

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 140 OF 2018

UGANDA COFFEE DEVELOPMENT AUTHORITY:..... PLAINTIFF

VERSUS

STEPHEN BANYA :..... DEFENDANT

BEFORE: HON. JUSTICE SSEKAANA MUSA

JUDGEMENT

The plaintiff filed this suit against the defendant seeking for a declaration that the tenancy agreement it had with the defendant has since terminated an order of recovery of rent for the period he has been in occupation of the house and costs of the suit. The plaintiff entered into a tenancy agreement dated 13th October 2013 with the defendant to let its residential units/flats A & B comprised in Plot 20 Elizabeth Avenue, Kololo for a period of two years.

On the 16th October, 2017, the plaintiff wrote or issued to the defendant a notice of termination of the tenancy agreement up to 31st December, 2017 as per the tenancy agreement. The defendant refused to vacate the house which prompted the plaintiff to write another letter on 15th January, 2018 reminding the defendant of his breach and notice to vacate 31st January, 2018. The defendant has since refused to vacate and continues to occupy the premises without paying any rent.

The parties filed a joint scheduling conference wherein the following facts and issues were agreed upon for court's determination:

Agreed Facts

The plaintiff is the registered proprietor of the residential flats 1&2 comprised in plot 20 Elizabeth Avenue, Kololo. The defendant is a tenant of the plaintiff occupying the above residential flats 1 & 2. By virtue of a tenancy agreement given and renewed between the plaintiff and defendant on various dates, the

defendant has resided on the above flats for a period of 23 years. At all times, the tenancy between the parties herein has been governed by a tenancy agreement.

Agreed Issues

1. Whether or not the plaintiff has terminated the defendant's tenancy agreement?
2. What remedies are available to the parties?

The plaintiff is represented by *Mr. Richard Aduango* while the defendant is represented by *Mr. Edwin Tumushime*.

Whether or not the plaintiff has terminated the defendant's tenancy agreement?

Counsel for the plaintiff submitted that at the scheduling conference it was an admitted fact that the plaintiff is the registered proprietor of the residential flats 1 and 2 comprised on Elizabeth Avenue Kololo. The defendant was a tenant of the plaintiff but still occupying the above residential flats. The defendant has stayed in the premises for up to a period of twenty (23) years and in all this duration, their relationship was governed by a tenancy agreement.

Counsel defined the word "terminate" as per the Oxford Dictionary of English 9th edition as to "bring to an end." He further cited a similar case with the facts at hand, *Justice D.K Wangututsi in Alexis Jubliee v. Justice Samuel W.W. Wambuzi and another, HCMA 923 OF 2016*, the applicant attempted to block the landlord from exercising his right to terminate a tenancy contract. Court noted that where the relationship between the applicant and the landlord is governed by a written contract, the terms should be complied with, including the termination clause. Court held that "*since the tenancy agreement provided for the termination (like this instant case) and there are remedies in the alternative, I find no reason to prevent the respondent from exercising his contractual right of termination*"

Counsel submitted that the plaintiff Exhibit No.1 is a tenancy agreement for the above flats that the defendant occupies. Page 6 of the tenancy agreement (found on page 9 of the trial bundle) and page 21 of the trial bundle contains identical paragraphs on termination of the tenancy agreement. It provides this; "the parties further agree as follows:

Any party to this agreement may terminate the tenancy by giving the other a three months' notice in writing of that fact, in this case, either party shall remain bound by the obligation under this agreement until the date of the expiry of the period of notice."

Counsel further submitted that the plaintiff PE2 and PE3 are notices issued by the plaintiff indicating its intention to terminate the tenancy agreement. In both notices, the defendant is given ample time of at least three months to enable him to vacate the rented premises. It was also the testimony of PW1 that owing to the defendant's failure to pay rent as stipulated in the agreement, prompted her to issue a notice of termination of the agreement in 2017 and 2018 as per paragraphs 5, 6, 7 and 8 of PW1 witness statement. The statement was never challenged by the defendant or his counsel by way of cross examination and the defendant does not deny receiving those notices.

Counsel submitted that this honourable court should believe that the tenancy agreement of the defendant with the plaintiff has since been terminated with notice. As such, he occupies the two flats illegally as a tenant at sufferance.

Counsel for the defendant submitted that it is an established fact that the plaintiff and defendant entered in a tenancy agreements dated 1st October, 2013 in respect of the plaintiff's property comprising 2 residential flats along Elizabeth Avenue and the same were duly agreed upon as documents in the joint scheduling memorandum, tendered and collectively exhibited as Exh. PE 1.

Counsel further submitted that clause A(3) and Annexure I(d) to the said agreement provided for the duration or term of the tenancy agreement and that being for a period of two (2) years from the 1st day of October, 2013 and that the same would be renewable by mutual agreement. Counsel argued that 2 years lapsed on the 1st day of October, 2015 and formal written agreement renewing the contract was executed between the parties as stipulated by the agreement and none was tendered by any of the parties in support of their respective cases. It therefore follows that the parties did not formerly renew their tenancy but maintained their relationship as landlord and tenant which they still maintain to – date.

