

UGANDA / JUDGMENT

Grace Canada Katuna v Commissioner Land Registration (Miscellaneous Cause No. 26 of 2020) [2021] UGHCLD 39 (25 January 2021)

[2021] UGHCLD 39

COURT

HC: Land Division (Uganda)

BEFORE

Kazaarwe, J

CASE / FILE NUMBER

Miscellaneous Cause No. 26 of 2020

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS CAUSE NO. 26 OF 2020

5 GRACE CANADA KATUNA -----APPLICANT

VS

COMMISSIONER LAND REGISTRATION ----- RESPONDENT

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

10 RULING

The Applicant brought this application under sections 188 of the Registration of Titles Act Cap 230 (RTA) and Order 52 rules 1& 3 of the Civil Procedure Rules seeking for orders that;

- a) The Respondent substantiates reasons why he has failed to remove the 15 caveat registered under Instrument No. KCCA 00046888 on Kyadondo Block 8 Plot 421 at Rubaga.
- b) The Respondent's caveat does vacate the caveat lodged by Kayondo Mark Ssajalyabene on Kyadondo Block 8 Plot 421 at Rubaga on the 30th January 20 2018.
- c) Costs of the application be provided for.

Applicant's case

The Applicant, Grace Canada Katuna, swore an affidavit in support of this application. She averred that she is the registered proprietor of the suit land and attached a copy of the certificate of title marked, 'A'. It indicates that she was registered on the 23rd August 2013.

- 5 Sometime in January 2018, one Kayondo Mark Ssajalyabene lodged a caveat on the land. A copy of the caveat dated 24th June 2016 and the notice of the caveat dated 31st January 2016 were attached and marked, 'B' and 'C' respectively. Under the statutory declaration attached to the caveat, Mr. Kayondo states that he is a beneficiary to the estate of the late Julia Kidza, his deceased grandmother. And that the Applicant, on the
- 1 st 10 June 2006 acquired letters of administration to the deceased's estate and transferred the land into her name with the aim of disinherit the rightful beneficiaries of the deceased. The Applicant averred that the caveat was wrongly lodged since the caveator failed to specify his particular interest in the suit land.

According to the Applicant's late mother's will, the property was bequeathed to her and 15 one Celia Mbirontono together with the paternal siblings of her mother, Julia Kidza, the deceased. The Applicant subsequently paid off all the beneficiaries of the property and remained as sole owner. Annexure, 'DS', is a copy of the deed of settlement dated 15th March 2007 between the Applicant as Administrator on the one part; and Celia Mbirontono, Nakyejwe P. Kidza, Sarah Kidza, Jane Kidza, Banalya Bosco Kidza, 20 Marion Kidza, Yayeri Kidza and Semu Kidza as beneficiaries, on the other part.

The Applicant's lawyers wrote to the Registrar of titles at KCCA requesting for the removal of the said caveat. The letter dated 22nd March 2019 was attached and marked, 'D'. In reply, the Registrar of Titles, issued a notice to the caveator in the New Vision Newspaper dated 10th June 2019. A copy of the notice was attached and marked, 'E'. It

25 was the Applicant's averment that the notice was served upon the caveator to his known address.

On the 27th January 2020, the Applicant's lawyers wrote to the Respondent, annexure, 'F', to notify him that there was no order to delay the removal of the caveat was obtained by the caveator and that the caveat should be removed. By the same letter, the Respondent was notified that he would be summoned to the High Court to substantiate

5 the reasons why the caveat was still in place. Hence this application.

An affidavit of service dated 14th October 2020 indicated that the Respondent was duly service with this motion on the 12th October 2020. Proof of service was attached. When the matter came up for hearing, the Respondent was absent and no reason was advanced for his absence. This court therefore proceeded ex parte against the Respondent. Court

10 is in receipt of the Applicant's Counsel's written submissions in support of this application.

Issue

Whether the caveat lodged by the Respondent under Instrument No. KCCA 00046888 on Kyadondo Block 8 Plot 421 at Rubaga should be vacated?

15 Section 139 of the Registration of Titles Act provides for who may lodge caveats as; ^{1*}any beneficiary or other person claiming any interest in land under the Act...^{1*}

The Applicant contends that the caveator, Mr. Kayondo Mark Ssajalyabene, did not specify what interest he had in the land comprised in Kyadondo Block 8 Plot 421 at Rubaga. I have perused the caveat and statutory declaration, annexure, 'B', and I find 20 that the caveator's interest is duly specified. The caveat's opening paragraph reads;

^{1*}TAKE NOTICE THAT, I KAYONDO MARK SSAJALYABENE...claim an interest in the part of the land above mentioned^{1*}

The land referred to is Plot 421 Block 8 Kyadondo County.

Turning to the statutory declaration attached under paragraphs 1,2, 3 and 4 the caveator gives a background to the lodging of the caveat. He states that he is one of the beneficiaries to the estate of the late Julia Kidza, the former registered proprietor of the land and that the Applicant transferred the suit land into her name with the sole purpose

5 of disinheriting the caveator and other beneficiaries of their rightful share. Under paragraph 5 he states;

^{1*}That there is a pending suit No. 10 of 2015 filed against Grace Canada and unless a caveat is registered, my equitable interest and that of other beneficiaries will be defeated and the pending suit will be rendered nugatory.^{1*}

10 This court directed the Applicant to avail the copies of the pending suit referred to and what was received were pleadings to Civil Suit No. 142 of 2014 wherein the caveator is the 1st plaintiff out of five who were listed as the grand children of the late Julia Kidza. The suit was brought for revocation of letters of administration to the estate of the late Julia Kidza, against the Applicant in her capacity as Administrator of the late 15 Julia Kidza's estate. Paragraph 4(m) of the Plaint makes reference to Block 8 Plot 421

at Rubaga as property comprising the estate of the deceased.

I have made a number of observations from this application. Firstly, the Applicant has not led evidence to prove that the caveator received the summons from the Registrar of Titles to show cause why the caveat should not be removed, a requirement under section

20 140 of the Registration of Titles Act. It is upon such proof that the Registrar may make orders as he or she thinks fit. It was not sufficient to publish the notice, it had to be served upon the caveator and proof of receipt furnished to the Registrar and this court.

Secondly, this application was not brought against the caveator himself. He is a relative to the Applicant and should be known to her. If the Applicant wished for this court to consider the application for the removal of the caveat, the caveator had a right to be heard on the merits of the caveat under section 140 of the RTA.

Lastly, it is a fact that Civil Suit No.142 of 2014 is a pending suit whose subject matter is *inter alia*, Block 8 Plot 421, Rubaga and the caveator and the Applicant are parties thereto.

It is for the foregoing reasons, that I find that I am unable to grant this application and it is hereby dismissed with no order as to costs.

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Olive Kazaarwe Mukwaya

JUDGE

25th 10 January 2021

Delivered by email to KGN Advocates for the Applicant

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Prepared on 12 October 2026 · Esheria