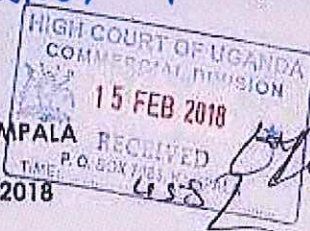


CASE 2 - RENT - CMS - PLAINT

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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
[COMMERCIAL DIVISION]
HIGH COURT CIVIL SUIT NO. 109 OF 2018



CRANE MANAGEMENT SERVICES LIMITED=====PLAINTIFF

-VERSUS-

DFCU BANK LIMITED=====DEFENDANT

PLAINT

1. The Plaintiff is a limited liability company duly incorporated, legally clothed with capacity to sue or be sued as such, whose address of service for purposes of this suit shall be C/o M/s Magna Advocates, Plot 22 Jinja Road, Spear House, 4th Floor, Left Wing, Suite No. 3, P. O Box 12866, Kampala.
2. The Defendant is a company incorporated under the laws of Uganda carrying on the business as a Financial Institution, with its headquarters at DFCU Towers, 26 Kyadondo Road, Nakasero, Kampala-Uganda being sued as such. The Plaintiff's advocates undertake to effect service of court process on the Defendant.
3. The subject matter of the suit are tenancies in respect of the following properties comprised in:
 - (a) Plot 9, Market Street - Crane Bank Branch.
 - (b) Plot 9, Market Street - Crane Bank ATM.
 - (c) Plot 1-13, Jinja Road - Crane Bank Branch.
 - (d) Plot 47, Republic Road, Mbale - Crane Bank Branch.
 - (e) Speke Hotel (1996) Limited - Crane Bank ATM.
 - (f) Plot 19, Cooper Road (Crane Plaza) - Crane Bank Branch.
 - (g) Plot 20, Kampala Road - Crane Bank ATM.
 - (h) Apartments at Bombo Road, Kiira Road, William Street, Market Street, Nkrumah Road.
 - (i) Plot 28, Luwum Street - Crane Bank Ltd Unit No. 31&33.
 - (j) Plot 1, Sinay Bin Amir Street - Crane Bank Staff -8 apartments
 - (k) Plot 22/24/26, Kampala Road - Crane Bank Ltd -Staff Flats,
 - (l) Plot 22/24/26, Kampala Road - Crane Bank Ltd -Staff Flats,
 - (m) Plot 22/24/26, Kampala Road - Crane Bank Ltd -Staff Flats

(hereinafter all referred to as the "suit properties") under which the Plaintiff claims rental arrears from the Defendant.

4. The Plaintiff brings this suit against the Defendant, on account of being the successor in title to Crane Bank Limited (now in receivership) as the

tenant in respect of the tenancies on the suit properties above mentioned, being transferee of the assets and liabilities of the said Crane Bank Limited (in Receivership) and having, by its conduct assumed the rights and obligations under the tenancies in respect of the suit properties.

5. The Plaintiff's claim against the Defendant is for breach of contract or in the alternative unjust enrichment, whereof the Plaintiff claims from the defendant, a total sum of **USD 385,728.54 (United States Dollars Three Hundred Eighty Five Thousand Seven Hundred Twenty Eight and Fifty Four Cents Only)** and **UGX. 2,998,558,624= (Uganda Shillings Two Billion Nine Hundred Ninety Eight Million Five Hundred Fifty Eight Thousand and Six Hundred Twenty Four Only)**, as rental arrears, interest on the sum aforementioned at the prevailing commercial rate from the date the said sums became due, until payment in full, general damages, interest on general damages, and costs of the suit, all arising from various breaches committed by the Defendant.

