

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA, AT KAMPALA**  
**(CIVIL DIVISION)**  
**MISCELLANEOUS CAUSE NO. 0033 OF 2023**  
**BAKAMPA BRIAN BARYAGUMA::: APPLICANT**  
**VERSUS**  
**BBAKA PROPERTY CONSULTANTS (U) LTD:::::::::::::::::RESPONDENT**  
**BEFORE HON. JUSTICE TEKO ISAAC BONNY**  
**RULING**

**Introduction**

This application is brought under Article 50 of the Constitution; Section 3(1) of the Human Rights (Enforcement) Act, 2019; and Rule 6 (1) (a) of the Judicature (Fundamental and Other Human Rights and Freedoms) (Enforcement Procedure) Rules 2019 seeking orders that:

A declaration that the Respondent's orders to the Applicant compelling him to vacate his home, forceful eviction from his home without notice of termination of his tenancy are threats to the Applicant's right to protection from unlawful eviction that is created by section 45 (1) of the Landlord and Tenant Act, 2022 and protected under article 45 of the Constitution.

A declaration that the Respondent compelling the Applicant to vacate his home before the termination of his tenancy, violated the Applicant's right to quiet enjoyment of premises that is created by section 19 of the Landlord and Tenant Act, 2022 and protected under article 45 of the Constitution.

A declaration that the Respondent violated the Applicant's rights under Article 40(2), 45, 24, 44(a) of the Constitution.

The Respondent pays general damages of UGX **100,000,000/=** and aggravated damages of UGX **50,000,000/=**



## **Background**

According to the Applicant, he was a tenant on the said premises from March 2022 to February 2023. Around May 2022, the Respondent took over management of the premises. Around December 2022, the Applicant failed to pay rent, upon which the Respondent's employees harassed the Applicant through insults, hostile knocks on his door and by plotting to throw the Applicant's properties out of the house.

On 18<sup>th</sup> January 2023, the Respondent served the Applicant with a back-dated notice of termination of tenancy, which it attempted to use to evict him as the Respondent's officers continued their campaign of harassment against the Applicant. On 25<sup>th</sup> February 2023, the Respondent evicted the Applicant from the premises, in the absence of the police.

## **The grounds of the application**

The grounds of the application are contained in the application and further expounded in the affidavit in support deponed by **Bakampa Brian Baryaguma** but briefly are as follows:

The Respondent through acts and omissions of its employees violated the Applicant's constitutional human rights and freedom which are:

### **Right to protection from unlawful eviction**

The Applicant was locked out of his home by the Respondent without a notice of termination.

### **Right to quiet enjoyment of premises**

The Respondent ordered the Applicant to move out of his home before termination of his tenancy.

### **Right to work**

The Applicant offers secretarial service from his home like printing and by unlawfully evicting him from his home infringed on his economic rights to work.

Right to respect for human dignity and protection from inhuman and degrading treatment.

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## **Representation**

The Applicant self-represented himself while the Respondent was represented by **Kabega, Bogezi and Bukenya Advocates**. Applicant's submission on the Preliminary Objection

### **Preliminary objection 1**

The Applicant raised a preliminary objection that the Respondent's affidavit in reply was filed out of time without leave of court and that the affidavit in reply is evasive.

The Applicant submitted that Respondent was served with summons to file a defence through its principal officers, Mr. Igumba Charles, Ms. Kagoya John Malisa and Mr. Mwase Grace, on Friday, 24<sup>th</sup> February, 2023, at 9:00 pm

The Applicant cited Order 8 rule 1 (2) of the Civil Procedure Rules which requires the Respondent to file their defense within fifteen days after service of the summons.

The Applicant averred that the Respondent filed their affidavit in reply 53 days on Tuesday, 18<sup>th</sup> April, 2023, out of time without leave of Court.

