

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

MISCELLANEOUS CAUSE NO.125 OF 2021

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ADAPT TECHNICAL SERVICES

LIMITED:.....APPLICANT

VERSUS

1.TIGALWANA FRED;

10 **2. KABANYOLO NORTH CHRISTIAN CENTER**

MINISTRIES:.....RESPONDENTS

Before: Lady Justice Alexandra Nkonge.

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RULING

Introduction:

20 The applicant brought this application under the provisions **Section 140 (1) & (2), Sections 142, 145 & 188 of the Registration of Titles Act Cap.230, Section 33 of the Judicature Act Cap.13, Section 98 of the Civil Procedure Act Cap.71 and Order 52 Rules 1, 2 & 3 of the Civil Procedure Rules S.I 71-1** seeking orders that:

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- 1. The 1st respondent be summoned to appear before this court and show cause why the caveat he lodged on 24th March 2021 on behalf of the 2nd Respondent on registered land comprised in Kyadondo Block 174 Plot 438 land at Kabanyolo measuring approximately 0.809 hectares should not be removed.**
 - 2. Consequential orders issue to the Commissioner, Land Registration to dislodge the respondents' caveat and effect the order in the Register book.**
 - 3. The 1st respondent pays general damages to the Applicant for the continued existence of the caveat on the suit land.**
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4. Costs of the Application be provided for.

The application is supported by an affidavit sworn by **Mr. Francis Olul**, the applicant's director and he deposes that the applicant is the registered proprietor of land comprised in **Kyadondo Block 174 Plot 438 land at Kabanyolo measuring approximately 0.809**
5 **hectares** (hereinafter referred to as the "suit land"), having purchased the same in 2016 from the former registered proprietor, a one Kalibala Cyprus who transferred the title to the applicant. that he immediately took possession of the same and has enjoyed peaceful and uninterrupted possession to date.

10 That the applicant was informed by its bank's lawyers that the suit property was encumbered with a caveat lodged by the 1st respondent on behalf of the 2nd respondent who owns a *kibanja* on the suit land.

The applicant avers that he has never had any dealings with the respondents and that it was never made aware of any *kibanja* interest on the suit land at the time of purchase.

15 In addition, that the applicant wrote to the Commissioner, Land Registration to give notice to the caveator to appear and show cause why the caveat should not be removed but when the applicant's advocates followed up on the same, the Registrar of Titles notified them that the said caveat could only be removed by court not the Registrar since the caveator claimed an interest as a *kibanja* holder.

20 That when the applicant wrote to the Registrar General of the Uganda Registration Services Bureau to establish the 2nd respondent's particulars so as to engage it to remove the caveat, it was informed that the 2nd respondent does not exist in the official data base and records of the Uganda Registration Services Bureau therefore, the 2nd respondent is non-existent.

25 According to the affidavit of service of Mr. Agaba Clinton a process server, as advised by counsel, the Registrar General had confirmed that since the 2nd Respondent was a non-existent party it therefore had no address for service.

30 Further, that it is the deponent's belief based on the advice of the applicant's advocates that a non-existent entity can neither own property nor have any interest in property. That although a caveat is a temporary protection given by law to a caveator halting any dealings in the land subject to the caveat to allow him assert his rights in a competent court, it is not a permanent remedy.

Furthermore that since March 2021 when the said caveat was lodged, the respondents have not instituted any action against the applicant in any court or tribunal to assert their interests.

35 That the 1st respondent's caveat has neither meaning nor basis and should be dislodged as it has impeded the processing of the applicant's facility with **M/s DFCU Bank Limited**.

From the record, it appears that the respondents were served through the postal address, **P.O Box No.3620 Kampala** that was availed for purposes of the caveat in issue. Court however in addition directed the applicants to serve the respondents through their counsel: **M/s GUMA & Co. Advocates.**

5 **Resolution by court:**

According to **section 139 (4) of the Registration of Titles Act**, a caveat shall not be received unless some address or place in which a post office is situated is appointed in the caveat as the place at which notices and proceedings relating to the caveat may be served.

