

UGANDA / JUDGMENT

PostBank Uganda Ltd v Aliganyira and Another (Miscellaneous Cause 1 of 2024) [2024] UGHC 712 (12 July 2024)

[2024] UGHC 712

COURT
High Court of Uganda

BEFORE
Mugabo, J

CASE / FILE NUMBER
Miscellaneous Cause 1 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISC. CAUSE NO. 001 OF 2024

POSTBANK UGANDA LIMITED ::::::::::::::::::::::::::::::::::: APPLICANT
VERSUS

1. ALIGANYIRA FLORENCE
2. COMMISSIONER LAND REGISTRATION

BEFORE HON. MR. JUSTICE VINCENT EMMY MUGABO

RULING

This application was filed by way of notice of motion under sections 140 and 142 of the Registration of Titles Act Cap 240, section 33 of the Judicature Act, section 98 of the Civil Procedure Act, and Order 52 Rule 1, 2 & 3 of the Civil Procedure Rules S. I 71-1. The application seeks the following orders:

- a) An order directing the Commissioner Land Registration to remove and or vacate the caveat lodged by the 1st respondent in respect of the properties comprised in FRV HQT 3 Folio 20, Binanata Tank Hill, Plot 4 land at Kitumba; and FRV HQT 1070 Folio 21 Block 45 plot 48 at Top Hill, Burahya County Kabarole District.
- b) Costs of the application be provided for.

Background

The 1st respondent, being a spouse to Winyi Stephen, consented to the applicant's mortgages on properties comprised in FRV HQT 3 Folio 20, Binanata Tank Hill, Plot 4 land at Kitumba, and FRV HQT 1070 Folio 21 Block 45 plot 48 at Top Hill, Burahya County Kabarole District, in the names of Winyi Stephen for a loan facility of UGX. 83,000,000/= executed

..... RESPONDENTS

in March 2019. Winyi Stephen later defaulted, and the applicant moved to foreclose the said properties. The 1st respondent then lodged caveats on the said properties forbidding further transactions on the same, an action that has frustrated the applicant from recovering the sums of money owed to it. Efforts by the applicant to have the caveats removed by the 2nd respondent did not yield any results hence the filing of this application.

Grounds in Support of the Application

The grounds in support of the application are set out in the affidavit of Emmanuel Kyarimpa, the Senior Legal Officer of the applicant, the gist of which is that;

- a. The 1st respondent, who is a spouse to Winyi Stephen, consented to the applicant's mortgage in respect of the properties comprised in FRV HQT 3 Folio 20, Binanata Tank Hill, Plot 4 land at Kitumba; and FRV HQT 1070 Folio 21 Block 45 plot 48 at Top Hill, Burahya County Kabarole District.
- b. Upon default, the applicant moved to foreclose on the said properties amidst resistance by the 1st respondent.
- c. The applicant sold the property comprised in FRV HQT 1070 Folio 21 Block 45 plot 48 at Top Hill, Burahya County Kabarole District on the 21st of October 2021 to one Karugaba Emmy but the 1st respondent frustrated the transfer of the property by lodging a caveat on the property on 20th December 2021.
- d. The 1st respondent also filed Misc. Application No. 105 of 2021 and lodged a caveat forbidding further transaction on the land comprised in FRV HQT 3 Folio 20 Binanata Tank Hill, Plot 4, land at Kitumba.
- e. The 1st respondent went ahead and filed Misc. Application No. 15 of 2022 seeking an injunctive order restraining the applicant from selling land comprised in FRV HQT 3 Folio 20 Binanata Tank Hill, Plot 4 land at Kitumba.
- f. This honourable court granted Misc. Application No. 15 of 2022 subject to a payment of 30% of the forced sale value of the said property within 30 days by the 1st respondent in court failure of which the applicant would proceed to sell said property land.
- g. The 1st respondent failed to meet the conditions of the court and the applicant proceeded to advertise the said property for sale by action.

- h. The 1st respondent failed to prosecute Civil Suit No. 53 of 2021 against the applicant and the same was dismissed with costs.
- i. This court directed the applicant to make a formal application for removal of the caveats lodged by the 1st respondent.

The Respondents did not file a reply to the application. Service of court processes to the respondents was affected through substituted service.

Representation and hearing.

