

- iv) Costs of this application be provided for.

Background;

2. The 1st applicant inherited the suit land from his late father Amis Genza. The 1st applicant sub-divided the land and sold it to the rest of the applicants while retaining a portion. The applicants are the registered proprietors of land comprised in Busiro Block 161 Plots 101, 102, 103 and 104 at Kasozo. The applicants allege that the respondent lodged a caveat that affects all the four plots of land without reasonable cause and pray to be compensated in damages. It is against this background that the applicants bring this application.

Applicant's evidence;

3. The application is supported by an affidavit deponed by **Mr Kisaka Juma** the 1st applicant which sets out the grounds of the application including the following;
- i) The applicants are the registered proprietors of the suit land comprised in Busiro Block 161 Plots 101, 102, 103 and 104.
 - ii) The 1st applicant obtained his land by way of succession from his late father Amis Genza while the rest of the applicants bought their land from the 1st applicant.
 - iii) That the respondent is a cousin brother to the 1st applicant and he is a biological child of the late Jaberu Ntege Mutebi who died in 1982 and he was the biological brother of the late Amis Genza.
 - iv) That the respondent is not a child of the late Amis Genza neither has he ever bought any land from the applicant and hence has no interest for him to lodge a caveat.
 - v) That the caveats were lodged without any reasonable cause and the caveator has no caveat able interest in the suit land.

- vi) That the respondent's caveat is frustrating the applicants' effort to deal and/or develop their land.

Respondent's evidence;

4. The application is responded to by an affidavit in reply deposed by **Mr. Mulondo Suleiman** the respondent in this application which briefly states as follows;
- i) That the 1st applicant and the respondent are biological grandchildren of the late Juma Kisaka.
 - ii) That the late Juma Kisaka had his land and all children were at liberty to acquire a certificate of title for their land or register their various interests.
 - iii) That the said land contains burial grounds given the fact that the late Juma Kisaka was buried on the same land.
 - iv) That in 2019 the 1st applicant procured a certificate of title on the residue which he acquired fraudulently.
 - v) That in 2020 the respondent and other family members lodged a caveat on over the said title, which caveat was fraudulently removed by the 1st applicant.
 - vi) That on the 6th of June 2023 the respondent lodged another caveat over the same certificate of title as was advised by the Wakiso lands office.
 - vii) That whatever is stated is true and correct to the best of the respondent's knowledge.

Representation;

5. The applicants were represented by **Mr, Segwanyi Saaka** of M/s Sseggwanyi Ssakka & Advocates whereas the respondent was represented by **Mr, Mugerwa Marcus** of Justus

Kato Advocates & Solicitors. Both parties filed their affidavits which I have considered in the determination of this application.

Issues for determination;

- i) Whether the caveat should be removed?
- ii) Whether the caveat was lodged without a reasonable cause to warrant the award of compensation/damages?

Resolution and determination of the issues;

Issue 1; Whether the caveat should be removed?

6. It is a settled principle of law that for one to lodge a caveat he or she ought to have a legal or equitable interest in the land or any other caveatable interest that he or she seeks the caveat to protect otherwise the caveat would be invalid (*See; Sentongo Produce and Coffee Famers Limited & another Vs Rose Nakafuma Muyisa HCMC No.690/1999*)
7. 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 actions and steps to handle the controversy so as to determine the thoughts of the parties affected by the existence of the caveat
8. I have carefully perused the affidavit in support of the application deposed by the 1st applicant together with the affidavit in reply deposed by the respondent.
9. Before I proceed to determine this issue, I will first ascertain whether there is a reasonable cause why the respondent lodged the said caveat over the 1st applicant's certificate of title.
10. The Registration of Titles Act Cap.230 under Section 140 states that "***Any beneficiary or other person claiming any estate or interest in land under the operation of this Act or in***

any lease or mortgage under any unregistered instrument or by devolution in law or otherwise may lodge a caveat with the registrar in the form in the Fifteenth Schedule to this Act or as near to that as circumstances permit, forbidding the registration of any person as transferee or proprietor of and of any instrument affecting that estate or interest until after notice of the intended registration or dealing is given to the caveator, or unless the instrument is expressed to be subject to the claim of the caveator as is required in the caveat, or unless the caveator consents in writing to the registration”

11. The above provision answers the question as to who might lodge a caveat over land, in the instant application referring to the respondent’s affidavit in reply under paragraph 6, it is clearly stated how the respondent and the 1st applicant are biological grandchildren of the late Juma Kisaka who is the owner of the suit land, hence justifying why the respondent lodged the said caveat over the suit land as a beneficiary.
12. The main issue in this case is whether there are sufficient reasons for court to order removal of the caveat instrument no. WBU-00360434 lodged by the respondent.
13. The 1st applicant in paragraph 11 goes on to state that they “learnt” and further discovered that the respondent lodged another caveat and that at that time under Instrument No. WBU-00360434 affecting all the four plots of land. This is fact supported by the respondent in his affidavit in reply under paragraph 13 where he states that on the 6th June 2023, he lodged a caveat vide instrument no.WBU-00360434 upon finding out how the first caveat was fraudulently removed by the 1st applicant.
14. This is a caveat that falls under the description of a beneficiary caveat as stated under the Registration of Titles Act Cap.230, Sections 139 and 140. The law on removal of the beneficiary caveats is strict in nature and among the ways a beneficiary caveat can be

removed is by order of court which the applicants in this application have adopted, however Parties should take note that where a caveat ought to remain or to be removed by court it involves the exercise of discretion by the court hearing the application. (*See;Eng Mee Young & others Vs Letchumanan s/o Velayutham,1980 A.C page 331 by the Privy Council, judgement of Lord Diplock.*)

- 15.** I am of the view that the respondent lodged the said caveat claiming to be a beneficiary to the said suit land as per the evidence adduced before me. Which caveat cannot just be vacated without court ascertaining and determining the rationale behind the said caveat.
- 16.** Further I find the applicants to be in a rush to have the said caveat removed since the caveat was lodged on the 6th of June 2023 by the respondent and it cannot be inferred that the respondent has relaxed for eternity without justifying why he lodged the said caveat.
- 17.** In the result, I find the affidavit in support of the application not convincing as regards the caveat the parties seek to remove by order of this court. I therefore determine the 1st issue in the negative and the 2nd issue fails subsequently.
- 18.** In the circumstances and in consideration of the foregoing, the application stands dismissed with the following orders;
- i) The respondent is hereby given 90 days from the date of this ruling to file a suit where the rights of all parties will be determined to finality and if he fails this court will be pleased to grant the application upon proof of the same
 - ii) Each party bears its own costs.

I SO ORDER.



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NALUZZE AISHA BATALA

JUDGE

6th /11/2023