

UGANDA / JUDGMENT

Marian Ali Farah v Orono Andrew (Civil Suit No. 0067 of 2022) [2025] UGHC 425 (7 May 2025)

[2025] UGHC 425

COURT

High Court of Uganda

BEFORE

Kaweesa, J

CASE / FILE NUMBER

Civil Suit No. 0067 of 2022

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CV-CS-067-22- MARIAN ALI FARAH -VS- ORONO ANDREW [RULING]

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT TORORO

CIVIL SUIT NO. 0067 OF 2022

MARIAN ALI FARAH:PLAINTIFF

VERSUS

ORONO ANDREW:DEFENDANT

RULING

BEFORE: HON. DR. JUSTICE HENRY I. KAWESA

Both Counsel for the Defendant and the Plaintiff raised preliminary objections. The objection raised by the lawyer for the Plaintiff was that the Defendant has no locus to appear in this matter. This is because there is an interlocutory judgment which was entered by the Court against the Defendant on the 28th day of June 2022, and the case was meant to be fixed for formal proof.

For the Defendant, the preliminary objection was on the following points:

- 1. Mootness of the plaint

- 2. The plaintiff discloses no cause of action

It was submitted by Counsel for the Defendant that mootness arises when a legal dispute no longer presents an active controversy due to changes in the circumstances that resolve the issue or render it irrelevant. He said that in this case, the Plaintiff who initially sought;

- i) a declaration that they should provide the performance part of the estate of the late Mohamed Ali Furah,
- ii) declaration that the Defendant has no caveatable interest,
- iii) an order for removal of the caveat alongside the other orders for recovery of general damages, interest and costs is overtaken by events, due to the fact that the property which

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the Plaintiff had applied to administer is now registered in her names as the owner. This is effective from 1st September 1984 expiring on 1 st September 2033. This diminishes the original issue whether she should be granted Letters of Administration.

It renders the dispute over the Defendant Caveat on the Letters of Administration moot. This is so because the Plaintiff 's registration of the property in her names means that the issuance of the Letters of Administration is no longer a live controversy, and continuing with this case serves no practical purpose. Therefore, Counsel argued that this issue is equally rendered irrelevant and the Court ought not waste time on a matter which is mooted by Plaintiff 's own actions.

Secondly, he argued that the plaintiff discloses no cause of action against the Defendant. He argued that the title for the property now lists the Plaintiff as the registered owner with no reference to Muhammad Ali Furah and that the plaintiff does not demonstrate the elements that must be proved to showcase a cause of action.

RESOLUTION.

1. Whether Defendant has *locus* to appear in the matter

This issue calls for this Court to examine the record to find out whether indeed an interlocutory Judgment was entered on record and the matter set down for formal proof.

I have duly examined the record and established that the Court entered an interlocutory judgment against the Defendant on the 28th of June 2022. The effect of that judgment meant that the next step was for the Court to set down the matter for formal proof. The arguments that have been raised in rejoinder by the Defendant 's Counsel cannot be relied upon to set aside an Order of Court.

It is therefore true that in the absence of an application to set aside the order of an interlocutory Judgment, the Defendant cannot be heard. This objection is sustained.

CV-CS-067-22- MARIAN ALI FARAH -VS- ORONO ANDREW [RULING]**2. Whether the matter is moot.**

In answer to this submission, Counsel for the Plaintiff argues that the Defendant is in active possession of the suit property and has raised a caveat on the property. The Plaintiff has moved this Court to issue eviction orders against the Defendant, and to pay damages and the costs arising out of the suit. These remedies cannot be terminated merely because as argued the property is now registered in Plaintiff's names. I agree with that position and I find that the matter is not moot.

3. Whether the plaintiff discloses no cause of action.

The law is that a cause of action exists if it is shown that the Plaintiff enjoyed a right, the right has been violated, the Defendant is the one who violated it.

From the plaint it is clear that there is a right that the Plaintiff claims to enjoy in the suit property as a beneficiary. she came to Court to apply for letters of Administration, the Defendant came to Court and put a caveat on this application and the process has since been stayed. The other issues that the Defendant raises cannot in any way rub away the facts as pleaded in the plaint which I have summed up as above.

Therefore, I find that the plaint discloses a cause of action.

In the result therefore, I sustain the objection raised by the Plaintiff and overrule the objections raised by the Defendant .

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I so order

Dr. Henry I. Kawesa **JUDGE** 07/5/2025

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