THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA; AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS CAUSE No. 6 OF 2014

KAKEBE PAUL ..... APPLICANT

VERSUS

1. SEBANDEKE IBRAHIM
2. REGISTRAR OF TITLES:: RESPONDENTS

BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO

RULING

The applicant is the Administrator of the estate of the late Musoke Paul by grant of Court, and has brought this application under sections 140 of the Registration of Titles Act, 14 of the Judicature Act, and 98 of the Civil Procedure Act, and as well 0. 24, r. 5, and 0. 52, rr. 1, 2, an d 3, urging this Court to order the removal of a caveat lodged on title to property comprised in Buruli Block 101, Plot 2, land at Kyensega (herein the suit property). Furthermore, he seeks a consequential order directing the Registrar of Titles (Bukalasa) to issue a certificate of titles to the suit property in his name; and, as well, order the Respondents to pay general damages, and costs. The grounds on which the application is founded, which are fully set out in the affidavit of the Applicant, can be summed up that: –

(i) The caveat lodged on the suit property has prevented the distribution of the said property to the beneficiaries of the estate of the late Musoke Paul.

(ii) The caveat is illegal, null, and void.

(iii) The 1st Respondent has no lawful interest in the suit property; and whatever interest he may have therein is barred by the law of limitation.

(iv) It is just, fair, and equitable that the caveat is removed by order of Court.

The 1st Respondent, in his affidavit in response, opposed the application. Counsels for the parties then filed written submissions in support of their respective contentions. Counsel for the Applicant sought to bring evidence through his written submission, as a rejoinder to the affidavit evidence sworn by the 1st Respondent in reply. This is unacceptable. A statement from the Bar

cannot amount to evidence, with the capacity to controvert evidence given on oath. The caveat, which still remains on the title to the suit property to date, was lodged in 1968. The 1st Respondent has been sued as the heir, under customary law and practice, to the caveator is now dead.

Ground No. 1: Whether the caveat has lapsed.

I agree with Counsel for the 1st Respondent, and fortunately Counsel for the Applicant concedes this point, that there is no provision in the Registration of Titles Act, or indeed in any other law, limiting the period for which a caveat may lawfully remain on the title it has been lodged on. Section 149 of the Registration of Titles Act, which maintains the position in the previous laws regarding Registration of Titles, provides that a caveat lapses after a statutory notice has been served on the caveator, but he or she takes no action with regard to the caveat. A caveat is not like a power of attorney, which is automatically extinguished upon the death of the donor. There is no evidence before me that statutory notice was ever served on the caveator, or his successor in title, who has taken no action thereto, to cause this Court to order the removal of the caveat.

Ground No. 2: Whether the 1st Respondent is lawfully sued.

The Respondents have not raised this matter at all. However, because it is a question of law, I am duty bound to resolve it. The Applicant has sued the 1st Respondent on account of the latter being a customary heir to the late Temutewo Wasswa Omulamata who lodged the caveat in issue alleging purchase of part of the suit property from the Applicant's predecessor in title. A customary heir is not necessarily the legal representative of the deceased person. In fact, under the Succession Act, the exclusive entitlement of the customary heir to the estate of the deceased person, by virtue of being a customary heir, is only 1% of the value of the estate.

There is no evidence, in the instant suit before me, that the customary heir is the sole beneficial owner of the suit land, for which the caveat was lodged, or that the suit land is what comprises his 1% as provided for under the Succession Act; which would have justified a suit being brought against him. The suit against him is therefore ill considered. The proper course of action, open to the Applicant, is to move Court to appoint a legal representative of the now deceased caveator, for the limited purpose of being sued over the estate of the deceased caveator. Such legal representative would then have to first be issued with a notice to show cause why the caveat should not be removed as provided for in the Registration of Titles Act; then subsequent actions could be taken, inclusive of a suit such as this one.

In the same vein, the prayer that Court directs the Registrar of Titles to issue the title to the late Paul Musoke's land, in the Applicant's name, has no basis in law. A caveat is an encumbrance, which is not lodged on the duplicate (owner's) copy of the certificate of title; but instead on the original (Registry) certificate of title. The lodgment of a caveat on the title does not disentitle or bar the owner of the land from being issued with a duplicate certificate of title. Any person transacting business over the land would then stand notified of the encumbrance registered in the original certificate of title. In the result, I find that this application has not merit; and cannot be maintained. Accordingly, I disallow it with costs to the Respondents.

Alfonse Chigamoy Owiny – Dollo
JUDGE

21 – 07 – 2014