

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**MISCELLANEOUS APPLICATION NO. 365 OF 2021**  
**(ARISING FROM CIVIL SUIT NO. 948 OF 2017)**

**MEERA INVESTMENTS LIMITED :::::::::::::::::::::::::::::::::::APPLICANT**

**VERSUS**

**1. COMMISSIONER LAND REGISTRATION**

**2. DFCU BANK LIMITED::::::::::::::::::::::::::::::::: RESPONDENTS**

**BEFORE: HON. JUSTICE JOHN EUDES KEITIRIMA**

**RULING**

This is an application brought by way of Notice of Motion under **Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act and Order 52 Rule 1 and 3 of the Civil Procedure Rules.**

The applicant is seeking for orders that:

1. An order does issue maintaining the applicant's caveats and restraining the respondents from vacating or otherwise removing the applicant's caveats registered on the properties comprised in and known as LRV HQT608 Folio 21, Plot 7 Rujumbura Block , Rukungiri Road land at Bunura, LRV 4478 Folio 25 Plot 31 Margherita Road land at Kasese Municipality, LRV 4478 Folio 24 Plot 33 Margherita road at Kasese Municipality, LRV HQT 228 Folio 6 Plot 105 Busia Municipality, Block Customs road land at Sofia "A" North East Busia Town Council , LRV HQT 608 Folio 11 Plot 11, Plot 99 Mamia Bugwe Block, Customs Road Land at Sofia "A" Busia, LRV KCCA 104 Folio 2, plot 1162 Kawempe Division Block 5, Land at Mulago Kampala, LRV 4410 Folio 16 , Plot 688 land at Nkumba, LRV 4410 Folio 14, Plot 893, land at Nkumba, LRV 4412 Folio



12, plot 22 land at Kampala Road Entebbe, LRV 1083 Folio 11, Plot 106 , land at Kireka and Banda, LRV 4410, Folio 19, Plot 60 land at Nabingo, LRV 4410 Folio 20, Plot 61 land at Nabingo. LRV HQT 688 Folio 1 Plot 846 Bulemezi Block 652, land at Luwero, LRV 4412 Folio 3, Plot 2A Broadway Road land at Masaka, LRV 4410, Folio 22, Plot 18 Jinja Road land at Gulu and Nasuti Mukono, LRV 4410 Folio 21, Plot 20A Jinja Road land at Gulu and Nasuti Mukono, LRV 4410 Folio 7, Plot 103 Customs Road, land at Samia Bugwe , Busia LRV 4411 Folio 101 Customs Road at Busia , LRV 4411 Folio 25, Plot 1B Ntinda Road, land at Kampala, LRV 4410 Folio 15 , Plot 93, land at Mengo Kampala, LRV 4410, Folio 13 Plot 40 Lubas Road, land at Jinja, LRV 4410 Folio 5, Plot 80 and 82 Main street land at Iganga, LRV 4412 Folio 14, Plot 2 Tanga Road Malaba, FRV 1280 Folio 24, LRV 4412 Folio 15 Plot 4, Tanga Road land at Malaba, LRV HQT 608 Folio 23, Plot 4 Soroti Block Kennedy Square Soroti Senior Quarters land at Soroti LRV 4411 Folio 16 Plot 40 Main Street , land at Hoima, LRV 4421 Folio 3, Plots 44&46 Kamwenge Road, Land at Bufunda Main street Ibanda , LRV HQT 608 Folio 25, Plot 143 Kabale Municipality Block, Kabale Road, land at Kabale LRV HQT 608 Folio 24 , Plot 145 Kabale Municipality Block Kabale , land at Kabale , LRV 4420 Folio 15 Plot 5 Kabula Block 76, land at Masaka, LRV 4410 Folio 6 Plot 55 Main Street Jinja, land at Jinja , LRV 4453 Folio 14, Plot 18 Old Kabale Road land at Park Ward Eastern Division Ntungamo, LRV 4409 Folio 19, Plot 54 Nyabushozi Block 68, land at Rushere Kiruhura, LRV 4410 Folio 9 , Plot 52 Nyabushozi Block 68 land at Rushere Kenshunga, LRV 4410 Folio 8 Plot 1 Adumi Road land at Arua, LRV 4412 Folio 10, Plot 51 High Street Mbarara land at Mbarar, LRV HQT608 Folio 22, Plot 38 Soroti Block Gweri land at Soroti Central Ward , LRV 4453 Folio 15, Plot 11 Babiiha Road , land at Bazar South Kabarole District, LRV 4456 Folio 15 , Plot 4360 Kyadondo Block 208, land at Kawempe Kampala, LRV 4494 Folio 10, plot 387 Kibuga Block 18 land at Natete , Kampala, LRV 4410 Folio 18 Plot 388 Kibuga Block 18 land at Natete Kampala, LRV 44106, Folio 12, Plot 52 Masindi Port Road, land at Masindi, LRV 4411 Folio 18 Plot 1419 Kibuga Block 5, land at Mulago Kampala, LRV 4410 Folio 11, Plot 1, Fort Portal Road, land at Cell 0, Bushenyi, LRV 4412 Folio 11 Plot 7, Luthuli lane land at Bugolobi, Kampala LRV 4567 Folio 24, Plot 54, Masindi Port Road , land at Masindi(hereinafter referred to as the suit properties), all being the





