

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISC. CAUSE NO. 048 OF 2016**

LWANYAGA FRANK APPLICANT

VERSUS

JOHN B. LUBEGGA RESPONDENT

RULING

BEFORE HON. LADY JUSTICE EVA K. LUSWATA

The applicant brought this application by Notice of Motion under the provisions of Section 140(3) and Section 188 RTA as well as Section 98 CPA Order 52 rules 1, 2 & 3 CPR seeking for orders that:-

1. The commissioner for Land Registration/The Registrar of Titles (hereinafter referred to as the Commissioner) be delayed from registering and effecting the respondent's application for removal of the applicant's caveat on Kibuga Block 12 Plot 385 Kisenyi (hereinafter referred to as the suit land).
2. Extending the lifetime of the applicant's caveat on the above land lodged on 18/12/14 under Instrument No. KCC-0013029.
3. Costs of the application be provided for.

The grounds for the motion are briefly that the applicant entered into an agreement to purchase the suit land and had made substantial payments towards the purchase price. It was for that reason that he lodged the caveat as purchaser and the respondent had applied to the Commissioner for its removal.

The application is supported by the applicant's affidavit in which the above grounds were expounded. He went on to depose and attach evidence that the sale agreement in respect of the suit land was executed on 25/8/14 for a purchase price of Shs.800,000/- of which Shs.520,000.000/- was paid. That the respondent and his son Daniel Mulindwa had also lodged a caveat on the suit land vide Instrument No.00012117 of 21/11/14. The respondent had in addition filed a suit against the applicant as Civil Suit No.183/15 challenging the sale for fraud

and seeking an order for the removal of the applicant's caveat. Annexure "N" to the applicant's affidavit indicated that a notice under Section 140(2) RTA had been issued to both the applicant and respondent for their respective caveats.

In reply to the application, the respondent deposed an affidavit in which he strongly denied selling the suit land to the applicant or authorizing him to deal in it because it is land from which him and his family derive sustenance. He admitted moving the Commissioner to lift the two caveats off the land and filing a suit against the applicant. He denied receiving any initial or subsequent payments from the applicant for the purchase of the suit land and stated that his two children Nakanwagi and Matovu who purported to have witnessed the agreement of sale, did not have his authority to deal in the suit land. Attached to his affidavit were several correspondence and a caption from a media report in which he decried fraudulent attempts by members of his family to sell his properties and resolutions of his other family members denouncing dealings in his property. In rejoinder, the applicant emphasized the payments already paid towards purchase of the suit land and the fact that all documentation leading to and after the sale were by the respondent in person.

The caveat which is the basis of this application was lodged under S.139 (1) RTA which provides as follows:-

"Any beneficiary or other person claiming any estate or interest in land under the of this Act...or otherwise, may lodge a caveat with the registrar ... 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 unless the caveator consents in writing to the registration."
(Emphasis mine).

My understanding of the above section is that only one with an estate or interest in land may be permitted to lodge a caveat. According to Justice Byamugisha (as she then was) in **Edward Mulindwa Vs Sarah Kalanda HCMC 763/96** the section also requires the caveator to disclose the nature of his interest in the land. In the same case, Justice Byamugisha quoted a caption in the authority of **Bayes Vs Gathure [1966] EA 385** in which Spry. J.A. at page 388 held that;

“a caveat is intended to serve a twofold purpose; on the one hand, it is intended to give the caveator temporary protection, on the other, it is intended to give notice of the nature of the claim to the person whose estate in the land is affected and to the world at large. Unless the nature of the claim is disclosed neither the caveatee nor any other person with an interest in the land knows whether or not to object to the caveat.” Therefore before a caveat can be lodged, and accepted against any property by the Registrar, a claim to an interest in the property must exist. The right in question must be in contemplation of law and must be such that it creates a legal or equitable estate or interest in the land and any notice of something though relating to land which falls short of an estate or interest is insufficient” (Emphasis mine)

According to the applicant, his interest in the suit land is one of a purchaser and this is clearly so stated in the sale agreement that he attached to his affidavit. The respondent strongly contents the sale stating that he has never dealt in the land with the applicant or any other person for that matter and that no other person was ever authorized to deal in it on his behalf. The strength of his protestations is exemplified in the suit he filed in this court against the applicant.

I am at this point in the proceedings not mandated to determine the merits of each claim. All that is required of the applicant is to show that before lodging the caveat, he disclosed an interest in the suit land recognized in law. In my view, one who has presented *prima facie* evidence of purchase of land would qualify as one with interest for which he is entitled to temporary protection. Such evidence has come in the face of an agreement of sale purportedly signed between the parties on 25/8/14 before no less than six witnesses, two of whom are advocates of this court. There is in addition evidence that payments of up to Shs.520,000,000/- were made to the respondent after execution of the sale agreement, again, before several witnesses. Indeed, the applicant will still be expected to prove the existence and legality of that agreement and the *bonafides* of the purported sale in general. This can be achieved in the suit now pending determination between these same two parties.

However, for now, I am satisfied that there is *prima facie* evidence before this court in the form of a sale agreement and payments towards purchase of the suit land by the applicant. That is sufficient for purposes of this application to afford him temporary protection of his unregistered interest in the suit land so as to extend the life of his caveat thereon.

This application accordingly succeeds I thereby issue an order directed at the Commissioner Land Registration, to delay the registration and giving effect to the respondent's application for removal of the applicant's caveat on land comprising Kibuga Block 12 Plot 385 Kisenyi. I further order that the lifetime of the applicant's caveat on the suit land be extended until the final determination of Civil suit No.183/15 or other specific orders of this Court ending the lifetime of the caveat.

I further order that each party shall bear their costs of the application.

I so order.

Signed

EVA K. LUSWATA
JUDGE
27/1/2016