

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

(COMMERCIAL COURT DIVISION)

HCT-00-CC-CS-0015-2005

DEBORAH NAMUTEBI  
THE ADMINISTRATOR GENERAL  
(Administrators of the Estate of the late Stanley  
Kizza Kizito)

PLAINTIFFS

VERSUS

KAWEMPE DIVISION

DEFENDANT

**BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE**

**JUDGMENT**

1. The plaintiffs are the administrators of the Estate of the late Stanley Kiiza Kizito, the registered proprietor of the land on which 'Kizito' Market is operated in Kawempe within Kawempe Division. They bring this action to recover arrears of agreed rent, at the rate of shs.2,000,000.00 per month, totalling to Shs.111,638,200.00, interest, general damages, and costs from the defendant, who has been managing the said market, since 1<sup>st</sup> October 1999 when the defendant assumed direct control of the market.
2. The defendant, a local authority established under the Local Government Act, Cap. 243 of the Laws of Uganda, denies the existence of any contract between the plaintiffs and the defendant or the agreement to pay shs.2,000,000.00 per month as alleged by the plaintiff. The defendant admits taking over control and management of the market and contends that the plaintiffs are only entitled to 30% of the net collections per month.
3. At scheduling stage the defendant admitted to be indebted to the plaintiffs to the tune of Shs.13,982,155.00 and judgment was entered in part for this amount, leaving the rest of the claim to be determined after trial.

4. The parties admitted by agreement the following facts: 1. That on 1<sup>st</sup> October 1999 the defendant took over the management of Kizito Market which is on land owned by the estate of late Stanley Kizza Kizito. 2. The defendant was supposed to make monthly remittances from October 1999. In addition documentary exhibits were admitted by consent by both parties.
5. The agreed issues were: 1. Whether the claim or any part thereof are time barred; 2. Whether the plaintiffs are entitled to Shs2,000,000.00 per month as claimed; and 3. Whether the plaintiffs are entitled to the remedies sought.
6. Apart from the admitted documentary evidence the defendant called no evidence in support of its case. The plaintiff called one witness, and that was Mr. Francis Atoke. The case must be decided on the evidence as adduced on record.
7. I will proceed to deal with each issue raised in the order the issues were framed. Starting with the issue of whether this claim or part thereof is time barred, it is contended on behalf of the defendant that this contractual claim against the defendant is limited to run only for three years under the Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap.72 of the Laws of Uganda. Any claim beyond that period is time barred. This action was filed in January 2005. Any claim beyond January 2003 would be out of time. The period between October 1999 and December 2002 is outside the permissible period for which an action can be maintained. Counsel for the defendant submitted that Shs.54,000,000.00 of the plaintiffs' claim is time barred and should be struck out.
8. The plaintiffs accept that limitation applies but contend that the cause of action is stated on the plaint to have arisen from 1<sup>st</sup> September 2003, and therefore the claim is within time.
9. As noted by counsel for the plaintiffs in their written submissions, Section 3 (2) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, provides, 'No action founded on contract shall be brought against Government or a local authority after the expiration of three years from the date on which the cause of action arose.'
10. Much as the plaint purports to state that this action arose on 1<sup>st</sup> September 2003 that does not dispose of the issue. 1<sup>st</sup> September 2003 is merely the date upon which the plaintiffs posted certain arrears of rent on the account with the defendant. In any case if one computed the rent accruals at the rate of Shs.2,000,000.00 per month from that period to

the time of filing this action, 11<sup>th</sup> January 2005, it would give a figure of Shs34,000,000.00 only and not the sum claimed in the plaint. Obviously the explanation of the plaintiffs' counsel in this regard is simply disingenuous.

11. This suit was filed on 11<sup>th</sup> January 2005. The plaintiffs are entitled to bring forth a claim only for the period that is not in excess of three years up to 11<sup>th</sup> January 2005. This would mean the claim that is earlier than 11<sup>th</sup> January 2002 is affected by limitation and cannot be maintained. It is struck out.
12. Turning to issue no.2 whether the plaintiffs are entitled to shs.2,000,000.00 per month, it was the evidence of the PW1, Francis Atoke, that when the defendant took over the market, it agreed to pay to shs.2,000,000.00 per month. The defendant paid this sum of money for October and December 1999 promptly every month and then it defaulted.
13. The defence contended on its pleadings that the plaintiff was only entitled to 30% of the net revenue collections per month and not the sum of shs.2,000,000.00 as claimed. The defendant did not adduce any evidence in support of this contention.
14. The agreed facts by the parties included the fact that the defendant was to pay monthly remittances to the plaintiff. What was not agreed was how much money this was to be. Exhibit P2 which was admitted by agreement is from defendant to the plaintiff. It states,

‘September 21, 1999

ADMINISTRATOR GENERAL

RE: KIZITO MARKET

This

is to formally confirm to you as per our discussion in your office on September 20, 1999 the Division resolutions regarding the above market. This comes after your agent managing Kalerwe Market has failed to pay Council its dues, and therefore Council resolved as follows:-

--that October, 1999 the Division shall enter the Market and manage it in bid to recover its arrears until arrangements are made to contract out its management.

–that a separate account shall be opened up where monies from that Market shall be banked for purposes of deducting the shs. 2,000,000/= for the estate of Late Kizito to be passed to the Administrator General. Please note that this decision has been arrived at after all efforts to get revenue even with your intervention from that market has failed. (signed) P.K. Wegulo Principal Assistant Town Clerk.’

15. This is an acknowledgement by the defendant that it would have to pay shs.2,000,000.00. The letter does not state over what intervals but given the agreed fact that the defendant was to make monthly remittances to the plaintiffs, the unchallenged testimony of the

PW1, that it was monthly and that the defendant paid rent of shs.2,000,000.00 per month for the months of October and November 1999, I am satisfied that the defendant was to pay shs.2,000,000.00 per month. Issue No.2 is answered in the affirmative.

16. In the result I would allow arrears of rent of shs.72,000,000.00 for 36 months up to the date this suit was filed, to the plaintiff to be paid by the defendant, less what has been admitted herein to be owing by the defendant, on account of rent.
17. This money shall attract interest at the rate of 20% per cent annum from the date of filing this suit up to the date of judgement and thereafter at court rate from date of judgment till realisation in full.
18. The plaintiff has claimed general damages. No doubt the plaintiffs were put to inconvenience and had to engage into correspondence and meetings to persuade the defendant to pay what it had agreed in fact to pay from the very beginning. Documentary proof of this is available on the exhibits entered into evidence by consent of the parties. These efforts were unsuccessful. The defendants breached the contract unjustifiably. The plaintiff is entitled to some measure of general damages, and I am satisfied that an award of shs.10,000,000.00 on this account would provide sufficient recompense for what the plaintiffs have suffered in this regard.
19. An award for general damages of shs10,000,000.00 is granted to the plaintiff together with costs of the suit. Judgment is entered accordingly.

Dated at Kampala this    day of October 2005

FMS Egonda-Ntende  
Judge