

- c) the respondent be evicted from the applicant's premises/property situate at Tank Road, Kateki cell, Hospital ward, Pallisa Town council, Pallisa District.
- d) Costs of the application.

Facts in brief:

The application is supported by with two affidavits, both deposed by the applicant, one undated and another deposed on the 30th May, 2025.

It's the applicant's assertion that he is the rightful owner of registered property comprised in **Freehold Register volume TOR 131 Folio 14** and known as Plot 1, Tank Road at Kinomu 1 located on Tank road, Kateki cell, Hospital ward, Pallisa Town council, Pallisa District having been registered on 17th May, 2024 vide **instrument no. TOR-00005353**.

In proof thereof, the applicant attached a copy of the certificate of title as annexure "A" to his supplementary affidavit deposed on the 30th May, 2025.

It is the applicant's evidence that he has been personally managing the said property, upon which he entered an oral tenancy agreement with the respondent in October, 2023 at a monthly rental fee of UGX.450,000/= and that for over 14 months, the same remains unpaid despite both oral and written demands.

I have perused the entire record and haven't seen any reply filed by the respondent in opposition thereto whereas there is an affidavit of service stating that the respondent was duly served.

When the application came up for hearing on the 2nd March, 2025 in the absence of the respondent, learned counsel for the applicant submitted and prayed to court to grant the application as unopposed.

On the 25th June, 2025, court granted an order to the applicant to proceed *ex parte* and prove his application.

Besides the affidavit evidence, the applicant called 3 witnesses who attended the *viva voce* hearing and corroborated the affidavit evidence.

Representation:

The applicant was represented by M/S Opolot, Otaget & Co. Advocates while the respondent did not make appearance nor appoint legal counsel.

Issues:

1. Whether the applicant is entitled to the remedies sought?

Resolution:

It is settled that rules relating to filing a written statement of defence also apply in interlocutory applications in respect to filing affidavits in reply/opposition.

Order 9 rule 10 CPR provides the general rule where no defence has been filed. It provides:

In all suits not by the rules of this Order otherwise specifically provided for, in case the party does not file a defence on or before the day fixed therein and upon a compliance with rule 5 of this Order, the suit may proceed as if that party had filed a defence.

Order 9 rule 20 CPR provides for the Procedure when only plaintiff appears. It provides:

(1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing—

a) if the court is satisfied that the summons or notice of hearing was duly served, it may proceed ex parte;

b) if the court is not satisfied that the summons or notice of hearing was duly served, it shall direct a second summons or notice to be issued and served on the defendant...

Order 9 rule 5 CPR provides:

Where any defendant fails to file a defence on or before the day fixed in the summons and the plaintiff is desirous of proceeding upon default of filing the defence under any of the rules of this Order, he or she shall cause an affidavit of service of the summons and failure of the defendant to file a defence within the prescribed time to be filed upon the record.

This court has looked at the affidavits of service on the court record deposed by this court's process server, **Ms. Longose Deborah** who set

out how the respondent was duly served with the motion on notice and the hearing notices. I note that the respondent acknowledged receipt by signing on the return copy of the hearing notice scheduling the application for the 2nd April, 2025, but to date, this court is at loss as to why he chose not to file a response or make appearance on the appointed date.

This court's process server has proven a track record of effective service and I have not found any reason to doubt the affidavit of service on court record.

As aforesaid, having been adequately satisfied about service of court process upon the respondent, court, on the 25th June, 2025 granted the applicant an order to proceed *ex parte*.

Evidence & burden of proof:

According to **Section 2 of the Evidence Act Cap 8** "evidence" denotes the means by which any alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved and includes testimonies by accused persons, **admissions**, judicial notice, presumptions of law and ocular observation by the court in its judicial capacity. [Bolding added for emphasis].

Section 101 of the Evidence Act, cap 8 is to the effect that "*he who alleges must prove.*"

Section 58 of the Evidence Act, cap 6 provides that a fact in issue can be proved by direct oral testimony, save for the contents of a document.

In ***Haji Asuman Mutekanga –Vs- Equator Growers (U) Ltd, S.C. Civil Appeal No.7 of 1995***, it was stated that it is trite law that strict proof does not necessarily always require documentary evidence. Oral testimony is good evidence to prove a fact in issue.

In ***Kabale District Local Government Council vs Musinguzi (2006) 2 EA at 131*** it was stated that a party presenting unchallenged evidence has no duty to prove it further. Same reasoning was adopted in ***Uganda Commercial bank ltd vs Yakub (2013) UGCOMMC 153***.

I have looked at both affidavit evidence and listened to evidence led orally in court. I note that the tenancy was entered by oral agreement, which according to unchallenged evidence of the applicant, the same has since been breached by the respondent by way of failing/refusing to make monthly rental fees as agreed. And when served with the application, the respondent failed to make appearance to defend himself against the allegations.

In ***Black's Law Dictionary, 9th edition at page 213*** breach of contract is defined to mean:

“...violation of contractual obligation by failing to perform one's own promise by repudiating it or by interfering with another party's performance”

In ***Nakawa trading co. ltd vs coffee marketing board SCCA no. 137 of 1991*** breach of contract was defined as:

“..where one or both parties fails to fulfill the obligations imposed by the terms of the contract..”

In the process of the evaluation of evidence, this court is guided by recognized considerations such as;

- i. Admissibility of the evidence;
- ii. Relevancy of the evidence;
- iii. Credibility of the evidence;
- iv. Probability of the evidence; and
- v. Conclusiveness of the evidence.

This court is satisfied that the applicant passed the above criterion.

I am alive to the fact that the **Landlord Tenant Act, cap 238, Laws of Uganda, 2023 revised edition** provides a procedure for eviction of and repossession from a noncompliant tenant but in this case, the applicant also seeks recovery of the accumulated rental arrears.

Section 9(2) of The Contracts Act cap 284, Laws of Uganda, 2024 revised edition provides that a contract can be wholly oral or partly oral and partly documented or wholly documented.

I have looked at the various demand notices and specifically, I listened carefully to oral testimony of the applicant while in court.

I am satisfied that the applicant, being the lawful owner of the impugned property is entitled to remedies.

I'm also satisfied that the occupancy of the respondent in the applicant's property in absence of proof of payment of rental fees or lawful justification thereof is adequate proof of breach of contract.

In conclusion I find that the applicant is entitled to remedies sought and I make the following orders:

1. The applicant is hereby granted a special certificate to levy distress for rent to recover UGX. 9,450,000/= (Amount as of today), different from what was asked for at the time of lodging the application.
2. The applicant shall certify to this court all reasonable particulars of which property of the respondent which is intended to be distrained.
3. A *notice to show cause* why the distrained property of the respondent should not be sold by public auction hereby issues.
4. The respondent is given 3 days from the date hereof to voluntarily vacate the applicant's premises.
5. Short of which, an eviction order doth issue and the same shall take effect upon lapse of 3 days from the date hereof.
6. Costs of the application are granted to the applicant.

I so order.

Dated at PALLISA this ...14th.....day ofJULY.....2025.



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HIS WORSHIP KYEMBE KARIM

MAGISTRATE GRADE 1