

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISCELLANEOUS CAUSE NO. 0043 OF 2020

THE REGISTERED TRUSTEES OF
THE DAUGHTERS OF
ST THERESE OF THE CHILD OF
JESUS (BANYATEREZA SISTERS)===== APPLICANT

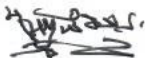
VERSUS

KABEIZI PATRICIA ::::::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE THE HON JUSTICE VINCENT WAGONA
RULING

This Application was brought under Sections 140 (1) (2) and 142 of the
Registration of Titles Act Cap. 230, Section 98 of the Civil Procedure Act and
Order 20 Rule 3A and Order 51 Rules 1 and 3 of the Civil Procedure Rules as
amended seeking orders that:

- (a) The Respondent should show cause why the caveat which she lodged on
the Applicant's land comprised in Block 94, Plot 41 and 41 land at
Burahya Kabarole District measuring 0.189 hectares should not lapse.
- (b) The Respondent's Caveat be removed from the Applicant's land.
- (c) The costs of taking out the Application be provided for.



The grounds of the Application are outlined in the Notice of Motion and particularized in the affidavit of Sr. Maria Goretti Kabakaali a Trustee and Superior General of the Applicant as follows:

5 (a) That on the 28th day of September 2019, the Applicant purchased land comprised in Block 94, Plot 42 and 41 land at Burahya, Kabarole District measuring 0.189 Hectares from Micheal Kaahwa, the Registered proprietor at a consideration of UGX 130,000,000/=.

10 (b) That following the purchase, the vendor who was the registered proprietor handed over the certificate of title in respect of the suit land together with duly signed transfer forms to enable the Applicant transfer into her names. That subsequently the Applicant applied for a transfer into her names and discovered that there was a caveat on the title lodged by Kabeizi Patricia Vide Instrument No. KBO – 00002990 dated 12th April 2019.

15 (c) That the lifespan of the caveat is 60 days and the same has since lapsed thus the caveat should be vacated to enable the Applicant transfer the title into her names. That the Respondent does not hold an interest in the suit land since she indicated in paragraph 5 of the affidavit in support of the caveat that she intended to file a suit against the vendor to recover her money. That the Respondent's caveat has since lapsed and she has not shown any
20 intention to pursue her purported interest in the suit land.

25 (d) That upon purchase, the Applicant took immediate possession of the suit land un-interrupted to-date. That the Applicant has good grounds for applying to vacate the caveat lodged by the Respondent and as such the Application has high chances of success. That it is highly prejudicial to the Applicant for the caveat to remain on the title and thus asked court to allow the Application and the orders therein.


The Application was opposed by the Respondent who indicated in her affidavit in Reply thus:

(a) That on the 6th day of September 2018, Kaahwa Micheal sold to her a plot of land measuring 100ft by 50ft on land comprised in Burahya Block 94, Plot 42 at a consideration of UGX 30,000,000/= which was fully paid. That on the 6th of September 2018, Kaahwa Micheal sold her another plot measuring 50ft by 100ft on land comprised in Plot 42 at a purchase price of UGX 18,000,000/=.

(b) That by another sales agreement dated 18th December 2018, the same Kaahwa Micheal sold to Niwagaba Augustine another plot measuring 100ft by 50ft on land comprised in Burahya Block 94, Plot 42 of land at Kasusu at a purchase price of UGX 18,000,000/=. That a sum of UGX 10,000,000/= was paid leaving a balance of UGX 8,000,000/= which was to be paid on the date the vendor was to provide the title.

(c) That Kaahwa Micheal committed himself to provide the certificate of title for Burahya Block 94, Plot 42 land at Kasusu on or before the 4th day of April 2019 for purposes of the Respondent and Niwagaba Augustine subdividing off their three plots approximately 37.5 decimals which he defaulted. That on the 28th day of September 2019 when the Applicant purported to purchase land comprised in Burahya Block 94 Plot 42, there was a pending caveat expressing her interests in the suit land and the Applicant is presumed to have had notice of the Respondent's interests in the suit land if he carried out the required due diligence prior to purchase.

