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**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDENT AT KABALE**

**MISCELLANEOUS CAUSE NO. 0002 OF 2023**

**HON. KAMARA JONH NIZEYIMANA..... APPLICANT  
VERSUS**

10 **1. NIZEYIMANA MARTIN  
2. THE COMMISSIONER LAND REGISTRATION.....RESPONDENTS**

**BEFORE: HON. JUSTICE SAMUEL EMOKOR**

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**RULING**

The Applicant brings the instant application by Notice of Motion under **Section 140, 142 and 188** of the **Registration of Title's Act, Section 98 of Civil Procedure Act** and **Order 52 Rule 2 (1) of Civil Procedure Rules** seeking orders  
20 that the Respondents show cause why the caveat lodged by the 1<sup>st</sup> Respondent since June 2021 on the land comprised in Freehold Register Volume HQT1426 Folio 17 known as Block (Road) 25 Plot 6 measuring approximately 0.6970 hectares land at Gatovu Bufumbira Kisoro should not lapse/be removed/be vacated and that the Applicant be compensated for the loss and inconvenience caused by the  
25 unreasonable conduct of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and that provision be made for costs.

The grounds upon which the instant application is premised is that the Applicant is the owner of the land comprised in Freehold Register Volume HQT1426 Folio 17 and known as block (Road) 25 Plot 6 land at Gatovu Bufumbira, Kisoro having  
30 purchased the same from the registered proprietor Hamis Habomugisha and that a caveat was lodged by the 1<sup>st</sup> Respondent since June 2021 till now and the

5 Respondent has not taken any further legal steps against the Applicant. That the caveator has no caveatable interest, legal or equitable on the land and the Applicant is aggrieved by the caveat lodged by the 1<sup>st</sup> Respondent because he cannot conduct any transaction on the said land and that it is equitable and in the interest of justice that this honourable Court grants the orders prayed for.

10 The application is supported by the affidavit of the Applicant and in his averments he substantiates on the grounds laid out for this application.

The 1<sup>st</sup> Respondent filed an affidavit in opposition to the instant application and in brief avers as follows:

15 a) That paragraph 2 of the affidavit in support is denied. The averment by the Applicant therein is a mere afterthought because we both executed the said Commission agent agreement without any duress and undue influence and ever since we signed the said agreement the Applicant has only paid me UgX 4,000,000/= thereby leaving a balance of UgX 6,000,000/= upon purchasing the property in issue, the agreement of which I am a witness.

20 The Applicant never came up to challenge the Commission agent agreement till he filed the subsequent application in bad faith upon refusing to fully fulfil his contractual obligation under the agreement.

b) That paragraph 3 of the affidavit in support is denied as far as it regards the averment that I lodged the caveat on the Applicants property with malice and without any basis or merit what so ever. In reply I reiterate the contents

25 of paragraph 4 above that I have a binding contract with the Applicant, the basis of which I lodged the said caveat to protect my interest therein.

5 c) That the contents of paragraph 4 of the affidavit in reply are a deliberate falsehood and are denied in total. In response thereto, upon lodging the said caveat, I sued the Applicant in the Chief Magistrate Court of Makindye at Makindye vide claim No. 0167 of 2021 and upon effecting Court process on him, promised to settle me but in vain.

10 d) That if the order is granted setting aside my caveat, my interest in the Commission agent agreement will be soaked in water.

e) That however in the event that Court grants the application the Applicant should be ordered to pay my balance in the Commission agent agreement.

The Applicant in his affidavit in rejoinder avers that there is no Judgment nor  
15 order by any Court of competent jurisdiction affecting the property in any way to warrant lodging a caveat and that the cause of action and remedy sought in the small claim case No. 0167 of 2021 at Makindye Chief Magistrates Court does not give rise to any sufficient cause for lodging a caveat.

The Applicant was represented by Messrs Skaar Advocates while the Respondent  
20 represented himself. Both sides filed written submissions.

I have in detail studied the affidavits deponed by the parties and also perused their submissions. I don't find it necessary to reproduce the same verbatim since they are all a part of the Court record.

The Applicant's Counsel framed 3 issues for determination as follows:

- 25 i) Whether the 1<sup>st</sup> Respondent has a caveatable interest.  
ii) Whether the 1<sup>st</sup> Respondents caveat should be removed.  
iii) Remedies.

5 **Issue 1:**

Counsel for the Applicant submits that under **Section 139(1)** of the **Registration of Titles Act** for a caveat to be valid the caveator must have proprietary interest, legal or equitable in the land. Counsel also relied on the decision in **Ali Ngaruye versus Muyonga Andrew Mubiru HMC No. 0031 of 2018** in which the Court  
10 held that persons with caveatable interests are wide and include purchasers under an agreement for sale of land under certain conditions, a registered or equitable mortgagor, beneficiaries of an interest in a trust or easement, a builders' contractual right to charge the land with all monies owing and a registered proprietor who fears false transfer of ownership.

