

iii) Costs of this Application to be provided for.

Background;

2. The Applicant is the Registered proprietor of Land comprised in Busiro Block 411 plot 396 at Sisa.
3. The Respondents claim that the land comprised in Busiro Block 411 plot 396 at Sisa was curved off Block 411 plot 43 at Sisa which belongs to the estate of the late Musa Lukusa and the same was bequeathed to the late Godfrey Kasujja from who the respondents claim.
4. The Respondents lodged a caveat on the land comprised in Busiro Block 411 plot 396 at Sisa which the applicant seeks to be removed hence this application.

Applicant's evidence;

5. The grounds of the application are contained in the affidavit in support of the application deposed by **NANTONGO MILLY the Applicant**, and are briefly that:-

- i) That I am the registered proprietor of land comprised in Busiro Block 411 Plot 396 at Sisa. That the said land was 5 acres in kibanja belonging to my family since 1952 evolving



as follows; It was bought for my Great Auntie Nakafeero Terefayina by her husband Mutagejja, then inherited by Namuddu Dorothy to Nantongo Manjeri from whom I inherited the same.

- ii) That in 2016, the landlord Gombya Ssembajjwe William approached my family with the proposal to give us a registrable interest in exchange for four acres which we agreed and the family resolved for the certificate of title to be registered into my names as the heir to Nantongo Manjeri.
- iii) I am and have always been in possession of the land and I obtained the certificate of title to the suit land in 2022.
- iv) I don't know the caveators neither does the suit land belong to the estate of the late Godfrey Kasujja.

Respondents' evidence;

6. The application is opposed to by an affidavit in reply deposed by **SSERUBIDDE MOSES** the 1st respondent on behalf of the 2nd and 3rd Respondents which briefly states as follows;

- i) That the land comprised in Busiro Block 411 Plot 42 at Sisa was among the various properties left by the respondents' grandfather, the late Musa Lukusa.



- ii) That upon distribution of the estate of the late Musa Lukusa by the Administrator General, the said property was given to the estate of the late Godfrey Kasujja to which the Respondents are beneficiaries.
- iii) That Buwembo Peter took over administration of the estate of the late Musa Lukusa and he accordingly gave us our share and in Civil Suit No. 133 of 2023, he insisted on never having sold that property to any third party.
- iv) The respondents don't know of any Nakafeero Terefayina, Namuddu Dorothy and Nantongo Manjeri who claim interest over the suit property and neither do they know Gombya Ssembajjwe William with whom the Applicant fraudulently transacted.
- v) That the suit land forms part of the estate of the late Godfrey Kasujja and hence the respondents oppose the removal of the caveat.

Representation;

7. The Applicant was represented by Mr. Luzige Joseph of M/s Luzige, Lubega, Kavuma & Co. Advocates whereas the



Respondents were represented by Mr. John Miti of M/s Zawedde Lubwama & Co. Advocates.

8. Both parties filed their affidavits and only the Applicant filed written submissions which I have considered in the determination of this application.

Issues for determination;

This Court shall determine the issues as raised by the Applicant.

- i) Whether or not the respondents had any legal or equitable interest in the Applicant's land entitling them to lodge a caveat?***
- ii) Whether or not the Applicant is entitled to compensation or damages from the Respondents for lodging a caveat on her land without a reasonable cause?***
- iii) Whether or not the Applicant is entitled to costs?***



Resolution and determination of the issue;

i) Whether or not the respondents had any legal or equitable interest in the Applicant's land entitling them to lodge a caveat?

9. Section 140 (1) of the Registration of Titles Act Cap 230 empowers Court to hear and determine applications of this nature and make such orders as it deems fit.

10. Counsel for the Applicant submitted that the Respondents have no caveatable interest in the land comprised in Busiro Block 411 Plot 396 at Sissa.

