

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISC. CAUSE NO.0034 OF 2012**

HUNTER INVESTMENTS LTD.

APPLICANT

VERSUS

1. SIMON LWANYAGA

2. EDITH LWANYAGA

RESPONDENTS

RULING

BEFORE HON. LADY EVA K. LUSWATA

The applicant brought this application by Notice or Motion under the provisions of Section 140(1), 142, 145 and 188 RTA Cap 230, and Order 52 rules 1,2 and 3 CPR S1 71-1 seeking for orders that:-

1. The respondents show cause why the caveats they lodged on the applicant's land should not lapse.
2. The respondents' caveats be removed from the applicant's land.
3. The respondents pay compensation/damages to the applicant for lodging the aforesaid caveats without lawful or reasonable cause.
4. The respondents pay costs of this application.

The motion was supported by the affidavit of Joshua Rwakijuma the managing director of the applicant who stated that the applicant is the registered proprietor of land comprised in Block 244 Plots 5410, 5411, 5412 and 5413 (hereinafter called the suit land) which they purchased for value with no notice of any adverse interest. That the respondent lodged caveats on the suit land by virtue of an interest they claim as beneficiaries of the estate of the late Simon Makumbi, claiming fraud on the part of the applicant's predecessor in title. He contended that the caveats were lodged without lawful cause because the person from whom the respondents lodge their claim do not appear in the history of the ownership of the suit land. That the existence of the

caveats have interfered with the applicant's attempts to access financial facilities from her bankers which has resulted into loss to them. He then sought an order to remove the caveats, and in addition, sought compensation or damages against them for lodging caveats without a reasonable cause.

Simon Lwanyaga the respondent swore an affidavit in reply admitting to lodging the caveats on the suit land which he claims forms part of the estate of his father the late Simon Makumbi (hereinafter referred to as the deceased).

The caveats which are the basis of this Application were lodged under S.140 (11) RTA now S.139 (1) RTA which provides as follows:-

“Any beneficiary or other person claiming any estate or interest in land under the operation of this Act ... may lodge a caveat with the registrar ... forbidding the registration of any person as transferee or proprietor of and of any instrument affecting that estate or interest until after notice of the intended registration or dealing is given to the caveator, or unless the instrument is expressed to be subject to the claim of the caveator as is required in the caveat, or unless the caveator consents in writing to the registration.”

According to J.T. Mugambwa in his book '**Principals of Land Law in Uganda** at Pg 86, the reasonableness or lack of it to lodge a caveat is a question of fact to be determined in the circumstances of each case. He adds that the fact that the caveator had no caveatable interest does not necessarily mean that he or she had no reasonable grounds to enter the caveat (**Kuper & Kuper Vs West Construction Pyt Ltd (1990) 3 WL 419**). Conversely, that the fact that the caveator has a caveatable interest does not by itself mean that he or she had a reasonable cause to lodge a caveat (**Hooke Vs Holland (1984) WAR 167**).

The respondent claims to be the heir and a beneficiary of the deceased's estate and that the deceased's family had for an unspecified period been in occupation of the suit land by cultivating a variety of crops. That the suit land was registered as in the names of Yayeri Tanaziraba while the deceased was away fighting in Burma with the British Army in WW2. That during 1997, Tanaziraba signed transfer forms in favour of the respondent but he could not have the same

registered both the original and duplicate certificates of title were found to be missing. That in 2000, his family sold a portion of the suit land to one Pastor Okoth Godfrey who constructed a school that is currently operating on the suit land. That in 2007, the applicant entered upon the land, destroyed all the respondents' crops and grated the tombs before constructing buildings on it.

The respondents' search of the register showed that the applicant caused the issuance of a special certificate of title before transferring the suit land into her name. That it was for those reasons that in consortium with Pastor Okoth, he filed Civil Suit No. 366/08 to challenge the applicant's proprietorship which he hopes will effectively determine all issues of his claim.

The certificates of title attached to Rwakijuma's affidavit bear witness that although the deceased does not appear as a previous registered owner of the suit land, Yayeri Tanaziraba does. It is stated in the suit (a plaint of which is also attached to the 1st respondent's affidavit that the deceased purchased the suit land through Tanaziraba his sister during the 1940s because he was away in action in WW2. Also attached is a transfer from Tanaziraba to the 1st respondent dated 10/1/97 in respect of block 244 Plot 1173. The 1st respondent claims this transfer was made before the suit land was subdivided into several plots and according to annexure B to his affidavit, I can safely assume that Plot 1173 is the mother plot from which plot 5413 originated. The deceased's will presented by the respondent was not translated into the language of the court and thus not helpful.

The applicant argues in rejoinder that Pastor Okoth owns a parcel adjacent to the suit land and that his presence on the suit land was merely the result of his encroachment in 2008 which was stopped by the court and KCC. He argued in addition that the applicant did not cause the issuance of the special title as they were not the owners of the suit land, by then.

