

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HIGH COURT CIVIL SUIT NO. 647 OF 1999
MOHAN SINGH BHARJ:::::::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

ATTORNEY GENERAL:::::::::::::::::::::::::::::::::::::DEFENDANT

Before The Hon. Mr. Justice E. S. Lugayizi

JUDGMENT

The plaintiff sued the defendant, among other things, for failure to pay him rent arrears and water bills amounting to shs. 52,097,079/= and sought Court orders as follows,

- (a) payment of shs. 1 9,500,000/ being rent arrears;
- (b) payment of shs.30,000,000/=being rent for the holding over period;
- (c) payment of shs.2,507,079/= being water bills;
- (d) general damages for breach of contract;
- (e) interest at the Uganda Commercial Bank rate in the case of (a) above from 1/12/1996 and in the case of(b) above from 1/10/ 1997 until the date of judgment;
- (f) further interest on such principal and interest awarded under (a), (b), (d) and (e) above at the Uganda Commercial Bank rate from the date of judgment till payment in full; and
- (g) costs of the suit.

In his Written Statement of Defence the defendant denied the plaintiff's claim and called for its dismissal with costs.

At the hearing of the suit the plaintiff called one witness, namely, himself (PW1) in support of his case. Briefly, his testimony was as follows. The suit premises, which were expropriated

property initially, belonged to the plaintiff's late grandfather. Sometime in the 1990s the Minister of Finance returned ownership of the said premises to the plaintiff's late grandfather by way of a repossession certificate (Exh. P2). Eventually, the plaintiff became the owner thereof by virtue of Letters of Administration that the High Court granted to him and were noted on the Certificate of title for the suit premises. On 3rd March 1995 the plaintiff entered a tenancy agreement in respect of the suit premises with the President's office (which is one of the Government departments the Attorney General stands as a legal representative for). Among other things, the said agreement provided that the tenancy in question was for two years effective from 1st December 1994. The rent was shs. 2,500,000/= per month; and it was payable in advance per quarter. An addendum accompanied the agreement. In the addendum the parties further agreed that when the plaintiff effected a number of repairs to the suit premises the rent payable would be revised to shs. 3,000,000/=. According to the plaintiff by November 1995 he had effected the necessary repairs to the suit premises. On 30 November 1996 when the tenancy expired the Government had, in all, paid him a total sum of only shs. 46,500,000/= in respect of the suit premises. That left a balance of shs. 19,500,000/=. In addition to that, the Government's agent Major General Elly Tumwine (who had possession of the suit premises during the whole tenancy of two years) did not vacate the suit premises. He stayed in occupation of them until 21st September 1997, thereby holding over for ten months. The plaintiff therefore claims an extra sum of shs. 30,000,000/= from the defendant as rent for the above period. That is the plaintiff's case against the defendant.

The defendant did not call any witness to his defence. He relied, wholly, on the WSD and the written submissions he filed in reply to the plaintiff's written submissions. Be that as it may the issues, which the parties herein and Court agreed upon for the purpose of disposing of the suit that is the subject of this judgment, are as follows:

1. Whether the plaintiff had power to enter into a tenancy agreement with any one in respect of the suit premises?
2. Whether there is some outstanding rent in respect of the suit premises?
3. Whether there was holding over of the tenancy by the defendant?
4. Whether the defendant was liable to pay water bills?
5. The available remedies.

Court insisted that it would resolve the first issue as quickly as possible. For that reason, both sides made written submissions in respect of it quite early; and on 21st November 2001 Court made a ruling on it in favour of the plaintiff that is part of the Court record. What remains now is for Court to resolve the remaining four issues; and it will do so in the order in which they occur above.

With regard to the second issue, that is to say, whether there is some outstanding rent in respect of the suit premises, Court has this to say. From the evidence on record the defendant does not seem to deny the existence of a tenancy agreement between the plaintiff and the Government in respect of the suit premises for the period running from 1st December 1994 to **30th** November 1996. What the defendant disputes is the rent payable for the duration of that tenancy. According to the plaintiff the total rent payable for the duration of the said tenancy was shs. 66, 000,000/=. That sum was constituted as follows, shs. 30, 000,000/= for the first year of tenancy (i.e. shs. 2,500,000/=X12) and shs. 36, 000,000/= for the second year (i.e. shs. 30, 000,000/=X 12). He explained that the rent changed to shs. 30, 000, 000/=: per month in the second year of tenancy because he had effected some major repairs to the suit premises, which he had agreed upon with the Government in an Addendum to the main Agreement. He concluded that the change in rent, therefore, entitled him to an additional sum of shs. 19,500,000/= in the second year which the Government refused to pay to him at the end of the tenancy. On the contrary the defendant in his written submissions denied that Government had anything to do with the Addendum. He called it a bogus document. He pointed out that the rent payable under the tenancy agreement that the Government and the plaintiff signed was shs. 2, 500,000/= per month only. He insisted that the Government paid all it owed the plaintiff for the suit premises under that agreement and did not owe him any more money. In the defendant's opinion there was, therefore, no outstanding rent in respect of the suit premise. For the sake of removing any doubt in respect of the contents of the tenancy agreement which are relevant to the issue under consideration Court will outline them below. Clause 1 reads as follows,

