

MISCELLANEOUS CAUSE NO. 103 OF 2022

Late AHMADA KYABASINGA).....APPLICANTS

VERSUS

KAYONDO NASSIWA JANAT:.....RESPONDENT

Before: Lady Justice Alexandra Nkonge Rugadya.

Ruling.

It seeks orders that the respondent shows cause why the caveat lodged on the applicant's land comprised in **Busiro Block 239 plot 18 land at Sanda Wakiso District** should not be vacated. It further seeks that the Commissioner Land Registration/Registrar of Titles Wakiso Zonal office removes the caveat from the register, and that the respondent pays damages, and costs of the application.

Grounds of the application.

That on 10th May, 2022, the respondent claiming to be the registered proprietor of the same having purchased it from NPART, lodged a caveat vide **instrument number WBU-00319806**. During his lifetime, the late Ahmada Kyabasinga never mortgaged the suit land to any financial institution as alleged by the applicant, nor has there ever been any mortgage deed registered on the white page as an encumbrance. That the deceased has never been part of

any legal proceedings touching the suit land in any court or tribunal as alleged by the respondent.

That contrary to the respondent's averments in her affidavit, the respondent has never been in possession of the suit land, since the applicants are the ones in possession of the land which has a tenant, and that the respondent had no lawful cause or otherwise to lodge the caveat in issue as she has no interest whatsoever therein.

That since January, 2022, when the applicant alleges to have discovered that the applicants are the registered proprietors of the suit land, she has never taken any steps to challenge their proprietorship in courts of law but rather lodged the caveat in issue which has not only inconvenienced but also inflicted psychological torture on them, and that various demands for the removal of the said caveat have not been heeded by the respondent.

In addition, that because the respondent does not have any caveatable interest in the suit land, the continued stay of the said encumbrance is unlawful and as such the caveat was lodged illegally. The respondent should in the circumstances show why the same should not be vacated by the Commissioner Land Registration and the applicants compensated for the inconvenience caused; and costs of the application.

Reply by the respondent:

The respondent opposed the application through her affidavit in reply wherein she stated *inter alia* that the instant application is not only misconceived but is also a blatant abuse of court process and that the applicants are forum shopping because the application raises pertinent issues that can only be disposed of by way of an ordinary suit.

That she is the lawful owner of the suit land having purchased the same for Non-Performing Assets Recovery Trust (NPART) pursuant to an execution order for sale of the same in ***Tribunal Case No.21 of 1997***. Upon purchasing the land on 25th July, 2005, not only was she registered as the proprietor thereof vide ***instrument no. KLA 277615*** she also immediately took possession thereof.

That the affidavit in support of the application is tainted with falsehoods owing to the fact that the applicant's acquisition of the special certificate of title and entry of their names on the register as the registered proprietors thereof was not only unlawful but also a total abuse of her right as the lawfully registered proprietor of the suit land.

That while the applicants allege that they are the administrators of the estate of the late Ahmad Kyabasinga, the said grant was obtained in 2016, while the respondent had already been registered as proprietor as at 25th July, 2003, hence the applicants lack the requisite knowledge of what transpired between NPART and the late Kyabasinga or the respondent and NPART.



The respondent's claim is that in 1996, the late Ahmad Kyabasinga mortgaged the suit land to Uganda Commercial Bank and the same was registered on 27th August, 1996 and that while the respondent has at all times been in possession of the suit property together with the tenants thereon, the applicants having been registered as the proprietors of the suit land on 31st March, 2022 are precluded from claiming possession thereof or being in control of the tenants in occupation thereof and that it is the respondent's right to lodge the caveat in her capacity as the lawful owner of the land.

That on 5th August, 2022, the respondent was invited to a fact-finding meeting by a one Ms. Namutebi Veronica, a Registrar of Titles at the Busiro MZO who confirmed that the special certificate of title in the applicant's names was issued in error and that it is against this background that she halted her lawyers from filing the case, pending the Registrar's intended action to rectify the error by September, 2022.

In addition, the respondent averred that she lodged the caveat to protect her interest therein and that if the same is vacated by this court, her interests therein will be prejudiced and that it would be contrary to the principles of natural justice to order the Commissioner Land Registration who is not a party to the suit to vacate the caveat.

Further, that removal of the caveat shall occasion a miscarriage of justice to the respondent and that instead of vacating the caveat, the matter regarding ownership of the suit land should be determined by way of ordinary suit.

Rejoinder.

In a rejoinder by the applicants, it was averred that the application is not only meritorious but also properly before this court as the same is based on facts supported by evidence and the law, which this court can easily dispose of.