subject in the Head Suit vide H.C.C.S No. 948 of 2017 until the hearing and determination of the main suit.

2. An order doth issue compelling the 1<sup>st</sup> Respondent to maintain the applicant's caveats registered on the said suit properties until the hearing and final determination of the dispute in respect of the land the subject matter of the main suit.

3. That costs of the application be borne by the Respondents.

The application is supported by the affidavit of **Dr. Sudhir Rupareila** the Director in the applicant who deposes inter alia:

- i. That the Applicant is the Mailo/Freehold owner and lessor of the suit properties from which the subject leases arise and as per the terms of the lease agreements.
- ii. That the applicant reserved the right to consent to any transfers, assignment or parting with possession of the lease properties to any third party.
- iii. That in 2017, the suit properties were transferred to the 2<sup>nd</sup> respondent by the Bank of Uganda albeit, illegally, fraudulently and without the authority and consent of the applicant, as the lessor of the properties and reversion owner thereof.
- iv. That the applicant challenged the legality of the transfer of the said leased properties in favour of the 2<sup>nd</sup> without its prior consent, as the lessor and reversion owner, all in breach of the terms of the lease and provisions of the Registration of Titles Act vide ***H.C.C.S No. 948 of 2017- Meera Investments Limited versus DFCU Bank Limited and Commissioner for Land Registration.***
- v. That in January 2019, on the application of the 2<sup>nd</sup> respondent vide ***Miscellaneous Application No. 1412 of 2018*** this court issued an order inter alia staying the hearing of **H.C.C.S No. 948 of 2017**, pending the



hearing and determination of an appeal on an interlocutory application filed by the 2<sup>nd</sup> respondent in the Court of Appeal, which appeal has not yet been heard.

- vi. That pending the appeal and or the hearing of the main suit and in order to preserve its contractual and statutory right to consent to any transfer, assignment or parting with possession of the leased suit properties and in order to prevent any other registration of any person as transferee or proprietor of the suit properties or any instrument and transactions of whatever nature affecting the suit properties or its interests without obtaining its prior consent, the applicant lodged caveats on all the suit properties .
- vii. That acting on the application by the 2<sup>nd</sup> respondent, the 1<sup>st</sup> respondent has directed all registrars in the respective areas where the leased suit properties are situate, to issue notices to the applicant indicating the 1<sup>st</sup> respondent's intention to vacate the caveats within a period of 60 days from the date of notices unless the applicant presents a court order maintaining the caveats on the register.
- viii. That the removal of the applicant's caveats is intended to enable the 2<sup>nd</sup> respondent to transfer the suit properties, without the consent of the applicant in a manner that deprives the applicant as the lessor and reversion owner of the contractual and statutory right to consent to any transfer, assignment or parting with possession and further illegal and fraudulent transfer of the leased suit properties.
- ix. That in the meantime, the question as to whether the applicant is entitled to the right to consent to any transfer, assignment or parting with possession of the leased suit properties and whether any transfer, assignment and or parting with possession without the consent of the applicant renders the transactions illegal and fraudulent is the subject of determination in the pending ***H.C.C.S No. 948 of 2017- Meera Investments Limited versus DFCU Bank Limited and Commissioner for Land Registration.***





