THE REPUBLIC OF UGANDA

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

CIVIL SUIT NO. 0621 OF 2023

DOWNTOWN INVESTMENTS LTD :: PLAINTIFF

VERSUS

1. M/S MUWEMA & CO. ADVOCATES
2. MUWEMA FRED
3. KAGORO FRIDAY :: DEFENDANTS

(Before: Hon. Lady Justice Patricia Mutesi)

JUDGMENT

Background

1. The Plaintiff brought this suit against the Defendants jointly and severally for a declaration that the Defendants breached a rental agreement, an order for vacant possession of the demised premises, recovery of USD 148,300 being rental arrears, mesne profits, general damages, interest and costs of the suit.

2. It is an uncontested fact that, on 15th December 2014, the Plaintiff and the 1st Defendant (represented by the 2nd and 3rd Defendants) executed a lease agreement in respect of the Plaintiff's property comprised in Plot 50 Windsor Crescent Road, Kololo ("the leased premises"). In that agreement, the parties agreed that the 1st Defendant would pay monthly rent of USD 5,000 plus VAT to occupy the leased premises. The rent was to be revised by 10% every 12 months after the first 24 months. The duration of the lease was 5 years.

3. The Plaintiff's case is that the Defendants, to this day, continue to occupy the leased premises despite the expiry of the duration of the lease in 2019. They have, however, defaulted severally in making payments of the monthly rent in a timely manner or at all. Prompted by a demand notice for rental arrears, the Defendants paid a sum of USD 50,000 on 8th June 2023 to the Plaintiff in partial settlement of the arrears. The Plaintiff has requested the Defendants

to vacate the premises on numerous occasions but all in vain. All attempts to reenter the leased premises remain futile despite the Plaintiff's termination of the lease agreement through its lawyers' letters dated 30th May 2023 and 5th July 2023.

4. In their defence, the Defendants contend that the rent revision clause of the lease agreement was never invoked and that no rent increment was justified, negotiated and/or agreed between the parties. They aver that, nonetheless, owing to the then existing harmonious relationship between the parties, the 1st Defendant has, so far, paid more than USD 850,000 to the Plaintiff in rent and spent more than USD 186,000 to put the leased premises, which it found in dire disrepair, into a good and tenantable state. The Plaintiff was always aware of these repairs and maintenance works at all material times but has never reconciled the incurred costs with its rent demands or reimbursed the 1st Defendant for them.

5. The Defendants further aver that the lease agreement had an express clause anticipating the purchase of the leased premises by the 1st Defendant. On 2nd August 2021, the 1st Defendant exercised its option to purchase the premises and, accordingly, made an offer to the Plaintiff to purchase. The Plaintiff did not give any substantial response to that offer to this day. The 1st Defendant avers that, upon invocation of the option to purchase, the Plaintiff was under the obligation to negotiate and conclude the purchase transaction, and that any payments it made after 2nd August 2021 constituted part payment of the purchase price that was set to be determined by the parties. Consequently, the Defendants denied indebtedness as claimed and counterclaimed alleging breach of contract against the Plaintiff for failure to conclude the purchase of the leased premises.

Representation and hearing

6. At the hearing, Mr. Roger Mugabi and Ms. Patricia Mugisa of GEM Advocates appeared for the Plaintiff while Mr. Charles Nsubuga from the 1st Defendant appeared the Defendants. Additionally, the 2nd Defendant and 3rd Defendant appeared for themselves and for the 1st Defendant, jointly with Mr. Nsubuga.

7. The Plaintiff led its evidence through the testimony of its director, Mr. Paresh Kumar Ratilal Mehta (PW1). The Plaintiff also adduced 19 documents which were admitted into evidence and exhibited consecutively as P.Ex.1 – P.Ex.19. On the other hand, the Defendants led evidence through the testimonies of the 2nd and 3rd Defendants who testified as DW1 and DW2 respectively. The Defendants adduced 11 documents which were admitted into evidence and exhibited consecutively as D.Ex.1 – D.Ex.11.

8. In his testimony, PW1 revealed that on 15th December 2014, the Plaintiff and the 1st Defendant entered into a lease agreement for the suit land for a fixed period of 5 years. Under the agreement, it was agreed that the 1st Defendant would pay the Plaintiff monthly rent of USD 5,000 plus VAT. This rate was to be revised by 10% every 12 months after the first 24 months. After the initial 24 months (December 2016 onwards), the 10% annual rent increase applied automatically to the agreement although the Plaintiff routinely notified the Defendants of these pre-agreed rent increases/revisions.

9. PW1 stated that, on 15th December 2019, the duration of the lease expired. However, the Defendants continued to occupy the suit premises on the same terms as in the agreement. Up to 15th December 2020, the Defendants had paid all the due rent and VAT, albeit late on many occasions. Since then, the Defendants have been issued with proforma invoices by the Plaintiff for rent payment but they continue to default through late payments or no payments at all. Prompted by a demand notice, the Defendants paid USD 50,000 on 8th June 2023 to the Plaintiff in partial settlement of the arrears. All attempts to reenter the leased premises remain futile despite the Plaintiff's termination of the lease agreement through its lawyers' letters dated 30th May 2023 and 5th July 2023.

10. On his part, the 2nd Defendant testified that he is the founding and managing partner of the 1st Defendant. He confirmed the execution and terms of the lease agreement and pointed out that it was also an express term of the lease agreement that the 1st Defendant would have the 1st option to purchase the leased premises for USD 2,000,000 if the purchase was concluded within 12

months from the date of execution of the agreement and thereafter the sale price would be determined by the market.

11. DW1 testified that, when the 1st Defendant took possession of the premises, it made significant renovations and improvements since the premises were found to be in a desolate state. The works included repair and renovation of the entire perimeter wall (it had partially collapsed) and the leaking roof. The 1st Defendant also repainted the entire premises, installed a new gate, tiled the entire floor, put up a new ceiling, repaired the entire drainage, electricity and water systems which it had found in a desolate state. The total cost of the repairs and renovations was estimated at USD 186,000. At all material times, the Plaintiff was aware of these renovations and repairs as PW1 would occasionally inspect the premises and acknowledge the works whenever he went there to collect rent.