(d) That the sale of the land comprised in Plot 42, Block 94 by Kaahwa Micheal and the subsequent handover of the title to the Applicant was fraudulent. That prior to the purchase by the Applicant, the Respondent and Niwagaba



Augustine had already acquired interest in the suit land. That the purported transfer of the title to the Applicant was marred with fraud and intended to defeat the Respondent's interests in the suit land since the transfer forms talk about both plots 41 and 41. That the Respondent is in possession of the land she purchased and had no knowledge of the Applicant being in possession of the title to the suit land till the Application at hand. That the caveat she lodged is still valid and she intended to file a suit against the vendor to handover the title for Plot 42 to enable her survey off her portion.

Issues:

1. Whether the Respondent has an interest in land comprised in Block 94, Plot 42 at Burahya?
2. Whether the Respondent's Caveat should be removed?
3. Remedies available to the parties

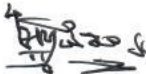
Representation:

Mr. Gerald Butebekezi Mirembe of M/s Acellam Collins & Co. Advocates represented the Applicant while Mr. Rubezi Jacob of M/s Owoyesigire, Muhereza & Co. Advocates represented the Respondent. Both parties filed written submissions which I have considered together with the pleadings.

Issue one: Whether the Respondent has an interest in land comprised in Block 94, Plot 42 at Burahya.

Applicant's submissions:

- It was submitted for the Applicant that on 28th September 2019, the Applicant bought land from the previous registered proprietor Micheal Kaahwa. That



following the purchase, the vendor handed over the certificate of title together with the transfer forms to the Applicant to effect a transfer into her names. That the Applicant later applied, only to discover that there was a caveat on the title by the Respondent lodged on the 12th day of April 2019. Counsel submitted citing the authority of **Sentongo Produce & Coffee Farmers Ltd Vs. Rose Nakafuma Thijusa HCMC 690 of 1999** that adopted the position in **Hunter Investment Ltd Vs. Simon Lwanyaga and Edith Lwanyaga Misc. Cause No. 34 of 2012** where it was held that for a caveat to be valid, the caveator must have an interest, legal or equitable to be protected. That in this case the Respondent has no interest in the suit land considering that she deponed an affidavit in support of the caveat where she indicated under paragraph 5 that she intended to file a suit against the vendor to recover her money. Counsel invited court to find that the Respondent has no interest in land comprised in Block 94, Plot 42 at Burahya.

Respondent's submissions:

In response Counsel for the Respondent argued that the Respondent clearly indicated under paragraph 3 (a) (c) & (d) of the affidavit in reply that her together with her principal Niwagaba Augustine purchased three plots forming part of land comprised in Plot 42, Block 84 at Burahya each measuring 100ft by 50ft and attached the purchase agreements to that effect. It was contended that on the basis of the said purchase, the Respondent has an interest in the suit land. That the Respondent further deposed under paragraph 3 (d) & (e) of the affidavit in reply that the registered proprietor had committed to avail them with the title by 12th April 2019 for purposes of subdividing and removing their portion pursuant to clause 5 of the purchase agreements and that when he defaulted, the Respondent lodged a caveat to protect her interests in the suit land. That in annexure C on the affidavit in support of the Application, the registered proprietor transferred both



land comprised in plots 42 and 41 to the Applicants without taking into account the Respondent's interests in the suit land and this was done fraudulently with intent to defeat the Respondent's interests in the suit land.

- 5 Counsel also submitted relying on the authority of **Alibhai & Anor. Vs. Karia & Anor. (1995-98)2 E.A 9**, where the Supreme Court of Uganda held inter-alia; that upon signing a contract of sale of interest in the land, the vendor becomes a trustee holding property for the purchaser who becomes the beneficial owner. That by virtue of the purchase agreements relied upon by the Respondents these created a
10 beneficial interest for the Respondent in the suit land. Counsel thus invited court to resolve the issue in the affirmative confirming the fact that the Respondent has an interest in the suit land.

