

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

MISCELLANEOUS CAUSE NO. 284 OF 2022

RITAH KISAKA ===== APPLICANT

VERSUS

SHEIFF RAYAN NGANDA ===== RESPONDENT

**BEFORE: HON JUSTICE EMMANUEL BAGUMA**

**RULING**

This application is by notice of motion under Article 50 of the 1995 Constitution of the Republic of Uganda as amended, section 98 of the Civil Procedure Act, section 14 & 33 of the Judicature Act, The Judicature (fundamental and other human rights and freedoms) (enforcement procedure) Rules 2019 seeking for orders that;-

1. The unlawful acts of the respondent's seizure of the applicants house hold property infringed her fundamental human rights and freedoms guaranteed by the 1995 Constitution of the Republic of Uganda.
  - a) The protection from deprivation of property under Article 26
  - b) The right to privacy of her person & home and property under article 27
  - c) The right to dignity and freedom from torture, inhuman and degrading treatment under article 24.
2. A declaration that the respondent's acts were unjust and illegal
3. An order for the respondent to pay general compensatory/aggravated, punitive, exemplary, special damages to the applicant.
4. Costs follow the event.

The application is supported by the affidavit of **Ritah Kisaka** the applicant whose details are on record but briefly states that;-

1. I entered into a tenancy arrangement on 22<sup>nd</sup> December 2021 and later executed a tenancy agreement with the respondent dated 24<sup>th</sup> July 2022 for rental apartment at Munyonyo Block 255 =, Plot 1823 under control and management of the respondent.

2. I have been paying my rent as it falls due including the security deposit of UGX of 1,200,000/= for renovation in case of any damage caused during the tenancy.
3. I entered the said apartment while it was not yet in a better tenantable condition especially the plumbing system and since then, the landlord/respondent neglected to renovate it despite numerous reminders.
4. On the 23<sup>rd</sup> day of November 2022, I paid rent to the respondent for my last month in the premises and informed the respondent that I will be moving out of the house by 23<sup>rd</sup> December 2022 which he unconditionally accepted.
5. On the 10<sup>th</sup> day of December 2022, I decided to vacate the house for a better option despite the fact that my time was still running and that I was not in any way indebted to the respondent.
6. On the same day I hired a truck and loaded all my house hold property and started my journey to my new location and to my surprise, I was intercepted by the respondent who came with goons, directed the driver to turn back inside the premises, brutally offloaded my property and dumped them in the compound, some were stolen by the goons, others were damages and the remaining ones were left exposed to rain and sun shine.
7. I did all I could to redeem my property including calling police and friends but all in vain instead I was advised that I file a civil matter in court.
8. I felt embarrassed, tortured mentally, degraded and subjected to cruelty, treated in an inhuman manner and deprived of my right to property, inconvenienced for unjustified reasons and hence fainted and rushed to Green Life Medical Centre for medical attention.
9. I have suffered great loss including property, inconvenience, financial loss, anguish, depression and embarrassment due to the respondent's illegality.
10. I have been advised by my lawyers whom I advise I believe to be true that the Respondent's actions amounted to violation of my fundamental human rights guaranteed under the 1995 constitution of Uganda as amended.

In reply, the Respondent in an affidavit sworn by **Shieff Rayan Nganda** the respondent opposed the application and briefly stated that;-

1. The Respondent entered the premises when they were fully worked on it was in good tenantable condition for any human dwelling.
2. The applicant was to move out of the premises after my inspection according to clause 2 of the tenant agreement.
3. The applicant's affidavit in paragraph 5 & 6 contain falsehoods as I was not around on the day the applicant sought to leave the premises.

