

UGANDA / JUDGMENT

Dezideriyo Ssenyonjo and Another v Kasibante Joseph (Miscellaneous Cause No. 157 of 2024) [2025] UGHCLD 56 (9 May 2025) [2025] UGHCLD 56

COURT

HC: Land Division (Uganda)

BEFORE

Naluzze Aisha Batala, J

CASE / FILE NUMBER

Miscellaneous Cause No. 157 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA [LAND DIVISION] MISCELLANEOUS CAUSE NO. 157 OF 2024

- 1. DEZIDERIYO SSENYONJO (Administrator of the Estate of the Late Gwedda Maria Merida)
- 2. MIREMBE SOFI (Suing through her Lawful Attorney Kiguli Andrew
Paul: ::::::::::::::::::::::::::::::)

VERSUS

KASIBANTE JOSEPH ::::::::::::::::::::::::::::::

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA RULING.

Introduction:

1. The applicant brought this application by way of notice of Motion under Section 98 of the civil procedure Act, Section 140(1) of the Registration of Titles Act, Order 52 rule 1 and 3 of the civil procedure rules for orders that;

Hamleyey -

- i) That the caveat lodged by the respondent in 2015 on land comprised in Block 8, Plot 68 at Buwasa-Busiro Wakiso District be removed or vacated.

- ii) The registrar land registration of Wakiso Busiro Mzo be directed to register the 2nd applicant as the registered owner as per the transfer form dated 12th/01/2016 which were assessed for and paid the necessary registration fees by the 2nd applicant upon the valuation by the government valuer.
- iii) Costs of the application be provided for.

Applicant's evidence;

- 2. The application is supported by an affidavit deponed by the 1st and 2nd applicants which briefly states as follows;
- i) That the 1st applicant is the registered proprietor/administrator of the land described in Block 8 Plot 68 land at Buwasa-Busiro Wakiso District.
- ii) That the 1st applicant is the sole beneficiary to the above estate and upon acquiring the grant of the letters of administration, he was legally registered on the abovedescribed land.
- iii) That the 1st applicant later sold the said land to the 2nd applicant as a purchaser and later on signed the transfer forms in favor of the 2nd applicant.
- iv) That when the transfer forms were to be effected, the 1st applicant discovered that the respondent who had no interest whatsoever in the suit land had lodged a caveat on the suit land.
- v) That ever since the caveat was lodged it is now eight years and the respondent has never taken any steps towards the reasons why he lodged the caveat.
- vi) That 2nd applicant is in physical possession of the suit land and he has never faced any interruptions by the respondent.

Representation;

- 3. The applicants were represented by M/S Nabwire & Co. Advocates & Legal Consultants whereas there was no representation from the respondent despite being served with the application. Only the applicant filed written submissions which I have considered in the determination of the application.

Issues for determination;

- i) Whether the caveat lodged by the respondent on the suit land can be vacated?
- ii) What remedies are available to the parties.

Resolution and determination of the issues;

- 4. After perusal of the affidavit in support of this application and the submissions of counsel for the applicant, emphasis being made to the fact that the respondent did not file an affidavit in reply therefore the application and affidavit of the applicant in the case stands uncontested. *(See: Samwiri Massa Vs Rose Achen, 1978 HCB 297)*
- *5.* It is a settled principle of law that for one to lodge a caveat he or she ought to have a legal or equitable interest in the land or any other caveatable interest that he or she seeks the caveat to protect otherwise the caveat would be invalid *(See;Sentongo Produce and Coffee Farmers Limited & Another Vs Rose Nakafuma Muyisa HCMC No.690/1999)*.
- 6. The primary 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 actions and

steps to handle the controversy so as to determine the thoughts of the parties affected by the existence of the caveat.

- 7. The procedure for removal of a caveat by an order of court is available not only to the registered proprietor but also any person aggrieved by the existence of the said caveat, this can be a purchaser to whom the registered proprietor has contracted to sell the land but the sale has not yet been completed by a proper instrument of transfer duly registered.
- 8. In the instant case, counsel for the applicants submits that there exists a caveat on the suit land that has affected the interests of the applicants in the suit land and that the respondent has no any caveatable interest in the suit land.
- 9. It is the submission of counsel for the applicant that the said caveat has been on the suit land for a period of eight years without any lawful justification.
- 10. Further counsel for the applicant adduced a copy of the application for the said caveat accompanied by an affidavit deposed by the respondent to infer that there exists a caveat on the suit land.
- 11. This court will first address the question as to whether there exists a caveat on the suit land?
- 12. My perusal of the certificate of title to the suit land attached to the application indicates the 1st applicant as the registered proprietor and does not anywhere indicate that there exists a registered caveat on the said certificate of title in the names of the respondent.
- 13. The incumbrancers page to the said certificate of title is blank and does not entail any instrument registered as a caveat by the registrar of titles.

- 14. The fact that the land in dispute is registered land, the said caveat referred to by the applicants ought to have been registered on the certificate of title with an instrument number, the date when it was registered and signed off by the registrar of titles.
- 15. It is trite that a fact is said to be proved when the court is satisfied as to its truth and the general rule is that the burden of proof lies on the party who asserts affirmative of the issue or question in dispute *(See; Jovelyn Barugahare vs Attorney General, SCCA No. 28 of 1993)*
- 16. The applicant in the instant case had the evidential burden to prove that indeed there exists a caveat on the said certificate of title to the suit land either through adducing a copy of the certificate of title to the suit land with a registered caveat or a search report indicating that there is an encumbrance on the said land which is the respondent's caveat. Relying on only an application for the said caveat by the respondent is not sufficient evidence to establish that there is a caveat registered on the suit land.
- 17. I am of the view that the applicants have not discharged the burden to prove their case as to the existence of the said caveat on the suit land.
- 18. Therefore, the instant application is hereby dismissed by this court with no order as to costs.

I SO ORDER.

NALUZZE AISHA BATALA

Ag. JUDGE.

09/05/2025

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