

**Nakajiri v Namusoke (Misc
Cause 328 of 2023) [2023]
UGHCLD 379 (18 October 2023)**
[2023] UGHCLD 379

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- i) The Caveat lodged by the respondent on land comprised in Kyadondo Block 262 Plot 433 Land at Luwafu be vacated.
- ii) That the suit land be transferred into the names of the applicant.
- iii) Costs of the application be provided for.

Background:

2. The applicant purchased the suit land on the 3rd January 2023 from Kusambiza Wamala Bulhan, Lubega Hakim and Alice Namusoke Hambere (respondent) administrators of the estate of the Late Efrancis Mbalyowere, three months later the respondent lodged a caveat on the suit land claiming to have a beneficiary interest over the land.
- 3. The respondent denies participation in the purported sale of the suit land to the applicant and since the said land was sold to Kirungi Fred her son. That the certificate of title to the suit land was delivered to Kirungi Fred upon payment of the first installment and he took immediate possession of the suit land.
 - 4. That around December 2022, Mr. Kirungi Fred discovered that a special certificate of title had been issued to the administrators of the estate of the late Efrancis Mbalyowere namely Namusoke Alice Hambere, Kusambiza Wamala Bulhani and Lubega Hakeem and the names had been entered as the registered proprietors to the suit land.
 - 5. When the respondent discovered Kusambiza Wamala Bulhani and Lubega Hakeem's intentions of selling the suit land to another person, as a co-administrator, she was very much aware that they had earlier in 2009 sold the suit land to Kirungi Fred, she had to protect the land to avoid court action against the co-administrators and herself by lodging the caveat.
 - 6. Mr. Kirungi Fred instituted a suit against Kusambiza Wamala Bulhani and Lubega Hakeem vide civil suit No.523/2023 for declaratory orders that the suit land belongs to Mr. Kirungi Fred and that the special certificate of title issued over the same land be cancelled. Kirungi Fred further filed an application to add the respondent and the applicant in this application as co-defendants in the suit vide Miscellaneous application No.2441 of 2023.

Applicant's evidence:

- 7. The application is supported by an affidavit deposed by *Mrs. Nakajiri Sumaiyah* the applicant, which sets out the grounds of the application including the following;
- i) That by a purchase agreement dated 3rd January 2023, the applicant purchased the land comprised in Kyadondo Block 262 plot 433 at Luwafu at an agreed consideration of UGX 180,000,000 (One hundred eighty million Ugandan shillings only) from Kusambiza Wamala Bulhani, Lubega Hakeem and Alice Namusoke (respondent herein)

- ii) That before the purchase of the suit land, the applicant conducted a search over the land and found out that the administrators of the estate of the late Efrancis Mbalyowere were the registered proprietors of the same land and inquired from the family members and she was informed how the family had agreed to sell off the land.
- iii) That at the time of purchase of the suit land, there was no caveat lodged over the land by any person.
- iv) That transfer forms were executed and a certificate of title to the land was handed over to the applicant and the sellers handed over vacant possession of the suit land to the applicant.
- v) That after the submitting of the transfer forms to the land registry, the respondent lodged a caveat over the suit land.
- vi) That the respondent cannot claim any more interest in the suit land since she was part of the co-administrators that sold the land to the applicant.
- vii) That the efforts to have the suit land registered in the applicant's name have been frustrated due to the respondent's caveat over the land.

Respondent's evidence:

- 8. The application is responded to by an affidavit in reply sworn by *Mrs. ALICE NAMUSOKE HAMBERE* which states the following among others;
- i) That the respondent is a daughter of the late Mbalyowere Enfrancis who died in around the month of October, 2009.
- ii) The late Mbalyowere Enfrancis was the owner of the suit land comprised in Kyadondo Block 262 Plot 433 land at Luwafu, Makindye Division, Kampala.
- iii) That a few days after the death and burial of the late Mbalyowere Enfrancis, the family was stuck with funeral expenses to clear and on 13/10/2009, the family members and beneficiaries of the estate of the late Mbalyowere Enfrancis led by

Moses Kirigwajjo, Kusambiza Wamala Bulhani and I agreed and we sold land comprised in Kyadondo Block 262 Plot 433 land at Luwafu, Makindye Division, Kampala.

- iv) That my son Kirungi Fred purchased the suit land for a consideration of UGX 14,000,000. Mr Kirungi Fred paid UGX.2.100.000 (Two Million One Hundred Thousand Shillings only) as the first installment and the balance was paid in instalments which Moses Kirigwajjo, Kusambiza Wamala Bulhani acknowledged receipt of till payment in full. Copies of the agreement and the acknowledgments of receipt of the purchase price by the vendors and their English translations are hereto attached.
- v) That the certificate of title to the suit land was delivered to Kirungi Fred and he took immediate possession of the suit land.

- vi) That the respondent has never participated in the purported sale of land comprised in Kyadondo Block 262 Plot 433 land at Luwafu, Makindye Division, Kampala to the applicant.
- vii) That the purported signatures on both the impugned sale agreement and transfer forms are forged and that the respondent has never been involved in the said transactions, never met nor seen the applicant.
- viii) That Kusambiza Wamala Bulhani and Lubega Hakeem have on several occasions made me sign on documents telling me that the documents were to have letters of administration processed to have the certificate of title in possession of Kirungi Fred transferred in his name and I indeed signed on the documents.
- ix) That after learning of the above purported transactions from my son Kirungi Fred, I opened up a criminal case against the applicant and all the people who endorsed their signatures on the said documents at Katwe Police station vide SD REF: 74/24/07/2023
- x) That around December, 2022, Kirungi Fred approached and informed me that he had to carry out a search from the land office to find out the status of the registration details of the suit land, but discovered that a special certificate of title for the suit land had been issued to the administrators of the estate of the late Mbalyowere Enfrancis namely Namusoke Alice Hambere, Kusambiza Wamala Bulhani and Lubega Hakeem and the names had been entered as the registered proprietors of the suit land on 1 1/10/2022.
- xi) That it is on that basis that the respondent rushed to the land registration office to lodge a caveat over the suit land.

