

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

MISCELLANEOUS CAUSE NO.0053 OF 2021

1. LAMECK BATEESA aka

LAMECK SENFUKA BATEESA

2. WINIFRED NAKASUJJA BATEESA aka

BYANSI WINIFRED

BATEESA:.....APPLICANTS

VERSUS

1. ALAN ZINGA (Administrator of the

Estate of the late TIMOTHY ZZINGA)

2. GLADYS

NAMUTEBI:.....RESPONDENT

Before: Lady Justice Alexandra Nkonge Rugadya.

RULING.

Introduction:

This application was brought by motion under the provisions of **Sections 136, 140 (1), (2) & (3), Section 142, 177 & 188 of the Registration of Titles Act, Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act and Order 52 rules 1 & 2 of the Civil Procedure Rules SI 71-1.**

It seeks orders that the caveats lodged on land comprised **Kibuga Block 29, plot 286 land at Kanjokya Kampala central division (suit land)** be vacated and that costs of this application be provided for.

Grounds of the application:

The application is based on the grounds contained in the affidavit in support of the 2nd applicant wherein she states *inter alia* that the applicants who are the administrators of the estate of the late Makubugu Yokana are also the registered proprietors of the suit land.

That on 6th August, 2006, the respondents with no justifiable reason or caveatable interest lodged caveats on the suit land: vide **Instrument No.KCCA-00063** and **instrument No.KCCA-00024518**



That the respondents, beneficiaries and administrators of the estate late Timothy Zzinga, who doctored a sale agreement in respect of the suit land. The same had been adjudicated upon in **Criminal case No.480 of 2007** wherein it was found that the document was procured through fraud.

- 5 That the said judgement has never been either appealed against or set aside and that the reasons for caveating the land was erroneous. Therefore there was no justifiable reason for their acts which have obstructed the applicants from executing their duties as the lawful administrators of the estate of the late Makubugu Yokana.

Representation:

- 10 Service was effected onto the respondents through their counsel, **Ms S.K Kiiza & Co. Advocates**. They did not file any response to oppose the application.

The applicants on their part were represented by **M/s Barnabas D K Dyadi & Co. advocates**. Counsel filed written submissions in support of the application.

Resolution by court:

- 15 I have carefully read and taken into account the submissions of counsel for the applicants, details of which are on court record.

It is now settled law that 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.

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

- The caveats which are the basis of this application was lodged under **S.139 (1) Registration of Titles Act Cap 230** which stipulates that a caveat may be lodged on land by any beneficiary or other person claiming any estate or interest in land under the operation of the Act, forbidding the registration of any person as transferee or proprietor of land until after
25 notice of the intended registration or dealing is given to the caveator or unless the caveator consents in writing to the registration.

Clearly, for one to lodge a caveat, the person must have a legal or equitable right of claim in the estate and there must be justifiable reasons for doing so. **(See: Simon Kataabu v Richard Ssimbwa Miscellaneous Cause No. 121 of 2020).**

- 30 In the instant case, it is not in dispute that the applicants are the registered proprietors of the suit land in their capacity as the administrators of the estate of the late Makubugu Yokana, the original owner of the suit land.


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They claimed further that the respondents did not have any caveatable interest in the suit land and that the agreement from which their purported interest is said to have stemmed was a forgery.

From the ruling of Her Worship Esta Nambayo (as she then was), one Timothy Zzinga under whom the respondents claim interest was found guilty of procuring through false pretenses, a document relating to the acquisition of the suit land.

As per the search certificate dated 23rd October, 2020, (**Annexure B**), the suit land comprised in **Block 29 plot No. 286, Kankokya Kibuga** several caveats had been lodged thereon, by Timothy Zzinga on 2nd August, 2006; Nakibirige Rebecca on 4th June, 2007; Namutebi Gladys on 13th January 2016; and Alan Zzinga on 31st July, 2019.

The land measuring 0.1093 had the names of both applicants as administrators of the estate of the deceased Mukubuga. They got registered on the title on 2nd December, 2019. Court in its judgment (**annexure C'** to the affidavit in support) noted that Timothy Zzinga and Nakitto Diana between 1998 and 2006 had made fraudulent representations, and without authority, dealt with the estate of Yokana Mukubuga, who had died testate. That the alleged sale of **Block 29, lot 286, Kanokya**, which is also the subject of this cause was false as the deceased never sold off that plot to the accused.

It is clear that some of the caveats were lodged before and others after the judgment was passed by the Chief Magistrates' Court, Buganda Road in 2008. There is no evidence however that the judgment was ever challenged or appealed against.

As per **Annexure D**, the firm representing the applicants wrote to the caveators giving them notice of intention to sue. The letter was also copied to their counsel, who acknowledged receipt on that same day. The requirement to give notice to the caveators was therefore satisfied.

In the said notice, the applicants' counsel referred to the said judgment, highlighting its implications to the perceived interests of the respondents and other caveators, and requested them to vacate the caveats within 7 days. It appears that no step was taken thereafter to remove the caveats, and hence this application.

It is settled that no court will lend its aid to a man who founds his cause upon an immoral or illegal act. It follows therefore that such a document cannot be ably relied on in claiming an interest in the suit land.

Where as in this case, no affidavit in reply is filed, the affidavit in support is taken to be unchallenged and truthful, subject to whether the contents pass the test of evidence and is cogent and of probative value. (**Tororo District Administration v Andalalapo Ltd [1997] KALR 126**). The statements of facts contained therein therefore remained uncontroverted.



The evidence presented by the applicants proves that the suit property herein was caveated by persons who evidently had no interest in the same.

This was property declared by court as rightfully belonging to the estate of the late Makubugu and no evidence was led by the respondents to suggest that subsequent transactions took place to change its ownership to that of the respondents.

I am therefore inclined to agree with counsel for the applicants that the respondents had no reasonable cause to lodge the caveats since they had no interest, legal or equitable in **Block 29, plot 286**.

In conclusion, the application is hereby granted. The Commissioner, Land Registration is therefore directed to vacate the caveats lodged by the respondents within fourteen (14) days from the date of delivering this ruling.

No orders as to costs.

I so order.



Alexandra Nkonge Rugadya

Judge.

14th March 2022.

Delivered by email
17/3/2022
