

**THE REPUBLIC OF UGANDA  
IN THE HIGH OF UGANDA AT KAMPALA  
LAND DIVISION  
MISCELLANEOUS CAUSE NO. 28OF 2014**

**KALIBBALA VICTORIA..... APPLICANT  
VERSUS**

**FLORENCE ADHOLLA..... RESPONDENT**

**RULING**

**BEFORE HON. LADY JUSTICE EVA K. LUSWATA**

The applicant proceeded under the provisions of Section 140 and 188 RTA Cap 230, Section 33 Judicature Act Cap 14, Section 98 CPA and Order 52 rule 1 CPR SI 71-1 to seek orders that the caveat lodged against her land comprised in Kibuga Block 16 Plot 892 at Lubaga (hereinafter referred to as the suit land) be removed. She in addition sought costs of the application.

The motion was supported by a brief affidavit of the applicant Marie Kalibbala in which she stated that she is the registered proprietor of the suit land on which the respondent placed a caveat without any colour of claim or right. On 15/10/14 I allowed Tendo Kabenge the applicant's lawyer, to effect service upon the respondent through substituted means which he did through the New Vision Newspaper of 5/12/14 and an affidavit of service filed to that effect. *Exparte* proceedings were thereby allowed on 12/12/14 after the Court was satisfied that the respondent had after substituted service exempted herself from court. Counsel Kabenge requested court to rely on the proceedings to make a final ruling on the matter.

In support of the application, the applicant provided a copy of the certificate of title confirming her registration under Instrument No. KLA 222666 of 21/2/01. That evidence was complimented by a research report dated 8/10/13 which showed that the caveat was lodged as an encumbrance on the suit land as Instrument No. KLA 247564 of 13/3/03. In my view, such evidence was sufficient to merit my consideration of the orders being sought.

I have confirmed that the respondent did not file an affidavit in reply to contest the application. She therefore voluntarily such placed herself outside these proceedings and according to the authority of **Wasswa Vs Achen (1978) HCB 297** I make the presumption that the facts in the

application are accepted and therefore that the respondent has no objection to the prayers being sought.

According to the pleadings, the caveat which is the basis of this application was lodged under S.140 (11) RTA now S.139 (1) RTA 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.”*

Nothing was put before this court to show why the respondent lodged the caveat and therefore the court cannot know the basis of the respondent's alleged interest and whether it needs to be protected by the caveat remaining on the land. However, I hasten to add that caveats are not to remain as encumbrances on land in perpetuity. It was incumbent upon the respondent to appear in court to contest its removal by justifying its presence on the suit land. She did not do so and this court cannot allow a registered owner of land to suffer continuous inconvenience and loss by such an encumbrance. I thereby find no reason to deny the application and accordingly make an order directed to the Commissioner, Land Registration to the effect that, the caveat of the respondent on the applicant's Certificate of Title of land comprised in Kibuga Block 16 Plot 892 at Lubaga be removed with immediate effect. In addition I order that the respondent meets the costs of this application.

I so order.

**EVA K. LUSWATA**  
**JUDGE**  
**12<sup>th</sup> February 2015**