6. The facts constituting the Plaintiffs' cause of action against the Defendant arose as follows;

a) The Plaintiff is a company dealing principally in the business of real estate, the manager and duly authorized letting agent of Meera Investments Limited, the registered proprietor of the suit properties.

b) The Plaintiff let out the various premises on the suit properties to Crane Bank Limited (in Receivership), which operated its business in the premises on the terms agreed between the parties.

c) When the Defendant took over the assets and assumed the liabilities of Crane Bank Limited, it took over occupation and use of the suit properties;

d) The Plaintiff had let out the suit properties to Crane Bank Limited in the manner hereinafter set out;

i. Premises known as **Plot 9, Market Street (Crane Bank Branch)** were let out to Crane Bank Limited (in Receivership), at the rent of **USD 4,205.52 (United States Dollars Four Thousand Two Hundred Five and Fifty Two Cents)** per month payable one year in advance. The last payment made covered the period up to the 30th day of September 2016, and by 30th April 2017 when the premises were vacated by the Defendant, the outstanding rental arrears for seven (7) months plus interest on arrears of **USD 28,730.11** and three months' notice period, making a total sum

- of **USD 66,579.31**. **(A copy of the demand note and receipt of acknowledgement is attached hereto marked "A")**.
- ii. Premises known as **Plot 9 Market Street (Crane Bank ATM)** were let to Crane Bank Ltd (in receivership) at the rent of **USD 4,205.52 (United States Dollars Four Thousand Two Hundred Five and Fifty Two Cents)** per month payable one year in advance. The last payment made covered the period up to the 31st day of March 2017, and by 30th April 2017 when the premises were vacated by the Defendant, the outstanding rental arrears inclusive of three months' notice period making a total sum of **USD 16,822.08**. **(A copy of the demand note and receipt of acknowledgement is attached hereto marked "B")**.
 - iii. By tenancy agreement dated 1st day of October 2013, the Plaintiff let out to Crane Bank Ltd (in receivership) premises known as **Plot 1-13, Jinja Road**, for a fixed duration of five (5) years, at the rent of **USD 9,800.34 (United States Dollars Nine Thousand Eight Hundred and Thirty Four Cents)** per month, with 7% annual increment compounded, payable one year in advance. The last payment made covered the period upto 30th day of September 2016 and by 30th April 2017 when the premises were vacated by the Defendant, the outstanding rental arrears in terms of the un expired period of twenty four (24) months plus interest of **USD 33,672.87** making a total sum of **USD 242,812.32**. **(A copy of the tenancy agreement is hereto attached as annexure "C")**.
 - iv. By a tenancy agreement dated 1st day of April 2014 but commencing on the 1st day of March 2014, the Plaintiff let out to Crane Bank Ltd (in receivership) premises known as **Plot 47, Republic Road, Mbale** for a duration of ten (10) years, at the rent of **USD 8,361.77 (United States Dollars Eight Thousand Three Hundred Sixty One and Seventy Seven Cents)** per month payable one year in advance. The last payment made covered the period up to 28th day of February 2017, and by 30th April 2017 when the premises were vacated by the Defendant, the interest on arrears of **USD 2,592.15** and three months' notice period making a total sum of **USD 27,678.01**. **(A copy of the tenancy agreement is hereto attached as annexure "D")**.
 - v. The Plaintiff also let out to Crane Bank Ltd (in receivership) premises known as **Speke Hotel (1996) Limited (Crane Bank ATM)** at the rent of **USD 4,583.24 (United States Dollars Four Thousand Five Hundred Eighty Three and Twenty Four Cents)** per month payable one year in advance. The last payment made covered the period up to 31st day of December 2016 and by 30th April

2017 when the premises were vacated by the Defendant, the interest on arrears of **USD 5,064.94** and three months' notice period making a total sum of **USD 18,814.61**. **(A copy of the demand note and receipt of acknowledgement is attached hereto marked "E")**.

