THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 570 OF 2002

1. RAJABALI VALIMOHAMED VAIYA

2. AKBARALI VALIMOHAMED VAIYA

3. TOJDIN ALIDINA VALIMOHAMED

4. NURDIN ALIDINA VALIMOHAMED ..... PLAINTIFFS

VERSUS

GENERAL PARTS (U) LTD ..... DEFENDANT

Hon. Lady Justice Monica K. Mugenyi

Judgment

The plaintiffs were the registered proprietors of the property comprised in Kyadondo LRV 184 Folio 4 at plot 14 South Street (presently known as Ben Kiwanuka Street), having been registered as such on 23rd May 1955. On 1st December 1995 the plaintiffs were issued with a certificate authorising their repossession of the suit land. At the time, the defendant company occupied one shop and 2 flats on the property and the plaintiffs had agreed to retain it as a tenant from April to October 1993. The parties did not reduce their tenancy arrangement into a formal tenancy agreement. The defendant defaulted on its rental obligations on numerous occasions, resulting in the execution of a 'payment agreement' by the parties dated 21st May 1997 whereby the defendant deposited seven post-dated cheques in satisfaction of its rental arrears. Six of the post-dated cheques were dishonoured upon presentation; subsequent cheques issued by the defendant allegedly in the sum of Ushs. 267,200,000/= were similarly dishonoured, and to date the defendant is allegedly in rental arrears to the tune of Ushs. 52,061,285/=.

The plaintiffs instituted the present legal proceedings before the 2005 sale of the repossessed property to a one Kunnal Pradip Karia. They seek the eviction of the defendant, mesne profits, declarations that the defendant's tenancy was rightfully terminated following its default on rental payments, as well as damages and related attendant prayers. The defendant contested the rent charged as having been excessive, discriminative and oppressive; and contended that should any rental arrears be found to have been outstanding they should be off-set against the cost of repairs and improvements that it allegedly undertook on the rental premises in the sum of Ushs. 55,000,000/=, as well as the value of property it allegedly lost when the plaintiffs sought to distress for rent allegedly valued at Ushs.145,000,000/=. The defendant further countered the plaintiffs' claim to the property with the assertion that the repossession process and the registration of Kunnal Pradip Karia as the proprietor of the repossessed property were tainted with fraud.

In a joint scheduling memorandum dated 24th March 2014 the following issues were framed:

1. Whether the defendant is indebted to the plaintiffs by way of rental arrears.
2. Whether the plaintiffs fraudulently repossessed the property.
3. Whether the parties are entitled to the respective remedies prayed for.

At the hearing of this case the plaintiffs were represented by Mr. Kabiito Karamagi, while Mr. Moses Kugumikiriza represented the defendant.

Issue No. 1: *Whether the defendant is indebted to the plaintiffs by way of rental arrears*

It was agreed between the parties that their did exist a tenancy arrangement between them in respect of a shop and 2 flats occupied by the defendant, having been retained by the plaintiffs following their repossession of Kyadondo LRV 184 Folio 4 at plot 14 South Street. It was the evidence of the sole witness for the plaintiffs that the terms of the tenancy arrangement were communicated to the defendant company by a letter dated 14th October 1993 (Exhibit P6) and included rent for the shop and each flat at Ushs. 1,200,000/= and 300,000/= respectively, which would bring the total amount of rental payments due from the defendant company to Ushs. 1,800,000/= per month. Although this court has not seen any acknowledgement of that letter nor did the parties reduce the terms contained in Exhibit P6 into a formal tenancy agreement, they did execute

