

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MUKONO  
MISCELLANEOUS CAUSE NO. 0031 OF 2018**

**ALI SIDI NGARUKIYE :::::::::::::::::::::::::::::::::::APPLICANT**

**VERSUS**

**MUYONGA ANDREW MUBIRU ::::::::::::::::::::::::::::::::::RESPONDENT**

**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, section 33 of the Judicature Act, Cap. 13 and Order 52 rules 1 and 3 of the Civil Procedure Rules, SI 71-1. The applicant sought orders that:

(a) the caveat lodged by the Respondent on land situate at Kyaggwe Block 111 Plot 738 Mawoto Mutuba IV, Mukono District be vacated by this honourable court;

(b) an order be made by this honourable court directing the Commissioner Land Registration to vacate the caveat lodged by the Respondent on land situate at Kyaggwe Block 111 Plot 738 Mawoto Mutuba IV, Mukono District; and

(c) costs of this application be provided for.

2. The grounds of the application are briefly found in the Notice of Motion and amplified by an affidavit in support of the application sworn by the Applicant. The grounds were that:

- (a) the Applicant purchased this land situated at Kyaggwe Block 111 Plot 738 Mawoto Mutuba IV Mukono (herein referred to as suit land) from the registered proprietor Mr. Kalungi Gerald Kirumira who duly signed transfer forms in his favour;
- (b) in the course of concluding the said transaction, the Applicant and the registered owner discovered that there were two caveats on the suit land lodged by a one Nyanja Henry and another by the Respondent herein;
- (c) the registered owner, Mr. Kalungi Gerald Kirumira and the Applicant tried to look out and find the caveators of the suit land so as to resolve their impending issues that could have resulted in the caveats being lodged on the land in the first place;
- (d) they managed to meet Mr. Nyanja Henry a caveator of the suit land over the caveat lodged by him on the suit land and as a result of the meeting, he signed a withdrawal of a caveat;
- (e) all efforts to find and meet Mr. Muyonga Andrew Mubiru the second caveator have been in vain;
- (f) there is a correspondence from the 2<sup>nd</sup> caveator's lawyers M/s Busingye & Co. Advocates to the Registrar of Titles Mukono dated 27<sup>th</sup> day of January, 2014 to the effect that the caveat





lodged by their clients be removed since his interests had been settled;

(g) the Applicant is now facing difficulty in having the said caveat removed because the officials from the Land Registry at Mukono are requesting for a court order vacating the said caveat yet the caveator cannot be located;

(h) the said caveat expired after the lapse of 60 days yet the caveator has never renewed it and as such the same should be vacated by this honourable court;

(i) the Applicant is seeking court's indulgence on the matter so that a court order is issued by this honourable court vacating the said caveat;

(j) it is in the interest of justice that this application be granted and an order vacating the caveat lodged by the Respondent may be issued.

3. In his supplementary affidavit, the Applicant deposed that due to the Respondent's absence, he was effectively served by way of substituted service through adverts in newspapers of wide circulation, that is, the New Vision Newspaper, Monitor Newspaper and Bukedde Newspaper. The substituted service was evidenced by affidavits of service filed in this court on the 18<sup>th</sup> August, 2022, the 29<sup>th</sup> September, 2022 and on the 7<sup>th</sup> October, 2022, respectively.

A handwritten signature in black ink, appearing to be a stylized 'N' or 'M' followed by a flourish.

4. The application proceeded ex parte as the Respondent did not file a reply to show cause why his caveat lodged in 2015 on certificate of title for land comprised in Kyaggwe Block 111 Plot 738 Mawoto Mutuba IV, Mukono District should not be vacated. During the hearing of this application, the Applicant was represented by Counsel Brenda Elizabeth Kawooya from M/s Barenzi & Co. Advocates who filed the Applicant's written submissions on the 7<sup>th</sup> October, 2022.
5. The Applicant submitted that the law encumbers the Respondent with the burden of showing cause why the caveat should not be removed. As highlighted in paragraph 5 of the Applicant's supplementary affidavit, the Respondent has not been available since he lodged the caveat and all efforts to trace him have been futile. It was further submitted that the Respondent never showed cause why the caveat ought not to be removed despite service by advertisement in the newspapers.
6. Counsel cited the case of **Segirinya Gerald v. Mutebi Innocent HCMA No. 081 of 2016** on the primary objective of a caveat which is to give the caveator temporary protection. That the Respondent's absence and non-responsiveness is an abuse of the said caveat and at variance with the purpose for caveats. Furthermore, that section 140 (1) of the Registration of Titles Act empowers court to act ex-parte, hence, the Respondent's non-appearance should in no way prejudice the Applicant's case or the prayers.
7. That this caveat was lodged by the Respondent in 2015 and that given the Respondent's unresponsiveness from the looks of things,



without court's intervention, this caveat will encumber the suit land for eternity. Counsel added that the temporary protection, as described by court in the case of **Segirinya Gerald v. Mutebi Innocent** (supra), offered by the caveat has turned into a perpetual nuisance for the Applicant and that it is only fair, just and equitable that this honourable court intervenes to put an end to this nuisance since without court's intervention its bound to be indefinite. Counsel prayed that this honourable court orders the Commissioner Land Registration to vacate the said caveat.

