

CASE 3 - RENT - MIL - PLAINT

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA  
[COMMERCIAL DIVISION]

HIGH COURT OF UGANDA  
COMMERCIAL DIVISION  
15 FEB 2018  
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P.O. BOX 12866 KAMPALA  
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HIGH COURT CIVIL SUIT NO. 108 OF 2018

MEERA INVESTMENTS LIMITED ===== PLAINTIFF

-VERSUS-

DFCU BANK LIMITED ===== DEFENDANT

**PLAINT**

1. The Plaintiff is a limited liability company duly incorporated under the Laws of Uganda, legally clothed with capacity to sue or be sued as such and its address of service for purposes of this suit shall be C/o M/s Magna Advocates, Plot 22 Jinja Road, Spear House, 4<sup>th</sup> 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 is a tenancy in respect of properties comprised in and known as Plot 38 Kampala Road, covering the Basement, Ground, 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 7<sup>th</sup> Floor and all of Plot 40A Kampala Road (herein after referred to as the suit premises).
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 tenancy on the suit premises, being the 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 tenancy in respect of the suit premises.
5. The Plaintiff's claim against the Defendant is for breach of contract whereof the Plaintiff claims from the defendant, a sum of USD. 6,144,079.14 (United States Dollars Six Million One Hundred Forty Four Thousand Seventy Nine and Fourteen Cents) in respect of plot 38 Kampala Road and USD 2,516,383.20 (United States Dollars Two Million Five Hundred Sixteen Thousand Three Hundred Eighty Three and Twenty Cents) in respect of Plot 40 A Kampala Road, all totaling



to a sum of **USD 8,660,462.34 (United States Dollars Eight Million Six Hundred Sixty Thousand Four Hundred Sixty Two and Thirty Four Cents)**, 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 Plaintiff's cause of action against the Defendant arose as follows;

I) The Plaintiff, a company dealing principally in the business of real estate is the registered proprietor of properties comprised in and known as Plot 38 Kampala Road and Plot 40A Kampala Road. **Copies of the certificates of titles are attached hereto and marked "A1 & A2".**

II) By tenancy agreement dated **16<sup>th</sup> day of December 2014**, the Plaintiff let out the suit properties to wit; Basement, Ground, 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 7<sup>th</sup> Floor of Plot 38 Kampala Road and all of Plot 40A Kampala Road to Crane Bank Ltd (in Receivership) for a fixed duration of ten (10) years, expiring on **31<sup>st</sup> day of March 2024** in respect of Plot 38 and **31<sup>st</sup> day May 2024** in respect of Plot 40A Kampala Road. **A copy of the tenancy agreement is attached hereto marked "B".**

III) Under clause b(1) at page 2 and clause 1(a) at page 3 of the tenancy agreement, Crane Bank Limited (in Receivership) as the tenant covenanted to pay rent in the sum of **USD 46,980 (United States Dollars Forty-Six Thousand Nine Hundred and Eighty)** and Ground Rent in the sum of **USD 46,980 (United States Dollars Forty-Six Thousand Nine Hundred and Eighty)** per month, with a 7% yearly increment, effective from the 1<sup>st</sup> day of April 2014, payable one year in advance for Plot 38 Kampala Road.

IV) Under clause b(2) and 1(a) at page 3 of the tenancy agreement, in respect of Plot 40A, the tenant further covenanted to pay rent in the sum of **USD 9,890 (United States Dollars Nine Thousand Eight Hundred and Ninety)** and Ground Rent in the sum of **USD 9,890 (United States Dollars Nine Thousand Eight Hundred Ninety)** per month, with a 7% yearly increment, effective from the 1<sup>st</sup> day of

June 2014, for Plot 40A Kampala Road payable one year in advance.