“The landlord lets and the tenant takes on rent the Premises for a term of two years commencing on the 1st day of December 1994. YIELDING AND PAYING therefore a monthly rent of shs. 2,500, 000/= payable three months in advance, the first payment having been

made to the Landlord by the tenant at/before the execution of this Agreement. This provision of this Agreement shall be read and operate in conjunction with the Addendum to this Agreement.”

The above provision is, among other things, about rent payable for the suit premises. However, it does not seal or conclude the matters it is dealing with which includes the matter of “rent”. That becomes clear when the provision subjects its reading or interpretation--and- operation- to contents of “the Addendum”. That means that the tenancy agreement in question contemplated the existence of an addendum at some point in time. An examination of the said agreement and the Addendum in question reveals that the plaintiff and the Government signed both documents on the same day. Court sees nothing strange or fishy about that especially since the two documents above bear the stamp of the President’s office; and the defendant did not lead any evidence to prove that the Addendum came into existence as a result of a forgery. For the above reasons Court does not agree with Mr. Cheborion that the Addendum is a bogus document. In addition to that, the defendant did not contradict the plaintiff’s testimony that in November 1995 he had effected the necessary repairs to the suit premises thereby being entitled to the revised rent of shs. 3, 000,000/= per month for the remaining part of the tenancy, that is to say, the whole of the second year of the tenancy.

For that reason, it follows that the plaintiff has an unpaid balance of rent of shs. 19,500,000/= that he must receive from the defendant on account of rent for the suit premises for the two years tenancy, running from December 1994 to 30th November 1996.

All in all, the plaintiff has succeeded in proving that there is some outstanding rent of shs. 19,500,000/ in respect of the suit premises. That means that Court has answered the second issue in favour of the plaintiff

With regard to the third issue, that is to say, whether there was holding over of the tenancy by the defendant, it depends on whether the Government remained in control of the suit premises at the end of the tenancy on November 1996. On the evidence available, it is doubtful, that it did. This is particularly so since the plaintiff failed to lead any evidence to prove that the Government renewed the tenancy agreement in respect of the suit premises after 30th November

1996. Again despite that Major General Elly Tumwine continued to occupy the suit premises after 30th November 1996 the plaintiff did not lead any evidence to prove that the Government was privy to his continued occupation of the suit premises or that it acquiesced in it? Therefore, whatever happened to the suit premises after 30th November 1996 had nothing to do with the Government. It was purely a matter between Major General Elly Tumwine and the plaintiff. In the circumstances, there was no holding over of the tenancy by the defendant. Court has, therefore, decided the third issue in favour of the defendant. With regard to the fourth issue, that is to say, whether the defendant was liable to pay water bills for the suit premises, first of all it is important to know what the tenancy agreement says in this area of controversy. Clause 2 of the said agreement provides as follows,

“2. THE TENANT HEREBY COVENANTS WITH THE LANDLORD as follows.• -

(a)

(b) *To pay all charges... on the Premises and all water bills...*”

Clearly, the Government was under obligation to pay water bills during the two years tenancy in respect of the suit premises. However, contrary to clause 2 of the said agreement the Government’s agent or servant Major General Elly Tumwine did not pay his water bills during his stay in the suit premises during that period. It follows, therefore, that the defendant is liable to pay the water bills incurred by Major General Elly Tumwine in respect of the suit premises during the said tenancy. Court has answered the fourth issue in favour of the plaintiff.

With regard to the fifth issue, that is to say, the available remedy Court has this to say. Those remedies depend on the final result of the suit; and from what has transpired above it is clear that the plaintiff’s suit has succeeded. That means that Court must grant the plaintiff some remedies. However, Court will only consider the remedies the plaintiff prayed for; and it should be remembered that those remedies were outlined at the beginning of this judgment. Court will go through them one by one with a view to deciding whether it should grant them to the plaintiff.