12. DW1 testified that, on 2nd August 2021, the 1st Defendant exercised its right of 1st option to purchase the leased premises and submitted its offer of USD 1,050,000 to the Plaintiff. In the offer, the 1st Defendant further proposed to pay a commitment fee of 10% of the proposed price and indicated that the balance thereof would be financed by a banking institution. On receiving the offer, the then managing director of the Plaintiff contacted the 2nd Defendant and appreciated the offer but remarked that it fell below his expectation. He committed to consult his brothers in the Plaintiff to make a counteroffer but no counter offer was ever sent to the Defendants.

13. DW1 revealed that the Defendants approached several financial institutions which were all willing to finance the purchase and development of the leased premises. The Defendants procured the drawing up of the architectural plans for the redevelopment of the premises as they waited for the counteroffer from the Plaintiff which never came. Unfortunately, the Plaintiff's managing director at the time passed away in December 2021 before the consultations and conclusions of the purchase transaction was made. DW1 explained that, upon the invocation of its option to purchase, the Plaintiff was obligated to conclude the purchase transaction. Nonetheless, the said invocation of the

purchase option automatically terminated the arrangement, and the Plaintiff only remained entitled to payment of the purchase price and not rent which meant that any payments made by the 1st Defendant after 2nd August 2021 went towards the purchase price and not rent.

14. The 3rd Defendant testified that he is a senior partner in the 1st Defendant. He reiterated the substance of the testimony of the 2nd Defendant.

15. After the hearing, counsel filed written submissions to argue the case. I have carefully considered the submissions, the laws and authorities cited therein and all other materials on the record in determining the suit.

Issues arising

16. As already noted, it is not in issue that the Plaintiff and the 1st Defendant are party to the suit lease agreement. The Court is now called on to investigate and determine if that suit lease agreement morphed into a sale of the leased premises. The Court will then investigate and determine if any of the parties are liable for breach of contract. Accordingly, the following issues have arisen for the Court's determination:

1. Whether the Plaintiff sold the leased premises to the 1st Defendant.
2. Whether the Defendant is liable for breach of contract.
3. Whether the Plaintiff is liable for breach of contract.
4. What reliefs are available to the parties.

Resolution of the issues

17. **Section 101(1)** of the Evidence Act Cap 8 states that whoever desires a court to give judgment as to any legal right or liability dependent on the existence of facts which he/she asserts must prove that those facts exist. Additionally, **Section 103** of the Evidence Act Cap 8 states that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

18. It is trite law that, in civil cases of this nature, the burden lies on the plaintiff to prove the existence of his/her rights and the liability of the defendant for breach thereof on a balance of probabilities. That standard will, typically, be achieved if Court is convinced, on the basis of the evidence adduced before it, that it is more probable than not that the breaches occurred. (See **Miller v Minister of Pensions [1947]2 All ER 372**.) I will be guided by these principles on burden and standard of proof in evaluating the evidence adduced.

Issue 1: Whether the Plaintiff sold the leased premises to the 1st Defendant.

19. The evidence adduced at the trial established that, on 15th December 2014, the Plaintiff and the 1st Defendant entered into a lease agreement. This lease agreement, which was exhibited at the trial as P.Ex.1 and D.Ex.1, anticipated that the parties could transform the lease into a purchase. This was through **Clause 5** thereof which provided that:

> *"The Lessee shall have the first option to purchase the leased premises from the Lessor at a floor price of US$2,000,000 [United States Dollars Two Million only] net if the purchase transaction is concluded within twelve (12) months upon commencement of this lease and thereafter the sale price shall be determined by the Market."*

20. DW1 and DW2 testified that on, 2nd August 2021, the 1st Defendant invoked its contractual option to purchase the leased premises by sending a written offer to the Plaintiff to the effect that it wanted to buy the leased premises from the Plaintiff at a price of USD 1,050,000. A copy of the offer letter was exhibited at the trial as D.Ex.4.

21. My initial observation is that the said offer was made on 2nd August 2021, a time when the lease agreement had already expired on 15th December 2019 without being formally renewed in a manner anticipated by **Clause 3(v)** and **Column 4** thereof. These provisions prescribed that the lease term was five years, subject to renewal for a further period of time to be mutually agreed upon between the parties with new terms and conditions to be agreed. However both parties continued conducting *business as usual* after the

expiry which begs the conclusion that the lessor-lessee relationship between them continued on the same terms as initially expressly agreed.

22. The Plaintiff exhibited a letter it wrote to the 1st Defendant dated 31st March 2016 vide P.Ex.18 in which it purported to cancel the option to purchase in Clause 5 of the lease agreement on grounds that the 1st Defendant had not purchased the leased premises within the first 24 months of the agreement. In my considered view, this termination was misguided because the option to purchase endured beyond the first 24 months of the agreement. Clause 5 of the agreement only set out a floor price which would apply if the sale was concluded within the first 24 months. It, however, anticipated a situation in which the sale would happen after the first 24 months. As such, the Plaintiff's unilateral cancellation of the option to purchase when the lease agreement was still in force, just because the purchase had not been concluded within the initial 24 months, was void and of no legal effect.

23. DW1 further testified that the Plaintiff did not formally reply to the said offer. He told the Court that he reached out to the then Managing Director of the Plaintiff, the late Mr. Tushar Ruparelia, who told him that the offer fell below his [Mr. Tushar's] expectations and that the Plaintiff had better offers *on the table*. The Defendants enclosed WhatsApp messages attributed to DW1 and Mr. Tushar in their D.Ex.4. The messages show that Mr. Tushar told DW1 that the offer would not be allowed and that, when DW1 pressed him to make a counteroffer, he agreed to do so after making further consultations with key stakeholders within the Plaintiff. This was around April 2021. Unfortunately, Mr. Tushar passed on in December 2021 before any formal response could be made to the offer and before a counteroffer could be sent over.

24. In view of this evidence which was presented by the Defendants themselves, it is inconceivable that any person, let alone the Defendants, would believe that there was an actual or putative sale of the leased premises to them by the Plaintiff. It is evident that the legal relationship between the Plaintiff and the 1st Defendant remained a lessor-lessee relationship. That relationship did

not mutate into a vendor-purchaser relationship since the then intended sale and purchase of the leased premises never succeeded.