- V) Under clause 3 (c) of the tenancy agreement, **It was specifically agreed by the parties that the tenancies SHALL remain firm and binding on them until the expiry of ten years.**
- VI) Crane Bank Limited (in Receivership) continued to occupy and operate its business from the suit premises in accordance with the tenancy, promptly paying the agreed rent thereof. The last rent payment made by Crane Bank Limited (in Receivership) for the suit premises covered the period from 1<sup>st</sup> April 2016 to 31<sup>st</sup> March 2017 for plot 38 Kampala Road and 1<sup>st</sup> of June 2016 to 31<sup>st</sup> May 2017 for plot 40A Kampala Road. **Copies of the demands for the rent, together with bank statements showing the sums received are attached hereto collectively marked "C1 & C2".**
- VII) On the 20<sup>th</sup> day of October 2016, Bank of Uganda took over management of Crane Bank Limited (in Receivership) which continued to occupy and utilize the suit premises.
- VIII) On the 24<sup>th</sup> day of January 2017, Crane Bank Ltd (in Receivership) was placed under receivership by Bank of Uganda and it continued to occupy and utilize the suit premises, pursuant to the terms of the subsisting tenancy, as the same was never terminated.
- IX) On the 27<sup>th</sup> day of January 2017, Bank of Uganda in its capacity as the Receiver represented that it had transferred the assets and liabilities of Crane Bank Ltd to the Defendant. **Copies of the Notice advertised in the Newspapers by the Bank of Uganda is attached hereto collectively marked "D1 & D2".**
- X) The Defendant also run notices in the Newspapers representing publicly that it had acquired the assets and assumed the liabilities of Crane Bank Ltd (in Receivership) and immediately took possession of the suit premises. **Copies of the Notice advertised in the Newspapers by the Defendant is attached hereto collectively marked "E1 & E2".**

- XI) The Defendant occupied the suit premises as follows;
- Full Basement; for Bulk Cash, Treasury, Vault and Lockers
  - Full Ground Floor for Main Banking Hall
  - Half of 1<sup>ST</sup> Floor for Banking
  - Full 2<sup>ND</sup> Floor for Administration Department, Management and Credit Department
  - Half of 3<sup>RD</sup> Floor for Marketing Department
  - Half of 7<sup>TH</sup> Floor for Canteen and Dining Area
- XII) Following the Defendant's takeover of the assets and assuming the liabilities, the Defendant's staff and employees continued to operate the business of the Defendant within the suit premises.
7. The Plaintiff avers that the Defendant, upon taking over the assets and upon assuming the liabilities of Crane Bank Ltd (in Receivership) and by its subsequent conduct acknowledged being party to the subsisting tenancy and assumed the rights and obligations under the subsisting tenancy between the Plaintiff and Crane Bank Limited (in Receivership), as a successor in title by doing the following;
- I) The Defendant immediately took possession of the suit premises to wit; the Basement, Ground, 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 7<sup>th</sup> Floor and Plot 40A Kampala Road under terms of the subsisting tenancy 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 Crane Bank Limited (in receivership) and substituted them with its own.
  - III) The Defendant entered into an arrangement with Crane Management Services Ltd, a duly authorized letting agent of the Plaintiff by which the defendant agreed and undertook to pay the agreed restoration costs of **USD 531,000 (United States Dollars Five Hundred Thirty One Thousand)** for the suit premises, and arrears of utility bills amongst other properties owned by the Plaintiff. **A copy of the letter dated 28<sup>th</sup> of April 2017 is attached hereto marked "G".**

- IV) The Defendant, in its letter to Crane Management Services Ltd as the duly authorized letting agent of the Plaintiff, dated the 3<sup>rd</sup> day of November 2017 claimed a refund of USD 107,574.83 as pre-paid rent for the month of February –March 2017 in respect of plot 38 Kampala Road, which had been paid by Crane Bank Limited ( in Receivership) to the Plaintiff under the then subsisting tenancy agreement dated 16<sup>th</sup> December 2014, thereby assuming the benefit and obligations under the said tenancy agreement. **A copy of the letter from the Defendant is attached hereto marked "H"**
- V) In late January 2017, the Defendant engaged Crane Management Services Ltd (CMS), being the duly authorized letting agent of the Plaintiff, with a view of entering into a revised tenancy in respect of part of the suit property to wit; the Basement, Ground Floor in respect of Plot 38 Kampala Road.
- VI) On the 1<sup>st</sup> day of February 2017, Crane Management Services Ltd and the Defendant entered into a revised tenancy agreement specifically in respect of the **basement and ground floors** of Plot 38 Kampala Road for a fixed period of three (3) years and the Defendant continued to occupy the remaining floors of Plot 38 and the whole of Plot 40 A under the terms and conditions of the tenancy agreement, dated 16<sup>th</sup> December 2014.
- VII) Under the terms of the said revised tenancy for the basement and ground floor, the Defendant covenanted to pay rent in the sum of **USD 35,000** per month plus VAT of **USD 6,300** all totaling to **USD 41,300 (United States Dollars Forty One Thousand Three Hundred)**, payable one year in advance but not later than the 1<sup>st</sup> day of February, every year. **A copy of the tenancy agreement is attached hereto marked "J"**.
- VIII) In a letter dated 4<sup>th</sup> May 2017, Bank of Uganda in its capacity as the receiver of Crane Bank Ltd (in receivership) informed Crane Management Services Limited, the duly authorized letting agent of the Plaintiff that BOU in its capacity as the receiver had transferred the right to and benefit of the pre-paid rent in respect of the suit premises (Plot 38 Kampala

