

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISCELLANEOUS CAUSE NO.184 OF 2009
(ARISING OUT OF MISCELLANEOUS CAUSE NO.12 OF 2009)
IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW

BETWEEN

1) LIN JENG-LIANG AKA LIN JEFF (administrators of the estate of the late LEE SINGH CHIANG)

2) EDDY CHOU **APPLICANTS**

VERSUS

AG. COMMISSIONER FOR LAND ADMINISTRATION **RESPONDENT**

BEFORE: HON. JUSTICE RUBBY AWERI OPIO

RULING

This application was brought seeking the following orders:-

- (a) An order of judicial review for orders of certiorari to call and quash the decision of the Commissioner of Land Registration of refusing to remove the caveat on the land title comprised in LRV 281 Folio 10 Plot 83 Kira road.
- (b) An order of Mandamus compelling the respondent to remove the caveat on the land title of property comprised in LRV 281 Folio 10 Plot 83 Kira Road.
- (c) Costs of this application.

The application was brought under Section 37 of the Judicature Act Cap 13 and Section 2 (1) a; 6 (2) (b) (4) and 10 of the Civil Procedure (Amendment) (Judicial Review) Rules 2003. **[The new law now is the Judicature (Judicial Review) Rules, 2009].**

The application was brought under Section 37 of the Judicature Act Cap 13 and Section 2 (1) a; 6 (2) (b) (4) and 10 of the Civil Procedure (Amendment) (Judicial Review) Rules 2003. **[The new law now is the Judicature (Judicial Review) rules, 2009].**

The application was based on the following grounds:-

- (i) That the applicants are co-administrators of the estate of the late Lee Singh Chiang.
- (ii) That the Applicants are the registered proprietors of the suit land.
- (iii) That on the 1st June 2008 M/s Sarah Nyakato lodged a caveat on property comprised in LRV 281 Folio 10 Plot 83 Kira Road.
- (iv) That the Applicants' lawyers wrote to the Respondent requesting her office to remove the caveat.
- (v) That the Respondent wrote a letter dated 24th November 2008 to the Applicants' lawyers stating her reason for refusing to remove the caveat.
- (vi) That it is just and equitable that the caveat on the said land be vacated.

The application was supported by affidavit deponed by LIN JENG LIANG dated 13th March 2009.

The respondent filed an affidavit in reply in opposition to the application to vacate the caveat. The salient paragraphs are paragraphs 3-8 which run as follows:-

“3. We received a caveat by Sarah Nyakato claiming as widow of the deceased (Lee Singh Chiang) on 18/6/2008.

4. *We proceeded and registered the said caveat under instrument No.397990 of 20/6/2008. Annexed is a copy of the caveat and marriage certificate marked annexure "D" on the application.*
5. *We received a letter from the Applicants' Advocates which was dated 24/11/2008 to remove the said caveat.*
6. *The Respondent wrote to the Caveator to show cause why her caveat should not be removed from the Register after the statutory period of 60 days.*
7. *In response to paragraph 6 above, the spouse, Caveator served the Respondent with a copy of the marriage certificate.*
8. *In the course, the Respondent realized that the said caveat does not lapse could not be removed as provided for under Section 140 of RTA or Section 38 (9) of the Land Act."*

During the hearing of this application, the Applicants were represented by Mr. Semakula Muganwa Charles while the Respondent was represented by Mr. Kakerewe. The court ordered both lawyers to file written submissions.

It must be noted that the reason for lodging the said caveat was that the late Lee Singh Chiang was married to the caveator and accordingly the caveator became a beneficiary within the meaning of Section 140 and 142 of the RTA and Section 38 of the Land Act.

I have carefully perused all the pleadings of the parties and their submissions in this matter. I have noted that the issue of the caveator's relationship to the deceased Lee Singh Chiang was determined by the courts of law in the negative.

In the first instance, on 22nd November 2006 the court at Nakawa ruled and ordered that the caveator was an employee and not a married wife of the deceased Lee Singh Chiang and that the caveator be ordered to vacate the suit property. In that case Lee Singh Chiang had sued M/S Nyakato Sarah, the caveator for among other things, a permanent injunction restraining

her, her agents, servants and (or successors from continuing to stay or putting any claim, or threats against the Plaintiff's use and enjoyment of the suit property.

The summary of Sarah Nyakato's defence was that out of love and affection the late Lee gave her the suit property to act as landlady and that they cohabited together and usually slept in the same bedroom on the same bed and engaged in sexual intercourse.

The court ruled that she was an employee but not a married wife to Mr. Lee Singh Chiang, and she was ordered leave the suit property or be evicted accordingly. In her application No.196/2007 for order detaining the Respondent in civil prison for disobeying court order, the caveator never disclosed that she was married to Lee Singh Chiang.

In another ruling dated 10th December 2007, the court ruled that the caveator Nyakato Sarah was not a widow or lineal descendant of the deceased Lee Singh Chiang and that her interest in the estate of the deceased was suspect as the two had been declared not wife and Husband by the Chief Magistrate's Court at Nakawa. The above application was on the premise that Nyakato was the widow of the late Lee and she relied on a customary marriage certificate. It is important to note that the Applicant Nyakato Sarah never appealed against the said court order, although she filed a notice of appeal which was later withdrawn.

The caveator in another attempt to rely on her customary marriage certificate filed a main suit No. 18 of 2007 at Kampala claiming that she got married to the late Lee Singh Chiang under Toro customary law in April 1997 and thereafter lived as husband and wife in diverse places in Kampala till his death in December 2006. The above suit was however withdrawn by Nyakato Sarah on 12th July 2007. It was contended for the Applicant that the above suit was withdrawn upon a preliminary point of law raised by Counsel for the Applicant.

It is clear from the a foregoing that the caveator had attempted three times to inform the court about her claim of being customarily married to the late Lee Singh Chiang, but to no avail. The issue of marriage came during the time the late Lee Singh Chiang was alive and breathing. The caveator did not adduce any evidence of customary marriage. Even the time she was applying for stay of execution and order for civil detention, she never put in any evidence that she was married to Lee Singh Chiang. At that time, she stated that she was cohabiting with the late Lee Sing Chiang. That was way back in 2006. Later in 2007 she

claimed that she was customarily married to the late Lee Singh Chiang. Why could she not say so when the late was still alive? Why did she not appeal against the orders declaiming her not a widow to Lee Singh Chiang? Why did she withdraw her suit No.18 of 2007 which sought among other things orders that she was the rightful widow of the late Lee Singh Chiang? All those questions would cast a huge shadow of doubt on the caveator's locus as a widow to the late Lee Singh Chiang. In view of the above status quo it was wrong for the Respondent to refuse to vacate the caveat. The caveator's caveat to say the least was not of a beneficiary to the late Lee Singh Chiang's estate as proved by the court orders I have alluded to. Therefore Section 140 (2) of the RTA does not apply.

In the same vein, Section 38 and 39 of the Land Act does not apply because it was not proved that the property was a family property. For the above reasons, I find that the Applicants right in the suit property are being affected by the said caveat which cannot be allowed to stand. The Respondent being responsible for vacating the caveat has clearly abdicated herself of her roles and duties relying on the customary marriage certificate whose impact have already been discussed above. The application is accordingly granted. Parties should bear their own costs.

HON. JUSTICE RUBY AWERI OPIO
JUDGE
29/06/2009

30/6/2009

Mr. David Cheng for the Applicant.
Respondent absent.
Ruling read in Chambers as in open court.

HON. JUSTICE RUBY AWERI OPIO

JUDGE

30/06/2009