

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-MC-0026-2023**

**MAGEMBE KAABI IBULAHIMU ::::::::::::::::::::::::::: APPLICANT
VERSUS**

1. KAYONDO SAIDI

2. KALEMA ALI

3. NASSIWA NURIAT ::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON LADY JUSTICE JOYCE KAVUMA

RULING

Introduction.

[1] By a notice of motion dated **2nd August 2023**, the Applicant, sought for orders that the court orders the Respondents to vacate the caveat they lodged on land comprised in **LRV 977 Folio 20 Block 2 Plot 1029** land at Rwampara and provision of costs for the application.

Background.

[2] The factual background as can be drawn from the body of the motion was that;

The Applicant is the surviving administrator of the estate of the late Kayondo Kabi who owned land comprised in **LRV 977 Folio 20 Block 2 Plot 1029** land at Rwampara. That the caveators are the Applicant's siblings and also beneficiaries to the estate of the late Kayondo Kabi. That all the beneficiaries including the Respondents were given their respective shares in the estate of the late Kayondo Kabi having fully administered the estate. That the land, being a lease, which had since expired, the Applicant wanted to renew the lease but was unable to owing to the caveat.

[3] In their response, 2nd Respondent who swore on behalf of the other Respondents deposed that the estate including the land comprised in **LRV 977 Folio 20 Block 2 Plot 1029** land at Rwampara of the late Kabi Kayondo was according to sharia law amongst all children a process that was wound up on **2nd June 2003**. That the Letters of Administration in relation to the estate were obtained to effect the shares in land comprised in **LRV 977 Folio 20 Block 2 Plot 1029** land at Rwampara wherein the Applicant, a one Amuza Kayondo and Walugembe Medi obtained the Letters of Administration vide **HCT-05-CV-AC-0198-2017** which grant was being challenged in **HCT-05-CV-CS-56-2018** and **HCT-05-CV-CS-20-2018**. That a temporary injunction vide **Misc. Application No. 71 of 2018** was obtained against the Applicant to protect the interest of beneficiaries in the estate. that the Applicant filed an appeal in the Court of Appeal vide **Civil Appeal no. 213 of 2021** against the injunctive order which is still pending.

That the Applicant lacked locus to convert **LRV 977 Folio 20 Block 2 Plot 1029** to freehold since his authority as an administrator of the estate of Kayondo Kabi was being challenged and was ordered by this court in **Misc. Application no. 71 of 2018** not to interfere with the said estate. That the Applicants would be prejudiced if this application were to be granted. That the leasehold was still subsisting and it would expire in 2026.

[4] In rejoinder, the Applicant contended that **HCT-05-CV-CS-20-2018** was concluded upon execution of a consent. That he instructed his lawyers to withdraw **Civil Appeal no. 213 of 2021**.

Representation.

[5] The Applicant was represented by M/s Matovu Suwaya & Co. Advocates while the Respondents were represented by M/s Twinamatsiko & Agaba Advocates.

Both counsel proceeded by written submissions which I took consideration of in the making of this ruling.

Analysis and decision of court.

[6] It is the law that the main purpose of a caveat is to give the caveator temporary protection. It is not the intention of the law that a 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. (See Boyes vs Gathure [1969] EA 385 quoted with authority in Rutungu Properties Limited vs Carrington and anor Court of Appeal Civil Appeal no. 61 of 2010).

A caveat is akin to an injunction, a temporary protection enjoyed by a caveator which fetters a registered proprietor from dealing with his or her property and exercising all their rights conferred upon them in relation to the land by statute. It is this nature of a caveat that makes vital that claims made by a caveator are settled by legal action without any delays.

As a matter of law, **Section 140(2)** of the Registration of Titles Act is to the effect that except for caveats lodged on behalf of a beneficiary claiming under any will or settlement or by the Registrar, every other caveat has a life span of sixty days after notice being given to the caveator that a proprietor has applied to have such caveat removed.

