

MISCELLANEOUS CAUSE NO.337 OF 2023

VERSUS

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA

Maria Saliwako and that Civil Suit No 2026 of 2015 was pending determination in Court. The suit was dismissed by Hon. Justice Nyanzi Yasin for want of locus. It is upon this background that the applicant brings this application for court to order for removal of the said caveat.

Applicant's evidence;

3. The application is supported by an affidavit deposed by *Mrs. Alice Okecha* the applicant which sets out the grounds of the application including the following;

- i) That the applicant is the registered proprietor of Land comprised in Busiro Block 432 Plot 600 at Bugabo having purchased the same from Maria Saliwako.
- ii) That before acquiring the said land, I carried out due diligence in regards to the authenticity of Title, ownership of the Land through the Local council officials and I ascertained that Maria Saliwako was the true owner of the said Land.
- iii) That ever since the said purchase, the applicant has carried out developments on the said land and up to date he has been utilizing the same without any third-party interferences.
- iv) That the applicant later learnt that the respondent lodged a caveat on her land vide instrument no. WAK-00133652 claiming that he has an interest on the same whereas.
- v) That the applicant has never met the respondent and he has never come out to me to officially claim that he has an interest on my land.
- vi) That in his application, the respondent claims to be a beneficiary of the Late Isaak Kiwanuka Sengooba and that's where he derives his interest from.
- vii) That on inquiry from Maria Saliwako whom I purchased my land from, she gave me documents from the High Court to prove that the respondent has never had any interest on Maria Saliwako's Land whatsoever.

viii) That according to the respondent's application for the said caveats, the Respondent did not attach any proof that he has caveatable interest whatsoever on the land.

Representation;

4. The applicant was represented by **Mr.Segamwenge Huduson** of M/S Luzige,Lubega,Kavuma & Co. Advocates whereas the respondent was not represented despite being served with the application. The respondent did not file an affidavit in reply neither did he attend the hearing despite being served with the application and the hearing notice. There is an affidavit of service and if the respondent had any objection to this application, he would have filed an affidavit in reply to guide this court in reaching its decision therefore this matter stands unchallenged. The applicant filed her affidavit in support and the submissions which I have considered in the determination of this application

Issues for determination;

5. Counsel for the applicant raised three issues for the determination by this court;-

- i) Whether the respondent has a caveatable interest?
- ii) Whether there is any reasonable cause as to why the respondent's caveat on the property comprised in Mailo Register Busiro Block 432 plot 600 land at Bugabo should be removed.
- iii) What other remedies are available to the parties.

Resolution of the issues;

6. In arguing the first issue, Counsel submitted that it is settled law that for a caveat to be valid the caveator must have a protectable interest and there must be reasons for doing so otherwise the caveat should be invalid. Counsel relied on *Simon Kattabu V Richard Simbwa*, HCMC No.121 of 2020 to support his submission.
7. Counsel for the applicant submitted that court is empowered in applications of this nature, to make such orders as it deems fit, this includes the power to make an order for removal of a caveat where a party fails to show cause why a caveat should not be removed.
8. It is also the applicant's case that the respondent without any lawful justification lodged a caveat on the said plot of land claiming interest whereas not. Counsel for the applicant submitted that for the aforementioned the caveat should be removed.

Determination of the application.

9. This honourable court shall proceed to determine the first issue first since it is where the other issues derive their validity.
10. I have carefully perused the affidavit in support of the application, the ruling attached thereto and the submissions of Counsel for the applicant. I also have to emphasize the position that the respondent did not file an affidavit in reply and it is trite law that where facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party, they are deemed admitted. (*See; Samwiri Massa V Rose Achen, 1978 HCB 297*)
11. It is settled law that for a caveat to be valid, a caveator must have a protectable interest legal or equitable to be protected by the caveat otherwise the caveat would be invalid. (*Hunter Investments Ltd V Simon Lwanyaga & Anor HCMC No 034 of 2012*).

- 12.** The applicant stated in her affidavit in support of the application in paragraph 8 of the Applicant's affidavit in support of the application the applicant stated that the respondent did not attach any proof that he had a caveatable interest. On perusal of the caveat application, the respondent did not attach any document to prove that he was the lawful attorney of the purported donees.
- 13.** Furthermore, it is evident that also Civil Suit No 2026 of 2016 was dismissed upon the failure of the purported lawful attorney to attach the document appointing him as such. He was then acting without authority and therefore had no locus to bring the suit. The question to be asked in the circumstances is "Whether a person in absence of any evidence to prove authority can be allowed to take any actions claiming that authority?" The answer in my view is no.
- 14.** In the instant case, the respondent caveated the applicant's land without proving authority as the lawful attorney by presenting the Power of Attorney duly executed. From the evidential point of view, it is clear he was acting without authority as a lawful Attorney.
- 15.** On the premises, it is the finding of this court that the respondent did not have authority as a lawful attorney and therefore did not have any caveat able interest to lodge the caveat thereby rendering the caveat invalid.
- 16.** In the result and on this issue alone, the application succeeds and court makes the following orders; -
- i) The caveat lodged by the respondent on land comprised in Busiro Block 432 Plot 600 at Bugabo under instrument No; WAK-00133652 is hereby removed by this court and the Commissioner land registration should cancel the said caveat immediately.

- ii) Costs are awarded to the applicant.

I SO ORDER.



.....

NALUZZE AISHA BATALA

JUDGE

17th/10/2023