

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**CIVIL SUIT NO.196 OF 2010**

**CAROLYN BWIZA**

:::::

**PLAINTIFF**

**VERSUS**

**1. FLORENCE NAKIWALA**

**2. THE COMMISSIONER LAND REGISTRATION :: }**

**DEFENDANTS**

**JUDGMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA**

The plaintiff through her lawyers M/s Ayigihugu & Co. Advocates file this suit against the two defendants. The defendants did not file their defences to the suit. And upon proof that the defendants were duly served with the summons to file a defence and that they failed to file their written statements of defence; the plaintiff was allowed to proceed exparte with the hearing of the suit. The suit came up for hearing on formal proof of the plaintiff's suit.

The brief facts of the suit are that:

The plaintiff is the owner of 0.65 acres of land part of land comprised in Kyadondo Block 228 Plots 568 and 569 situate at Mbalwa and also 0.33 acres of land part of land comprised in Kyadondo Block 228, Plot 464 at Mbalwa.

The plaintiff acquired the suit land on 3<sup>rd</sup> August 2009 by purchase from Mr. Protasio S. Ayigihugu. Mr. Protasio S. Ayigihugu acquired the land by purchase on 13<sup>th</sup> October 1984 from one George Kaleebu Mukasa. By the time the plaintiff acquired the land Protasio S. Ayigihugu had been in possession of the land for twenty five (25) years and she took possession of the suit land immediately after purchasing it and is still in possession thereof. It is noted that Protasio Ayigihugu had not surveyed the land when he purchased in 1984 and had also not transferred it. The plaintiff caused the approached the registered proprietors of the land the same people who sold Ayigihugu the land namely John

Sekirevu and George Kaleebu Mukasa to execute transfer forms of the land in plaintiffs favour and they did.

However, when the plaintiff sought to survey the suit land she discovered that the 1<sup>st</sup> defendant had lodged caveats on the titles of the land. The 1<sup>st</sup> defendant is the occupier of 0.36 acres of plot 464 and 0.849 acres of plots 568 and 569. The land occupied by the 1<sup>st</sup> defendant is still on the same titles as the land purchased and occupied by the plaintiff but it is separated by a road.

The following issues were framed by the party for the determination of the suit:-

- (a) Whether the 1<sup>st</sup> defendant had a right to lodge the caveats complained of on to the Certificate of Title of the suit land.**
- (b) Whether the plaintiff is entitled to the remedies prayed for in the plaint.**

To prove her case, the plaintiff called two (2) witnesses, herself inclusive to testify in this suit as shown here below:-

**PW1, Carolyn Bwiza**, aged 35 years resident of Nansana village, Nansana town Council, Wakiso District, gave evidence that:-

- “ 1. I am the owner of 0.65 acres of land comprised in **Kyadondo Block 228 Plots 568 & 569 situate at Mbalwa and also 0.33 acres of land comprised in Kyadondo Block 228 plot 464 at Mbalwa.****
- 2. I acquired the land on 3<sup>rd</sup> August 2009 by purchase from Protasio S. Ayigihugu. A copy of the agreement is attached hereto and marked “exhibit P.I”.**
- 3. Protasio S. Ayigihugu had acquired the land by purchase on 13<sup>th</sup> October 1984 from one George Kaleebu Mukasa. A copy of the agreement is attached hereto and marked “exhibit P2”.**
- 4. By the time I acquired the land Protasio S. Ayigihugu had been in possession of the land for twenty five (25) years.**
- 5. I took possession of the land immediately after purchasing it.**
- 6. I am still in possession the land.**
- 7. Protasio Ayigihugu had not surveyed the land when he purchased it in 1984 and had also not transferred it.**
- 8. Protasio Ayigihugu referred me to the registered proprietors of the land the same people who sold him the name people who sold him the land namely John Sekirevu and George Kaleebu Mukasa to execute transfer forms of the land in my favour.**
- 9. I approached the said John Sekirevu and George Kaleeba Mukasa who signed the mutation forms to enable me subdivide**

the land and transfer forms to enable me transfer the land in my name. Copies of the forms are attached hereto and collectively marked "Exhibit P3 A and P3 B".

