

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

MISCELLANEOUS CAUSE NO. 149 OF 2023

1. EDWARD FREDRICK SSEMPEBWA

2. ELIZABETH KITIMBO ::::::::::::::::::::::: APPLICANTS

VERSUS

1. NDYAGUMANAWA RICHARD DOUGLAS

2. THE COMMISSIONER LAND REGISTRATION::::::::::::::::::

RESPONDENTS

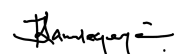
BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING

Introduction.

1. Edward Fredrick Ssempebwa and Elizabeth Kitimbo

hereinafter referred to as the applicants brought this suit by way of notice of motion under Section 140(1), 142, 145 and 188 of the Registration of titles Act Cap 230, Section 98 of the Civil Procedure Act and Order 52 rule 1 and 2 of the Civil Procedure Rules against **Ndyagumanawe**



Richard Douglas and the Commissioner Land Registration hereinafter referred to as the respondents for orders that;

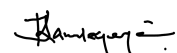
- i) To direct the Respondents to show cause why the caveat lodged by the Respondents on the certificate of title to the land comprised in Kyadondo Block 219 Plot 990 land at Najjera should not be removed.
- ii) To direct the Registrar of Titles, Wakiso to remove the caveat from the certificate of title of the said land.
- iii) costs of this application be provided for.

Background;

2. The 1st applicant and Ssempebwa Elizabeth Nyende are the registered proprietors of land comprised Kyadondo Block 219 Plot 990 land at Najjera as joint owners. The 1st respondent lodged a caveat on the said land and the 2nd respondent caused the registration of the same on or about the 28th day of April 2023. It is against this background that the applicants bring this application for removal of the said caveat.

Applicants' evidence;

3. The application is supported by the affidavit of **Edward**




Fredrick Ssempebwa the applicant which sets out the grounds of the application but briefly are as follows;

- i) The Applicants are the registered proprietors of the above-mentioned certificate of title comprised in Kyadondo Block 219 Plot 990 land at Najjera.
- ii) The Applicants are the registered owners of the subject land and have been in uninterrupted possession of the said land for more than 14 years.
- iii) On or about the 28th of April 2023, the 1st Respondent lodged a caveat over the certificate of title to the said land, and, the 2nd Respondent caused a registration of the same.
- iv) The purported claim of right by the 1st Respondent on the land is by virtue of a sale agreement from a person whose interest in the land is non-existent.
- v) The 1st Respondent has no lawful justification to lodge or maintain the caveat.
- vi) It is in the interest of justice that this application be granted

Respondents' evidence;

4. The 1st respondent replied to the application by an affidavit in reply deposed by Ndyagumanawe Richard



Douglas the respondent and briefly states as follows;

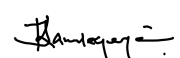
i)That my lawyers shall raise a preliminary point of law that the application is prematurely in court, abuse of court process and the 2nd applicant has no locus standi.

ii)That the applicants never purchased the suit property and if indeed they purchased, it was subject to the equitable interests of the estate of the late Nahate Lukia from whom I derive my interest as a purchaser of the kibanja.

iii)That I am in firm possession and utilization of my Kibanja which I acquired by way of purchase from the children/beneficiaries and Administrators of the Estate of the Late Nahate Lukia upon carrying out proper due diligence.

iv)That upon consultation with my lawyers, I was advised to lodge a caveat to protect my equitable interest in the land by stopping the applicants from selling my kibanja without my notice or being compensated as my user rights would easily be abused by a 3rd party.

v)That I claim an equitable interest in the suit property in form of a Kibanja which is at risk of being grabbed by



the applicants and the caveat should be maintained until the applicants refrain from their threats to sell the land.

vi) That the applicants are using the application as a disguised suit to determine proprietary rights in the suit property which suit would require an extensive hearing and not through an application of this nature.

5. The applicants rejoined by way of affidavits in rejoinder deponed by Mr. Edward Fredrick Ssempebwa and Tamale Ismael.

Representation;

6. The applicants were represented by **Mr. Frank Sewagude** of M/S Messrs Katende, Ssempebwa & Co. Advocates, Solicitors and legal consultants whereas the first respondent was represented by **Mr. Onen Kenneth** of M/S Songon & Co. Advocates, there was no representation from the second respondent. The applicants and the 1st respondent filed their affidavits which I have considered in the determination of this application.

Issues for determination;

- i) Whether the 2nd applicant lacks locus standi to bring the application?



ii) Whether the application is premature and an abuse of the court process?

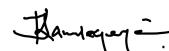
iii) Whether the 1st respondent has a caveatable interest?

iv) Whether the caveat lodged by the 1st respondent should be removed?

