

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

5 **CIVIL SUIT NO. 299 of 2020**
AYUB TALUTAMBUDE-----PLAINTIFF

V

10 **LUBEGA SULAIMAN-----DEFENDANT**

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

JUDGMENT

The Plaintiff, Mr. Ayub Talutambudde brought this suit against the Defendant, Mr. Lubega Sulaiman seeking the remedies below:

- 15 a) A declaration that the Defendant breached the tenancy contract.
b) An order of specific performance.
c) General damages.
d) An order of permanent injunction.
e) Punitive and exemplary damages.
20 f) Aggravated damages for the high handed action of the Defendant.
g) Interest on each award.
h) Costs of the suit.

PLAINTIFFS' CLAIM

25 On the 8th day of October 2017, the Plaintiff and the Defendant entered into a tenancy agreement. It was agreed that the Plaintiff would rent the Defendant's Kibanja situated at Salaama Road Makindye in Kampala to run a petrol station business, for a 20- year period

at a monthly rate of UGX 1,000,000/=. A copy of the tenancy agreement was admitted into evidence and marked Exb.P.1.

According to the Plaintiff, upon signing the agreement, he paid to the Defendant the sum of UGX 120,000,000/= for the first 10 years starting from 18th June 2018 and ending on the 17th June 2028. The parties agreed that the payment of UGX 120,000,000/= for the last 10 years from 2028 to 2038 was to be paid by the Plaintiff to the Defendant, in two instalments, within a 3-year period, starting from 18th June 2018.

Further, in the event that the Plaintiff failed to make that payment, the Defendant would terminate the tenancy contract for the last 10 years.

10 Subsequently, on the 11th day of July 2019, the Plaintiff received a demand notice cum notice of intention to sue from the Defendant's lawyers' M/S Muwema & Co. Advocates alleging among others that the Plaintiff had sublet the premises to other people contrary to the tenancy agreement. A copy of the notice was admitted into evidence and marked Exb.P.2.

15 In his reply dated 12th day of July 2019 authored by his lawyers' M/S Sanywa Wabwire & Co. Advocates, the Plaintiff denied the said allegations. When the Defendant did not take any further steps, he believed that the situation had been settled. A copy of the reply was tendered into evidence and marked Exb.P.3.

At the halfway mark of the 3-year period, Mr. Talutambudde approached the Defendant to pay him UGX. 60,000,000/= as the first instalment. However, the Defendant declined to receive the said payment without any justification. Consequently, the Plaintiff instructed his lawyers to write to the Defendant requesting him for his bank account details to deposit the money but it was not shared as hoped. A copy of the said letter was admitted into evidence and marked Exb.P.4.

25 The Plaintiff contended that he is in possession, occupation and utilisation of the said premises carrying out the business of fuel petrol station with a super market and an office managing that business. He further asserted that the said business belongs to him and he has never sublet it or any part of the premises to any other person. He insisted that he has neither breached the agreement nor misrepresented the Defendant on any fact.

He further contends that the Defendant is liable for breach of contract for refusal to receive the rental money as per the tenancy agreement yet time is of essence and also interfering with his business.

5 PW2, Ms. Nakirijja Rehemah, the manager of the petrol station business situated on the suit premises also corroborated the Plaintiff's testimony in all material particulars.

The Defendant, after filing his defence with a counterclaim and participating in filing a Joint Scheduling Memorandum did not attend the hearing although he was duly served with hearing notices. This matter therefore proceeded ex parte against him.

10 **REPRESENTATION**

The Plaintiff was represented by Mr. Sanywa Shaban from M/S Sanywa, Wabwire & Co. Advocates.

Counsel for the Plaintiff filed written submissions which I have duly considered.

At scheduling, the following issues were formulated for Court's resolution;

15 **ISSUES**

1. **Whether there is a valid tenancy contract between the Plaintiff and the Defendant?**
2. **Whether there was breach of the tenancy agreement by any of the parties?**
3. **Whether there was misrepresentation to the Defendant by the Plaintiff?**
- 20 4. **What remedies are available to the parties?**

RESOLUTION

Issue 1

Whether there is a valid tenancy contract between the Plaintiff and the Defendant?

25 **Section 10 of the Contracts Act 7 of 2010** provides as follows;

10. Agreement that amounts to a contract

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.

See also; ***Ebbzworld Ltd & Anor v Rutakirwa (Civil Suit 398 of 2013) [2017] UGCommC 138 (20 October 2017) and Nsubuga v Nakiganda & 2 Ors (Civil Appeal 154 of 2016) [2020] UGHCCD 24 (26 March 2020).***

I have perused the agreement, Exb. P.1 dated 8th October 2017. It is originally written in the Luganda language. There is an English translation attached to it. Thankfully, I am familiar with both languages. And I noticed that the English Translation distorted the meaning of the Luganda agreement as I shall demonstrate below;

a. On the 11th line of the Luganda agreement, page 1, it states; *'the money is payable in a lump sum for the period of 10 years- one hundred twenty million'*. In the English version, its translated; *'he is supposed to deposit a sum of 120,000,000/= (one twenty million shillings) for 10 years.'*

b. At the bottom of page 1 of the Luganda agreement before the sketch map is the sentence; *'the area rented has been increased as follows;'*. However, the English translation reads; *'the size of the land is 100ft by 85ft.'*

c. Below the name, number and signature of Sulaiman Lubega on page 2 of the Luganda agreement is a date; 08-06/2017. This date was dropped in the English version.

Additionally, Exb. P.2 is a demand notice cum notice of intention to sue which the Plaintiff received. It is dated 11th July 2019. In that letter there is an assertion that the Plaintiff first came to the suit land under an agreement dated 9th March 2013. The Plaintiff denies that there is any other agreement between the parties besides Exb. P.1. However, observation(b) above does suggest that this was a subsequent agreement since it makes reference to *'an increase in the rented land measurements'*. In any event, the contents of Exb. P.2, indicate that the Defendant was totally unaware of the existence of Exb. P.1 because the only agreement referred to therein is one dated 9th March 2013.

By way of reply, in their letter dated 12th July 2019, the Plaintiff's lawyers acknowledged the tenancy agreement referred to by the Defendant's lawyers. Later, on the 25th February 2020, the Plaintiff's lawyers wrote to the Defendant's lawyers claiming that according to their tenancy agreement the Plaintiff was supposed to pay UGX 120,000,000/= within a period of 3 years and the letter, Exb. P.4 was requesting for bank details. I must note that the letter does not specify which tenancy agreement was being referred to. And it is open for this court to conclude that the agreement which was the subject of those correspondences was the agreement dated 9th March 2013 and not Exb. P.1.

I find that the highlighted observations immediately make Exb. P.1 a questionable agreement and the intention of its authors equally dubious. The English translation contained serious distortions of the original agreement which were crafted to mislead this court. In my view, Exb. P.1, the tenancy agreement dated 8th October 2017 does not answer to the description of a valid contract under section 10 of the Contracts Act 2010. It could therefore not be the basis for any legal remedies in this court. Issue 1 is resolved in the negative and all subsequent issues are rendered moot.

Turning to the Counter Claim, Counsel for the Plaintiff prayed in his submissions that the Counter Claim be dismissed for want of prosecution under Order 17 rule 5 of the Civil Procedure Amendment rules 2019. Indeed, the Defendant failed to fix the Counter Claim for hearing within the six months' period following the scheduling conference. It is therefore dismissed accordingly.

This suit is hereby dismissed with no order as to costs.

Olive Kazaarwe Mukwaya

JUDGE

16th September 2022

Delivered by email to Counsel for the Plaintiffs.