11. Caveatable interest is defined to mean a protectable interest legal or equitable to be protected by the caveat otherwise a caveat would be invalid. **(See Sentongo produce & Coffee farmers' ltd V Rose Nakafuma HMC No. 690 of 1990 cited in Bateesa Lameck aka Lameck Senfuka & anor v Alan Zinga & Anor HMC No. 0053 of 2021)**

12. For a caveat to be valid, the caveator must have a caveatable interest, legal or equitable in land. **(See Section 139 (1) of the Registration of Titles Act and Simon Kataabu v Richard Ssimbwa MC No. 121 of 2020.)**



13. The Respondents claim interest in land comprised in Busiro Block 411 Plot 42 and Plot 43 which was part of the estate of the late Musa Lukusa, their grandfather and that the same was a share of their late father Godfrey Kasujja as per the Administrator General's distribution list to whose estate they are beneficiaries.
14. The Applicant's land which was caveated by the respondents is comprised in Busiro Block 411 Plot 396 and whereas the respondents aver that the same was curved out of the estate property comprised in Block 411 Plot 43 they have not adduced any evidence to support this allegation.
15. This Court is inclined to believe that the Respondents' allegation is rather unfounded and the same applies to the caveat on the Applicant's land.
16. The land comprised in Busiro Block 411 Plot 42 and 43 Busiro and Busiro Block 411 Plot 396 at Sissa are clearly different despite being on the same Block.
17. The Respondents have not adduced any evidence to prove the allegation that plot 396 was curved out of Plot 42 or 43. The Court takes note of the respondent's confusion of not knowing whether



to claim Plot 42 or Plot 43 which in turn raises questions of ownership which cannot be addressed in this application.

18. Ordinarily, the Respondents ought to have adduced an area schedule from the department of mapping and surveys from the relevant Ministry Zonal Office (MZO) to prove and guide Court that indeed Plot 396 was curved out of Plot 42 or 43 as alleged.

19. It is quite clear that the respondents did not make a search to clearly ascertain whether their right of claim lies with Plot 42 or Plot 43 but they are rather uncertain. The importance of conducting a search in the land registry is to avoid making baseless and misplaced claims.

20. This leaves this Court with no option but to rather conclude that the respondents have no caveatable interest in the land comprised in Busiro Block 411 Plot 396 hence the caveat should be removed.

II. Whether or not the Applicant is entitled to compensation or damages from the Respondents for lodging a caveat on her land without a reasonable cause?

Section 142 of the Registration of Titles Act Cap 230 provides;



Any person lodging any caveat with the Commissioner, either against bringing land under this Act or otherwise, without reasonable cause, shall be liable to make to any person who may have sustained damage by the lodging of the caveat such compensation as the High Court deems just and orders.

21. Court notes that Learned Counsel for the Applicant vehemently submitted that the Applicant has been greatly inconvenienced financially by hiring Lawyers to vacate the said Caveat, missing getting treatment abroad which surely merits compensation as a remedy.

22. The said submissions are well articulated and quite convincing if only they are backed up by evidence adduced by the Applicant. The rule of the thumb is that Court cannot base its decision on submissions from the bar by an Advocate of the party because there is no evidence or any averment of the said allegations in the affidavit in support nor the affidavit in rejoinder. Therefore, Court cannot award compensation based on that.

23. In any event, the submission that the Applicant incurred expenses in hiring the Lawyers to vacate the caveat can be considered by awarding costs to the applicant but not

compensation. In light of the foregoing, this issue is answered in the negative.

III. Whether or not the Applicant is entitled to costs?

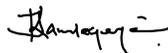
24. It is trite law that costs follow the event and Section 27 of the Civil Procedure Act stipulates that the Court has discretion to determine costs and against whom.

25. That since this Court has established that the Respondents had no justifiable cause and have no caveatable interest, it prompted the Applicant to institute these proceedings to have the same removed which therefore entitles the Applicant to costs.

26. Therefore, the application succeeds with the following orders: -

- i) The caveat lodged by the Respondents on land comprised in Busiro Block 411 Plot 396 at Sisa is hereby vacated by this honorable court.
- ii) Costs of the application awarded to the applicant.

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

26/03/2024