

UGANDA / JUDGMENT

Mugerwa Abbas v Wamala Solomon Kanyoma and Others (Miscellaneous Cause 33 of 2024) [2025] UGHC 491 (6 July 2025)

[2025] UGHC 491

COURT
High Court of Uganda

BEFORE
Godfrey Himbaza, J

CASE / FILE NUMBER
Miscellaneous Cause 33 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

AT LUWERO

HCT-17-LD-MC-0033-2024

MUGERWA ABBAS:.....

\$VS\$

1. WAMALA SOLOMON KANYOMA

2. KUUMA FREDRICK

3. COMMISSIONER LAND REGISTRATION:.....

BEFORE HON. JUSTICE GODFREY HIMBAZA**RULING.****Introduction**

- 1. This application was brought by Notice of Motion filed in this court on 11th November 2024 under sections 98 of the Civil Procedure Act, Section 37 of the Judicature Act, and Order 52 rule 1 and 3 of the Civil Procedure Rules. The application sought for the following orders & declarations;
- a) A Declaration that the respondents' lodgment of the caveat under instruments no. BUK 176649 dated 31st May 2018 on land comprised in Bulemezi Block 609 Plot 28 at Kiumpa registered in the names of the applicant was illegal, null and void.
- b) An Order directing the 3rd respondent to vacate the caveat from the suit land comprised in Bulemezi Block 609 plot 28 at Kiumpa.
- c) An Order directing the respondent to pay costs of the application.
- 2. The grounds in support of this application are contained in the affidavits of Mugerwa Abbas the applicant as well as an additional affidavit in support of the Notice of Motion sworn by Ssegujja Stephen the former registered proprietor of the land.
- 3. The respondents were served with the application on 6th December 2024 according to the affidavit of service on court record, but no affidavit in reply was

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filed by them. When the matter came up for hearing on 20th May 2025, I ordered that the application proceeds ex parte and directed counsel for the applicant to file written submissions which I have considered in this ruling.

&representation

- 4. The applicants were represented by Counsel John Patrick Muganga from J. P Muganga & Co. Advocates.

Background to the application

- 5. The applicant is the registered proprietor of the land comprised in Bulemezi Block 609 plot 28 land at Kiumpa having been registered on 14th March 2018 under instrument number BUK 173688, having bought the same from Ssegujja Stephen the former owner who had been registered on 26th April 2017 under instrument number BUK 16 1307 who had also bought from one Kikomeko Hussein who got registered on 17th December 2015 under instrument number 137408. According to the history of transactions on the title, the respondents had been registered on the title as administrators of the estate of late Kavulu

Kanonya David on 16th June 2015 vide instrument number 128788. Under paragraph 3 of the statutory declaration in support of the caveat, the respondents had entrusted the certificate of title with a one Kikomeko Hussein (a land surveyor) for opening of boundaries of the said land but he transferred it into his names and later into the names of Segujja Stephen who in turn transferred the land into the names of the applicant. The applicants then lodged the caveat (the subject of this application) seeking to forbid any transactions on the subject land. The applicants thus filed this application seeking orders for removal of the said caveat on the basis that the 3rd respondent wrongly and illegally entertained the lodgment and registration of the 1st and 2nd respondents' caveat without any claim of right whatsoever.

- 6. According to the applicant, the 1st and 2nd respondents lodged a caveat on the said land yet they did not have any interest thereon. The caveat instrument attached to the application as annexure 82, shows that the 1st and 2nd

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respondents lodged the caveat on 31st May 2018 and paragraph 3 of the Statutory Declaration accompanying the caveat, states as follows;

"3. THAT we had entrusted our certificate of title with a one Kikomeko Hussein (Land Surveyor) for opening of the boundaries of the said land but he illegally transferred it into his own names and later into the names of Ssegujja Steven"

- 7. Indeed the history of ownership as revealed by the certificate of title shows that the land belonged to the 1st and 2nd applicants as administrators of the estate of late Kayulu Kanyoonya having been registered thereon on 16th June 2015 under instrument number 8UK128788, and then the land later got transferred into the names of Hussein Kikomeko on 17th December 2015.
- 8. When this matter came up for hearing, the applicant submitted that he had duly served the application upon the respondents and an affidavit of service had been filed on court record. Court directed that the matter proceeds ex parte and the applicant was directed to file written submissions which I have considered in this ruling..

Issue for determination.

The issues that were framed by counsel for the applicant for determination are ;

- a) Whether the 1st and 2nd respondents have an interest in the suit land described as Bulemezi Block 609 plot 28 at Kiumpa./Whether the 1st and 2nd respondents have a caveatable interest in the land.
- b) Whether the caveat lodged by the 1st & 2nd respondents should be removed.
- c) What remedies

Submission of the Applicants' Counsel on issue no.1. Whether the 1st and 2nd respondents have an interest in the suit land described as

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Bulemezi Block 609 plot 28 at Kiumpa./Whether the respondents have a caveatable interest in the land.

