

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA

MISC. APPLICATION NO. 4/1996

IN THE MATTER OF THE PROPERTY COMPRISED IN LRV VOL. 454 FOLIO
7 PLOT 10 BLOCK B LAND AT NAMWENDWA

AND

IN THE MATTER OF AN APPLICATION TO REMOVE THE CAVEAT AND AN
APPLICATION FOR VESTING ORDER TO ISSUE TO JAMES KIBENGE

BEFORE: THE HONOURABLE JUSTICE C.M. KATO

R U L I N G

This ruling refers to a preliminary objection raised by the learned counsel representing the Chief Registrar of Titles Mr. Mukalazi. The preliminary objection arises out of an application made by the applicant James Kibenge requesting the Chief Registrar of Titles to remove a caveat in respect of a piece of land comprised in LRV vol. 454 Folio 7 plot 10 Block B at Namwendwa in Kamuli district. The application was made under the provisions of section 190 of Registration of Titles Act. The substance or essence of the preliminary objection is that the application was brought under the wrong section of the Act.

According to Mr. Mukalazi section 190 of the Act provides for a situation where the Chief Registrar of Titles has failed or has omitted to do certain act and the applicant is not satisfied with this act or omission by the Chief Registrar of Titles. It is situation like that one when the Registrar can then be called upon to substantiate his act or omission. It was also his contention that an application for removal of a caveat can only be instituted by registered proprietors of the property but not somebody who has not been registered as an owner as is the case in the present case. In Mr. Mukalazi's view a matter of this nature should be disposed of by an ordinary suit but not by an application like this one. He maintained that the Chief Registrar of Titles had given reasons as to why he could not lift the caveat and why he could not issue the vesting order to register the applicant, the reason being that the applicant had not presented the proper documents.

In reply to this preliminary objection Mr. Masiga who appeared for the applicant in this matter requested the court to dismiss the objection because the Chief Registrar had in fact issued a notice to the caveator, he (the Chief Registrar of Titles) should not therefore turn round and say that he could not remove the caveat. According to Mr. Masiga provisions of section 190 of the Registration of Titles Act are applicable to the present case because the Chief Registrar had refused to remove the caveat and because of that refusal he could not issue the vesting order when the caveat was subsisting. He further pointed out that section 190 is not prohibitive; after all a notice of motion is also as good as a suit.

The provisions of section 190 of Registration of Titles Acts under which this application was brought reads as follows:-
"190. If upon the application of any owner or proprietor to have land brought under the operation of this Act, or to have any dealing registered or recorded, or to have any certificate of Title or other document issued, or to have any act or duty done or performed which by this Act is required to be done or performed by the Registrar, the Registrar refuses so to do, or if such owner or proprietor is dissatisfied with any decision of the Registrar upon his application, it shall be lawful for such owner or proprietor to require the Registrar to set forth in writing under his hand the grounds of his refusal or decision, and such owner or proprietor may, if he thinks fit, at his own costs summon the Registrar to appear before the High Court to substantiate and uphold such grounds; such summons shall be served upon the Registrar six clear days at least, before the day appointed for hearing the complaint of such owner or proprietor. Upon such hearing the Registrar shall have the right to reply; and the High Court may, if any question of fact is involved, direct an issue to be tried to decide such fact; and thereafter the High Court shall make such order in the premises as the circumstances of the case require, and such order as to payment of costs and fees as to it shall seem fit; and the Registrar shall obey such order".

In my view in order for a person to qualify to bring a matter under the provisions of this section he must be the owner of the land or proprietor of the land and the Registrar must have failed to perform certain acts at the request of the applicant; it is after such refusal or failure that the Chief Registrar may be called upon to substantiate the refusal or failure.

In the matter before the court now the applicant has sworn in his affidavit of 24/1/1996 that the Commissioner of lands had refused to issue a vesting order in his names in respect of this particular land as per paragraph 14 of his affidavit. On the other hand Mr. Tibisasa the commissioner for land registration/ Chief Registrar of Titles in his affidavit in reply stated that he had no power to remove the caveat because the applicant was not the registered owner of the land; that so long as the caveat was still there the land could not be transferred to the applicant (see paragraph 8 of his (Tibisasa's) affidavit). Mr. Kibenje in paragraph 8 of his affidavit also pointed out that one Christopher Wangadya had lodged the caveat because he was claiming to be a co-owner of the property.

All these facts do indicate that James Kibenje has never been the registered lawful owner or proprietor of the land within the meaning of section 2 of the Registration of Titles Act and on the authority in the case of: In the matter of Ivan Mutaka (1980)HCB 27 at page 28, therefore he (Kibenge) cannot be covered by the provisions of section 190 of the Registration of Titles Act which was intended to deal with owners or proprietors of the land. It is also clear from the affidavits of the Registrar of Titles and of James Kibenje himself that the land in issue is a subject of a dispute by somebody else called Christopher Wagandya whose interests cannot be ignored. I quite agree with Mr. Mukalazi when he says that this matter was improperly brought under the provisions of section 190 of the Registration of Titles Act. I am doubtful if the applicant would have been in order to bring the matter under section 175 of the Act in view of the fact that his interest in the land is being challenged by Wagandya.

The proper way to deal with the matter should have been to file an ordinary civil suit which have dealt with the issue of the true owner of the property more exhaustively after hearing evidence from all the parties concerned. It is true, as pointed out by Mr. Masiga, that an application by notice of motion may also be regarded as a suit as per section 2 of Civil Procedure Act, but where there are matters which are very involving it is not proper to file an application in order to sort out such matters, the proper approach is to institute an ordinary suit which will not be determined on mere affidavits as is the case in the case of notice of motion, but it (suit) has to be determined after assembling evidence from all the parties concerned and come to a considered conclusion.

In all these circumstances the preliminary objection is upheld. The position being what it is, the application to compel the Chief Registrar to remove the caveat and issue a vesting order to James Kibenge is dismissed with costs to the Chief Registrar of Titles.

[Signature]
C. M. KATO

JUDGE

21/5/1996