In the case of **Sentongo Produce & Coffee Farmers Ltd Vs Rose Nakafuma thijusa HCMC 690/99** it was held that for a caveat to be valid, the cavetor must have a interest legal or equitable to be protected. I did not have the benefit of knowing the exact wording in the caveats, but, the 1st respondent admits that his family's interest is only equitable and to be derived from

one who was a former registered owner of the suit land. The strength of his claim is yet to be proved but going by the facts he relates, in particular his relationship to Yayeri Tanaziraba which was not strongly rebutted, he may have had reasonable grounds for lodging caveats on all the plots which, going by the record, at one time did belong to Yayeri Tanaziraba and one of which was derived from the title for which Tanaziraba allegedly executed for him a transfer. Although his occupancy is denied by the applicant, it is a fact presented by the latter, that Pastor Okoth, owned land adjacent to the suit land but attempted to encroach on the suit land. This may tally with the respondent's facts that him and his family sold land to Pastor Okoth in the area. Also, I did not see strong evidence from the applicant contradicting the evidence of previous ownership of the suit land by Tanaziraba in any case, the existence of CS.No.366/08 which is still an unresolved suit, would with no doubt lend merit to my sustaining the caveat lodged against Plot 5413.

With respect to the three other Plots, notwithstanding the protestations from either party, the truth of the respondents' claim or the bonafides and legality of the applicants proprietorship, will require more evidence, which cannot be the subject of an application, such as the one before me. Therefore, under such circumstances, I would be reluctant to order the discharge of the caveats on the suit land. Justice demands that the rights of each party are first fully determined. By a court of law.

The above notwithstanding, I note that the caveats on the four plots were all lodged by the 1st respondent way back in July 2010. Since then, he has made no attempts to challenge the applicants' registration or assert his adverse claim by suit. I have noted that the suit which was filed in 2008, only addressed the interests of the applicant and Pastor Okoth in respect of plot 5413 only. It is in fact argued by counsel for the applicants that caveats were lodged on other plots which were not purchased from Bob Kabuye. Details are given of the other predecessors in title in the submissions for the applicant but not his affidavits. It is trite that court will not accept evidence from the bar. In my view, filing of the suit may have been due to the pressure faced by the respondent and Pastor Okoth on account of the latter's alleged encroachment of the suit land. However, this would again not explain why the respondent chose not to challenge the legality of

the applicant (and their other predecessors in title's) registration and proprietorship of the entire suit land.

I have had an opportunity to peruse the record of HCCS. No.366 of 2008 which I confirmed is allocated to my brother Judge Kwesiga. So far, there appears to be very little effort or interest by the 1st respondent to prosecute that suit and the last entry by the Judge on 8/9/14, is a directive that the plaintiffs should cause why it should not be dismissed for failing to take the necessary steps since 2012. Against that background, the applicant who is the current registered proprietor has shown that the respondent's caveats have impeded their efforts to put the suit land to commercial use which has occasioned her loss.

I have found that the respondent's equitable claim is not yet proved, but that he may have had reasonable grounds to lodge the caveats on the suit land. Unfortunately, a caveat once lodged can only cease to have effect if withdrawn by the caveator, lapses after statutory notice or (in the case of beneficiaries) is removed by order of court. According to the authority of **Boynes Vs Gathure (1969)EA 385**, provided by the applicant, one primary objective of a caveat is to give the caveator temporary protection. Therefore, it will not be equitable to allow the respondents to sit back and "twiddle their fingers" for an undetermined future to the detriment of the applicant who as a registered proprietor has indicated a need to put the land to good use. The respondent has through a suit demonstrated that he has a *prima facie* unregistered claim to part of the suit land that is yet to be determined and confirmed by a court of law. In my view, he should carry through that intention seriously and not only for one plot but for the suit land in its entirety.

I see no provision in the RTA that would address the circumstances above. However the inherent powers of the court under both Section 98 and Section 33 Judicature Act would pertain so that justice in the matter is achieved. I would therefore disallow the application and instead order that the caveats lodged by the respondent on the suit land be maintained but strictly on the following conditions:-

1. The respondents shall within a period of 21 days from the date of this ruling, challenge the transfer and registration of the applicant onto the suit land by an ordinary suit in the High Court of Uganda. They may do so by filing a fresh suit or if legally possible,

causing an amendment to HCCS. No. 366 of 2008 to add any and all land for which they claim an unregistered interest to enable the High Court to determine the rights of the two parties herein.

2. Should the respondent fail, neglect or decline in the time given, to take any of the two alternatives given in condition No. 1 above, then the caveats in respect of Block 244 Plots 5410, 5411 and 5412 shall automatically lapse and be removed by the Commissioner of Land Registration without further recourse to this court. Notwithstanding my directives in order(s) No. (1) and (2) above, the caveat lodged by the respondent in respect of Block 244 Plot 5413 shall be maintained on the record and remain in force until HCCS. No.366 of 2008 is fully determined.
3. Since the caveats are to remain (subject to the conditions above) no compensation/damages are awarded to the applicant.
4. Each party shall meet their costs in respect of this application.

I so order.

EVA K, LUSWATA

JUDGE

17/6/2015