

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO

MISCELLANEOUS APPLICATION NO. 41 OF 2020

- 1. SIMON MPINGA**
2. DDUMBA ISMAIL APPLICANTS

VERSUS

- 1. MICHAEL SERUWAGI**
2. JUDITH NAKIMU
3. PETER SIIRA BUGEMBE
4. ISRAEL SENKIRIKIMBE
5. GLORIA NALUNGA
6. REGISTRAR OF TITLES RESPONDENTS

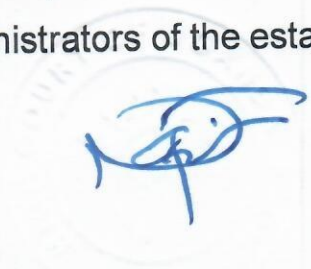
BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA

RULING

1. This application was brought by Notice of Motion under Section 140 of the Registration of Titles Act, Cap 230, Section 98 of the Civil Procedure Act, Cap. 71, Order 52 rules 1, 2 and 3 of the Civil Procedure Rules, S.I. 71-1, seeking for orders that:
- (a) An order be issued that the caveat lodged by the Respondents under instrument MKO-00060530 on land at Bukweya and Kirindi Bugerere, Block 125 Plot No. 75 be removed;
 - (b) Costs of the application be provided for.



2. The application is supported by the 1st Applicant's affidavit wherein he deposed *inter alia*; that he and Ddumba Ismail are the registered proprietors of land at Bukweya and Kirindi Bugerere, Block 125 Plot 75 measuring about 40 acres. That the said land measuring about 90 acres initially belonged to Samwiri Kasiryе and was comprised in Block 125 Plot 45. That Samwiri Kasiryе subdivided Block 125 Plot 45 to obtain Plot 74 of about 50 acres and Plot 75 of about 50 acres and that Samwiri Kasiryе transferred Plot 74 of about 50 acres to Cornelius Tamale and retained Plot 75 of about 40 acres.
3. Further, that on the 24th September, 1959, Samwiri Kasiryе transferred the residue of the 40 acres to Yafesi Kinsambwe Lutalo. That consequently, Yafesi Kinsambwe Lutalo was registered on MRV and on the blue page under instrument number MKO 16878 on the 24th September, 1959 as the proprietor of the 40 acres of land. That after Yafesi's death, Nakyobe Christine Lutalo and Naluggwa Margaret Lutalo were appointed as his Administrators who were consequently registered on the blue page title in that capacity under instrument No. MKO-142730 on the 29th June, 2015.
4. It was further deposed that the said Administrators of Yafesi Kinsambwe processed and obtained a white page title in respect of the very land on which they were registered under instrument No. MKO-0143201 on 30th August, 2017. That the Applicants did due diligence prior and ascertained that the land was unencumbered and that consequently they bought the said land from Nakyobe Christine Lutalo and Naluggwa Margaret Lutalo acting as Administrators of the estate of



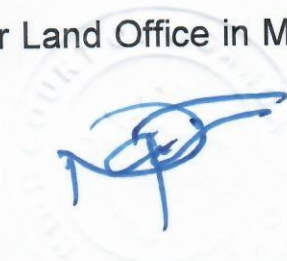
the late Yafesi Kinsambwe. That the Applicants were registered as proprietors on the title under instrument No. MKO-00055775 on 27th April, 2018. That the 1st Applicant has learnt that the Respondents lodged a caveat on his land title claiming as beneficiaries of Samwiri Kasirye. That the Respondents have no caveatable interest on the suit land and that this court has power to remove the said caveat. And lastly, that the said caveat infringes on the Applicants' rights as the owners of the land and that they can no longer deal with it as they wish or benefit from it.