Consideration by Court:

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- I have considered the pleadings of both parties and submissions of both Counsel. It is discernable there from that Applicant does not dispute the fact that the Respondent and Niwagaba Augustine purchased three plots out of land comprised in Plot 42, Block 94 at Burahya, Kabarole from the registered proprietor Kaahwa
20 Micheal by virtue of the agreements dated 6th/9/2018, 6th/9/2018 and 18th December 2018 each measuring 50ft by 100ft. The registered proprietor did not depone an affidavit disputing the transactions in issue and they are thus taken to be admitted. It was also contended by the Respondent that after purchase of the suit land, she assumed possession of the same and she is the one in possession. This
25 was equally not opposed by the Applicant since there is no affidavit in rejoinder.



It is now settled law that facts as adduced in affidavit evidence which are neither denied nor rebutted are presumed to be admitted. (*See Eridadi Ahimbisibwe v World Food Program & others [1998] IV KALR 32*). The Applicant never opposed these facts through filing an affidavit in rejoinder to rebut the allegations by the Respondent and thus those facts are taken to be admitted.

Therefore, in this case, since the purchase by the Respondent is not contested. The purchase created an interest in land comprised in Plot 42, Block 94 at Burahya, Kabarole. I have concluded that the Respondent has sufficiently demonstrated that she has interest in land comprised in Block 94, Plot 42 at Burahya for the purpose of this Application. I therefore resolve issue one in the affirmative confirming that the Respondent has an interest in land comprised in Plot 42 Block 94 at Burahya pursuant to the purchase agreements dated 6th/9/2018, 6th/9/2018 and 18th December 2018 respectively.

Issue two: Whether the Respondent's Caveat should be removed?

Applicant's submission:

The Applicant contended that the Respondent lodged a caveat on the 12th April 2019. It was submitted that the purpose of lodging a caveat is to protect a caveator's interest in the land. The Applicant acquired an interest in question from the registered proprietor on the 28th day of September 2019 after a period of 5 months from the time the caveat had been lodged. That Respondent has not made any effort to file a suit to protect her interests in the suit land.

Counsel submitted relying on the case of *Boynes Vs. Gatheru (1969)* which was followed in *Hunter Investments Ltd Vs. Simon Lwanga Misc. Application No.*



034 of 2012 that the primary objective of a caveat is to give to the caveator a temporary protection. That it cannot be equitable to allow the Respondent to sit back and twiddle their fingers for an undetermined future to the detriment of the Applicant who bought from the registered owner and has indicated the need to put the land in use. It was contended that per the evidence on record, the Respondent lodged a caveat in April 2019 and went to sleep. That the Respondent did not show any effort to pursue her purported interests in the suit land; that no suit has been filed by the Respondent against the registered proprietor to protect her interests in the suit land. That it is thus just and equitable that the caveat lodged by the Respondent be vacated and the Applicant's interests entered on the title.

Respondent's submissions:

It was submitted for the Respondent that by virtue of the decision of **Alibhai & Anor Vs. Karia and Anor**, the registered proprietor from whom the Applicant acquired the suit land, did not have the authority to sale the same; that this was on ground that the Respondent and Niwagaba Augustine had acquired interest therein of approximately 37.5 decimals. That the Applicant's purported purchase agreement is illegal and the Applicant seeks through this Application to validate their fraud.

Counsel further relied on the case of **Makula International vs. His Eminence Cardinal Nsubaga Wamala (1982)** at page 12 where it was held that once illegalities are brought to the attention of court, it overrides all questions of pleadings and admissions. Counsel thus asked court to declare the sale of the suit by Kaahwa Micheal to the Applicant a nullity. That the claim by the Applicant that the Respondent did not do anything from the time he lodged the caveat is self-defeating; that the Applicant's claim would have been for delivery of the title



which was not known to the Respondent to be illegally in the custody of the Applicant. It was contended that the Applicant cannot seek to rely on equity since she is not coming to court with clean hands. Counsel thus invited court to disregard the Application.

