

TANZANIA / JUDGMENT

venance francis ngula vs joy vera ngula 7 others 2023 tzhclandd 16427 20 april 2023

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20 April 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT PAR ES
SALAAM MISC. LAND CASE APPLICATION NO. 37 OF 2023 VENANCE FRANCIS
NGULA..... APPLICANT VERSUS JOY VERA
NGULA..... 1stRESPONDENT JAY VENANCE
NGULA..... 2nd RESPONDENT FRANCIS WALLI
NGULI..... 3rd RESPONDENT VERONICA NAMWAKA
NGULA..... 4th RESPONDENT MICHAEL JUMAA
NGULA..... 5th RESPONDENT NANCY VENANCE
NGULA..... 6th RESPONDENT REGISTRAR OF
TITLES..... 7th RESPONDENT ATTORNEY
GENERAL..... 8th RESPONDENT

RULING

21.03.2023& 20.04.2023 A. MSAFIRI, J This application was brought by the applicant seeking for the order of the Court to summon the 1st respondent to appear before this Court to show cause why the caveat she filed with the Registrar of Title in respect of the Applicant's Right of Occupancy on Plot No. 1970, Kibamba, Ubungo, Dar es Salaam with Certificate of Title Number 41303 LD Number 162790 (herein suit property) should not be removed. The application was made under Section 78(4) of the Land Registration Act, Cap 334 [R.E. 2019]. The applicant was praying for this i Court to make an order removing caveat registered by the Registrar of Titles in respect of suit property. Upon being satisfied that the 1st - 6th respondents were dully served with summons to appear but opted not to appear to make their defense, this Court ordered the application to proceed ex-parte against them. The application was supported by the affidavit deposed by the applicant Venance Francis Ngula. The 7th and 8th respondents also filed their joint counter affidavit in opposition of the application. The application was disposed by way of written submission whereas the applicant enjoyed the legal services of Gerald Noah learned Advocate while the 7th and 8th respondents were represented by Lilian Machange, learned State Attorney. On his submission Mr. Noah submitted that the applicant had purchased the suit property from Mr. Mtindi and his wife Binti Fatma Selemani in the year 1970, whereas that the suit property had two farms for agricultural purposes by then. He further stated that one of the

farms (which is the suit property) was registered in the applicant's name with certificate of Title 41303 LD No. 162290. Af I /n. 2 He submitted that the Government had changed the uses of the premises from agricultural to residential purposes in which the applicant opted to partition one of the farms and sell it to different bonafide purchasers between the years 2000 to 2022. That, when the said purchasers were in the process of registering their purchased plots into their individual names from the applicant, they encountered the caveat from the applicant's sons and daughters herein the 1st-6th respondents. Mr. Noah further submitted that the 1st-6th respondents entered the caveat with the Registrar of Titles (the 7th respondent) on the ground that the said suit property was matrimonial property between the Applicant and their mother who is deceased. He said further that in entering the caveat the applicant was not notified as required by law under section 78(3) of the Land Registration Act hence that the process was full of irregularity as the suit property is still in the name of the Applicant as owner of the estates. He prayed that this Court be pleased to allow the application by ordering the 7th respondent to remove the caveat as encumbrance against the applicant as the sole rightful and lawful owner of the land in dispute, /fl I 3 Mr. Noah stated that the applicant agrees that the suit premises was jointly owned by him and his late wife, but that after the demise of his wife, the surviving co-owner (the Applicant) takes all. Mr. Noah referred Section 159(4) (b) of the Land Act, Cap 113 [R.E. 2019] which provides; 159(4); Where the land is occupied jointly under a right of occupancy or lease, no occupier is entitled to any separate share in the land and, consequently-

- (b) on the death of a joint occupier, his interest shall vest in the surviving occupier or occupiers jointly. In response, the 7th and 8th respondents adopted their joint counter affidavit deposed by Pastory Clement Masua, authorised officer of the 7th respondent. Mr. Masua admitted to have registered the caveat entered by the 1st-6th respondents on the ground that the said suit property is part of matrimonial property of their deceased mother who passed away in 2014. That, another reason advanced by the 1st - 6th respondents who are the applicant's children was that their father's (Applicant) health is impaired hence they decided to enter the caveat. 4 The counsel submitted more that the 7th respondent registered the said caveat upon being satisfied with reasons advanced by the 1st-6th respondents that they have interest in the registered land as beneficiaries and that the caveat is invertible in order to protect the land hence that Section 78(3) of the Land Registration Act, was complied with. He added that the 7th respondent has no interest over the land and that he has minimum role in this application. However, the applicant is obliged to substantiate sufficient reasons to convince and prove to the Court as to whether the caveat should be removed or not for interest of justice. After a careful scrutiny of the submission of the parties herein, it appears that the issue for determination is whether the Applicant has advanced sufficient reasons to satisfy this Court to order removal of the entered caveat? According to the facts pleaded, it shows that the applicant jointly owned the suit property with his late wife as it has been admitted by the applicant. For the property owned jointly, at the death of one co-occupier the interest is vested to the surviving occupier, that is to say where the applicant is the surviving occupier of her late wife (1st-6th respondents mother) after her death, her interest on the property is vested on the 5 surviving occupier who is currently the applicant. This is

as provided under section 159 of the Land Act. It is not disputed that the 1st-6th respondents entered the caveat on the suit property claiming an interest on the said property which is registered in the name of the applicant. In the joint counter affidavit and written submission, the 7th respondent have failed to show whether he notified the applicant about the registration of the caveat as required by the law. The applicant being the owner of the estate, he had right of notification of the encumbrance as required under Section 78(3) of the Land Registration Act, which provides; - Upon receipt of any such caveat, the Registrar sha/i enter the same in the land register as an incumbrance and shall notify the same to the owner of the estate or interest thereby affected, (emphasis added). I find that the applicant being the owner of the estate and having interest on the same was not notified on the registered caveat. Furthermore, the 1st - 6th respondents have failed to establish their interest on the estate or the suit property. Such reasons suffice good 6 reasons for this Court to order removal of the caveat entered by the 1st - 6th respondents. My findings are not for reason that the 1st-6th respondents did not make their defense but because the applicant has advanced sufficient reasons for this Court to grant his prayers. I grant the application and proceed to order that the registered caveat by the Registrar of Titles in respect of the suit property be removed. No order as to the costs. It is so ordered. MJs A. MSAFIRI JUDGE
20/04/2023 7

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