

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

MISCELLANEOUS APPLICATION NO. 3053 OF 2023
(Arising from civil suit No.1150 of 2023)

**MPIIMA MICHEAL (suing through his lawful attorney
Ssenyonga Micheal) ::::::::::::::::::::::::::::::::::: APPLICANT**

VERSUS

1.MUTUMBA YUSUF

2.COMMISSIONER LAND

REGISTRATION:::RESPONDENTS

BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING

Introduction;

1. ***Mpiima Micheal*** (Suing through his lawful Attorney Ssenyonga Micheal) hereinafter referred to as the applicant brought this application against ***Mutumba Yusuf and The Commissioner Land Registration*** hereinafter referred to as the 1st and 2nd respondent

respectively under Section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71 and Order 52 rules 1 and 3 for orders that;

- i) An order does issue maintaining the applicant's caveat and restraining the respondents from vacating or otherwise removing the applicant's caveat registered on land comprised in Kyadondo Block 81 Plot 345 land at Watembe measuring approximately 0.0440 Hectares (suit land) which is the subject matter in the Head Suit vide H.C.C.S No 1150 of 2023 until the hearing and determination of the main suit.
- ii) An order doth issue compelling the 2nd Respondent to maintain the applicant's caveat registered on the said suit land until the hearing and final determination of the dispute in respect of the land which is the subject matter of the main suit.
- iii) That costs of the application be borne by the Respondents.

Background:

2. The applicant on the 23rd day of February 2021 bought

land from the 1st respondent comprised in Kyadondo Block 81 Plot 345 land at Watembe. The applicant paid full purchase price and receipt of the same was acknowledged. The applicant was shocked to find out that a one Nsamba Ismail purchased the same land from a one Kayongo George who also claimed to have purchased the suit land from the 1st respondent before the applicant had purchased the same. The applicant lodged a caveat on the Certificate of title to protect his equitable interest.

3. The 1st respondent applied to remove the caveat where he was directed to get an order from the High Court directing the 2nd respondent from removing the caveat. It is against this background that the applicant brought this application.

Applicant's evidence;

4. The application is supported by an affidavit deponed by **Ssenyonga Micheal** which sets out the grounds for the application but briefly are as follows;

- i) That the Applicant is the Plaintiff in the main suit whereupon he sued the Respondents among other defendants jointly and severally for fraud, recovery of

land comprised in Kyadondo Block 81 Plot 345 land at Watembe measuring approximately 0.0440 Hectares (hereinafter referred to as the suit land), for eviction and or IN THE ALTERNATIVE, but without prejudice to the above, recovery of money had and received and unjust enrichment/ restitution with interest at commercial rate from the date of breach of agreement until payment in full, a permanent injunction restraining the 2nd respondent from removing the applicant's caveat on the suit land, general damages, mesne profits, interest and costs of this suit.

- ii) That the Applicant holds an interest in the suit land and hence lodged a caveat on the suit land to protect his interest from being interfered with by transfers and any other dealings on the suit land.
- iii) That the Applicant's suit has not been fixed for hearing /cause listed and or heard to conclusion owing to the busy schedule of court yet the status quo of the caveat is at risk of being removed as the 2nd respondent has issued a notice to remove the same upon the lapse of 60 days.



- iv) That if this Application is not granted the main suit will be rendered nugatory, the status quo will be altered, the caveat removed and the applicant will suffer grave inconvenience as he will have no further claim on the suit land.
- v) That it is in the interest of justice and to the prejudice of neither party that this Application be granted.

Representation;

5. The Applicant was represented by **Mr. Bampaburwa Joseph** of M/S F.Aogon & Co. Advocates whereas the 2nd respondent was represented by **Mrs. Arinaitwe Sharon** from the office of the commissioner land registration. There was no representation from the 1st respondent despite being served. The Applicant filed his affidavit and submissions which I have considered in the determination of this application

Issues for determination;

- i) Whether the applicant is entitled to the grant of an order maintaining his caveat on the suit**

property until the hearing and determination of the main suit?

Resolution and determination of the issues;

Issue 1; **Whether the Applicant is entitled to the grant of an order maintaining his caveat on the suit property until the hearing and determination of the main suit?**

6. Counsel for the applicant submitted that in view of the existing suit in HCCS No. 1150 of 2023, it is just and equitable that the Applicant's caveat ought to be and be maintained on the suit property until the party's rights and disputes are resolved.
7. Counsel further submitted that Section 98 of the Civil Procedure Act Cap 71 and Section 33 of the Judicature Act Cap 13 invites this court as the circumstances may require, to issue and or grant orders in any given matter which serves to meet the ends of justice. Counsel relied on **Hunter Investments Limited versus Simon Lwanyaga & Anor HOMC No. 0034/2012**
8. The applicant claims an interest in the suit property as an equitable owner who is aggrieved by the actions of the 1st Respondent who is desirous of dealing with the suit land

to the detriment of the Applicant's interest. From the actions of the Respondents, the applicant seeks several prayers touching the said transfers.

