

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISC. APPLICATION NO. 16 OF 2014**

DAVANTI UNION LIMITED APPLICANT

VERSUS

COMMISSIONER LAND REGISTRATION..... RESPONDENT

RULING

BEFORE LADY JUSTICE EVA K. LUSWATA

In this application Davanti Union Ltd sought orders of this court to summon the respondent to give and substantiate her grounds for;

- i) Her refusal to act on the applicant's application for removal of the caveat lodged on the register of Kyaggwe Block 107 Plot 1016 by Mr. R.L. Jain.
- ii) Her continued keeping the register of Kyaggwe Block 107 Plot 1016 at her offices at Kampala and refusal to return it to the Mukono Titles registry and thereby preventing the applicant as registered proprietor from making searches and other transactions on this land.

And subsequently for the following orders to be issued against the respondent i.e.

1. Remove the caveat lodged by the said R.L. Jain.
2. Return the register of the said land to the Mukono titles registry.

On 16/2/15, I gave my summarized ruling and orders in favour of the applicant and the following is my detailed ruling.

The grounds of the application which were enumerated in the motion briefly are that the respondent refused when so requested by the applicant as registered proprietor to remove a caveat launched on Kyaggwe Block 107 Plot 1016 (hereinafter referred as the suit land) by one R.L. Jain. Also that the respondent by removing the records in respect to the suit land from the Mukono Land Registry, she has prevented the applicant from freely dealing with her land. Also that the respondent had threatened to illegally cancel the registration of the applicant as the registered proprietor of the suit land. Lastly, the respondent had refused when requested to furnish any grounds for her actions.

The application was supported by an affidavit of Joseph Kamusiime the Managing Director of the applicant company. He gave an account that the applicant had on 21/8/13 bought the suit

property for valuable consideration from one Tonny Kipoi Nsubuga and procured registration after fulfilling all the requisites for registration. That on 19/12/13, he confirmed at the Mukono zonal Titles office that a one a Mr. R.L. Jain had lodged a caveat on the suit land. That he was then informed by Ms Ataro the Registrar, of Titles that there were issues with the applicant's certificate of title and that she was going ahead to cancel the applicant's registration.

He further stated that on 10/1/14, upon his instructions, the applicant's advocates wrote to the registrar of titles seeking information regarding the issues being raised against the certificate of title, and to request for removal of the caveat lodged by R.L. Jain. That when he followed up those two letters, the Registrar of Titles at Mukono Zonal titles office informed him that she had taken all the records and titles for the suit property to the respondent in Kampala for cancellation of the applicant's registration. That the applicant thereafter instructed her advocates who on 10/1/14 wrote to the respondent to seek written grounds for her refusal to remove the caveat and her continued custody of the registrar in respect of the suit property. Since then, the respondent did not respond to that request and the applicant has genuine fears that her registration will be illegally cancelled thereby occasioning her loss of valuable property.

Sarah Kulata Bassangwa, the respondent, filed an affidavit in reply stating that the office of titles is now digitalized and that once the digitalized copy is synchronized with a hard copy, as was the case for the title in respect of the suit land, a transaction is always affected on the digitalized copy and therefore any person who wishes to deal with land could do so without the hard copy. She further testified that she had summoned the applicant to produce her duplicate certificate of title for perusal which is her power so vested on her in law, but that the applicant had declined to do so. She concluded therefore that this was a frivolous, vexatious and misconceived application amounting to an abuse of court process and liable to be dismissed.

Both counsel furnished written submissions which this court has fully read, digested and evaluated and thereby come to the following conclusions.

None of the parties gave full details of the caveat lodged on the suit land by Mr. R.L. Jain (hereinafter called the caveator) and it is assumed by this court that it is one that could have been lodged under S.139 RTA. It was never in contention that the respondent has certain powers in respect to the registration of land and caveats and also the management of the Register Book of land and all its contents. The contention of the applicant is that the respondent refused when formerly requested, to remove a caveat or to surrender the register of the suit land back to the Mukono Titles Registry where it should be formerly retained for transactions to continue and for

its perusal by the registered proprietor and other members of the public. There is also fear that the respondent intended to cancel the applicant's registration illegally.