- x. That if the applicant's caveats on the suit properties are vacated/removed and the properties are transferred again without the contractual and statutory consent of the applicant, the applicant shall be deprived of its rights in the property as a lessor thereby enabling and furthering illegalities which are already being challenged in ***H.C.C.S No. 948 of 2017.***
- xi. That in order to maintain the applicant's caveats, the 1<sup>st</sup> respondent requires an order of this court against the respondents to maintain the caveats on the register and to restrain the removal of the caveats otherwise the caveats will be lapsed within a period of 60 days from the date of receipt of the notices and removed from the register.
- xii. That the respondents will not suffer any prejudice by the maintenance of the caveats on the register, since they are both parties to ***H.C.C.S No. 948 of 2017*** and will benefit from the final decision of the court on whether the applicant is entitled to the right to consent to any transfer, assignment or parting with possession of the leased suit properties and whether any transfer, assignment and or parting with possession without the consent of the applicant renders the transactions illegal and fraudulent.
- xiii. That it is just and equitable that this court grants the orders sought herein.

In their affidavit in reply sworn by **Bamwite Emmanuel**, a Senior Registrar of Titles working with the office of the 1<sup>st</sup> Respondent he deposes inter alia:

1. That it is true that the applicant lodged/registered caveats on the suit properties which caveats are still subsisting.
2. That on the 13<sup>th</sup> of February 2020 through its lawyers, M/S Magna Advocates the applicant informed the Commissioner Land Registration that there was a threat of having its caveats removed and likely transfer of the properties prior to the determination of the main suit.



3. That owing to the fact that the Commissioner Land Registration is a party/defendant in the suit which is a contentious matter in which the actions of the office are being challenged as having been illegal and unlawful, the 1<sup>st</sup> respondent registered a caveat for the Commissioner Land Registration pending resolution and final determination of the suit.
4. That on the 28<sup>th</sup> February 2021, the 1<sup>st</sup> Respondent received applications from M/S Sebalu & Company Advocates for the removal of the caveats lodged on the suit properties by the applicant and the Commissioner Land Registration.
5. That the 1<sup>st</sup> Respondent acted upon the applications and issued directions to all the Registrars at the Ministry Zonal Offices where the properties fall to issue notices to the applicant informing it of its intention to remove the applicant's caveats within a period of 60 days unless the caveator/applicant obtains an order from the High Court barring removal of the caveats within a period of 60 days from receipt of the notice.
6. That according to the notices and **Section 140(2) of the Registration of Titles Act** upon which the they were issued, the Commissioner is clothed with the powers to remove the caveats from the suit properties if the applicant does not within 60 days from the date of receipt of the said notices, present an order from the High Court to maintain the said caveats and stopping the removal of the caveats.
7. That as long as the caveats subsist or are maintained, the 1<sup>st</sup> respondent cannot transfer the suit properties as caveats would bar any such transfers.

In their affidavit in reply sworn by **Angelina Namakula Ofwono**, the Chief Legal Officer /Company Secretary of the 2<sup>nd</sup> respondent, she deposes on behalf of the 2<sup>nd</sup> respondent inter alia:

1. That she has been advised by the 2<sup>nd</sup> Respondent's Advocates that the instant application is an abuse of court process, is misconceived and wrongly before this court as the issues in it are out of the scope of the





main suit and it is barred by the doctrine of Res Judicata, the issues arising therein having already been the subject of litigation before this court vide **H.C.M.A No. 1566 of 2019** which matter was adjudicated upon and a ruling delivered by her Worship Flavia Nabakooza Kalungi. A copy of the ruling was attached and marked as "A".

2. That in **H.C.M.A No. 1556 of 2019**, the applicant sought inter alia for orders that a temporary injunction issues restraining the 2<sup>nd</sup> respondent from effecting any transaction whether by way of transfer or otherwise in favour of any other party be it Crane Bank Limited (then in receivership) or any other entity in respect of the suit properties all being the subject matter in the head suit **No. 948 of 2017**.
3. That **H.C.M.A No. 1556 of 2019** was heard and disposed of and in that ruling which was never challenged or appealed by the applicant, it was found that it was not prejudicial to the applicant's main suit for the 2<sup>nd</sup> respondent to surrender titles to where it got them from and that the applicant would be adequately compensated if the 2<sup>nd</sup> respondent was at fault.
4. That in the instant application, the applicant seeks to maintain its caveats lodged on the same suit properties and to restrain the respondents from removing the said caveats which removal according to the applicant's affidavit is intended to enable the 2<sup>nd</sup> respondent transfer the suit properties.
5. That the injury or grievance for which the applicant seeks court's protection by way of maintaining its caveats is the transfer of the suit properties to Crane Bank Limited (now in liquidation) which this court has vide **H.C.M.A 1556 of 2019** not found to be prejudicial to the applicant's main suit.
6. That the 2<sup>nd</sup> respondent seeks to have the caveats vacated for the purpose of fully and finally exercising its option to rescind the purchase of the suit properties in accordance with the purchase of assets and



assumption of liabilities agreement by retransferring them into the names of Crane Bank Limited (now in liquidation) which action would not be prejudicial to the applicant since the intended transferee is the former holder of the suit properties with whom the applicant is comfortable.

