THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]

MISCELLANEOUS CAUSE NO.38 OF 2021

NAKABUYE AGNES::APPLICANT

VERSUS

1. MARTIN STROKES

2. EDWARD KATO C. STROKES::::::::::::::::::::::::RESPONDENTS

RULING

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

This application was brought by notice of motion under **Section 140(1), 142, 145, and 188 of the Registration of Titles Act Cap 230, and O.52 rr.1, 2 &3 of the Civil Procedure Rules S.I 71-1.**

The application seeks orders that:

1. The Respondents show cause why the caveats lodged on the Applicant's **land comprised in Block 249 Plot 1103, at Bunga**, should not lapse.
2. The caveats lodged by the Respondents be removed.
3. Costs of the application be provided for.

The grounds of the application, which I shall not reproduce, are supported by the affidavit of Nakabuye Agnes. The 1st Respondent filed an affidavit in reply; and the Applicant filed an affidavit in rejoinder to it.

The 2nd Respondent did not file a reply, and it is indicated in the 1st Respondent's affidavit in reply that he died in 2012.

Counsel for the Applicant and 1st Respondent filed written submissions which I shall consider, but shall not reproduce.

I have considered a preliminary objection raised by the 1st Respondent first. This is to the effect that the application is incompetent on ground that it was lodged against a wrong party. In his affidavit in reply, the 1st Respondent indicated that the Applicant named him as Martin Strokes while as he is Martin Stokes.

While as the Respondent's Counsel argued that this is a fatal mistake, the Applicant's Counsel argued that the mistake was a misnomer, and can be corrected under **O.1 r.10 of the Civil Procedure Rules.**

In ***Attorney General versus Sabric Building and Decorating Contractors Ltd MA No.299 of 2012*****,** it was observed that where a wrong description of a party is a misnomer, it is not

fatal, especially if the substance of identities of the parties to the proceedings is not affected. A misnomer is defined in **Black's Law Dictionary (1999), 7th Edn. at p. 1015** as:-

> *... A mistake in naming a person, place or thing especially in a legal instrument. In federal pleading - as well as in most states - misnomer of the party can be corrected by an amendment, which will relate back to the date of the original pleading...*

In the same case, Court further observed that a "*review of the authorities shows that most cases of misnomer involve misnaming the Defendant… Amendment will ordinarily be made under Order 1 rule 10.*"

Although the 1st Respondent is captured as Martin Strokes in the application, attachment "A" to the application (*a copy of his caveat*) captures him as Martin Stokes (*similarly, the 2nd Respondent is also captured as Strokes in the application, but also as Stokes in attachment "B" to the application (a copy of his caveat*). Clearly this is a misnomer; and it is not fatal, especially since the substance of identities of the Respondents is not affected. It is easy to tell that the application refers to the Respondents, and no other persons.

As such, the preliminary objection is overruled, and an amendment is hereby made under Order 1 rule 10 of the Civil Procedure Rules to capture the Respondents as Martin Stokes and Edward Kato C. Stokes. I now proceed to the merits of the application.

The following issues are hereby proposed:

1. **Whether the Respondents have cause why their caveats should not be removed.**

2. **Whether the Respondent's caveats should be removed.**

Issue No.1:

Whether the Respondents have cause why their caveats should not be removed

Under Section 140(1) of the Registration of Titles Act, this Court is empowered, in applications of this nature, to make such orders as it deems fit. This includes the power to an order the removal of a caveat where the caveator fails to show cause show why it ought not to be removed.

At the onset, I state that the 1st Respondent's caveat was lodged on the 18th of January, 2016; and that of the 2nd Respondent was lodged on the 4th day of August, 2011. Respectively, 6 and 10 years have since passed since the said caveats were lodged. That said, the record shows that the Respondents have never taken any step to have the controversy between them and the Applicant settled in as far as the suit land is concerned.

The 1st Respondent averred that several complaints have been lodged in a bid to recover the suit land, and he attached copies of the said complaints in proof thereof. However, these complaints were lodged with the Police, the Ministry of Lands, Housing, and Urban Development, the Commissioner for Land Registration, and the Land Commissioner.

The 1st Respondent's affidavit in reply clearly shows that the Respondents allege fraudulent acquisition of the suit land by the Applicant; and since she is the registered proprietor of the same, they legally intend to impeach her title. That said, none of the said offices is competent to order the impeachment of the Applicant's title. Such power is only vested with the High Court. To allege, therefore that several complaints have been lodged is not enough. Such

complaints must have been lodged with a competent authority. In the case, the competent authority should have been the High Court. Since no complaint has ever been lodged with it to adjudicate the matter between the parties and determine who the rightful owner of the suit land is, it cannot be said that the Respondents have ever taken any step to have the matter settled.