Resolution and determination of the issues;

Issue 1; **Whether the 2nd applicant lacks locus standi to bring the application?**

- 7.** Counsel for the 1st respondent submitted that the 2nd applicant lacks locus standi to bring the application reason being that Elizabeth Kitimbo hereinafter referred to as the 2nd applicant is an alien to the application and that the Search statement attached to the affidavit in Rejoinder has Edward Fredrick Ssempebwa and Ssempebwa Elizabeth Nyende as the registered proprietors of the land.
- 8.** The 2nd applicant who refers to herself as Elizabeth Kitimbo did not by way of affidavit clarify to court the variations in the names through adducing a deed poll or statutory declaration verifying the names.

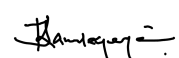


9. Locus standi is a point of law that literally means a place of standing, right to appear or heard in court. To say that a person has no locus standi means that the person has no right to appear or be heard in specified proceeding. In determining such a point, court is perfectly entitled to look at the pleadings and the attachments only. **(See; Mukisa Biscuits Vs West End Distributors (1969)EA 696.)**

10. It is without doubt that the name Elizabeth Kitimbo and Ssempebwa Elizabeth Nyende represent two different persons. That unless a deed poll or statutory declarations is made the position stands. Elizabeth Kitimbo the 2nd applicant did not even file an affidavit in support of the application to clarify on the variations in the names if indeed they are variations.

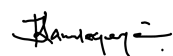
11. The 1st applicant did not hint on it in any of his affidavits both in support and in rejoinder. This leaves the position that the 2nd applicant and Ssempebwa Elizabeth Nyende are two different people unruffled.

12. I am also alive to the provisions of Order 1 rule 9 of the Civil Procedure Rules which provides that No suit shall be defeated by reason of the joinder or misjoinder of parties



and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

- 13.** According to my understanding of Section 140 of the Registration of Titles Act, not every person can bring an action for removal of a caveat as to do so would encourage busybodies to flood court with such applications without any substantial interest.
- 14.** It appears to me that the question before court is one of locus standi and not misjoinder of parties.
- 15.** In paragraph 2 of the affidavit in support of the application, the 1st applicant states that himself and the 2nd applicant (Elizabeth Kitimbo) are the registered owners of land comprised in Kyadondo Block 219 Plot 990 situate at Najera and a Certificate of title is attached and Marked Annexure "A".
- 16.** The registered proprietors on the title are Ssempebwa Edward Fredrick and Ssempebwa Elizabeth Nyende as opposed to Elizabeth Kitimbo. There are variations in the names of the 2nd applicant with those on the title however the respondent does not object to that.
- 17.** The application to remove a caveat should be limited to



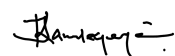
the registered proprietors, persons claiming under any instrument signed by the proprietor or any person that demonstrates sufficient interest in its removal that is to say a person who benefits in a proprietary way if the caveat was removed.

18. Considering the pleadings, Elizabeth Kitimbo the 2nd applicant does not fall under any of the aforementioned persons at-least as per the pleadings and therefore lacks locus standi to bring this application.

19. In the premises, I determine this issue in the affirmative however the application stands as for the 1st applicant.

Issue 2; Whether the application is premature and an abuse of court process?

20. Counsel of the 1st respondent submitted that the application is prematurely brought in court as the applicants had the 1st option of moving the registrar of titles to remove the caveat upon issuance of the mandatory notice of 60 days provided for under the law as enshrined under Section 140 (2) of the Registration of titles Act.



21. I will reproduce the provisions of Section 140 (2) of the Registration of Titles Act which states as follows; ***“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.”***

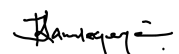
22. With due respect to Counsel for the first respondent’s submissions, I find his interpretation of the above provision strange. The section does not seem to make it mandatory that for one to remove a caveat resort should first be made to the Registrar of titles.

23. In the premises, I determine this issue in the negative.

Issue 3; Whether the 1st respondent has a caveatable interest?

24. It is trite law that under Section 139 (1) of the Registration of titles Act that for a caveat to be valid, the caveat must have a caveatable interest, legal or equitable in the land.

25. A caveatable interest is a claim of a proprietary or quasi



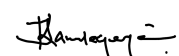
proprietary nature in a particular piece of land. (**See; JT Mugambwa in Principle of Land Law in Uganda at Page 84**).

26. A person has a caveatable interest in all cases where an injunction could be issued to prevent the proprietor from meanwhile dealing with the land. (**See; Kuper & Kuper Vs Keywest Construction Pty Limited [1990] 3 WAR 419**).