7. That pursuant to clause 8.7 of the Purchase of Assets and Assumption of liabilities agreement, the 2<sup>nd</sup> respondent exercised its option to rescind the purchase of the suit properties and the intended transfer of the suit properties to crane bank limited (now in liquidation) is meant to conclude the rescission process by restoring the Certificates of title to the previous registered owner which is Crane Bank Limited (now in liquidation).
8. That the applicant's fear expressed in paragraphs 14, 15 and 16 of the affidavit in support are unfounded since the 2<sup>nd</sup> respondent is not transferring the Certificates of Title to unknown third parties but only returning them to Crane Bank Limited (now in liquidation) which was the original lessee.
9. That the orders sought in this application clearly defeat the orders sought in the main suit for a permanent injunction restraining the 2<sup>nd</sup> respondent from continued trespass on the suit properties and at the same time seeks in this application for orders to maintain the caveats on the suit properties.
10. That she is advised by the 2<sup>nd</sup> respondent's Advocates that the applicant has no proprietary interest in the leases which are the subject of this application and the removal of caveats which is sought the 2<sup>nd</sup> respondent will not in any way affect or interfere with the applicant's Freehold and Mailo interests.






11. That the maintenance of the caveats will unjustly prevent the 2<sup>nd</sup> respondent from exercising its contractual right to rescind the purchase of the suit premises.
12. That resultantly the 2<sup>nd</sup> respondent shall be forced to continue holding onto the properties and bearing the responsibility for the maintenance and other attendant obligations as if it were in possession and occupation of the suit properties whereas not.
13. That the 2<sup>nd</sup> respondent is highly prejudiced by the applicants caveats which were lodged in abuse of court process after the unsuccessful efforts of the applicant in **H.C.M.A No. 1556 OF 2019** in preventing the 2<sup>nd</sup> respondent from parting with possession and transfer of the suit properties. That the caveats were intended to frustrate the 2<sup>nd</sup> respondent's success in **H.C.M.A No. 1556 of 2019** and were lodged in bad faith.
14. That she is advised by the 2<sup>nd</sup> respondent's lawyers that the applicant's case will not be affected by the retransfer of the suit properties into the names of Crane Bank Limited (now in liquidation) and that the applicant can still obtain the necessary court remedies if it succeeds in proving its entitlement thereto.
15. That she is advised by the lawyers of the 2<sup>nd</sup> respondent that there is no just and reasonable cause for this court to grant the applicant's prayers to maintain its caveats on the suit properties.

Counsel for the applicant and counsel for the respondents filed written submissions the details of which are on record and which I have considered in determining this application.

**Preliminary Objections Raised by the second Respondent**

**Whether the application is brought under the proper law.**

Counsel for the 2<sup>nd</sup> respondent submitted that the applicant presented this application under **Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act and Order 52 of the Civil Procedure Rules** which empower the





court to exercise its inherent powers to grant remedies necessary for the achievement of the ends of justice.

Counsel submitted that an application to delay the removal of a caveat must be filed under **Section 140 (3) of the RTA** and the requirements of the section have been held to be mandatory In the matter of an application for extension of a caveat by **Joseph Muluuta-Miscellaneous Application No. 500 of 1995** where the case of **Jack Wavamunno versus Gordon Wavamuno-Miscellaneous Cause No. 19 of 2011** was applied and where it was held that ***"This Section is very clear. A caveat cannot be renewed by or on behalf of the same person or for the same estate or interest. But the sub section goes on to specify circumstances under which the court may in its discretion direct the Registrar to delay any dealing with the land, lease or mortgage for a further period to be specified by court. The circumstances specified in the specifications are creations of statute and court can only act where these have been followed and complied with. The caveator and his agent has to be given an undertaking or security or has to lodge a sum of money considered by the court to be sufficient for the purposes of indemnifying any person that may be adversely affected by the order it makes. It is then and only then that the court is empowered by the section to make orders touching on the lapsed caveat. In this application no attempt whatsoever was made to meet the requirements of the law. The application will accordingly be refused."***