According to ***Segirinya Gerald versus Mutebi Innocent H.C.M.A No.081 of 2016***,

> **"***The primary objective of a caveat is to give the caveator temporary protection. It is not the intention of the law that the caveator should relax and sit back for eternity without taking positive steps to handle the controversy, so as to determine the rights of the parties affected by its existence."*

As noted before, the Applicant is the registered proprietor of the suit land. Obviously, she has been affected by the existence of the Respondents' caveats on the suit land by virtue of this application; and yet the Respondents have relaxed and sat back for eternity without taking steps to

ensure their controversy with the Applicant in relation to the suit land is determined.

Accordingly, it is my finding that the Respondents abused the temporary protection afforded to them by their caveats.

Further, it is trite law that for a caveat to be valid, the caveator must have a caveatable interest, legal or equitable, in the land (Section 139(1) of the Registration of Titles Act; ***Sentongo Produce & Coffee Farmers Ltd versus Rose Nakafuma Muyiise H.C.M.A No.690 of 1999; Hunter Investments Ltd versus Lwanyanga & Anor H.C.M.C. No.0034 of 2012***.

In paragraph 1 of the affidavit in reply, the 1st Respondent deposed as the attorney of the administrators of the estate of the late Charles Kasaja Stokes. He continued to aver in paragraph 7 of the same affidavit that he has a caveatable interest in the suit land, by virtue of holding powers of attorney donated to him by the administrators of the said estate, and that these powers give him the mandate to recover the land belonging to that estate. But according to the case of; ***Re: Estate of Krishan Murti Maini (Deceased) [2011] Eklr***, cited with approval by *Justice Nkonge Lugadya*

in ***Kampala Financial Services versus Commissioner for Land Registration Misc. Cause No. 149 of 2020***, *the Learned Judge* stated that;

> *"an administrator has no power to delegate his or her mandate".*

I find no reason from departing from this position. The implication is that the power of attorney allegedly given to the 1st Respondent by the administrators of the estate of the late Charles Kasaja Stokes is *null* and *void*. As such, I find that the 1st Respondent acquired no interest in the suit land by virtue of the said powers of attorney; and therefore, has no caveatable interest.

Further, in his affidavit attached to the caveat (*annexure "A"*), the 1st Respondent averred that he is a beneficiary of the estate of the late Charles Kasaja Stokes. It suffices to note that his evidence demonstrates no *nexus* between the suit land and the said estate, to support his would be beneficial interest in the suit land. Be that as it may, his Counsel also argued that the 1st Respondent's caveat cannot lapse, and can only be removed by the caveator under the circumstances stipulated in Section 139 (1) of the Registration of Titles Act**,** because it is a beneficiary's caveat.

Apparently, Counsel meant to assert that the 1st Respondent's caveat cannot also be removed by Court. But this is a fallacy. In my view, there is nothing in Section 139(1) of the Registration of Titles Act which bars this Court from ordering the removal of any caveat. Even if the provisions of the said section are read together with those of other sections on caveats, such cannot still be implied.

To start with Section 140(1) of the Registration of Titles Act, I already noted that this empowers Court to order the removal of any caveat, if the caveator fails to show cause why it should not be removed, in an application of this nature.

It provides:

> *Upon receipt of such caveat the Registrar shall notify the receipt to the person against whose application to be registered as proprietor or, as the case may be, to the proprietor against whose title to deal with the estate or interest the caveat has been lodged; and that Applicant or proprietor or any person claiming under any transfer or other instrument signed by the proprietor may, if he or she thinks fit, summon the caveator to attend before the Court to show cause why the caveat should not be removed; and the Court may,*

> *upon proof that the caveator has been summoned, make such order in the premises either ex-parte or otherwise, and as to costs as to it seems fit.*

It is from sub-section (2) of Section 140 of the Registration of Titles Act that I noted what may have caused Counsel to argue that the 1st Respondent's caveat "*does not lapse and can only be removed by the caveator under the circumstances provided for under Section 139 of the Registration of Titles Act…*" (*page 5, paragraph 1, top, of Counsel's submissions*).