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Consideration by Court:

Removal and lapse of caveats lodged on registered land is provided for under section 140 of the Registration of the Titles Act (RTA). Section 140 (1) provides thus:

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(1) Upon the receipt of such caveat the registrar shall notify the receipt to the person against whose Application to be registered as proprietor or, as the case may be, to the proprietor against whose title to deal with the estate or interest the caveat has been lodged; 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 before the 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 ex parte or otherwise, and as to costs as to it seems fit.

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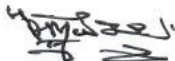
Section 140(1) of the RTA gives Court powers to order for removal of a caveat in the event that the caveator does not show sufficient cause why the same should not be vacated.

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In **Nakabuye Agnes Vs. Martin Strokes and Anor. Miscellaneous Cause No.38 of 2021** at page 4 thus, the Hon. Justice Kawesa stated that: *"Under Section 140(1) of the Registration of Titles Act, this Court is empowered, in Applications of this nature, to make such orders as it deems fit. This includes the power to*
5 *order the removal of a caveat where the caveator fails to show cause why it ought not to be removed"*. The Judge further relied on the decision in **Segirinya Gerald versus Mutebi Innocent H.C.M.A No. 081 of 2016** where it was observed thus: *"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*
10 *eternity without taking positive steps to handle the controversy, so as to determine the rights of the parties affected by its existence."*

A caveat only gives temporary protection of interest as the caveator is required to bring an ordinary action without undue delay, to
15 determine the caveator's rights as against other rights or competing interests and to obtain permanent remedy in appropriate cases. The respondent was obliged to show that as caveator, she had brought an ordinary action in time against the caveatee. (*See: Rutungo Properties Limited versus Lind Harriet Carrington Civil*
20 *Appeal No.61 of 2010*). In the case of **Lim Ah Moi v Ams Periasamy Suppiah Pillay, Civil Appeal No A-2-641-1995** which was relied on by the Court of Appeal in the **Rutungo Properties Limited Case (Supra)**, it was held that: *"It is well settled that a caveat acts as a statutory injunction which*
25 *fetters a registered proprietor from dealing with his property and exercising all the rights conferred upon him by the code. Because of its far reaching effects, it is vital that*



claims made by a caveator are enforced by action without undue delay”.

5 A caveat was not meant to offer permanent protection to the caveator. It was not envisioned under the Registration of Titles Act that a caveat should last forever. The RTA imposes a mandatory obligation upon the caveator to take active steps to pursue his or her rights or her claim over the registered land. This is intended to avoid caveats that frustrate the rights of the registered proprietor or other parties.

10 In this case, the land transactions involving or known to the Respondent were purchases on 6/9/2018 and 18/12/2018. The Respondent then lodged a caveat on the land comprised in Plot 42 Block 94 on the 12/4/2019 and this was before the sale of the suit land to the Applicant who bought on 28/9/2019. The Applicant bought the suit land on the 28th day of September 2019 five months after the caveat
15 had been lodged. If the Respondent had pursued her claim by either recovering the money from the registered proprietor or securing an order directing the registered proprietor of the suit land to surrender the title for purposes of effecting a subdivision, probably the Applicant would not have purchased the suit land. Since lodging the caveat on 12th April 2019 to-date, there is no evidence that the
20 Respondent has pursued the matter any further. This is a period of more than 3 years. After a caveat is lodged, the law expects the caveator to immediately pursue his or her claim. I find that there has been a very long and unexplained delay on the part of the Respondent in pursuing her claims in the suit-land. In the premises I find that the Respondent has failed to satisfy the court as to why her caveat on land
25 comprised in Plot 42, Block 94 at Burahya should not be removed. This Application therefore succeeds with the following Orders:



Remedies:

5 (a) An order hereby issues directing the Commissioner for Land Registration to remove the caveat that was lodged by the Respondent Kabeizi Patricia Vide Instrument No. KBO – 00002990 dated 12th April 2019 against land comprised in Block 94, Plot 41 and 41 land at Burahya Kabarole District measuring 0.189 hectares.

(b) There is no order as to costs.

10 I so order.


Vincent Wagana

High Court Judge

15 **FORT-PORTAL**

11.11.2022