Counsel contended that the applicant filed the application under the normal rules of injunction but the proper law should have been **Section 140(3) of the R.T.A.** Counsel contended that it was held in the case of **Amrit Goya versus Hari Chand Goya-H.C.C.S No. 432 of 2011** which was applied with approval in **Pharmaceutical Society of Uganda versus Attorney General –Miscellaneous Cause No. 260 of 2019** where it was held that ***"A specific legislation over a specific subject takes precedence over a general legislation."*** Counsel further cited the case of **Taparu Roitei [1968] E.A 618** where it was held that ***"A court's inherent jurisdiction should not be invoked where there is a specific statutory provision which would meet the necessities of the case."***

Counsel contended that since there was a specific law providing for suits to delay removal of caveats, the applicant cannot be allowed to proceed under the general law to avoid the requirements of the specific law to wit:-

- (a) The caveator or his or her agent giving an undertaking or security;





- (b) The caveator lodging such sum in court as the court considers sufficient to indemnify the 2<sup>nd</sup> respondent against any damage that may be sustained by reason of any disposition of the property being delayed;
- (c) The caveator making an undertaking to indemnify the 2<sup>nd</sup> respondent for any loss that may be caused by the delay to dispose of the land.

Counsel further emphasised that the courts have since declared to be mandatory and to amount to a condition precedent before a decision can be made for removal of a caveat.

Counsel for the 2<sup>nd</sup> respondent further submitted that the applicant must prove by attaching the caveat that is intended to be vacated on the affidavit in support. That the applicant in this application has failed to adduce evidence of the existence of the said lodged and registered caveat that is sought to be vacated. That this position is fortified in the case of ***Mohamed and another versus Haidara-(1972) E.A 166*** where it was held that no caveat should be extended unless an authenticated copy of it is before the court. That a caveat prospects a specific interest and the evidence in support of an application for extension must relate to that interest and no other. That the applicant had failed to comply with the requirements of annexing an authentic caveat to the application and the application ought to be dismissed.

The other objection raised by the 2<sup>nd</sup> respondent was that the application was barred by res judicata and /or amounts to an abuse of court process.

Counsel for the 2<sup>nd</sup> respondent submitted that the law frowns upon attempts by parties to re-litigate the same case or the making of collateral attacks to judicial decisions except by way of review or appeal.

Counsel for the 2<sup>nd</sup> respondent submitted that the instant application was res judicata the issues arising from this instant application having already been the subject of litigation before the court vide ***H.C.M.A 1556 of 2019*** where the matter was adjudicated upon and the ruling delivered by Her Worship Flavia Nabakooza Kalungi. Counsel cited **Section 7 of the Civil Procedure Act Cap 71** and the case of ***Adam Namadowa and 6 others versus Hakim Kawaidhanako and 3 others -H.C.C.S No. 100/2012*** to buttress his submissions. Counsel contended that **H.C.M.A No. 1556 of 2019** was between the same parties and a final decision on the merits was given by her Worship Flavia Nabakooza Kalungi.






Counsel further submitted that in both applications the wrong the applicant seeks protection for is the transfer of the suit properties by the 2<sup>nd</sup> respondent to third parties. That the issue for investigation and determination in both applications is whether it is appropriate for the court to issue orders that would restrain or make it impossible for the 2<sup>nd</sup> respondent to transfer the suit properties to other parties more specifically to Crane Bank Limited (now in liquidation). That the remedy was first sought as a temporary injunction against the respondents in a case vide **H.C.M.A No. 1556 of 2019** and is in the current application sought in form of an order to maintain the caveats on the suit properties.

Counsel for the 2<sup>nd</sup> respondent further submitted that although the applicant contends in its affidavit in rejoinder that the current application is different from **H.C.M.A No. 1556 of 2019** because the latter sought a temporary injunction to maintain the status quo and the current application seeks maintain the applicant's caveats, that the matters are substantially the same and have since been resolved by a competent court of law. That although the prayers made in the instant application are for the maintenance of the caveats yet the issues to be investigated and determined by court in arriving at the said conclusion are the same issues that were handled and disposed of in **H.C.M.A No. 1556 Of 2019** and the intended transfers which were the subject of proceedings in H.C.M.A No. 1556 of 2019 are the same transfers that the applicant seeks to restrain in the current application by maintenance of the caveats and issues arising thereunder have already been addressed by this court as they were directly and substantially in issue in **H.C.M.A 1556 OF 2019**.