5. The 1st to 5th Respondents opposed the application through the affidavit in reply sworn by Mr. Michael Seruwagi, the 1st Respondent. He deposed that the Applicants' application is incompetent, premature, devoid of merit and that the supporting affidavit is riddled with falsehoods. That the first five Respondents are the Administrators to the estate of their late father Samwiri Kasirye. That their late father left various properties and among them the land comprised in Block 125 Plot 75 at Bukweya and Kirindi measuring approximately 40 acres. Also that at the time of the demise of their late father, land comprised in Block 125 Plot 75 was on the Blue page title under the names of their grandfather the late Martin Luther Nsibirwa but subsequently the Administrators to their grandfather's estate were entered on the Blue page title.
6. He further deposed that the 1st five Respondents being the Administrators of the estate of Samwiri Kasirye, have been engaging the Administrators of their late grandfather's estate to transfer the land



comprised in Block 125 Plot 75 into their names. However, it was discovered that the said Administrators to their grandfather's estate had hired the services of a surveyor by the names of Geoffrey Luganda to streamline the estate. That fearing that the surveyor would with the help of some relatives tamper with their land, he was advised by their lawyers to lodge a caveat on the Blue Page title of Martin Luther Nsibirwa in order to avoid any illegal transfer of their father's land. That he later discovered that Nakyobe Christine Lutalo and Nuluggwa Margaret Lutalo had purported to obtain a title of their father's land that is Block 125 Plot 75, land at Bukweya on ground that their late father had sold it to their late father Yafesi Kinsambwe.

7. It was further deponed that the 1st Respondent discovered that Nakyobe Christine Lutalo and Naluggwa Margaret Lutalo had processed title for their land and transferred it to the Applicants in attempt to have the land beyond their reach. That Nakyobe Lutalo and Naluggwa Lutalo did not follow the legal steps of creating a title for the subject land which is in a Blue page. That the Administrators of their late grandfather's estate denied ever transferring the suit land to anybody and that they acknowledge that the land belongs to their late father. Additionally, that they decided to lodge a caveat on the illegally created title to protect their interest on the land comprised in Block 125 Plot 75 land at Bukweya.
8. The 1st Respondent further stated in his affidavit in reply that they have made an official complaint to the office of the Commissioner Land Registration protesting the act of the Registrar Land Office in Mukono



for creating a land title for land which is on a Blue page without transfer from the registered proprietor thus giving land to masqueraders. That the Commissioner Land Registration has since called for the file and the matter is pending determination and that the purported registration of the Applicants has no basis whatsoever since the subject land is still registered in the names of the Administrators of the estate of the late Martin Luther Nsibirwa and which has their caveat. That the purported MRV title is neither an original nor certified copy and that it's not true that their late father transferred the subject land to Yafesi Kinsambwe Lutalo. That Yafesi has never been entered on the title and that the suit land has at all material times been in the Blue page of their late grandfather to-date. The land has never left the Blue page. That the attached Blue page by the Applicants is suspicious as the land registry only issues such through a court order.

9. That it is not true that Nakyobe Christine Lutalo and Naluggwa Margaret Lutalo were entered on the Blue page and that court should verify the authenticity of the letters of administration issued to Nakyobe Christine Lutalo and Naluggwa Margaret Lutalo. That any registration made by the Administrators to the estate of the late Yafesi Kinsambwe Lutalo is unlawful and that's the reason why a caveat was lodged against the fake title. That the Applicants did not carry out due diligence otherwise they could have discovered that the subject land had a caveat on the Blue page and that they lodged a caveat on the suit land because they discovered that the Applicants were interfering with the estate of their late father. That the first five Respondents have caveatable interest in the subject land hence they oppose the removal of caveat on land

comprised in Block 125 Plot 75 land at Bukweya. The Respondents prayed that the application be dismissed with costs.

10. The 6th Respondent filed its affidavit in reply on 15th June, 2022 after this court directed the Applicants to serve him with fresh hearing notice since there was no affidavit of service on court's record showing proof of effective service on the 6th Respondent. It is deponed for the 6th Respondent that it registered the 1st, 2nd, 3rd, 4th and 5th Respondent's caveat on the suit land in furtherance of its legal mandate following an application for the same made by them. That the other Respondents lodged a caveat claiming as Administrators of the Estate of the late Samwiri Kasirye and that by implication only this honourable court can vacate their beneficiaries caveat as it cannot be legally lapsed by the 6th Respondent.