10 Similarly, **Section 202 (2) of the RTA** further stipulates that any address of a person as entered in the Register Book may be used as his or her address for service. **Subsection (3)** states that the address appointed in a caveat as the place at which notices relating to the caveat may be served shall be the address for service of the caveator.

15 In the instant case, the address supplied by the 1st respondent for purposes of any proceedings in respect of the caveat is the address, through which he and the 2nd respondent were served.

To this end, a copy of the mailing receipt dated 20th October, 2021 is attached as proof that the 1st respondent who lodged the caveat on behalf of the 2nd respondent was served through postal address by registered mail (speed post) posted on 10th October 2021 because the 1st respondent was unknown to the applicant thereby making personal service hard.

20 Following the directives of court the applicants also served the respondents through their last known counsel, **M/s GUMA & Co. Advocates.** The respondents were therefore duly served but opted not to oppose the application.

25 The applicant through its lawyers **M/s Gem Advocates** filed written submissions which I have carefully read and taken into consideration in addressing the issue of whether or not the application merits the prayers sought.

The main issue for consideration is whether or not the caveat lodged by the 1st respondent on behalf of the 2nd respondent on **Kyadondo Block 174 plot 438 land at Kabanyolo** should be vacated by court.

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

The caveat which is the basis of this application was lodged under **section 139 of the Registration of Titles Act (supra)** under which a beneficiary or other person claiming any estate or interest in land may lodge a caveat.


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The applicant avers that that the suit property was encumbered with a caveat lodged by the 1st respondent on behalf of the 2nd Respondent who claims that it is the owner of a *kibanja* on the applicant's land.

Through the affidavit of Mr. Francis Olul contends that it was notified by the Registrar General's Office that the 2nd respondent does not exist in the official data base and records on the Uganda Registration Service Bureau and as such it is a nonexistent.

The applicant counsel in his submissions contends that the 2nd respondent on whose behalf the caveat was lodged is a non-existent party which has no locus to lodge a caveat and that the caveat should not have been lodged in the first place.

From the wording of the caveat and the statutory declaration, the said caveat was lodged on behalf of Kabanyoro North Christian Center by the 1st respondent pursuant to a board resolution authorizing the same. It was not presented as evidence in court.

Facts as adduced in affidavit evidence which are neither denied nor rebutted are presumed to be admitted. **See: *Eridadi Ahimbisibwe v World Food Program & others [1998] IV KALR 32***. Since the respondents filed no objection to this application it remains uncontested. The respondents in short admit that they had no basis for lodging the caveat in issue.

In any case, a caveat only gives temporary protection of interest of interest as the caveator 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 permanent remedy in appropriate cases.

Court further noted that the respondents are obliged to show that the caveator, had brought an ordinary action in time against the caveatee. (**See: *Rutungo Properties Limited versus Lind Harriet Carrington Civil Appeal No.61 of 2010***).

Further, in the case of ***Lim Ah Moi v Ams Periasamy Suppiah Pillay Civil Appeal NoA-2-641-1995*** which was relied on by the Court of Appeal in the ***Rutungo Properties Limited Case (supra)***, it was held that;

"It is well settled that a caveat acts as a statutory injunction which fetters a registered proprietor from dealing with his property and exercising all the rights conferred upon him by the code. Because of its far reaching effects, it is vital that claims made by a caveator are enforced by action without undue delay."

In the instant case, it is evident that the applicant it is the unchallenged registered proprietor of the suit land since August, 2015, as per ***Annexure A***, attached to the affidavit in support. It has been denied a loan facility by DFCU bank owing to the fact that the suit land is encumbered. (***Annexure B***).

No action whatsoever has been instituted by the 1st respondent or his principal for over 8 months since 24th March, 2021 when the caveat was lodged. In the circumstances, I find that this is a proper and fit case for removal of the caveat lodged by the respondents.

In the final result, the application is granted with costs.

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.....
Alexandra Nkonge Rugadya.
Judge

10 **28th January, 2022.**

Delivered by email
Alexandra
28/1/2022