

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISCELLANEOUS CAUSE NO. 0164 OF 2019

AMBA VENTURE LIMITED:::APPLICANT

VERSUS

- 1. SEMBATYA ABUBAKALI**
- 2. COMMISSIONER LAND REGISTRATION:::::::::::::::::RESPONDENTS**

RULING

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

The Appellant brought this application by way of Notice of Motion for orders that;

The Respondents show cause why his caveat on land comprised in **block 207, plot 1932 situate at Kanyanya Kampala road** should not be vacated.

The grounds are that the Applicant is the registered owner of the land comprised in **block 207, plot 1932 situate at Kanyanya Kampala**.

That the Respondent's caveat on the said land is misconceived as the Respondent does not have any interest whatsoever, in the Applicant's plot of land. The affidavit in support by Isaac Lukandwa reiterates the above grounds.

The 1st Respondent raised on affidavit in reply by Sembatya Bumbakali, denying the Applicants' averments. He details 12 averments in opposition. An affidavit in rejoinder was signed by Isaac Lukanda; raising answers to grounds raised by the 1st Respondent in reply.

The Applicant in his submissions argued that the 1st Respondent's caveat on the suit land is misconceived. He highlighted the law governing caveats that; '*a caveator must know how a caveatable interest*'. See **Kuper & Kuper versus West Construction Pty Ltd. (1990) 3WLQ9**

He also reiterated the holding in **Boyes versus Gathure (1969)EA 3385** cited in **Hunter Investments Ltd versus Lwanyaga & Anor; Misc. Application No.0034/2014** (unreported) that;

‘The preliminary objective of a caveat is to give the caveator temporary protection. It is not the intention of the law that the caveator should relax and sit back for eternity without taking positive steps to handle the controversy, so as to determine the rights of the parties affected by its existence’

He referred to Section 140(1) of the Registration of Titles Act Cap 230 which empowers Court to revoke a caveat if the caveator fails to show cause why the caveat should be maintained. It should be revoked by Court. He further argued that the Respondents failed to do that.

The 1st Respondent in his submissions referred to paragraph 5 of the affidavit in reply which referred to HCCS No.068 of 2012, and in paragraph 7 and 9 of the affidavit in reply. He maintained that the Respondent did not go to sleep, but was still preparing himself as it was only after 4 months of filing the caveat that the Applicant hurriedly brought this application. He pointed at the lack of due diligence and hence illegalities surrounding the transaction which he caveated. He further referred to the cases of **Bbaale Wakulira versus Cairo Bank International Bank Ltd and Commissioner Land Registration and Kyaligonza Daphine;** citing **Nabanoba Desiranta & Anor; HCCS No. 496/2005**

The Applicant in his submissions, explains that the Respondents’ references to fraud alleging that the suit land was fraudulently transferred could not be raised by an affidavit of service, since the standard of proof of fraud is higher than that in an ordinary suit(s). He referred to **Sanyu Lwanga versus Ntaate Mayanja; SCCA No. 059/1995**, for that position.

He argued that the preliminary intention of the law is the caveator’s temporary protection. That it is not intended that the caveator should relax and sit back for eternity without taking positive steps to handle the controversy, so as to determine the rights of the parties affected by its existence. He further stated that the failure to take positive steps by filing a suit against the Applicant, is evidence that the Respondents has no genuine claim in the suit land.

Given the nature of this claim, I have to refocus the Applicant to the issue for determination.

The issue is whether caveator has shown cause why the caveat should not be vacated.

Other issues which were raised in this application were responded to by the Respondent. In the Respondent's affidavit in reply by Sembatya bumbakali in paragraph 8, 10, 11, and 12 that the caveat was irregularly vacated and fraudulently transferred and hence lodged the caveat to protect his interest and 24 beneficiaries including a widow.

The affidavit in rejoinder of Isaac Lukanda in paragraph 5 averred that matters of fraud and illegality would require a fully bonafidely acquired ownership.

The import of all these averments are revealing. The affidavit evidence is informing this Court that the caveator is challenging the proprietary rights of the Applicant. The only way to protect his claim was to place a caveat.

I notice, from the file that the caveat was lodged on 4th April 2019. The Respondents argue that they were not asleep, but intervening circumstances led the delay to file the civil suit to show cause.

I have also noted from the pleadings that the issues raised by the caveator, including the fact that there was COVID-19 epidemic interruption, there was a rush in bringing the application et.

I have been made aware of the allegations in the caveator's pleadings of illegality and fraud. There is need to investigate the allegations.

I also agree with the Respondents that the intervening circumstances stood in his way. The illegalities mentioned must be investigated.

Given all the above circumstances, this application partially succeeds in that the caveator ought to have filed a suit by now; bringing forth the allegations which led to the caveator time to file a suit and bring the allegations out for trial.

I hold that if after the lapse of two months from this date no suit is filed (or step taken, to back up the caveat, the caveat will automatically lapse.

Costs of this application shall be borne by the Respondents.

I so order.

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Henry I. Kawesa

JUDGE

21/01/2021.

21/01/2021:

Nicodemus Akampurira for Kamya for the Applicant.

Applicant absent.

Respondent absent.

Court: Ruling delivered in the presence of the above.

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Henry I. Kawesa

JUDGE

21/01/2021.