

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)**

HCT - 00 - CC - CS - 673 - 2004

MUBIRU CHARLES PLAINTIFF

VERSUS

SHEILA INVESTMENTS (U) LTD. DEFENDANT

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE.

J U D G M E N T:

The plaintiff brought this suit against the defendant company for the payment of Ushs.3,560,000/= for the loss of his goods and Ushs.1,500,000/= being good will paid by the plaintiff to the defendant. The defendant inter alia run lock-up shops at Nakasero market in Kampala while the plaintiff averred that he was a tenant in one of the said lock-up shops. This suit was brought following what the plaintiff alleges was his unlawful eviction from his lock-up shop by the defendant.

The case for the plaintiff is that the plaintiff took occupation of lock-up shop No. 1316 at Nakasero market in August of 2003. The plaintiff claims to have taken up the said lock up shop from a previous tenant called one Mary Ntale. The plaintiff further claims that he took over occupation of the said lock-up shop and thus became a tenant of the defendant on the basis of a transfer agreement which was witnessed inter alia by an agent of the defendant. The plaintiff paid monthly rental to the defendant of Ushs.75,000/= per month and started to trade in groceries from the said lock-up shop. However, about a year later in June 2004, the plaintiff found that he had been locked out of his shop by the defendant who had placed a second padlock on the door. He was subsequently evicted without recourse to his property within the lock-up shop.

The case for the defendant on the other hand is that the said lock-up shop had actually been abandoned empty by its previous owner and that the defendant took it over to mitigate any loss to it.

The parties agreed to the following facts namely;

- 1- The plaintiff was a tenant at the defendant's premises.
- 2- The defendant subsequently took over the premises.

The parties then agreed to the following issues for trial namely;

- 1- Whether the plaintiff was unlawfully evicted by the defendant?
- 2- Whether in the process the defendant lost property.
- 3- Whether the defendant is liable for the loss and damage.
- 4- Remedies.

Mr. D. Katende appeared for the plaintiff while Mr. O. Mwebesa appeared for the defendant.

Issue No. 1: Whether the plaintiff was unlawfully evicted by the defendant?

The plaintiff Mr. Charles Mubiru PW1 testified that he was a university student who sold groceries on the side. He testified that he left his grocery on Friday the 4th June 2004, but when he returned to it on Monday 7th June 2004, he found that the defendants had placed an additional padlock on the door thus effectively locking him out of the shop.

He testified that he reported this to the LC1 Chairman one Mr. Kayanja who afforded him little help in establishing why all this had taken place. Mr. Mubiru testified that he was at a loss as to why the

place had been locked up has he had last paid rent on the 10th May 2004 (Exh. P.1). When Mubiru claims to have inquired from the defendant why his lock-up had been closed, he alleges that he was told that the lock-up had been reserved for Mr. Basajjabalaba (known to be the owner of the defendant company).

Mr. John Wamala Mubiru PW2 the father of Mr. Charles Mubiru also testified and said that he too run the lock-up with his son. His testimony was short and he said that the lock-up had been removed from them without notice and he does not know why this had happened. He said that he went to office of the manager of the defendant company to inquire, he even took rent money in the hope that this would resolve the matter but was told to forget about the lock-up.

Mr. Burhan Bamwine a Director of the defendant company testified as DW1. He said that he was responsible for all the operations at the market where the suit lock-up shop is located. He testified that he did not know Mr. Charles Mubiru the plaintiff but rather he knew PW2 Mr. John Wamala Mubiru (the plaintiff's father) who he said he used to interact with.

Mr. Bamwine testified that his officers one Ssemala and Issa Kiggundu while following up on rent defaulters in June 2004 found the lock-up shop B16 empty and abandoned. He said that he notified LC1 Chairman of the area one Fred Mugenyi who was also requested to come and look at the place. They then established from the neighbours that the tenant of the said lock-up one Maria Rose had packed her things and left. He denied that the plaintiff was evicted to give the lock-up to Mr. Basajjabalaba. He said the main reason for taking over the lock-up was that it was left open which was irresponsible and negligent.

I have reviewed the evidence given at the trial and the submissions of both counsel.

Clearly the role of court in this issue is simply to establish the facts as to what happened based on the evidence before it, on the balance of probabilities.

Both counsel examined the witnesses in detail as to whether there was a tenancy in the first place between the plaintiff and the defendant. This of course was strange given the existence of Exh.P.3 the hand written transfer agreement, the evidence of Mr. Gaygenda (PW3) and Exh. P.1 which were rental receipts issued by the

defendant to the plaintiff. Now what is more important is that parties had an agreed fact at scheduling to the effect that

“The plaintiff was a tenant in the defendant’s premises”.

The second agreed fact is also important in dealing with this issue namely

“The defendant subsequently took over the premises”.

It therefore follows from these agreed facts that the tenancy between the plaintiff and defendant existed but was determined or terminated. Mr. Bamwine (DW1) testified that there was no written tenancy agreement with the plaintiff. Indeed he further testified that as long as a tenant paid rent they did not go around the lock-up shops to see who they were. Indeed the defendant did not bring any form of record or documentation regarding how the lock-up tenancies were managed. There was a latent lacuna in this respect, which is unacceptable for a company of this nature.

Be that as it may there is no written agreement as to how a tenancy comes to an end. The defendants say there was no eviction of the plaintiff because the lock-up shop was abandoned. However, their evidence is confused when it comes to who abandoned the lock-up shop; was it the plaintiff or one Mary Ntale (who I believe was also

referred to as Maria Rose)? The evidence clearly shows that at the time of the dispute, the plaintiff was still paying rent for the lock-up shop and indeed Mr. Bamwine concedes that he used to deal with the plaintiff's father in this regard.