15 It is the submission of the Applicant that the Respondent does not fall anywhere close to the said categories.

*On the 2<sup>nd</sup> issue Counsel for the Applicant relies on the provisions of **Section 140(2)** of **Registration of Titles Act** that provides that;*

*except in the case of a caveat lodged by or on behalf of a beneficiary claiming under  
20 any will or settlement or by the Registrar, every caveat lodged against a proprietor shall be deemed to have lapsed upon the expiration of sixty days after notice given to the caveator that the proprietor has applied for the removal of the caveat.*

It is therefore the contention of the Applicant's Counsel that the caveat lodged by the 1<sup>st</sup> Respondent is not one covered by **Section 140(2)** of the **Registration of  
25 Titles Act** and lapsed by operation of the law after expiration of sixty days.

Counsel in reference to the small claim case No. 0167 of 2021 lodged by the respondent at Makindye Chief Magistrates Court contends that to date there is no

5 Judgment in the said case and that the same has been abandoned. Besides according to Counsel the said claim does not relate to any claims in land.

Counsel on the remedies sought submits that **Section 142** of the **Registration of Titles Act** provides that any person lodging any caveat with the Registrar either against bringing land under this Act or otherwise without reasonable cause shall  
10 be liable to make to any person who may have sustained damage by the lodging of the caveat such compensation and orders as the High Court deems just. Counsel for the Applicant therefore seeks damages and costs of this application.

The 1<sup>st</sup> Respondent in his submissions in reply (wrongly titled as rejoinder) submits that the Applicant refused to fully pay him his commission as an agent for  
15 the land purchased and even after promising to pay the same when he instituted his claim at Makindye Chief Magistrates Court vide claim No. 0167 of 2021 the same has never been paid.

The 1<sup>st</sup> Respondent therefore prays that the instant application is dismissed.

**My decision:**

20 The law governing who may lodge a caveat is provided for under **Section 139(1)** of the **Registration of Titles Act** that provides that:

*“Any beneficiary or other person claiming any estate or interest in land under the operation of this Act or in any lease or mortgage under any unregistered instrument or by devolution in law or otherwise may lodge a caveat with the Registrar in the  
25 form in the fifteen schedule to this Act...”*

5 The above provision of the law is clear that the person lodging the caveat must be a beneficiary or person claiming an estate or interest in land or any lease or mortgage or by devolution in law

The instant 1<sup>st</sup> Respondent lays no claim to land comprised in Freehold Register Volume HQT 1426 Folio 17 and known as Block (Road) 25 Plot 6 at Gatovu  
10 Bufumbira, Kisoro.

The 1<sup>st</sup> Respondent despite having no claim to the same lodged his caveat on the basis that he had not been fully paid his Commission fees by the Applicant over purchase of the same. A land broker which is what the 1<sup>st</sup> Respondent really is has no propriety claim on purchase of land over which they have brokered. Any claims  
15 that they may have over unpaid fees can be remedied by filing a formal claim before a competent body.

The 1<sup>st</sup> Respondent in this regard took his claim before the Chief Magistrates Court at Makindye and filed a small claims suit vide No. 0167 of 2021. Issues of territorial jurisdiction aside, the 1<sup>st</sup> Respondent should have done well to pursue this claim  
20 in this chosen fora.

The 1<sup>st</sup> Respondent therefore having no claim, had no basis upon which he could have lodged a caveat on the Applicant's property.

The Court in **Segirinya Gerald versu Mutebi Innocent HCMA No. 0008 of 2016** held that:

25 *“The primary objective of a caveat is to give the caveator temporary protection. It is not the intention of the law that the coveator should relax and sit back for eternity*

5     *without taking positive steps to handle the controversy so as to determine the rights of the parties affected by its existence”*

The 1<sup>st</sup> Respondent’s caveat has been subsisting for 2 years without any deliberate efforts to resolve his issues with the Applicant and this is because the 1<sup>st</sup> Respondent in the first place does not have a claim on the land in issue.

10    This Court is empowered under **Section 140(1) of Registration of Titles Act** to order for removal of a caveat where the caveator fails to show cause why it ought not to be removed.

**See also Nakabuye Agnes versus Martin Strokes and another HCMC No. 0030 of 2021.**

15    In the result issue No. 1 is answered in the negative while issue No. 2 is answered in the affirmative.

The instant application therefore succeeds with the following orders issuing:

- i) An order is issued directing the Commissioner for Land Registration to remove the caveat lodged by the 1<sup>st</sup> Respondent on land comprised in  
20     Freehold Register Volume HQT 1426 Folio 17 and known as Block (Road) 25 Plot 6 land at Gatovu Bufumbira, Kisoro.
- ii) The costs of this application are awarded to the Applicant against the 1<sup>st</sup> Respondent.

It is so ordered.

5 Before me

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**SAMUEL EMOKOR**  
**JUDGE**  
**03/10/2023**

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