THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[CIVIL DIVISION]

CIVIL SUIT No. 411 OF 2017

VINCENT R. RUBAREMA :: PLAINTIFF

VERSUS-

JAQUELINE RUGASIRA :: DEFENDANT

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

JUDGMENT:

Vincent R. Rubarema *(hereinafter referred to as the "plaintiff")* brought this suit against Jaqueline Rugasira *(hereinafter referred to as the "defendant")* seeking for orders that the defendant doth pay to the plaintiff the sum of UGX. 58,000,000 as rental arrears; special damages, and general damages; interest at the rate of 25% per annum; and costs of this suit.

Background:

The brief background, as can be discerned from the pleadings, is that on 1st July 2006, the plaintiff and the defendant executed a tenancy agreement wherein the plaintiff let his premises comprised in land at Plot 39B Lumumba Avenue, Nakasero Kampala *(hereinafter referred to as the "premises")* to the defendant. The defendant paid rent for the first six years until May, 2012 when she

started defaulting. The rent arrears accumulated to UGX.58,000,000 as at 31st March 2017. The defendant kept on occupying the premises and even sublet part of it to other tenants without the plaintiff's knowledge and/or consent.

Upon inspection by the plaintiff and local authorities, the premises were discovered to have been misused, degraded and damaged, thereby leading to the plaintiff terminating of the tenancy agreement with the defendant and re-entry of the suit premises. It is based on those brief facts that the plaintiff brought this suit to recover the rent arrears, general and special damages as pleaded in the plaint, interest and costs of the suit.

The defendant denied the plaintiff's claim and filed a defence in which she averred that she was forced to pay a higher figure in US dollars to the plaintiff contrary to what was agreed in the tenancy agreement. Further, that she was forced by the plaintiff to terminate the tenancy in April 2012 when the plaintiff gave her one month's notice to vacate the premises. That the plaintiff had informed her that he wished to break down the structure and construct a new one. The defendant insisted that she paid all rent due and owing to

the plaintiff and that the suit is frivolous, lacks merit and should be dismissed with costs.

The plaintiff was represented by *M/s. Kabayiza, Kavuma Mugerwa & Ali Advocates* while the defendant's defence was filed on her behalf by *M/s. Oasis Advocates*. Neither the defendant nor her lawyers appeared for the hearing of the suit despite being duly served with the hearing notices several times which they acknowledged. The case thus proceeded *ex parte* pursuant to Order 9 rule 20(1) (a) Civil Procedure Rules, and the plaintiff called led evidence in proof of his claim. The evidence is on court record and needs not to be reproduced in detail but shall be evaluated in the resolution of the issues posed but this case. Counsel for the plaintiff filed written submissions in support of the plaintiff's case. They too are on court record and court has considered them. The following issues were framed by the plaintiff in his scheduling notes and adopted by court for the determination of this case;

1. ***Whether the defendant breached the tenancy agreement with the plaintiff.***
2. ***Whether the plaintiff is entitled to the sum of UGX.58,000,000 in rent arrears from the defendant.***

3. What remedies are available to the Parties?

Resolution of issues:

Issue No.1: Whether the defendant breached the tenancy agreement with the plaintiff.

A tenancy agreement is governed by of the same principles as a contract under the ***Contracts Act 2010.*** Section 10 thereof, provides to the effect that;

"10. Agreement that amounts to a contract.

(1) 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."

Clearly from the above provisions, parties are free to contract, but shall be bound by the terms of their contract.

In the instant case, evidence of the plaintiff, as well as the documents contained his trial bundle, show that the plaintiff and the defendant executed a tenancy agreement in respect of the premises on 1st July 2006 and the defendant took immediate possession thereof. This is evident from page1-5 of the plaintiff's

trial bundle where the said tenancy agreement appears. Under Clause 2 of the agreement, the monthly rent payable was UGX.1,000,000 (One million Uganda shillings only) for each subsequent month starting 1st September 2006. The plaintiff's evidence is further that the defendant paid the rent from 2006 until 2009 when she started defaulting and making partial payments; which the plaintiff nevertheless allowed. However, due to the part payment, the defendant accumulated rental arrears and by mid-2010, the defendant's rental obligations outstanding were for a period of nine months amounting to UGX. 9,000,000. The plaintiff further adduced evidence that between 2010 and 2011, the defendant started distancing herself from him and even the part payments for the rent would be made by the defendant's relative, a one Paul. That by 2012, the defendant was nowhere to be seen as she kept avoiding the plaintiff's invitation for meetings to settle her obligation, yet she continued to occupy the premises. The defendant denied this claim and at paragraph 7 of the written statement of defence, she averred that she vacated the premises after clearing all her rental obligations until May 2012.

The correct interpretation of the defendant's averment is to the effect that indeed by May 2012, she had cleared all the rent before vacating the premises and there were no outstanding rental arrears. In the subsequent averments in paragraph 9 (f), however, the defendant goes ahead and contradicts herself and avers that the plaintiff picked the keys to the said premises in June 2012 from one Paul Njuguna together with USD $2000 which was pending payment. Whereas in the earlier averment the defendant suggests that there were no rental arrears outstanding, in the subsequent averments she states that there is an outstanding balance of USD $2000. This contradiction is not explained or clarified. The inference is that she still owes the said amount, among others, as the outstanding balance.