an ‘agreement to pay’ dated 21st May 1997 which was admitted on the record as Exhibit P15. Mr. Kabiito submitted that this agreement would constitute acknowledgement by the defendant company of the rental arrears that had accrued from the rental terms stipulated in Exhibit P6. Learned counsel submitted that further acknowledgement of the rental terms may be found in correspondence entailed in Exhibits P10 and P13 hereof. It was the plaintiffs’ case that as at the date of the payment agreement, the rental arrears owed by the defendant were stated in clause 1 thereto to have been in the sum of Ush. 31,360,000/= but as at October 2000 the rental arrears had accumulated to Ushs. 52,061,285/= as depicted in a ‘statement of account’ admitted on the record as Exhibit P14. PW1 testified that a valuation exercise by M/s Kyagulanyi Ntwatwa Chartered Quantity Surveyors had valued the improvements undertaken on the suit property by the defendant at Ushs.33,298,715/= and this reimbursable item was factored into the statement of account. This evidence was not controverted in cross examination. Rather, the defence contended that the plaintiffs were not entitled to any rent from the suit property given that the entire repossession process was tainted by fraud therefore the certificate of repossession (Exhibit P4) should be cancelled. The question of fraud was raised as the second issue herein. I shall, therefore, revert to it later in this judgment. On the question of rental arrears, however, it was submitted for the defendant that following the temporary allocation of the disputed property to it Departed Asians Property Custodian Board (DPACB) as stipulated in Exhibit D13, the defendant company did pay rent for the allocated premises until December 2014. The defence relied on receipts admitted on the record as Exhibit D16 in support of this claim.

I have carefully scrutinised the evidence on record on this issue. I find that Exhibit P6 did establish the terms of the tenancy arrangement between the parties, while Exhibit P15 was an affirmation by the defendant company that it was indeed in breach of that tenancy arrangement and was willing to meet its rental obligations as prescribed by that payment agreement. The agreement provided for 7 post-dated cheques to be issued by the defendant in satisfaction of its then outstanding rental obligations to the plaintiffs. It was testified by PW1 that the monies and payment schedule outlined in clauses 2 and 3 of that agreement were not honoured by the defendant. The same witness also testified that the defendant’s improvements to the suit property as at March 2001 stood at Ushs. 33,298,715/= and the said amount had been factored into the Statement of Account (Exhibit P14) that formed the basis of the present claim for rental arrears in the sum of Ushs.

52,061,285/=. Under cross examination of PW1 it did transpire that the defendant company had procured its own independent valuation of the improvements undertaken on the suit property, as a result of which the then Minister of Finance, Hon. Basoga Nsadhu, requested the plaintiffs to reimburse the defendant in the sum of Ushs. 50,000,000/=. The same valuation exercise was referred to in Exhibit P16(ii) and appeared to have been the subject of verification in the valuation exercise that was undertaken by M/s Kyagulanyi-Ntwatwa Chartered Quantity Surveyors, which resulted in the report adduced in evidence as Exhibit P17. The foregoing evidence establishes that there was a dispute between the parties with regard to the value of the improvements that had been undertaken on the suit property by the defendant company. I shall return to a determination of that value as I consider the question of remedies available to the parties. However, for present purposes, the defence was unable to controvert the existence of rental arrears; it only sought to have the value of the improvements undertaken on the property off-set from the said arrears.

On the other hand, DW1 testified that he had objected to the increment of his rent from Ushs. 170,000/= that he allegedly used to pay to DAPCB to Ushs. 1,300,000/= per month. The witness also indicated that he had objected to the excessive rent he was being charged and produced a letter to that effect dated 18th October 2000 and admitted on the record as Exhibit D6. DW1 then proceeded, in the very next sentence, to admit that the terms contained in the payment agreement dated 21st May 1997 had been arrived at in agreement with him. I find this evidence self-contradictory in 2 material aspects: first, Exhibit D6 makes no reference whatsoever to excessive rent as testified by DWI and secondly, the payment agreement that the witness attested to having conceded to had been executed in 1997, well before the purported letter of objection dated 18th October 2000. Therefore, by 2000 when DW1 supposedly objected to the excessive rent, the defendant company had already accumulated rental arrears in the sum of Ush. 31,360,000/= as provided for in Exhibit P15. Further, there is no evidence on record that he or the defendant company contest the rental terms that were communicated to them vide Exhibit P6. DW1 testified that there was a chance that the dishonoured cheques were paid later but did not adduce any evidence to support his supposition. The defence sought to rely upon Exhibits D15 and D16 in purported proof of rent. Exhibit D15 entailed 4 receipts for rent in the aggregate sum of Ushs. 10,000,000/= paid to DAPCB for the period 2012 – 2013, while Exhibit D16 is a document from Crane Bank Ltd reporting a payment transaction by the defendant