The Applicant cited the **Case of Stop and See (U) Ltd v. Tropical Africa Bank Ltd, Miscellaneous Application No. 333 of 2010** Justice Madrama discussed in the absence of an application to enlarge time within which to file the reply, the affidavit in reply is incompetent having been filed out of time. The general rule is that where no defense filed or where it is not filed within time, the court will proceed in default of the defense.

### **Preliminary objections 2**

The Respondent's affidavit in reply is evasive, stating deliberate falsehoods.

The Applicant submitted that the Respondent's affidavit in reply is utterly worthless because it is simply evasive and states deliberate falsehoods.

The Applicant argued that Evasive denials are prohibited under order 6, rule 10 of the CPR which states that "When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he or

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she must not do so evasively, but answer the point of substance.”

The Applicant argued that the Respondent’s affidavit in reply does not answer the points of substance raised in the notice of motion and affidavit in support and hence is a mere afterthought that was filed for the sake of filing.

The Applicant submitted that the Respondent is a moneylender and it is well-known in areas along Entebbe Road.

The Applicant submitted that in the introductory meeting of 8<sup>th</sup> May 2022 the landlord introduced Mr. Igumba Charles and Ms. Kagoya John Malisa as representatives of the Respondent to tenants

The Applicant submitted that the Respondent found him already in occupation of the premises, having entered the same in March 2022. The Applicant averred that he did not sign the tenancy agreement with the Respondent.

### **Respondent’s submissions on the Applicant’s preliminary objection**

The Respondent submitted that the Applicant raised preliminary objections concerning the Respondent’s affidavit in reply to wit;

a) That the Respondent’s affidavit in reply was filed out of time without leave of court and that the affidavit in reply is evasive.

The Respondent submitted that there was no proper service and there is no proper proof of service that the Respondent received the Applicant’s application on 22<sup>nd</sup> February, 2023. The affidavit of service filed by the Applicant in proof of service is in contravention of the law governing service of court process and affidavits.

The Respondent averred that the affidavit of service dated 18<sup>th</sup> April, 2023 is defective, scandalous and as such ought not to be relied upon as proof of service and it should be struck off court record.

The Respondent argued that the person who purportedly effected service is not authorized under the law to effect service of court process.

That there was no proper service of the application on the Respondent as required by the law as there was no order of substituted service authorizing

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the Applicant to effect service on the Respondent by way of substituted service using WhatsApp.

The Respondent cited Order 5 rule 7(1) (a) of the Civil Procedure Rules provides for persons who are authorized to effect service of court process. Among them is any person for the time being duly authorized by court or an advocate or an advocate's clerk.

The Respondent submitted that the Applicant who purportedly effected service of court process upon the Respondent via whatsapp is not one of those authorized to effect service of court on.

The Respondent stated that the affidavit of service dated 18<sup>th</sup> April, 2023 is defective, scandalous and as such ought to be struck off court record.

The Respondent cited Order 5 rule 16 of the Civil Procedure Rules is to the effect that proof of service is by way of affidavit of service. That the Applicant's affidavit of service dated 18<sup>th</sup> April, 2023 does not pass this test.

The Respondent submitted that there is no such type or form of affidavit known as "Affidavit of service and failure of the Respondent to file a defense within the prescribed time." The affidavit itself is scandalous and full of speculation.

The Respondent cited Order 6 rule 18 of the CPR is to the effect that the Court may, at any stage of the proceedings, order any matter to be struck out or amended in any endorsement or pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay fair trial of the action, and may in any such case, if it thinks fit, order the costs of the application to be paid as between the advocate and client.

The Respondent argued that the allegations in pleadings are scandalous if they state matters which are indecent or offensive or are made for a mere purpose of abusing or prejudicing the opposite party.

There was no proper service of the application on the Respondent as required by the law.

The Respondent cited Order 29 rule 2 of the Civil Procedure Rules to the effect that subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served on the Secretary, or any director or other principal officer of the corporation; or, by leaving it or sending it by post addressed to the corporation at the



registered office., then at the place where the corporation carries on business.

The Respondent averred that the Applicant never effected service pursuant to the provisions of Order 29 rule 2 of the CPR.