Counsel submitted that the plaintiff has since the service of the two notices of termination dated 16th October, 2017 and 15th January, 2018 exhibited as PE-2 and 3 respectively continued to invoice the defendant and continues to do so to date. This simply implies that the plaintiff in fact intended to continue the relationship with the defendant as landlord and tenant.

Counsel cited the case of ***Walji v. Mount Cook Land Ltd [2002] 12 WLUK 628***, where court found that there was an implied periodic tenancy where the landlord allowed the tenant to remain in occupation of the premises and accepted rent in return. This case is similar to the instant case where the plaintiff permitted the defendant to remain in occupation of its premises and continued to invoice the defendant and continues to receive rent to date. This implies a continued periodic tenancy between the parties, it therefore follows that;

1. The notices of termination so issued by the plaintiff to the defendant were null and void given that they refer to provisions of a tenancy agreement that had since lapsed with time
2. The said notices of termination issued by the plaintiff to the defendant were overtaken by events given the conduct of the plaintiff of permitting the defendant to remain in occupation of the premises, reviewing the rent payable by the defendant and further invoicing and receiving rent from the tenant, which would only lead to an inference of the plaintiff's intention to continue the landlord and tenant relationship with the defendant. Thus the tenancy agreement was never terminated.

Analysis

Court noted that where the relationship between the applicant and the landlord is governed by a written contract, the terms should be complied with, including the termination clause. ***(See Justice D.K Wangututsi in Alexis Jubilee v. Justice Samuel W.W. Wambuzi and another, HCMA 923 OF 2016)***. The plaintiff's Exhibit No.1 is a tenancy agreement for the above flats that the defendant occupies. Page 6 of the tenancy agreement (found on page 9 of the trial bundle) and page 21 of the trial bundle contains identical paragraphs on termination of the tenancy agreement. It provides this; "the parties further agree as follows:

Any party to this agreement may terminate the tenancy by giving the other a three months' notice in writing of that fact, in this case, either party shall remain

bound by the obligation under this agreement until the date of the expiry of the period of notice.”

It is true that termination notices were given to the defendant, as per PE2 and PE3, giving ample time of at least three months to enable him vacate the rented premises. It was also the testimony of PW1 that owing to the defendant's failure to pay rent as stipulated in the agreement, prompted her to issue a notice of termination of the agreement in 2017 and 2018 as per paragraphs 5, 6, 7 and 8 of PW1 witness statement. The said statement was never challenged by the defendant or his counsel by way of cross examination and the defendant does not deny receiving those notices. If then the defendant did not object to the notice what point is there to prove the continuity of the agreement?

It is in this regard that I agree with the plaintiff that the tenancy agreement of the defendant with the plaintiff was terminated by notice and thus occupies the two flats illegally as a tenant at sufferance. ***Halsbury's Laws of England 4th edition*** this on Tenancy in sufferance “*a person who enters on land by lawful title and, after his title has ended, continues in possession without statutory authority and without obtaining the consent of the person then entitled, is said to be a tenant at sufferance*”

The court is also aware of the decision in ***Joy Tumushabe and another v. Anglo African Ltd and Another, SCCA No. 7 of 1999: [1999] 2 EA 319***, where it was held that when tenants defy the landlord's terms and conditions of tenancy agreed between the parties and the landlord prefers to repossess or effect a lawful act which the tenants continue to disregard, they become trespassers on the property concerned. In that event, the owner may resort to any legal means to achieve the desired objective namely of evicting the defiant trespassers well as removing their property from the premises as to leave the premises event.

The plaintiff terminated the tenancy agreement by the different notices as provided under the law. The defendant remained in possession against the will of the plaintiff. The defendant became a trespasser from the date of determination of the tenancy. ***Tumushabe & Another v Anglo-African Ltd (supra)***

Furthermore the actions of the defendant, of not paying rent for that period of time was ground enough to terminate their tenancy agreement.

What remedies are available to the parties?

A trespasser who refuses to leave may be removed from the land using no more force than is necessary. ***Halsbury's Laws of England (3rd Edition) Volume 38 at 741: Peter Mburu Echaria and Another v Priscilla Njeri Echaria CACApp No. 149 of 1997(CAK)***. The landlord or owner of the property may use reasonable force in ejecting a trespasser. A landlord should not exercise his rights of vacant possession or re-entry extra-judicially and acts of hooliganism in ensuring vacant possession or eviction should not be allowed by a Court of Justice. This court would grant the plaintiff the orders sought with such caution in mind in executing the same.

The court issues the following orders and declarations:

- 1. A declaration that the defendant's tenancy has since been terminated by notice*
- 2. An order directing the defendant to vacate the suit flats within a period of 3 months from the date of this judgment. Upon failure or refusal to vacate an order of Eviction issues automatically.*
- 3. An order that the defendant pays rent to the plaintiff for the period of occupation till date of giving vacant possession.*
- 4. The plaintiff is awarded costs of the suit*

I so order

SSEKAANA MUSA

JUDGE

7th July 2021