

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

CIVIL SUIT NO. 804 OF 2016

(Arising from Commercial Court Civil Suit No. 487 of 2014)

SYLVIA NAMUKASA PLAINTIFF

VERSUS

1. EKM LTD

2. GEORGE SSEMBEGUYA..... DEFENDANTS

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

The Plaintiff sued the Defendants for;

- i) Breach of tenancy terms failure to return goods worth shs. 45,045,800/-, (*forty five million, forty five thousand, eight hundred shilling*),
- ii) Special damages and;
- iii) Interest.

The particulars are as pleaded in paragraph 5 of the plaint.

Briefly the Plaintiff rented the defendant's premises in 2001 at **plot 38 William Street Kampala** at shs. 1,500, 000/- (*one million, five hundred thousand shillings*). She paid the money on 14th July 2013 rent for July 2013, she found when the Defendants had locked the premises, and on the 11th day of August 2013 she was given a notice to vacate on the 31st day of August 2013. On 27th August 2019, a neighbour told her that the goods worth shs.

45,045,800/- (*forty five million, forty five thousand, eight hundred shilling*) had been taken. The Plaintiff has since kept her goods throwing her out of business. She prayed for special damages of shs. 299,703,800/- (*two hundred ninety nine, seven hundred three thousand eight hundred shillings*). She pleaded loss of income at shs. 20,016,000/- (*twenty million, sixteen thousand shillings*) per month. She claimed she was duly paid her rent till July 2013.

In defence by written statement of defence dated 22nd August 2014, the Defendants denied the claims and averred that the Plaintiff breached the tenancy by failing to pay rent; and she was notified. The defendant pleads that the parties mutually agreed to the Plaintiff's vacation of the same and her properties were listed ready for her collection which she has never done. The 2nd defendant pleaded that there is no cause of action as he is not privy to the tenancy arrangement.

In Court, the defendant did not offer evidence in rebuttal to the Plaintiff who proceeded *ex parte* after the testimony of PW1.

Three issues were listed which I now determine as follows:

Issue No. 1

Whether the Plaintiff's removal from the premises was unlawful

The law is that the Plaintiff has the burden to prove the case on the balance of probabilities. The evidence of PW1 shows that there was a tenancy relationship between herself and the defendant. What is not clear is the explicit terms of this tenancy. The tenant is expected to abide by the conditions set by the landlord. It is trite that in such relationships, there is always an

implied term that 30 days' notice must be given in lieu of the termination of any tenancy.

It is therefore unusual for a landlord to receive rent and then close the shop without giving the tenant the statutory notice so that they can relocate and not suffer loss. The case of *Ritex International Forex Bureau Ltd versus Haba Group Ltd Kampala; HCCS No. 219 of 2012* is a persuasive authority and gives the *nexus* between a landlord tenant relationship and a contract.

Given the evidence from PWI; Sylvia Namukasa, detailing how she was unfairly removed from her shop on 16th July 2013, without notice amounts to an illegality and was unlawful. I find the issue in the positive.

Issue No. 2

Whether the items listed on the written statement of defence were the only items in the Plaintiff's shop

Evidence is admitted as proof; the annexure 'B' to the written statement of defence was not proved, so it is not evidence. It's therefore not the only true list of items and the issue terminates in the negative.

Issue No. 3

What remedies are available

The only issue for consideration here is how much compensation in terms of damages the Plaintiff is entitled to.

The *onus* of proving that the Plaintiff is entitled to any recovery is on he who asserts. During the hearing of the matter, the Plaintiff

referred Court to various figures and alluded to lost items, but during cross examination, some were discredited. According to the evidence therefore, she was not able to positively prove the items specified, save her word of mouth and her witness. These items were just listed and talked about.

This Court cannot therefore grant them without specific proof. However, guided by the list on the written statement of defence, which is acknowledged by the Defendants and given the witness statements and evidence give, it is this Court's finding that the average value of the items listed at the current market prices could be in the region of shs. 10,000,000/- (*ten million shillings only*)

If the business had not been closed, assuming that she was selling at a minimum business profitability, perhaps she could, out of her capital of shs. 10,000,000/- (*ten million shillings*), recoup back a profit of shs. 1,000,000/- (*one million shillings*) per month. The Plaintiff, is assumed could have run till the end of the year, that's from July to December which is a period of 6 months. Therefore I would grant her shs. 1,000,000/- (*one million shillings only*) per month for 6 (*six*) months which is a total of shs. 6,000,000/- (*six million shillings only*) as lost profit.

I do not agree with Counsel for the Plaintiff that, she lost shs. 1,120,000,000/- (*one billion, one hundred and twenty thousand shillings*) that is abnormal in Uganda's current business practice and given the reasons why the defendant terminated the tenancy.

I do not find any other justification for the excessive claims even in the absence of controversion.

General damages are awarded always to compensate for damage accrued. The Plaintiff unfairly terminated the tenancy and breached its terms. The law punishes with punitive in compensatory damages to atone for the resultant pain, suffering and inconvenience. The Plaintiff prayed for shs. 100,000,000/- (*one hundred million shillings*), however, this amount is prolofix and unjustified with a subject matter of this extent, I will grant general damages of shs. 4,000,000/- (*four million shillings only*).

The Plaintiff is not entitled to the other prayers which are listed since they are covered in the awards given above.

Court therefore enters judgment for the Plaintiff against the Defendants in terms as above.

Costs granted to the Plaintiff.

I so order.

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Henry I. Kawesa

JUDGE

13/03/2020.

Right of appeal explained.

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Henry I. Kawesa

JUDGE

13/03/2020.

13/03/2020:

Counsel Musa Nsimbe for the Defendants.

Counsel David Onyango for the Plaintiff.

Clerk: Kanagwa Grace.

Court: Ruling delivered today.

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Flavia Nabakooza
DEPUTY REGISTRAR