

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT No. 645 OF 2003

DIPAK PREMCHAND RAKHAND ::::::::::::::::::::::::::::::::::: PLAINTIFF

- VERSUS -

MYTRADE (U) LTD & ANOTHER::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. MR JUSTICE RUBBY AWERI OPIO

J U D G M E N T:-

The plaintiff brought the action for the following orders:-

- (i) A declaration that the reviewed lease dated 6th March 2001 between the first and third defendants is void or voidable.
- (ii) An order that the second defendant accounts for accounts for and or fund US \$ 60,000 received as advance deposit on the lease rental as it is contrary to the lease arrangement between the first and third defendants.
- (iii) An order that the third defendant causes payment of the lease sums to the second defendant and pays the same into the first defendant's account with Standard Chartered Bank (U) Ltd only without any deductions.
- (iv) An order that the third defendant account for all payments so far made under all the arrangements with the first defendant.
- (v) An order that the third defendants comply with the terms of the memorandum of agreement signed on 30th April 1999.

The background facts give rise to the cause of action are as set below-

- (a) By an agreement dated 1st March 1999, the first defendant leased lands comprised in FRV volume 60 Folio 23 Plot No. 25 Bombo Road, Kyadondo land at Kawempe and in FRV volume 60 Folio 24 Plot No. 24 Bombo Road, Kyadondo land at Kawempe to the third defendant for a period of three years subject to renewal.

- (b) On the 6th day of March 2001, the second defendant purported to renew the said leased by signing a deed renewal of lease agreement with the third defendant in the capacity of a director of the first defendant (annexture A). The second defendant had no authority of the Board of Directors or otherwise to renew the lease. The plaintiff did not sign the said lease yet he was a director of the 1st defendant at the time of the purported renewal (annexture B).
- (c) The defendant did not make the plaintiff aware of the renewed lease or the terms of the renewal.
- (d) On the 14th day of May 2003, a consent judgment was entered in favour of the plaintiff against the first defendant in the sum of shs. 1,100,000/= plus interest. That judgment established the plaintiff as creditor of the first defendant (annexture C). Owing to the fact that the first defendant did not have sufficient funds to meet all its debt obligations on the 30th day of April 1999, it entered into a memorandum of agreement with the plaintiff (first Creditor) a Mrs Prathiba Sharma (second Creditor) and MRs M.K. Vohora (3rd Creditor). The parties agreed, inter alia, that in the event of the successful sale of the property comprised in FRV volume 60 Folio 23 Plot No. 25 Bombo Road, Kyadondo land at Kawempe, the first defendant through the second defendant would repay the debt obligations of the first and second creditor after deduction of all expenses, commissions, secured obligations and recognized pending loans therein already stated and mentioned (annexture D). 60,000 US \$ was paid to the second defendant as an advance deposit on the lease rental but the same was not deposited in the first account with Standard Chartered Bank (U) Ltd in breach of the terms of the memorandum of agreement. As a result the said sum was not applied to the settlement of the first defendant's outstanding debt obligations to the detriment of the plaintiff and other conditions of the first defendant. The plaintiff made demands of the defendants to comply with the terms of the understanding but to no avail hence this suit.

The first and second defendants filed jointly filed written statement of defence in which they denied the claim and contended that the plaintiff never gave any consideration for the agreement under which he was claiming payment.

In the course of the hearing, the plaintiff and the third defendant entered a consent judgment leaving the matter only between the plaintiff and first and second and third defendant. The matter proceeded ex parte because the defendants were served but never attended court on the scheduled hearing date. The plaintiff adduced the evidence of one witness D. Pak Premchand Shah PW1, who testified that in 1995/96 he advanced the first defendant some money through the second defendant amounting to US \$1,100,000. He testified that proof that the defendants owed him money was the consent judgment and the memo of understanding, which stipulated the mode of payment. (Exhibit P1 and P2).

It is clear from the memorandum of appeal and the consent judgment that the defendants owe the plaintiff US \$ 1,100,000 which is due and owing. It is therefore ordered that the said sum of money should be paid by the two defendants plus interest at 25% from 30th April 1999 until payment in full.

The plaintiff further claimed US \$ 60,000 which had been paid to second defendant who never remitted the same. However that amount of money was part of the US \$1,100,000.

If it is to be paid then it has to be offset from the amount which was due and owing. All in all judgment is entered for the plaintiff in the above terms with costs.

RUBBY AWERI OPIO

JUDGE

1/10/2005

James Bagonza for plaintiff holding brief for Mr Mukasa. Judgment read in chambers.

RUBBY AWERI OPIO

JUDGE

1/10/2005