Counsel prayed that the application should therefore be dismissed.

#### **Submissions by Counsel for the Applicant on the preliminary objections**

Counsel for the applicant submitted that the applicant brought this application under the proper law and the submission by counsel for the 2<sup>nd</sup> respondent that this application ought to be brought under **Section 140(3) of the R.T.A Cap 230** was legally flawed and premised on an incorrect interpretation of the provision. Counsel submitted that **Section 140(3) of the RTA** provides for renewal of an expired caveat and not maintaining a valid and running caveat. That in essence the provision of the law applies in circumstances where the applicant's caveat has already lapsed and the applicant seeks to have it renewed i.e after the lapse of 60 days or where the court order maintaining the caveats has lapsed as per the terms of such an order. That the Section





does not apply to an applicant who brings their application prior to the expiry of the 60 days or before the caveat lapses which is what the applicant did. That the authorities cited by counsel for the 2<sup>nd</sup> respondent were distinguishable from the circumstances of the application herein. That in the said cases, the applicants filed specifically for extension of a caveat under now **Section 140(3) of the RTA**.

Counsel for the applicant submitted that at the time of filing this application, the 1<sup>st</sup> Respondent had issued notices to lapse the applicant's caveats but the 60 days within which to obtain an order maintaining the caveats had not expired and neither had the caveats lapsed. That the applicants therefore could not bring an application for renewal or extension of the caveats under **Section 140(3) of the RTA** as its caveats were still valid and subsisting.

Counsel for the applicant further submitted that according to the case of ***Hunter Investments Limited versus Simon Lwanyanga and another –H.C.M.A No. 0034/2012*** it was held that a caveat once lodged can only cease to have effect if it is withdrawn by the caveator or if it lapses after the statutory notice or is removed by a court order. That it is in those circumstances that the caveator would be required to apply for renewal of the caveat under **Section 140(3) of the RTA**.

Counsel contended that the applicant rightly brought its application under **Section 33 of the Judicature Act, Section 98 of the CPA and Order 52 of the Civil Procedure Rules**. That the provisions of the said law clothe this court with the discretion to grant the orders sought by the applicant to prevent the ends of justice from being defeated and restrain any person from doing any act as may be specified by court.

That with regard to the argument that the applicant must prove the existence of the caveat by attaching the caveat intended to be vacated on the affidavit in support and that the applicant had failed to do so, counsel contended that the submission to that effect was devoid of any merit for the following reasons:

- i. That in 2019, the applicant lodged caveats on the suit properties.
- ii. In February 2021, aware of the applicant's existing caveats, the 2<sup>nd</sup> respondent applied to the 1<sup>st</sup> respondent to lapse or vacate them. That if the caveats had not been registered what would the 2<sup>nd</sup> respondent be applying to vacate?





- iii. That the 1<sup>st</sup> respondent subsequently issued notices to the applicant to lapse /remove the said caveats and the 1<sup>st</sup> respondent would not have issued notices to vacate non-existent caveats.
- iv. That in their affidavit in reply, the 1<sup>st</sup> respondent attached copies of search statements as annexure "A" proving that that the caveats were registered by the applicant.

Counsel for the applicant contended that proof is required on disputed facts and not admitted facts. That the said facts were never rebutted by the 2<sup>nd</sup> respondent. That the 2<sup>nd</sup> respondent's own admission of the caveats on its own application to remove the caveats meant that the 2<sup>nd</sup> respondent fully knew that the applicant had indeed lodged the caveats which it seeks to maintain. That the 2<sup>nd</sup> respondent's submission that the caveats sought to be maintained weren't attached to prove the caveats should therefore not arise.

Counsel for the applicant further submitted that in such an application, a caveat must have been attached as it protects a specific interest and the evidence in support of such an application must relate to that interest and no other. Counsel cited the case of ***Hunter Investments Limited versus Simon Lwanyanga and another-H.C.M.C No. 0034 of 2012*** where although the caveat wasn't attached, taking into account the said principle, the court granted the application to maintain caveats on the land to protect the caveator's interests in land until resolution of the disputes on the suit land. That in maintaining the caveats even though no copy of the same was attached, the court found that the respondent's interest in the suit land weren't contradicted /denied by the applicant and the court held that the legality of the applicant's proprietorship/interest in the suit property would require more evidence which can't be a subject of this application . In such circumstances court would be reluctant to discharge the caveats on the suit land. That in view of the pending suit between the applicant and the respondents touching on the suit properties, justice demands that the rights of each party are fully determined by a court of law.