Road) and other properties formerly occupied by Crane Bank Ltd but owned by the Plaintiff, to the Defendant as at the 25<sup>th</sup> of January 2017. **A copy of the said letter is attached marked "K".**

IX) Part of the pre-paid rent was offset by the Defendant from the total outstanding restoration charges. **A copy of the said letter is attached marked "L".**

X) By a letter dated the 3<sup>rd</sup> 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 Crane Management Services Limited as the duly authorized letting agent of the plaintiff in respect of properties formerly occupied by Crane Bank Ltd but owned by the plaintiff to wit; 6<sup>th</sup> Street Industrial area rent for (Feb 2017 –August 2017), Kyambogo warehouse rent for (Feb 2017 – July 2017), Plot 38 Crane Chambers, suit property rent for (Feb 2017 – March 2017). **Copy of that letter already attached hereto as annexure "H" above.**

8. The Plaintiff further avers that the Defendant continued to occupy the suit premises to wit; the **Basement, Ground Floor, 1<sup>st</sup> Floor, 2<sup>nd</sup> Floor, 3<sup>rd</sup> Floor and 7<sup>th</sup> Floor** and Plot 40A Kampala Road until 30<sup>th</sup> of April 2017, when it opted to vacate the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 7<sup>th</sup> floors of Plot 38 Kampala Road and Plot 40A Kampala Road. **Copies of the hand over forms are hereto attached as annexure "N1 & N2".**

9. The Defendant has breached the unrevised part of the tenancy agreement dated 16<sup>th</sup> December 2014, whereof it is liable to pay to the Plaintiff the sum constituting rent for the unexpired period of 84 months being **USD \$8,660,462.34 (Eight Million, six hundred sixty thousand, four hundred sixty two and thirty four cents)**. **A copy of the schedule detailing the arrears is hereto attached annexure "O".**

10. The Plaintiff avers that the Defendant's said non-payment of the rent has not only caused it losses, deprived it of use of its money and interest, caused it more suffering and grave inconvenience, but it

has also adversely affected the Plaintiff's businesses for which the Plaintiff claims general damages.

11. The Plaintiff further avers that this being a commercial lease, it is entitled to interest at a commercial rate from the date of default till payment in full.
12. The transactions, the subject of the suit are commercial in nature; the suit property is situate in Kampala, where the breach occurred and the claim of **USD 8,660,462.34 (United States Dollars Eight Million Six Hundred Sixty Thousand Four Hundred Sixty Two and Thirty Four Cents)** is within the jurisdiction of this Honorable court.
13. Despite notification of the Plaintiffs' grievances and the demand for payment of the Plaintiff's money, the Defendant has blatantly refused to pay the same. **A copy of the Plaintiff's demand for payment and the Defendant's response are attached hereto marked "P1 & P2".**

**WHEREFORE**, the Plaintiff prays for judgment against the Defendant for;

- a) Payment of the sums of **USD 8,660,462.34 (United States Dollars Eight Million Six Hundred Sixty Thousand Four Hundred Sixty Two and Thirty Four Cents)**.
- 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 15<sup>th</sup> Day of Feb 2018.



**For; M/S Magna Advocates,  
(Counsel for the Plaintiff)**

**Drawn & Filed By:**

***M/S Magna Advocates,***

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