10. At the time I purchased the land the titles of the land were free of encumbrances. Copies of search statements from the Registrar of Titles certifying this fact are attached hereto and collectively marked "Exhibit P 4".
11. However when I sought to survey the land I discovered that the 1<sup>st</sup> defendant had lodged caveats on the titles of land.
12. The caveats are registered as Instrument No. Kla 427380 and were lodged on 25/08/2009. Copies of search Statements from the Registrar of Titles certifying this fact are attached hereto and collectively marked "exhibit P.5"
13. Plots 568 and 569 measures 0.607 hectares (1.499 acres) and plot 464 measures 0.28 hectares (0.69 acres).
14. The 1<sup>st</sup> defendant resides in the home of her father the late George William Lule which is across the road from my portions of land but on the same titles.
15. The 1<sup>st</sup> defendant occupies 0.36 acres of plot 464 and 0.849 acres of plots 568 and 569 and that is where her interest is.
16. My interest is in 0.65 acres of plots 568 and 569 and 0.33 acres of plot 464.
17. The 1<sup>st</sup> defendant's caveats are preventing me from surveying off my portions of land from the rest of the land of the current registered proprietors.
18. The caveats are also preventing me from transferring my land transferring it into my name.
19. The 1<sup>st</sup> defendant has no interest in the portions of the land which I purchased and which I occupy.
20. The 1<sup>st</sup> defendant had no justification for lodging caveats on the whole of the plots and or the portions of the plots that I purchased.

I pray Court

- (a) Makes an order directing the 2<sup>nd</sup> defendant to remove the 1<sup>st</sup> defendant's caveats lodged on the titles of the comprised Kyadondo Block 228 plots 568 and 569 and also land comprised in Kyadondo Block 228 plot 464 at Mbalwa.
- (b) In the alternative makes an order directing the 2<sup>nd</sup> defendant to remove the 1<sup>st</sup> defendant's caveat lodged on the titles of the comprised Kyadondo Block 228 plot 568 and 569 and also land comprised in Kyadondo Block 228 Plot 464 at Mbalwa and then directing the 2<sup>nd</sup> defendant to reinstate the caveats after I have surveyed off my portions of land and transferred them.
- (c) Makes an order for payment of general damages as I have been inconvenienced.
- (d) Payments of costs the suit. ”

The second witness, **PW2, Protasio Ayigihugu**, the resident of Mbalwa – Namugongo village, Kira Town Council Wakiso District gave evidence that:

- “
1. I am a lawyer and advocate by profession practicing under the name and style of M/s Ayigihugu and Co. Advocates the Chambers are presently located on plot 28 Luwum Street Eagan House Kampala City.
  2. I have been an advocate since 1968.
  3. On 13<sup>th</sup> October 1984 purchased land from one George Kaleebu Mukasa. A copy of the agreement is attached hereto and marked “exhibit P 2”.
  4. I knew George Kaleebu Mukasa as the son of the late George William Lule. He was also one of the administrators of his state.
  5. The land is about 400 meters from my home.
  6. I took possession of the land after purchasing it.
  7. I did not transfer the land in my name.
  8. On 3<sup>rd</sup> August 2009 after 25 years of ownership and occupation of the land I sold it to the plaintiff Carolyn Bwiza. The sale agreement is exhibit P2.
  9. I advised Carolyn Bwiza to go to the registered proprietors of the land John Sekirevu and George Kaleebu Mukasa to execute transfer forms of the land in her favour which she did.
  10. For all the 25 years I occupied the land my ownership and occupation of it was not challenged by anyone and in particular the 1<sup>st</sup> defendant.
  11. I know the 1<sup>st</sup> defendant is the daughter of the late Lule and she resides in her father’s former residence which is across the road and directly opposite the portions of land that I sold the plaintiff.
  12. The land occupied by the 1<sup>st</sup> defendant is 0.36 acres of plot 464 and 0.849 acres of plots 568 and 569 and that is where her interest is.
  13. The portions I sold are 0.65 acres of plots 568 & 569 Block 228 Kyadondo and 0.33 acres of plot 464 Block 228 Kyadondo.
  14. The 1<sup>st</sup> defendant has no interest in the land I sold to the plaintiff as it is different from the land she (the 1<sup>st</sup> defendant) occupies. The two pieces of land are separated by a road. They are still on the same titles. ”

The above adduced evidence was never challenged in any way. The evidence adduced shows that the 1<sup>st</sup> defendant occupies 0.849 acres from the land held on the Certificate of title known as Kyadondo Block 228 Plots N0s. 568 and 569 and 0.36 acres from the Certificate of title of land known as Kyadondo Block 228 plot 464.