Submissions of Counsel on issue 1.

- 9. Counsel in his submissions defined an 'interest' to mean ownership which is legal (registered owner or his successors) or equitable. He submitted, that legal interest in land refers to an interest held in land by a land owner who has registered under the Registration of Titles Act so as to give the world notice of his or her ownership, whereas an equitable ownership refers to an interest held in land which has not been registered .
- 10. Counsel submitted that the 1st and 2nd respondents in the first instance are not registered owners or proprietors of the suit land described as Bulemezi Block 609 Plot 28 land at Kiumpa, as is clearly evidenced through the Certificate of Title which indicates that the registered proprietor is the applicant who purchased the land from one Ssegujja Stephen who was the previous registered owner under instrument number BUK 161307. Counsel submitted that the 1st and 2nd respondents are neither tenants by occupancy nor are they purchasers of the land. Counsel argued that the 1st and 2nd respondents do not have a caveatable interest in the land. Counsel cited Black's Law Dictionary, 8th Edition at pg. 666 which defines a caveat as a warning or proviso which has to be a legal or equitable interest that is protectable. He relied on the authority of Nabunjo Edita Vs. Kibudde Isiah Misc. Application no. 35 of 2021 where Hon Florence Nakachwa cited the case of Boyes Vs Gathure (f 9691 E. A 385 where it was held as follows;

"... A caveat is intended to serve a twofold purpose; on the one hand it is intended to give the caveator temporary protection and on the other hand it is intended to give notice of the nature of the claim of the person whose estate in the land is affected to the world at large".

¹1. He cited section 123(1) of the Registration of Titles Act Cap 240 and a couple of authorities to buttress his arguments to wit; Ainomugisha Doreen Vs, Saava

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Micheal David Kyazze C. S No. 839 of 2017; Ali Saidi Ngarukiye Vs. Muyonga Andrew Mubiru Misc. Cause no. 0031 of 2018, Mawejje Mike Joseph/ Vs. Emmanuel Mulondo & 2 ors C. S No. 279 of 2009 that a person should have a caveatable interest before his caveat is registered on the title.

- ¹2. Counsel further submitted that caveats are not meant to subsist in perpetuity but are rather intended to offer temporary protection to a claimant pending proving their claims. That it is therefore not just and equitable to allow the respondents to sit back and twiddle for an undetermined future to the detriment of the applicant who has indicated a need to put the land to good use. That since 2018, the caveat has been on the land and no action has been taken by the respondents to prove their claim to date.
- 13. Counsel relied on section 145 of the Registration of Titles Act Cap 240 which provides that a caveat ought to be removed if it has been withdrawn or lapsed or otherwise ceased to have effect on land in respect of which it was originally lodged.

Decision.

Determination of issue no. 1.

- 14. The respondents lodged a caveat on the suit land in May 2018, and according to the statutory declaration which supported the caveat (which is attached to the application as annexure 82), the caveators lodged the caveat as beneficiaries of the estate of the late Kavulu Kanonya David. Under paragraphs 2, 3 and 4 of the Statutory Declaration, the respondents are administrators of the estate of the late Kavulu Kanonya David by virtue of Letters of Administration issued in March 20 15. That they entrusted their certificate of title with a one Kikomeko Hussein (a land surveyor) for opening boundaries of the said land but illegally transferred it into his own names and later into the names of Seggujja Steven who in turn sold the land to the applicant.
- 15. The Law allows lodgement of a caveat to protect the estate of a deceased person. Section 139(1) of the Registration of Titles Act provides that;

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"(1) Any beneficiary or other person claiming any estate or interest in land may lodge a caveat with the Registrar forbidding the registration of any person as transferee or proprietor of any instrument affecting that estate or interest until after notice of the intended registration or dealing is given to the caveator"

- 16. Under section 140(21) of the Registration of Titles Act, a caveat lodged by or on behalf of a beneficiary claiming under any will or settlement is protected from automatic removal after expiration of 60 days after notice is given to the caveator that the proprietor has applied for removal of the caveat.
- 17. Accordingly, caveats that are lodged to protect an estate of a deceased person do not lapse automatically after the expiration of statutory notice of 60 days unless the court orders such caveat to be removed upon sufficient cause being shown.

- 18. In the case of Nassaka Vs. Nansimbi (Misc. Cause no 31 of 2020 of 120211 UGHCCD 201 (per Hon. Lady Justice Victoria Nakintu Nkwanga Katamba) it was held as follows;

"Beneficiary caveats.....do not lapse unlike other caveats and the reason behind this is because interests of beneficiaries need to be protected. A court cannot simply issue an order vacating the caveat without sufficient reason, evidence and grounds warranting such vacation".