A proprietor's first line of remedy would in my view be to have the Registrar issue a notice to the caveator to show reason why his or her

caveat should not be removed. Which after sixty days of no action from a caveator, the caveat will be removed. (**See also JWR Kazzora vs MLS Rukuba Supreme Court Civil Appeal No. 13 of 1992 per Oder JSC (RIP)**).

The caveator bears the burden of satisfying court that there are sufficient grounds in fact and law for continuing to encumber another's land. Where such a caveator succeeds in discharging this burden, and raises serious questions to be tried, the balance of convenience it has been held, in the absence of special circumstances, would be to leave the caveat in existence until proceedings brought and prosecuted by the caveator are concluded.

It should be pointed out that any delay on the part of the caveator to initiate such action will greatly prejudice his or her caveat or rights as in such circumstance, the Court may remove the caveat owing to such a delay. The decision of whether or not to remove a caveat is an exercise of judicial discretion. Which just like other judicial discretion must be exercised judiciously.

This process ordinarily involves the balancing of competing considerations and evaluation of evidence and the facts of each particular case until the balance conclusively sifts in one direction or the other. (**See Lim Ah Moi vs Ams Perisamy Suppiah Pillay Civil Appeal no. A-2-2641-1995, Eng Mee Young and Ors vs Letchuman S/o Velayutham [1980] AC 331 and Teo Ai Choo vs Leong Sze Hian [1982] 2 MLJ 12**).

To succeed in maintaining a caveat, the caveator must prove to the court the existence of:

- (a) Sufficient grounds to maintain the caveat.

(b) That there exists a suit or action brought in time against the caveatee.

(c) The balance of convenience lies in maintaining the caveat rather than its removal.

(See Rutungu Properties Ltd vs Carrington (supra)).

[7] In the instant matter all parties do not dispute the fact that they are beneficiaries to the estate of the late Kayondo Kabi. It is also not in dispute that the estate of the late Kayondo Kabi comprises of the subject matter of the instant application, that is, **LRV 977 Folio 20 Block 2 Plot 1029** land at Rwampara. The parties also do not dispute the fact that **HCT-05-CV-CS-0056-2018** was initiated in this court whose merits relate to **LRV 977 Folio 20 Block 2 Plot 1029** land at Rwampara and revocation of letters of administration granted by this court to the Applicant.

[8] Ordinarily, the caveat filed on **LRV 977 Folio 20 Block 2 Plot 1029** land at Rwampara by the Respondents as beneficiaries of the estate of late Kabi Kayondo has no expiry time within the meaning of **Section 140(2)** of the Registration of Titles Act. The only recourse of any person in need of its removal would be to apply to the court.

The Applicant in this matter deposed under **paragraphs 4 and 5** of his affidavit in support that though the Respondents were beneficiaries of the estate of the late Kabi Kayondo, the estate had been fully administered and the Respondents given their respective shares in line with sharia law.

On the other hand, the Respondents contended that if the caveat were vacated by this court, their respective shares in **LRV 977 Folio 20 Block**

2 Plot 1029 land at Rwampara would be alienated by the Applicant and it would also render the orders sought in **HCT-05-CV-CS-0056-2018** nugatory in which they contended that the Letters of Administration granted to the Applicant were obtained through fraud.

The above issues are triable issues in need of resolution by court which resolution may not be done in such an application.

[9] I have done cursory reading of the plaint that was filed in **HCT-05-CV-CS-0056-2018** and I am of the stern view that its resolution will finally resolve the above triable issues raised by the parties to this application.

The justice of this case and the balance of convenience would in my considered view require that I maintain the caveat on **LRV 977 Folio 20 Block 2 Plot 1029** land at Rwampara until the final determination of **HCT-05-CV-CS-0056-2018**. My resolution here also in my considered opinion finally resolves the preliminary points raised by counsel for the Respondent in the matter in their final submissions.

This application therefore fails and is accordingly dismissed. The costs of the application shall abide the outcome of **HCT-05-CV-CS-0056-2018** which is pending before this court.

I so order.

Dated, delivered and signed at Mbarara this ^{11th} day of June 2024.



Joyce Kavuma
Judge