

UGANDA / JUDGMENT

Letshego Uganda Limited v Okech & 3 Others (Miscellaneous Cause 409 of 2023) [2025] UGHCLD 7 (16 January 2025)

[2025] UGHCLD 7

COURT

HC: Land Division (Uganda)

BEFORE

Naluzze Aisha Batala, J

CASE / FILE NUMBER

Miscellaneous Cause 409 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA [LAND DIVISION] MISCELLANEOUS CAUSE NO. 409 OF 2023

LETSHEGO UGANDA LIMITED :::::::::::::::::::: APPLICANT

VERSUS

1. OKECH ABDU JUMBE
2. AUMA VICTORIA SHIFA :::::::::::::::::::: RESPONDENTS
- 3. BIRUNGI HARRIET
- 4. REGISTRAR OF TITLES

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA RULING.

Introduction:

- 1. This was an application by notice of motion brought under Section 98 of the Civil Procedure Act, Section 140 of the Registration of Titles Act, Order 52 rules 1, 2 & 3 of the Civil Procedure Rules (CPR) and Section 33 of the Judicature Act for orders that:
 - i) The Registrar of Titles be directed by this Honorable Court to vacate the caveat lodged by the 2nd Respondent

from the register of land comprised in Kyadondo Block 234 Plot 5786 land at Kirinya Wakiso District I. N. O Oketch Abdu Jumbe.

ii) Costs of the application be provided.

Background;

- 2. The Applicant and the 1st Respondent executed a loan agreement on the 22nd day of April for Ug shs 80,000,000/= where the 1st Respondent used land comprised in Kyadondo Block 234 Plot 5786 land at Kirinya, in Wakiso District. The 1st Respondent defaulted servicing his loan and the Applicant proceeded with steps to realize the security through foreclosure. However, to the Applicant's dismay, the property had since been caveated by the 2nd Respondent claiming to be a spouse of the 1st Respondent and that she did not consent to the creation of the mortgage on her matrimonial home.
- 3. The Applicant brings this application to have the said caveat vacated on grounds that the 3rd Respondent gave consent as a spouse to mortgage the said property.

Applicant's evidence;

- 4. The application is supported by an affidavit deposed by EGUMAN IVAN, a legal officer of the applicant which briefly states as follows;
- i) That the 2nd Respondent has no legal basis whatsoever for lodging the aforementioned caveat as she does not possess a caveatable interest in the property as a spouse in form of proprietary or quasi proprietary interest to which the caveat would be subject of.
- ii) That the 1st Respondent executed a loan agreement with the Applicant on the 22nd day of April 2016 wherein he was advanced a loan facility of Ug shs 80,000,000 and the 1st Respondent proceeded to hand over his title as security for the loan and a legal mortgage was created and registered thereon after which the 1st Respondent started servicing the loan but later defaulted on his monthly loan remittances up to date.
- iii) That at the time of processing the loan, the 1st Respondent presented a one Birungi Harriet, the 3rd Respondent as his wife. That whereas the said property is matrimonial, the

affidavit in proof of receiving independent advice sworn by the 3rd Respondent portrayed her consent to the mortgage.

- iv) That our attention was later drawn to a caveat dated 6th May 2019 purportedly lodged by a one Auma Victoria Shifa, the 2nd Respondent.
- v) That upon studying the caveator's reasons we found that the same is tainted with falsehoods as the said Auma Victoria Shifa had lodged the caveat claiming to be a wife to Oketch Abdu Jumbe, the registered proprietor and 1st Respondent.
- vi) That we are only aware of Ms Birungi Harriet as wife to the 1st Respondent as per the conducted due diligence prior to the loan advancement and the said 2nd Respondent made no appearance whatsoever as the 1st Respondent's wife at the time the loan was advanced.

- vii) That the spousal caveat by the 2nd Respondent is seemingly a ploy by the 1st Respondent to frustrate the foreclosure process of the mortgages property that is currently underway.
- viii) That maintaining the said caveat would be prejudicial to the institution as it would be unable to successfully

proceed with the foreclosure process in a bid to exercise its legally granted rights as a mortgagee under the Mortgage Act.

