

The application which is brought under Sections 140, 142 and 188 of the Registration of Titles Act, Cap 230 and Order 52 rules 1, 2 and 3 of the Civil Procedure Rules, is supported by the affidavit of the applicant. The respondent, through his lawyers M/s Maganwa, Nanteza & Co. Advocates filed an affidavit in reply in opposition of this application.

The parties relied on their respective affidavit evidence and filed Written Submissions. The grounds of the application and the affidavit evidence of the applicant are to the effect that he is a bonafide purchaser for value of the suit land. That the respondent has no interests in the suit and that by law he cannot sustain a caveat he lodged on the land title of the suit land. On the other hand, the respondent deponed in his affidavit sworn on 15th September, 2009 that as a beneficiary of the estate of the late Merekizadeki Sepuya Mulondoozi Kajubi Ssalongo has locus to lodge a caveat on the suit lands. He also deponed in paragraph 5 of his affidavit that to-date Kato William Mpagi, Wasswa Amon Bwogi and himself have at all material times been in occupation of the said lands with their families. This is in contrast to the applicant's affidavit evidence in paragraph 4 thereof that upon payment of the entire purchaser price, he entered into occupation of the said property and instructed his attorneys to effect a transfer of the said properties into his names. However, the said averment of the respondent was not challenged by the applicant in an affidavit in rebuttal. There are also the supplementary affidavits of Kato William Kajubi sworn on 1st September 2009 and that of Bwogi Wasswa Amon sworn on 1st September 2009 in support of the respondent's case and in opposition to the application. Those affidavits are to the effect that they are in occupation of the suit land. And that they are beneficiaries to the estate that was sold to the applicant without their knowledge. These affidavits, too, were never challenged by the applicant in an affidavit in rebuttal. The law in such insistences is settled. In the case of **Samwiri Mussa vs Rose Achen; (Civil Appeal N0. 3 of 1976) 1978 HCB 297, Ntabgoba Ag. J. (as he then was), held that**

“where certain facts are sworn to in an affidavit, the burden to deny them is on the other party and if he does not they are presumed to have been accepted and the

deponent need not raise them again but there are disputed then he has to defend them.”

In the instant case the respondent raised pertinent issues in respect as to who is in occupation of the suit property:

- (i) The applicant or the respondent together with other brothers and their respective families?
- (ii) Whether the respondent is a beneficiary to the estate of the suit land or not?
- (iii) Whether by the time the applicant bought the suit land, the respondent and his brothers were in occupation of the said suit land?
- (iv) And whether Joshua Mayanja Kajubi sold the suit land to the applicant in total disregard of the interests or her rights of other beneficiaries to his deceased's father's estate?

In this regard, therefore, I would agree with counsel for the respondent that the application and reply by the respondent raise contentious matters which cannot be resolved in an application of this nature.

Further, the applicant in his submissions raised the following issues:-

1. Whether the applicant is a bonafide purchaser for value without notice?
2. Whether the respondent's caveat discloses a reasonable cause?
3. What are the remedies available to the parties?

In his submissions, Counsel for the applicant cited a number of authorities.

In resolving the above raised issues, Counsel for the applicant raised matters concerning fraud. He also cited cases that dealt with matters concerning fraud. It is my finding that the issues raised by the applicant cannot be addressed in an application of this nature to determine rights and interests related to land. In my view, there would be a necessity of calling witnesses to adduce evidence in support of their respective pleadings. The issues raised need to be proved by the parties on the balance of probabilities through adducing evidence in examination –in – chief , cross examination and re-examination in a suit that be institute through a plaint. The applicant therefore would have commenced the suit by way of a plaint which would warrant a respondent to file a formidable defence.

Consequent to the above, the caveat that was lodged by the respondent acts as an injunction order. Since the applicant is not yet registered on the title of the suit land, it would cause great injustice to the respondent and other beneficiaries of the estate in the suit land if the caveat was to be removed under this process. Annextures A1 and A3 to the affidavit of the applicant do not prove as averred in paragraph 2 of his affidavit that he bought the suit property at Shs 320,000,000/= without a look at the sale agreement between the applicant and one Joshua Mayanja Kajubi. These are such matters that could be looked at in case that would be filed in court by way of a plaint. In the result I find no merit in the application.

All in all, I dismiss the application. The applicant is to pay costs of this application to the respondent.

Dated at Kampala this 5th day of February, 2010

JOSEPH MURANGIRA
JUDGE