

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISCELLANEOUS CAUSE NO. 398 OF 2023

CAIRO BANK UGANDA LTD ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

COMMISSIONER LAND REGISTRATION ::::::::::::::::::: RESPONDENT

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING.

introduction;

1. This was an application by notice of motion brought under Section 98 of the Civil Procedure Act, Section 140(1) of the registration of titles act, Order 52 rules 1, & 3 of the Civil Procedure Rules (CPR) that: -

- i) That the caveats on the register for Land comprised in Kyadondo Block 90 Plot 13 at Katalemwa Wakiso District (herein after referred to as the suit land), registered on under Instrument No.WAK-00330709, WKY-00331231 and WKY- 00346385 be removed and/or vacated.
- ii) Costs of the application be provided for.



Background:

2. By Letter of Offer dated 26th July, 2022, Cairo Bank Uganda Limited advanced a term loan facility of UGX,768,000,000 (Uganda Shillings Seven Hundred Sixty-Eight Million only) to Malcom Health Care Limited to be utilized for purchase of hospital diagnosis machines. Prior to the disbursement of the loan the Bank undertook the necessary, due diligence and upon being satisfied that the Borrower was the rightful owner of the property to be pledged, the Bank disbursed the funds to the Borrower.
3. Owing to the Borrower's default in making payment, the Bank commenced foreclosure proceedings against the pledged securities to recover the outstanding sum, interest and penalties, the suit property was advertised on 20th February, 2023 in the Daily Monitor News Paper at page 37 in preparation for sale by public auction.
4. The Bank conducted a search and discovered that caveats had been registered on the suit land shortly after the advert was published and later, another caveat was lodged as well. Upon a

complaint application by the Bank, the Respondent issued Notice to the Caveators, the Respondent has to this date, failed to vacate the impugned caveats despite the fact that no cause was shown by the caveators why they should be maintained on the register, hence this application.

Applicant's evidence;

5. The application is supported by an affidavit deposed by Mr. Henry Kyasanku the applicant's recovery manager which briefly states as follows;

- i) THAT, by Letter of Offer Ref, 1000511524 dated 26th July, 2022, the applicant advanced a term loan facility of UGX,768,000,000 (Uganda Shillings Seven Hundred Sixty-Eight Million only) to Malcom Health Care Limited (the "Borrower") to be utilized for purchase of hospital diagnosis machines.
- ii) THAT, the facility was secured by a legal mortgage registered over land comprised in Kyadondo Block 90 Plot 13 situate at Katalemwa (the "suit land") among other securities.



- iii) THAT, prior to the disbursement of the loan, the Bank undertook the necessary due diligence and upon being satisfied that the Borrower was the rightful owner of the property to be pledged, the Bank disbursed the funds to the Borrower.
- iv) THAT, owing to the Borrower's default in making payment, the Bank commenced foreclosure proceedings against the pledged securities to recover the outstanding sum, interest and penalties.
- v) THAT, the suit property was advertised on 20th February, 2023 in the Daily Monitor News Paper at page 37 in preparation for sale by public auction.
- vi) THAT, I know that the Bank conducted a search and it was discovered that caveats had been registered on the suit land shortly after the advert was published and later, another caveat lodged as well.
- vii) THAT, upon a complaint/ application by the Bank, the Respondent issued Notice to the Caveators which was served on 22nd September, 2023.



viii) THAT, I Know that the Respondent has to this date, failed to vacate the impugned caveats despite the fact that no cause was shown by the caveators why they should be maintained on the register.

Respondent's evidence;

6. The application is responded to by an affidavit in reply deposed by Kafureeka Victor Jagaine an officer from the office of the respondent which briefly states that;

- i) That the applicant does not attach proof of due diligence it carried before disbursement of the mortgage loan facility.
- ii) That any party claiming an interest in Land has a right to protect his interest by Lodging of a caveat on the land on which the interest is claimed.
- iii) That the choice of the applicant not suing the caveators is calculated to look out for evidence which would be detrimental to the application.
- iv) That whatever I have stated herein above is true and correct to the best of my knowledge and belief.



Representation;

7. The applicant was represented by Mr. Kirunda Henry of M/S Terrain Advocates whereas the respondent was represented by Mrs. Patience Tumwijukye from the office of the commissioner land registration. Both parties filed their affidavits and the applicant filed his submissions which I have considered in the determination of this application.

Issues for determination;

Whether there are any grounds for this court to order for the removal of caveats lodged on the suit land comprised in kyadondo Block 90 Plot 13 at katalemwa wakiso district?

Resolution and determination of the issues;

8. A caveat acts as a warning or formal notice to tell the public that there is an interest on the land or property for a particular reason. The word caveat means “beware” and lodging a caveat on land warns anyone dealing with the property that someone has a priority interest in that property. (See; Section 139 of the

registration of titles act and Nakajiri Sumaya vs Alice Namusoke MC No. 328 of 2023).

9. In the instant application, the caveats the applicant desires to vacate were lodged by Mr Sekalala Muhammad and Nabuwembo Madinah respectively.
10. The two parties clearly state under their applications for the said caveats the capacity under which they lodged the said caveats and the interest they hold in the suit land.
11. Mr. Sekalala Muhammad clearly states under his application for the said caveat how he lodged the said caveat under the basis that Malcom health care ltd herein referred to as the borrower failed to fully perform his duties which included payment of full purchase price of the suit land as required by the sales agreement executed between Mr Sekalala Muhammad and Malcom health care ltd.
12. Then Ms Nabuwembo Madinah clearly states that she lodged the said caveat as a beneficiary to the suit land since she was the legally married wife to Mr. Sekalala Muhammad and the suit land



was their matrimonial home where she derives sustenance and further stated how the same was dealt with without her consent.

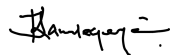
13. These are interests that the law on caveats intends to protect, for the caveat lodged by Ms Nabuwembo Madinah this is classified as a beneficiary caveat as stated under section 140(2) of the registration of titles act and the same caveat does not lapse unless vacated by an order of court or withdrawn by a caveator.
14. Further in the instant application, the caveators are not parties to this application something that this honorable court finds detrimental to the said caveators.
15. The applicant states in his affidavit in rejoinder that he sued the respondent as a custodian of the certificates of titles, this honorable court proceeding to pronounce itself on the said caveats without hearing the caveators would be defeating the principles of fair hearing which is an essential tool in the field of justice.
16. I am of the opinion that this application cannot be justly and fairly determined without hearing from the said caveators, it would be just and fair if they were all parties to this application where



this honorable court will have to analyze the evidence adduced by both parties to reach a fair and just decision.

17. Therefore, it is to the findings of this honorable court that the application is not properly brought before this court and the same lacks merit hence it stands dismissed with no orders as to costs.

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

12/02/2024