11. That upon perusal of the register and the land information system, it was discovered on the MRV from which the Applicants' claim originates, that the suit land was transferred from Samwiri Kasirye to Yafesi Kinsambwe Lutalo on the 24th September 1959 and registered under Instrument Number MKO 16878. That as per the records in the 6th Respondent's possession, Samwiri Kasirye ceased to have any interest on the suit land at the time it was transferred in 1959. Further, that Nakyobe Christine Lutalo and Naluggwa Margaret Lutalo were later registered as the administrators of the estate of Yafesi Kinsambwe Lutalo on the Blue page under Instrument No. 142730 in 2015.



12. The 6th Respondent further deposed that due process was followed and a white page was issued for the suit land and that the aforementioned administrators transferred the suit land to the Applicants who were thereafter registered as proprietors under Instrument No. MKO 00055775 on 27th April 2018. That the first five Respondents then lodged a caveat on the suit land which was registered on the 24th July 2018. Furthermore, that as per the records in the 6th Respondent's possession, Samwiri Kasirye and anyone claiming under his estate ceased to have any interest on the suit land when it was transferred to Yafesi Kinsambwe Lutalo in 1959. That the caveat where the first five Respondents claim their father's estate is still intact and that the 6th Respondent shall comply with any orders issued by court on this matter.

13. In their affidavit in rejoinder sworn by the 1st Applicant and filed on 14th February, 2022, the Applicants rejoined that the 1st Respondent's affidavit in reply is misplaced, misconceived and barred in law. Referring this court to the highlighted part-sheet 6, second last paragraph, the 1st Applicant deposed that a certified true copy of FCC title MRV 762 Folio 22 for land comprised at Bukweya and Kirindi obtained from the Commissioner Land Registration reflects that the suit land was transferred on 24th September, 1959 to Yafesi Kinsambwe Lutalo under instrument number MKO 16878. That this was supported by a copy of the original transfer form signed on 24th September, 1959 by Samwiri Kasirye passing 40 acres of land to Yafesi Kinsambwe Lutalo. Hence Samwiri or his beneficiaries have no claim on the suit land.



14. Further, that the blue page referred to therein reflects several plots on which the Respondents' land can be found, meaning the Respondents have to first survey their land to determine under which plot their land is since they are absentee landlords. That the Applicants are not privies to the dealings of the Administrators of the late Martin Luther Nsibirwa and they are not known to them and that neither are they part of this application.
15. In addition, the 1st Applicant stated that he acquired the suit land legally, that there was no hindrance or caveat on the same. That the white page for the suit land was created way back on 30th August, 2017 before the Respondents lodged their caveat on 12th February 2018. Through the advice from their lawyers, the Applicants stated that once a white page is created for a given plot of land, it ceases to be part of the blue page. That the search statement referred to by the Respondents is on an updated blue page since the suit land ceased to be part of the blue page as at 30th August, 2017 long before the search of 17th January, 2018. That the Respondents' caveat which is still intact is on the blue page where they claim their father's land is and not on the white page where the Applicants' land is. That the Respondents have no caveatable interest on the Applicants' land and that the application be granted.
16. Both parties except the 6th Respondent filed their written submissions. During the hearing of the application, the Applicants were represented by Counsel Onyango Joseph of Higenyi, Ngugo and Wadamba



Advocates while the first five Respondents were represented by Counsel James Njogu Wangui of Odokel Opolot & Co. Advocates. The 6th Respondent was absent and unrepresented.

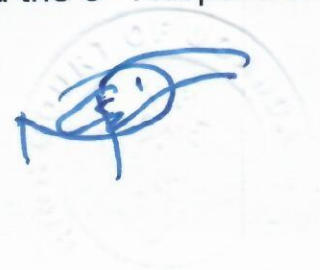
17. Counsel for the Applicant submitted that the Applicants through their counsel sought leave to file a rejoinder in this matter but after obtaining certified copies of the MRV 762 Folio 22 for land at Bukweya and Kirindi, copies of blue page for land at Bukweya and Kirindi Block 125 Plots 45 and 75. That the delay to file their rejoinder was due to failure by the 6th Respondent to issue certified copy of blue page for Block 125 Plot 45 as ordered by court which they waited in vain. That since the matter was taking long, they chose to file the rejoinder without filing the certified document for Block 125 Plot 45 as requested by this court.

