

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 80 OF 2008**

DANISH LAND OWNERS LTD	::::	APPLICANT
	VERSUS	
GEOFFREY KIKONYOGO	:::::	RESPONDENT

RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA

The applicant through its lawyers M/s Bitangaro & Co. Advocates brought this application under Section 140 (1) and 188 of the Registration of Titles Act, Cap. 230 and order 52 rules I and 2 of the Civil Procedure Rules, Statutory Instrument 71-1 against the respondent. The respondent through his lawyers M/s Owen Murangira & Co. Advocates filed an affidavit in reply opposing this application.

This application is seeking the following orders; that:-

- (a) The Respondent appears before the Honourable Court and show cause why his Caveat dated 30th January, 2008 registered under Instrument N0. KLA 365559 on 31st January, 2008 in respect of land comprised in Block 383, Plot 4875 should not be removed.**
- (b) Costs of this application be provided for.**

Further, this application is premised on two (2) grounds which are set out in detail in the affidavit sworn by Soren Opstrup, but briefly they are; that:-

- (i) That the caveat is unattested and null and void.**
- (ii) That the caveat was not executed in accordance with the law.**

Furthermore, this application is supported by the affidavit of Soren Opstrup, sworn on 25th August, 2008. That affidavit evidence is produced here below:-

“ **Affidavit in support of Notice of Motion**

I, Soren Opstrup of postal address c/o P.O Box 7898, Kampala do hereby solemnly swear and state as follow;

1. That I am a male adult citizen of Denmark and a director in the applicant company.
2. That the applicant is a Ugandan Company (copy of the Memorandum and Articles of Association of the applicant company are attached and marked “A”).
3. That the applicant purchased the land described as Block 383, Plot 4875 at Kajjansi measuring approximately 0.467 Hectares from its proprietor George William Katongole vide a Sale Agreement dated 15th January, 2008. (A copy of the sale Agreement is attached and Marked “B”).
4. That the Vendor surrendered to me the Duplicate Certificate of Title and transfer deed in respect of the land. (Photocopies of the title deed and transfer attached and marked “C” and “D” respectively.
5. That I am advised by my lawyer Eric Hatanga that the respondent lodged a caveat dated 30th January, 2008 which was registered by the Commissioner for Land Registration under Instrument N0. KLA 365559 on 31st January, 2008.
6. That my lawyer has shown to me a copy of the said Caveat which I attach hereto and mark “E”.
7. That I am advised by my lawyer and verily believe that the caveat was not executed in accordance with the law and is unattested.
8. That I am further advised by my lawyer and verily believe that the caveat is null and void and contrary to the law.
9. That I verily believe that the said Caveat must be removed from the Land Registry Book and there is no reasonable cause why it should not be removed.
10. That I swear this affidavit in support of an application for the respondent to show cause why the caveat should not be removed.
11. That what I stated herein is true and correct to the best of my knowledge save for the contents of paragraphs 5, 7, 8 and 9 which are true to the best of my information and belief.

.....”

The respondent opposed this application. The affidavit evidence of the respondent is shown here below:-

“ **Affidavit in Reply**

I, Geoffrey Kikonyogo of C/o P.O Box 12155 Kampala, hereby make oath and state as follows;

1. That I am a male adult Ugandan of sound mind and the respondent in this matter and swear this affidavit in that capacity.
2. That by the time the applicant purportedly purchased the land described in Block 382 plot 4875 at Kajjansi measuring approximately 0.467 Hectares from George William Katongole vide a purported Sale Agreement dated 15th January 2008, I had already acquired an interest in the said property by way of purchase. (A copy of the Sale Agreement is attached hereto and marked “A”).
3. That I am advised by my lawyers M/s Owen Murangira & Co. Advocates that the caveat I lodged on the 30th January 2008 which was registered by the Commissioner for Land Registration under Instrument N0. KLA 365559 on the 31st January 2008 was duly executed in accordance with the law and is in the circumstances valid.
4. That I am further advised by my lawyers which advice I verily believe that the caveat must not be removed from the Register Book as there is reasonable cause why it should not be removed as it protects my interests as a purchaser in the said property(copy of the caveat is hereby attached and marked “B”).
5. That I swear this affidavit in reply to Misc. Application N0.8 of 2008 to show cause why the caveat should not be removed reasons as highlighted above.
6. That what is stated herein is true and correct to the best of my knowledge save for the contents of paragraphs 3 and 4 which information and source is from my lawyer as herein above disclosed.