The Respondent submitted that the Applicant knowing the place where the Respondent carries on business and even after being directed to serve the company's lawyers at an address provided to him, the Applicant did not make any effort or attempt to serve the Respondent at its offices nor did he serve the lawyers.

The Respondent submitted that the Applicant in his defective affidavit of service did not anywhere indicate that he made attempts to serve the Respondent without success. In his affidavit of service under paragraph 6, he states that he suspected that the Respondent would evade service.

The Respondent submitted that the Applicant on his own without first obtaining an order for substituted service chose to serve the Respondent's director via whatsapp a mode which would be a last resort or a mode of substituted service which would be done with permission of court.

The Respondent submitted that there was no proper service as required by the law governing service and the affidavit of service on record ought to be struck off court record with costs.

The Respondent argued that the only principal officer of the Respondent is Igumba Charles. The Applicant under paragraph 7(b) claims to have sent a Notice of motion to the Respondent's director via whatsapp on 24<sup>th</sup> February, 2023.

The Respondent submitted that the Applicant after serving Igumba via whatsapp did not call the principal officer of the Respondent to notify him over the same until the Respondent's director opened his WhatsApp and viewed the same on 4<sup>th</sup> April, 2023 and it is upon that he instructed the company lawyers to file an affidavit in reply which was filed on 18<sup>th</sup> April, 2023 which is 14 days after the Respondent getting aware of the Applicant's application in court.

The Respondent submitted that a court of law cannot sanction what is illegal, and an illegality once brought to the attention of court overrides all questions of pleading, including any admission thereon **(Makula**





arguments or matter of law.”

The Respondent argued that the Applicant’s affidavit in support contains matters of law which are not supposed to be deponed in affidavits. The Respondent made specific reference to paragraphs 39, 42, 47, 49 and 57 of the affidavit in support containing provisions of the law.

The Respondent averred that the affidavit in support offends the provisions of Order 19 of the CPR as it contains matters and/or provisions of law that are not supposed to be deponed in affidavits.

**Affidavit being argumentative and prolix**

The Respondent cited the Black’s Law Dictionary 9<sup>th</sup> edition at page 1331, the word prolix is defined as the unnecessary and superfluous stating of facts and legal arguments in pleadings or evidence.

The Respondent cited Order 19 Rule 3 of the Civil Procedure Rules which governs the procedure of affidavit evidence provides as follows;

(1) Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, order except in interlocutory applications on which statements of his or her own belief may be admitted, provided that the grounds thereof are stated.

The Respondent cited the case of **Nakiridde Namwandu Vs Hotel International Ltd(1987) HCB 85** Held that "An affidavit which is found to be argumentative should be struck out and not relied on."

The Respondent also cited the Supreme Court in the case of **Male H Mbirizi K Kiwanuka Vs The Attorney General, SC Misc. Applcn No. 7 of 2018** on Page 10, Held inter alia that

"Where an affidavit is found to be prolix and non-compliant with Order 19 rule 3 of the Civil Procedure Rules, such affidavit ought to be struck out.

The Respondent cited Order 19 Rule 3(2) of the Civil Procedure Rules provides that the costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter or copies of or extracts from documents shall unless the court directs otherwise be paid by the party filling the affidavit.



Justice Bashaija in **Wadri Mathias & Others VS Dranilla Angella, Civil Revision No 0007 of 2019**, held that "a deponent who makes an argumentative affidavit which is incurable can be penalized by paying costs of the applications.

The Respondent argued that affidavits are meant to adduce evidence and rather not to argue the application for which the latter happens to be the case for the affidavit in support of this application and thus falls short of meeting this standard.

Without Prejudice to the Above the Respondent submitted that the application is an abuse of court process, incompetent, bad in law, lacks merit and the Applicant is seeking to unjustly enrich himself by using Court claiming a violation of his rights yet it is himself who failed to fulfil his rental obligations.

The counsel for Respondent submitted that the Respondent is a Limited Liability Company dealing in property management among others.