18. Citing the case of **Sentongo Produce & Coffee Farmers Ltd v. Rose Nakafuma Muyiisa HMC 690/1999**, the Applicants' counsel submitted that for a caveat to be valid the caveator must have a protectable interest legal or equitable to be protected by the caveat otherwise the caveat would be invalid. That the Respondents have no caveatable interest on the land in question. Counsel reiterated the averments in the 1st Applicant's supporting affidavit and added that the 6th Respondent who is the custodian of land records in Uganda also confirmed that the suit land was transferred from Samwiri Kasirye to Yafesi Kinsambwe Lutalo on the 24th September, 1959. That anyone claiming under Samwiri Kasirye has no interest in the suit land. That the suit land was transferred to Yafesi by Samwiri over 60 years ago and that the first five Respondents are statute barred under Section 5 of the



Limitation Act, Cap. 80 which provides that no action shall be brought by any person to recover any land after the expiration of 12 years.

19. The Applicants' counsel further contended that it is settled principle that a caveat is similar to an interlocutory injunction as it only gives the caveator a temporary protection and the caveator is required by law to bring an ordinary suit to determine the interest of the caveator against other competing interests and to obtain a permanent remedy. Counsel cited the case of **Rutungu Properties Limited Vs Linda Harriet Carrington and Harriet Kabagenyi (1969) E.A 385** where it was held that; "..... The prima facie objective of a caveat is to give a caveator a temporary protection. It is not the intention of the law that the caveator should relax and sit for eternity without taking steps to handle the controversy so as to determine the thoughts of the parties affected by its existence."
20. It is further averred for the Applicants that it is now 4 years since the 1st to 5th Respondents lodged a caveat. No ordinary suit has been instituted by them hence that they chose to sit back and relax as their caveat infringes on the Applicants' rights. Learned counsel relied on **Rutungu's case** (supra) which cited the case of **Teo Ai Choo Vs Leong Sze Hian**, where it was stated that eleven months during which period no action has been filed entitled court to order removal of a caveat. Counsel contended that under Section 140 (1) of the Registration of Titles Act, this court is empowered under applications of this nature to make orders including orders for removal of a caveat. Counsel prayed that the application is granted and the 6th Respondent



is ordered to remove the caveat lodged by the 1st to 5th Respondents on land at Bukweya and Kirindi in Bugerere on Block 125 Plot 75.

21. On the other hand, counsel for the 1st to 5th Respondents during the hearing of this application, raised a preliminary objection against the affidavit in rejoinder filed by the 1st Applicant to be struck off the court's record with costs on the Applicants for late filing without seeking leave of court. Counsel submitted in the 1st to 5th Respondents' written submissions that Section 140 (2) of the Registration of Titles Act, gives special protection to what is regarded as beneficiary caveat and that this type of caveat unlike the ordinary caveat does not lapse after 6 months from the time of lodging.
22. The learned counsel also relied on the case of **Sentongo Produce & Coffee Farmers Limited v. Rose Nakafuma Thijusa** (Supra), where court held that a caveator must have protectable interest legal or equitable to be protected by a caveat otherwise the caveat would be invalid. That in the instant case, the 1st Respondent in his affidavit in reply, demonstrated that they have caveatable interest in the suit land which justifies lodging of a caveat in the suit land. That the 1st to 5th Respondents attached a copy of the Area Schedule Form obtained from the Mukono Lands Office on the 24th January, 2019 which shows the history of the suit land and which shows that Plot 75 measuring approximately 16.20 hectares (suit property) is a residue by balance and is owned by Samwiri Kasirye.



23. The 1st to 5th Respondents' counsel further submitted that at the time of the demise of their late father, the suit land was on Blue Page Certificate of title and that a search result was attached which was never challenged by the Applicants. That Yafesi Kinsambwe Lutalo never owned the suit land and that the purported transfer form attached by the Applicants was a fabricated and forged document as the same does not bear the signature of the 1st to 5th Respondents' late father and neither does it refer to the suit property. Further, that the alleged MRV title under paragraph 5 of the supporting affidavit sworn by the 1st Applicant is also a fabricated or forged document which cannot be relied upon by the court.

