

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA  
(LAND DIVISION)  
MISCELLANEOUS CAUSE NO.92 OF 2023

KIMBOWA JANE ----- APPLICANT  
VERSUS  
HENRY MUGABI -----RESPONDENT

RULING  
BEFORE HON. LADY JUSTICE KANYANGE SUSAN

This Application is brought under S.40 Registration of Titles Act S.98 Civil Procedure Act Order 52 Civil Procedure Rules.

It seeks orders that,

- a. The caveat lodged on land comprised in Busiro Block 363, plot 9830 by the respondent be removed
- b. Costs of the Application be provided for

The grounds of the application were contained in the affidavit of Kimbowa Jane but briefly they are;

The applicant is a widow to the late Joseph Kimbowa Kizza who together purchased land comprised in Busiro Block 383, plot 9830 and took effective occupation as their matrimonial home. The late Joseph Kimbowa died and left a Will bequeathing the said property to her. She applied for Letters of Administration and the same were granted. She transferred title into her names as an Administrator of the estate of her late husband. That the respondent without any justification lodged a caveat as a beneficiary on the said land stating it's a family home whereas not.

That the respondent and his mother Mary Nalwanga were left with property which they utilize and he has never utilized this land as he only came at the death of the father. Further to this he claimed there were fraudulent transfers whereas not.

The respondent was served but did not put in a reply and matter proceeded ex parte.

### **Representation**

**M/s Luzige, Lubega, Kawuma and Co. Advocates** represented the applicant and filed written submissions

### **Issues**

- i. Whether there is any reasonable cause as to why the respondent's caveat on the property comprised in Mailo Register Busiro Block 383 plot 9830 land at Bwebajja should not be removed.
- ii. Whether the respondent has a caveatable interest
- iii. What other remedies are available to the parties

Under **S.139(1) of the Registration of Titles Act** 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 notice of the intended registration or dealing is given to the caveator or unless the caveator consents in writing.

It is also 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. See case of **Sentongo Produce & Coffee Farmers Limited and Anor versus Rose Nakafuma Muyiisa HCMC No.690 of 1999**.

In the case of **Simon Kataabu Versus Richard Ssimbwa Miscellaneous Cause No.121 of 2020**. It was held that to lodge a caveat the person must have a legal or equitable right of claim in the estate and there must be reasonable reasons for doing so.

In instant application, the applicant is the registered proprietor of the land comprised in Busiro Block 383 plot 9830 land at Bwebajja and she is registered as an administrator of the late Joseph Kimbowa.

The respondent lodged a caveat dated October 2020 and he averred that he is a biological son of the late Joseph Kimbowa and was appointed in the will as the Chairperson of the Estates trust. That he is a beneficiary of the said land as it, their family home. That some persons have opened boundaries and are trying to effect a transaction on the family home. That the said fraudulent transfers or subdivision or change in proprietorship of the land are being done without due regard to his interest or without his consent. He lodged caveat to protect his interest.

In the Will attached the respondent Henry Mugabi is the Chairman of the Committee of the Trustees among the children of the deceased. The deceased left 4 (four) acres of land located at Bwebajja Busiro on Block 383, plots 230, 214 and 215. He stated that his main home is also situated on the land in question.

In the bequeathement (1) he left his home at Bwebajja to his wife to stay there till her death. However, the home in question and the land on which it is located shall be managed by the above said Committee of Trustees and it (the Committee should never chase my wife away from the said home.)

Counsel for the applicant submitted that in the Will property was bequeathed to the applicant and does not in any way convey it to the Committee. Further to this that the said property has never been a family home to the respondent and



that there is no proof to back allegations of fraudulent transactions on the property in question hence no basis for the caveat to stay

In the Will its clear the respondent is the Chairman of the committee of trustees and has an equitable interest in the suit land as a beneficiary. Though it applicant's home, the Will placed it in the hands of the committee of trustees to manage though not to chase her away from the home until her death.

I find that the respondent has a caveatable interest as a beneficiary and he had reasonable cause to lodge the caveat as boundaries were being opened without his consent as chairman of the committee of trustees.

In conclusion I find no merit in this application. It is hereby dismissed .No order as to costs.

DATED AT KAMPALA THIS 31<sup>st</sup>-----DAY OF August-----2023

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KANYANGE SUSAN

AG JUDGE LAND DIVISION.