On the issue as to whether this application is barred for being res-judicata or amounts to an abuse of court process, the applicant submitted that the application before this court was different and therefore the principle of res-judicata did not arise.





Counsel for the applicant submitted that in **HCMA No. 1556** the applicant filed an application specifically under **Order 41 Rules 1, 2, 7& 9 of the CPR** seeking for orders inter alia, for a temporary injunction, maintaining the status quo and restraining the 2<sup>nd</sup> respondent from effecting any transactions whether by way of transfer or otherwise in favour of any other party. that in this application, the applicant seeks for orders against the respondents to inter alia maintain the applicant's caveats registered on the suit properties and compelling the 1<sup>st</sup> respondent to maintain the said caveats until the hearing and determination of the main suit.

Counsel for the applicant further submitted that the cause of action for determination in this application arose in February 2021 when the 2<sup>nd</sup> respondent applied to the 1<sup>st</sup> respondent to remove its caveats and the 1<sup>st</sup> respondent issued notices for the removal of the same caveats. Counsel contended that during and at the time of hearing **H.C.M.A No. 1556 of 2019** the caveats which are the subject of issue in this application were never brought up, never discussed and no ruling or orders were ever made on, against or in favour of them. That the principles applicable to grant of temporary injunctions are distinct from those for maintaining caveats on the suit property. That the refusal to grant an order of a temporary injunction does not affect the protection afforded through lodgement of a caveat. Counsel for the applicant cited the case of ***Babigumira versus Magezi-H.C.M.A No. 538 of 2013 (Commercial Division)*** to buttress his submissions.

Counsel for the applicant further submitted that the applicant lodged its caveats in August of 2019 prior to filing **H.C.M.A No. 1556 of 2019** and they were existing at the time of determination of the impugned application in February 2020. That there was no threat to vacate the caveats at the time. That nowhere in the ruling has the 2<sup>nd</sup> respondent pointed to any pronouncement by the court regarding the subsistence or maintenance of the caveats at all.

Counsel further contended that it was because of the 2<sup>nd</sup> respondent's subsequent actions seeking to vacate the applicant's caveats that the applicant filed this application before the court to invoke its inherent powers to maintain the caveats and maintain the applicant's rights in the suit property, otherwise they stand a risk of being alienated thereby rendering the remedies sought in the main suit nugatory.





Decision of court on the preliminary objections.

Whether the application is brought under the proper law.

Section 140(3) of the RTA provides that *“A caveat shall not be renewed by or on behalf of the same person in respect of the same estate or interest, but if, before the expiration of the sixty days referred to in subsection (2) or such further period as is specified in any order made under this section, the caveator or his or her agent appears before the court and gives such undertaking or security, or lodges such sum in the court as the court considers sufficient to indemnify every person against any damage that may be sustained by reason of any disposition of the property being delayed, then and in such a case the court may direct the registrar to delay registering any dealing with the land, lease or mortgage for a further period to be specified in such order, or may make such other order, and in either case such order as to costs as is just.”*

The applicant was compelled to file this application because the 1<sup>st</sup> respondent had issued notices to lapse the applicant's caveats. The period for their lapse had not expired. This was prompted by the application by the 2<sup>nd</sup> respondent's application to the 1<sup>st</sup> respondent for the removal of the caveats lodged on the suit properties by the applicant and the 1<sup>st</sup> respondent. In the application for the temporary injunction, the threat was perceived whereas in this application the threat is real as acknowledged by the 1<sup>st</sup> respondent in their affidavit in reply.

I agree with the submission by counsel for the applicant that the provisions of **Section 140(3) of the RTA** apply where the caveat is about to lapse and one is applying for renewal of the same. It does not apply to situations where one is applying to maintain a running caveat especially where there has been notice from the Commissioner Land Registration of removing it basing on an application by a party as it was in this application. In other words the said provision of the law does not apply where there is a threat of removing a running caveat.

