

UGANDA / JUDGMENT

Tanansi Zibalaba v Commissioner Land Registration and Another (Miscellaneous Application 2127 of 2024) [2025] UGHCLD 130 (9 July 2025) [2025] UGHCLD 130

COURT

HC: Land Division (Uganda)

BEFORE

Kaahwa, J

CASE / FILE NUMBER

Miscellaneous Application 2127 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND
DIVISION) MISCELLANEOUS APPLICATION NO. 2127 OF 2024 (ARISING FROM
MISCELLANEOUS APPLICATION NO. 3823 OF 2023) (ARISING FROM HCCS NO. 1516
OF 2023)

TANANSI ZIBALABA

(Suing through his lawful attorney

Juma Wasswa) ::::::::::::::::::::::::::::::

VERSUS

1. COMMISSIONER LAND REGISTRATION

2. FAROUK SSERWADDA ::::::::::::::::::::::::::::::

RULING

BEFORE: HON. LADY JUSTICE CHRISTINE KAAHWA

RULING

Introduction.

The Applicant brought this Application under sections 170, 188 and 189 of the Registration of Titles Act, RTA, Orders 52 Rule 8, 44 Rule 1, 2 & 3 of the Civil Procedure Rules (CPR), Section 14 and 33 of the Judicature Act for an order for the removal of the Respondents' caveats from the suit land and costs of the Application be provided for.

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The grounds of the Application are premised in the affidavit in support of the Application deponed by Juma Wasswa but briefly are;

- 1. That the Applicant is aggrieved with the caveats on the suit land, the caveats affect the Applicant's rights over the suit land and were illegally registered.
- 2. That Tanansi Zibalaba is the current registered proprietor of the suit land and gave him powers of attorney in respect of the suit land.
- 3. That Tanansi Zibalaba assigned the suit property to him and executed an assignment deed in his favor. Tanansi Zibalaba also gave him the duplicate certificate of title, a copy of his National Identity Card and passport size photographs.
- 4. That a lease was illegally registered on the suit land by Hermant A. Jani. That he filed HCCS No. 1017 of 2020 against Hermant A. Jani before this Court and the suit is still pending.
- 5. That Farouk Sserwadda is the son of Tanansi Zibalaba who without any color of right over the suit land caveated it.
- 6. That the 1st Defendant also registered a caveat over the suit land pursuant to the Application of Kabandize Ezra to prevent fraud or improper dealing thereon.
- 7. That Kabandize Ezra executed a sales agreement with the 2nd Respondent in respect of the suit land. That in the said agreement the 2nd Respondent impersonated Tanansi Zibalaba the Applicant.
- 8. That the 2nd Respondent also impersonated the Applicant on 12th august 1999 and executed a lease agreement, on 22nd October, 1999 terminated the aforementioned lease.
- 9. That the Defendant made a deed clarifying that the suit land was registered in his father's name and that he does not own the land. That the 2nd

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Respondent disguised as the Applicant and tried to apply for a special certificate of title in January 2024.

- 10. That the 2nd Respondent on 25th March, 2024 made a Statutory Declaration stating that he was formerly called Tanansi Zibalaba and on 3rd February, 2023 he made a Deed Poll stating that his name is Tanansi Zibalaba Sserwadda Farouk
- 11. That he learnt from the 1st Respondent about the various fraudulent transactions by Farouk Sserwadda in respect of the suit land and applied to vacate the disputed caveats on the land but no action was taken.
- 12. That Kabandize is fictitious and be that as it may be, Kabandize Ezra is not a person under disability or infancy, coverture, lunacy, unsound mind or absent from Uganda. His residence or nationality is not known and he does not own any interest whatsoever in the suit land which makes the 1st Respondents caveat untenable.
- 13. That the Applicant signed transfer forms in favor of the estate of the late Abdu Karim Walugembe where I am a beneficiary.
- 14. That the Applicant is interested in transacting in the suit land but is held back by the caveats.

The Reply.

The 1st Respondent contends that the Applicant has never applied to the office of the 1st Respondent to have any caveat affecting his interest removed from the suit land comprised in Kyadondo block 208 Plot 1129 at Bwaise-Kawempe.