.....”

In his submissions, Counsel for the applicant argued that the caveat lodged by the respondent under Instrument N0.KLA 365559 of 31st January, 2008 in respect of Block 383, Plot 4875 was unattested. That it was not executed in accordance with the law.

In reply, Counsel for the respondent argued that his client's caveat is valid. That a caveat under Section 139 of the Registration of Titles Act, Cap.230 only acquired the respondent to state in the caveat, the following facts:-

- (i) Address or place in which a post office is situated.
- (ii) The name and addition of the person by whom or on whose behalf the caveator or his/her agent is registered.
- (iii) Caveator to support the caveat if required with an affidavit.

He further argued that these are the only requirements provided for under the law for a caveat to be lawful and protect the interests of the caveator and nothing more. That the respondent complied with the law in his endeavors to protect his interest in the suit land. That the caveat need not be attested by any person. That so long as the caveator complies with Section 139 of the Registration Titles Act, Cap 230, the caveat is valid. He made a prayer that this application be dismissed with costs. In reply to the said submissions, Counsel for the applicant, maintain his stand that the caveat in issue is null and void.

There are two issues to determine by this Court:-

- (a) Whether the caveat was executed by the respondent in accordance with law.
- (b) Remedies available to either party.

Counsel for the applicant insists in his arguments that the caveat in issue did not comply with the Section 147 (1) of the RTA. Counsel for the respondent stuck to his guns in this arguments that a caveat need not be attested as long as the caveator complies with Section 139 of RTA.

I have looked at the caveat, which is annexure E to the affidavit in support of the application dated 25th November 2008 and lodged by Geoffrey Kikonyogo, dated 30th January 2008, it clearly shows that it is not attested to. This position is conceded to by Counsel for the respondent.

Then what is the law? In accordance with Section 147 (1) of the RTA, any instrument Under the RTA needs to be attested. Then Section 1 (h) of the RTA, interpretation Section

defines an instrument as any document in pursuance of which any entry is made in the register.

The case of Fredrick **Zabwe vs Orient Bank and others, Supreme Court Civil Appeal NO. 4 of 2006**, it was held that an Instrument under the RTA should be attested otherwise the instrument would be invalid, null and void.

Consequent to the above, Counsel for the applicant is attacking the caveat, in his view, for non-compliance with the law. On the other part, the respondent's Counsel is considering the interests of the respondent in the suit land. That is, the affidavit in reply of the respondent simply indicates that he purchased the suit land from one Katongole, the registered proprietor. The affidavit in reply does not address the form of non-attestation of the caveat.

In conclusion, I have carefully considered the submissions of each Counsel for the parties. I have also perused the documents attached and the law referred to in their respective submissions. I am of the opinion that a caveat is an instrument within the contemplation of Section 147 RTA and in the 4th schedule to the Registration of Titles Act Cap. 230. In this schedule there is a requirement that the instrument be dated and attested. Section 20 of the RTA requires that the caveat be lodged in the form provided in the 4th schedule. That schedule provides for dating and attesting to the caveat.

Following the holdings of **Hon. B. Katureebe J.S.C in the case of FJK.**

Zabwe vs Orient Bank and 5 Others CA NO. 4/06, I hold as follows; that:-

The requirement of a date and an attestation to the signature of the caveator

“ is a matter of a substantive provision of the law, not a mere technicality If a person is to be deprived of his/her property then substantive justice requires that the law should have been followed in its entirety. To hold otherwise is to allow mere technicality to defeat justice.”

Having made the above findings, it follows that the applicant is entitled to the remedies, it is seeking in this application. In the result and for the reasons given hereinabove this application ought to succeed.

Accordingly this application is granted in the following terms and orders:-

- (a) The caveat lodged in respect of Block 383, Plot 4875 is hereby vacated for lack of conformity with Section 147(1) of the RTA and schedule 4 of the Section 20 of the same Act, Cap. 230.
- (b) The Registrar of Titles is directed to comply with the above order and effect changes in the Register Book.
- (c) As a consequential order, the Registrar of Titles shall register, entertain the applicant's application and have it registered on the suit land. This is to avoid numerous suits being filed in Court in a matter which has been litigated upon by the same parties.
- (d) The Respondent is condemned to costs for this application.

Dated at Kampala this 24th day of September, 2010

sgd
MURANGIRA JOSEPH
JUDGE