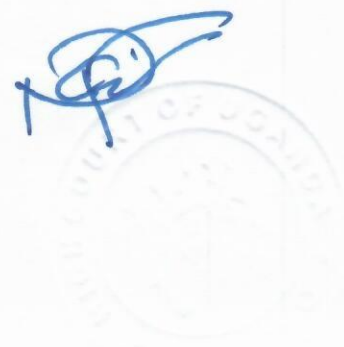
24. Counsel further contended that the Applicant never tendered any sales agreement between themselves and the administrators of the late Yafesi Kinsambwe Lutalo and neither did they adduce any sales agreement between Samwiri Kasirye and Yafesi Kinsambwe Lutalo. Counsel highlighted that court should treat the affidavit in reply of the 6th Respondent with contempt it deserves as such was filed after a period of one year and five months since filing of the application. That the affidavit is suspicious since no representative of the 6th Respondent ever appeared in court for the entire period to tender the same in court. Counsel prayed that this court finds that there are no grounds that merit the removal of the caveat. That the application be dismissed with costs.



Issue:

Whether the caveators who are the 1st to 5th Respondents have shown cause why their caveat should not be removed.

25. I have carefully read and considered the submissions by both counsel for the Applicants and counsel for the 1st to 5th Respondents, the details of which are on court record. This court notes that the filing of the Applicant's affidavit in rejoinder depended on the response by the 6th Respondent to comply with the court's order to issue certified copies of the certificate of titles hence such delay or failure to comply need not be visited on the Applicants who endeavored to file their affidavit in rejoinder after the 6th Respondent failing to fully comply with the said court's order. Accordingly, this court hereby overrules the preliminary objection raised by counsel for the 1st to 5th Respondents.
26. With respect to the 6th Respondent's affidavit in reply alleged to have been lately filed, the court's record shows that on the 30th March, 2022, court directed the Applicants to serve the 6th Respondent with fresh hearing notice as the affidavit of service dated 29th March, 2022 did not indicate the names of the lady at the reception who introduced herself as the Secretary to whom a copy of the hearing notice was tendered. Court ruled that there was no effective service. Having considered that there was no effective service on the 6th Respondent, the affidavit in reply filed by the Commissioner Land Registration cannot be disregarded.



27. I now turn to determine the issue as to whether the caveators have shown cause why the caveat should not be removed. In **Sentongo Produce & Coffee Farmers Ltd v. Rose Nakafuma Thijusa HCMC 690/99**, it was held that for a caveat to be valid, the cavetor must have a interest legal or equitable to be protected. The caveat which is the basis of this application was lodged under Section 139 (1) of the Registration of Titles Act, Cap. 230, which provides as follows:-

“Any beneficiary or other person claiming any estate or interest in land under the operation of this Act ... may lodge a caveat with the registrar ... forbidding the registration of any person as transferee or proprietor of and of any instrument affecting that estate or interest until after notice of the intended registration or dealing is given to the caveator, or unless the instrument is expressed to be subject to the claim of the caveator as is required in the caveat, or unless the caveator consents in writing to the registration.”

28. According to J.T. Mugambwa in his book '**Principals of Land Law in Uganda** at page 86, the reasonableness or lack of it to lodge a caveat is a question of fact to be determined in the circumstances of each case. He adds that the fact that the caveator had no caveatable interest does not necessarily mean that he or she had no reasonable grounds to enter the caveat. In **Hunter Investments Ltd v. Simon Lwanyaga & Anor, HCMC 0034/2012**, Lady Justice Eva K. Luswata held that the fact that the caveator has a caveatable interest does not by itself mean that he or she had a reasonable cause to lodge a caveat.



29. Under Section 140(1) of the Registration of Titles Act, Cap. 230, this court is empowered, in applications of this nature, to make such orders as it deems fit. This includes the power to order for removal of a caveat where the caveator fails to show cause why it ought not to be removed. Section 140 of the Registration of Titles Act provides thus;

“(1) Upon the receipt of such caveat the registrar shall notify the receipt to the person against whose application to be registered as proprietor or, as the case may be, to the proprietor against whose title to deal with the estate or interest the caveat has been lodged; and that applicant or proprietor or any person claiming under any transfer or other instrument signed by the proprietor may, if he or she thinks fit, summon the caveator to attend before the court to show cause why the caveat should not be removed; and the court may, upon proof that the caveator has been summoned, make such order in the premises either ex parte or otherwise, and as to costs as to it seems fit.”

