

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
CIVIL SUIT No. 0086 OF 2007

KAGORO SOLOMON PLAINTIFF

VERSUS

**MYRTHA WEST [administrator of
the estate of the late Harry West] DEFENDANT**

BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO

JUDGMENT

The Plaintiff herein brought this suit against the Defendant in her representative capacity as administrator of the estate of the late Harry West; seeking the following reliefs from this Court: –

- (a) Payment of U shs 59,875,000/= (fifty nine million eight hundred and seventy five thousand only) being unpaid ground rent owing under the lease agreement for LRV 609 Folio 13 Plot 9, Block 39 Mwenge.
- (b) A declaration that the he is entitled to re enter the leasehold property on account of the Defendant’s breach of the covenant to pay rent.
- (c) An order that the Registrar of Titles note the re–entry.
- (d) Costs of the suit.
- (e) Interest from the date of the cause of action until payment in full.

The Court issued summons to the Defendant to file a defence within the period prescribed by law; and subsequent to which the Plaintiff’s counsels applied for an interlocutory judgment on the ground that no defence had been filed by the Defendant. Upon satisfying himself that there had been effective service of the said summons on the Defendant, and yet she had not filed in any defence, the Registrar of the Court granted the application under 0. 9 r. 8 of the CPR, this being an action essentially for pecuniary claim; and accordingly set the matter down for formal proof.

At the hearing, the Plaintiff testified that the Defendant is his lessee, on a 99 year lease running from 1966, with regard to property comprised in LRV 609 Folio 13 Plot 9 and known as Kisangi estate (herein after called the suit property), exhibit *PE2* herein. He tendered in evidence the freehold title FRV 18 Folio 18 exhibit *PE1* herein, out of which the suit property was leased out. His evidence was that in 1996 when the ground rent provided for in the lease was due for revision due to the lapse of 15 years as provided for in a covenant of the lease agreement, Harry West, his lessee then, and he, failed to agree on new rental terms.

He testified further that in 2000 Harry West deposited with his (Plaintiff's) counsels then the sum of U. shs 2m/= to cover one year's rent, this being Harry West's proposed revised rent; and that in 2001, the said Harry West, through his (Harry West's) lawyers, sought to pay him the same amount by cheque, but that he declined as they had not agreed on the revised term. After this the Defendant through her lawyers proposed in 2004, by letter *exhibit PE4*, that the revised ground rent payable be arrived at after determining the unimproved value of the suit property, by professional valuation; and the Defendant's counsel proposed the services of Mr. Balinda Birungi a land valuation expert. To this the Plaintiff acquiesced.

Meanwhile, in that letter nominating the valuer, the Defendant's counsels Kateera & Kagumire Advocates notified the Plaintiff that the Defendant had deposited the sum of 2m/= pending the valuation proposed. In their letter of 9th August 2004, *exhibit PE5*, M/s Kateera & Kagumire formally instructed the said land valuation expert to: "*carry out a valuation of the said property for purposes of determining the unimproved value of each of each acre of the said property.*" In his valuation report of August 2004, addressed to M/s Kateera & Kagumire Advocates, *exhibited as PE6*, Mr. Balinda Birungi determined that the market value of the suit property was U shs. 750,000/= (seven hundred and fifty thousand only) per acre.

With a view to give effect to the clause in the lease covenant that the revised ground rent should not exceed one twentieth of the unimproved value of the land leased, the Plaintiff computed the new ground rent at U shs. 5,625,000/= per annum, and communicated this to the Defendant. The Defendant was not agreeable to this, and through their counsels M/s Kateera & Kagumire still stuck to the sum of 2m/= as ground rent vide theirs of 16th November 2004, tendered in and exhibited as *PE7*. His lawyers then communicated to the lawyers of the Defendant on 2nd December 2004, vide exhibit *PE9* that he would accept nothing less than the sum of 5,625,000/= which was arrived at from the valuation report.

The Defendant however neither replied, nor made any payment as demanded. Instead the Defendant made an attempt to sell off her proprietary interest in the suit property; and this was evidenced by the advert dated the 25th April 2005 at page 36 of the 'The Monitor' newspaper exhibited as *PE10*. The Plaintiff then placed a caveat on the title to the suit property as the Defendant did not require the prior consent of the Plaintiff prior to the sale.

The Plaintiff finally stated that the Defendant who is still in possession of the suit property, and carrying on good business thereon, has never bothered to honour her obligation to the Plaintiff as provided for in the lease agreement; for which he has brought this suit, with the plea that the Court should allow him to re-enter upon the suit premises, and order the Defendant to pay the arrears of rent owing and demanded by the Plaintiff, with interests thereon from the date they became due. He has also prayed for costs of the suit.

The issues arising from the suit identified for determination were namely:

- (i) Whether the Defendant is in breach of the lease agreement.
- (ii) Whether the Plaintiff can lawfully re-enter the leased property for non-payment of rent.
- (iii) What other remedies are available.

On the first issue, namely whether the Defendant has acted in breach of a clause in the lease agreement by not paying the rent demanded by the Plaintiff, learned counsel for the Plaintiff in his written submissions, argued that in failing to pay the rent arrived at following the valuation report by the land valuer mutually agreed upon by the parties, the Defendant had breached the clear clause in the lease agreement; and that owing to the findings of the land valuer, who had been the Defendant's nominee in the first place, there was then no issue outstanding for presentation to an arbitrator anymore. I agree with this.

