

UGANDA / JUDGMENT

Nagawa Lggya v Commissioner for Land Registration and Another (Misc Cause 21 of 2023) [2025] UGHC 95 (24 January 2025)

[2025] UGHC 95

COURT
High Court of Uganda

BEFORE
Byaruhanga Rugyema, J

CASE / FILE NUMBER
Misc Cause 21 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT HOIMA MISCELLANEOUS CAUSE NO. 021 OF 2023

JULIET NAGAWA LUGGYA VERSUS

- 1) COMMISSIONER FOR LAND REGISTRATION
- 2) BIRUNGI SUZAN NYAKOOJO

BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

RULING

In this Application, the Applicant, Juliet Nagawa Luggya, is seeking orders \$[1]\$ inter alia, for the removal of caveats lodged on her land, measuring 150 acres, located in FRV Hqt759, Folio 15, Block 24, Plot 106 at Nyakabale Village, Bugahya County, Hoima District. The Applicant contends that the caveats lodged by the deceased, Nyakoojo William Hosea and Birungi Susan Nyakoojo (the 2nd Respondent) are without merit, as they pertain to land that does not overlap with or include her lawfully purchased land.

Background

- On 15th September 2020, the Applicant purchased 150 acres of land from a \$[2]\$ one Rwankozzi Geoffrey, Baliija Jackson, Kwesengereza John and Birungi Robinah out of land measuring 589 acres pursuant to a consent judgment dated 1st/06/2018 vide Masindi HCCS No. 67 of 2014. Prior to this transaction, a caveat was lodged by Nyakoojo William Hosea on October 15, 2020, claiming an interest in the property and upon his demise, later, by the 2nd Respondent as a beneficiary of the 1st caveator. The

\$2^{nd}\$ Respondent and her late father lodged caveats on the Applicant's land to protect their interest on part of the land titled by the Applicant's sellers. It was however established that the caveator's interest was limited to 25 acres of kibanja land, which did not include the 150 acres purchased by the Applicant. Although the caveator expressed a willingness to withdraw the caveat, he passed away before this could be finalized.

- The 2nd Respondent subsequently lodged a caveat as a beneficiary of the first \$[3]\$ caveator. The refusal of the 1st Respondent to remove these caveats has effectively hindered the Applicant's rights as a bona fide purchaser and thwarted her to transfer and register her land in her name. The Applicant's repeated attempts to have the caveats removed through the 1st Respondent have been unsuccessful, thus impairing her rights as a purchaser.

Counsel Legal representation

- [4] Mr. Kasangaki Simon of M/s Kasangaki & Co Advocates, Masindi appeared for the applicant. M/s Kiyonga-B-Asasira Advocates, Kampala appeared for the 2nd Respondent. The Applicant and the 2nd Respondent filed written submissions. The 1st Respondent did not enter appearance. I have given due consideration to the submissions on record in deciding this matter.

Preliminary objections

The 2nd Respondent, through her submissions, has raised certain objections \$[5]\$ to the effect that the Applicant has no locus standi to file this application and that Court has no jurisdiction to entertain this Application.

Locus Standi of the Applicant

The 1st Respondent contends that the Applicant lacks locus standi, arguing that \$[6]\$ she should have sued the registered proprietors instead of the Respondents. I find that the Applicant, as an undeniably bona fide purchaser, is directly affected by the caveats lodged on the approx. 150 acres of land she bought from the registered proprietors. Following the purchase, the registered proprietors held the land in trust for the applicant, as the beneficial owner thereof pending transfer. The law recognizes the standing of a purchaser to challenge caveats that impede their right to enjoy the property or even transfer of land purchased into the transferee's name. In the premises, I find that the Applicant has established sufficient interest to pursue this Application and this objection is overruled.

Turisdiction of the Court

The \$1^{st}\$ respondent argued that this court has no jurisdiction to entertain this \$[7]\$ application. It is however trite that under the Registration of Titles act, the rights and interests of a purchaser before or after transfer are protected, even in instances where the title remains in the name of the registered proprietor,

See the provisions of Section 167 RTA. The Applicant's intention to seek the removal of the caveats in this case is not against the acts of a registered proprietor but rather an assertion of her rights under a legitimate contract of sale. The Applicant's rights as a bona fide purchaser cannot be ignored. The Court thus finds that it possesses jurisdiction to hear the matter and the applicant rightly commenced the present application for vacation of caveats lodged on her land she purchased from the registered proprietors of the land.

[8] The objections raised against the competence of the application and the locus standi of the applicant are accordingly overruled. The application is to proceed on the merits.

Merits

- [9] The following Issues have been formulated for Determination
- 1. Whether this Application is tenable before the Court.
- 2. What remedies are available to the parties.