company of Ushs. 3,000,000/= being rent for plot 14 Ben Kiwanuka Street for the period July – December 2014. The period for which those rental payments were made to DAPCB to wit 2012 – 2014 was not in issue before this court. PW1 clearly stated that the figure claimed in rental arrears presently did not even include the period between 2000 and 2005 when the repossessed property was eventually sold. Indeed, the plaintiffs would have had no interest in the suit premises after 2005, when they sold the repossessed property. I would therefore disregard the defence evidence in that regard. Consequently, on a balance of probabilities, I am satisfied that the defendant did accumulate rental arrears in the sum of Ushs. 52,061,285/= as reported in Exhibit P17. I so hold.

Issue No. 2: *Whether the plaintiffs fraudulently repossessed the property comprised in Kyadondo LRV 184 Folio at plot 14 South Street*

The particulars of fraud pleaded by the defendant are as follows:

i. Applying for repossession using a land office registry copy.
ii. Applying or causing the application for a special certificate of title on the basis that the original title got lost and thus concealed the Grindlays Bank (U) Ltd encumbrance.
iii. Failure to clear the caveat in Grindlays Bank (U) Ltd.
iv. Deliberately refusing to retrieve the title from Grindlays Bank (U) Ltd.

It was contended for the defence that the plaintiffs circumvented a mortgage that was registered on the title in respect of the repossessed property, wrongly processed the repossession of the property using a land registry copy of the title and thus purported to repossess the said property without securing the release of the mortgage. Learned defence counsel contended that this contravened the provisions of section 6(2) of the Expropriated Properties Act, as well as the process for the release of mortgages outlined in section 125 of the Registration of Titles Act (RTA). Mr. Kugumikiriza described the evidence of PW1 that he did secure the release of the mortgage as unconvincing and unbelievable because the witness had not adduced any proof of having paid the mortgage amount or secured the release of the title; counsel maintained that had PW1 truly visited DAPCB, as alleged, he would have discovered that Grindlays Bank (U) Ltd had itself released the mortgage and handed the certificate of title to DAPCB. Learned counsel invited this court to deduce authenticity in the release of mortgage adduced by DW1 (Exhibit D15) rather than that presented by PW1 (Exhibit P3). Further, Mr. Kugumikiriza faulted the plaintiffs for propagating the co-existence of 2 certificates of title in respect

of the repossessed land owing to their declaring the original (duplicate) title lost, whereas not; swearing a statutory declaration to that end that was premised on falsehoods, and obtaining a special certificate of title that was materially different from the allegedly lost title (hence the caveat thereon). Citing sections 70 and 77 of the RTA, learned counsel sought the cancellation of the special certificate of title. Learned defence counsel took issue with the certificate of repossession (Exhibit P4), contending that it was not authentic given that it was certified by the DAPCB yet it had been issued by a separate entity, the Minister of Finance and was neither addressed nor copied to the DAPCB. Mr. Kugumikiriza further faulted PW1 for premising his role in this matter on instructions from a one Nazim Valimohammed, allegedly holder of powers of attorney from the plaintiffs, but failing to produce the said power of attorney in court. Counsel cited the cases of **Bryant Powis and Bryant Ltd and La Banque Du Peuple and The Quebec Bank (1893) PC House of Lords** and **Zaabwe vs. Orient Bank SCCA No. 4 of 2009** in support of his contention that it would have been important for this court to confirm whether in fact Mr. Valimohammed, upon whose instructions PW1 acted, did operate within the authority assigned to him in the power of attorney. Counsel argued that just like the Supreme Court had in **Zaabwe vs. Orient Bank** (supra) found the first respondent's mortgage registration null and void on account of fraud and illegalities apparent in the power of attorney; this court should, similarly, find the repossession process in issue presently null and void for failure by the plaintiffs to produce the power of attorney under which it was undertaken.

