

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
MISCELLANEOUS CAUSE NO. 002 OF 2022

MUTUMBA RONALD.....APPLICANT

VERSUS

1. DIRISA GAWANO

2. THE COMMISSIONER LAND REGISTRATION.....RESPONDENTS

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

Ruling

The applicant brought this application against the respondents seeking the following orders;

- a. That the 1st respondent shows cause as to why the caveat lodged on the white page of land comprised in Mawokota Block 122 Plot 129 at Kikondo, Mpigi, vide Instrument Number KLA – 00012222 should not be removed.
- b. That the 1st respondent's caveat lodged on land comprised in Mawokota Block 122 Plot 129 at Kikondo, Mpigi District be removed from the white page for land comprised in Mawokota Block 122 Plot 130 at Kikondo Mpigi District be vacated.
- c. That the 2nd respondent be ordered to vacate the caveat lodged from the white page for land comprised in Mawokota Block 122 Plot 129 at Kikondo, Mpigi District.
- d. That the 1st respondent pays compensation/damages to the Applicant for lodging the aforesaid caveat on his land without lawful or reasonable cause.
- e. Costs of this application be provided for.

The application is supported by an affidavit sworn by the applicant and the grounds briefly are as follows;

1. That the applicant purchased land comprised in Mawokota Block 122 Plot 129 at Kikondo, Mpigi District from Max Mwebembezi who had also

purchased the same from Boaz Musasizi, the registered proprietor thereof and the said Max Mwebembezi was in occupation of the same.

2. Before the purchase of the said land, the Applicant carried out a search both on the ground and in the land registry and established that the land was free from any encumbrance.

3. The applicant took possession of the portion of land purchased. However, when the applicant wanted to transfer the land into his own name, he was informed that the land was caveated by the 1st respondent on the 1st day of February 2017 vide instrument number KLA- 00012222.

4. The respondent does not have any caveatable interest in the land and merely lodged the caveat for purposes of frustrating the applicant from transferring the certificate of title for the said land.

5. That it is in the interest of justice that the application be allowed.

The application was opposed by an affidavit in reply sworn by the 1st respondent and the pertinent paragraphs are as follows;

7. That I lodged a caveat on the said certificates of Title to protect my interest in the said land as a beneficiary to the estate of my late father.

8. That plot 129 on Mawokota Block 122 was illegally surveyed out of original plots on which I had lodged a caveat.

12. That I had kept the said certificates in the drawer located in my bedroom at my home at Nsujjuwe.

13. That after the death of my father on 1st February, 1991, I discovered that thugs had entered my bedroom without my knowledge, I found my drawer broken and the said Certificates of Title which I had locked inside the drawer were missing.

14. That in the year 2002 I found one Edward Ssegonja of Namungoona, Kasubi, Lubaga Division having entered the land at Mawokota Block 122 Plot 35 measuring 6.50 acres for which the certificate of Title was one of those which were stolen from my bedroom on or about 1st February, 1991.

15. That when I asked Edward Ssegonja why he was occupying the land at Mawokota Block 122 Plot 35, he said that it is my brother Ahmed Ssemambo who had sold to him the said land and he had acquired the Certificate of Title for Mawokota Block 122 Plot 35 from Ahmed Ssemambo.

17. That at the L.C.1 and Police I came to learn that it is Ahmed Ssemambo who had stolen all said certificates of Title from my bedroom.

21. That I sued Ahmed Ssemambo under High Court C.S No. 372 of 2007 for revocation of the Letters of Administration which he had obtained through fraud in respect of the estate of my late father and for cancellation of all the land titles which he had acquired through fraud.

23. That on 1/12/2009 the High Court issued fresh grant to the Administrator General in respect of my late father's estate.

26. That the land at Mawokota Block 122 Plot 129 was curved out of Plot 7 through fraud and I still have interest in the said land as a beneficiary to the deceased's estate and I am entitled to maintain my caveat on it until the accurate Plot 7 is restored.

Representation:

Mr. Katumba C. appeared for the Applicant while Mr. Simeon Lutaakome represented the 1st respondent. The 2nd respondent was unrepresented. Counsel for the applicant made written submissions but both counsel made oral submissions before court at the hearing of the application.

