THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 0114 OF 2013

EDWARD BUTERA ::APPELLANT

VS

MUTALEMWA GODFREY:::::::::::::::::::::::::::::::::::::: RESPONDENT

CORAM: HON. MR. JUSTICE S. B. K KAVUMA, JA

HON. JUSTICE CHEBORION BARISHAKI, JA

HON. JUSTICE PAUL KAHAIBALE MUGAMBA, JA

JUDGMENT OF THE COURT

This is a second Appeal. The first Appeal was in the High Court and was determined by V. T. Zehurikize J following dissatisfaction with the decision of the trial magistrate's court. In the Appeal before us six grounds were advanced. They read:

1. The learned Judge of the High Court erred in law and fact when he awarded the Plaintiff General Damages of Ushs. 5,000,000/= which occasioned a miscarriage of justice.
2. The learned Judge erred both in law and fact when he held that the Respondent was the owner of the suit premises which occasioned a miscarriage of justice.
3. The learned Judge erred both in law and fact when he held that there was a tenancy Agreement between the parties.

4. The learned Judge erred both in law and fact when he held that the alleged tenancy agreement was enforceable against the appellant.
5. The learned Judge erred both in law and fact when he held that the Appellant breached the alleged Tenancy Agreement.
6. The learned Judge erred both in Law and fact when he failed to properly evaluate the evidence on record as required by the first Appellant Court.

The parties agreed five issues to be resolved in this Appeal. These are:

1. Whether the respondent was entitled to general damages.
2. Whether the respondent is the owner of the suit premises.
3. Whether there was a tenancy agreement between the parties.
4. Whether the tenancy agreement was enforceable against the appellant.
5. Whether the appellant breached the tenancy agreement.

Background

The facts are correctly narrated by the appellant and we shall adopt his version given that it does not differ from what is generally agreed.

The respondent sued the appellant under Order XXXVI of the Civil Procedure Act (Summary Procedure) for arrears of rent of Ushs 4,500,000/=and vacant possession of shop No. B11 located at Nakasero market in the Chief Magistrate's Court of Mengo at Mwanga II Court.

The appellant filed an Application for Leave to Appear and Defend and the same was by consent of the parties allowed.

The appellant filed a written statement of defence in the suit denying all the claim of the respondent.

Judgment was delivered by the trial magistrate in favour of the respondent/plaintiff. Court awarded special damages of Ushs. 5,900,000/= with 10% interest, general damages of Ushs. 5,000,000/= with 10% interest, vacant possession of the suit premises and costs.

The appellant was dissatisfied with the whole judgment of the trial Court. He appealed to the High Court. In its judgment the High Court allowed the appeal partially when it quashed the award of special damages. The appellant was not satisfied with the judgment of the High Court delivered on 12th April 2013 because it retained the Ushs. 5,000,000/= general damages, the order for vacant possession, costs of the suit in the trial court and ¾ of the costs of the Appeal.

Consequently the appellant lodged this Appeal.

Representation

Mr. Denis Mudhoola appeared for the appellant. Mr. Patrick Kasumba represented the respondent.

Resolution

This is a second Appeal in this matter. The Supreme Court in Kifamunte **Henry v Uganda, Criminal Appeal No. 10 of 1997** properly put the role of a court such as ours into perspective when it stated:

`It does not seem to us that except in the clearest of cases, we are required to re-evaluate the evidence like a first appellate Court. On second appeal it is sufficient to decide whether the first appellant Court on approaching its task, applied or failed to apply such principle. See D. R. Pandya vs R [1957] EA (Supra), ***Kairu vs Uganda [1978] HCB 123.****This Court will no doubt consider the facts of the appeal to the extent of considering the relevant part of law or mixed law and fact raised in any appeal. If we re-evaluate the facts of each case whole-sale, we shall assume the duty of the first appellate Court and create unnecessary uncertainty. We can interfere with the conclusions of the Court of Appeal if it appears that in consideration of the appeal, as a first appellate Court, the Court of Appeal misapplied or failed to apply the principles set out in such decisions as Pandya (Supra), Ruwala (Supra) and Kairu (Supra).'*

We shall resolve the issues in the following order of precedence: 3,4,2,5,1.

Issue 3

Whether there was a tenancy agreement between the parties.

The trial Court found that there existed a tenancy agreement between the appellant and the respondent herein. This position was upheld by the High Court on first appeal. We find no reason to fault the finding of the two courts given the document that was clearly marked as a `Tenancy Agreement for Shop No. B 11' dated 30th November 2006 reflected at pages 8 and 9 of the proceedings.

We answer this issue in the affirmative.

Issue 4

Whether the tenancy agreement was enforceable against the appellant.

The appellant and the respondent herein entered into an agreement creating a contractual relationship to be enforceable by law. We agree with the reasoning of the trial court and the court of first appeal. We answer this issue also in the affirmative.

Issue 2

Whether the respondent is the owner of the suit premises.

In his judgment the learned Judge of the appellate court observed:

> *`It is immaterial whether the respondent was the tenant of KCC or Sheila Investment Ltd. What is clear is that he had the power to rent or sublet the premises. It is a result of the Tenancy Agreement between parties that the appellant is still in occupation of the suit land. The respondent's right to rent the premises did not depend on registered proprietorship. It depended on the rights he enjoyed from the owners of the premises'.*

We agree with the learned Judge that in the circumstances of this matter the question of ownership does not arise.

Issue 5

Whether the appellant breached the tenancy agreement.

It is not disputed by either party that the appellant continued to occupy and utilise the suit premises even when he ceased paying rent to the respondent. The court of first appeal observed:

> *`It follows therefore that no breach of tenancy agreement for nonpayment of rent could be blamed on the tenants until May 2009.However the evidence on record shows that even since May 2009 the defendant/appellant who has*

been in occupation and use of the suit premises has not paid any rent. To that extent I find that he is in breach of the tenancy agreement.'

We cannot agree more. We answer this issue also in the affirmative.

Issue 1

Whether the respondent was entitled to general damages.

General damages is taken to mean money which is awarded in a lawsuit for injuries suffered such as pain, suffering, inability to perform certain functions or breach of contract for which no arithmetical calculation can be done exactly. See **Uganda Commercial Bank Ltd vs Deo Kigozi, [2002] I E.A. 293.**

Lord Macnaughten in Stroms v Hutchinson, [1905] AC 515 had this to say:

`General damages as I understand the term, are such as the Law will presume to be the direct natural or probable consequence of the act complained of.'

We have noted earlier that the appellant defaulted in meeting his rent obligations. Doubtless this was an inconvenience to the respondent. In its discretion the trial Court awarded general damages of Shs. 5,000,000/= which the first appellate Court did not find in any way unseemly. Indeed the Judge found the sum awarded on the lenient side. We find no reason to disturb the award.

Our answer to this issue is in the affirmative.

We find no merit in this Appeal. We uphold the judgment and orders of the first appellate court.

Accordingly this Appeal is dismissed with costs.

Dated at Kampala this 28th day of NOV 2017

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HON. JUSTICE S. B. K KAVUMA

JUSTICE OF APPEAL

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HON. JUSTICE CHEBORION BARISHAKI

JUSTICE OF APPEAL

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HON. JUSTICE PAUL KAHAIBALE MUGAMBA

JUSTICE OF APPEAL