25. The failure of the intended sale and purchase negotiations is exactly why the Defendants are now seeking reliefs against the Plaintiff in the counterclaim alleging that the Plaintiff failed in its contractual duty to conclude the sale. It is bizarre that a party who claims that another did not conclude negotiations aimed at a transaction would turn around and claim some benefits from that transaction which never materialized, as the Defendants now seek to do by asserting that their contractual obligation to pay rent for the leased premises ceased when they offered to buy the leased premises. Without the sale and purchase of the leased premises being finalised, the 1st Defendant remained a lessee of the premises and its duty to pay the due rent continued to obtain.

26. It cannot be overemphasized that the one of the most elementary principles of contract law is that an offer can only give rise to a legally binding contract between the offeror and the offeree if and when it is accepted by the offeree. **Section 9(1)** of the **Contracts Act Cap 284** prescribes free consent as a crucial ingredient of a valid contract. An offeree has the liberty to accept or to reject an offer made to him or her.

27. In the instant facts, although **Clause 5** of the lease agreement anticipated a possible sale and purchase transaction in respect of the leased premises, the provision did not negate the parties' liberty to negotiate and freely consent to that anticipated transaction. The only condition placed on that anticipated transaction was that the leased premises would be sold by the Plaintiff to the 1st Defendant at the floor price of USD 2,000,000 if the transaction was to be concluded within the first 12 months after the commencement of the lease. Since the 2nd August 2021 offer was made after the lapse of the said first 12 months from the commencement of the lease, the parties had the liberty to negotiate the terms of the anticipated transaction and the offer made by the 1st Defendant could only have given rise to a valid sale and purchase contract if it had been accepted by the Plaintiff.

28. I hasten to add that acceptance of an offer would have to have been done in accordance with the relevant law. It is trite law that silence on the part of the offeree upon receipt of an offer does not amount to acceptance of that offer. Save for offers that can only be accepted by an offeree's conduct, acceptance of an offer must be communicated by the offeree to the offeror. This position is firmly reinforced by **Section 6** of the Contracts Act Cap 284 which provides that an offer is converted into a promise where the acceptance of that offer is absolute and unqualified, and expressed in a usual and reasonable manner, except where the offer prescribes the manner in which it is to be accepted. Also see the decision in **Crystal Consult (U) Ltd v MTN Uganda Ltd, HCCS No. 67 of 2012** cited by counsel for the Plaintiff on acceptance in contract law.

29. Thus, in the instant case, it is simply false and misleading for the Defendants to insinuate that anything became of their 2nd August 2021 offer at law when it was not accepted in an absolute and unqualified manner as anticipated by **Section 6** of the Contracts Act.

30. This issue is accordingly answered in the negative with the resultant finding that the Plaintiff did not sell the leased premises to the 1st Defendant. At all times material to this dispute, the Plaintiff and the 1st Defendant remained lessor and lessee, respectively, and the Defendants insinuation that the 1st Defendant became an apparent/putative purchaser and owner of the leased premises, or a *"buyer in waiting of the leased premises"* in the words of DW1 during cross examination, following the 2nd August 2021 offer, are dismissed as baseless and unsubstantiated in law and evidence.

Issue 2: Whether the Defendants are liable for breach of contract.

31. When someone does not perform his or her promise in a contract, one is said to have breached the contract. Accordingly, breach of contract occurs if one party to a contract fails, neglects or refuses to perform his or her obligations in the contract without a legal excuse. (See **William Kasozi v DFCU Bank Ltd, HCCS No. 1326 of 2000**.) Where there has been a breach of contract, the party who suffers that breach is entitled to receive from the party who

breaches the contract, compensation for any loss or damage cause to him or her. (See **Section 60** of the **Contracts Act Cap 284**.)

32. **Clause 1(i)** of the lease agreement provided that the 1st Defendant had the duty to pay the rent on the days and in the manner agreed. **Column 6** of the same agreement provided that the rent payable was *"USD 5,500 plus VAT to be revised by 10% every 12 months after the first 24 months"*. Furthermore, **Column 7** of the lease agreement also provided that the rent was payable 1 year in advance.

33. The gist of the Plaintiff's claims in the plaint is that the Defendants continue to occupy the leased premises, to this day, without paying all the agreed rent. In **para. 5(c)** of the plaint, the Plaintiff stated that, from 15th December 2015 up to date, the Defendants have defaulted in making timely payments of the monthly rent under the agreement, and that the arrears had accumulated to USD 182,400. In **para. 5(d)** of the plaint, the Plaintiff further pleaded that, on 8th June 2023, prompted by a demand notice, the Defendants paid a sum of USD 50,000 as partial payment of the outstanding arrears, and that the sum due and owing is USD 148,300.

34. In his testimony, PW1 testified that the rent due up to 15th December 2021 was duly paid by the Defendants, although, as was their habit, all payments were made late and long after the agreed contractual dates. He stated that from 15th December 2021 onwards, the Defendants did not pay the due and agreed rent. On 30th May 2023, the Plaintiff was compelled to write a notice to the Defendants demanding for the outstanding rent. He added that it was only on 8th June 2023 that the Defendants, prompted by the said demand notice, paid to the Plaintiff a sum of USD 50,000 in partial settlement of the rent arrears which left an outstanding rent balance of USD 148,300.

35. This testimony was corroborated by rent demand notices/invoices asking for the payment of rent vide P.Ex.2, P.Ex.3. P.Ex.4, P.Ex.6, P.Ex.7 and P.Ex.8. It is further corroborated by the demand notice dated 30th May 2023 (P.Ex.9), the demand notice dated 5th July 2023 (P.Ex.11), a copy of the termination of lease agreement and notice of eviction dated 12th July 2023 (P.Ex.12), a copy

of the termination of the lease agreement and notice of eviction dated 10th August 2023 (P.Ex.13), a copy of the complaint to the 1st Defendant regarding its continued illegal occupation of the leased premises without paying rent (P.Ex.14) and a written complaint to Kampala Metropolitan Police against the Defendants' illegal occupation of the leased premises dated 18th August 2023 (P.Ex.17).