Issues:

1. Whether the caveat lodged on the white page of land comprised in Mawokota Block 122 Plot 129 at Kikondo Mpigi, vide instrument Number KLA – 00012222 should be removed?
2. Whether the applicant is entitled to the remedies sought?

Submissions:

Issue 1: Whether the caveat lodged on the white page of land comprised in Mawokota Block 122 Plot 129 at Kikondo Mpigi, vide instrument Number KLA – 00012222 should be removed?

Counsel for the applicant cited **Black's Law Dictionary, 8th Edition** on the definition of a caveat as a warning. And that the intention of a caveat is to protect any person's interest in land. (See: **Section 139 (1) of the Registration of Titles Act and the case of Boyness v. Gathern (1969) E.A 385**). That the 1st respondent lodged a caveat on the 1st day of February 2017 and to date making 5 years, has brought no suit against the applicant to determine the validity of his interests.

Thus, the caveat should be removed since the 1st respondent has no legal or equitable interest in the suit land.

5 Counsel added that the suit land does not form part of the estate of the late Asani Mukasa alias Hasani and one of the predecessors in title (Kabona Phillip Mayinja) owned 7 acres of land out of which the suit land was demarcated. That Kabona Phillip Mayanja bought the said 7 acres from two people to wit; the late Hajji Ssemambo Ahamada who was a beneficiary and the Administrator of the estate of the late Asani Mukasa alias Hasani and Hassan Lwanga who was a beneficiary in the estate of the late Asani Mukasa. That this sale and transfer of
10 the land left no legal or equitable interest for the 1st respondent to base on the caveat.

Further, that the applicant traces his interest in the suit land from Musasizi Boaz who became the registered proprietor of the same on 28/6/2016 having acquired the same land from Kabona Phillip Mayanja who also acquired the
15 same land on 29/2/2008 by way of purchase from the late Hajji Ssemambo Ahamada who was the Administrator of the estate of the late Asani Mukasa alias Hassan vide Administration Cause No. 11 of 2004 of the High Court of Uganda.

Furthermore, that the suit land ceased to be part and parcel of the late Asani Mukasa when it was sold and transferred into the names of Kabona Phillip Mayinja. Thus, according to **Sections 180, 192 and 270** of the Succession Act, Kabona Phillip Mayanja acquired good title as a bona fide purchaser for value without notice of fraud. Semambo Ahamada who was the registered proprietor of the suit land as the Administrator of the estate of the late Asani Mukasa alias Hassan had the authority to sell the same as he had acquired good title. (See:
20 **Miriam Nanteza & 3 Others v. Nasani Rwamunono (Court of Appeal Civil Appeal No. 28 of 2013 and Molly Turinawe & Others v. Eng. Ephraim Turinawe, S.C.C.A No. 10 of 2018).**

Analysis of court:

I have carefully considered the submissions of the parties in this application and
30 particularly under this issue.

In the instant case, the applicant bought land comprised in Mawokota Block 122 Plot 129 at Kikondo, Mpigi District from Max K. M. Mwebembezi on the 21st day of December 2016 who had bought the same from Boaz Musasizi. That before buying the land, the applicant carried out a search on both the ground and in the

land registry and established that the land was registered in the name of Boaz Musasizi from whom Max K. M. Mwebembezi had bought the same and it was free from any encumbrances.

That Boaz Musasizi acquired his interest in the above land from Phillip Mayinja who became the registered proprietor of the same on 29/2/2008 having bought the property from the late Hajji Ssemambo Ahamada (Administrator/beneficiary of the estate of the late Asani Mukasa alias Hasani) and Lwanga Eriasa (beneficiary of the estate of the late Asani Mukasa alias Hasani).

It was argued for the applicant that Mwebembezi Max handed over the certificate of title together with the transfer forms signed by Boaz Musasizi, the registered proprietor to facilitate the transfer of land into the name of the applicant who thereafter took possession of the land. That when the applicant wanted to transfer the title into his name, he was informed that the 1st respondent had lodged a caveat on the suit land vide instrument No. KLA – 00012222 and found so upon carrying out a search on the 20th day of August 2020.