Conversely, the plaintiffs did raise 3 preliminary points of law with regard to the defendant's counter-claim in fraud: first, that the defendant company had no *locus standi* to institute the counter-claim because it was a stranger to the repossession proceedings; secondly, that the defendant had no cause of action against the plaintiffs and thirdly, that the counter-claim was time-barred having been brought well beyond the time stipulated in section 15 of the Expropriated Properties Act.

Before considering the above points of law or, indeed, the merits of this issue I am constrained to observe that the defence raised some matters in submissions that it had not pleaded either in its written statement of defence or counterclaim, as well as matters that were not in issue before this court. Indeed, Mr. Kugumikiriza did concede this in his submissions but argued that although those matters were not framed as issues they, nonetheless, were in issue herein. The matters so raised include the

question of the plaintiffs having never been present in Uganda for purposes of their application for repossession, as well as the extensive reference to a one Kunnal Pradip Karia's allegedly fraudulent interest in the repossessed property.

Order 6 rule 1(1) of the CPR states that '**every pleading shall contain a brief statement of the material facts on which the party pleading relies for a claim or defence, as the case may be**.' In the case of **Captain Harry Gandy vs. Caspair Air Charter Ltd (1956) 23 EACA 139** it was held:

> "**The object of pleadings is of course to ensure that both parties shall know what are the points in issue between them so that each may have full information of the case he has to meet and prepare his evidence to support his own case or to meet that of his opponent**."

I respectfully agree with that clarification on the purpose of pleadings. Indeed, in my considered view, it is on the basis of the facts contained in pleadings that scheduling conferences as prescribed in Order 12 Rule 1(1) of the CPR are held to sort out points of agreement and disagreement. It is at the stage of scheduling conference and on the basis of pleadings, therefore, that points of disagreement are translated into and framed as issues. This is for purposes of engendering clarity on the matters in dispute between the parties and thus focusing the attendant litigation proceedings. Further, it is well established law that a cause of action in fraud must be specifically pleaded, particulars thereof provided and the claim proved at a higher balance of probabilities. See **Tifu Lukwago vs Samwiri Mudde Kizza & Another Civil Appeal No. 13 of 1996 (SC)** and **Fam International Ltd & Another vs. Mohamed Hamird El-Fatih Civil Appeal No. 16 of 1993 (SC)**. A party faced with pleadings founded in fraud would then know the specific elements of fraud that it needs to rebut or disprove in its defence.

Learned counsel for the plaintiff did argue, quite persuasively, that the defendant's failure to specifically plead or raise during scheduling conference the plaintiffs' alleged physical absence at the time of the application for repossession meant that they were not given the opportunity to rebut this allegation. I would therefore disallow the introduction of this allegation of fraud at this stage of the proceedings. The defendant did also seek to have this court determine the issue of Kunnal Pradip Karia's interest

in the repossessed property. I have carefully scrutinised the record in this case. Whereas the fraud allegedly underlying the issuance of a special certificate of title was duly pleaded; Kunnal Pradip the current holder thereof is not a party to the present suit, he has not been given an opportunity to present the possible bonafides of his interest in the repossessed property and, accordingly, it would be a travesty of justice and a breach of the constitutional obligation to ensure a fair hearing to all parties for this court to pronounce itself on Mr. Pradip's interest in the land without according him an opportunity to be heard. I would therefore disregard the defence submissions on that issue.

I now revert to the points of law raised by learned counsel for the plaintiff. On the question of *locus standi* the defence maintained that as a sitting tenant on the repossessed property, the defendant company was allocated the suit property vide Exhibit D13(a) therefore it did have *locus standi* to challenge the allegedly fraudulent repossession. Learned defence counsel did also provide a detailed preview of the numerous cases related to this matter to presumably negate learned plaintiff counsel's submission that the question of *locus standi* had been conclusively addressed in **Civil Suit 266 of 2013**.

