

2.2 This application is based on the following grounds; that:-

- a) **The applicant was never served with summons to file a defence.**
- b) **That the applicant's interest in plot 568 and 569 (now 3602 and 3603) is still existent and is a subject of Civil Suit No. 110 of 2010 at the High Court of Uganda , Kampala (Family Division) and Criminal Case at no. GEF/1243/2009 still under investigations of fraud at CID Headquarters.**
- c) **That the applicant was never served with a Notice of show cause by execution (removal of caveats) should not be effected.**
- d) **That it is in interest of justice that the judgment /decree and execution of the same be set aside.**
- e) **That the applicant has a good defence to the claim with high chances of success.**
- f) **It is in the interest of natural justice that the case is heard interparte and decided on merit.**

3. Resolution of this application by Court

3.1 The parties were directed to file written submissions, which they gracefully did. Both parties relied on a number of authorities to justify each party's case.

3.2 In his submissions, Counsel for the applicant argued that the applicant was never duly served with summons to file a defence. That a person alleged served with the summons to file a defence is a stranger to her. That all the time during that period, that she was resident in the United Kingdom (UK). That on the grounds of none service of Court summons on her the expert judgment ought to be set aside with costs. And that she be allowed to file a defence with a counterclaim.

In reply, counsel for the respondent submitted that the applicant was duly served through the senior and adult member of her family who was residing in the house of the applicant opposite, the other side of the road of the suit land. And that for the hearing of the suit, the defendants therein were duly served with the hearing notices.

That the applicant was served with summons and plaint through an adult member of her family Ronald Lule after several fruitless attempts to serve her personally. The service was done at her father's former home occupied by her and her other siblings and that

which is just opposite the suit land. That the hearing notice for hearing of the suit was served on Nyanzi, Kiboneka Mbabazi advocates indicated on the caveat as the address of service but there was no response. No defence was filed and neither the applicant nor her then advocates turned up in Court. Hearing proceeded exparte. The suit was set down for hearing on the formal proof. Evidence was adduced by the respondent and this Court found her evidence credible.

After considering the evidence adduced by the respondent (plaintiff) Court found that the applicant occupied 0.849 acres from the land on certificate of title known as Kyadondo Block 228 plot 568 & 569 and 0.36 acres also from the Certificate of title known as Kyadondo Block 228 plot 464.

Court further found that the rest of the land described hereinabove in this ruling on the certificates of title that is 0.65 acres on the certificate of title of plot 568 & 569 and 0.33 acres of plot 469 is for the respondent. Court held that the applicant's interest is only in portions of the land on the certificate of title. Court held that the applicant's caveats which affected all the land on the titles including the land where she did not have an interest to be defective. Court

ordered the removal of the applicant's caveats to enable the respondent surveyed off and transfer the land into her names.

Court further ordered that the caveats be re-instated after the respondent had surveyed off her said portion of the suit land so as to protect the applicant's interest in the residue plots.

Accordingly, the respondent surveyed off her land in accordance with the decree of the Court and the caveats were re-instated on the residue plots namely plots 3608 and 3603 which are for the applicant.

The applicant further deposed in her affidavit that her address of service on the caveat were M/s Nyanzi, Kiboneka & Mbabazi Advocates and further that she had to be served on that address instead of being served personally.

In paragraph 9 of her affidavit in support of this application she stated that the service was insufficient. The respondent filed a response in which she deposed that the applicant was served through one Ronald Lule as an adult member of her family when the applicant could not be found after several attempts. The respondent further stated that the applicant was further served with hearing notice though the advocates indicated on the caveat as the address on which notices and proceedings relating to the caveats may be served as M/s Nyanzi, Kiboneka & Mbabazi & Advocates.

The respondent further stated that M/s Nyanzi, Kiboneka & Mbabazi Advocates were served with the application by notice of motion under which the respondent first commenced the matter for removal of the caveats. M/s Nyanzi Kiboneka & Mbabazi Advocates accepted, received, and acknowledged Court process but did not turn up in Court for the hearing of the suit/application.

In her rather lengthy affidavit in rejoinder, the applicant denies knowing Ronald Lule (despite the fact that he bears her late father's name). She claims she has never taken up residence at her father's home in Mbalwa and resides in United Kingdom and when in Uganda she resides in Hotels after the properties left by her deceased father were sold off.

Insufficient service is a ground in support the application in the affidavit in support of the application see paragraph 9 of the affidavit. However, in the same affidavit paragraph 15 the applicant alleges non service. In my considered opinion these are two different things. Insufficient service means that serve was effected but was not effective in a way that service was not brought to her attention. None service means that she was not served, at all.