2nd respondent's evidence;

- 5. The application is responded to by affidavit in reply deposed by AUMA VICTORIA SHIFA, the 2nd respondent which briefly states as follows;
- i) That on 16th February 2003 I got married to Mr. Okech Abdu Jumbe and during the subsistence of our marriage, we acquired property comprised in Kyadondo Block 234 Plot 5786 land at Kirinya on which we have our matrimonial house.
- ii) That my husband illegally mortgaged the matrimonial land and house to the Applicant Company without my knowledge and consent reason which I caveated the land as the wife of Okech Abdul Jumbe.
- iii) That as the wife of Okech Abdu Jumbe I have a caveatable interest in the subject land on the basis that the land and house are our matrimonial home and out of the rentals thereon is where I and the children derive sustenance from

and the same should not have been mortgaged without my consent and knowledge.

- iv) That I did not know about my husband obtaining a loan from the Applicant company and mortgaging the matrimonial home, I learnt about the same in 2019 when officials of the Applicant company found me at home (the subject land of the caveat) and informed me of the mortgage upon which I caveated the land.
- v) That I know Birungi Harriet as my husband's 1st wife who he married in 2000 and their matrimonial home is in Namiganda village, Ibulanku sub county Bugweri District and not the subject land.
- vi) That the Applicant did not conduct any due diligence, had it done so, it would have established that I am the wife in possession of the subject land from whom they ought to have obtained spousal consent and not Birungi Harriet.
- vii) That the 1st Respondent should be held personally accountable for his loan obligations. The foreclosure of my matrimonial home/land is illegal having not given spousal consent before it was mortgaged to the Applicant.

viii) That vacating the caveat would leave me with no home as the mortgaged property shall be foreclosed yet the 1st Respondent can be held personally liable for his loan obligations to the Applicant company.

4th respondent's evidence;

- 6. The application was also responded to by the 4th Respondent through an affidavit in reply deponed by **SSEKABIRA MOSES**, a Registrar of tiles in the 4th Respondent's office which briefly states as follows;
- i) That the 4th Respondent registered a mortgage as an incumbrance on land comprised in Kyadondo Block 234 Plot 5786 land at Kirinya Wakiso District under instrument number WAK00082020.
- ii) That the 2nd Respondent lodged a caveat on the suit land claiming to be a spouse of the 1st Respondent and attached a marriage certificate as proof of marriage.
- iii) That the 4th Respondent in carrying out any transactions on the suit land performed its mandate on the basis or on the legality of the documents presented by the 2nd Respondent to the office of the 4th Respondent believing the same to be true

and as such were bonafide without any sinister motive to defraud.

iv) That this affidavit in reply is for intent and purposes meant to guide this Honourable Court as on the position of the register in respect of land comprised in Kyadondo Block 234 Plot 5786 land at Kirinya Wakiso District.

Representation;

7. The applicant was represented by Counsel Joseph Kyazze of M/S Magna Advocates whereas the 2nd respondent was represented by Counsel Berna Mutamba of M/S Manzi Mutamba Advocates & Solicitors.

Issues for determination;

- *i) Whether the 2nd Respondent's caveat on the suit land was validly lodged?*
- *ii) Whether the Registrar of Land can vacate the caveat lodged on the suit property?*

Resolution and determination of the issues;

8. I will proceed to resolve both issues synchronously;

- 9. Counsel for the Applicant stated in his submissions and relied on the provisions of Section 142(now section 126 of the revised laws) of the Registration of Titles Act stating that one has to have reasonable cause for lodging a caveat and this was reechoed in the case **Kataabu vs Ssimbwa and Anor (Miscellaneous Cause 121 of 2020)** where it was stated that the fact that the caveator has a caveatable interest does not in itself mean that he or she had reasonable cause to lodge the caveat.
- 10. Counsel cited a plethora of authorities to the effect that the 2nd Respondent has no caveatable interest and that she did not discharge the burden of proving that the suit property is indeed matrimonial property.
- 11. It is trite law that for a caveat to be valid, the caveator must have a caveatable interest, legal or equitable, in the land as stated in Section 139(1) (now section 123 of the revised laws) of the Registration of Titles Act, *(See; Sentongo Produce & Coffee Farmers Ltd versus Rose Nakafuma Muyiise H. C. M. A No.690 of 1999 and Hunter Investments Ltd versus Lwanyaga & Anor H. C. M. C. No.0034 of 2012.)*
- 12. The 2nd Respondent lodged the caveat as a spouse to the registered proprietor, the 1st Respondent therein on grounds

that the subject land is matrimonial property and she did not consent to it being mortgaged.