9. Counsel further submitted that the 1st Respondent is hell-bent on frustrating the main suit by clinically alienating and transferring the suit property in order to circumvent the applicant's case against him and the orders sought thereunder.
10. Sections 98 of the Civil Procedure Act cap 7 and 33 of the Judicature Act Cap 13 under which the Applicant brought its application confer to this Honourable Court inherent powers and discretion to make orders necessary for the ends of justice to be met.
11. Section 33 of the Judicature Act similarly vests this Court with powers to grant any remedies in matters brought before it so that, as far as possible, all matters in controversy between the parties are completely and finally determined.
12. The court of appeal in **Rutungu Properties Limited v Linda Harriet Carrington and Anor Civil Appeal No 61 of 2010** observed that for a caveat to be maintained the caveator must prove the existence of the following;

i) The caveator has sufficient grounds to maintain the caveat.

ii) The caveator has brought an ordinary action timeously against the caveatee.

iii) The balance of convenience lies in maintaining the caveat rather than its removal.

13. I will therefore proceed and determine the application in light of the above principles bearing in mind that the application stands uncontested given the fact that there is no affidavit in reply for the respondents.

14. The long-standing position of the law is that where facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party, they are deemed admitted. (**See; Samwiri Massa v Rose Acen [1978] HCB 297**)

15. The applicant states under Paragraph 4 of his Affidavit in support of the Application that on 23rd day of February 2021 he bought from the 1st Defendant/Respondent land comprised in Kyadondo Block 81 Plot 345 land at Watembe measuring approximately 0.0440 Hectares.

16. Under paragraph 5 and 6 of the affidavit in support of

the application, the applicant states that it was intimated to the applicant by the 1st respondent that the Certificate of Title of the suit land and signed transfer forms were in the custody of the 2nd Defendant (in the main suit) as collateral for the 1st Defendant's/Respondents loan.

17. Furthermore, it was agreed by the Plaintiff and Defendant/Respondent that the plaintiff would have to clear the 1st defendant's loan balance and have the Certificate of Title and transfer forms released to him to enable him to effect transfer of the suit land into his names. The 2nd defendant confirmed the aforementioned documents to be in his custody.

18. The Applicant under paragraph 10 states that he paid the full purchase price including the full and final payment of the loan.

19. Under paragraph 13 of the same affidavit, the applicant states that his quiet possession was disrupted by a one Nsamba Ismail who claimed to have purchased the suit land on 18th February 2020 from a one Kayongo George who also claimed to have purchased the suit land from the Defendant earlier before the plaintiff had purchased the same.

- 20.** The applicant also states under paragraph 20 of the affidavit in support of the application that the caveat on the suit land which is his only safe guard on the land is about to be vacated as the 2nd respondent has issued a Notice to remove it.
- 21.** In my view, there are so many issues that should be investigated by the court as far as the suit land is concerned and also determine the rightful owners and any parties with interests pertaining thereto.
- 22.** It is true that the caveator (Applicant) instituted Civil Suit No 1150 of 2023 to enforce his rights against the defendants in respect of the suit-land.
- 23.** In addition, I also find that the balance of convenience is in favour of maintaining the caveat rather than removing it. If the caveat is not maintained and more dealings are done on the land, I find that there will be a further twist in the already convoluted history and series of transactions on the land.
- 24.** In the premises, it is my view that the caveat should be maintained so as to enable court determine the dispute in finality without any additions to the existing series of

H. Ameyi

transactions on the land.



25. In consideration of the foregoing, the application succeeds with the following orders;

- i) That the 1st and 2nd respondents are restrained from removing the Applicant's caveat vide Instrument No WKY-00277433 on land comprised in Kyadondo Block 81 Plot 345 Land at Watembe pending determination of Civil Suit 1150 of 2023.
- ii) That the 2nd respondent is hereby ordered to maintain the caveat vide Instrument No WKY-00277433 until the hearing and final determination of Civil Suit No 1150 of 2023.
- iii) No orders as to costs.

I SO ORDER.



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NALUZZE AISHA BATALA

JUDGE

2nd / 1/2024