Section 140 (1), (2) of the Registration of Titles Act empowers the court to order removal of caveats and provides as follows;

“ 1. Upon the 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 it seems fit.

2. 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.”

I do associate myself with the decision of **Boynes versus Gather (Supra)** where it was held that;

5 *“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 steps to handle the controversy, so as to determine the thoughts of the parties affected by its existence.”*

10 In the instant matter, the 1st respondent lodged a caveat on the suit land on the 1st day of February 2017 however, ever since has not taken any steps. Caveats are meant to be a temporary measure to protect one’s land, thus a caveat is similar to an interlocutory injunction as it only temporally protects the interest of the caveator who is required to bring an ordinary action without undue delay to determine the caveator’s rights as against other rights or competing interests and to obtain a permanent remedy in appropriate cases. (See: **Rutungu Properties Ltd v. Linda Harriet Carrington & Another**, Civil Appeal No. 61 of 2010).

15 In the case of **Teo Ai Choo v. Leong Sze Hian [1982] 2 MLJ 12**, it was stated that; a delay of eleven months during which period no action had been filed entitled court to order removal of a caveat.

20 I find that the 1st respondent’s failure to take any action after having lodged the caveat in 2017 to date as a dilatory act which shows that the 1st respondent has no interest in the land and thus there is no justification for the continuance of the caveat. The respondent should have taken action after lodging the caveat and not sitting on his rights if any.

25 Be that as it may, I have carefully considered the submissions, evidence and entire record in this case. It was argued for the applicant that before the purchase of the said land, the Applicant carried out a search both on the ground and in the land registry and established that the land was registered in the name of Boaz Musasizi and was free from any encumbrance.

30 That by the time the applicant bought the land it was not part of the estate of Mukasa Hassan and the people who bought the land were bonafide purchaser for value without notice.

In this case the respondent did not filed any action to determine his interest, I find that he conducted himself in a dilatory manner and such conduct must be discouraged as it breeds abuse of the caveat scheme. In addition no claim has been brought challenging the transfer of land from 2008 to date when the land

was bought by Phillip Mayinja who became the registered proprietor of the same on 29/2/2008 having bought the property from the late Hajji Ssemambo Ahamada. Fresh Letters of Administration were issued on the 1/12/2009.

5 The applicant in this case did conduct due diligence before purchase and found that there was no encumbrances on the suit land and thus went ahead and purchased thus, qualifying as a bonafide purchaser for value without notice. The applicant even after purchase took possession of the suit land.

10 I accordingly find that the applicant bought land that was not part of the estate of Mukasa Hassan and the people who bought from him were bonafide purchasers for value without notice. I therefore, find no reason why the caveat should not be removed.

This issue is therefore resolved in the affirmative.

Issue 2: Whether the applicant is entitled to remedies sought?

15 Counsel for the applicant submitted that **Section 33** of the Judicature Act, **Section 98** of the Civil Procedure Act and **Section 177** of the Registration of Titles Act and the case of **Rutungu Properties Ltd v. Linda Harriet Carrington & Another, (supra)**, cloth this court with jurisdiction to grant all remedies sought in this application. That the 1st respondent in the instant case has no caveatable interest in the suit land and thus, the same be removed and that the applicant has been
20 greatly inconvenienced the applicant and should be held liable in damages.

Analysis of Court:

25 Having found in the first issue that the applicant bought land that was not part of the estate of Mukasa Hassan and the people who bought before him were bonafide purchasers for value without notice. And no action has been taken since 2008 when the land was purchased by Phillip Mayinja challenging the said purchase from which the applicant derives his interest. Phillip Mayinja acquired good title and therefore passed on the same to his successors in title including the applicant. I therefore, see no justification of maintaining the caveat as the 1st respondent has no cause.

30 I accordingly order that the caveat be removed. The application is hereby allowed with costs. I so order.

Right of appeal explained.

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OYUKO ANTHONY OJOK

5 JUDGE

24/06/2022