- vi. The Plaintiff also let out to Crane Bank Ltd (in receivership) premises known as **Plot 19, Cooper Road, Crane Plaza, Apt No. 305**, at the rent of **USD 600 (United States Dollars Six Hundred)** per month payable one year in advance. Crane Bank Ltd (in receivership) never paid any rent for the said premises and by 30th April 2017 when the premises were vacated by the Defendant, the outstanding rental arrears for ten months and three months' notice period, making a total sum of **USD 7,800**.
- vii. The Plaintiff further let out to Crane Bank Ltd (in receivership), the premises known as **Plot 20, Kampala Road, (Crane Bank ATM)** at the rent of **USD 4,283.40 (United States Dollars Four Thousand Two Hundred Eighty Three and Forty Cents)** per month payable one year in advance. The last payment made covered the period up to 31st of March 2017 and by 30th April 2017 when the premises were vacated by the Defendant, the outstanding rental arrears and three months' notice period, making a total sum of **USD 12,850.60**. **(A copy of the demand note and receipt of acknowledgement is attached hereto marked "F")**.
- viii. The Plaintiff let out to Crane Bank Ltd (in receivership), **apartments at Bombo Road, Kira Road, William Street, Market Street, Nkrumah Road etc.** at the rent of **USD 12,830.94 (United States Dollars Twelve Thousand Eight Hundred Thirty and Ninety Four Cents)** per month, payable one year in advance. The last payment made covered the period up to 31st of March 2017 and by 30th April 2017 when the premises were vacated, the outstanding rental arrears on one month and three months' notice period stood at **USD 51,323.76**. **(A copy of the receipt of the demand note and receipt of acknowledgement is attached hereto marked "G")**.
- ix. The Plaintiff also let out to Crane Bank Limited (in Receivership) the premises known as **Plot 28, Luwum Street, (Crane Bank Unit number UG – 31&33)** at the rent of **UGX 12,100,000/= (Uganda Shillings Twelve Million One Hundred Thousand)** per month payable one year in advance. The last payment made covered the period up to 31st of August 2016 and by 30th April 2017 when the premises were vacated by the Defendant, the interest on arrears of **UGX 55,411,671** and three months notice period stood

at UGX 91,711,671. **A copy of the demand note and receipt of acknowledgement is hereto attached and marked as "H".**

- x. The Plaintiff further let out to Crane Bank Ltd (in receivership), the premises known as **Plot 1, Snay Bin Amir Street (Crane Bank Staff – 8 apartments)** at the rent of **UGX 9,600,000/= (Uganda Shillings Nine Million Six Hundred Thousand)** per month payable one year in advance. The last payment made covered the period up to 31st of May 2017 and the current outstanding rental arrears as at April 30, 2017 when the premises were vacated by the Defendant, in terms of three months' notice period minus one month paid in advance, stood at **UGX 19,200,000/= (A Copy of demand note and proof of last payment made is hereto attached and marked as "I")**.
- xi. The Plaintiff let out to Crane Bank Ltd (in receivership) the premises known as **Plot 22, 24, 26, Kampala Road (Crane Bank Staff Flats -1 Apartment)** at the rent of **UGX 1,200,000/= (Uganda Shillings One Million Two Hundred Thousand)** per month payable one year in advance. Crane Bank Ltd (in receivership) never paid any rent and the outstanding rental arrears as at April 30, 2017 when the premises were vacated by the Defendant, for nine months plus three months' notice making a total sum of **UGX 14,400,000/=**.
- xii. By a tenancy agreement dated 1st day of July, 2016, the Plaintiff let out to Crane Bank Ltd (in receivership), the premises known as **Plot 22, 24, 26, Kampala Road (17 apartments for Crane Bank Staff Flats)** for a fixed duration of Five (5) years and expiring on the 30th of June 2021, at the rent of **UGX 23,112,000/= (Uganda Shillings Twenty Three Million Eleven Hundred Two Thousand)** per month with a 7% annual increment payable one year in advance. The last payment made covered the period up to 30th of June 2017 and the outstanding rental arrears as at April 30, 2017 when the premises were vacated by the Defendant, in terms of the unexpired period of four years making a total sum of **UGX 1,231,391,551/= (A Copy of the tenancy agreement is hereto attached and marked as "J")**.
- xiii. By a tenancy agreement dated 1st day of August, 2016, the Plaintiff let out to Crane Bank Ltd (in receivership), the premises known as **Plot 22, 24, 26, Kampala Road (21 apartments for Crane Bank Staff Flats)** for a fixed duration of Five (5) years and expiring on the 31st of July 2021, the at the rent of **UGX 30,816,000/= (Uganda Shillings Thirty Million Eight Hundred and Sixteen Thousand)** per month with a 7% annual increment payable one

year in advance. The last payment made covered the period up to 31st of July 2017 and by April 30, 2017 when the premises were vacated by the Defendant the outstanding rental arrears in terms of the un expired period of four years stood at **UGX 1,641,855,402/=**. **(A Copy of the tenancy agreement and the detailed schedule indicating the total amount owed is hereto attached as annexure "K1, K2 & K3" for ease of reference).**