It is apparently that his mixture of the term "*removed*" as used in the aforestated provisions, and "*lapse*" as used under Subsection (2) of Section 140 of the Registration of Titles Act**,** providing that "*Except in the case of a caveat lodged by or on behalf of a beneficiary claiming under any will or settlement or by the registrar, every caveat lodged against a proprietor shall be deemed to have lapsed upon the expiration of sixty days after notice given to the caveator that the proprietor has applied for the removal of the caveat.*"

These provisions dictate that any other caveat, except one lodged by or on behalf of a beneficiary claiming under any will or settlement or by the registrar, can lapse upon the expiration of sixty days after notice given to the caveator

that the proprietor has applied for the removal of the caveat. The term "lapsed" as used in the latter provisions appears to be different from the term "*removed*" as used in sub-section (1).

According to the **Black's Law Dictionary (1968), Revised 4th Edn., p.1022,** the term lapse means, that the caveator's right (to protection by the caveat) has terminated through his or her neglect or failure to exercise it within sixty days after notice given to him or her that the proprietor has applied for its removal. Section 142(3) of the Registration of Titles Act sheds light on how a caveator may exercise the said right, that is; by appearing before Court "*before the expiration of the sixty days…." and giving "such undertaking or security, or lodges such sum in 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…"*

It suffices to note that the lapse of caveats in confined to particular circumstances as specified under Section 140(2) of the Registration of Titles Act. First is that the lapse can occur to any caveats except those lodged by or on behalf of a beneficiary claiming under any will or settlement or by

the registrar. The 1st Respondent's averred in his affidavit attached to his caveat (*annexure "A"*) to be a beneficiary of the estate of the late Charles Kasaja Stokes.

It is not indicated anywhere in that affidavit that his alleged beneficial interest in the suit accrued from a will or settlement. As such, his caveat can lapse, since it is not one of those caveats excepted from lapsing under Section 140(2) of the Registration of Titles Act**.** This refutes his Counsel's argument that his caveat does not lapse.

Secondly, only caveats lodged against a proprietor of land can lapse. This means that caveats lodged against any other person, say; any person claiming under any transfer or other instrument signed by the proprietor, cannot lapse under Section 140(2) of the Registration of Titles Act.

In this case, the Respondents' caveats were lodged not only against other persons, but also the Applicant, who is a proprietor of the suit land. As such, it can lapse upon the expiration of sixty days after notice given to the caveator that the proprietor has applied for the removal of the caveat. Turning now to the term "removed".

The term "removed" as used in Section 140(1) of the Registration of Titles Act literally means; to get rid of

something, say; the caveat **(*See.,* *https://www.vocabulary.com/dictionary/remove*).**

The provisions of the said section appear to generally apply to any caveat. What this means is that Court has powers to order that any caveat, be it one lodged by a beneficiary claiming under any will or settlement, to be gotten rid of, in an application of this nature, upon the caveator failing to show cause why the same should not be gotten rid of.

In view of the above, it can be said that whereas a caveat lodged by or on behalf of a beneficiary claiming under any will or settlement or by the registrar cannot lapse, it can be removed upon an order of Court. It was, therefore, erroneous for the 1st Respondent's Counsel to argue that the 1st Respondent's caveat cannot be removed. Having said that, I shall now turn back to the issue at hand:

Whether the Respondents have cause why their caveats should not be removed

I already noted that the Respondents abused the temporary protection afforded to them by their caveats. Besides that, I also found that 1st Respondent has no caveatable interest in the suit land. I am unable to make a finding on the 2nd Respondent's interest in the suit land given his non-

appearance in the matter on account of his alleged death. But be that as it may, I consider that the time his caveat has subsisted is sufficient to make a finding on its lifespan. Having already lived 10 years without any step being taken by the remaining executors of the estate of the late C. Stokes, Kasaja (since the 2nd Respondent was just one of them), my view is that the 2nd Respondent's caveat should not be allowed to continue to subsist.

Considering the weight of the Applicant's case against that of the Respondent's, I am constrained to find that the Respondents have no cause why their caveats should not be removed.

This issue is thus found in the negative.

Issue No.2:

Whether there are any remedies available to the parties

The Applicant sought an order directing the removal of the Respondents' caveats on the suit land. Having ruled issue one in the negative, I deem fit to grant this order.

Ultimately, this application succeeds with the following orders:

1. An order directing the Commissioner for Land Registration to remove the caveat lodged by the Respondents on land comprised in Block 249 Plot 1103, at Bunga.

2. An order that the 1st Respondent pays 50% of the costs of this application.

I so order.

…….

Henry I. Kawesa

JUDGE

27/01/2022

27/01/2022:

Ms. Majda Atulinda for the Applicant.

Respondents and their Advocate absent.

Sgd:

Ayo Miriam Okello

DEPUTY REGISTRAR

27/01/2022