4. I only advised the applicant through a phone call not to leave the premises before inspection and I instructed the gate guard not to allow any property out before I inspect the premises in accordance with clause 2 (i) of the tenancy agreement.
5. The applicant made a drastic move to vacate the premises without any earlier communication well knowing that she was obliged to inform me prior to her moving out to inspect the premises but she chose to vacate and only me during the process of moving out which turned out to be impossible for me to do the inspection.
6. I have never caused any pain, agony, torture or even confiscated the applicant's properties, after the inspection, the applicant picked all her properties and nothing remained in the building.
7. After inspection I found that the damage caused to the premises required her to pay more 350,000/= (Three Hundred and Fifty thousand shillings) on top of the 1,200,000/= security money.
8. The applicant reported me to different police stations including Buziga police post, Kabalagala police station and CMI for having confined her and in all these offices, we were advised to solve our issues amicably and she was not confined as she claimed.
9. The applicant's affidavit in support contains lies, unjustified and calculated at extorting money from me for actions which were done by the applicant willingly and with full knowledge of their outcome.

### **Legal Representation**

Mr. Kabali Edward of Ayebazibwe & Makorogo Co. Advocates represented the applicant while Mr. Ambrose Tebyasa of Ambrose Tebyasa & Co. Advocates represented the respondent.

At the trial both counsel agreed to file written submissions and their details are on record. This court has taken into account the pleading, affidavits and submissions of both parties while writing this ruling.

Counsel for the Applicant in his written submissions raised three issues for court's determination to wit:-

- a) *Whether or not the Applicant's property was seized by the Respondent or if the Respondent infringed on the Applicant's human rights?*
- b) *Whether or not the Respondent was entitled to inspect the house before the Applicant vacated?*
- c) *What remedies are available to the parties?*

## **Submissions by counsel for the applicant.**

### **Issue No. 1**

***Whether or not the Applicant's property was seized by the Respondent or if the Respondent infringed on the Applicant's human rights?***

Counsel for the Applicant submitted that the Respondent acted illegally and unlawfully when he ordered for the interception and subsequently seizure of the applicant's property. The relationship between the applicant and respondent was contractual and there was no provision in the tenancy agreement that warranted the respondent's illegal actions. The Applicant had no unpaid arrears with the respondent and she had paid security of 1,200,000/= as per the tenancy agreement to cater for any damages if any.

Counsel submitted that Article 26 (1) of the constitution provides for the Protection from deprivation of property, it states that;-

***“Every person has a right to own property either individually or in association with others”.***

Counsel submitted that the applicant testified that as she was shifting to her new location, the lorry carrying her properties was intercepted by the Respondent and his goons, his properties were roughly offloaded, stolen, damaged and others confiscated by the Respondent and his goons. The applicant had informed the Respondent of her intention to relocate from the rented premises on the 29<sup>th</sup> November 2022 as per the communication attached to the affidavit marked annexure B on the second page to which the Respondent said yes. Thus the Respondent had no right to seize the applicant's properties and nowhere in the agreement did the respondent reserve a right to seize property hence his actions were unlawful.

Counsel referred to a valuation report made by Grok Appraisal Services dated 15<sup>th</sup> December 2022 with a list of items valued at 8,660,000/=. That the value of items that were stolen as per the police report are valued at 24,550,000/= and the same included 01 sonny headset valued at UGX 2500,000/=:, 01 apple Mac Book valued at 4500,000/=:, 01 small canon camera valued at 6,500,000/=:, 01 sonny column speakers valued at UGX 5,500,000/=:, 01 fridge valued at 4,500,000/=:, 01 fragrance

creed at 800,000/=, 01 pair of sneakers valued at 200,000/=. 02 pieces of basin valued at 5000/= each.

Counsel submitted that the applicant's properties that were stolen in total valued at 33,210,000/= and prayed that the applicant be compensated in the said sums.

Counsel submitted that the applicant's right to privacy was violated when the Respondent and his goons unlawfully seized, entered and searched several documents and private properties items found in the truck. Her properties were offloaded and dumped in the compound for more than 3 days while others were littered in the corridor of the rented house for instance dining set, wooden bed, chairs, jerry cans among others. This is corroborated with the police reported which is attached as annexure C to the affidavit in support and the valuation report.