I do agree with the submissions of counsel for the applicant that the respondent was obliged under S.140 910 & (2) RTA to receive and act upon the applicant's application to remove the caveat by issuing a notice to the caveator. She could only refrain from doing so with good reason and even then, communicate her reasons formerly in writing to the applicant or if she deems it necessary, proceed under S.165 RTA. Annexure "J" to Kamusiime's affidavit is proof that the application for removal of the caveat was made and received by the respondent on 14/1/14. There was no response or action taken on it by the respondent. And in my estimation there has been no specific reply to that accusation by the respondent.

I also note that there was no specific reply to the allegation that the Registrar at Mukono had in response to an inquiry by Kamusiime advised the latter that the register and certificate of title with respect to the suit land had been transmitted to Kampala for cancellation. Indeed Annex. "K" to Kamusiime's affidavit which was received by the office of the respondent on 24/2/14, indicated that it was addressed to her office in Kampala and only copied to the Registrar of Titles in Mukono. Therein the applicant sought formal and written grounds of the respondent's refusal to remove the caveat and her continued custody of the register in Kampala instead of Mukono. Again I see no response to those two communications. Counsel for the respondent argued that the respondent chose not to respond or act upon the application to remove the caveat as it would have been superfluous to entertain any other dealings in the suit land which was by then, the subject of a court order of this court. She also argued that Annex. "A" to the respondent's affidavit was a summons under S.165 RTA calling for the duplicate certificate of title for routine inspection and perusal which is in the powers of the respondent. That the applicant refused to honour those summons and instead filed this application.

I am aware that on 26/6/14, this court did issue a temporary injunction against the respondent. With due respect, my order specifically restricted the respondent from cancelling the proprietorship of the applicant until final disposal of this substantive application. Such order was not envisaged to curtail those actions that would benefit or had been specifically requested for by the applicant himself as the registered owner.

Again I do agree with counsel for the applicant that the Registrar Book envisaged by the RTA constitutes a certificate of title in one of the forms in the third schedule as required as by S.38 (1) and S.38 (3) RTA. This court takes judicial notice of progressive developments in the land registry whereby the register and titles are now being digitalized and therefore accessible to the

public through electronic means. This would support the respondent's argument that, under Section 37(2) (a) RTA the Registrar may keep the Register book or any part of it, as she may consider appropriate. That notwithstanding, I believe this process is still ongoing and cannot be said to have completely overtaken the previous manual procedures. There may even be a requirement to amend the law to accommodate these relatively modern procedures.

That being so, I do agree with counsel for the applicant that anybody wishing to transact in the land would still need to rely on the manual procedures of registration by the Registrar entering the memorial on the folio of the Register Book i.e. on the original/white page and the duplicate certificate of title as envisaged under S.46 (2) RTA. Further, although currently, a search may be achieved electronically, the court takes judicial notice that currently, such search letters being issued by the office of the Registrar of Titles contain a waiver by the Registrar of the accuracy of its contents. Therefore, any prudent person may still need to carry out a physical inspection of the register book and where necessary, taking certified copies of the Certificate of Title or any other instrument under S.201 (2) RTA. Certified copies can only be made out of originals, the latter which are always retained by the office of the Registrar of Titles.

It is also a point of judicial notice that for administrative purposes, the office of the respondent, created zonal offices at which registered land falling within certain jurisdictions would be kept. The proper office for the suit land would be the Mukono Titles Zonal office. It could only be transferred and kept in Kampala upon authorization of the respondent (e.g. as in this case where a complaint was allegedly raised or an inquiry was being made by the respondent herself). However, in all circumstances, it has to be with sound legal reasons which if so requested, have to be communicated to the registered proprietor as the primary beneficiary of that part of the Register Book and particular folio. No such reasons were formerly communicated to the applicant even after she made a formal request to that effect.

