

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLENEAOUS CAUSE NO. 023 OF 2022

NAMIGGADE PROSSY ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

ADMINISTRATOR GENERAL ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING

Introduction;

1. NAMIGGADE PROSSY (*hereinafter referred to as the Applicant*)

brought the present application against the **ADMINISTRATOR GENERAL** (*hereinafter referred to as the Respondent*) by way of notice of motion under Section 33 of the Judicature Act cap.13, Section 98 of the Civil Procedure Act Cap.71, Section 140(1) of the Registration of Titles Act Cap.230 Order 52 Rules 1 and 2 of the Civil Procedure Rules S.I.71-1 for orders that;

- i)** To direct the respondent to show cause why the caveat he lodged on the Certificate of title of land comprised in

kyadondo Block 216 Plot 3194 at Buye should not be removed

- ii)** To direct the commissioner for Land Registration / Registrar of Titles to remove the caveat registered as instrument No KCCA-00081033 lodged on the 21st of May 2021 from the certificate of title to the suit land.
- iii)** Costs of the application be provided for.

Background;

- 2.** The applicant is the registered proprietor to the suit land, land comprised in kyadondo Block 216 plot 3194 at Buye and he is in possession of the same land. In January 2022, the applicant conducted a search at the office of titles and discovered that on the 21st may 2021 the respondent lodged a caveat (instrument no. KCCA-00081033) on the certificate of title to the suit land.
- 3.** The respondent claims in the affidavit in support of the caveat that he lodged the same caveat on behalf of the beneficiaries to the estate of the late Cissy Bukirwa who was one of the children of the late Grace Kresipo Mitembo Mukwaya. However, the applicant



denies knowledge of the interests of the said parties, hence this application.

Applicant's evidence;

4. The application is supported by an affidavit in support deponed by

Mrs. Namigadde Prossy the applicant which briefly states that;

- i) That the applicant is a registered proprietor of land situate at Buye and comprised in Kyadondo Block 216 Plot 3194.
- ii) That in January 2022, the applicant conducted a search and established that the respondent had lodged a caveat over the certificate of title to the suit land under instrument No. KCCA-0081033
- iii) That the respondent claims under the affidavit in support of the caveat to have lodged the caveat on behalf of the beneficiary to the estate of the late Cissy Bukirwa who was one of the several children of the late Grace Keresipo Mitembo Mukwaya.
- iv) That at the time of purchasing the suit land, it was not encumbered in any way.



- v) That the applicant does not know the late Cissy Bukirwa or the beneficiaries to her estate.

Representation;


5. The applicant was represented by **Mr. Dennis Kwizera** of M/S Ayigihugu & Co. Advocates, there was no representation from the respondent despite being served by the applicant. The applicant filed her affidavit which I have considered in the determination of this application.

Issues for determination.

- i) ***Whether there is any reasonable cause as to why the respondent's caveat over land comprised in Kyadondo Block 216 Plot 3194 should be vacated.***
- ii) ***What remedies are available to the parties.***

Resolution and determination of the issues;

Issue 1. **Whether there is any reasonable cause as to why the respondent's caveat over land comprised in Kyadondo Block 216 Plot 3194 should be vacated?**



6. Before this court proceeds with the determination of this issue, I would wish to bring to notice that, the respondent did not file an affidavit in reply neither did he attend the hearing despite being served with the application. There is an affidavit of service and if the respondent had any objection to this application, he would have filed an affidavit in reply to guide this court in reaching its decision therefore this matter stands uncontested.
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. **(See; Maria Saliwako Vs Segantebuka, Misc. Cause No.335 of 2023)**
8. The principle of law is 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 HMC No.690/1999)**



9. The issue in contention in this application is whether there is a reasonable cause to order for removal of the said caveat. 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.)**

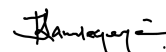
10. The applicant moves court under Section 140(1) of the Registration of Titles Act cap.230 which provision I will quote briefly “..... **and that applicant or proprietor or any person claiming under any transfer or other instrument signed by the proprietor may, if he or she thinks fit, summon the caveator to attend court to show cause why the caveat should not be removed and the court may upon proof that the caveator has been summoned, make such order in the premises either exparte or otherwise and as to costs as it seems fit**” the wording of the provision speak to the fact that in applications of this nature, court is concerned with the justice of the case.



11. In the instant application, the applicant states under paragraphs 5,6 & 7 that in January 2022 he conducted a search on the certificate of title to the suit land and discovered that the respondent had lodged a caveat over the suit land under instrument No.KCCA 0008 1033 on behalf of the beneficiaries to the estate of the late Cissy Bukirwa whom the applicant denies knowledge of. This fact is proved by a certificate of title and copies of the application of the said caveat adduced in court.

12. Reference being made to the affidavit in support of the said caveat attached on the application under paragraphs 4 & 5 where the administrator general states that he lodged the said caveat on behalf of the beneficiaries of the estate of the late Cissy Bukiirwa who was one of the several children of the late Grace Keresipo Mitembo Mukwaya and he further states that he had advised the beneficiaries to the estate of the late Cissy Bukiirwa to bring an action in court to protect their interests.

13. The above averments speak to the fact that the administrator general lodged the said caveat over the suit land to protect the interest of said beneficiaries to the estate of the late Cissy Bukiirwa who claim interest in the suit land.



14. The affidavit in support of the caveat adduced in this court by the applicant establishes the interest the caveat seems to protect. Further in applications of this nature, caveators are under a mandate to establish the interest their caveats intend to protect otherwise the caveat would be invalid. (***See; Sentongo Produce and Coffee Famers Limited & another Vs Rose Nakafuma Muyisa, supra***)

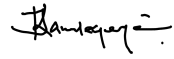
15. I am of the view that the caveator in the instant application should not sit back and relax after lodging a caveat since he will be depriving the registered proprietor from enjoying possession free from any encumbrances.

16. It is to the finding of this honorable court that the application stands dismissed with the following orders;

- i) The respondent to file a suit within 90 days from the date of this ruling showing cause why the caveat (instrument No. KCCA00081033) lodged over the suit land should not be vacated or else this honorable court will proceed to vacate the said caveat.
- ii) No order as to costs.



I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

6th /12/2023