

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA; AT KAMPALA
(LAND DIVISION)

MISCELLANEOUS CAUSE No. 85 OF 2013

1. DR. HENRY SSEKAALO
2. KASSANI SSENFUKA SSEBUNZA :::::::::::::::::::: APPLICANTS

VERSUS

1. NADULI ABDUL
2. REGISTRAR OF TITLES, BUKALASA :::::::::::::::::::: RESPONDENTS
3. COMMISSIONER FOR LAND REGISTRATION

BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY –
DOLLO

RULING

The Applicants are, respectively, the registered proprietor, and purchaser of land comprised in Bulemezi Block 320 Plot 32 at Busowa, measuring 40.5 hectares (hereinafter the suit land). They have jointly brought this application under the provisions of section 140 of the Registration of Titles Act (Cap. 230 Laws of Uganda, 2000 Edn.), section 98 of the Civil Procedure Act (Cap. 71 Laws of Uganda, 2000 Edn.), and 0. 52 rr. 1, 2, and 3, of the Civil Procedure Rules S.I. 71–1, seeking the following orders of this Court; namely that: –

1. The Respondents be summoned to attend before Court and show Cause why the caveat lodged on the title to the suit land on the 29th April 2010, by the 1st Respondent, under Instrument No. BUK. 89129, should not be vacated.

2. Consequential orders should issue directing the 2nd and 3rd Respondents to vacate the 1st Respondent's caveat; and the 2nd Applicant be registered on the title to the suit land as proprietor thereof.

3. Costs of this application be provided for.

The grounds supporting this application, which are better set out in the twin affidavits sworn by the Applicants, with supporting documentary annextures, are that: –

(a) The 1st Applicant has, since the 29th March 1990, been the registered proprietor of the suit land upon purchase of the same.

(b). The 1st Applicant sold and executed a transfer of the suit land to the 2nd Applicant on the 16th September 2009, free from encumbrance; and the 2nd Applicant has been in physical possession since.

(c). On the 29th April 2010, the 1st Respondent who has no interests in the suit land unreasonably lodged a caveat on the title to the suit land; and this has prevented the 2nd Applicant from being registered as the proprietor thereof.

(d). On the 11th June 2012, the 1st Applicant applied to the 2nd Respondent to vacate the caveat lodged by the 1st Respondent, as required by law, but the 2nd Respondent failed to comply.

Both the motion and hearing notices were duly served on the Respondents to the satisfaction of Court; but they chose not to respond to the summonses. Accordingly, Court proceeded to hear the matter ex–parte, under the provisions of 0.9, r.10, of the Civil Procedure Rules. This suit is well founded, on the authority of section 140 (1) of the Registration of Titles Act, which provides as follows: –

"... the proprietor or any person claiming under any transfer or instrument or other instrument signed by the proprietor may, if he or she thinks fit, summon the caveator to attend before the Court and show cause why the caveat should not be removed; and the Court may, upon proof that the caveator has been summoned, make such order in the premises either ex parte or otherwise, and as to costs as to it seems fit."

Notwithstanding that the Respondents never made a response to the Applicants' affidavit evidence, which was duly served on them, nevertheless, on the authority of the Court of Appeal decision in *C.A.C.A. No. 34 of 1999 –The Management Committee of Rubaga Girls School vs. Dr. Bwogi Kanyerezi [1999] KARL 587*, the Applicants are under duty to put up a credible case, for Court to decide the matter in their favour. From the uncontroverted evidence adduced by the Applicants, the 1st Applicant had been registered as the proprietor of the suit land for close to twenty years before disposing of the same to the 2nd Applicant. It is abundantly clear that the 1st Respondent has no justification for lodging the caveat on the title to the suit land.

The 2nd Applicant's root of title stems from that of the 1st Applicant; hence whatever claim the 1st Respondent may have on the suit land would be affected by the law of limitation, unless it falls under exceptions provided for by law. The Applicants had sought an administrative removal of the caveat by the 2nd Respondent. Section 140 (2) of the Registration of Titles Act provides that a caveat lodged against a proprietor shall be deemed to have lapsed upon the expiry of sixty days after notice has been served on the caveator that the proprietor has applied for the removal of the caveat. This means the 2nd Respondent ought to have served a notice on the caveator, of the proprietor's application to have the caveat administratively vacated.

Accordingly, the 2nd Respondent should have served the 1st Respondent with the requisite notice to show cause why the caveat should not be removed as is provided for under the provisions of section 149 of the R.T.A. To this extent, it failed in its statutory responsibility. Court served notice on the 1st Respondent to show cause why the caveat he lodged on the title to the suit land should not be vacated, but the 1st Respondent has failed to show such cause. This Court therefore orders that the said caveat be vacated. The prayer for the additional order directing the 2nd Respondent to register the 2nd Applicant as proprietor of the suit land is

redundant. Once the caveat is vacated, there will be no encumbrance to the registration of the 2nd Applicant as sought.

Therefore, this application is allowed with costs against the 1st Respondent; and so, Court makes the following orders: –

(i). The Registrar of Titles shall forthwith vacate the caveat lodged by Naduli Abdul (the 1st Respondent herein) on the title to land comprised in Bulemezi Block 320 Plot 32 at Busowa.

(ii). The 1st Respondent shall meet the Applicants' costs of the application.



Alfonse Chigamoy Owiny – Dollo
JUDGE

28 – 11 – 2014