] The issues for the determination of the court were;

i. Whether a contract existed between the Appellant and the Respondent.
ii. Whether the Appellant was liable for any breach or loss.
iii. The remedies available to the parties.

[7] The case was heard inter parties. On the 8th February 2018 the learned trial Magistrate rendered her judgement. On issue 1, the Magistrate Grade 1 held that the management agreement, which was admitted in evidence as PE1, was not signed by the Appellant and for that reason did not bind the Appellant. However, since the Appellant admitted managing the suit premises, she found that an oral management agreement existed between the Appellant and the Respondent.

[8] On issue 2, the learned trial Magistrate held that since the Appellant admitted being the manager of the Respondent and rented out the suit premises to the tenant, the Appellant had a duty to collect rent from the tenant and remit it to Respondent. The tenant having abandoned the suit premises with unpaid rent arrears of 11 months totaling to UGX 5,500,000/=, the Appellant is liable to the loss because it failed to perform its duty of collecting rent from the tenant for the 11 months. On the expenses for repair of the suit premises, the learned trial Magistrate held that it was not clear to the court if the parties agreed on repair of the premises in case of any damage. Much as DW1 stated in his witness statement that they occasionally made repairs to damaged parts of the suit premises, it was not clear to the court to what extent the Appellant was supposed to make repairs. In her view, in the absence of concrete evidence by the Respondent to prove that the Appellant had the duty to repair the suit premises, the Appellant was not liable for the damage caused to the premises by the tenant.

[9] On issue 3, the learned trial Magistrate awarded the Respondent UGX 5,500,000/= for the unpaid rent arrears, general damages of UGX 3,000,000/= for inconvenience suffered, interest and costs of the suit.

Grounds of appeal:

[10] The Appellant being dissatisfied with the decision of learned Magistrate Grade 1 appealed to this court on the following grounds.

1. That the trial Magistrate erred in law and in fact when she held that the Appellant was liable to pay to the Respondent UGX 5,500,000 (Five Million Five Hundred Thousand Shillings only) as unpaid rent.
2. That the trial Magistrate erred in law and in fact when in her judgement she condemned the appellant to the general damages and costs of the suit.

Legal representation and submissions:

[11] At the hearingof this appeal, the Appellant was represented by counsel Serunjogi Brian of M/s Serujogi &Partners Advocates. The Respondent was represented by counsel Nicholas Kebba of Kibukamusoke & Tendo Advocates. The court gave counsel directives to file written submission, which directives were duly complied with. I have given the submissions the requisite consideration.

[12] On ground 1 of the Appeal, Counsel for Appellant submitted that in as much as there was no written contract between the Appellant and the Respondent for management of the suit premises, an agency relationship was created and whatever the Appellant did in the management of the premises, it did the same as an agent for the Respondent who was the principal. It was counsel's submission that an agent cannot incur personal liabilities. For that proposition of the law, counsel relied on the case of ***Dr. Vincent Karuhanga T/a Friends Polyclinic versus National Insurance Corporation and Anor (2008) HCB 151***. According to counsel for the Appellant, the Appellant cannot be liable for payment to the principal monies (rent) that did not come into its hands except for monies collected and not remitted. Counsel further submitted that the Appellant cannot be blamed for failure to collect rent from a tenant who simply abandoned the suit premises and ran away.

[13] On ground 2 of the appeal, counsel for the Appellant submitted that the Appellant was not in breach of the agency relationship it had with the Respondent. Counsel contended that whatever inconvenience and loss suffered by the Respondent as a result of the unpaid rent cannot be passed onto to the Appellant.

[14] Counsel for the Respondent on the other hand argued, on ground 1 of the appeal, that the Appellant being an agent of the Respondent with a duty to manage the suit premises and collect rent, was under obligation to carry out its duties diligently, failure of which the Respondent holds the Appellant liable for the rent due and damages. For that proposition, counsel relied on the Section 145 of the Contracts Act, 2010 and the case of ***R Allarakhia Janmohamed & Co versus Jethalal Valabhdas & C0 [1958] 1 EA 419(CAZ***).