Further, from the evidence on record, the rest of the suit land on the certificate of title, that is, the certificate of title of 0.65 acres of plots 568 and 569 and 0.33 acres of plot 464

is for the plaintiff. Clearly, the 1<sup>st</sup> defendant's interest is only in parts of the land on the certificate of title. It is my finding that, the caveats however, affect all the land on the titles and forbids transactions on all the land on the certificates of title. The law is that the caveat that does not describe or indicate which part of the land is being claim is defective. That would be in respect of titled lands in accordance with the Registration of Titles Act, Cap. 230.

In the case of **Boyes vs Gathure (1969) EA 385, East African Court of Appeal per Sire Charles Newbold, P**, held that:-

**“The second aspect of the second point arises by reason of the fact that the caveat, on the face of it, relates to the whole of the property though it subsequently transpired that the caveat or was claiming an interest only in part of the property and made no claim in respect of the remainder. In the result there is a caveat entered against property in respect of which there is no claim; and the wording of the caveat makes it impossible to ascertain even generally that part of the property in respect of which exists from that part in respect of which no claim was made. Before a caveat can be entered against no claim exists as to part of the property, yet the caveat refers to the whole and prohibits any dealing wit the whole. The result is that the entry of the caveat has prohibited dealing with property over which no is made. This surely is not merely an irregularity which can, in appropriate case, be cured – it must be fundamental to the whole basis on which caveats are entered, and the rights.**

**There is no right to enter a caveat against the property in respect of which no interest is claimed and if generously it is entered and the mistake subsequently comes to light, surely the entry must be struck out.”**

In the result, for the reasons given hereinabove and the authority quoted above, the 1<sup>st</sup> defendant had no right to lodge caveats that encumbered the suit lands in which she did not have any interest. The 2<sup>nd</sup> defendant also was wrong to register such caveats on the suit lands without any justification in law. However, it was not shown in evidence that the 1<sup>st</sup> and 2<sup>nd</sup> defendants had knowledge of the plaintiff's interests in the land comprised in Block 288 plots N0s. 568, 569 and 464 at Mbalwa. Instead there is evidence that the 1<sup>st</sup> defendant is also occupying some parts of the land on the said titles. To that extent the 1<sup>st</sup> defendant was justified to lodge the said caveats on the said certificates of title which were still in the names of the estate of her late father. This revelation, therefore, affects the plaintiff's claims for damages and costs of the suit.

Furthermore, on issue NO. 2 of whether the plaintiff is entitled to the remedies prayed for in the plaint; I reiterate my findings on issue NO. 1 and hold that the plaintiff is entitled to some remedies. On the item of the payment of general damages of general damages by the 1<sup>st</sup> defendant, the plaintiff did not adduce enough evidence to prove on the balance of probabilities the loss and damage she suffered as result of the caveat that was lodged on the suit lands. That claim fails. Also as stated hereinabove, the claim of costs of the suit also fails.

All in all, judgment is entered in favour of the plaintiff in the following terms:-

- (a) The suit is allowed in part.
- (b) An order for the removal of caveats registered as instruments NO. Kla 427380 and lodged on the titles of land comprised in Kyadondo Block 228 plots NOs. 568 and 569; and Kyadondo Block 228 and 464 at Mbalwa is granted.
- (c) The 2<sup>nd</sup> defendant is ordered to remove the 1<sup>st</sup> defendant's caveats lodged on the Certificates of titles comprised in Block 228 plots 568 and 569 and Block 228 plot 464 at Mbalwa to enable the plaintiff have the suit lands surveyed and transferred into her names.
- (d) The 2<sup>nd</sup> defendant is further ordered to reinstate the said caveats after the plaintiff has surveyed off her said portions of land and transfer them into her names so to protect the 1<sup>st</sup> defendant's interest in the residual land on the said certificates of title.
- (e) The plaintiff shall meet her own costs of the suit.

Dated at Kampala this 20<sup>th</sup> day of December, 2010.

Signed  
**MURANGIRA JOSEPH**  
**JUDGE**