

UGANDA / JUDGMENT

Saliwako v Segantebuka (Misc Cause 335 of 2023) [2023]

UGHCLD 393 (17 October 2023)

[2023] UGHCLD 393

COURT

HC: Land Division (Uganda)

BEFORE

Naluzze Aisha Batala, J

CASE / FILE NUMBER

Misc Cause 335 of 2023

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****(LAND DIVISION)****MISCELLANEOUS CAUSE NO.335 OF 2023****MARIA SALIWAKO ::::::::::::::::::::::::::::::::::: APPLICANT****VERSUS****MULUMBA SEGANTEBUKA ::::::::::::::::::::::::::::::::::: RESPONDENT****BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA RULING*****Introduction:***

- *1. Maria Saliwako* hereinafter referred to as the Applicant brought this application against *Mulumba Segantebuka* hereinafter referred to as the Respondent by way of a miscellaneous cause under the Provisions of Section 33 of the Judicature Act (Cap.13), Section 98 of the Civil Procedure Act (Cap 71), Section 140 of the Registration of Titles Act (Cap.230) and Orders 52 Rules 1 & 3 of the Civil Procedure Rules seeking for orders that;
- i) The Caveats lodged by the respondent on land comprised in Mailo Register Busiro Block 432 plots 499 and 866 at bugaboo belonging to the applicant be vacated.

ii) Costs of the application be provided for.

Background:

- 2. The applicant is a beneficiary of the estate of the late Isaak Kiwanuka Sengoba by virtue of a memorandum of understanding dated the 29th of December 2010 where she was allocated land Mailo register Busiro Block 432 plots 499 and 866 which land she has been utilizing and deriving a source of survival. The respondent lodged a caveat on the above described land on the 30th of June 2017 as the attorney for Bukirwa Specioza and Namagembe Proscovia who claimed interest in the land forbidding any registration or any change in proprietorship, mortgage or any dealings with the estate until notice of such registration is provided to him.
- 3. Further HCCS No.2026 of 2016 was instituted in court by Bukirwa Specioza and Namagembe Proscovia through the respondent against the applicant and 2 others before Hon. Justice Nyanzi Yasin, however the same was dismissed for lack of locus standi. Till date the said suit land is still caveated by the respondent.

Applicant's evidence:

- 4. The application is supported by an affidavit deponed by *Mrs. Maria Saliwako* the applicant, which sets out the grounds of the application including the following;
- i) That the applicant is a beneficiary of the estate of the late Isaak Kiwanuka Sengoba and she was allocated one hundred acres of land from land comprised in Busiro Block 432 Plot 1 at Bugaboo from the estate of the late Isaak Kiwanuka Sengoba
- ii) The applicant acquired a certificate title to the suit land after obtaining transfer instruments from the administrator of the estate of the late Isaak Kiwanuka Sengoba.
- iii) That the applicant has been utilizing the suit land and its where she derives her sustenance.
- iv) That the respondent on the 30th day of June 2017 lodged a caveat forbidding any registration or change of proprietorship or any instrument affecting the said estate or interest without notice to him.
- v) That the respondent lodged the said caveat on the basis that he was the attorney of Bukirwa Specioza and Namagembe Proscovia who had interest in the suit land.
- vi) That Bukirwa Specioza and Namagembe Proscovia through the respondent instituted a suit H. C. C. S No.2026/2016 against the applicant and 2 others for recovery of land before Hon. Justice Yasin Nyanzi however the same was dismissed for lack of locus standi.
- vii) That it is in the interests of justice the said application be granted.

Representation:

5. The applicant was represented *Mr. Segamwenge Huduson* of M/S Luzige, Lubega, Kavuma & Co. Advocates whereas the respondent was not represented despite being served with the application. The respondent did not file an affidavit in reply neither did he attend the hearing despite being served with the application and the hearing notice. There is an affidavit of service and if the respondent had any objection to this application, he would have filed an affidavit in reply to guide this court in reaching its decision therefore this matter stands unchallenged. The Applicant's evidence in the present application is largely by way of Affidavit Evidence in support of the Applicant and the submissions filed by Learned counsel that are on court record, I will refer to the relevant excerpts in the determination of this application.

Issues for determination by court:

- i) Whether or not the respondent has caveatable interest in the suit land?
- ii) Whether or not the caveats lodged by the respondent on the land comprised in Mailo Register Busiro Block 432 plots 499 and 866 at Bugabo belonging to the applicant be vacated.

Resolution of the issues:

- 6. The two issues are to be resolved concurrently by this honourable court; 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 HCCM No.690/1999*)
- 7. 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
- 8. Counsel for the applicant submitted that court is empowered in applications of this nature, to make such orders as it deems fit, this includes the power to make

an order for removal of a caveat where a party fails to show cause why a caveat should not be removed. Counsel cited the provisions of Section 140(1) of the Registration of Titles Act and **Simon Kattabu Vs Richard Simbwa HCCM NO.121 of 2020.**

- 9. Counsel for the applicant submitted that the applicant obtained the said land through a memorandum of understanding dated the 29th of December 2010 as a beneficiary. Further, counsel for the applicant submitted that a certificate of title to the said suit land was obtained by the applicant, however the same was not adduced before this honorable court.