8. Counsel further argued that section 27 (2) of the Civil Procedure Act, Cap. 71 provides that costs should follow the events unless court for good reasons orders otherwise. That there is no reason to deprive the Applicant costs of this suit.

### **Issue**

**Whether the Respondent's caveat should be removed.**

9. Under Section 140 (1) of the Registration of Titles Act, Cap. 230, this court is empowered in applications like this 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 (1) of the Registration of Titles Act, Cap 230 provides thus:

*"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."*

10. It is trite law as per section 139 (1) of the Registration of Titles Act, 230 that for a caveat to be valid, the caveator must have a caveatable interest, legal or equitable in the land. Section 139 (1) of the Registration of Titles Act states that:

*"Any beneficiary or other person claiming any estate or interest in land under the operation of this Act or in any lease or mortgage under any unregistered instrument or by devolution in law or otherwise may lodge a caveat with the registrar in the form in the Fifteenth Schedule to this Act or as near to that as circumstances permit, 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."*

11. Persons with caveatable interests are wide. They include a purchaser under an agreement for sale of land under certain conditions; a registered or equitable mortgagor; beneficiaries of an interest in a trust or easement; a builder's contractual right to charge



the land with all moneys owing; and a registered proprietor who fears a false transfer of ownership. In my view, any person who lodges a caveat unreasonably or maintains the caveat when it is no longer necessary to do so is liable for damages sustained by any other person. Where the caveator lacked reasonable cause to lodge a caveat, it is irrelevant whether they had a reasonable cause to maintain it.

12. According to J.T. Mugambwa in his book **Principles of Land Law in Uganda** at Pg 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. Conversely, 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.

13. A caveat once lodged whether reasonably or unreasonably can only cease to have effect if withdrawn by the caveator, lapses after statutory notice or is removed by court's order. In **Boyes v. Gathure [1969] E.A 385**, it was held that

*".... a caveat is intended to serve a two –fold purpose: on the one hand, it is intended to give the caveator temporary protection, and on the other, it is intended to give notice of the nature of the claim to the person whose estate in the land is affected and to the world at large."*

14. Basing on the above authority, caveats are not meant to subsist in perpetuity. They are intended to offer temporary protection to a claimant pending proving their claims. Therefore, it will not be equitable and just to allow the Respondent to sit back and twiddle for an undetermined future to the detriment of the Applicant who has indicated a need to put the land to good use.
15. The affidavit evidence and the statement of search dated 5<sup>th</sup> October, 2022 are informing this court that the caveat on the suit land was lodged by the Respondent on 20<sup>th</sup> March, 2015. It is over 7 years since the caveat was lodged and there is no proof that for all these years the Respondent has taken any action to address the claim for which the caveat was lodged. However, a letter from the Respondent's lawyers Busingye & Co. Advocates annexed as "E" to the supporting affidavit indicates that the Respondent who could not be located has already settled his issue over the suit land with its registered owner one Kalungi Gerald and that as such, the caveat should be removed.
16. Pursuant to the foregoing, I find no intervening circumstances to bar this court from vacating the caveat which is the subject of this application. The Respondent ought to have filed a suit by now bringing forth the allegations which led to the lodging of the caveat. He has not done anything for over seven years. I hold that the caveat lapses and justice in this case requires that it be vacated to enable the Applicant or registered proprietor of the suit land deal with it as he or she pleases.






17. In summary, this application is allowed and I hereby order:  
(a) the Commissioner Land Registration to remove or vacate the caveat lodged by the Respondent on 20<sup>th</sup> March, 2015 on land comprised in Kyaggwe Block 111 Plot 738 Mawoto Mutuba IV, Mukono District;

(b) the Respondent to pay costs of this application to the Applicant.

I so rule.

This ruling is delivered this <sup>25<sup>th</sup></sup> day of <sup>Jan</sup> 2023 by



**FLORENCE NAKACHWA**  
**JUDGE.**

*In the presence of:*

*Ms. Pauline Nakavuma, the Court Clerk.*