36. Additionally, PW1's testimony of the 1st Defendant's non-payment of rent is also corroborated by P.Ex.10 which is a series of screenshots of WhatsApp conversations between PW1 on one hand and the 2nd and 3rd Defendants on the other hand. The conversations are said to have occurred at various times between 2021 and 2023. P.Ex.10 shows that the Defendants made several promises to PW1 to pay the rent due but all in vain. What is truly astonishing is that P.Ex.10 also shows that PW1, on many occasions, literally had to beg the Defendants to pay the due rent after several months of non-payment. It is utterly absurd that a landlord can be brought to his knees begging for his rent from a tenant. It is even more absurd that this could happen when there was a very clear provision on rent payment in the lease agreement.

37. In the premises, the Court is satisfied that the 1st Defendant breached the lease agreement by failing to pay all the rent due from it within the agreed timelines or at all. It is unfortunate that, even without an injunction stopping the collection of rent by the Plaintiff, the 1st Defendant continues to occupy the leased premises to this day without paying the all the due rent yet the Plaintiff terminated the lease agreement in July 2023. This conduct borders on impunity and must stop.

38. The Defendants contested the amounts of rent to payable, arguing that the rent increments enforced by the Plaintiff were not supposed to be automatic but that they had to be mutually agreed upon by both parties before being effected. I reiterate that **Column 6** of the lease agreement provided that the rent under the lease agreement would be *"US$ 5,500 plus VAT to be Revised by 10% every 12 Months after the first 24 Months"*. PW1 testified at the trial that the Plaintiff would always send proforma invoices/demand notices to

the 1st Defendant to appraise the latter of the due rent to be paid, including the impugned increments whenever applicable. PW1 added that the parties mutually informally agreed to revise the monthly rent up to USD 10,000 with effect from 15th December 2020 in lieu of the clause on the automatic 10% annual rent increment.

39. The Defendants did not prove that they ever contested the said invoices in which the increments were effected. To the contrary, PW1 testified that the Defendants actually settled all the rent due up to 15th December 2021, albeit late, without complaint. It thus appears to be a disingenuous afterthought for the Defendants to now claim that the various rent increments were not agreed to yet they paid the rent for all the years when those increments were being applied without complaint.

40. In interpreting a contract, Court must first be guided by the express words of the contract. If it becomes necessary to ascertain the intention of the parties to a contract, as it has in this case, the words of the contract should be given their ordinary meaning in the contractual context. (See **Andrew Akol Jacha v Noah Doka Onzivua, HCCA No. 1 of 2014**.) Second, court should construe the contract with a businesslike intention or in a commercial sense. The ultimate aim of interpreting a contract provision, especially in a commercial contract, is to determine what parties meant by the language they used. This usually involves ascertaining what a reasonable person would have understood the parties to have meant. (See **Rainy Sky Sa & Ors v Kookmin Bank [2011]1 WLR 2900** cited with approval in by this Court in **Andrew Akol Jacha v Noah Doka Onzivua,** *(supra)*. Also see **Net Fabric & Engineering Ltd v Arab Contractors (Osman Ahmed, Osman & Co.), HCCS No. 0774 of 2022**.)

41. In cross examining PW1, counsel for the Defendants insisted that there was no single part of the lease agreement expressly stating that the rent revision anticipated in Column 6 of the lease agreement automatically meant that the rent would be increased. While this may be the case, it would certainly not make any commercial or logical sense for rent to be revised downwards in a rental agreement since real property, as a general rule, appreciates in value.

42. To briefly indulge in the Defendants' logic so as to discount it, if rent was to be revised downwards gradually in a lease agreement, there is a likelihood that the rent would, at some point, be reduced to zero or descend into the negatives. In that absurd situation, a lessor would earn no rent from the lease and may even be required to pay the lessee rent for the latter's use of the property. Since consideration is a salient feature of a valid and enforceable contract as per **Section 9(1)** of the Contracts Act, such logic would completely have wiped out all consideration for the lessor in the lease and the contract would, thereby, cease to be legally valid and enforceable.

43. This would defeat all commercial logic and common sense. In my considered opinion, a reasonable business-like construction of rent revision clauses, in general, in which a landlord and tenant agree to rent revisions at a defined rate and regular intervals, inevitably means that the rent would be gradually increased over time to recognise the appreciation in value of the property. In the absence of any special conditions which would cause the devaluation of real property, there is a rebuttable presumption that a rent revision clause in lease agreement in respect of that property, by design, calls for increment and not reduction in rent.

44. Accordingly, the Court takes the view that the proper construction of **Column 6** of the lease agreement is that the rent of USD 5,500 per month was to be revised and increased upwards by 10% every 12 months following the first 24 months. There was nothing left for both parties to *"mutually agree on"* as the Defendants want this Court to believe. The provision is clear that the rent had to be revised. The regular intervals in which it would be revised and the extent to which it would be revised are further set out. It would definitely not make commercial sense for the parties to have intended that the 10% revision would effect reduction in rent. The revision was intended to effect an increment in rent at the regular agreed intervals. It is this construction which explains why the 1st Defendant paid all the rent as demanded up to 15th December 2021.

45. Similarly, I find that the Defendant's complaints about the increment of rent to USD 10,000 from 15th December 2020 onwards to be insubstantial. The 1st Defendant's payment of demanded rent up to 15th December 2021 without complaint about the change of the rate to USD 10,000 monthly is enough to satisfy the Court that the change was agreed, notwithstanding the absence of a formal addendum or other written agreement detailing the same. DW1 also admitted in cross examination that the Defendants agreed to pay USD 10,000 monthly as rent for the premises because they anticipated purchasing the premises.

46. It is also confusing why the Defendants are up in arms over a change to the rent clause of the lease agreement which actually favours their interests for the most part. The Plaintiff's position is that, following an informal discussion and agreement, the parties agreed that the monthly rent for the lease would be USD 10,000 with effect from 15th December 2020 onwards. In this change, the Plaintiff gave up its right to regular annual rent increments that had been initially agreed by necessary implication of **Column 6** of the lease agreement. By having its rent obligation capped, the 1st Defendant actually stands to gain since the Plaintiff would not keep effecting rent increments. It is, therefore, unclear why the Defendants who have since settled the USD 10,000 monthly for the period 15th December 2020 to 15th December 2021 would contest this abandonment of the rent increment framework under the lease agreement.