30. It is well settled in a number of cases including the case of **Amba Venture Limited v. Sembatya Abubakali & Anor, HMC No.0164/2019**, that the preliminary 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.

31. The attachments on the court's record show that the 1st to 5th Respondents' caveat which is the subject of this application was lodged



on 9th February, 2018. Four (4) years have since passed since the said caveat was lodged. That said, the record shows that the 1st to 5th Respondents have never taken any step to have the controversy between them and the Applicants settled in as far as the suit land is concerned. The 1st Respondent averred in paragraph 18 of his supporting affidavit that they have made an official complaint to the office of the Commissioner Land Registration protesting the act of the Registrar Land Office in Mukono for creating a land title for land which is on a blue page without transfer from the registered proprietor. That however, the Commissioner Land Registration has since called for the file and the matter is pending determination.

32. Court has taken note of the Applicants' contention that the suit land was transferred by the 1st to 5th Respondents' late father Samwiri Kasirye to Yafesi Kinsambwe Lutalo in 1959. That they are bonafide purchasers for value having purchased the suit land from the Administrators of the late Yafesi Kinsambwe Lutalo. On the other hand, the 1st to 5th Respondents who claim to have equitable interest over the suit land contest to the whole transactions of transfer, sales and registration of titles. They claim that Yafesi never owned the suit land, that the purported attached transfer form by the Applicants is a fabricated or forged document since it does not bear the signature of their late father Samwiri and neither does it refer to the suit property.

33. Further that the MRV title alleged to have been obtained by the Applicants is a fabricated or forged document and that the Applicants



have not tendered in any sales agreement between themselves and the Administrators of Yafesi Kinsambwe Lutalo and neither did they adduce any sales agreement between Samwiri Kasirye and Yafesi Kinsambwe Lutalo before this court.

34. To sum up, all these averments are revealing. The affidavit evidence is informing this court that the caveators are challenging the proprietary rights of the Applicants. The only way to protect their claims was to temporarily place a caveat but not for eternity.

35. Notwithstanding the contentions from either party, the truth of the 1st to 5th Respondents' claim or the bonafides and legality of the Applicants' proprietorship, will require more evidence, which cannot be the subject of an application, such as the one before this court. Therefore, under such circumstances, I would be reluctant to order the discharge of the caveats on the suit land. In this case, justice demands that the rights of each party be fully determined by a court of law after a fair hearing in an ordinary suit which enables court to consider the complete facts, evidence adduced, issues and the law before making a decision.

36. In order for justice to be achieved among the parties in this matter, this court is empowered to exercise its inherent powers under both Section 98 of the Civil Procedure Act, Cap. 71 and Section 33 of the Judicature Act, Cap. 13. By virtue of such powers, I hereby disallow the application and instead order that the caveat lodged by the 1st to 5th Respondents on the suit land be maintained but strictly on the following terms:



(a) The 1st to 5th Respondents shall within a period of 30 days from the date of this ruling, challenge the transfer and registration of the Applicants onto the suit land by filing an ordinary suit in the High Court of Uganda to enable the court to determine the rights of the two parties;

(b) If the 1st to 5th Respondents fail, neglect or decline to comply with the condition in (a) above, then the caveat in respect of Block 125 Plot 75 shall automatically lapse and be removed by the 6th Respondent without further recourse to this court;

(c) Each party shall meet their own costs in respect of this application.

I so rule and order accordingly.

This ruling is delivered this 19th day of September, 2022 by



FLORENCE NAKACHWA
JUDGE.

In the presence of:

*(1) Counsel Onyango Joseph from M/s Higenyi, Ngugo & Wadamba
Advocates for the Applicants;*

(2) Mr. Simon Mpinga and Mr. Ddumba Ismail, the Applicants;

(3) *Mr. Michael Seruwagi, (1st Respondent) and Mr. Israel Senkirikimbe (4th Respondent);*

(4) *Ms. Pauline Nakavuma, the Court Clerk.*