7. The Plaintiff avers that Crane Bank Limited (in Receivership) occupied and operated its business from the suit premises in accordance with the tenancies and on agreed terms. Crane Bank Limited (in Receivership) only paid rent in the manner and for the periods herein above specified in respect of each property, save for properties where no payment was effected at all.
8. On the 20th day of October 2016, Bank of Uganda took over management of Crane Bank Limited (in Receivership) under statutory management and Crane Bank Limited (in Receivership) continued to occupy and utilize the suit properties under the existing tenancies.
9. On the 24th day of January 2017, Crane Bank Ltd was placed under receivership by Bank of Uganda, and it continued to occupy and utilize the suit properties, pursuant to the terms of the then subsisting tenancies.
10. On the 25th day of January 2017, Bank of Uganda as a Receiver represented that it had transferred the assets and liabilities of Crane Bank Ltd to the Defendant. **Copies of the Notices advertised in the Newspapers by the Bank of Uganda is attached hereto marked "L1 & L2".**
11. The Defendant also, run notices in the Newspapers representing publicly that it had acquired the assets and assumed the liabilities of Crane Bank (in Receivership). **Copies of the Notices advertised in the Newspapers by the Defendant is attached hereto marked "M1 & M2".**
12. The Plaintiff avers that, the Defendant, upon taking over the assets and assuming the liabilities of Crane Bank Ltd (in Receivership), by its subsequent conduct acknowledged being party to the subsisting tenancy and assumed the rights and obligations under the subsisting tenancies between the Plaintiff and the Crane Bank Limited (in Receivership), as a successor in title by doing the following;

- I) The Defendant took occupation of the suit premises from 27th January 2017 under terms of the subsisting tenancies of its predecessor Crane Bank Limited (in Receivership) and continued to operate from the said suit properties.
- II) The Defendant removed all Boards and everything advertising or relating to the previous tenant; Crane Bank Limited (in receivership) and substituted them with its own, as the new tenant in the suit premises.
- III) The Defendant, further effected payment to the Plaintiff of arrears of rent incurred by its predecessor in title Crane Bank Limited (in receivership) in the sum of **USD 81,408 (United States Dollars Eighty One Thousand Four Hundred and Eight) and UGX 219,210,728 (Uganda Shillings Two Hundred Nineteen Million Two Hundred Ten Thousand and Seven Hundred Twenty Eight)** in respect of some of the suit properties managed by the Plaintiff, which conduct further confirms that the defendant was a successor in title of the tenant (Crane Bank Ltd). ***A copy of the letter from the defendant confirming the payment is hereto attached and marked as "N".***
- IV) The Defendant also paid utilities arrears of its predecessor Crane Bank Ltd (in receivership) of **UGX 410,303,436= (Uganda Shillings Four Hundred Ten Million Three Hundred Three Thousand Four Hundred Thirty Six)** to the Plaintiff, further confirming that it was a successor in title of Crane bank Ltd and therefore took over the obligations of Crane Bank Ltd (in receivership).

13. The Plaintiff avers that after the Defendant had vacated the suit premises on 30th April 2017;

- i) The two parties negotiated and agreed on only the restoration costs, in the total sum of **USD 531,000.00 (United States Dollars Five Hundred and Thirty One Thousand)** to cover for the restoration of premises. ***(Copy of the letter from the defendant agreeing to pay the restoration costs is hereto attached as annexure "O").***