The plaintiff also referred to phone text messages between himself and the defendant which is evidence that further demonstrates that as of 2017, the defendant was still in occupation of the premises. This evidence is attached to the plaintiff's witness statement and marked "A". The several telephone text messages of August 2014, fully show that the defendant's claim as to when she left the premises are totally untrue. For instance, on 7th August 2014 the

phone text message (SMS) (from landlord – 0772500929 to the tenant – 0712790734) states as follows;

"Madam, please pay up your rent arrears, May 2012 to September 2014. Last Reminder to avoid interest, costs and damages, Rubarema."

On 7th August 2014 (from tenant – 0712790734 to the landlord – 0772500929):

"Good morning sir, good to hear from u. I have been out of the country for a while, but I don't understand your message. We vacated the premises upon your advice (that u were going to renovate) in Feb. 2013. I held on to the keys for a year. I even asked Paul to call u to hand them over as I had failed to get u on fon a few times. I know I have an outstanding to clear. But it is for 2012. Kindly let's meet and discuss, Thank u."

It is noted here that the defendant indicates that her vacating of the premises was in February 2012 but even by 2013, she had held onto the keys for the premises for yet another year up to 2014. The text message on 7th August 14 (from landlord – 0772500929 to the tenant – 0712790734) states;

"I am available. Kindly pick up my calls."

On 11th August14 (from landlord – 0772500929 to the tenant – 0712790734) states;

"Tried to get you via tel but failed. Plse let's meet Wednesday 13th. At 04.00pm. My records staff is upcountry."

On 11th August 14 (from tenant – 0712790734 to the landlord 0772500929) reads;

"Ok. Wednesday it is. See u there."

On 11th August 14 (from Landlord – 0772500929 to the Tenant – 0712790734) reads;

"Thanks."

On August 14 (from landlord – 0772500929 to the tenant – 0712790734) reads;

"Good afternoon, am still stuck in meeting and the boy the key for the place didn't work today. Can we reschedule to tomorrow?"

On 13th August 14 (from tenant – 0712790734 to the landlord – 0772500929) reads;

"Friday Ok?"

On 13th August 14(from landlord – 0772500929 to the tenant – 0712790734) reads;

"Friday is fine. Same time?"

On 13th August 14 (from tenant – 0712790734 to the landlord – 0772500929) reads;

"Yes. Emphasis on payment of rent arrears. Same time. Thanks.

On 13th August 14 (from tenant – 0712790734 to the landlord – 0772500929) reads;

"I don't have it yet. Best we meet when I do. This week is too soon for payment."

From the foregone, the defendant invariably acknowledges that there were still outstanding arrears although she had no money to pay yet. This contradicts her allegation in paragraphs 7 and 9 of her written statement of defence that by May, 2012 she had already cleared all her outstanding arrears and also that by June 2012, one Paul Njuguna gave the keys of the premises to the plaintiff together with USD $2000 which was outstanding amount in arrears.

0n 28th February 2015, the landlord (tel. 0772500929*)* sent a telephone text message to the tenant (tel. 0712790734) reading;

"You need to resolve your unpaid rent arrears. May 2012 to March 2015. Please pick my calls."

This latter text messages between the plaintiff and the defendant, shows that the defendant did not deposit any money as rent from May 2012 to March 2017, yet she continued to occupy the plaintiff's premises until when the plaintiff re-entered by chasing away the defendant's workers/agents. This was no doubt in breach of the terms of the tenancy agreement in *Clause 6(a)* which among other things, provides that if rent is not paid for a period of 28 calendar days and remains outstanding, it constitutes a breach. Needless to emphasise, that the plaintiff could not re-possess his premises without engaging the local authorities and the Police where the same had been sublet to strangers without the plaintiff's authority and in was found in a very sorry state.

Had the plaintiff requested the defendant to vacate the premises so that he could use it as falsely claimed by the defendant in her defence, then the plaintiff ought to have issued a notice in writing to the defendant pursuant to *Clause 3* of the tenancy agreement. However, the defendant did not adduce any such evidence to prove that indeed such notice to vacate the premises was ever issued to

her. Instead she simply made a mere allegation when in actual fact she continued to occupy the plaintiff's premises without paying rent. In the ***United Building Services Ltd vs. Yafesi Muzira T/A Quickset Builders and Co. HCCS No.154 OF 2005,*** the court held *inter alia*, that;

> ***"A breach of the contract occurs when one or both parties fail to fulfil the obligations imposed by the terms of the contract."***

In the instant case, evidence adduced clearly shows that the defendant defaulted in fulfilling her obligation under the tenancy agreement of paying rent of UGX. 1,000,000 per months for 58 months which accumulated to UGX. 58,000,000. This compelled the plaintiff to notify her through his lawyers, by a letter received by the defendant on 6th April 2017 (at page 34 of the plaintiff's trial bundle) terminating the tenancy agreement as well as demanding that defendant vacates the suit premises. The defendant failed to fulfil her obligation under the tenancy agreement and is in in total breach of *Clause 4 (a)* of the said tenancy agreement.