How then can Mr. Bamwine testify that he inquired from the neighbours who told him that the said lock-up was abandoned by one Maria Rose yet rent was being received from Charles Mubiru and he knew this?

I find that the testimony of Mr. Bamwine is not believable in this regard. All the evidence points to the termination of the plaintiff's tenancy by the defendant and I so find that this was the case. The plaintiff also faults the defendant for terminating the said tenancy without notice. Of course the defendant denies this. I find that there is no written agreement or tenancy. In such a situation where the parties do not have a written agreement or express terms, the court will imply such terms as it thinks are necessary to give effect to what the parties intended. This being a commercial tenancy it would be expected that a reasonable notice of termination would have been given. It is only after such a notice of termination has been given but not complied with by the tenant, that one would expect eviction to occur. This is what is normally found in written

tenancy agreements. In such tenancy agreements it is common to have a notice period of about 3 months so as to avoid business disruptions. Tenancies tend to be terminated forthwith only for non-payment of rent. This is practice that warrants judicial notice.

In this case there is no evidence that rent had been outstanding for an unreasonable period of time. There is also no evidence of notice of termination. I accept the evidence of both PW1 and PW2 that they found a second padlock on their lock-up and thus had no access to it. This act of putting a second padlock on the lock-up by the defendant amounts to a constructive termination and eviction of the plaintiff from the lock-up. Such termination and eviction was unlawful for want of a reasonable notice.

Issue No. 2: Whether in the process the defendant lost some property.

It is the case for the plaintiff that in the process of eviction, he lost

- 50kg of vanilla (worth 27,600/= per kilo)
- Shelves worth 1,780,000/=
- 2 tables worth 200,000/= each.

That is all the plaintiff seems to remember which in my calculation is a claim worth Ushs.3,560,000/= as pleaded in the plaint.

Counsel for the defendant challenges this claim which he submits that being a special damage has not been specifically proved by evidence. I believe here the learned counsel was referring to documentary evidence.

In the case of

Kyambadde V Mpigi District Administration [1983] HCB 44

The Hon. Masika (C.J. as he then was) held that special damages must be strictly proved but they need not be supported by documentary evidence.

The trade in lock-up shops in markets in Kampala and throughout Uganda tends to be informal. Unlike the defendant company these lock-ups are run as sole proprietorships or simple partnerships. They apply little capital, have no stock records and rarely issue receipts for commodities sold.

Court will also take judicial notice of this prevalent practice. In this case however the plaintiff's evidence is corroborated by in the main by that of his father as to the items claimed. There is also the

evidence of one Salim Gaygenda PW3 a neighbour to the effect that he knows the plaintiff's did not leave with their property in the lock-up. I found the evidence of these 3 persons on the balance to be truthful. The claim also is small and plausible. I accordingly find that the claim for special damages is proved. I accordingly find that the plaintiff lost property worth Ushs.3,560,000/=

Remedies

The plaintiff also claims the following remedies

- 1- A refund of Ushs.1,500,000/= as consideration on the grant of tenancy/goodwill.
- 2- General damages
- 3- Punitive damages
- 4- Costs of the suit.

The claim for goodwill of Ushs.1,500,000/= is curious. The plaintiff says he paid it to the defendant company but he did not get a receipt for it. It is curious because for other money paid to the company, like rent, the plaintiff was given a company receipt. Secondly, it is also becoming notorious in Uganda for "*goodwill*" to mean anything. In some cases "*goodwill*" is paid to a former tenant of a premises in order for one to take over the said premises. However, the plaintiff

was emphatic in his evidence that the “*goodwill*” was not paid to the former owner of the lock-up shop. He cannot even define what the “*goodwill*” was paid for. In such circumstances the court finds that the claim for good will of Ushs.1,500,000/= is not sustained and I will not grant it.

As to general damages counsel for the plaintiff left those to be awarded in the discretion of the court. I am not happy with the growing tendency of counsel not to address court on the issue of quantum of damages on the ground that it should be left to the discretion of court. This practice the bar has to remedy. Be that as it may I will grant damages in lieu of notice equal to the rent that would have been paid; being Ushs.75,000/= multiplied by three months being a total of Ushs.225,000/=.

As to punitive /exemplary damages, in the case of

Obwolo V Barclays (U) Ltd. (1992-1993) HCB 179 at 180

a decision I agreed with and applied in the case

Afro Motors Ltd V Uganda Revenue Authority HCCS 355 of 2000

(unreported).

I found that a claim of exemplary damages had to be specifically pleaded in the body of the plaint with full particulars and not just in the prayers.

In this case the claim for punitive damages is only in the prayers in the plaint and is not particularized. Given the informal nature of this tenancy where there were no express terms, this is a fatal omission not to have particulars of damage and so I do not grant any punitive damages against the defendant.

Counsel for the plaintiff has also prayed for interest at 49% p.a. on the amounts so awarded from the date of filing the suit. I think that interest at 49% p.a. is excessive. I award interest at 24% p.a on the Ushs.3,560,000/= from the date of filing till payment in full and 8% p.a on the general damages of Ushs.225,000/= from the date of judgment until payment in full.

I also award the plaintiff the costs of the suit.

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Geoffrey Kiryabwire
JUDGE

Dated: 29/01/08

29/01/08

10:20am

Judgment read and signed in Court in the presence of;

- Byamugisha Dennis h/b for O. Mwebesa for defendant
- Rose Emeru – Court Clerk

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Geoffrey Kiryabwire

JUDGE

Date: 29/01/08