

**Nalumenya Aaron v Sematimba
Eric (Miscellaneous Cause 7 of
2025) [2025] UGHC 490 (8 July 2025)**
[2025] UGHC 490

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

- This application was brought by Notice of Motion filed in this court on 31st March, 2025 under Section 124 (1), (3), 188 of the Registration of Titles Act Cap 240, Section 98 of the Civil Procedure Act Cap 282 and Order 52 rules 1,2, 3 of the Civil Procedure Rules, for orders that;
I
- a) The respondent be summoned to attend court and show cause why his caveat lodged under instrument no. LUW-00043281 registered on the land comprised in Bulemezi Block 159 Plot 2473 land at Wobulenzi should not be vacated

- b) An order be issued by this honourable court directing the Commissioner Land Registration to vacate the respondent's caveat lodged on the suit land
- c) Compensation/damages for the continued existence of a caveat on the suit land
- d) Costs of this application be provided for.
- The grounds of this application are contained in the affidavit in support and an affidavit in rejoinder deposed by the applicant Nalumenya. 2
- The respondent filed an affidavit in reply deposed by himself. 3

11Page

/l,rrtu-

4 When the matter came up for hearing on 196 May,2025, the respondent requested for leave to file an affidavit in reply out of time which I accordingly allowed and further directed both parties to file their written submissions along the following schedule. However, the respondent did not file written submissions.

Lesal Reoresentation

The applicant was represented by counsel Habwanga Richardson of M/s Kibazo Associated Advocates, whereas the respondent was self-represented. 5

Background to the anolication

6. The applicant bought the suit land on 18ti, August, 2020 from a one Lugesera Abel Ssalongo, the registered proprietor of the suit land comprised in Bulemezi Block 159 Plot 2473 land at Wobulenzi. Prior to the said purchase, he carried out due diligence, and a duplicate certificate of tile was availed to him and transfer forms were executed between him and Lugesera. However, when he attempted to register his interest, he was informed that the respondent Sematimba Eric, had lodged a caveat on the suit land on 2nd October, 2023, hence this application.

Issue for determination

Whether the respondent's caueat should be remoued

Apolicant's case and submissions

- The applicant deposed that prior to the purchase of the suit land, he carried out due diligence and discovered that the respondent Sematimba Eric was in possession of the suit land as a son and caretaker of the same on behalf of his father Lugesera as introduced to him by Lugesera himself. Furthermore, the applicant deposed that he subsequently purchased the suit land measuring 0.0580 hectares on 18th August, 2020, transfer forms were executed and a duplicate certificate of title was handed over to him as seen in

annexure A, B, C and D respectively. 7

- The applicant further deposed that in 2023, when he commenced the registration of his interest in the suit land, he was informed that the respondent had lodged a caveat on 2nd October, 2023 on the suit land as 8

2lPage ',{t* I

seen in annexure E to the affidavit in support, and all talks to have the said caveat withdrawn were in vain and that the said caveat has since lapsed without the respondent taking any further steps.

- 9. In rejoinder to the respondent's affidavit in reply, the applicant deposed that the respondent owns no interest in the suit land and has never purchased the same as it is comprised in Block 159 Plot 1478 and further that several attempts to have the respondent vacate the suit land have proved futile. Further, the applicant deposed that the place of execution of the sale agreement was a choice made by the respondent's father -Lugeresa, since the area chairperson of Kigulu LC 1 was demanding for an exorbitant fee of Ugx. 2,000,000/= to witness the said transaction. The applicant further reiterated his earlier averments.
- 10. It was the submission of counsel for the applicant that the court is empowered to order for the removal of a caveat where the caveator fails to show cause for its maintenance. Further, counsel submitted that the respondent's attempts to reach out to the respondent to withdraw his caveat were rendered futile.
- 11. Counsel further submitted that the respondent at all material times knew that his father was the registered proprietor and had eventually sold the suit land to the applicant. Counsel also relied on the authority of *Boyes v Gathure* [1969] E. A 385 and averred that caveats are not meant to subsist in perpetuity but to offer temporary protection to a claimant pending proof of their claims and as such, allowing the respondent to sit back is detrimental to the applicant.
- ¹2. Lastly, counsel submitted that the applicant has suffered pain and has wasted resources in attempts to have the said caveat withdrawn and as a result, he should be awarded Ugx. 10,000,000/=.

Respondent's case

- 13. The respondent deposed that in company of his father Lugeresa Abel, he purchased land measuring 50ft by 100ft, on 2nd March, 2006 from a one Serunjoji Patrick the previous registered proprietor, at a consideration of
- 3lPase

b,k{

Ugx. 3,400,000/= as seen in annexure X. The respondent further deposed that he then took possession of the same and utilized it for agriculture and constructed his residential home from 2008 to 2010, and in 2022, he dug a well for water supply as seen in annexures M and Z to the affidavit in reply.

14. Furthermore, it was the respondent's deposition that in 2023 when he discovered that his father Lugeressa had fraudulently registered himself on the suit land as the current registered proprietor, he was prompted to lodge the said caveat to protect his interest in the suit land which seemed to be a fair and non-controversial step instead of filing a suit for fraud against his own father. And further that, since the applicant executed the sale agreement for the purchase of the suit land in Kyalugondo LC II and not Kigulu LC I where the suit land is situated, it points to his fraudulent intent and dealings on the suit land and it proves the assertion that he did not carry out due diligence prior to its purchase.