13. The Mortgage Act Specifically Section 5(now section 4 of the revised laws) is very elaborate when it comes to mortgaging matrimonial property and it states as follows; (1) Notwithstanding section 40 of the Land Act, a mortgage of a matrimonial home, including mortgage on customary land of a matrimonial home is valid if— (a)any document or form used in applying for the mortgage is signed by or there is evidence from the document that it has been assented to by the mortgagor and the spouse or spouses of the mortgagor living in that matrimonial home; (b)any document or form used to grant the mortgage is signed by or there is evidence that it has been assented to by the mortgagor and the spouse or spouses of the mortgagor living in that matrimonial home. (2) For the purposes of sub section (1)— (a) an intending mortgagee shall take reasonable steps to ascertain whether an intending mortgagor is married and whether or not the property to be mortgaged is a matrimonial home; (b) an intending mortgagor shall make full disclosure to the intending mortgagee as to his or her marital status and whether or not the property to be mortgaged

comprises the matrimonial home. (3) The mortgagee shall be deemed to have discharged the duty under subsection (2), if the mortgagee obtains a marriage certificate issued in accordance with the laws of Uganda, and in the absence of it, a statutory declaration from the spouse or spouses of the mortgagor as proof of marriage*.*

- 14. The question before this honorable Court is not to determine the legality of the mortgage but rather that of the caveat lodged by the 2nd Respondent.

- 15. A caveat is a warning not to deal with property or matter to which the caveat applies until the caveator's claim has been addressed. A caveat is protective in nature as it's a mechanism to safeguard an individual interest.
- 16. The 2nd Respondent claims interest in the subject land as a spouse and contends that the same is matrimonial property in which she resides and that the same bears rental houses from which she claims to derive substance for herself and her children and attaches a marriage certificate on her affidavit in reply.
- 17. The issue at hand is whether the Applicant conducted proper due diligence before creating the said mortgage on land that is

claimed to be matrimonial property of not the 3rd respondent but rather that of the 2nd Respondent.

- 18. The Applicant attached statutory declarations on the application deposed by the 1st and 3rd Respondents clarifying their marital status which is not in doubt. However, the 3rd Respondent gave spousal consent to mortgage property which turns out to be matrimonial property of the 2nd Respondent.
- 19. Court in **Wamono Shem V Equity Bank Limited & Anor HCMA No. 600 of 2012** noted that the duty to take reasonable steps is not satisfied by merely obtaining a statutory declaration. In other words, the Applicant had a duty to ascertain the status of the property, who the occupants are, investigate in the locality and come up with a due diligence report.
- 20. From the above, it's quite evident that the 2nd Respondent has an interest in the subject land and the same is caveatable.
- 21. Under Section 140(1) (now section 124 of the revised laws) of the Registration of Titles Act, this Court is empowered, in applications of this nature, to make such orders as it deems fit. This includes the power to an order the removal of a caveat

where the caveator fails to show cause why it ought not to be removed.

- 22. The rule of the thumb is that a caveat is not meant to give the caveator permanent protection. Court in **Boynes Versus Gather (1969) EA 383** held that 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 steps to handle the controversy, so as to determine the thoughts of the parties affected by its existence and the same position was expounded by Court in **Nakabuye**

Agnes v Martin Strokes & Anor Misc. Cause No. 38 of 2021.

- 23. In the circumstances, this Court deems it fit to maintain the caveat on the subject land as the 2nd Respondent seeks recourse to resolve the impasse.

- 24. Therefore, this Application is hereby dismissed with no orders as to costs.

I SO ORDER.

NALUZZE AISHA BATALA

Ag. JUDGE

16 th/01/2025

**Delivered Electronically via ECCMIS on the 16th day of
January, 2025**

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