Counsel cited the case of **Sikuku Agaitano Vs Uganda Baati HCCS No. 298 of 2012** and also referred to Article 24 of the constitution which states that;-

*No person shall be subjected to any form of torture, cruel, inhuman or degrading treatment or punishment.*

Counsel also referred to section 44 of the constitution which provides that;-

*Notwithstanding anything in this Constitution, there shall be no derogation from enjoyment of the*

*following rights and freedoms-*

*(a) freedom from torture, cruel, inhuman or degrading treatment or punishment;*

*(b) freedom from slavery or servitude;*

*(c) the right to fair hearing;*

*(d) the right to an order of habeas corpus.*

Counsel defined torture according to section 2 of the Prevention and Prohibition of torture Act 2012 to mean;

*Any act or omission by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person whether a public official or other person acting in an official or private”.*

Section 3 provides for prohibition from torture and the enjoyment of the right to freedom from torture shall be non derogable.

Counsel referred to Article 5 of the Universal Declaration of Human Rights and article 7 of the Covenant on civil and political Rights which all preserve the right to personal dignity.

## **Issue No.2**

### **Whether or not the Respondent was entitled to inspect the house before the applicant left/vacated.**

Counsel submitted that under the tenancy agreement, the Respondent doesn't reserve a right to inspect the rented premises before a tenant leaves. The agreement is silent on this issue hence no right to inspect is reserved therein.

Counsel concluded that the Respondent was not entitled to inspect the house before the Applicant left as the respondent did not reserve the right to inspect under the tenancy agreement.

## **Issue No3**

### **Whether the Applicant is entitled to any remedies.**

Counsel submitted that the applicant having made out a case for violation of her personal rights and liberties, she is entitled to the remedies as prayed for in the application and affidavits.

### **Submissions by counsel for the respondent.**

#### **Issue No.1**

#### ***Whether or not the Applicant's property was seized by the Respondent or if the Respondent infringed on the Applicant's human rights?***

Counsel for the respondent submitted that Respondent and the applicant had contractual relationship and as such were governed by the Contractual Act and the Tenancy Act respectively.

Counsel submitted that under cause 2(i) of the tenancy agreement, it states that he tenant covenants with the land lord as follows;-

***“To return the leased premises to the landlord in as good condition as it was at the beginning of the term, the landlord shall consider any move in inspection form or other form of written notification to the tenant upon move –in when determining repair and or maintenance charges to the tenant. The tenant shall leave an operating light bulb in each socket upon vacating”.***

Counsel submitted that from the above clause the landlord/Respondent was meant to have a move – in inspection of the premises before the tenant would vacate the premises and failure to observe the same meant breaching the tenancy agreement. That the Applicant deciding to vacate the premises without inspection by the respondent resulted into breach of the contract of tenancy and as such, any act or omission that was done by her thereafter was in breach of a tenancy agreement.

Counsel submitted that the applicant intimated to the Respondent that she will leave the premises by 23<sup>rd</sup> December 2022 which the respondent was in agreement with but in twist of events the applicant decided to leave on 10<sup>th</sup> December 2022 in total breach of the agreement.

Counsel submitted that the Respondent never infringed on the applicant’s rights as alleged. The applicant was allowed to take her properties but she abandoned her property in the sitting room and the corridor of the premises that she was occupying.

Counsel further submitted that all the alleged actions that are said to have occasioned the violation of the applicant’s rights were not done by the respondent but occurred as a result of the applicant’s violation of the tenancy agreement for which the applicant is held to be the perpetrator wherein she cannot turn out to claim benefit from it as having violated her rights.

## **Issue No. 2**

**Whether or not the respondent was entitled to inspect the house before the applicant vacated?**

Counsel submitted that clause 2(I) of the Tenancy agreement stated that;

***“To return the leased premises to the landlord in as good condition as it was at the beginning of the term, the landlord shall consider any move in inspection form or other form of written notification to the tenant upon move –in when determining repair and or maintenance charges to the tenant. The tenant shall leave an operating light bulb in each socket upon vacating”.***

Counsel submitted that there was no doubt that the applicant and the respondent has a contractual relationship to which all parties appended their respective signatures and from the above clause, the applicant had a duty to inform the respondent when she was due to vacate the premises and the respondent had a duty to conduct a move in inspection before the applicant vacated the premises and whoever would not observe the above clause would be in breach of the same and held so accountable.