47. I have already dealt with the Defendants' claims that they did not incur any rent after their 2nd August 2021 offer to purchase the leased premises. Since the offer was not accepted, the lease agreement continued in force and the 1st Defendant continued to incur monthly rent through continued occupation of the leased premises.

48. I am satisfied by the evidence adduced by the Plaintiff that the sum of USD 148,300 sought to recovered in rent arrears is due. The sum arose from the period between 15th December 2021 and 30th June 2023, as reduced by the payments made by the Defendants during that time. I, accordingly, find that the 1st Defendant breached the lease agreement by failing/refusing to pay

the rent due from it under that agreement within the agreed timelines or at all. For these reasons, Issue 2 is answered in the affirmative.

Issue 3: Whether the Plaintiff is liable for breach of contract.

49. In their counterclaim, the Defendants alleged that the Plaintiff breached the lease agreement. The Defendants asserted that the Plaintiff's breach arose from its failure/refusal to finalise the sale of the leased premises contrary to Clause 5 of the lease agreement. They also claimed that the Plaintiff refused to offset or reimburse the cost of repair and maintenance works on the lease premises over the years.

50. For clarity, I reiterate that, in **Clause 5** of the lease agreement, it was agreed that the 1st Defendant would be accorded the first option to buy the leased premises. In respect to lease contracts, an option to purchase is simply an opportunity that the lessor gives to the sitting lessee to purchase the lessor's reversionary interest in the leased property in case the lessor wishes to sell that interest.

51. It entitles a sitting lessee to consideration, before and above 3rd parties, as a potential purchaser of a lessor's reversionary interest in the leased property. Indeed, as a general position, if the owner of an interest in land fails to offer his or her interest to a lawful occupant of the land as a first option before he or she offers it to other potential buyers, any subsequent transaction that he or she enters into, selling that interest to 3rd parties, is void. (See **Section 36(3)** of the Land Act Cap 236 and **Bukulu Samuel Katumba v Charles Jemba, HCCA No. 0095 of 2022**.)

52. Contrary to the Defendants' pleadings, evidence and submissions, the option to purchase does not entitle a sitting lessee to succeed in a negotiation for the purchase of the lessor's reversionary interest. Once the lessor gives the lessee's offer the first priority in the consideration of all potential offers, the option to purchase would have been exhausted. An option to purchase does not bind the lessor to always accept the lessee's offer at all costs. If the lessor considers a lessee's offer first and finds it unsatisfactory and unconvincing,

he or she is at liberty to consider and to even accept other offers. An option to purchase, thus, proceeds on a *"willing buyer, willing seller"* basis.

53. In his cross examination, DW1 severally explained that after the 2nd August 2021 offer, the Defendants made improvements and repairs on the leased property with the firm and concrete belief that they were going to *"take the property"* after the purchase anticipated in Clause 5 of the lease agreement. While this may have been the case, this perspective is inconsistent with the *"willing buyer, willing seller"* basis which underlies the option to purchase in Clause 5 of the lease agreement. It was wrong for the Defendants to assume that Clause 5 meant that the Plaintiff would inevitably sell them the property. Clause 5 simply meant that the Plaintiff would give the 1st Defendant the first option to purchase the property, and no more.

54. In the instant facts, from the DW1's and DW2's testimony, and from D.Ex.4, the Plaintiff's former Managing Director, Mr. Tushar Ruparelia, responded to the 1st Defendant's 2nd August 2021 offer to purchase the leased premises by acknowledging it, by stating that the 1st Defendant had been duly considered and given its first option to purchase the property and by stating that the 1st Defendant's offer fell below the Plaintiff's expectations. He stated that he had also consulted other stakeholders in the Plaintiff about the offer and that a final decision would be made on it and communicated to the Defendants. This unequivocally confirms that the 1st Defendant was indeed given the first option to purchase the leased premises by the Plaintiff in accordance with **Clause 5** of the lease agreement.

55. The Defendants took offence with the Plaintiff's failure/omission to make a formal response to the 1st Defendant's 2nd August 2021 offer. DW1 and DW2 testified that this caused the Defendants harm since they remained *in limbo* about the 1st Defendant's fate in the leased premises. While it is indeed likely that the Plaintiff's failure to formally respond to the said offer caused some injury to the Defendants, it is difficult to see how that failure amounts to a breach of the lease agreement.

56. The Court reiterates DW1's testimony confirming that the late Mr. Tushar, the Plaintiff's Managing Director at the time, responded to the offer through a text messages exchange on WhatsApp stating that the offer was too low. The Court further observes that the Defendants did not cite any provision of the lease agreement which required the Plaintiff to formally respond to any and all offers made to it for the purchase of the leased premises. **Clause 5** of the lease agreement only entitled the 1st Defendant to first consideration for the purchase of the Plaintiff's interest in the leased premises. In the absence of proof of a contractual obligation requiring the Plaintiff to formally respond to the 2nd August 2021 offer made to it by the 1st Defendant for the purchase of the leased premises, Court is inclined to overlook the Plaintiff's omission to formally respond to the impugned offer.

57. Before taking leave of this point, I also find it noteworthy that the Plaintiff has not yet dealt with any other third party in respect of the leased premises. Thus, hypothetically speaking, even if the Plaintiff had not given the 1st Defendant the first option to purchase the leased premises, it is still practicable for the Plaintiff to do so even after the delivery of this judgment since it remains the registered owner of the leased premises. The Plaintiff's reversionary interest has still not yet been sold off to a third party and the 1st Defendant can still be given the first option to purchase it even after this judgment.

58. The other breach complained of by the Defendants against the Plaintiff is its failure to offset or reimburse the cost of the repair and renovation works carried out on the leased premises by the Defendants over the years. The Defendants pleaded that, when the 1st Defendant took possession of the leased premises, it made significant renovations and improvements thereon since the premises were found to be in a desolate state.

59. At the trial, DW1 testified that the repair and renovation works done by the 1st Defendant on the leased premises included repair and renovation of the perimeter wall which had partially collapsed and the leaking roof. DW1 told the Court that the 1st Defendant also repainted the entire premises, installed

a new gate, tiled the entire floor, put up a new ceiling, repaired the entire drainage, electricity and water systems which it found in a desolate state. He claimed that the total cost of the repairs and renovations was estimated at USD 186,000 which was never reimbursed and/or off set from the rent.