- 19. It is evident in the instant application before me that the respondents lodged the caveat in May 2018. The reason for lodgment of the caveat was that the certificate of title had been entrusted with one Kikomeko Hussein who was a surveyor. The reason for the hand over of the title was because he had been instructed to survey the land and probably make some subdivisions or mutations. The said Kikomeko instead transferred the land into his names and later sold the same to one Segujja Steven who in turn sold it to the current applicant. Indeed, this history of transactions is evident from the title itself which indicates that the respondents were the original owners having been entered on the title as such in June 2015. The land was later transferred into

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the names of Kikomeko Hussein in December 2015. Kikomeko later transferred it to Segujja Stephen in April 2017 who later transferred it to the current registered owner who is the applicant in the month of March 2018. It was in that year that the respondents lodged their caveat.

- 20. I agree with the holding in Boyes Vs Gathure (1969) 1 E. A 385

"... A caveat is intended to serve a twofold purpose; on the one hand it is intended to give the caveator temporary protection and on the other hand it is intended to give notice of the nature of the claim of the person whose estate in the land is affected to the world at large".

- 21. Indeed, caveats are not meant to subsist in perpetuity but rather help to provide temporary protection to a claimant pending the caveator proving his or her claim. A party is not supposed to sit back and expect permanent protection, because under section 145 of the Registration of Titles Act, a caveat may be removed if it has ceased to affect the land in question.
- 22. The Court of Appeal in the case of Rutungu Properties Limited v Carrington & Another (Civil Appeal No. 61 of 2010) [2019] UGCA 20.26 [21 November 2019] held that;

"... a caveat is similar to an interlocutory injunction as it only gives temporary protection of interest... a caveatee must prove that he holds an interest and an unfettered right to deal with the suit land as he may please. On the other hand, the caveator must prove the existence of the following;

- a) The caveator has sufficient grounds to maintain the caveat
- b) the caveator has brought an ordinary action timely against the caveatee.

- c) The balance of convenience lies in maintaining the caveat rather than its removal."
- 23. The import of the above authority is that when a caveator lodges a caveat on the suit land, he or she must therefore undertake the necessary steps to prove his or

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her interest in the said land by filing an ordinary suit against the caveatee, without inordinate delay. Furthermore, once the caveator has shown to have undertaken an ordinary action to protect their interest, the court may be persuaded to find that the balance of convenience lies in favour of maintaining that caveat.

- 24.1 have noted that ever since the caveat was lodged in 2018, the 1st and 2nd respondents who were the caveators did not take any action by way of filing a suit to prove their claims. At the time the caveat was lodged, the land was already registered in the names of the applicant. If indeed the 1st and 2nd respondent's claim that the title had been entrusted with Kikomeko Hussein who allegedly fraudulently transferred it into his names and later into the names of Segujja Stephen is true, they ought to have filed a suit challenging the said transactions.
- 25. Furthermore, at the time the caveat was lodged, the land had changed hands three times. In the absence of any evidence linking the applicant to any fraud or at least notice of it, he would qualify to be a bona fide purchaser for value without notice of any previous frauds. All this would be proved in a suit filed in this court, which as I have already noted above, does not exist.
- 26. For the aforesaid reasons, I am inclined to believe the applicant and make the following findings on issue no. 1;
- a) The applicant is the current registered proprietor of the land in dispute comprised in Bulemezi Block 609 Plot 28 land at Kiumpa. His title is indefeasible under the Registration of titles Act unless otherwise impeached through fraud.
- b) The 1st and 2nd respondents do not have any interest in the suit land unless and until a suit claiming the same is filed and proved in this court.
- c) There is no valid reason why the respondents' caveat should remain on the title. A caveat lodged in 2018(7 years ago) without the caveators proving their claim in court cannot be left to stay on a title as an incumbrance. Caveats are not lodged to remain permanently.

Consequently, I do hereby resolve issue no. 1 in the negative.

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Issue no 2: {Whether the 1st and 2nd respondents' caveat should be removed.

I have already found that there is no basis for maintaining the 1st and 2nd respondents' caveat on the title for reasons I gave while resolving issue no 1. For that reason, I resolve issue no. 2 in the affirmative. The 1st and 2nd respondents' caveat should be removed from the title

Issue no. What remedies are available to the parties.

- 27. Having found that there is no valid reason for the caveat to be left on the title as an incumbrance, I do therefore make the following orders;
- a) This application hereby succeeds.
- b) The 3rd respondent is hereby directed to vacate the caveat lodged by the 1st and 2nd respondents under instrument number 176649, from land comprised in Bulemezi Block 609 plot 28 land at Kiumpa in the names of the applicant.
- c) Costs of the application are awarded to the applicant.

I so Order

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GODF H Ag. JUDGE 6th July 2025

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Prepared on 13 October 2026 · Esheria