First and foremost, section 15 of the Expropriated Properties Act provides for appeals to the High Court by any person that is aggrieved by any decision made by the Minister under that Act. However, such appeals should be lodged within 30 days from the date the Minister's decision is communicated. For ease of reference the section is reproduced below:

> **"Any person who is aggrieved by any decision made by the Minister under this Act, may, within thirty days from the date of communication of the decision to him or her person, appeal to the High Court against the decision."**

In the instant case it seems to me that the defendant company is aggrieved with the issuance of a certificate of repossession in respect of the property comprised in Kyadondo LRV 184 Folio 4 at plot 14 South Street owing to alleged fraud in the repossession process. The decision in issue was made within the precincts of section 6(1) of the Expropriated Properties Act, the certificate duly issued on 1st December 1995 and a letter communicating the said issuance dated 6th February 1996 duly transmitted. No such appeal was lodged within the prescribed time therefore the plaintiffs' repossession remained valid. In any event, even if the present counter-claim were

deemed to be an appeal under section 15, it would be out of time having been lodged well beyond the 30 day period prescribed in section 15 of the Act.

Secondly, the question of *locus standi* has been raised in this suit. I propose to address it together with the issue of a cause of action. Fraud in land transactions has *inter alia* been defined as '**a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or suppression of the truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated**.' See **Zaabwe vs Orient Bank & 5 Others Civil Appeal No. 4 of 2006**. This includes any dishonest dealing in land or sharp practice intended to deprive a person of an interest in land. See **Kampala Land Board & Another vs. Venansio Babweyaka & Others Civil Appeal No. 2 of 2007.** To my mind therefore, a person that seeks to impugn another's interest in land on account of fraud would have to have had a recognised interest in that land himself that the alleged fraudster seeks to deprive or cheat him of thus establishing his or her *locus standi* in the matter. The defence in this case did acknowledge that the defendant company was a 'sitting tenant' on the repossessed property. The question is whether a sitting tenant on expropriated property would be possessed of a legally recognised interest in land such as to give him *locus standi* to institute a cause of action in fraud.

Article 237(3) of the Constitution of Uganda, 1995 recognises the following land tenure systems: customary, freehold, mailo and leasehold. The same land tenure systems are reflected in section 2 of the Land Act. The Land Act does also recognise lawful and bonafide occupants on land as having a legitimate interest in land. See sections 1(dd), 3(4)(c), 29(1) and (2), and 31(1) of the Land Act. However, section 29(4) of the Land Act explicitly excludes licensees from the definition of lawful or bonafide occupants. The section reads:

> "**For the avoidance of doubt, a person on land on the basis of a licence from the registered owner shall not be taken to be a lawful or bona fide occupant under this section."**

The **Oxford dictionary of law, Oxford University Press, 2009, 7th Edition, p.325** defines a licence as follows within the context of land law:

> "(**In land law) permission to enter or occupy a person's land for an agreed purpose. <u>A license does not usually confer a right to exclusive possession of the land, nor any estate or interest in it</u>: it is a personal arrangement between the licensor and the licensee**."

In the instant case it has been established that the defendant company entered into a tenancy arrangement with the plaintiffs after the repossession of the property. This tenancy arrangement permitted the said company to remain on the repossessed property as a tenant. It thus gave the defendant company a licence to so occupy the rental premises in issue presently. It did not confer any estate or interest in the said property. Further, Section 7(a) of the Expropriated Properties Act recognises a certificate authorising repossession as sufficient authority for the then Chief Registrar of Titles to transfer title in an expropriated property to its former owner. The certificate authorising repossession is thus an acknowledgement of its holder's proprietary interest in expropriated land. In the instant case, the plaintiffs having been issued with a certificate authorising repossession of their property, the DAPCB was divested of its statutory mandate over the said property as prescribed by section 2(4) of the Expropriated Properties Act. Therefore, its purported issuance of a temporary allocation to the defendant company as stipulated in Exhibit D13(a) was mute and of no legal effect. In the result I am satisfied that that the defendant company, as a former licensee on the repossessed property, had no *locus standi* to institute the present counter-claim alleging fraud in the repossession process. I so hold.