### **Issue No.3**

#### **What remedies are available to the parties?**

Counsel submitted that the applicant does not qualify to get the remedies as she has not adduced evidence to prove her case. He prayed that the application be dismissed with costs to the respondent.

### **Analysis of court.**

#### **Issue No.1**

#### ***Whether or not the Applicant's property was seized by the Respondent? If the Respondent infringed on the Applicant's human rights?***

In the instant Application, it is not in dispute that the Applicant was a tenant as per paragraph 2 of the affidavit in support. This is further supported by annexure A to the affidavit in support.

Under paragraph 5 of the affidavit in support, the Applicant informed the Respondent that she will be moving out of the premises by 23<sup>rd</sup> of December, 2022 and the Respondent indicated the need for inspection of the premises before she could leave but she instead left on 10<sup>th</sup> of December, 2022. However, while she was starting her journey to leave the premises, she was allegedly intercepted by the Respondent who came with goons, brutally offloaded her property and dumped them in the compound and some were stolen and damaged. The Applicant in the Affidavit in support attached annexures C which are the photographs of the properties that were allegedly dumped and damaged. But on critical look at these pictures by this court, I have failed to see any property damaged or destroyed. In the case of **Kamo Enterprises Ltd Vs. Krystalline salt Ltd Supreme Court Civil Appeal No. 08 of 2018**, the Supreme Court while citing *Cross & Tepper on Evidence 8<sup>th</sup> Edition* noted that the standard of proof in Civil cases is on the balance of probabilities. See also **Section 103 of the Evidence Act.**



According to Clause 2(i) of the Tenancy Agreement, the Respondent was supposed to inspect the premises before the Applicant could vacate, and from the communication the Application made to the Respondent, she was supposed to leave the premises by 23<sup>rd</sup> of December, 2022 but instead left on 10<sup>th</sup> of December, 2022 when the Respondent was far away from Kampala which is the reason she could not be left to go with her properties.

The Respondent does not deny instructing the guards to stop the Applicant from leaving until he comes and inspects the premises. *See paragraph 8 of the affidavit in reply.* But contend that the Applicant left her property in the compound an attended to and moved away.

From the above analysis therefore, I find that the Respondent never seized the Applicant's properties but only asked her to wait until he comes back to inspect the premises which the Respondent did not want to do.

Issue No.1 is answered in the negative.

## **Issue No. 2**

### **Whether or not the respondent was entitled to inspect the house before the applicant vacated?**

Clause 2(i) of the Tenancy Agreement allowed the Respondent to inspect the premises before the Applicant could vacate. The clause stated that *“The tenant hereby covenants with the landlord as follows; to return the leased premises to the landlord in as good a condition as it was at the beginning of term. Landlord shall consider any move –in inspection form or other form of written notification by the Tenant upon move-in when determining repair and/ or maintenance charges to the Tenant. Tenant shall leave an operating light bulb in each light socket upon vacating”*

According to the above clause, the Respondent was entitled to inspect the premises before the Applicant could vacate. In the exercise of that duty, the Respondent under paragraph 8 of the affidavit in reply informed the Applicant not to leave before he could inspect the house but the Applicant instead wanted to leave without communicating the same to the Respondent.

Therefore, it is apparent that the Respondent was entitled to have a move-in inspection of the premises before the Applicant would vacate the premises and failure to comply would amount to the breach of the tenancy agreement.

Issue No. 2 is also answered in the negative

Before I take leave of this matter, I would like to note that parties or litigants should stop hiding under violation of fundamental human rights to bring any action to courts of law.

In the instant case, it was the relationship between tenant and landlord that went sour as a result of disagreement on leaving the premises after inspection but not violation of fundamental human rights as the applicant wanted this court to believe.

**Issue No. 3: Whether the Applicant is entitled to any remedies?**

Having resolved issues number 1 and 2 in the negative, the Applicant is not entitled to any of the remedies sought.

In the final results, this Application fails with the following orders;

- i. The Application is hereby dismissed.
- ii. Considering the nature and circumstances of this Application, no order is made as to costs

Dated, signed, sealed and delivered by email this **11<sup>th</sup>** day of **September** 2023

**Emmanuel Baguma**  
**Judge.**