27. I have carefully perused all the affidavits in this matter together with submissions in opposition to the application and I will proceed to determine the issue in light of the same.

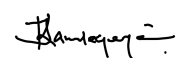
28. Paragraph 11 (d) of the Affidavit in Support of the application deponed by the 1st applicant suggests that the 1st respondent has no claim on the suit land hence no caveatable interest.

29. In reply, under paragraph 7 of the affidavit in reply the 1st respondent stated that the applicants never purchased the land and if they purchased the land it was subject to the interests of the estate of the late Nahate Lukia from whom he derived his interest as a kibanja holder. The 1st respondent attached the sale agreement marked annexure



A to prove his alleged interest in the land.

- 30.** Counsel for the applicant cited **Kakika Abdu Vs Leo Kimalempaka and Ors Misc Cause No 10 of 2022** for the proposition that for a caveat to be valid, the caveator should have a protectable interest legal or equitable to be protected by the caveat otherwise the caveat would be invalid.
- 31.** I need to emphasize that lodging a caveat does not prove the caveator's interest or title in the land. In the same spirit what is claimed to be a caveatable interest may be the subject of verification in court proceedings present or imminent.
- 32.** It is common place in Uganda for equitable owners in the form of Bibanja holders to lodge caveats and protect their interests from being twisted by the registered proprietors without notice to them.
- 33.** I have also carefully perused the application to lodge the caveat by the 1st respondent and the reasons fronted for the lodgement of the caveat.
- 34.** In my view the 1st respondent claims to have a kibanja on the land which he purchased from the Estate of the Late Nahate Lukiya and attaches an agreement to that effect.



35. I believe such interest in land constitutes a protectable interest hence a caveatable interest.

36. In the premises, this issue is answered in the affirmative.

Issue 4; Whether the caveat by the 2nd respondent should be removed?

37. 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. **(See; *Boynes Vs Gather (1969) EA 385*)**

38. 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. Because of its far-reaching effect, it is vital that claims made by the caveator are enforced by action without undue delay. **(See; *Lim Ah Moi vs Ams Periasamy Suppiah Pillay Civil Appeal No A-2-641-1995*)**

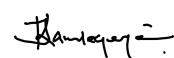
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39. In *Eng Mee Young and Others V Letchumanan s/o Velayutham* [1980] A.C 331 the privy Council held as follows;“.....**the court in hearing the application to remove a caveat is very much concerned with the Justice of each case.**”

40. In paragraph 11(b) and (d) of the affidavit in support of the application deponed by the 1st applicant it is stated that the alleged sellers of the Kibanja land to the 1st respondent have never claimed any such interest for the 15 years the applicants have been in possession and therefore the respondent has no interest in the said land.

41. In reply, under paragraph 7 of the affidavit in reply the 1st respondent stated that the applicants never purchased the land and if they purchased the land it was subject to the interests of the estate of the late Nahate Lukia from whom he derived his interest as a kibanja holder. The 1st respondent attached the sale agreement marked annexure A to prove his alleged interest in the land.

42. In rejoinder, the 1st applicant in paragraph 5 of the affidavit in rejoinder states that in further reply to paragraph 7 of the affidavit in reply of Mr. Richard Douglas Ndyagumanawe lam aware, and it is my belief, by nature

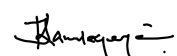


of my training as an advocate that the 1st Respondent could not legally purchase a Kibanja interest on the 14th day of April 2022 from the alleged administrators of the estate of the late Nahaate Lukia without first giving the option to repossess the Kibanja to the 1st and 2nd Applicants as registered proprietors/landlords, even assuming that the alleged administrators were lawful Kibanja owners in possession.

43. In my, view this application raises serious triable issues between the parties. This application raises serious questions as to the proprietary rights of the parties. On perusal of the affidavit in support of the application and the affidavits in rejoinder, the case cut out by the 1st applicant as against the 1st respondent is that the 1st respondent has no claim in the suit land and to that end the caveat should be removed.

44. I find that if court made a determination that the said caveat should be removed, such determination will have the effect of suggesting a conclusion that the 1st respondent indeed has no claim in the suit land.

45. I agree with Counsel for the respondent that this suit is disguised as an application to remove a caveat yet the



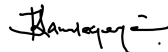
whole purpose is the confirmation of ownership of the suit land. Such questions cannot be determined in a suit of this nature.

46. I advise the applicant to institute an ordinary suit where all matters pertaining to the suit land and the proprietary positions of both parties shall be determined.

47. In the premises, this issue is answered in the negative.

48. In consideration of the foregoing, the application is dismissed and I make no orders as to costs.

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

4th / 12/2023