The circumstances of this case are even more peculiar in that the 1<sup>st</sup> respondent had issued notices to lapse the said caveats even when the case involving the suit properties was not yet concluded! The applicant challenged the legality of the transfer of the said leased properties in favour of the 2<sup>nd</sup> respondent without its prior consent as the lessor and reversion owner. The





applicant filed a suit vide **H.C.C.S No. 948 of 2017** against the respondents challenging the transfer of the said properties. The case was stayed after the 2<sup>nd</sup> respondent filed an appeal in the Court of Appeal arising from an interlocutory application. The said appeal has not been determined. Ideally one would expect the status quo to be maintained pending the determination of the said suit. In my view it is contemptuous for a party to a suit to start dealing or changing the status quo of the suit land whose dispute is still ongoing.

This type of application is therefore not the one envisaged under the provisions of **Section 140 (3) of the RTA**. The submission by counsel for the 2<sup>nd</sup> respondent that the applicant must have attached the caveat intended to be vacated on the affidavit in support is superfluous as the provisions of the said law were inapplicable in this application as I have already shown.

The above notwithstanding, the 2<sup>nd</sup> respondent could not have applied to vacate what never existed! The applicant therefore did not have to prove what the 2<sup>nd</sup> respondent had acknowledged existed and was seeking for its removal.

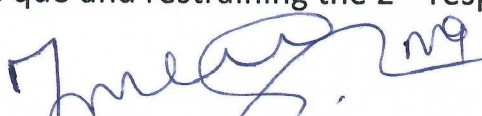
The applicant was therefore right to invoke the inherent powers of this court to ensure the ends of justice and the ends of justice in this matter require that the rights of the parties involved in this case are finally determined without tampering with the status quo of the suit properties. I do not see any provisions of the law in the RTA that would have addressed the peculiar situation the applicant was faced with.

The preliminary objection in that respect is therefore overruled.

**Whether the application is barred for being res judicata and or amounts to abuse of court process.**

**Section 7 of the Civil Procedure Act Cap 71** provides that ***"No court shall try any suit or issue in which the matter directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court"***.

In **H.C.M.A No. 1556** involving the same parties, the applicant filed an application under **Order 41 Rule 1, 2, 7&9 of the CPR** seeking for a temporary injunction, maintaining the status quo and restraining the 2<sup>nd</sup> respondent from





effecting any transaction whether by way of transfer or otherwise in favour of any other party.

In this application the applicant seeks to maintain their caveats and restraining the respondents from vacating or otherwise removing the applicant's caveats registered on the suit properties and compelling the 1<sup>st</sup> respondent to maintain the said caveats until the hearing and determination of the main suit.

The cause of action for determination in this application arose in February 2021 when the 2<sup>nd</sup> respondent applied to the first respondent to remove the applicant's caveats they had placed on the suit properties. When **Miscellaneous Application No. 1556 of 2019** was heard and determined, there was no threat to vacate the applicant's caveats at the time.

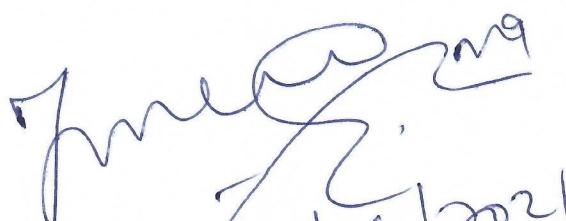
I also agree with counsel for the applicant's submission that the principles applicable to grant of a temporary injunctions are distinct from those of maintaining caveats on the suit property. The refusal of the grant of an order of a temporary injunction does not affect the protection afforded through lodgement of a caveat. I have also already observed that the interests of justice demand that the status quo (the maintenance of the caveats on the suit properties) be maintained until the final determination of the parties' rights.

I therefore find that the two applications are different and the causes of action and issues for determination are different as well as the reliefs sought. This application is therefore not res-judicata nor an abuse of court process. The preliminary objection to that effect is therefore also overruled.

With regard to the merits of the main application, I find that it is in the interests of justice that the applicants caveats on the mentioned suit properties are maintained pending the determination of the main suit for the reasons I have already given.

The respondents are hereby restrained from vacating or otherwise removing the applicants caveats registered on the said suit properties and the 1<sup>st</sup> respondent is hereby directed to maintain the applicant's caveats on the said properties until the determination of the main suit.

Costs of this application will abide the outcome of the main suit.







**Hon. Justice John Eudes Keitirima**

**28/06/2021**