The Applicant was a tenant on one of the premises managed by the Respondent situate at Mirimu Cell, Ndejje Division, Wakiso District.

The Applicant entered into a tenancy agreement with the Respondent on the 8<sup>th</sup> day of May, 2022 to rent a single room on the premises managed by the Respondent at a sum of UGX. 100,000/= per month payable in advance i.e not later than the 5<sup>th</sup> day of every month.

The Applicant defaulted in paying rent for three months namely December, 2022, January and February, 2023 prompting the Respondent to issue him with a notice of termination of tenancy dated 20<sup>th</sup> December, 2022 and this fact is not denied by the Applicant in his affidavit in rejoinder.

After several demands and reminders to have the Applicant pay rent arrears, he deliberately refused to clear his rent arrears and kept on threatening the Respondent's employees with Court action if they ever evict him from the room he rented.

The Respondent submitted that issuing a termination of tenancy notice to the Applicant, the Applicant had on the 15<sup>th</sup> day of December, 2022 convened a meeting at the rental premises managed by the Respondent and incited all the tenants to stop paying rent hence prompting the Respondent to issue him with a notice of termination.

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The Respondent submitted that the Applicant at first refused to acknowledge service of the notice of termination but upon the Respondent involving Police and Local Council authorities, he accepted to acknowledge receipt of the same on 16<sup>th</sup> January, 2023.

The Applicant after the expiry of the termination notice in his own handwriting committed himself to pay the rent arrears by the 18<sup>th</sup> day of February, 2023 or leave the house by that date which he did not do.

The Applicant was evicted by the Respondent's officials and the Landlord in the presence of Local Council authorities on the 25<sup>th</sup> day of February, 2023 which was 36 (thirty-six) days after the expiry of the notice of termination.

The Respondent cited Section 38(1) and (2) (b) of the Landlord and Tenant Act 2022 provides for issue of a notice of termination of 30 days in case of a monthly tenancy.

The Respondent submitted that the Applicant was served with a notice of termination of tenancy on 20<sup>th</sup> December, 2022 which was terminating his tenancy on 20<sup>th</sup> January, 2023.

The Respondent submitted that neither the Respondent nor its officials has ever violated any of the Applicant's rights guaranteed under the Constitution or any other law as deponed in his affidavit in support of the application and there is no proof in respect of the same.

The Respondent submitted that the Applicant submitted in his submissions that the Respondent is a money lender conducting money-lending business without a license and that it is not entitled to receive rent on behalf of the Landlord.

The Respondent stated that this submission is misplaced as the application before court concerns alleged violation of the Applicant's human rights and it is not about money-lending.

The Respondent submitted that the Respondent has never extended any money-lending facility to the landlord and neither is he a money-lender. The allegations of money-lending by the Applicant are unfounded and baseless as the Applicant did not adduce any evidence to that effect and neither did he file any affidavit from the persons whom the Respondent purportedly lent money confirming that indeed the Respondent is a money

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lender.

The Respondent concluded that the due process of the law provided under the Landlord and Tenants Act 2022 was followed before the Applicant's eviction after him having defaulted in paying rent for three months and the period he committed to vacate the house having expired.

The Respondent submitted that no Applicant's right was violated by the Respondent and the application is an abuse of court process and lacks merit and as such, the honorable Court dismiss the application with costs.

The **Applicant** submitted that he does not know Respondent's place of business nor its lawyers place.

The Applicant submitted that he was directed to serve the Respondent's lawyers at a provided address. And none of all three of Respondent's principal officers directed him to their lawyers.

The Respondent submitted that the affidavit in support of the application deponed by the Applicant being incurably defective for being argumentative, being based on matters of law and prolix and that the same should be struck off from the court record.

The Applicant submitted that Respondent is guilty of lying and perpetrating falsehoods.

That the deliberate falsehoods amount to perjury, and he cited Oxford Advanced Learner's Dictionary which defines as a "willful false statement."