Mr. Paul Keishaari represented the applicant while the respondents were unrepresented. The 1st respondent appeared in person but did not file necessary pleadings as directed by the court. Counsel for the applicant has filed written submissions which I have considered in this ruling.

Issues for determination

Counsel for the application submitted on two issues for this court's determination, namely:

- 1. Whether the caveats lodged by the 1st respondent should be removed.
- 2. What remedies are available to the parties?

Resolving issues

Issue 1: Whether the caveats lodged by the 1st respondent should be removed.

Submission by Counsel for the Applicant on Issue 1

Counsel for the applicant submitted that for a caveat to be maintained, the caveator must demonstrate to the court that;

- *a) He or she has sufficient grounds to maintain the caveat:*
- *b) He or she has brought an ordinary action timeously against the caveatee; and*
- *c) The balance of convenience lies in maintaining the caveat rather than its removal."*

Counsel for the applicant referred this court to the case of *Rutungu Properties Limited vs. Linda Harriet Carrington & Another CACA No. 61 of 2010*

Counsel for the applicant submitted that the applicant is a registered mortgagee of the properties in issue having acquired the consent from 1st respondent as a spouse of the borrower and the registered proprietor of the properties in issue. Counsel argued that the 1st respondent had unequivocally consented to the mortgaging of the properties she caveated and therefore she had no justification as to why the caveats should be maintained.

Counsel argued that a caveat is only intended to serve as a temporary relief until that time when the caveator's substantive rights against other competing parties have been determined. Counsel argued that in the instant case, the 1st respondent had filed Civil Suit No. 53 of 2021 which was dismissed by this honourable court on the 4th day of May 2023 and therefore it was in the interest of justice that a caveat registered on 20th December 2021 in respect to land comprised in FRV HQT 1070 Folio 21 Block 45 plot 48, land at Top Hill Burahya County, Kabarole district be removed to enable the applicant to proceed with its recovery process.

As to the property comprised in FRV HQT 3 Folio 20 Binanata Tank Hill Plot 4 land at Kitumba, counsel for the applicant argued that while the 1st respondent lodged a caveat on the property, she did not file a substantive suit so that any issues of controversy concerning the property between the parties are determined.

Counsel referred this court to the case of **Boynes Vs. Gather (1967) EA 385* cited in *Rutungu Properties Ltd Vs. Linda Harriet Carrington & Harriet Kabagenyi (Supra)** where the court held that the primary objective of a caveat is to give a caveator temporary protection and once a caveat is lodged, a caveator should not relax and sit back for eternity without taking steps necessary for determination of the rights of the parties affected by its existence.

Counsel argued that the 1st respondent had lodged a caveat on the property comprised in FRV HQT 3 Folio 20 Binanata Tank Hill Plot 4 land at Kitumba on 23rd of February 2022 and had not taken steps to file a suit to determine the questions of controversy between the parties.

Counsel also argued that the balance of convenience favoured the grant of the order for removal of the caveat on the said properties because the 1st

respondent had consented to the mortgaging of the properties and even when the court granted her a temporary injunction against the sale of the properties on the condition that she would deposit 30% of the forced sale value of the properties, she did not comply with the court order.

Counsel argued that the applicant was a registered mortgagee, under the mortgage Act, and is entitled, by law, to sell the mortgaged property upon default of the registered proprietor/borrower on his loan repayment obligations unless the property is redeemed. Counsel argued that the balance of convenience was in favour of the applicant who has been frustrated to recover the money owed to it by the spouse of the 1st respondent.

Consideration by Court on Issue 1

In the case of **Rutungu Properties Limited vs. Linda Harriet Carrington & Another (supra)** court held that the respondent as a caveator "must" prove the following for his/her caveat not to be vacated; -

- *a) The Caveator has sufficient grounds to maintain the caveat:*
- *b) The Caveator has brought an ordinary action timeously against the caveatee; and*

- *c) The balance of convenience lies in maintaining the caveat rather than its removal.*"

It has been stated by Spry. J. A. at page 388 in the case of *Bayes Vs Gathure [1966] EA 385* that "a caveat is intended to serve a twofold purpose; on the one hand, it is intended to give the caveator temporary protection, on the other, it is intended to give notice of the nature of the claim to the person whose estate in the land is affected and to the world at large.* (Underlining for emphasis). As such, a caveator

should not be allowed to lodge a caveat and sit back for eternity without taking steps to establish his or her interests with finality.