60. However this pursuit of a set off from rent or reimbursement of expenses is, however, plagued by five insurmountable complications. The first complication is the absence of any legal basis for the set off or reimbursement. **Clause 1(iii)** of the lease agreement required the 1st Defendant to keep the interior of the leased premises, including floors, walls, ceilings, inside doors entering into corridors of the building and the glass in windows and all fittings and fixtures sufficiently cleaned and in good and tenantable repair and condition. **Clause 1(ix)** of the agreement bound the 1st Defendant not to make any alterations and additions, whether structural or otherwise in or to the leased premises, except for temporary partitions inside the premises for suitable use to meet its needs.

61. By **Clause 2(i)** of the lease agreement, the Plaintiff was required to keep the roof, the outside walls and entire exterior of the leased premises in good and tenantable repair. **Clause 2(ii)** of the agreement also required the Plaintiff to repair and maintain water, electricity fittings and all structural aspects of the leased premises, except such repair and maintenance that would have been occasioned by the 1st Defendant's negligence. Most notably, **Column 17a** of the agreement provided that any alteration to the leased premises had to be approved by the Plaintiff in writing. It also added that that expenses on any renovation or improvement in electrical wiring would be fully met by the 1st Defendant.

62. In light of these clear contractual provisions, it is clear that any and all repairs, renovations and improvements on the leased premises had to be approved by the Plaintiff in writing. At the trial, the Plaintiff exhibited a letter written to it by the 1st Defendant in February 2015 vide P.Ex.15. In that letter, the 1st Defendant sought the Plaintiff's consent to make structural alterations to the leased premises to add 2 small windows to the garage. The Plaintiff further

exhibited its reply to that request vide P.Ex.16 wherein it consented to those alterations as long as the costs thereof were borne by the 1st Defendant and as long as the 1st Defendant obtained approval from the local authorities for the changes. Save for this consent, the Defendant did not adduce any written consent by the Plaintiff to any of its repairs, renovations and improvements on the leased premises.

63. In his testimony, DW1 attempted to explain away the absence of any written consent in the Defendants' evidence at the trial by stating that, at all material times, the Plaintiff was aware of these renovations and repairs because PW1 would occasionally inspect the leased premises and acknowledge the works whenever he went there to collect rent. I find this testimony to be besides the point. This is because it is legally inconsequential that PW1 or any other agent, officer or employee of the Plaintiff knew about the renovations and repairs as they were being executed. The contractual standard of consent to repairs, renovations and alterations to the leased premises was clearly spelt out in the lease agreement. Such actions had to be undertaken with written consent of the Plaintiff and this was never secured in the instant case.

64. Second, **Column 17a** of the lease agreement expressly provided that the cost of any expenses on any renovation or improvement in electrical wiring would be met by the 1st Defendant. Having assigned the contractual responsibility of settling expenses for renovation or improvement in electrical wiring to the 1st Defendant, the parties could not have anticipated that the 1st Defendant would ever sue the Plaintiff to recover monies spent on any such works. The import of **Column 17a** of the agreement is that it is not legally conceivable that the Plaintiff would ever have to pay for renovation or improvement in electrical wiring conducted by the 1st Defendant on the leased premises.

65. Third, the evidence adduced by the repairs and renovations is so inconclusive and vague that it could never have formed a proper basis for the claimed set off or reimbursement of expenses. The Defendants relied on the testimonies of DW1 and DW2 to prove the repairs and renovations. They further adduced D.Ex.3 which was a list of the items that are said to have been repaired and,

or renovated/overhauled by the 1st Defendant on the leased premises. D.Ex.3 included 13 items. These were construction of a new perimeter wall, putting a new roof on the premises, construction of the new guard house, installing a new gate, fixing new water/sewerage/drainage system, fixing the electricity system, fixing of a new ceiling for the premises, installation of new doors and windows, partial tarmacking/marking the parking lot, painting of walls both inside and outside the premises, fixing new toilets/bathrooms and tiling the entire floor of the premises.

66. D.Ex.3 concluded by stating that the total estimated cost of all the works was USD 186,000. The failure by the Defendants to indicate what they spent on each of 13 items in D.Ex.3 casts doubt as to its genuineness. The Defendants dismally failed to show how they arrived at that sum through each of the 13 items. What further fails the Defendants' case is that D.Ex.3 relies on an *"estimated"* total cost of the works. If the works had all been done as the Defendants claimed, the Defendants would already have gone past the stage of estimating the total cost of the works. They would have had a definite and final cost of the works.

67. During his cross examination, DW1 repeatedly said that they spent so much money in repairs, that is to say, USD 186,000 since they knew that they would purchase the property. However, the evidence of this expenditure is scanty at best, if at all. The Defendants did not adduce in evidence any receipts of cash payments, bank transfers or any other source record of payment of the said monies to service providers for the said works. All the Court has is a list of what was allegedly done and an estimated total cost of the works.

68. These evidential gaps are heightened by the fact that the Defendants failed to adduce cogent corroboration evidence of what necessitated the renovation and repair works alleged. Both DW1 and DW2 testified at the trial that the premises were in run-down and dilapidated state at the time when the lease commenced. No pictorial evidence was adduced confirming that state. There were no expert reports or opinions from the 1st Defendant's engineers and other technical personnel who advised on or conducted the

works showing why and how the renovation and repair works were conducted. As such, while the Court conducted a locus visit to the leased premises and confirmed the present state of the premises, no evidence was led to show, with definite certainty, the earlier state of the premises which necessitated the impugned works.

69. Fourth, since the expenditure on the works was known at the time of filing the counterclaim, it constitutes special damages in law. In **Makubuya Enock William t/a Polla Plast v UMEME (U) Ltd, CACA No. 1 of 2019**, the Court of Appeal of Uganda defined special damages as past pecuniary loss calculable at the date of trial. The Court further emphasized that special damages must be specifically pleaded and proven. Since they are already ascertained, there is nothing that should logically stop whoever pleads them from giving all the necessary details about them in the pleadings and from proving them in all specific detail at the trial. In the instant case, neither the written statement of defence nor the counterclaim contained any specific pleading of the works done for which the set off or reimbursement is sought by the Defendants.