The Applicant cited the penal code which states that Perjury and subornation of perjury.

(1) Any person who in any judicial proceeding or for the purpose of instituting any judicial proceeding knowingly gives false testimony touching any matter which is material to any question then pending in that proceeding or intended to be raised in that proceeding commits the misdemeanor termed perjury.

The Applicant states that the Respondent's submission that Mr. Igumba Charles is the only principal officer of Bbaaka Ltd is not true.

The Applicant submitted that It is inconceivable that the Respondent has only one principal officer, the director.



The Applicant submitted that the Respondent has three principal officers with whom he served accordingly that is Ms. Kagoya John Malisa, Mr. Igumba Charles and Mr. Mwase Grace.

The Applicant argued that these are queries raising matters of controversy that are capable of standing alone and are arguable by themselves. They do not controvert his preliminary objections that the Respondent did not file a defense within the prescribed time and that when the Respondent filed the defense the affidavit in reply was evasive and full of deliberate falsehoods.

The Applicant submitted that court finds and hold that his preliminary objections have neither been challenged nor contradicted.

### **Improper Service**

The Applicant submitted that it is not true that he knows where the offices of the Respondent are located and it is not true that the said officers directed him to serve the Respondent's lawyers.

Prescribed Time, does not exist in law and as such therefore, that affidavit does not pass the test in Order 5 rule 16 of the CPR.

The Applicant submitted that he filed the affidavit of service on 18th April and therefore proved service of summons on the Respondent as required by Order 5 rule 16 of the CPR.

The Applicant cited Article 126 (2) (e) of the Constitution and section 19 (2) (c) of the Judicature Act (as amended by section 4 of the Judicature (Amendment) Act, 2002) that enjoin Court to administer substantive justice without undue regard to technicalities in adjudicating cases in order not to strike out his affidavit of service.

The Applicant submitted that the absurdities are highlighted by the fact that holding him unable to serve his own pleadings operates to a peculiar disadvantage by impermissibly interfering with enjoyment of his constitutionally guaranteed and non-derogable right to a fair hearing under articles 28 (1)[15] and 44 (c)[16] of the Constitution.

The Applicant submitted that preliminary objection by the Respondent repudiates the use of WhatsApp as an authorized means of serving court process should be rejected and overruled.

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The Applicant submitted that this is a cause for enforcement of fundamental and other human rights and freedoms which cannot be impeached and struck out of the record.

The Applicant submitted that this cause is just because even if he failed to fulfil his rental obligations, it does not mean that his fundamental and other human rights and freedoms should be violated by the Respondent.

The Applicant concluded that the Respondent's submissions are illegal for stating falsehoods and should be struck out of the record.

The Respondent submitted that by virtue of progressive laws like the Electronic Transactions Act. No. 8 of 2011 and The Constitution (Integration of ICT into the Adjudication Processes for Courts of Judicature) (Practice) Directions, Legal Notice No. 6 of 2016 notably paragraph 7 thereof, electronic means of communication like WhatsApp and email are now legitimate and lawful means through which to serve court process between and among parties and their counsel.

### **Analysis and Determination**

The Applicant raised a preliminary objection that the Respondent's affidavit in reply was filed out of time without leave of court and that the affidavit in reply is evasive.

### **Applicant's Preliminary Objection.**

The Applicant cited Order 8 rule 1 (2) of the Civil Procedure Rules which requires the Respondent to file their defense within fifteen days after service of the summons.

The Applicant averred that the Respondent filed their affidavit in reply 53 days on Tuesday, 18<sup>th</sup> April, 2023, out of time without leave of Court.

Order 5 rule 7(1) (a) of the Civil Procedure Rules provides for persons who are authorized to effect service of court process. Among them is any person for the time being duly authorized by court or an advocate or an advocate's clerk.

I agree with the Respondent that the Applicant effected service of court

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process upon the Respondent via WhatsApp without authorization under the law to effect service of court process on the Respondent.

