



IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

IN THE MATTER OF: SECTION 81 OF THE LANDS AND DEEDS
REGISTRY ACT CAP 185 OF THE LAWS OF
ZAMBIA

IN THE MATTER OF: AN APPLICATION FOR REMOVAL OF CAVEAT
OVER STAND NUMBER LUS/9812/611

BETWEEN:

KANEKWA MUMBA

APPLICANT

AND

EUNICE CHIGOWE

1ST RESPONDENT

YOTAM CLIVE NGOMA

2ND RESPONDENT

REGISTRAR OF LANDS AND DEEDS

3RD RESPONDENT

BEFORE HONORABLE JUSTICE MR. MWILA CHITABO, SC

For the Applicant:

*Ms. M. Siansumo of Messrs Malambo
and Company*

For the 1st & 2nd Respondent: Nil

For the 3rd Respondent:

*Mr. Emmanuel Tembo (Assistant
Senior State Advocate)*

J U D G M E N T

Legislation referred to:

1. *The Lands and Deeds Registry Act, Chapter 185 of the Laws of Zambia*

This is an originating summons launched by the Applicant against the Respondents for the removal of a caveat placed on the Stand Number Lus/9812/611, Lusaka with costs. The application is anchored under Section 81 of the Lands and Deeds Registry Act¹. The application is supported by an affidavit deposed to by the Applicant one **Kanekwa Mumba**.

The essence of which is that the Applicant purchased Stand No. Lus/9812/611, Lusaka from the 2nd Respondent **Yotam Clive Ngoma** as evidenced by exhibit KM1 dated 28th December, 2015 which is a contract of sale, in respect of the property which is registered in the name of **Yotam Clive Ngoma** as shown by exhibit KM2.

It was deposed that the Applicant on 17th November, 2015 conducted a diligent search at the Lands and Deeds Registry vide exhibit "KM3" which is a computer printout revealing that there were no encumbrances on the property other than a third party mortgage registered by Betternow Finance Company Limited.

That on 30th December, 2015, a further search was conducted at the Ministry of Lands which did not reveal any encumbrance but reflected memorandum of deposit of title as evidenced by exhibit KM4.

That the Applicant made full consideration of purchase price and redeemed the mortgage and certificate of title was released to him by Betternow Finance Company Limited and the certificate of title was released to him as evidenced by exhibit LM5, which is a letter dated 30th December, 2015 from the said company.

It was deposed that on the basis of advise rendered to him by his Advocates, the discharge of the mortgage was to the benefit of all persons claiming an interest in the property.

That after completion and whilst trying to lodge the assignment at the Ministry of Lands, it was revealed that the 1st Respondent had lodged a caveat as reflected in exhibit "KM6" which is a computer search report generated on 20th June, 2016.

It was deposed that the caveat had been placed after the 1st and 2nd Respondents had ceased to have any interest in the property the transaction having been concluded and monies paid.

It was further deposed that the Applicant had applied for and obtained the necessary State consent. It was averred that State consent, the said consent to assign was granted to the 2nd Respondent prior the entry of the caveat and the 1st Respondent upon placing the caveat should have been aware that there was a contract of sale relating to the said property.

It was further deposed that the 1st Respondent has not furnished the Applicant any reasonable and legitimate justification for the continued subsistence of the said caveat despite numerous correspondence and telephone conversations requesting withdrawal

of the caveat as revealed in exhibit "KM 9" which is a letter from the Applicants Advocates dated 28th June, 2016, demanding for removal of the caveat. The deponent lastly entreated the Court to order the removal of the caveat so that he can register his interest in the land.

At the time of hearing, I was satisfied that the Respondents Advocates had been duly served with the originating summons and supporting affidavit and I therefore allowed the Applicants Advocates to present their clients application.

In her brief submissions, the Learned Ms. M. Siansumo informed the Court that the application was anchored under Section 21 of the Lands and Deeds Registry Act¹. In support of her application, reliance was placed on the supporting affidavit deposed to by the Applicant **Kenekwa Mumba** in the prayer to order the removal of the caveat in respect of property Subdivision No. 611 of Stand 9812, Lusaka placed on 24th February, 2016. It was pointed out that no reasonable grounds exist for the sustenance of the caveat at Lands Register and accordingly invited the Court to order its removal.

There was no affidavit in opposition filed by the 1st and 2nd Respondents. I therefore hold that the 1st and 2nd Respondents are deemed to have admitted the facts as narrated by the Applicant.

Though the 3rd Respondent filed in an affidavit in opposition, the facts as asserted by the Applicant were not traversed. In fact at the time of hearing the Learned Mr. E. Tembo, Assistant State Advocate

informed the Court that the discretion to order removal or not of a caveat was the preserve of the Court.

I have already somewhere in one of the preceding paragraphs alluded to the fact that there being no affidavit in opposition to the Applicants impeccable evidence illustrated in documentary evidence vide the various exhibits, I am satisfied that no justifiable reason exists to allow the caveat to remain on the Lands Register.

The 1st Respondent has not demonstrated any registrable interest to justify the lodging of the caveat on the property. I accordingly

- (1) Invoke the provisions of Section 21 of the Lands and Deeds Registry Act¹ and order that the Caveat placed on the property subdivision No. 611 of the stand 9812, Lusaka placed by the 1st Respondent be removed forthwith by the Registrar of Lands.
- (2) I order that the costs of and incidental to this application be borne by the 1st Respondent, which costs are to be taxed in default of agreement.
- (3) Leave to appeal to the superior Court of Appeal is denied.

Delivered under my hand and seal this ^{10th} day of December, 2017



Mwila Chitabo, S.C.

Judge