70. Finally, the Court is now left to wonder why the 1st Defendant agreed to sign the lease agreement on 15th December 2014 if the leased premises were in such dire need of repair and renovation at the time, yet the lease agreement remained silent on that dire state of the premises. If the premises were so run down that they needed a *near-total* overhaul at the very commencement of the lease, this would have been incorporated into the lease agreement. It is unlikely that a person, let alone a firm of eminent members of the bar like the 1st Defendant, would execute a lease agreement for premises that were so badly dilapidated and not insist that the duty or cost of the necessary repair works and renovations is duly anticipated and expressly factored into the lease agreement. All this renders the Defendants' claims on the necessity and cost of the said repair and renovation works even less believable on a balance of probabilities.

71. For all these reasons, Issue 3 is answered in the negative with the resultant finding that the Plaintiff is not liable for breach of the lease agreement. Court

could have forgiven the lack of formal consent from the Plaintiff for the said works if the Defendants' evidence on the works was watertight. However, in the absence of cogent evidence corroborating DW1's and DW2's testimonies on the state of the premises before the works and the expenditure thereon, the Court remains unconvinced about the need for the works, the scope of the works actually done and the expenditure on those works.

Issue 4: What reliefs are available to the parties.

72. The Plaintiff prayed for the following reliefs in the plaint:

i. Recovery of rent arrears of USD 148,300

73. In para. 5(e) of the plaint, the Plaintiff pleaded that the outstanding balance of rent due as at 30th May 2023 was USD 148,300. At the trial, PW1 explained that this sum arose from the period between 15th December 2021 and 30th May 2023, and that payments made by the Defendants since 15th December 2021 (a total of USD 70,000) were factored in before arriving at that amount. In view of this evidence, I am satisfied that a sum of USD 148,300 is due and owing from the 1st Defendant in rent arrears arising from the period between 15th December 2021 and 30th May 2023.

ii. An order for vacant possession

74. In **Red Stone Training Institute Ltd v Joyce Nabbosa Sebugwawo, HCMA No. 195 of 2024**, this Court was faced with a case in which a tenant had failed to pay rent and also refused to vacate the rented premises. The Court held that:

> *"It is unfair and unjust for the Applicant to continue staying in the Respondent's premises and still refuse to pay the rent due or even to vacate the premises."*

I cite and refer to this dictum with approval. The rationale on which the case was decided is applicable to the instant case because, while the case arose from a tenancy and not a lease like in the instant dispute, both tenancies and leases involve an owner of an interest in land granting a right of possession and use to another person in consideration of rent.

75. To this day, the 1st Defendant is still in occupation of the leased premises yet the term of the lease agreement lapsed on 15th December 2019. Additionally, the 1st Defendant remains adamant to yield the leased premises back to the Plaintiff yet it is not paying the due rent as it falls due. More importantly, the Plaintiff terminated the lease on 12th July 2023 and asked the 1st Defendant to leave but the 1st Defendant ignored that termination.

76. In signing the lease agreement, it is unlikely that the parties ever anticipated a time in which the 1st Defendant would occupy the leased premises without paying rent, especially after the lapse and termination of the lease. Indeed, it only makes logical sense that, if a lease expires and a lessee is unwilling or unable to pay rent for premises which he or she is occupying, the least he or she can do, in all fairness, is to vacate those premises so that they are taken up by another person who is willing and able to pay the rent.

77. There is absolutely no reasonable justification for a lessee refusing to pay the rent for leased premises after the lapse of the lease while at the same time, insisting on his or her continued occupation of those premises. Such conduct would subject the lessor to loss of both his or her rent from the current lessee and the rents that he or she could have earned from other tenants.

78. Following the expiry of the lease agreement on 15th December 2019 and the overt termination of the lease agreement on 12th July 2023, it is evident that the 1st Defendant is no longer occupying the leased premises in any lawful capacity. The continued occupation of the premises by the 1st Defendant is inconsistent with the lease agreement and unfair, and must be brought to an end. (See the decision of the Supreme Court of Uganda in **Joy Tumushabe & Anor v M/S Anglo-African Ltd & Anor, SCCA No. 7 of 1999** where it was held that a tenant who defies the landlord's terms and conditions as agreed even when the landlord has given a notice to repossess the property becomes a trespasser and may be evicted from that property.) Again, although this case dealt with a tenancy and not a lease, the ratio decidendi in it is relevant and applicable to this case.

79. Accordingly, the Court shall issue an order of vacant possession and an order of eviction against the 1st Defendant in respect of the leased premises.

iii. General damages

80. General damages refer to the losses which flow naturally from a defendant's breach. They are what the law presumes to be the direct, natural or probable result of a defendant's breach (See **Opia Moses v Chukia Lumago Roselyn & 5 Ors, HCCS No. 0022 of 2013**). They are also said to be the immediate, direct and proximate result, or the necessary result, of the wrong complained of.

81. The evidence adduced by the Plaintiff proved that the 1st Defendant has held onto the leased premises since the inception of the lease agreement on 15th December 2014 while committing several breaches of the lease agreement through delays in paying the rent or not paying the rent at all. The evidence also proved that, despite the Plaintiff's termination of the lease agreement and demands that the 1st Defendant vacates the leased premises, to this day, the 1st Defendant is still occupying the leased premises to without paying all the due rent.

82. The natural and probable consequence of the 1st Defendant's conduct is that the Plaintiff has indeed suffered financial loss and inconvenience as a result of that conduct. This plight was exacerbated by the Defendants branding themselves as putative owners/buyers of the leased premises who have no duty to pay the rent due from them, yet their 2nd August 2021 offer was never accepted.

83. The Court also recalls the contents of P.Ex.10. This exhibit contains excerpts of WhatsApp conversations which PW1 had with the 2nd and 3rd Defendants about delayed rent payments. The Court has noticed, with great concern, the manifest indignity with which PW1 had to beg the 2nd and 3rd Defendants for rent to be paid in the midst of countless empty promises from them.