<u>Issue No. 3</u>: *Remedies*

The remedies sought by the plaintiffs as stated in the plaint are as follows:

i. A declaration that the defendant has breached the tenancy it entered into with the plaintiffs.
ii. A declaration that the plaintiffs rightfully and lawfully terminated the tenancy on account of the defendant's breach thereof.
iii. An order that the defendant pays Ushs. 52,061,285/= being rent arrears due and owing to the plaintiffs.
iv. An order to evict the defendant from the plaintiffs' premises it currently occupies on plot 14 Ben Kiwanuka Street, Kampala.
v. Mesne profits at the rate of Ushs. 1,200,000/= per month for the shop and Ushs. 300,000/= per month for each of the 2 flats currently occupied by the defendant from 11th October 2000 up to the date of handing over of vacant possession thereof to the plaintiffs.
vi. Interest on (ii) at the rate of 28% from 21st May 1997.

vii. General damages.
viii. Costs.

On the other hand, the defendant sought the following orders by counter-claim:

i. Ushs. 145,100,000/=.
ii. Ushs. 55,000,000/= being the value of improvements to the property.
iii. General damages.
iv. Costs.

As alternative prayers, the defendant/ counter-claimant sought the following orders:

a. An order that the repossession certificate dated 1st December 1995 issued to the defendants to the counter-claim in respect of the suit land plot 14 South Street be cancelled/ revoked.
b. An order that the defendants to the counter-claim are not entitled to any rent in respect of the suit premises.
c. An order that the title in respect of the suit premises in the names of the defendants to the counter-claim or any person claiming title from them be cancelled.

I am constrained to state from the onset that, having answered the first issue in the affirmative, the order sought by the defendant that the plaintiffs/ defendants to the counter-claim are not entitled to any rent is not tenable. On the contrary, I find that the plaintiffs are entitled to the declaration sought that the defendant/ counter-claimant did breach the parties' tenancy arrangement. In the same vein, having ruled that it goes against the constitutional duty upon it to ensure a fair hearing to all parties for this court to entertain and pronounce itself on the claim against Kunal Pradit Karia in his absence, it follows that the other alternative orders sought by the defendant/ counter-claimant are not tenable either. In equal measure, the plaintiffs' prayer for an order of eviction against the defendant/ counter-claimant is not tenable having been over-taken by events following the plaintiffs' sale of the property. They thus have no locus standi to secure an eviction order against the defendant company.

Be that as it may, the plaintiffs did seek a declaration that they rightfully and lawfully terminated the tenancy on account of the defendant's breach thereof. I have carefully scrutinised the evidence on record. This court has seen a letter dated 11th October 2000 on the subject of termination which was attached to the plaint. Although it was not formally tendered in evidence the defence was well aware of its existence but opted not to raise it in cross examination or at all. I therefore find that the plaintiffs'

termination of the tenancy is not disputed and would, allow the prayer sought by the plaintiffs in that regard.

The plaintiffs did also pray for mesne profits. Mesne profits are defined in section 2(m) of the Civil Procedure Act (CPA) as '**those profits which the person in wrongful possession of the property actually received or might with ordinary diligence have received from it, together with interest on those profits, but shall not include profits due to improvements made by the person in wrongful possession.**' In the **Oxford dictionary of law, ibid., p. 351** mesne profits are defined as '**money that a landlord can claim after his tenancy ends, the amount being equivalent to the current market rent of the property**.' It seems to me then that mesne profits entail a monetary benefit in terms of the applicable market rent enjoyed by a wrongful occupant of rental premises at the expense of the land lord thereof. I have carefully considered the plaintiffs' evidence. I find no evidence on the market rent attributable to the rental premises in question for the period after the termination of the defendant's tenancy, that is, the period after 11th October 2000. The Kalema report that was adduced in evidence pertained to the rental market rates applicable well before the termination of the tenancy. I would, therefore, disallow the claim for mesne profits.