I find this reasoning sound. Although the Defendant had asked the Plaintiff to appoint his own valuer as well, to act in concert with that of the Defendant, the Plaintiff was instead content with and relied on the findings made by the Defendant's nominee; consequently then it would not make sense to allow the Defendant to renege on her own proposed solution to the bone of contention between the two of them over the ground rent payable. There is no evidence before

Court that the Defendant disputed that valuation report; or the computation for ground rent that was arrived at therefrom.

The reason which the Defendant gave for her refusal, and thus failure to pay the sum of U. shs. 5,625,000/= as ground rent, which was computed from the said valuation, is clear from *exhibit PE7*; in which her lawyers' M/s Kateera & Kagumire Advocates in their communication to the Plaintiff's counsels Rwakafuuzi & Co. Advocates stuck to the pre-valuation figure of 2,000,000/=. This reason was as follows:

“It would not make economic sense to our client to pay a sum of Shs. 5,625,000/= per annum.”

I must point out that the lease terms and covenants are very clear. Ground rent determination was not pegged on the volume of economic activity the lessee would be carrying out on the demised property. The terms were very clear that every 15 years there would be a revision; and that such revision would not exceed one twentieth of the unimproved value of the land. I therefore find that the Defendant acted in breach of the terms of the lease covenant; and accordingly resolve the first issue in the affirmative.

On the second issue, namely whether the Plaintiff can lawfully re enter the leased property for non-payment of rent, the lease covenant between them is clear. Clause 5(a) of the lease obliges the lessee to pay the reserved rent in the manner set out in the lease. Clause 6(e) provides that the lessee shall peaceably hold and enjoy the demised property without interruption from the lessor, upon her due observation and performance of the several covenants and stipulations in the lease. Payment of the rent due is of course part of the covenants the lessee bound herself to, but which she has now acted in breach of.

Section 102 of the Registration of Titles Act (Cap 230 Laws of Uganda, 2000 Edn), in sub paragraph (a) thereof, clearly obliges the Defendant to pay the rent reserved in the lease. Section 103 of the same Act, in sub paragraph (b) thereof, which I hereby quote in extenso provides quite succinctly as follows:

103. Powers to be implied in lessor.

In every lease made under this Act there shall be implied in the lessor and his or her transferees the following powers—

- (a)*
- (b) that in case the rent or any part of it is in arrear for the space of thirty days, although no legal or formal demand has been made for payment of that rent, or in case of any breach or non observance of any of the covenants expressed in the lease or by law declared to be implied in the lease on the part of the lessee or his or her transferees, and the breach or non observance continuing for the space of thirty days, the the lessor or his or her transferees may reenter upon and take possession of the leased property.*

The evidence adduced by the Plaintiff in Court fully satisfies the requirements of the law as set out above. The Defendant has clearly and obdurately been in breach of her obligation to meet the terms and covenants set out in the lease agreement regarding payment of the ground rent for the leased premises. The suit property is therefore liable to forfeiture for non payment of rent.

The Plaintiff had two courses of action open to him to give effect to the provisions of section 103 of the Registration of Titles Act. He could have made a physical re entry by occupation of the whole or part of the demised property or taken legal action. He chose the latter with regard to which he could even, in accordance with the provisions of O. 36 r. 2(b), have brought this action for re entry by summary suit as an alternative course of action. I therefore find that the Plaintiff is entitled to re enter the demised premises for the reasons laid down above; thereby answering the second issue too, in the affirmative.

On the third issue, that is: the remedies available to the Plaintiff; the evidence adduced by the Plaintiff is that in 2000 he accepted the sum of 2m/= as ground rent. The valuation report made in 2004, unfortunately did not give an assessment of the value of the property for the period preceding that date. I would therefore for that period, from May 16th of the preceding year to May 15th of the subsequent year, for the years 2001/2002, 2002/2003, 2003/2004, exercise my discretion on the side of caution, and maintain the figure of shs 2m/= as ground rent payable; and this totals to shs 6m/=.

From May 2004 to date, the annual ground rent is the sum of 5,625,000/= arrived at from computation based on the valuation report. Therefore, at the date of this judgment which is the

date of re entry and termination of the lease between the parties, the total sum owing and recoverable from the Defendant as ground rent is U. shs. 36,234,375/= (Thirty six million, two hundred and thirty four thousand, three hundred and seventy five only). Accordingly then I allow the suit and make the following declarations and orders:

- (i). The Court hereby declares a re-entry onto the suit property by the Plaintiff; thereby forfeiting the lease.
- (ii). The Registrar of Title is hereby ordered to note the said re-entry and vacate the forfeited leasehold encumbrance from the freehold title.
- (iii). The Defendant shall pay to the Plaintiff the sum of U. shs. 36,234,375/= (Thirty six million, two hundred and thirty four thousand, three hundred and seventy five only), as arrears of rent outstanding from the forfeited property.
- (iv). The Defendant shall pay costs of this suit.
- (v). Interests shall accrue on the decretal sum from the date of the suit until payment.



Alfonse Chigamoy Owiny – Dollo
JUDGE

05 – 10 – 2009