

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
MISCELLANEOUS CAUSE NO. 009 OF 2021

MUSOKE ISMAEL NOOH :..... APPLICANT

VERSUS

NAMAGEMBE KASIFA :..... RESPONDENT

BEFORE: HIS LORDSHIP HONORABLE JUSTICE OYUKO ANTHONY OJOK

RULING

10 The applicant brought this application by Notice of Motion under Sections 140, 142, 145 and 188 Of the Registration of Titles Act, and Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules against the respondents.

The Applicant sought to be heard on the following orders;

1. That the Respondent appears before court and show cause why the caveat she lodged in respect to land comprised in **Butambala Block 130 plot 32 situated at Nakasozi** not be removed or lapsed.
2. The respondent's caveat be removed from the above described land.
3. The respondent pays compensation/ damages to the Applicant for lodging the aforesaid caveat without lawful or reasonable cause.
4. A consequential order to issue directing the registrar of titles to remove the caveat and effect changes in the register book.
- 20 5. Costs of the application.

The application was supported by the affidavit sworn by the Applicant and the grounds briefly are as hereunder;

1. The Applicant is the bonafide purchaser for value with no notice of any adverse interest.
2. The Respondent lodged the caveat without lawful cause since she consented to the release of the title to the Applicant.



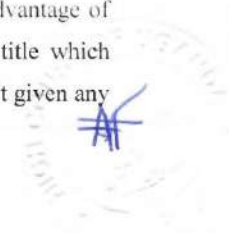
3. The existence of the caveat on the land has interfered with the applicant's right to register the title into his names and denied him access to financial facilities from his bankers, thus resulting into loss.
4. The interest of justice demand that the caveat be removed.

The application is supported by the applicant's affidavit wherein he deposed that he is the owner of land comprised in **Butambala Block 130, plot 32 land at Nakasozi** which she bought from the respondent on 9th March 2021 who had mortgaged it in the bank but failed to honor the facility agreement. That the Respondent signed an authorization letter to the bank consenting to release the land title to the Applicant together with a signed transfer form, a photocopy of her national I.D and a passport photo to enable the applicant transfer the land into her names.

That the applicant took the title to land office to have it transferred into his names only to be informed that it was caveated by the respondent on the 26th day of March 2021 vide instrument No. 477425. That the applicant had never been informed about the lodgment of the caveat by the respondent and neither has the respondent ever challenged his occupation of the land.

The respondent filed an affidavit in reply wherein she deposed inter alia that she is the registered owner of the land comprised in Butambala Block 130 plot 32 land at Nakasozi which she has never sold to the applicant. That the suit arose from a loan of UGX 16,000,000 offered to the respondent's son, Siraje Nsereko by the then Uganda Microfinance Limited which loan was secured by a mortgage registered over the respondent's land comprised in **Butambala Block 130, plot 32 land at Nakasozi vide instrument No. KLA477423** on the 15th day of November 2010. That upon Uganda Microfinance Limited being sold off to Equity bank, the mortgage was transferred to Equity bank as well.

That in February 2021, officials from Equity bank, Katwe branch approached the respondent that her title was still in the bank's possession and that she was required to pay **UGX 21,600,000** as the outstanding balance on the loan and accrued interest before her title could be released to her. That by 8th March 2021, the respondent had obtained the full sums of money demanded by the bank and started on the verification process on where to pay the same. That on the 11th day of March the respondent was approached by an official from Equity bank who took advantage of her illiteracy and old age and made her sign documents in order to release her title which documents were never explained to her as required by law. That the respondent wasn't given any



copies of the documents to seek clarity and independent advice from a person of her choice and upon consultation with her sons she was advised to lodge a caveat on the land which she did on 15th March 2021 barring any transfer on the land.

Representation;

The Applicant was represented by **M/S Katumba & Co. Advocates** and the Respondent was represented by **Kibuka Musoke & Tendo Advocates**.

Analysis of Court;

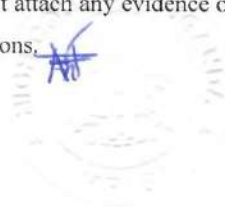
Both parties filed written submissions as directed by this Court.

10 I have carefully read and considered the submissions by both counsel, the details of which are on court record and contents of which I have taken into account in addressing the issue of whether or not the caveat lodged by the Respondent be removed.

Section 139(1) of the Registration of Titles Act as rightly cited by counsel for the applicant 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 form in the Fifteenth Schedule to this Act or as near to that as circumstances permit, forbidding the registration of any person as transferee or proprietor of and of any instrument affecting that estate or interest until after notice of the intended registration or dealing is given to the caveator, or unless the instrument is expressed to be subject to the claim of the caveator as is required in the caveat, or
20 unless the caveator consents in writing to the registration.”

For a caveat to be valid, the caveator must have a protectable interest legal or equitable to be protected by the caveat otherwise the caveat would be invalid as per the holding in **Sentongo Produce V Coffee Farmers Limited & Anor vs Rose Nakafuma Muiyisa HCMC 690/99**. Therefore, it is my finding that the respondent has a protectable interest on the land and she rightly lodged the caveat on the same.

I agree with counsel for the respondent’s argument that in as far as the applicant’s claim that the respondent sold the suit land to him, the applicant didn’t attach any evidence of a sale agreement to that effect and this court cannot act on mere speculations.



It was contended by counsel for the respondent that the respondent as an illiterate is protected by Section 3 of the Illiterate Protection Act cap 78 which the bank officials contravened when they didn't explain the contents of the documents before making her sign the same and neither did they give her an opportunity to seek independent advice on the same as required by law which was a fraudulent action. Counsel for the respondent rightly cited the case of **Makula International Ltd V His Eminence Cardinal Emmanuel Nsubuga CACA No. 4 of 1981** which is to the effect that court cannot sanction an illegality or fraud once its brought to its attention. I do agree with this submission.

10 The Respondent's counsel in his submissions stated that the Applicant raised baseless accusations that the Suitland is family land that forms part of the estate of the late Yusuf Kato that was never distributed by the respondent who is an administrator. That the above allegations weren't pleaded by the applicant in his pleadings hence the Respondent wasn't given an opportunity to respond to them.

Counsel for the Respondent argued and relied on the case of **Independent Electoral Commission and Boundaries Commission & Anor V Stephen Mutinda Mule & 3 ors [2014] KLR** that the position of the law is clear that parties are bound by their pleadings and that any evidence led by any of the parties which doesn't support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleading goes to no issue and must be disregarded.

20 The essence of this position is that parties do not introduce new facts and allegations that out of their pleadings as this will amount to a fishing expedition.

Therefore, I find that this application has no merit and cannot be maintained. Accordingly, I disallow it with costs to the Respondent. I so order.

Right of appeal explained.

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OYUKO ANTHONY OJOK
JUDGE
24/01/2022