That the respondent has no interest whatsoever in the suit land as the certificate of title is not only in their possession but also in their names as the registered proprietors as the administrators of the estate of the late Ahmada Kyabasinga as indicated in the registry records, and that the deceased was not a party to either the transaction between NPART, or the alleged **Tribunal Case No. 21 of 1997.**

That the statutory declaration attached to the affidavit in reply marked **Annexure 'D'** which was made after filing this application is inconsequential since the same does not cure the defects in respect of the differences in the name of the caveator on the certificate of title, and that the respondent has never been the registered proprietor, or in possession of the suit land.

The applicants further denied the allegations that the affidavit in support of the application contains falsehoods as evidenced by the record from the land registry, as well as the certificate of title which is not only in their possession but, was also legally obtained in their names and

capacity as the administrators of the late Ahmada Kyabasinga, and that there has been no infringement on the respondent's rights since she has no interest in the land.

That while the respondent alleges that she was registered as the proprietor of the suit land on 25th July 2003, there is no evidence of a purchase agreement or the late Ahmada Kyabasinga's dealings with NPART, from whom she claims to have purchased, nor is there any evidence of the alleged mortgage in the form of a mortgage deed or agreement linking the deceased and NPART.

They also refuted the respondent's claim of possession of the suit land and caveatable interest and contended that there was no justifiable reason whatsoever for lodging the caveat in January, 2022 and failing to take any action.

Further, that the alleged invitation by the Registrar of titles is not attached and that the contents of *paragraphs 15 & 16* of the affidavit in reply contain falsehoods with no evidence of the allegations therein.

That the principles of natural justice have been well applied in the instant application against the respondent who falsely claims an interest in the suit land. The Commissioner Land Registration's role in this application was only to implement the orders of court.

Representation.

The applicants were represented by ***M/s Verus Advocates***, while the respondent was represented by ***M/s Nambirige & Co. Advocates***. Both counsel filed written submissions in support of their respective clients' cases as directed by this court.

Issues for determination

Counsel in their written submissions raised the following issues for determination by this court;

- 1. Whether the caveator/respondent has a caveatable interest in the suit land;***
- 2. Whether the reliefs sought can be granted.***

Resolution by court.

I have carefully read and taken into account the pleadings, evidence, and submissions of both counsel, the details of which are on the court record.

Issue No.1: Whether the caveator/respondent has a caveatable interest in the suit land.

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 HCCM 690/99***).

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A caveatable interest is a proprietary interest in land rather than a mere personal right in relation to the land or against the owner of the land.

In the instant case, both the applicants and the respondent claim ownership of the suit land. The applicants on the one hand claim ownership of the land in their capacity as the administrators of the late Ahmada Kyabasinga the original owner, while on the other hand the respondent claims to have purchased the suit land from NPART in the execution of an order of sale in **Tribunal Case No.21 of 1997**.

Under **section 59 of the Registration of Titles Act**, a certificate of title is conclusive evidence of ownership by the person named in the Title as proprietor, with power to dispose of the land described therein. The only exception is upon proof of fraud; as dictated under **section 176 (C) of the RTA**.

In the case of **John Katarikawe versus William Katwiremu (1977) HCB 187**, it was held that once a person is registered as a proprietor of land his title is indefeasible, except for fraud.

The applicants in the instant case possess a special certificate of title of the suit land whereon they were registered as the proprietors of the suit land in their capacities as the administrators of the estate of the late Ahmada Kyabasinga under **instrument no. WBU00315746** on 31st March, 2022 at 11:22 am. **(Refer to Annexure 'B2' of the affidavit in support of the application)**.

The respondent claims to have purchased the suit land from NPART, and that she was registered as the proprietor of the suit land on 25th July, 2005. To this end she presented a copy of the execution order as well as the notification of sale marked **annexure 'A' & 'B'**, to prove the said sale and a copy of the original duplicate certificate of title of the suit land marked **Annexure 'E'** whereon she was registered as proprietor under **instrument no. KLA 277615** on 27th July 2005 at 3:48 pm.

In addition, the respondent also adduced a copy of the transfer form marked **Annexure 'C'** to support her claim that she lawfully acquired and procured the transfer of the suit land into her name.

Decision of court:

The question before court is for the determination of which of the two certificates was valid and which is to be cancelled, as the two cannot co-exist. Court under those circumstances has to play an investigatory role to understand how the two titles had been created over the same piece of land, issued to two different owners and indeed how each side had acquired ownership/possession of the suit property.



Court is also required to decide whether or not the late Ahmada Kyabasinga was involved as claimed, in any transaction with NPART, or **Tribunal Case No.21 of 1997.**

Where fraud is alluded to as in this case which would require cancellation of a title, the evidence presented from either side has to be test to verify its truthfulness. This can only be done through a proper and full trial, not through an application and affidavit evidence.

I would accordingly dismiss this application with costs, and direct that the matters be raised under a formal suit.

I so order.


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Alexandra Nkonge Rugadya
Judge

30th November, 2022.

Delivered by mail
Alexandra Nkonge Rugadya

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30/11/2022