[15] On ground 2 of the appeal, counsel for the Respondent submitted that the court awarded the Respondent general damages of UGX 3,000,000/= because the Respondent was denied use of her money and she suffered inconvenience. On the award of costs, counsel made reference to Section 27(2) of the Civil Procedure Act and the case of ***Roko Construction Company Ltd vs Uganda Co-operative Union SCCA No. 32 of 1997*** and submitted that costs follow the event. Counsel for the Respondent prayed that this court should uphold the trial Magistrate's judgement and decree. It should find that the appeal is devoid of merit.

Duty of the court:

[16] This court being first appellate court from the decision of the trail court, it has the duty to review and re-evaluate the entire evidence before the trial court and reach its own conclusions, taking into account, of course, that it did not have the opportunity to hear and see the witnesses testify. This position of the law was stated by the Supreme Court in the case of ***Kifamunte Henry v Uganda SCCA No. 10 of 1997***, where it was held that;

> *"The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it."*

Consideration and determination of the court:

Ground 1: That the trial Magistrate erred in law and in fact when she held that the appellant was liable to pay to the Respondent UGX 5,500,000 (Five Million Five Hundred Thousand Shillings only) as unpaid rent.

[17] From the submission of both counsel, it is common ground that the Appellant was an agent of the Respondent when it let out of the suit premises to the tenant. The only point of departure, according to counsel for the Appellant, is that the Appellant being an agent cannot be personally liable for payment to the principal monies (rent) that did not come into its hands except for monies collected and not remitted. The Respondent on the other hand contends that the Appellant being the agent of the Respondent was under obligation to carry out its duties diligently, failure of which the Respondent holds the Appellant liable for the rent due and damages.

[18] I do not agree with the submissions of counsel for the Appellant that an agent cannot be liable to the principle. Section 146 of the Contracts Act is very clear on the skill and diligence required of an agent and the liability of an agent to the principal for the direct consequences of his or her own neglect, lack of skill or misconduct. It provides that;

> *"**146. Skill and diligence required from agent***
>
> *(1) An agent shall act with reasonable diligence and conduct the business of the agency with as much skill as is generally possessed by a person engaged in similar business, unless the principal has notice of the lack of skill by the agent.*
>
> *(2) An agent shall compensate a principal in respect of the direct consequences of his or her own neglect, lack of skill or misconduct but not in respect of loss or damage which are indirectly or remotely caused by the neglect, lack of skill or misconduct of the agent.* (Underlined for emphasis)

[19] In the instant case, Adnan Mpuga who was the Appellants witness stated, in his witness statement, that the Appellant manages properties on behalf of clients. The Appellant therefore held out as being possessed of the necessary skill of a person engaged in a similar business. It is common ground that the tenant abandoned the premises in February 2015, with rent arrears for 11 months amounting to UGX 5,500,000/=. The tenancy agreement which the Appellant signed with the tenant (PE2) clearly stipulated that the tenant was to pay the rent 3 months in advance. It was therefore gross neglect on the part of the Appellant to have permitted the tenant to remain in the suit premises for a period of 11 months until the tenant had to abandon the premises. Although Adnan Mpuga stated in his witness statement that the Appellant wrote to the tenant to demand for rent arrears, the alleged letter to the tenant was not adduced in court. The Appellant chose not to excise its right to re-enter the suit premises under article 8 of the tenancy agreement (PE2) when the tenant failed to pay rent arrears within 60 days of default. The Appellant simply sat back for 11 months until the tenant abandoned the premises. I find that Appellant did not act with skill and diligence in managing the suit premises. The Appellant was liable to compensate the Respondent in respect of the direct consequences of its own neglect, lack of skill or misconduct. The loss of UGX 5,500,000 being rent arrears for 11 months, which was suffered by the Respondent, was a direct consequence of the Appellant's failure to collect the rent from the tenant or evict the tenant from the premises.

[20] In the circumstances, I find no reason to fault the trial magistrate for holding that the Appellant was liable to pay to the Respondent UGX. 5,500,000/=. The trial Magistrate therefore came to the correct conclusion. Consequently, this ground of appeal fails.

