



2. That the applicant purchased Kyadondo Block 265 plot 89 from a one Geresome Katamba on the 10<sup>th</sup> November, 1995.
3. That prior to the purchase of the abovementioned land, the applicant obtained valuation from professional valuers.
4. That the applicant did not immediately get registered as owner of the Kyadondo Block 265 plot 89 since there were squatters on the land and the applicant had to deal with them before completing the registration process.
5. That in May 2006, the applicant commenced the process to get plot 89 registered in its names but was shocked to find that its duplicate certificate of title was missing and even the original certificate of title was missing in the Land Registry.
6. That the applicant found later that the land had changed ownership from Geresome Katamba to Namirimu and then to Kaweesa Henry even though the applicant does not and did not have any dealings with Namirimu nor Kaweesa Henry.
7. That the applicant found that plot 89 had been subdivided into plots: 5968, 5969, 5970, 6204, 6205, 6013, 6014, 6015, 6016, 6189, 6190, 6243, 6244, 6245, 6246, 6247, 6248, 6249, 6250, 6251, 6252, 6253, 6254, 6255 and 6256.
8. That in order to protect its interests against further subdivisions and sale, the applicant lodged a caveat on all the above-mentioned properties vide instrument N0. KLA 315085 on the 22<sup>nd</sup> November, 2006.
9. That further, the applicant instituted Civil Suit N0. 23 of 2007 against Kaweesa Henry who was the person registered on the land title in order to have all the new entries cancelled and the original title comprised in Kyadondo Block 265 plot 89 restored.
10. That it is in the interest of justice that the removal of the caveat is delayed until such a time when the applicant's interest is determined by the court.

11. That the applicant is willing to meet such terms as the court may set.

The application is supported by the affidavit of J.M. Ssemwogerere, the applicant's Secretary. The affidavit evidence sworn on 16<sup>th</sup> day June, 2009 clearly supports the grounds of the application. The affidavit in support of the application repeats in the averment format of the grounds of the application in the evidence form.

When the application came up for hearing on 5<sup>th</sup> October, 2009, Counsel for the applicant informed court that the respondent was not served with the hearing notice of that date. On that information, court adjourned the matter to 21<sup>st</sup> October, 2009 for hearing. Still on 21<sup>st</sup> October, 2009 when the application came up for hearing, Counsel for the applicant informed court that the respondent was never served with court process. The Court directed that the respondent be served with the application and the order of the Court directing parties to file in Court written submissions. That was done by the applicant's lawyer and return of service was made and filed in court on 26<sup>th</sup> October, 2009. It should also be noted that the respondent was earlier on served on the application and the respondent duly stamped on the copy of this application, and the date of receipt of the said application is 1<sup>st</sup> July 2009. It is further noted that, the respondent never at all filed in court any affidavit in reply challenging the applicant's application despite the fact that the respondent was served with the application. Wherefore, the application stood unchallenged. It is trite law that in such circumstances, the respondent is taken to have conceded to the application. In the case of **Samwiri Massa vs Rose Achen (1978) HCB 297** it was held that where facts are sworn to in an affidavit and they are not denied or rebutted **by the opposite party**, the presumption is that such facts are accepted.

It is now clear that where certain facts are sworn in an affidavit, the burden to deny them is on the other party and if he does not they are presumed to have been accepted and the deponent need not raise them again but if they are disputed then he has to defend them.

Consequent to the above, I considered the averments in the affidavit in support of the application, reviewed the annexures thereto, and I find that the applicant has a valid cause in lodging the

caveat. Its interests have to be protected pending the determination of High Court Civil Suit N0.23 of 2007 now pending hearing in the High Court of Uganda (Land Division).

Furthermore, section 140 (3) of the Registration of Titles Act, cap.230 gives court a discretion to direct the Registrar to delay the registering of any dealing or to make any order suitable in the circumstances which I hereby do.

Whereas, Section 140 (2) gives the Registrar powers to give a 60 days notice to the caveator within which a caveat will be removed unless a court order delaying the removal is obtained, which order is herebelow granted

In the result, I allow the application with all the orders sought therein. Costs of this application shall be met by the applicant.

Dated at Kampala this 1<sup>st</sup> day of December, 2009

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**JOSEPH MURANGIRA**  
**JUDGE**