Order 5 rule 16 of the Civil Procedure Rules is to the effect that proof of service is by way of affidavit of service. The Respondent submitted that there is no such type or form of affidavit known as 'Affidavit of service and failure of the Respondent to file a defense within the prescribed time'

Order 6 rule 18 of the CPR is to the effect that the Court may, at any stage of the proceedings, order to be struck out or amended any matter in any endorsement or pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay fair trial of the action, and may in any such case, if it thinks fit, order the costs of the application to be paid as between the advocate and client.

I agree with the Respondent that the Applicant's affidavit of service is scandalous and full of speculation.

The Respondent cited Order 29 rule 2 of the Civil Procedure Rules is to the effect that subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served on the Secretary, or any Director or other principal officer of the corporation; or, by leaving it or sending it by post addressed to the corporation at the registered office, then at the place where the corporation carries on business.

I find that there was no proper service of the application on the Respondent as required by the law.

I find that the Applicant did not anywhere indicate that he made attempts to serve the Respondent without success.

I find that there was no order of substituted service authorizing the Applicant to effect service on the Respondent by way of substituted service using WhatsApp.

The Applicant on his own without first obtaining an order for substituted service chose to serve the Respondent's director via WhatsApp a mode which would be a last resort or a mode of substituted service which would be done with permission of court.

An illegality once brought to the attention of court overrides all questions of pleading, including any admission thereon **(Makula International V**

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**Cardinal Nsubuga, Civil Appeal No. 4 of 1981.**

**The Respondent's Preliminary Objection.**

Affidavit raises matters of law which are not supposed to be deponed in affidavits.

Order 19 Rule 3 of the Civil Procedure Rules which governs the procedure of affidavit evidence provides as follows;

(1) Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except in interlocutory applications on which statements of his or her own belief may be admitted, provided that the grounds thereof are stated.

The case in **Re: Bukeni Gyari Fred, HCMA 63/99, (1999) KALR 918** as cited by court in interpreting this rule held that:

"The order is very clear. An affidavit should contain facts and not arguments or matter of law."

I find that the Applicant's affidavit in support contains matters of law which are not supposed to be deponed in affidavits.

**Affidavit being argumentative and prolix**

The Respondent cited the Black's Law Dictionary 9th edition at page 1331, the word prolix is defined as the unnecessary and superfluous stating of facts and legal arguments in pleadings or evidence.

Order 19 Rule 3 of the Civil Procedure Rules which governs the procedure of affidavit evidence provides as follows;

(1) Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, order except in interlocutory applications on which statements of his or her own belief may be admitted, provided that the grounds thereof are stated.

**The case of Nakiridde Namwandu Vs Hotel International Ltd (1987) HCB 85** held that "An affidavit which is found to be argumentative should be struck out and not relied on."

The Supreme Court in the case of **Male H Mbirizi K Kiwanuka Vs the Attorney General, SC Misc. Applcn No. 7 of 2018 on Page 10**, Held inter alia that:

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*"Where an affidavit is found to be prolix and non-compliant with Order 19 rule 3 of the Civil Procedure Rules, such affidavit ought to be struck out.*

Order 19 Rule 3(2) of the Civil Procedure Rules provides that the costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter or copies of or extracts from documents shall unless the court otherwise directs otherwise be paid by the party filling the affidavit.

I agree with the Respondent that affidavits are meant to adduce evidence and rather not to argue the application.

The Applicant's affidavit in support of this application falls short of the standard of affidavit evidence.

**Conclusion**


I find that the impugned affidavit does not contain facts within the knowledge of the deponent, they are argumentative and contain matters of law which is against the law of affidavit evidence as analyzed above.

I hereby sustain the preliminary points of objection raised by counsel for the Respondent.

The Applicant's affidavit is hereby struck off the court's record.

**CONSEQUENTLY,** the application is Dismissed with costs to the Respondent.

Delivered via ECCMIS this 22<sup>nd</sup> day of May 2026.

  
**Signed.....**  
**Bonny Isaac Teko**  
**Ag. Judge**