

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)**

MISC APPLICATION NO. 0474 OF 2016

ARISING FROM MISC. CAUSE NO. 33 OF 2015

NORAH BATWAWULA NALUBWAMA:.....APPLICANT

VERSUS

- 1. NUWA KADDU**
- 2. JUDAS KITAKA :.....RESPONDENTS**
- 3. COMMISSIONER LAND REGISTRATION**

Before: HON. MR. JUSTICE HENRY I. KAWESA

RULING

The Appellant brought this application by way of Notice of Motion for orders that-

- a) The Respondents show cause why the caveats lodged on the certificate of title comprised in Kyadondo Block 82 Plot 1163 at Kungu should not be vacated.
- b) Costs of the application.

The grounds of the application contained in the Notice of Motion and supported by the affidavit of Norah Batwawula Nalubwama are that;

- i) *The Applicant is the registered proprietor of land comprised in Mengo Block 82 Plot 1163*
- ii) *The Respondents have no legal or equitable interest in the said land and wrongly caveated it.*
- iii) *Notices to show cause why the caveat should not be vacated were issued to the Respondents, but in vain.*
- iv) *It is just and fair that the caveats be removed.*

The Respondents did not defend the application though served and the matter was heard *ex parte*. The Respondent did not file an affidavit in reply.

From the pleadings above and submissions of the Applicant's Counsel, this Court is satisfied that this application should succeed for the following reasons.

1) The Respondent did not file an affidavit in reply.

It is now trite that affidavits contain evidence and what is deponed, if not controverted, becomes unchallenged evidence. The importance of affidavit evidence was considered in **Ready Agro Supplies Ltd. & Ors versus Uganda Development Bank; HCCS NO. 379/2005** (*unreported*), which was an application for leave to appear and defend.

In that case, one of the parties to wit the 3rd Applicant did not support his application with an affidavit as per O.36 r4 of the Civil Procedure Rules and Court held that his application was not supported by evidence, as an affidavit is evidence and it ought to be specific in response to answer the claim in dispute.

Similarly, in this case no affidavit was filed in answer to the Applicant's claims which by far are not denied by the Respondent. The claim is hence unchallenged.

2. The law governing caveats forbids caveators from going to sleep for ever, having issued the caveat. Once a notice to show cause is issued as per section 140(1) Registration of Titles Act, then the caveator is obliged to explain why the caveat should not be removed.

This position was considered in the case of **Boynes versus Gatheru (1969)**, followed in **Hunter Investments Ltd. versus Simon Lwanyaga; Misc. Application No. 034/2012** (*unreported*), which held that;

'one primary objective of a caveat is to give the caveator a temporary protection. Therefore it will not be equitable to allow the Respondents to sit back and 'twiddle their fingers' for an undetermined future to the detriment of the Applicant, who as the registered proprietor has indicated the need to put the land to good use.....'

It has been shown in this case that the Respondents lodged a caveat on the land in January 2008 and have since gone to sleep. To date, they have not taken any step to challenge the registered interest of the Applicant on the land.

It is therefore equitable and in the interest of justice that this Court grants the application so that the caveats lodged are vacated and the Applicant put his land to use as the registered proprietor.

For all reasons above, this application is granted with costs.

I so order.

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Henry I. Kawesa

J U D G E

06/11/2017

06/11/2017:

Mr. Hamza Muwonge for the Applicant

Parties absent.

Clerk: Irene Nalunkuuma.

Court: ruling delivered in chambers.

Before me:

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Emukor Samuel
DEPUTY REGISTRAR

06/11/17