- ii) The restoration costs were with the knowledge of the Defendant paid on a without prejudice basis to the claim by the Plaintiff for rental arrears. **A copy of the letter dated 11th May 2017 is attached hereto marked annexure "P"**
- iii) The Defendant paid **USD 362,524.00 (United States Dollars Three Hundred and Sixty Two Thousand Five Hundred and Twenty Four)** as part of the said restoration costs leaving a balance of **USD 168,476.00**.
- iv) The Defendant, having assumed the rights and obligations of Crane Bank (in Receivership) off set the balance of the restoration costs in the sum of **USD 168,476.00** from sums claimed as pre-paid rent by Crane Bank Limited (in Receivership) to the Plaintiff under the subsisting tenancies, thereby assuming the benefit and obligations under the said tenancy agreements.
- v) Subsequently, by a letter dated 2nd May 2017, Defendant notified the Plaintiff as the duly authorized letting agent of Meera Investments Ltd that it had offset the prepaid rent effected by Crane Bank Limited (in Receivership) from the outstanding restoration charges that had been agreed upon by the Plaintiff and the Defendant. **(A copy of the said letter is attached marked "Q")**.

14. In a letter dated 4th May 2017, Bank of Uganda as the receiver of Crane Bank Ltd (in receivership) informed the Plaintiff as the duly authorized letting agent of Meera Investments Ltd that BOU in its capacity as the receiver had transferred the right to and benefit of the pre-paid rent in respect of some of the suit properties formerly occupied by Crane Bank Ltd (in Receivership) and managed by the Plaintiff to the Defendant as at the 25th of January 2017. **(A copy of the said letter is attached marked "R")**.

15. By another letter dated the 3rd day of November 2017, the Defendant demanded a refund of a sum of **USD 162,964.90\$ (United States Dollars One Hundred Sixty Two Thousand Nine Hundred Sixty Four and Ninety Cents)** as pre-paid rent from the plaintiff as the duly authorized letting agent of Meera Investments Ltd in respect of

properties formerly occupied by Crane Bank Ltd (in receivership) and owned by the Meera Investments Ltd to wit;

- 6th Street Industrial area rent for (Feb 2017 – August 2017),
- Kyambogo warehouse rent for (Feb 2017 – July 2017),
- Plot 38 Crane Chambers rent for (Feb 2017 – March 2017).

Copy of that letter is attached hereto as annexure "S"

16. The Defendant's said non-payment of the rental arrears has not only caused Plaintiffs' losses, deprived it of use of its money and interest, caused it more suffering and grave inconvenience, but it has also adversely affected the Plaintiffs' businesses for which the Plaintiff claims general damages.

17. The Defendant has continuously kept the Plaintiff out of its money and has taken advantage of the receivership to use the withheld rent for their benefit, thereby depriving the Plaintiffs not only of the use of the money but also any commercial benefit, whereof the Plaintiff claims interest at a commercial rate from the date of default till payment in full.

18. The transactions out of which the Plaintiff's claim arises occurred in Kampala City, and the sum claimed **USD 385,728.54 (United States Dollars Three Hundred Eighty Five Thousand Seven Hundred Twenty Eight and Fifty Four Cents Only)** and **UGX. 2,998,558,624= (Uganda Shillings Two Billion Nine Hundred Ninety Eight Million Five Hundred Fifty Eight Thousand and Six Hundred Twenty Four Only)**, all within the jurisdiction of this Honorable court.

19. Despite notification of the Plaintiffs' grievances and the demand for payment of the Plaintiff's money, the Defendants have blatantly refused to pay the same. ***(Copies of the demand letter from the Plaintiff and the Response from the Defendant are attached hereto marked annexure "T1 & T2")***.

WHEREFOR, the Plaintiff prays for judgment against the Defendant for;

- a) Recovery of the sums of **USD 385,728.54 (United States Dollars Three Hundred Eighty Five Thousand Seven Hundred Twenty Eight and Fifty Four Cents Only)** and **UGX. 2,998,558,624= (Uganda Shillings Two Billion**

Nine Hundred Ninety Eight Million Five Hundred Fifty Eight Thousand and Six Hundred Twenty Four Only), as rental arrears.

- b) Interest on the sum aforementioned at the prevailing commercial rate from the date the Defendant was in default until payment in full,
- c) General damages,
- d) Interest on general damages,
- e) Costs of the suit.

Dated at Kampala this 15th Day of Feb 2018.



**M/S Magna Advocates,
(Counsel for the Plaintiffs)**

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