84. In light of all these factors and evidence, Court shall award UGX 50,000,000 in general damages, which sum is considered to be a fair, just and adequate

compensation to the Plaintiff for all its non-quantifiable loss and injury as a result of the 1st Defendant's breach of the lease agreement.

iv. Mesne profits

85. **Section 2(m)** of the Civil Procedure Act Cap 282 provides that:

> *"... profits which the person in wrongful possession of the property actually received or might with ordinary diligence have received from it, together with interest on those profits, but shall not include profits due for improvements made by the person in wrongful possession."*

86. The Defendants referred to **Chris Rugari v Amin Tejan HCCS No. 25 of 2016** to submit that the Plaintiff's claim for mesne profits is unfounded as it is not based on any action for wrongful possession which is a prerequisite for grant. This claim is a misapplication of the principle in that case. From the amended plaint, it is evident that the Plaintiff's complaint in this suit is, precisely, that the Defendants are in possession of the leased premises without paying the due rent. This is the textbook definition of wrongful possession.

87. The Court has already found that the 1st Defendant is in wrongful possession of the leased premises following its failure to pay rent for them promptly or at all. This creates a proper basis for the award of mesne profits.

88. Counsel for the Plaintiff premised their submissions on mesne profits on the loss in rental fees which the Plaintiff has suffered since the filing of the suit. While the rental income the Plaintiff was deriving from the premises can be taken into account in tabulating the mental profits due, caution ought to be taken not to turn mesne profits into the loss incurred by the Plaintiff. Mesne profits are the profits that the defendant in wrongful possession has actually received or could have received with ordinary diligence. Indeed, in **Elizabeth Luwedde Kasule & Anor v Board of Governors of Caltec Academy & Anor, HCMA No. 1861 of 2022**, it was held that:

> *"The calculation of mesne profits is based on the profits that the defendant in wrongful possession has actually received or could have*

received with ordinary diligence, rather than on the losses incurred by the owner due to the deprivation of possession."

89. The 1st Defendant is a law firm operating its business on the leased premises. According to the lease agreement, it was supposed to pay monthly rent of USD 5,500. I have also considered the fact that this rent had been increased to USD 10,000 by the time of the last computation of rent arrears on 30th May 2023 and the fact that the leased property is prime property in Kololo, Kampala. By not paying rent to the Plaintiff for all this time, the 1st Defendant is saving a substantial amount of money from its profits on a monthly basis. Considering all these factors, I award mesne profits to the Plaintiff at the rate of USD 7,000 per month with effect from 1st June 2023 until 31st January 2026 (32 months) which translates into a total sum of USD 224,000.

v. Interest

90. The Plaintiff prayed for interest at the contractual rate of 10% per month for late rent payments and interest on rent arrears and mesne profits at the rate of 25% per annum from the date of filing the suit. The Court notes that the contractual interest rate of 10% per month translates into a rate of 120% per annum. This rate is harsh and unconscionable, in light of the several decisions of this Court on the propriety of interest rates. (See **MTN Two One Two Staff Coop. & Credit Society Ltd v Samuel Majwega Musoke, HCCS No. 0082 of 2021, JAS Ventures International Ltd v Atuhaire Juliet, HCCS No. 0676 of 2021** and **Walusimbi's Garage Ltd & 2 Ors v NCBA Bank Uganda Ltd, HCMA No. 1561 of 2024**.)

91. Accordingly, the Court will not apply the rate of 10% per month for late rent payments set out in the lease agreement. The Court will instead substitute that rate with a rate which it deems just in line with **Section 26(1)** of the Civil Procedure Act Cap 282.

92. Additionally, **Section 26(2)** of the Civil Procedure Act Cap 282 gives Court the power to award interest on the damages recoverable in a suit. A successful plaintiff is entitled to interest at a rate which would not neglect the prevailing economic value of money but which would also insulate him or her against

further economic vagaries, like inflation and depreciation of the currency, in the event that the money ordered to be recovered is not paid promptly when it falls due. (See **Mohanlal Kakubhai Radia v Warid Telecom, HCCS No. 0224 of 2011**.)

93. In view of the above these laws and principles, Court awards interest to the Plaintiff on the rent arrears of USD 148,300 at the rate of 6% per annum from 30th May 2023 until full payment. Court also awards interest on the general damages of UGX 50,000,000 at the rate of 13% per annum from the date of this judgment until full payment and on the mesne profits of USD 224,000 at the rate of 6% per annum from the date of judgment until full payment.

vi. Costs

94. Section 27(1) of the Civil Procedure Act accords this Court the discretion to award the costs in a suit before it. Nonetheless, the general rule is that costs follow the event. This means that an award of costs will generally flow with the result of litigation and that a successful party is entitled to costs, unless the Court, for good reason, orders otherwise (See **Kwizera Eddie v Attorney General, SC Const. Appeal No. 01 of 2008**).

95. In the instant case, I have not found any justification to deny costs to the 1st Plaintiff. The costs of the suit are, therefore, awarded to the Plaintiff who is the successful party in the suit.

Reliefs

96. Consequently, judgment in this suit is hereby entered for the Plaintiff against the 1st Defendant on the following terms:

i. The 1st Defendant shall pay the sum of USD 148,300 being rent arrears as at 30th May 2023 to the Plaintiff.

ii. The 1st Defendant pay general damages of UGX 50,000,000 to the Plaintiff for breach of contract.

iii. The 1st Defendant shall pay **mesne profits** of USD 224,000 to the Plaintiff for wrongful possession of the leased premises from 30th May 2023 until 31st January 2026.

iv. The 1st Defendant shall pay interest on the sum in (i) above to the Plaintiff at the rate of 6% p.a. from 1st June 2023 until payment in full.

v. The 1st Defendant shall pay interest on the sum in (ii) above to the Plaintiff at the rate of 13% p.a. from the date of judgment until payment in full.

vi. The 1st Defendant shall pay interest on the sum in (iii) above to the Plaintiff at the rate of 6% p.a. from 1st June 2023 until payment in full.

vii. An order of vacant possession hereby issues requiring the 1st Defendant to vacate the leased premises comprised in comprised in Plot 50 Windsor Crescent Road, Kololo and yield them back to the Plaintiff forthwith.

viii. An order of eviction hereby issues permitting the Plaintiff to evict the 1st Defendant from the leased premises comprised in comprised in Plot 50 Windsor Crescent Road, Kololo forthwith.

ix. Costs of the suit are awarded to the Plaintiff.

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Patricia Mutesi

JUDGE

(20/02/2026)