Tenability of the Application

- The Applicant's case rests on the assertion that the caveats in question lack a legitimate basis. The essence of a caveat is to serve as a protective mechanism, notifying the court or registrar of a claim. The legal principle established in *Sentongo Produce & Coffee Farmers Ltd Vs. Rose Nakafuma Thijusa HCMC 690/99* stipulates that a valid caveat must safeguard a legal or equitable interest. A caveat is meant to protect a lawful interest; in this instant case, the caveator's claim pertains to a portion of land that is not affected by the Applicant's purchase.
- In this case, the Applicant purchased 150 acres of land. In the process of subdividing and/or bringing the land under the operation of the RTA, the Applicant discovered that a caveat had been lodged on the property by Nyakoojo William Hosea (Now deceased). It is apparent that before his demise, the caveator, Nyakoojo William Hosea had agreed to withdraw the caveat on condition that he was given transfers for his 25 acres. It appears that the caveator died before the transfer forms in respect of the 25 acres were signed in his favour and therefore, died before he withdrew the caveat. Whereas the Applicant's interest is therefore limited to the 150 acres she purchased and those of the caveator are limited to only 25 acres of his kibanja, the caveat in question affected the entire land measuring 589 acres

including the portion purchased by the Applicant. The caveat has affected the entire land beyond the Respondent's interest.

- It has not been shown that the portion of the land sold to the Applicant [12] comprise the Respondent's 25 acres of Kibanja so as for one to say that the Respondent's kibanja overlaps with or include the Applicant's purchased land. Indeed, the Respondent has not complained of any trespass against the Applicant.
- This court therefore, has to strike the delicate balance of the interests of the Applicant who intends to have her purchased portion brought under the RTA but is hindered by the Respondent's caveat and the interests of the Respondent which the impugned caveat intended to protect. The Registered proprietors have not mutated in the Respondent's favour his 25 acres of land. In the premises that the Respondent's caveat is negatively and gravely affects the interests of the Applicant yet the Respondent has no interest whatsoever in the Applicant's portion of land, it follows that the caveat is unjustifiable in the circumstances of the case. The caveat lodged by the deceased and subsequently by the Respondent does not pertain to the 150 acres owned by the Applicant. The caveat has remained in place beyond the statutory period of 6 months, which renders it untenable as it does not protect any legitimate interest in the land. The Applicant's land is distinct from the deceased's interests and the Respondent must be found to have been aware of the boundaries of her late father's 25 acre kibanja. As rightly argued by counsel for the applicant, the caveat lodged on March 22, 2023, has persisted beyond the six-month period without a legitimate interest being demonstrated. Under Section 140(11) of the Registration of Titles Act, a caveat that does not reflect a valid claim should be removed to avoid infringing upon the rights of the registered proprietor and in my view, any other person unjustifiably affected by the caveat.
- Furthermore, the Respondent is required to substantiate any refusal to act [14] regarding the removal of the caveats, as per Section 182(1) of the Registration of Titles Act. This duty has not been discharged. The Respondent has not provided any evidence that the interests of the deceased do overlap with or include his property, affirming the tenability of this Application.
- The Respondent further asserted that the Registrar is the proper authority [15] to resolve this matter. However, Section 182 of the Registration of Titles Act

provides for the removal of caveats through the intervention of the Court when grounds for such removal are established. The evidence presented by the Applicant clearly show that the caveats do not pertain to her interest in the land. The Court has the authority to order their removal in the circumstances of this case. I find non legitimate grounds for the caveats and because of the continued infringement of the Applicant's rights as a purchaser, the appropriate remedy is to remove the caveats. The Respondent's claims do not establish a valid interest over the specific land sold to the Applicant, and the evidence of her claims is tenuous at best.

Available Remedies

Given the lack of a valid interest represented by the caveats, it is reasonable \$[16]\$ and just to grant the Applicant's request for their removal. The caveats are obstructive and unjustly deny the Applicant her rightful use of the land. The primary intention of a caveat is to afford temporary protection, as emphasized in *Boynes v. Gather* (1969) EA 385, and it is neither equitable nor lawful for the caveator to indefinitely withhold the rights of a registered proprietor or any other person affected by the caveat. Thus, I find that the caveats lodged by both the deceased and the 2nd Respondent are unwarranted to the extent that they do not pertain to the Applicant's land. Consequently, the appropriate course of action is to remove the caveats to restore the Applicant's rights over her property.

Conclusion

- [17] In light of the above considerations, I grant the Applicant's Application as follows:
- a) This application succeeds
- b) The 1st Respondent is directed to remove the caveats lodged by Nyakoojo William Hosea (now deceased) and Birungi Susan Nyakoojo from the Applicant's land measuring 150 acres
- c) The applicant is awarded the costs of this application.

Dated at Hoima this 24th day of January, 2025.

Byaruhanga Jesse Rugyema

JUDGE

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