

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISCELLANEOUS CAUSE NO. 45 OF 2014**

RWABUNYORO MUGUME DAVID.....APPLICANT

VERSUS

KALULE S. SIMON KING..... RESPONDENT

RULING

BEFORE LADY JUSTICE EVA K. LUSWATA

The applicant brought this application by Notice of Motion under the provisions of Section 140 RTA, Section 98 CPA and Order 52 rule 1 & 3 CPR seeking for orders that:-

1. The caveat lodged by the respondent on the Register Book for Bulemezi Block 134 Plot 11, land at Namakofu measuring 60.25 hectares on the 26th March 2013 under Instrument No. BUK 106911 be removed.
2. The applicant be allowed to freely transact and deal with his land free of the said encumbrance and/or claims from any person claiming under the estate of the Late Ziyadi Teefe.
3. Costs of the application be provided for.

The motion was supported by two affidavits of the applicant Rwabunyoro Mugume David and it was his case that he is the registered proprietor of Bulemezi Block 134 Plot 11 at Namakofu (hereinafter referred to as the suit land) having procured registration on 25/10/12. That prior to purchasing the suit land, he made a search at the mailo land, office at Bukalasa through his advocates, in order to ascertain the true particulars and ownership and thereby confirmed that the suit land has no encumbrances. That he also carried out physical inspection of the suit land and ascertained that the land belonged to the late Mikairi Mukasa and that it was now owned by the Administrator of his estate Kiggundu James. That later in December 2013, the applicant learnt that the respondent had lodged a caveat on the suit land with erroneous claims of protecting the interests of the estate of the Late Ziyadi Teefe. That in his caveat which was attached to this application, the respondent claims that he has powers of attorney duly granted by a one Male Ahamed and Nantumbwe Nuulu who are biological children of the Late Ziyadi Teefe. That the respondent further claims that sometime in the 1950's, Ziyadi Teefe purchased the suit land from

the late Mikairi Mukasa but there were no documents to that effect like a sale agreement. That Mikairi Mukasa died before effecting transfer and mutation forms in favour of their late father Ziyadi Teefe. Further to this, the applicant argued that the respondent and/or the family members or beneficiaries of the estate of the Late Ziyadi Teefe, do not and have never had any physical possession of the suit land.

The applicant also contended in his affidavit, that the respondent's caveat is erroneous as Ziyadi Teefe through whom the respondent claimed interest, had no interest whatsoever in the suit land. That the respondent has no legal basis whatsoever to claim any ownership of the suit land since Male Ahamad one of the donors of the Powers of Attorney passed on in 2013, and the surviving donor is not a beneficiary of Ziyadi Teefe and hence, has no claim on the suitland at all. In conclusion, that the applicant is aggrieved by the caveat of the respondent as he is unable to freely transact or deal with the suit land and it is fair, just and equitable to have caveat removed.

Despite having been served with the motion through his advocates, the respondent never opposed the application and no reasons were ever advanced for his absence from court proceedings. Therefore on this court allowed the application to proceed *ex parte* against him under **Order 9 rule 20(1) CPR**. The applicant filed written submissions to prove his claim.

Counsel for the applicant submitted that upon the death of Ahamad Male, his powers of attorney to the respondent terminated. Counsel relied on **Black's Law Dictionary 9th Edition page 1290** where it states that a power of attorney is revocable and automatically terminates upon the death of the principle. Counsel also noted that the other donor is not a beneficiary or lineal descendant of Ziyadi Teefe hence, has no interest in the suit land.

Relying on the case of **Remmy Kasule Vs Jack Sabiti & 2 Ors HCMA No.22/06**, Counsel also submitted that since the respondent choose not to file an affidavit in reply to oppose the application, the applicants application should be wholly accepted by court.

Counsel further contended that the applicant being the legal and registered proprietor of the suit land and having a certificate of title, the same is therefore conclusive evidence of the registered proprietor's ownership thereof. It can only be impeached on account of fraud in registration. That the onus of proving fraud lay on the respondent which was never done in accordance with **Sections 101, 102 and 103 Evidence Act Cap 6**. In support of this, counsel relied on the cases of **Mugerwa Muliisa Paul & Anor Vs. Twaha Kiganda HCCA No.9 of 2012**, **Justine E.M N Lutaaya Vs. Stirling Civil Engineering Company Ltd SCCA No.11 of 2002** and **Francis Kisitu Vs. Kide Hardware (U) Ltd (1998) KALR 966**.

There is indeed wealth of authorities with reference to parties who fail to respond to applications. For example, the court in **Wassa Vs. Achen [1978] HCB 297** held that, "*where facts are sworn to in an affidavit, and these are not denied or rebutted by the opposite party, the presumption is that such facts are accepted.*" The court in **Haji Abdu Nandalla Vs. General Stores HCCA No. 6/98** held to the effect that, where an affidavit in reply is not filed, it would be taken that what the

opposite party stated was correct. A similar view was taken by the Supreme Court, in **Gandeha and Anor Vs. Lutaya SCMA 14/89**. I cannot depart from such a well cemented principle, and thus find that the failure of the respondent to file an affidavit in reply is taken that, he is in agreement with the applicant's contentions and prayers.

Section 59 of the Registration of Titles Act provides that;

“No certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate, and every certificate of title issued under this Act shall be received in all courts as evidence of the particulars set forth in the certificate and of the entry of the certificate in the Register Book, and shall be conclusive evidence that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power.”

In the case of **Kampala Bottlers Ltd Vs. Damanico (U) Ltd SCCA No. 22 of 1992** Wambuzi C.J (as he then was) in considering Section 56 (now 59) held that;

“production of the certificate of title in the names of the appellant is sufficient proof of ownership of the land in question unless the case falls within the provisions of Section 184 (now 187) of the Registration Titles Act...on the wording of section 184 (now 187) it would appear that an action for recovery of land can lie or be sustained only by “a person deprived of any land” against the person registered as proprietor of such land through fraud.”

It is not in dispute that the applicant is the registered proprietor of the suit land having procured registration on 25/10/12. Prior to purchasing the suit land, he made a search at the Mailo land Office at Bukalasa through his advocate's in order to ascertain the true particulars and ownership and which search revealed that the suit land was available with no encumbrances. That a physical visit on the suit land, showed that it belonged to the late Mikairi Mukasa and that it was then owned by the administrator of his estate, Kiggundu James. Even then, the burden of proof rested on the applicant to prove on a balance of probabilities that he was the lawful owner of the suit land. The certificate of title that the applicant adduced as evidence in court which was in his names is conclusive evidence of ownership. That certificate is buttressed by a search letter issued by the land registry at Bukalasa on 30/1/14. The letter confirms that the suit land is encumbered by two caveats one of which is by the respondent.

The respondent did not put forward any evidence to support his alleged adverse claim to the applicant's proprietorship. As such, his caveat cannot be permitted to continue in existence on

the certificate of title to fetter transactions that the applicant, as the proprietor may be interested in.

This application is thereby granted and it is hereby ordered that;

1. The caveat lodged by the respondent on the Register Book for Bulemezi Block 134 Plot 11, land at Namakofu measuring 60.25 hectares on the 26th March 2013 under Instrument No. BUK 106911 be removed.
2. The applicant is awarded costs of the application.

I so order.

EVA K. LUSWATA
JUDGE
7th November 2014