

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 1024 OF 2001

THE KABAKA OF BUGANDA: :::PLAINTIFF

V E R S U S

**THE REGISTERED TRUSTEES OF THE UGANDA
SCOUTS ASSOCIATION: :::DEFENDANTS**

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

The Plaintiff brought this suit against the Defendant for re-entry and possession of lands comprised in an order to account for the proceeds obtained from the licensees, general damages for breach of the lease agreement and costs of the suit.

Under paragraph 4 of the plaint, it is alleged that the Defendants were granted a lease on the suit property by the Uganda Land Commissions for 59 years from July 27, 1998.

The Defendants were registered as proprietors of the suit property by lease agreement and lease title.

In 1993, the mailo interest in the suit property was returned to the Plaintiff vide the Traditional Rulers (Restitution of Assets and properties) Statute 8/93, hence the Plaintiff became the lessor of the suit property.

Under paragraph 5 of the plaint, it is alleged that the Defendants have breached the express and implied terms of the lease agreement in as far as they have failed, neglected or refused to pay the reserved rent since 1993, despite repeated demands by the Plaintiff and has also since December 2001, been granting tenders to persons to excavate sand from the land todate.

The Plaintiff therefore, hold the Defendants in breach of the lease agreement, hence the application for re-entry and possession of the suit property. The Plaintiff also prayed for an injunction, general damages, and refund of money obtained from the tendering of the land since 2001.

The Defendant, by a written statement of defence dated 8th November 2005, denied the allegations.

During the hearing, issues were;

- a) Whether the acts of the Defendant amount to a breach of the lease agreement.
- b) Whether the Plaintiff is entitled to the remedies prayed for.

At the hearing, the Plaintiff led evidence through PW1 – Kaaya Kavuma – the then Deputy Katikito of Buganda Kingdom. His evidence was effectively that there was excavation of the said sand by the Defendant’s licencees. He also stated that there was breach of the lease covenants by the Defendants by non-payment of rent. The evidence is supported by the exhibits PEX4; PEX5.

The Plaintiff closed their case.

However, the defence which was meant to begin on 1st October 2007, was never given though several adjournments were given for the purpose.

These includes; 26th October 2007, 2nd December 2009, 5th September 2013, 19th September 2013, 6th September 2016, 11th November 2016, 23rd August 2016, 18th January 2017 and 13th December 2017, on all those dates, no defence had been given. On 13th December 2017, this Court gave orders that the case being backlog, the defence should be deemed closed.

Section 17(2) of the Judicature Act was invoked; and O.9 R20 of the Civil Procedure Rules was followed whereupon the Plaintiff’s Counsel was granted leave to file submissions and serve the Defendants. The submissions were accordingly prepared but the Defendant was still unavailable for service.

I have seen a copy of a letter allegedly from the Defendant trying to explain the failure to abide by the Court orders and the failure to handle their defence. The explanations were of no value since they were given outside time frames as allowed by Court. In essence, there is no defence in response to the case by the Plaintiff.

Counsel for the Plaintiff referred to the cases of **Samwiri Massa versus Rose Achieng (1978) HCB 297, Makerere University versus St. Mark Education Institute & Ors (1994) KALR 26, Eridadi Ahimbisibwe versus World Food Programme (1998) KALR 32** which provide that;

‘The story of the Plaintiff given in the absence of a defence to contradict it, ought to be accepted as the truth’.

The evidence adduced by the Plaintiff through PW1 and PE1, PE2, PE3, PE4 and PE5 is sufficient to prove on a balance of probability that the Defendant committed a breach of the lease agreement by using the suit land for a user other than what is permitted in the contract, and by failing to pay rent. This lease therefore became voidable.

I am also in agreement with Counsel for the Plaintiffs’ reliance on the authority contained in the **Supreme Court** decision of **Francis Butagira versus Deborah Namukasa Civil App. No. 6 of 1989** which postulates the above position.

I also agree that under Section 176(b) of the Registration of Titles Act, the Plaintiff is entitled to indemnification against the breaches committed by the Defendant by way of excavation of sand and non-payment of rent.

I further agree with Counsel for the Plaintiff that a period of seven years without payment of rent is not excusable.

For all reasons stated above, I find that the Plaintiff has proved this case on the balance of probabilities. Judgment is therefore entered for the Plaintiff with orders specifically that;

- a) Possession of the suit property is granted in favour of the Plaintiff.

b) An injunction is issued restraining the Defendants from allowing excavation of sand.

c) Re-entry be noted by the Land office.

d) Costs of the suit.

General damages were not proved, neither did Counsel address Court on their quantum. They are therefore not granted.

The prayer for refund of money obtained from excavating the sand is also redundant as no proof of this amount was given. Accordingly this relief is also not given.

The Court will however in view of the evidence adduced of non-payment of rent for 7 (*seven*) years and breach of the covenant generally, order the Defendants to pay nominal damages of shs. 5,000,000/- only (*five million*).

The Judgment is entered for the Plaintiff in terms as above.

I so order.

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Henry I. Kawesa

JUDGE

23/05/2018

23/05/2018:

Ferdinand Musimenta (brief for Joseph Luswata) for Kabaka of Buganda: Plaintiff.

Defendant – representative – Richard Okello present.

Counsel absent.

Musimenta: Matter for Judgment.

Court: Judgment delivered to parties above.

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Henry I. Kawesa

JUDGE

23/05/2018

Right of Appeal explained.

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Henry I. Kawesa

JUDGE

23/05/2018