

UGANDA / JUDGMENT

Kajubi & Another v Commissioner Land Registration (Miscellaneous Cause 154 of 2024) [2025] UGHCLD 38 (21 February 2025)

[2025] UGHCLD 38

COURT

HC: Land Division (Uganda)

BEFORE

Naluzze Aisha Batala, J

CASE / FILE NUMBER

Miscellaneous Cause 154 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS CAUSE NO. 154 OF 2024

1. KAJUBI DUNCUN ::::::::::::::::::::::::::::::::::: APPLICANTS

2. KITENDA ROBINSON LINCON (Administrators of the late Kajubi Solomon Mcgrey)

VERSUS

COMMISSIONER LAND REGISTRATION ::::::::::: RESPONDENT

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA RULING

Introduction:

1. This ruling is in respect of an application brought under Section 33(Now section 37 of the revised laws) of the Judicature Act, Section 98 of the Civil Procedure Act, Section 145(Now section 129 of the revised laws) of the Registration of Titles Act and Orders 52 Rules 1,2 & 3 of the Civil Procedure Rules seeking for orders that;

- i) The Caveat lodged under instrument number KLA 124022 on the 5th March 1987 on land at Kibuga Block 5 Plot 22 Mulago Kyadondo be vacated/removed.
- ii) Each party bears its costs.

Applicant's evidence;

- 2. The application is supported by an affidavit deposed by the 1st applicant which briefly states as follows;
- i) That the 1st and the 2nd applicant have come to learn that Hellen Namukabya lodged a caveat under instrument no. KLA 124022 on the suit land.
- ii) That Mrs Hellen Namukabya was sued in Civil Suit No.18 of 1989 in the High Court by Nelson Kawalya as administrator of the late Erisa Musoke who was the father of the late Kajubi Mcgrey.
- iii) The High Court on the 16th of October 2000 decreed and ordered that Mrs Hellen Namukabya did not have any interest in the said land and a permanent injunction against her was issued.
- iv) That Hellen Namukabya filed Civil Appeal No.072 of 2001 which appeal was dismissed by court.
- v) That Hellen Namukabya further filed Civil Appeal No.01 of 2011 in the supreme court and the same was dismissed.
- vi) That on the 15th of March 2024 the High Court Family Division under Execution Misc. Application No.050 of 2023 made an order that the administrator of the estate of the late Erisa Musoke should sign transfer forms for the family of Kajubi Mcgrey.
- vii) That the administrator of the estate of the late Erisa Musoke has complied with the said order and signed transfer forms in favor of the family of Kajubi Mcgrey.
- viii) That on the 10th June we wrote to the respondent to effect the transfer as directed by court and respondent wrote to all the four courts to verify the authenticity of the said order.
- ix) That the respondent has declined to effect the transfer because of the existence of a caveat lodged by Mrs Hellen Namukabya.

Representation;

- 3. The applicants were represented by Counsel Chimwani Stephen of M/S Lubega, Babu & Co. Advocates whereas the respondent was represented by Counsel Nakaziba Zurah. Only the applicants filed their affidavit and written submissions which I have considered in the determination of this application.

Issues for determination;

Whether the caveat under instrument no. KLA 124022 on the suit land should be vacated?

Resolution and determination of the issue;

- 4. It is a settled principle of law that for one to lodge a caveat he or she ought to have a legal or equitable interest in the land or any other caveatable interest that he or she seeks the caveat to protect otherwise the caveat would be invalid (*See; Sentongo Produce and Coffee Famers Limited & another Vs Rose Nakafuma Muyisa HCMC No.690/1999).*
- 5. The primary objective of a caveat is to give the caveator temporary protection, it is not the intention of the law that the caveator should relax and sit back for eternity without taking actions and

steps to handle the controversy so as to determine the thoughts of the parties affected by the existence of the caveat.

- 6. The registration of titles Act under section 123 is to the effect that a caveat may be lodged or withdrawn *"Any beneficiary or other person claiming any estate or interest in land under the operation of this Act or in any lease or mortgage under any unregistered instrument or by devolution in law or otherwise may lodge a caveat with the registrar in the form in the Fifteenth Schedule to this Act or as near to that as circumstances permit, forbidding the registration of any person as transferee or proprietor of and of any instrument affecting that estate or interest until after notice of the intended registration or dealing is given to the caveator, or unless the instrument is expressed to be subject to the claim of the caveator as is required in the caveat, or unless the caveator consents in writing to the registration".*
- 7. The applicants bring this application under section 129 of the registration of titles act which is to the effect that a caveat can be removed or vacated when it's no longer affecting the said land.
- 8. I take note of the submissions of counsel for the applicants, upon perusal of the search certificate attached onto the application marked annexure "Q" it indicates that the caveat was lodged by Nakayenga, Y. Namukabya, Lwantale Esukanesi, and Wampamba Nasani vide instrument number KLA 124022 on the 5th day of March 1987.
- 9. The said parties are not party to the instant application to justify why the said caveat should not be vacated by this court. The respondent in the instant application is not the caveator nor in the position to justify the existence of the said caveat. This court proceeding to vacate the said caveat without hearing from the parties who lodged the same would be a miscarriage of justice.

- 10. Having regard to the law and decided cases, it is my decision that the proper course of action is for the applicant to sue the caveators where they will have to justify why the said caveat should not be vacated by court.
 - 11. I find it improper and incorrect to bring the instant application against the commissioner land registration instead of filing the same against the caveators or legal representatives of the same.
12. Therefore, the instant application is dismissed with no orders as to costs.

I SO ORDER.

NALUZZE AISHA BATALA

Ag. JUDGE

21/02/2025

**Delivered Electronically via ECCMIS on the 21st day of
February 2025.**

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