

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]**

MISCELLANEOUS CAUSE NO.50 OF 2019

1. SSEMANDA PAUL

2. GETRUDE NABULIME LUBEGA:.....APPLICANTS

VERSUS

1. NAKATO LUKWAGO JOYCE

2. KISAKYE ABBEY

3. COMMISSIONER LAND REGISTRATION:.....RESPONDENTS

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

This application was brought under Section 140, 188 of the Registration of titles Act Cap 230, Section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71 and 0.52 rr1, 2 &3 of the Civil Procedure Rules seeking for orders that;

1. The caveat lodged by the Respondents on land comprised in Busiro Block 400 Plot 36 at Nganjo (*hereinafter the suit land*) be vacated.
2. Costs of this application be provided for.

The grounds of this application are supported by affidavit of the 2nd Applicant. She deponed therein that she together with the 1st Applicant are joint administrators of the estate of the late Mukasa Erasito. She also deponed that the late Mukasa Erasito is the registered proprietor of

the suit land and she and the 1st Applicant are in possession of the same. *A copy of a certificate of title to the suit land was attached in proof whereof as annexure “B”.*

That at the time of registering as administrators of the deceased’s estate, they discovered that the Respondents had unjustifiably lodged a caveat on the suit land claiming that it formed part of the estate of a one Lukwago Benon whereas not. *A copy of the caveat was attached as annexure “C” in proof whereof.* It was her evidence that the Respondents have no justification for maintaining the said caveat whereupon they claim damages for the inconvenience suffered through frustrating their registration as administrators of the estate of the late Mukasa Erasito.

Though all Respondents were duly served with the application, none of them defended it. Being convinced of this fact, I allowed the application to proceed ex parte under *O.9 r20 of the Civil Procedure Rules*. Counsel for the Applicants filed written submissions which I shall rely upon in determination of the application.

In his written submissions, Counsel for the Applicants cited the case of **Norah Batwawula Nalubwama versus Nuwa Kaddu & Others HCMA No.33 of 2015; Hunter Investments Ltd versus Simon Lwanyanga HCMA No.034 of 2012 and Ssegirinya Gerald versus Mutebi Innocent HCMA No.81 of 2016.**

All these authorities are to the effect that caveats are temporary protective measures and therefore Caveators are barred from sitting back after lodgment for an undetermined period without taking positive steps to handle the controversy so as to determine the rights of the parties affected by the caveat.

Counsel then submitted that the 1st and 2nd Respondents went to sleep since March 2017 when they lodged the caveat on the suit land. He also submitted that the 1st and 2nd Respondents had no

justification for lodging the caveat on the suit land because it is registered in the name of the late Mukasa Benon contrary to what they claim. To buttress his point, he argued that this position has not been challenged by the Respondents who court must presume to have admitted.

In support of this, he cited the cases of Energo *Projekt Niskogradnja Joint Stock Company versus Brigadier Kasirye Ggwanga & Anor HCMA No.558 of 2009, Samwiri Mussa versus Rose Achen (1978) HCB 297, Juliet Nabagala versus Tereza Mbiro Misc. Cause No.82 of 2011; Tororo District Administration versus Andalalapo Ltd [1977] IV KALR 126 and Eridadi Ahimbisibwe versus World Food Programme & Others [1998] IV KALR 32.*

All these authorities opine that where certain facts are sworn to in an affidavit, the burden to deny them is on the other party and if he does not they are presumed to have been accepted.

Having submitted as such, counsel argued that the Respondents have failed to show cause as required under *Section 140(1)* of the Registration of Titles Act *Cap 40*, why their caveat should not be vacated. He invited me to allow the application with costs to the Applicants.

I have looked at the entire application and appreciated the submissions of Counsel for the Applicant. It is the requirement of the law that for a caveat to be valid, the caveator must have an interest legal or equitable to be protected. See *Sentongo Produce & Coffee Farmers Ltd versus Rose Nakafuma Thijusa HCMC No.690 of 1999.*

According to the certificate of title attached to the affidavit, the suit land is registered in the name of the late Mukasa Erasito through whom the Applicants claim as administrators. No evidence was led by the 1st and 2nd Respondents to demonstrate their interest in the suit land. In the absence of this evidence, it is my view that the 1st and 2nd Respondents have no interest in the suit land and therefore could not properly lodge a caveat thereon.

That notwithstanding, under *Section 140(1) of the Registration of Titles Act*, once the person affected by the caveat applies to court for its vacation, it is upon the caveator to show cause why it should not to be vacated failure of which an order to vacate it may issue. In this case, despite having notice of the application, no objection was made by the Respondents as to the averments of the Applicants. In that sense, I agree with the submissions of the Applicant's Counsel that the Respondents admitted the averments contained in the Applicant's affidavit. In view of this fact, it cannot be said that the Respondents have any cause why the impugned caveat should not be vacated.

Basing on the above reasons, I find that this application should succeed against the Respondents with the following orders;

1. An order directing the 3rd Respondents to vacate the 1st and 2nd Respondents' caveat lodged on land comprised in Busiro Block 400 Plot 36 Nganjo.
2. An order that the 1st and 2nd Respondents meet costs of this application incurred by the Applicants.

I so order.

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Henry I. Kawesa

JUDGE

20/08/2019

20/08/2019:

Ajungule Sulaiman for the Applicants present.

1st Applicant present.

Respondents absent.

Matter is for Ruling.

Court:

Ruling communicated to the parties above.

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Henry I. Kawesa

JUDGE

20/08/2019

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