Evidence of plaintiff further shows that together with the local authorities of the area and a Police liaison officer from Wandegeya Police Station, he went and inspected the premises only to discover that the same had been left to a one Nuriat Babirye who was the defendant's worker/agent. The premises had also been sublet to seven other people who were using it for car dealings and restaurant businesses without the plaintiff's knowledge and/or consent. This evidence is fortified backed a report on the findings from the office of LC Chairperson Nakasero Hill Village (at page 14 of the plaintiff's trial bundle). Under *Clause 4 (f)* tenancy agreement, it was an express term the that the defendant/tenant was not to assign, sublet or part with the possession of the premises or any part thereof without the consent of the landlord which shall not be unreasonably withheld.

There is no evidence whatsoever to suggest that the defendant had ever requested the landlord to allow her sublet any part of the premises. However, without any authority, the defendant sublet the same to several others as listed in the Chairperson's findings. The defendant, under paragraph 9 (d) of her defence, concedes that

indeed Nuriat Babirye was her worker/agent, Nuriat Babirye was among the people who were found at the premises and to whom the sub- tenants were paying rent to on behalf of the defendant. This was done in violation of *Clause 4(f)* of the tenancy agreement and it is also a further illustration of the defendant's continued breach of the agreement. In light of the foregone findings, the defendant breached the tenancy agreement. Issue No.1. is resolved in the affirmative.

Issue No.2: What remedies are available?

The plaintiff prayed for recovery of rental arrears for the months of June 2012 to March, 2017 he re-entered and took possession on the premises. This totaled to 58 months that the defendant was in continuous occupation of the premises without paying rent despite several demands and reminders to do so from the plaintiff. The rental obligation was UGX.1,000,000 per month which makes it a total of UGX.58,000,000 for the 58 months. The plaintiff is entitled to this sum which is accordingly awarded.

The plaintiff also prayed for the award of special damages. The general rule is that special damages must be specifically pleaded and proved. In ***W.M Kyambadde vs. Mpigi District Administration Civil Suit No. 229 of 1975*** the court also held that to prove special damages, they do not need to be supported by documentary evidence in all cases.

The plaintiff led evidence that he engaged M/s. DEC Consultants Ltd to particularize and value the damage caused by the defendant and her agents since the premises were found to have been degraded and damaged. M/s. DEC Consultants Ltd valued the property taking into account the proposed repairs to the property and came up with a report (at page 17 of the 29 of the plaintiff's trial bundle) with the total estimated repair costs of UGX. 84,089,500.

Under *Clause 4(e)* of the tenancy agreement, the defendant/tenant undertook to make good any damage caused to the said buildings or premises by the removal by the tenant of any furniture, goods or other articles into or out of the said buildings. According to the report by M/s. DEC Consultants Ltd (at page 18 of the trial bundle)

the estimates covered damage to buildings and to the gardens and walk ways reportedly caused by the defendant. This makes it the obligation of the defendant to ensure that the premises are restored to as near the same status as she found at the time of taking possession hence court awards UGX.84,089,500 as the amount that can make good the damage caused by the defendant to the premises.

The plaintiff also led evidence showing that the defendant left un paid utilities bill including the electricity bill for the period ending 12th April 2017 which was fully utilized by the defendant/her agents to a tune of UGX. 372,033. This is supported by *Exhibit 8* (at page 32 of the plaintiff's trial bundle). Court finds this was duly proved and awards the same to the plaintiff.

The plaintiff also claimed as the unpaid water bill left by the defendant for a period ending 12/4/2017 which was fully utilized by the defendant/her agents to a tune of UGX.1,717,676. It is also supported by *Exhibit 7* (at page 30 of the plaintiff's trial bundle). This too is dully proved and court awards the same to the plaintiff.

The plaintiff further prayed to be awarded general damages. He led evidence to the effect that he has been inconvenienced by the defendant's conduct and as a result he has incurred financial loss and had to facilitate the Chairperson of the area as well as the Police liaison officer and others, to visit and inspect the premises. That he continued to incur financial loss since his premises are still in a bad state up to date and are not being fully utilized. Further, that M/s. DEC Consultants Limited also had to be paid to conduct the valuation on the repairs to be made. Court finds the evidence of the plaintiff in that regard cogent. This inconvenience is the basis that the plaintiff is entitled UGX 20 million as general damages.

Regarding interest on the rental arrears, special damages and general damages, Section 26 (2) CPA is to the effect that it is awarded in the discretion of court at a reasonable rate that court deems fit. The plaintiff is awarded interest at the rate of 10% per annum on the rental arrears, special damages as well as general damages from the time of default till payment in full in order to cushion the amount against depreciation of the money value by inflation.

On the issue of costs, Section 27 CPA is to the effect that costs are in the discretion of court, but shall follow the event unless for good reasons court directs otherwise. The plaintiff is a successful party in this case and is awarded costs of this suit.

BASHAIJA K. ANDREW
JUDGE
20/03/2020.