Ground 2: That the trial Magistrate erred in law and in fact when in her judgement she condemned the appellant to the general damages and costs of the suit.

[21] The position of the law is that damages are awarded at the discretion of court, and is always as the law will presume to be the natural consequence of the defendant's act or

omission (See ***James Fredrick Nsubuga v. Attorney General, H.C.C.S No. 13 of 1993***). The objective of awarding damages is that a plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been in had he or she not suffered the wrong(See ***Charles Acire v. Myaana Engola, H.C.C.S No. 143 of 1993; Kibimba Rice Ltd. v. Umar Salim, S.C.C.A. No.17 of 1992*).** In assessing the quantum of damages, courts are mainly guided, *inter alia,* by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach (See ***Uganda Commercial Bank v. Kigozi [2002] 1 EA. 305***).

[22] The principles upon which an appellate court can interfere with an award of damages by the trial court were set out in ***Crown Beverages Limited v Sendu Edward SCCA No. 1 of 2005*** where Oder JSC (as he then was) stated that:

> *"…an appellate court will not interfere with the award of damages by a trial court unless the trial court acted upon wrong principle of law or the amount awarded is so high or so low as to make it an entirely erroneous estimate of the damages to which the plaintiff was entitled…"*

[23] In the instant case, as I have already found when determining ground 1 of the appeal, the loss of UGX 5,500,000/= suffered by the Respondent, was a direct consequence of the Appellant's failure to collect the rent from the tenant or evict the tenant from the premises. It is therefore not true, as submitted by counsel for the Appellant, that the Appellant was not in breach of the agency relationship it had with the Respondent. As a matter of fact, it was because of the Appellant's conduct that the Respondent was denied use of her rent money for 11 months and was inconvenienced. The Respondent is therefore entitled to general damages. I find that the trial Magistrate did not act upon wrong principle of law when she awarded the general damages or that the amount of UGX 3,000,000/= awarded is so high or so low as to make it an entirely erroneous estimate of the damages to which the Respondent was entitled.

[24] On costs of the suit, the general rule is that costs follow the events and is awarded at the discretion of the court. (See: Section 27 of the Civil procedure Act). In ***Campbell v. Pollak, (1927) A.C. 732*** Lord Atkinson at page 81 held that:

> "*It is well established that when the decision of such a matter as the right of a successful litigant to recover his costs is left to the discretion of the Judge who tried his case, that discretion is a judicial discretion, and if it be so its exercise must be based on facts… If, however, there to, in fact, some grounds to support the exercise by the trial Judge of the discretion he purports to exercise, the question of the sufficiency of those grounds for this purpose is entirely a matter for the Judge himself to decide, and the Court of Appeal will not interfere with his discretion in that instance."*

[25] In ***Mulla on Code of Civil Procedure*** 12th Edition at page 150 what may amount to good cause was explained. It states that:

> *"The general rule is that costs shall follow the events unless the court for good reason otherwise orders. This means that a successful party is entitled to costs unless he is guilty of misconduct or there is some other good cause for not awarding costs to him. The court may not only consider the conduct of the party in the actual litigation but matters which led up to the litigation."*

[26] In ***Kiska Ltd versus Vittoris De Angelis (1969) EA 6*** Sir Clement De Lastang Ag-P reiterated the same principle. At page 8 he stated that:

> *"In **Devram Nanji Dattani v. Haridas Kalidas Dawda, 16 EACA 35,** the Court of Appeal held that a successful defendant can only be deprived of his costs when it is shown that his conduct, either prior to or during the course of the suit, has led to litigation which, but for his own conduct, might have been averted."*

[27] In the instant case, the Respondent was the successful party. No good cause was advanced by the Appellant to deny Respondent the costs of the suit. The trial Magistrate

therefore came to correct conclusion on the award of costs. Ground 1 of the appeal also fails.

[28] In the end, I find that this appeal has no merit. It is accordingly dismissed with costs to the Respondent.

I so order.

Dated and delivered by email this 22nd day of September 2023

Phillip Odoki
JUDGE.