

**IN THE HIGH COURT OF ZAMBIA**  
**AT THE PRINCIPAL REGISTRY**  
**AT LUSAKA**  
**(Civil Jurisdiction)**

**2013/HP/1721**

**BETWEEN:**

**BONAVENTURE KALULU (Suing as Administrator**

**APPLICANT**

**of the estate of the late Solomon Kalulu)**

**AND**

**BERTONONOTTI ANGELO**

**RESPONDENT**

**Before the Hon. Mrs. Justice A. M. Sitali in Chambers on 26<sup>th</sup> March, 2014**

***For the Applicant* : *In Person***

***For the Respondent* : *No Appearance***

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## **J U D G M E N T**

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**Cases referred to:**

- 1. Construction and Investment Holdings Limited v. William Jacks and Company Zambia Limited (1972) ZR 66**
- 2. Lenton Holdings Limited v. Moyo (1982) ZR 55**

**Legislation referred to:**

- 3. The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia, sections 76 and 81 (1) and (2).**

The Applicant commenced this action by originating summons issued out of the principal registry on 19<sup>th</sup> November, 2013 seeking an order that the caveat lodged by the Respondent in respect of Stand No 459 Siavonga be removed. The originating summons are supported by an affidavit sworn by Bonaventure Kalulu in his capacity as administrator of the estate of the late Solomon Kalulu. Mr. Kalulu avers that the late Solomon Kalulu was the

registered and beneficial owner of Stand No 459 Siavonga and that the certificate of title to the property was issued in his name on 30<sup>th</sup> May, 1994.

The Applicant states that the said Solomon Kalulu died intestate on 19<sup>th</sup> October 1992 and that on 22<sup>nd</sup> December 1993 the Respondent lodged a caveat against the said property at the Lands and Deeds Registry claiming an interest in the property as intending purchaser. The Applicant avers that since he was appointed as administrator of the estate the Respondent has never come forward to assert his interest in the said property. He contends that he has been unable to deal with the property in issue due to the caveat which was registered against the property on 22<sup>nd</sup> December, 1993 and the Respondent has taken no action since then.

The Applicant exhibited a copy of the lands register evidencing the late Solomon Kalulu's title to the property and the caveat lodged by the Respondent against the property which register is marked exhibit "BK1". The Applicant also exhibited a copy of the letters of administration under which he was appointed as administrator of the estate of the late Solomon Kalulu marked exhibit "BK2". Due to the Respondent's inaction and his failure to assert his claim the Applicant prays that the caveat be removed.

The Respondent did not file an affidavit in opposition. Therefore, the only evidence available to the court in determining this application is the evidence of the Applicant.

At the hearing of the application the Applicant reiterated the contents of the affidavit in support of the originating summons and stated that he was first appointed as administrator of the estate of the late Solomon Kalulu soon after his death and that he renewed his appointment as administrator on 1<sup>st</sup> March 2011. The Applicant said that the Respondent had not come forward to assert his interest in the property since he lodged the caveat against the property on 22<sup>nd</sup> December 1993 and that by his failure to do so, he has hindered the administrator of the estate of the late Solomon Kalulu in dealing

with the property and administering the estate. He, therefore, urged me to order that the caveat registered against the property by the Respondent be removed.

I have carefully considered the affidavit evidence and the Applicant's submissions. Part VI of the Lands and Deeds Registry Act Cap. 185 of the Laws of Zambia (hereinafter referred to as the Act) sets out the law regarding the administration of caveats in sections 76 to 83. In terms of section 76 of the Act, a caveat against dealing with land may be lodged by any person who discloses an enforceable interest in the property. To that effect section 76 of the Act provides that:

*"76. Any person-*

*a) claiming to be entitled to or to be beneficially interested in any land or any estate or interest therein by virtue of any unregistered agreement or other instrument or transmission, or of any trust expressed or implied, or otherwise howsoever, or*