Preliminary Objection

- 15. Counsel for the applicant raised an objection that annexure X as attached to the respondent's affidavit in reply contravenes Section 88 of the Civil Procedure Act as it was attached without a translated version and as such, that such an anomaly cannot be cured under Article 126 (2) (e) of the constitution and the said annexure should be expunged.
- 16. Section 88 of the Civil Procedure Act Cap 282 posits that the language of court shall be English and documents shall be written in the same. However failure to translate a document does not affect its authenticity. I do not find the preliminary objection tenable .

Decision of court on the merits of the application

17. It is well established in various decided cases that the primary objective of lodging a caveat on land, is to give the caveator temporary protection of his interest. The caveator must therefore have a valid protectable legal or equitable interest to have their caveat maintained. See *Boyes Vs. Gathure* 1196elEA 385

41Page

lild

- 18. Section 124 III of the Registration of Titles Act Cap 240 states that where notice of a caveat is given by the Registrar to the registered proprietor or any person intending to be registered as one, that person may summon the caveator to attend court and show cause why the caveat should not be removed, and the court will make any order as maybe necessary.
- 19. Therefore, it is not the duty of court to summon the caveator as stated in the orders sought in the notice of motion, but rather, the applicant has to move court and subsequently summon the caveator to show cause why his/her caveat should not lapse or be removed.

- 20. The Court of Appeal in the case of *Rutungu Properties Limited v Carrington & Another* (Civil Appeal No. 61 of 2010 of 120191VGC. A 2026 (21 November 2019) held that;

"...a caveat is similar to an interlocutory injunction as it only arises to protect an 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."
- 21. 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 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.

51Page

ilr{w

- 22. Upon a careful perusal of the record, the gist of the respondent's case is not against the applicant but against the respondent's own late father Lugeressa Abel Salongo -the registered proprietor, who is said to have fraudulently registered himself on the title. The respondent accuses his late father - the registered proprietor and the applicant -Nalumenya, of fraudulent dealings and acquisition of their interest in the suit land. However, I take note that these averments require a host of evidence and as such cannot be dealt with in the instant application by way of affidavit evidence. The respondent ought to have filed a suit in order to prove his claim in the suit land. I have not seen any indication of a suit filed in this court by the respondent seeking to prove the claim that the caveat he lodged aimed at protecting.
- 23. Furthermore, despite the existence of a purported land sale agreement dated 2nd 4 March, 2006 marked X to the affidavit in reply and executed between the respondent Sematimba Eric and Serunjoji Patrick -the previous registered proprietor, I am unable to ascertain the nature of the respondent's interest in the land without proof by way of evidence adduced in a formal suit; that is to say, whether respondent holds a caveatable interest in the suit land as the actual owner or a beneficial owner. Worthy of noting, the respondent took possession after the late Lugeressa's registration of his interest on 6th February, 2007 as seen in the certificate title marked 'C' and yet, he never took any further steps to protect his interest.

- 24. On the other hand, by an agreement dated 18th August, 2020, the applicant purchased the suit land from the late Lugesera Abel Salongo -the then registered proprietor, at a consideration of Ugx. 21,000,000/=. Therefore, on the face of it, he possesses a legal interest in the suit land. Needless to say, the late Lugesera Abel Salongo's interest is protected by the legal principle of indefeasibility of title under Section 59 of the Registration of Titles Act Cap 240, unless it is impeached by fraud.
- 25. Be that as it may, it was incumbent upon the respondent to undertake steps to protect his interest in the same owing to the fact that he had been in

61Page hnw

possession since 2008, before and immediately after the applicant purchased it from the late Lugesera Abel (respondent's father),

- 26. Noteworthy, the respondent only lodged a caveat on 2nd October, 2023 under caveat instrument no. LUW-00043281 and sat back. This conduct, in my view, amounts to inordinate delay and as such, I am not persuaded by the respondent's justification of his inordinate delay wherein he states that he could not sue his own father for fraudulent dealings with the suit [and. Besides, the maxims of equity posit that "Equity aids the vigilant and not the indolent" and, "delay defeats equity."
- 27. It follows then, that the respondent decided to lodge a caveat and sit back considering the fact that two years have since lapsed without him undertaking any action in protecting his purported interest.
- 28. The Court of Appeal in *Mariam Nanteza & 3 Ors v Nansani Rwamunono & Anor* Civil Appeal No.28 of 2013, relying on the case of *Boynsee v Gathure* (19691 EA 385, held;

"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 positive steps to handle the controversy, so as to determine the rights of the parties affected by its existence."

- 29. Therefore, for the foregoing reasons, I find that the balance of convenience lies in favour of removing the said caveat owing to the respondent's inaction in safeguarding his interests. The respondent is well within his rights to file an ordinary suit to protect his purported interest in the suit land.
- 30. I am also unable to grant the applicant's prayer for compensation, as this requires proof by way of leading evidence through a formal suit.
- 31. In the premises, this application is hereby allowed with the following orders;
- a) The caveat lodged under instrument no. LUW-00043281 is hereby vacated.

- b) The Commissioner Land Registration shall henceforth deregister the caveat under instrument no. LUW-00043281 from the suit land.

TlPage

ll'ilb'

- c) The respondent shall pay costs of the application.

IT IS SO ORDERED. \$ \ldots\$ day of. \$ \ldots\$ 2025\$ \$ \ensuremath{\text{\textbf{DATED}}}\$ this \$ \delta n\$ **GODFREY HIMBAZA AG. JUDGE**

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughc/2025/490/eng@2025-07-08>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/nalumenya-aaron-v-sematimba-eric-miscellaneous-cause-7-of-2025-2025-ughc-490-8-july-2025-unknown-topic-unknown-court-2025--6a3ea4db3b1caa91297e85a4>

Prepared on 13 October 2026 · Esheria