With regard to the sum of shs. 19,500,000/= that represents rent arrears for the suit premises for the period of two years running from 1st December 1994 to 30th November 1996, Court found, under the second issue, that the said sum is due. The defendant must therefore, pay it to the plaintiff.

With regard to the sum of shs. 30,000,000/ that represents rent arrears for the holding over period running from 1st December 1996 to 21st September 1997, Court found, under the third issue, that the defendant was not privy to Major General Elly Tumwine's acts in respect of the suit premises. That means the defendant cannot, lawfully, be made to pay shs. 30,000,000/= that accrued on account of rent in respect of the suit premises during that period.

With regard to the water bills, which amount to shs. 2,597,079/= the plaintiff testified that Major General Elly Tumwine incurred that amount during the whole of the period he had possession of the suit premises, that is to say, from December 1994 to 21st September 1997. However, as a result of delayed payment the Water Authority imposed a penalty of 10% on the said bills. The penalty is shs. 274,567/=; and the plaintiff wished the defendant to pay it as well. It should be remembered that Court found, under the third issue, that the Government's liability for Major General Elly Tumwine's stay in the suit premises only covered a period of two years, that is to say, from 1st December 1994 to 30th November 1996. Likewise, the Government's liability for water bills must be limited to that period. Now, the important question Court must answer is this. How much in terms of water bills for the suit premises is the Government liable to pay in respect of the period in question? Exhibits P6 and P7 (i.e. water bills in respect of the suit premises) paint the picture that at the beginning of December 1994 the arrears of water bills for the suit premises stood at around shs. 1,000,000/=. Of course, the Government is not liable for that sum of money because by the time it signed the tenancy agreement for the suit premises that sum of money was already outstanding. However, when the tenancy came to an end on 30th November, 1996 the total of arrears for water bills in respect of the suit premises was shs. 2,378,163/=. Therefore, when one takes away from the total bill of water arrears (i.e. shs. 2,378,163/=) the amount which the defendant does not owe (i.e. shs. 1,000,000/=) one discovers that one remains with only the amount that the Government rightly owes, that is to say, shs. 1,378,163/=. That means that the plaintiff is entitled to recover shs. 1,378,163/= from the defendant as unpaid water bills for the period running from 1st December 1994 to 30th November 1996.

With regard to the 10% penalty referred to above, Court has this to say. Apart from the fact that 10% of shs. 2,597,079/= is not shs. 274,567/= Court will not order the defendant to pay any penalty in respect of water bills for the suit premises. That is so, because that penalty is an

afterthought on the plaintiff's part, which is not part of his case as is revealed by the plaint. He did not include it among the things he was claimed in the plaint.

With regard to general damages for breach of contract, it is quite clear that the plaintiff has suffered inconvenience for the last six years or so since the outstanding rent fell due. Therefore, taking into account all, Court thinks that a sum of shs. 2,000,000/= is sufficient compensation for him to atone the breach of contract which the plaintiff suffered at the hands of the Government. With regard to interest on the sum of shs. 19, 5 00,000/=-, the plaintiff will have it as he prayed, that is to say, at the Uganda Commercial Bank rate from December 1996 until the date of full payment. However, the defendant will pay interest on general damages at court rate from the date of judgment till payment in full.

The defendant will also bear the costs of the suit. All in all, judgment is hereby entered in favour of the plaintiff against the defendant in the following terms,

1. The defendant shall pay the plaintiff a sum of shs. 19,500,000/= as arrears of rent in respect of the suit premises for the period running from 1st December 1994 to 30th November 1996.
2. The defendant shall also pay the plaintiff a sum of shs. 1, 378,163/= as water bills in respect of the suit premises for the period running from 1st December 1994 to 30th November 1996.
3. The defendant shall further pay the plaintiff a sum of shs. 2,000,000/ as general damages for breach of contract.
4. The defendant shall pay interest as follows,

(a) On the award in paragraph 1 above - at the Uganda Commercial Bank rate from **1st** December 1994 until payment in full;

(b) on the award in paragraph 3 above- at court rate from the date of judgment until payment in full.

5. The defendant shall also bear the costs of the suit.

JUDGE

20/9/2002

Read before: At 9.34 a.m.

Mr. Wadidi for the plaintiff

Mr. Senabulya c/clerk