*b) transferring any estate or interest in land to any other person to be held in trust; or*

*c) being an intending purchaser or mortgagee of any land;*

*may at any time lodge with the Registrar a caveat in Form 8 in the Schedule."*

In the case of *Construction and Investment Holdings Limited v. William Jacks and Company Zambia Limited* (1) Scott J explained the effect of the lodgement of a caveat in the following terms:

*"...where a person lodges a caveat under section 49 of the Act, the Registrar is forbidden to make any entry on the register having the effect of charging or transferring or otherwise affecting the estate or interest protected by a caveat. This means that the registered proprietor is prevented from showing a clear title and dealing with his*

*property as he might wish to do and would be able to do but for the caveat.”*

Further, in the case of Lenton Holdings Limited v. Moyo (2) the Supreme Court held that in terms of sections 76 and 77 of the Act a caveat should disclose the interest claimed in order for it to be effective.

In the present case the Respondent lodged a caveat against Stand No. 459 Siavonga as intending purchaser and therefore disclosed an enforceable interest in the property which is recognised by section 76 (c) of the Act. However, from the affidavit evidence the caveat has been registered against the property since 22<sup>nd</sup> December, 1993 which is a period of twenty years and according to the Applicant the Respondent has not taken any steps since then to claim his interest in the property. It is on the basis of the Respondent’s inaction that the Applicant has applied for the removal of the caveat pursuant to Section 81 (1) and (2) of the Act. Section 81 of the Act provides that:

*“81 (1) Such registered proprietor or other interested person may, if he thinks fit, summon the caveator, or the person on whose behalf such caveat has been lodged, to attend before the Court or a Judge thereof to show cause why such caveat should not be removed.*

*(2) Such Court or Judge, upon proof that such person has been summoned may make such order in the premises, either ex parte or otherwise, as to such Court or Judge seems meet.”*

From the foregoing provision it is clear that the registered proprietor or any other interested person on his behalf may summon a caveator to show cause why a caveat entered against a property should not be removed. As the Applicant herein is the administrator of the estate of the late Solomon Kalulu who is the registered owner of Stand No. SIA/459 he is perfectly entitled to

summon the respondent as caveator to show cause why the caveat should not be removed in terms of section 82 (1) and (2) of the Act.

Although the Respondent did not appear at the hearing, there is an affidavit of service filed by the Applicant on 28<sup>th</sup> January 2014 showing that the Respondent was served with the originating summons and the supporting affidavit by the advertisement which was placed in the Zambia Daily Mail newspaper of 6<sup>th</sup> and 7<sup>th</sup> October, 2013, pursuant to a court order dated 5<sup>th</sup> December 2013. The Applicant has, therefore, proved to my satisfaction that the Respondent as caveator has been summoned.

From the affidavit evidence adduced by the Applicant, the caveator Bertononotti Angelo registered a caveat against Stand 459 Siavonga on 22<sup>nd</sup> December 1993 as intending purchaser as evidenced by the land register which is exhibited as "BK 1" to the affidavit in support. The Respondent has not come forward since then to assert his claim in the subject property. It is trite that lodging a caveat is an interim measure and is not a final remedy. As the caveator has failed to assert his interest in Stand No. 459 Siavonga over a period of twenty (20) years and has not come forward, in spite of being notified of the hearing date, to show cause why the caveat should not be removed, and in the absence of a reasonable explanation from the caveator as to his failure to assert his interest in the property over such a long period of time, it is my considered view that it is only fair and just that the said caveat should be removed to enable the Applicant to deal with Stand No. 459 Siavonga as the administrator of the estate of the late Solomon Kalulu.

I accordingly order that the caveat registered against Stand No. 459 Siavonga on 22<sup>nd</sup> December 1993 by the Respondent be removed forthwith.

Leave to appeal is granted.

Dated the 26<sup>th</sup> day of March 2014.

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**A. M. Sitali**  
**Judge**