That the 1st Respondent was moved by Kabandize Ezra who claims an interest in the suit land to lodge the said caveat. The 1st Respondent also lodged an incumbrance of a lease by Hermant A. Jani. That further caveats in the names of

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Hitesh Shah who is the registered proprietor of the lease and Tanansi Zibalaba were lodged.

In reply, the 2nd Respondent stated that he has at all material times been the registered proprietor of the suit land and Tanansi Zibalaba his father has never challenged his registration since he knows the same is his.

That Tanansi Zibalaba his father is 104 years old and cannot transact since he is already down and sick most of the time. That he has never given Powers of Attorney to the Applicant in respect of the suit land.

Additionally, the 2nd Respondent stated that there are pending civil suits in respect of the suit land vide land Civil Suit No. 1516 of 2023 Shah Developments versus Tanansi Zibalaba and Land Civil Suit No. 1017 of 2020 filed by the Applicant. The Applicant was directed by Court to add all people claiming interest in the suit land

Furthermore, that he lodged a caveat to protect his interest as the Applicant, Kiyimba Ssebudde Abby, Kaweesa Amuran, Ssimbwa Huzaifa Waligembe and Rehema Nassuna Waluembe had started attempting to transfer the suit land into their names and carry out illegal transactions on the suit land to defeat my interest.

Lastly, he deposed that it important for this Honorable Court to first determine all the suits in the High Court of Uganda Land Division and for the Applicant to amend and add me and other people claiming interest as a parties as directed by court

Representation and hearing.

The Applicant is represented by Muganwa, Nanteza & Co. Advocates while the 2nd Respondent is represented by M/S Smak Advocates. The 1st Respondent is represented by Officers from her Legal Department.

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On the 4th of March, 2025 this court gave directions for the parties to file submissions with the last of the submission to be filled by 19th March, 2025. However, none of the parties has filed submissions.

Issue.

Whether there is sufficient evidence for Court to order to vacate caveat.

Resolution of the issue.

A caveat as defined by **Black's Law Dictionary 8th edition** as a warning or caution, often implying a qualification or condition that must be considered before taking further action.

Section 139 (1) of the Registration of Titles Act provides that any beneficiary or other person claiming any estate or interest in land may lodge a caveat with the Registrar forbidding the registration of any estate or interest until after notice of the intended registration or dealing is given to the caveator.

A caveat is a temporary relief that gives the caveator time to pursue a more permanent remedy. In the case of *Boyness v Gathern* (1969) EA 385 "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 steps to handle the controversy, so as to determine the thoughts of the parties affected by its existence."

For a caveat to be valid, the caveator must have an interest legal or equitable to be protected. See case of *Sentongo Produce & Coffee Farmers Ltd vs Rose Nakafuma HCCM No. 690 of 1999*.

Section 140 (1), (2) of the Registration of Titles Act empowers this Court to order removal of caveat.

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The Applicant through his lawful attorney states that he is the registered proprietor of the suit land and is aggrieved by the caveats imposed by the Respondents on the suit land.

That his son the \$2^{\text{nd}}\$ Defendant has impersonated him and illegally dealt with the suit land. That this prompted him to file a Civil Suit No. 1017 of 2020 which is still pending in this Court.

That he is interested in transacting in the suit land but is held back by the caveats. The 1st Respondent stated that it entered a caveat on the Application of Kabandize Ezra who claimed to have bought part of the suit land from the Applicant.

Taking into consideration the Respondent averments in this matter and the facts as deposed in the various affidavits it clear that the suit property is being contested in Civil Suit 1017 of 2020, and Civil Suit 1516 of 2023, *Shah Developments v Tanansi Zibalaba*.

I am mindful of the fact that Civil Suit No. 1017 of 2020 *Juma Wasswa v the Commissioner Land Registration & Hemant A. Jani* was withdrawn in September 2024.

Nonetheless, in my considered opinion that it is reasonable that all the caveats on the suit property be maintained until the completion of the two aforementioned suits. To order otherwise would in my view render the suit nugatory as the suit property may be disposed of before determination of the matters.

I am anchored in that decision by paragraph 32 of the affidavit in support of the Application where he states that he is interested in disposing of the suit land.

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In light of the above, I reject the Application for removal of the caveat on the suit property during the pendency of Civil Suit 1516 of 2023. Each party shall bear their own costs.

Dated at Kampala this 9th day of July 2025.

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Christine Kaahwa**JUDGE**

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