- 10.The applicant has been utilizing the said suit land and the respondent lodged the said caveats without any caveatable interest in the suit land. Counsel for the applicant submitted that the respondent lodged the said caveats as a lawful attorney for Bukirwa Specioza and Namagembe Proscovia who hold interest in the said suit land however the respondent did not attach any instrument on his caveat to prove that indeed he was the lawful attorney of the said persons who had interest in the suit land.

Determination of court:

11.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)*

- 12.However, the Applicant must discharge the burden of proof and present a meticulous case to the satisfaction of court to discharge the legal burden that must be met on which courts usually grant the relief's sought herein.
- 13.In actions where parties tend to rely on affidavits, it should be noted that the affidavits are purely evidence and parties ought to rely on them to establish their cases to the satisfaction of court to warrant determinations in their favor. *(See:Mutembuli Yusuf V Nagwomu Moses Musamba & Anor EP Appeal No. 43 of 2016).*
- 14.The main issue for determination in this application is whether there is a reasonable cause to order for removal of the said caveat. Parties should take note that where a caveat ought to remain or to be removed by court it involves the exercise of discretion by the court hearing the application*. (See;Eng Mee Young & others Vs Letchumanan s/o Velayutham,1980 A. C page 331 by the Privy Council, judgement of Lord Diplock.)*
- *15.*Particular attention should be paid to the wording of Section 140(1) of the Registration of Titles Act cap.230 "..... *and that applicant or proprietor or any person claiming under any transfer or other instrument signed by the*

proprietor may, if he or she thinks fit, summon the caveator to attend 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 exparte or otherwise and as to costs as it seems fit" these words make it clear that a court hearing the application for removal of the caveat is very much concerned with the justice of the case. The process involves balancing of competing considerations and evaluation of evidence and the facts of each particular case until the balance conclusively shifts in one direction or the other.

- *16.*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.
- 17. There should be a distinction drawn between cases where the person who desires court to remove the caveat is the registered proprietor to the suit land and cases where the same is some other person other than the registered proprietor who claims interest in the suit land.
- 18. I will draw reference to the decision in **Eng. Mee Young & Others Vs Letchumanan s/o Velayutham**, (Supra) Judgement of Lord Diplock, where he

stated that in situations where a party who moves court for removal of a caveat over land where he is the registered proprietor, that particular person is to rely upon his registered title as prima facie evidence of his unfettered right to deal with the land as he pleases and it is for the caveator to satisfy court that there are sufficient grounds in fact and law for the caveat to remain on the said land, but in situations where a party who desires court to remove a caveat over land where he is not the registered proprietor it is incumbent on him to begin by satisfying court that there are sufficient grounds in fact and law for treating him as a person claiming such interest in the land as would, if it were established, make him aggrieved by the existence of the said caveat.

- 19. In the instant case, the applicant in her affidavit in support under Paragraph 3 states how she obtained the certificate of title to the suit land having obtained transfer documents from Francis Kaleba the Administrator of the Estate of the late Isaak Kiwanuka Sengoba, however the applicant did not attach any certificates of title nor transfer forms onto the said affidavit.
- 20. The applicant paints court with the picture that she is the registered proprietor to the suit land, all the applicant has to prove first is her registered interest in the said land before moving court to vacate the said caveat as prima facie evidence of her unfettered right to deal with the land as she may please*. (See; Rutungi*)

Properties Limited Vs Linda Harriet Carrington & Harriet Kabagenyi, by the Court of Appeal Civil appeal No.61 of 2010, Judgement of Hellen Obura, JA)

- 21. Further the applicant in her affidavit in support does not describe the said caveat, there is no instrument number to the said caveat neither the date when the same caveat was filed at the land registry leaving court with the question as whether the said caveat really exists or not.
- 22. The affidavit in support of the application deposed by the applicant does not convince this court that indeed the applicant holds interest in the suit land in which the caveat is depriving her of. The applicant ought to have adduced copies of the certificates of title and transfer instruments to prove her interest in the said land. In absence of such evidence it becomes speculative of court to hold that the Applicant has exhibited a proprietary or Quasi Proprietary interest in the subject matter land. It is my view that the applicant by the above

arguments has not demonstrated prima facie evidence of her unfettered right to deal with the land as she pleases.

- 23. This honorable court shall not commit itself in removing the caveat with the uncertainties over interests in the suit land.

24. Accordingly, it is the finding of this court that the application lacks merit and it is hereby dismissed with no order as to costs, each party shall bear its own costs.

Hamlegy -

I SO ORDER.

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NALUZZE AISHA BATALA

\$\boldsymbol{\text{J U D G E}}\$

\$17^{\rm th}/10/2023\$

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