Finally, I turn to a consideration of the prayers for Ushs. 52,061,285/= being the rental arrears sought by the plaintiffs viz the counter-claims of Ushs. 55,000,000/= and Ushs. 145,100,000/= being compensation sought by the defendant/ counter-claimant for improvements undertaken on the suit premises and goods illegally distressed for rent respectively. PW1 testified that a valuation report by M/s Kyagulanyi Ntwatwa Chartered Quantity Surveyors (Exhibit P17) had valued the improvements undertaken on the suit property by the defendant at Ushs.33,298,715/= and this reimbursable item was factored into the statement of account that forms the basis for rental arrears claimed by the plaintiffs. On the other, DW1 did under cross examination questioned the validity of the Ntwatwa report, asserting that Mr. Ntwatwa who undertook the valuation exercise had not entered his shop to assess the improvements therein. This court understood DW1 to make the point that the valuation report produced by M/s Roka Enterprises Ltd (Exhibit D7) was more credible than that contained in Exhibit P17 given that the valuation therein had been undertaken by persons that actually effected the improvements in the shop. The witness maintained that persons that had undertaken the improvements in question were better placed to know the value of the improvements they

had made. Although learned counsel for the plaintiffs sought to discredit the Roka report on account of its having been made by persons that had not been proven to be qualified valuers, interestingly, in clause 4 of the Ntwatwa report it is apparent that the presumably qualified valuers did rely upon the bills of quantities provided by M/s Roka Enterprises Ltd. In clause 6 of the same report the valuers then purported to exclude moveable furniture, fittings and general painting from the reimbursable expenses. This court has carefully perused the bill of quantities prepared by M/s Roka Enterprises Ltd and adopted by M/s Kyagulanyi-Ntwatwa Chartered Quantity Surveyors. I do not find any moveable furniture therein. My understanding is that the safe custody room fitted with a ready-made heavy safe had been customised for a shop. I would consider this an improvement that warrants compensation as provided under section 12(2) of the Expropriated Properties Act. Consequently, on a balance of probabilities I would uphold the defendant/ counter-claimant's claim for compensation for improvements made in the sum of Ushs. 55,926,700/=. This claim accrued prior to the sale of the repossessed property and therefore is liable for payment by the present plaintiffs.

With regard to the defence claim for compensation for property illegally distressed for rent, this court has seen documentation authorising M/s Tropical Links General Auctioneers to levy distress on the defendant company's property to recover outstanding rent as at 24th May 2000. The defendant, however, did not furnish sufficient proof of this claim. A document that purportedly valued the claim at Ushs. 145,100,000/= and attached to the amended written statement of defence as annexure GP3 was not certified by the court from which it allegedly originated neither was the basis for the handwritten monetary sums inserted against each item explained. I would therefore disallow this claim.

In the final result, judgment is hereby entered for the plaintiffs with the following orders and declarations:

1. It is declared that the defendant did breach the tenancy it entered into with the plaintiffs.
2. It is declared that the plaintiffs rightfully and lawfully terminated the tenancy on account of the defendant's breach thereof.
3. It is ordered that the defendant pays Ushs. 52,061,285/= to the plaintiffs being rent arrears due and owing to them.
4. It is ordered that the defendant off-set Ushs. 55,000,000/= from the monies due to the plaintiffs in rental arrears, being the value of

improvements to the property comprised in Kyadondo LRV 184 Folio at plot 14 South Street (presently known as Ben Kiwanuka Street).

5. General damages for breach of tenancy arrangement are awarded to the plaintiffs in the sum of Ushs. 10,000,000/=.
6. Costs to the plaintiffs.

I so order.

Monica K. Mugenyi
Judge

30th October 2014