In the instant case, the 1st respondent lodged caveats on December 20, 2021, in respect to the property comprised in FRV HQT 1070 Folio 21 Block 45 Plot 48, land at Top Hill, Burahya County, Kabarole District, and on February 23, 2022, in respect to the property comprised in FRV HQT 3 Folio 20, Binanata Tank Hill Plot 4, land at Kitumba.

Although the 1st respondent filed Civil Suit No. 53 of 2021 so that substantive issues between her and the applicant with respect to the property in issue could be determined, she, however, failed to prosecute the said suit, which was later dismissed. No action was taken with respect to the second caveat. More than 2 years have elapsed since the lodgement of the second caveat.

The applicant, in the affidavit in support, states that the 1st respondent gave unequivocal spousal consent to the mortgaging of the properties in issue as per Annexure D, and her spouse in whose names the properties in issue are registered defaulted on payment of the loan. As rightly argued by counsel for the applicant, the applicant bank being a registered mortgagee is entitled to recover.

Section 140(1) of the Registration of Titles Act empowers this Court to order the removal of any caveat if the caveator fails to show cause why it should not be removed, in an application of this nature.

It provides:

Upon receipt of such caveat the [Registrar](<https://ulii.org/akn/ug/act/ord/1922/22/eng%402011-09-02#defn-term-registrar>) shall notify the receipt to the person against whose application to be registered as [proprietor](<https://ulii.org/akn/ug/act/ord/1922/22/eng%402011-09-02#defn-term-proprietor>) or, as the case may be, to the [proprietor](<https://ulii.org/akn/ug/act/ord/1922/22/eng%402011-09-02#defn-term-proprietor>) against whose title to deal with the *estate or interest the caveat has been lodged; and that Applicant or [proprietor](<https://ulii.org/akn/ug/act/ord/1922/22/eng%402011-09-02#defn-term-proprietor>) or any person claiming under any transfer or other [instrument](<https://ulii.org/akn/ug/act/ord/1922/22/eng%402011-09-02#defn-term-instrument>) signed by the [proprietor](<https://ulii.org/akn/ug/act/ord/1922/22/eng%402011-09-02#defn-term-proprietor>) may, if he or she thinks fit, summon the caveator to attend before the Court to show cause why the caveat should not be removed; and the Court may, upon proof that the caveator has been summoned, make such order in the premises either ex-parte or otherwise, and as to costs as to it seems fit.*

The provisions of the said section appear to generally apply to any caveat. What this means is that the court has powers to order that any caveat, be it one lodged by a spouse, in an application of this nature, upon the caveator failing to show cause why the same should not be gotten rid of, be removed.

The 1st respondent did not respond to this application, and I don't see any cause why the caveats she lodged against the properties in issue should not be removed. She has also not taken any steps to establish her interest in finality in the properties in issue. It would be unfair if the said caveats on the said properties were to be maintained in the situation where the spouse of the 1st respondent has defaulted, and the 1st respondent has not taken any steps to redeem the said properties.

It is therefore my considered view that the applicant has satisfied the conditions for the removal of the caveat and issue 1 is answered in the affirmative.

Issue 2: What remedies are available to the parties

Counsel for the applicant submitted that this instant application is fit and proper for the grant of the order of the removal of the caveats lodged on the properties in issue. Counsel also prayed for the costs of this application.

Having answered issue 1 in the affirmative, I have no reason as to why I should not grant the orders sought by the applicant.

Resultantly, this application succeeds, and it is hereby granted with the following orders:

1. The Commissioner Land Registration is hereby ordered to remove the caveats lodged by the 1st respondent in respect of the properties comprised in FRV HQT 3 Folio 20, Binanata Tank Hill Plot 4, land at Kitumba, and FRV HQT 1070 Folio 21 Block 45 plot 48, land at Top Hill, Burahya County, Kabarole District.
2. The costs for this application shall be borne by the 1st respondent

I so order.

This ruling was made ready by 30th June 2024 before the 7th Revised Edition of the Principal Laws was published and therefore sections cited herein apply mutatis mutandis.

Dated at Fort Portal this 12th day of June 2024.

Vincent Emmy Mugabo Judge

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