The applicant denies knowing Ronald Lule who was served. In paragraph 8 of her affidavit in support of this application she states that she was supposed to be served through Mbabazi Kiboneka & Co. Advocates (she probably meant M/s Nyanzi, Kiboneka, Mbabazi & Co. Advocates). In her affidavit in rejoinder she states that the advocates did not bring to her attention the existence of the suit.

The applicant claims that she was in United Kingdom. From the practical experience it is crucial for Court to note and remember that applicants in applications of this nature

almost always deny service to excuse their dilatory conduct or failure to act within the stipulated time to file a defence and to deny judgment creditors the fruits of their judgments. It is important for the court to examine all the facts of the case as it related to service of the summons. Court should not just take the applicant's words that she was not served. The applicant must prove her case on the balance of probabilities, that she was not served with the Court summons.

Service on an adult member of the defendant's family is acceptable under the provisions of Order 5 of Rule 13 Civil Procedure Rules. It is not correct for Counsel for the applicant to state that since Lule was not the applicant's agent therein service was defective.

Court should also consider the effort the respondent took to serve the applicant in the matter relating to the suit caveats:-

The respondent first commenced the matter for removal of caveats by an application under the provisions of the Registration of Titles Act. The caveats indicated the place of service of all notices and proceedings relating to the caveats as M/s Nyanzi, Kiboneka & Mbabazi Advocates. The respondent effected service of the notice of Motion on the said advocates and they accepted service by stamping and signing a copy of the same but did not file a reply to it and neither did they turn in Court. See annexure "A" to the affidavit in reply. The same advocates were further served with a hearing notice for hearing of the application but again neither they nor the applicant turned up in Court for the hearing. See annexure "B" to the affidavit in reply.

The letter written on the applicant's behalf by the then applicant's advocates is dated February, 2009. It does not state that the applicant's residence is in United Kingdom. In fact the implication therein is that the applicant is resident in Uganda. The applicant has also complained that the affidavit of the process server does not state that it is the respondent who identified Ronald Lule and the affidavit does not name the person who witnessed the service of the summons.

This complaint in my view is not justified. It is clear from the affidavit of service that Ronald Lule was known to the respondent and the respondent accompanied the process server on all the occasions he went to the applicant's home and was present at the time of

service. It is the respondent who identified Ronald Lule. And it is the respondent who witnessed the service of the summons together with the plaintiff on Ronald Lule.

Another complaint by the applicant is that the affidavit of the process server is riddled with contradictions. However she does not name these contradictions save one minor one to the effect that Ronald Lule received service on behalf of the Commissioner for Land registration.

Counsel for the respondent in his submissions conceded that paragraph 16 of the affidavit in support which relates to service on the Commissioner for Land Registration contains the name Lule but that it is clear from reading the preceding paragraphs (14 and 15) and the proceeding paragraphs (17-20) that the name inserted therein should have been Andrew the secretary of the Commissioner for Land Registration who is named in all the other paragraphs.

The minor error related to the service on the Commissioner for Land Registration who is not complaining and would not complain as service was perfectly accepted and acknowledged by stamping, dating and signing the summons. In the premises, the court finds that the applicant was served with the court process in HCCS No. 196 of 2010 between the parties.

I further emphasize that the applicant's interest in the land was protected by the order of Court in my judgment which required the Commissioner Land Registration to reinstate the applicant's caveats after respondent has surveyed off her portions of the land and transferred them into her names.

4. Conclusion

4.1 I have evaluated the affidavit evidence by the parties and on the facts of this case this is not a case in which Court should exercise its discretion by setting aside its judgment and decree. The applicant wants to defend a suit for removal of caveats which caveats were reinstated on the applicant's residue portions of the land.

4.2 Caveats are by their very nature temporary measures meant to protect interests in land normally until disposal of a suit or a settlement. The applicant filed a suit in the Family Division of the High Court but that suit does not concern the respondent as she is not a party there to. And the applicant does not complain against her. The existence of the said suit is even doubtful seeing that no evidence of its existence was attached to the applicant's affidavits in support of this application. The applicant cannot be allowed to lodge and keep the lodged caveats on other people's land until the end of the world. Court made the right decision when it ordered their removal.

4.3 In the result and for the reasons given hereinabove in this ruling, this application lacks merit. It is accordingly dismissed with costs to the respondent.

Date at Kampala this 20th day of February, 2013.

sgd
Murangira Joseph
Judge