The contention by the respondent that Annex "A" to her affidavit amounts to a summons under S.165 RTA is rejected. Firstly, as I have, already found, the respondent had by the time she allegedly wrote Annex. "A" failed in her duty to issue a notice for removal of caveat. Secondly, the powers of the respondent under S.165 RTA must be exercised by issuing a summons in the form provided in the 20th schedule to the RTA. Such summons should *inter alia* contain the time and place at which the addressee is to surrender the certificate and of title and also, mention the source and content of the complaint. Annex. "A" did not take the form of such summons but more important, there is no evidence that the summons were even served or received by the applicant so as to afford her notice of their existence. In fact, in my view, Annex. "A" may just have been an afterthought by the respondent since as counsel for the applicant rightly argues;

there was no mention of it even after her office subsequently received subsequent correspondence from the applicant's lawyers regarding the suit land.

The above notwithstanding, there was no concrete proof produced by the applicant that the respondent intended to cancel her registration as proprietor of the suit land. However, as her counsel points out, this accusation was not specifically controverted and in my estimation, the conduct of the respondent both at the Mukono and Kampala offices is such that would lead any right thinking person of society that the respondent's intention was to cancel the registration of the applicant. I am inclined to think as much because of the uncontroverted evidence that the Registrar at Mukono communicated to Mr. Kamusiime the fact of the intended cancellation because she had issues with the applicant's registration and had transmitted the certificate of title to Kampala for cancellation. Secondly, both Registrars failed when requested to substantiate on the nature of the co-alleged complaints and the respondent instead, purportedly issued Annex. "A" which did not name any complainant or the basis of the complaint.

I am therefore inclined on a balance of probabilities to believe the account of the applicant to hold that the respondent failed to exercise her powers under the law on the formal requests of the applicant with respect to the caveat on the suit land. There is a danger that she is holding onto the register and certificate of title with respect to the suit land with intention of its cancellation without first having followed due process as provided for in both the RTA and Land Act. She failed to substantiate her reasons and in my estimation, she has in her affidavit in reply, failed to give reason for her failing to act as prescribed by law. Thus, she must be restrained otherwise the applicant may stand to lose valuable property without being heard.

The applicant sought an order to cancel the caveat of R.L. Jain. In my view, such an order would be legally erroneous because Sections 140 (1) and (2) RTA did not envisage such an order being made *ex parte*. It would mean that the caveator is being condemned unheard on his/her complaints for which he/she lodged the caveat in the first place. Indeed, the applicant had in her previous interactions with the respondent, sought only for a notice to be issued against R.L. Jain of their intention to remove the caveat and not removal of the caveat outright.

I had in my summarized order allowed removal of the caveat but as I have explained, this is not tenable in law since the caveator has a right to be heard before a caveat is removed and, should he/she fail so to remove court, it will then be lapsed by the respondent. Thus, relying on the inherent powers vested in this Court under Section 98 of the Civil Procedure Act, in order to

meet the ends of justice and to prevent abuse of court process, I allow the application and issue the following orders;

1. The respondent is directed to remove the caveat lodged on Kyaggwe Block 107 Plot 1016 by R. L. Jain with immediate effect.
2. The respondent is directed to return the register of the suit land to Mukono Titles registry within seven days of this order after removing the caveat.
3. A permanent injunction is issued to restrain the Registrar of Titles from cancelling registration of the applicant from the certificate of Titles, in respect of Kyaggwe Block 107 Plot 1016 until after she has followed and fulfilled the procedures laid down in both the RTA and Land Act.

There was no order sought for costs and as such, I order that each party meets their costs with respect to this application.

I so order.

EVA K. LUSWATA
JUDGE
20 February 2015