Representation:

9. The applicant was represented by Mr. Bamwite Edward and Faisal Balikurungi of M/S Bamwite & Kakumba Advocates while the respondent was represented by Mr. Julius Kinyera of M/S Tumwebaze, Kasirye & Co. Advocates. Both parties filed their affidavits and submissions which are to be considered in the determination of this application.

Issues for determination by court:

- i) Whether or not the respondent has a caveatable interest in the suit land?
- ii) Whether or not the Caveat lodged by the respondent on land comprised in Kyadondo Block 262 Plot 433 Land at Luwafu be removed?

Resolution of the issues:

10. This court is to resolve the two issues concurrently.

- 11. A caveat acts as a warning or formal notice to tell the public that there is an interest on the land or property for a particular reason. The word caveat means "beware" and lodging a caveat on land warns anyone dealing with the property that someone has a priority interest in that property.
- 12. If one has an interest in land through which registration of another dealing cannot protect that person should consider lodging a caveat to protect their interest and this is known as a caveatable interest.
- 13. There should be a genuine interest at the time of lodging the caveat and this can be a legal or equitable interest ,when a caveat is lodged it effectively prevents the registration of further dealings on the property's title until the caveat is formally withdrawn,lapses,removed by an order of court or the caveator consents to another registration that deals with the property's title*.(See;Simon Kataabu Vs Richard Ssimbwa, Misc. Cause No.121 of 2020)*
- 14. The **Registration of Titles Act cap 230 under Section 139(1)** provides that any beneficiary or other person claiming 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 other wise may lodge a caveat with the registrar forbidding the registration of any person as a 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 caveat as is required in the caveat or unless the caveator consents in writing to the registration.
- 15. It is trite law that for one to lodge a caveat he or she ought to have a legal or equitable interest in the land that he seeks the caveat to protect otherwise the caveat would be invalid (*See;Sentongo Produce and Coffee Famers Limited & another Vs Rose Nakafuma Muyisa HCMC No.690/1999)*
- 16. In the instant application, the applicant's counsel in his submissions alleges to have acquired the suit land through a purchase agreement executed between the administrators of the estate of the late Efrancis Mbalyowere where the respondent was part of the administrators as well and that she was provided with a certificate of title to the suit land. And that the respondent does not have any interest whatsoever in the suit land since the land was sold to the applicant.
- 17. The respondent' counsel submitted that the said purchase transaction was fraudulent from the onset and that the said suit land had already been sold to Kirungi Fred earlier on and the administrators of the estate of the late Enfrancis Mbalyowere acknowledged receipt of the purchase price from Mr.kirungi Fred. He further submitted that the respondent was made to sign papers by the co-administrators which she did not know under the perception that the documents are to be used to transfer the certificate of title to the suit land into the names of Kirungi Fred as the registered proprietor, something that was not true.

- 18. The respondent is a co-administrator and a beneficiary to the estate of the late Efrancis Mbalyowere, as per the evidence adduced before this honourable court.
- 19. Further the respondent seeks to stop the purported transfer of the suit land to the applicant since she is aware that the said land was sold to Mr Kirungi Fred and that there is a pending suit HCCS No.523 of 2023 instituted by Mr.kirungi Fred against the co-

administrators to the estate of the late Efrancis Mbalowere before this court that seeks to determine the rightful owner of the suit land and the cancellation of the special certificate of title. The same Fred Kirungi filed an application Miscellaneous Application No.2441 of 2023 arising from HCCS No.523 of 2023 before the same court seeking orders to add the applicant and the respondent as co-defendants to the suit.

Determination of court:

- 20. Situations where a person holds an interest in land be it equitable or legal, that particular person has room to lodge a caveat on the said land prohibiting further registrations and change of proprietorship over the land. *(See;Sentongo Produce and Coffee Famers Limited & another Vs Rose Nakafuma Muyisa,supra)*
- 21. I concur with the submissions of counsel for the respondent that the removal of the respondent's caveat lies in the determination of civil suit No.523 of 2023 before this court.
- 22. Further, The applicant moving this court to vacate the said caveat would defeat the purpose of HCCS No.523 of 2023 instituted by Mr. Kirungi Fred who is said to have purchased the same suit land and all the applications arising there in. it is my view that the balance of convenience lies in maintaining the caveat rather than removing the same.
- 23. Therefore, it is to the findings of this honorable court that the respondent holds a caveatable interest in the suit land and that the same is protected by the caveat lodged by the respondent.
- 24. Vacating the said caveat by this honourable court would not only bar the ends of justice to be met but also act as a path for validating transactions that are still under review in pending suits before courts of law.
- 25. I find that the respondent has a caveatable interest in the suit land as a beneficiary and that she had reasonable cause to lodge the caveat since the suit land was on the verge of being transferred to the applicant.
- 26. Accordingly, it is the finding of this court that the application lacks merit and it is hereby dismissed with no order as to costs of the application.

I SO ORDER.

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JUDGE**18th/10/2023**

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