

MISCELLANEOUS CAUSE NO.131 of 2019

1. FLORENCE ISINGOMA

BEFORE: HON. LADY JUSTICE CORNELIA KAKOOZA SABIITI

The Applicant is the Registered Proprietor of the Suit land and has brought this application under Section 98 of the Civil Procedure Act, Cap. 71, Sections 140(1), (2) and 142 of the Registration of Titles Act, Cap. 230 and Order 52 rules 1,2 and 3 of the Civil Procedure Rules SI 71-1.), seeking the following orders;

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c) The 1st Respondent pays compensation/ damages to the Applicant for lodging a Caveat on the Applicant's land/Certificate of Title for ***Leasehold Register Volume KCCA 180 Folio 2 Plot Number 15 Nakawa Division Blacklege Road, Kampala District.***

d) The costs of this application be provided for.

The application is supported by the Applicant's affidavit wherein he deposed *inter alia* that he is the registered proprietor and swears this affidavit in that capacity.

The Applicant averred that with effect from 1st May, 2009, he was granted a 39-year lease of the property ***Leasehold Register Volume KCCA 180 Folio 2 Plot Number 15 Nakawa Division Blacklege Road, Kampala District*** by Kampala District Land Board and thereafter a Certificate of Leasehold Title was issued in his name by the 2nd Respondent and has since the year 2009 been in actual physical possession of the land described above and Certificate of Title thereof. A copy of the Certificate of Title was attached hereto as Annexure "A".

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He further averred that during May, 2019, he commenced the process of developing his plans on the land which he submitted to the Director of Physical Planning, Kampala Capital City Authority who conducted a search in the Land Registry/Office and it was discovered that the 1st Respondent from nowhere and without reasonable cause had lodged a caveat on my land which is described above under Instrument Number KCCA- 00039393. A copy of Search Certificate/Report was attached as Annexure "B".

He deponed that he carried out his own search at the Land Office in respect of the land from which he confirmed the existence of a caveat on the land lodged by the 1st Respondent and that the 1st Respondent has no claim/interest whatsoever in the land and has emerged from nowhere with intentions to grab his land and to frustrate his developments thereon. He also averred that he has greatly been inconvenienced, lost business opportunities as a result of the lodgment of the caveat by the 1st Respondent on his land and his construction plans in respect of the said land have not been approved due to the existence of the caveat on the suit land, the subject of this application.

The Applicant also added that the 1st Respondent lodged a caveat on his land without reasonable cause. That it is just, equitable and in the interest of justice that this application be granted and the caveat lodged by the 1st Respondent on his land above described be vacated/ removed and the 1st Respondent pays compensation/ general damages to him.

The Respondents did not file any defence. It is trite law that the facts as adduced in affidavit evidence which are neither denied nor rebutted are presumed to be true. *Eridadi Ahimbisibwe v World Food Programme [1998] IV KALR 32*

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Representation

The Applicant was represented by M/s Kusingura Tindyebwa & Co. Advocates

Email: btindyebwa@yahoo.co.UK

The Respondent was not represented.

Resolution

I have carefully read and considered the submissions by counsel for the Applicant, 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 Applicant merits the prayers sought.

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. *(Sentongo Produce V Coffee Farmers Limited & Anor vs Rose Nakafuma Muyiisa HCMC 690/99).*

It was never in dispute that the Applicant is the registered proprietor of the suit land and this is proved by the copy of the Certificate of Title which was attached and marked as Annexure "A" and is are entitled to benefit from the estate, unless and until the contrary is proved.

It is however noteworthy that the fact that the caveator has a caveatable interest does not in itself mean that he or she had a reasonable cause to lodge the caveat. *(Hunter investments ltd vs Simon Lwanyanga & Another Miscellaneous Cause No. 34 of 2012, See: Hooke vs Holland (1984) WAR 167).*

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According to J.T. Mugambwa in his book '**Principals of Land Law in Uganda**' at Pg. 86, the reasonableness or lack of it to lodge a caveat is a question of fact to be determined in the circumstances of each case. He adds that the fact that the caveator had no caveatable interest does not necessarily mean that he or she had no reasonable grounds to enter the caveat *(Kuper & Kuper Vs West Construction Pyt Ltd (1990) 3 WL 419)*. Conversely, that the fact that the caveator has a caveatable

interest does not by itself mean that he or she had a reasonable cause to lodge a caveat (**Hooke Vs Holland (1984) WAR 167**).

I am alive to the authority of **Boynes Vs Gathure (1969) EA 385**, that *the one primary objective of a caveat is to give the caveator temporary protection. Therefore, it will not be equitable to allow the respondents to sit back and "twiddle their fingers" for an undetermined future to the detriment of the applicant who as a registered proprietor has indicated a need to put the land to good use.*

The 1st Respondent was served by substituted service and did not respond to the application. However, given that land matters are subject to fraud and the court requires diligence to make an informed decision, the Court made an order for the Commissioner Land Registration to avail a Search statement on the suit land as well as certified copies of the documents relating to the caveat lodged by the 1st Respondent. From the Search Statement availed it is noted that there indeed exists a Caveat lodged by the 1st Respondent on 5th June 2017 under Instrument No. KCCA 00039393.

Further, the affidavit attached to the Caveat is by the 1st Respondent who is described as Florence Isingoma alias Maama Lillian. She refers to a civil suit No. 0009/2017 by the Applicant against the 1st respondent (under her alias name) where judgment was in favour of the Applicant and a subsequent appeal Civil Appeal No. 49/2008 by the 1st Respondent against the Applicant which judgment was in favour of the 1st Respondent. The copy of the decree on appeal is dated 13th July 2013. It is noted that the date of the caveat in 2017 is four years after this decree of the High Court. It is very surprising that none of these pertinent facts were disclosed by the Applicant in

this application and raise valid concerns that the 1st respondent may have reasonable cause to have lodged the caveat on the suit land.

Given that it is not clear whether the appellate judgment of High court has been overturned or set aside this court of the opinion that any ruling affecting such a judgment is premature and misplaced. It is in the interest of justice that the claims of the Applicant and 1st Respondent with regard to the suit land are confirmed and this requires the court to ascertain the status of the earlier judgment in favour of the 1st Respondent.

I therefore disallow this application and instead order that the caveat lodged by the 1st Respondent in respect of on the Certificate of Title of the land comprised in **Leasehold Register Volume KCCA 180 Folio 2 Plot Number 15 Nakawa Division Block Blacklege Road, Kampala District** under Instrument Number KCCA-00039393 be maintained until the Applicant avails documentary evidence that the High Court judgment/decree on appeal by the 1st Respondent was overturned or set aside within a period of 30 days from the date of this ruling.

This application is dismissed with no order as to costs.

It is so ordered.



CORNELIA KAKOOZA SABIITI

JUDGE

Date: 5th November 2021