

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 524 OF 2022

JANE ZABLON KIUTESHA ..... APPLICANT

VERSUS

DANIEL CLEMENT NEHEMIA MWAKASUNGULA .... 1<sup>ST</sup> RESPONDENT

REGISTRAR OF TITLES ..... 2<sup>ND</sup> RESPONDENT

RULING

*Date of the last order 18.11.2022*

*Date of Ruling 23.11.2022*

A.Z.MGEYEKWA

In the application at hand, Jane Zablun Kiutesha, the applicant is praying for this Court to order the caveat dated 24<sup>th</sup> February, 2016 in respect to the property situated on Plot No. 680, Block C, Sinza Area, Kinondoni Municipality with Certificate of Title No. 186266/21 be removed.

The application is made under section 78 (4) of the Land Registration Act, Cap.334 [R.E 2019]. The application is supported by the affidavit of Jane Zablou Kiutesha, the applicant herein. The 1<sup>st</sup> respondent filed a counter affidavit deposed by Daniel Clement Nehemia Mwakasungula, 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent did not show appearance. The matter proceeded ex-parte against him.

Mr. Katemi, learned counsel for the applicant was the first one to kick the ball rolling. He submitted that the applicant is the lawful owner of the suit land described as Plot No. 680, Block C, Sinza Area, Kinondoni Municipality with a Certificate of Title No. 186266/21. He submitted that on 24<sup>th</sup> February, 2016, the 1<sup>st</sup> respondent for non-reasonable ground filed a caveat with the 2<sup>nd</sup> respondent against the land in dispute.

The learned counsel for the applicant went on to submit that the 1<sup>st</sup> respondent's caveat in paragraph 5 mentioned Land Case No. 113 of 2013, the parties being Daniel Clement Nehemia Mwakasungura v Chiku Hussein Kunga, Majembe Auction Mart, Seth Mwamoto, Joyce Bernard Masanzu, Selemani Haliwa Gama and Flamingo Auction Mart. He added that in the alleged case the 1<sup>st</sup> Respondent alleges that the parties thereto entered a settlement where the land in dispute was to be shared by two parties. The 1<sup>st</sup> respondent and Chiku Hussein Kunga.

Mr. Katemi continued to state that the 1<sup>st</sup> respondent neither in his caveat nor his counter-affidavit stated how he came into connection with the land in dispute. He stated that the case was likely to be sort of a fraud, the 1<sup>st</sup> respondent was running to default the applicant of her rightful ownership of the land in dispute. He claimed that the 1<sup>st</sup> respondent stated that there is a pending Misc. Land Application No. 504 of 2015 at the High Cout Land Division between Chiku Hussein Kunga v Jane Zablon Kiutesha & Another, while it is untrue. He valiantly argued that the 1<sup>st</sup> respondent lodged this caveat on 24<sup>th</sup> February, 2016, and this case had already been concluded on 17<sup>th</sup> February, 2016.

The learned counsel for the applicant forceful contended that the 1<sup>st</sup> respondent maintained the caveat with a wicked intention to frustrate, injure, torture, and cause the applicant huge financial losses since the caveat was lodged on 24<sup>th</sup> February, 2016 to date, more than five years and the applicant is suffering for being blocked to financially utilize her land for economic purposes. He added that the applicant reached out to the 1<sup>st</sup> respondent to peacefully remove the caveat but the 1<sup>st</sup> respondent arrogantly refused.

The learned counsel for the applicant continued to submit that the law requires the caveat to contain facts but the said caveat offends this

mandatory requirement as it contains a falsehood. Mr. Katemi invited this Court to remove the caveat. To fortify his submission he referred this Court to section 78 (4) of the Land Registration Act, Cap. 334 [R.E 2019]. He further stated that the 1<sup>st</sup> respondent was summoned to file a counter affidavit but there is nothing of the resemblance of the cause shown for the caveat to continue. He spiritedly argued that the caveat itself has been in place for over five years and it appears the 1<sup>st</sup> respondent wants the caveat to sustain indefinitely that is proof of ill will, malice, and lack of cause

On the strength of the above submission, Mr. Katemi beckoned upon this Court to grant the application with deserving costs.

In reply, Mr. Mbamba argued that the applicant has not proved his ownership since ownership is proved by registration in the Land Register or production of a Title Deed. Mr. Mbamba contended that annexure A is two paged; the first page indicates the number of the Certificate of Title and page 2 indicates stamps for payment of stamp duty. He argued that annexure A to be something to go by, ought to have indicated the connection of the Title with the name of the applicant, a fact which is missing. He added that the second requirement is for the applicant to request the court to call upon the caveator to attend and show cause why the caveat should not be removed and failure to show cause to make an order for the court for removal of the caveat. He

stressed that the applicant is inviting this Court to put the cart before the horse. He insisted that the application ought to have contained two prayers; to move the Court to call upon the applicant to show cause why a caveat should not be removed the second prayer; in case failure to show cause to make a consequent order of removing the caveat.

In conclusion, he stated that the application runs counter to the requirement of section 78 (4) of the Land Registration Act, Cap. 334. He urged this court to find that the application is vague and premature and is in contravention of the provision. Hence he prayed this Court to dismiss the application with costs.

In his rejoinder, Mr. Katemi contended that the essence of the application is to have the caveat removed from the applicant's property and the respondent was summoned to bring evidence in form of the counter affidavit to show why he maintains that caveat. Hence the 1<sup>st</sup> respondent was afforded an opportunity to defend his caveat. In his view, the 1<sup>st</sup> respondent has failed to defend why he lodged the caveat. He stressed that the applicant is the lawful owner of the landed property as evidenced by her affidavit and annexures thereto. Ending Mr. Katemi urged this Court to grant the application.

I have heard the submissions of the counsels for the applicant and 1<sup>st</sup> respondent herein. I will determine the issue whether the application is meritorious. The application is brought under section 78 (4) of the Land Registration Act, Cap. 334. For ease of reference I reproduce the section hereunder:-

*" The High Court, on the application of the owner of the estate or interest affected, may summon the caveator to attend and show cause why such caveat should not be removed, and thereupon the High Court may make such order, either ex parte or otherwise as it thinks fit."*

Mr. Mbamba tried to fault the applicant's application claiming that the applicant was required to call the caveator to attend and show cause why such a caveat should not be removed. In my considered view, I find Mr. Mbamba's contentious unfounded because as long as the 1<sup>st</sup> respondent was summoned to appear in court and ordered to file a counter affidavit the same suffice. What matter was for the 1<sup>st</sup> respondent to show cause why the caveat should not be removed. The 1<sup>st</sup> respondent appeared in court and filed his counter-affidavit and was given an opportunity to state his reasons, the same suffice to move this Court to determine the instant application.

Regarding the proof of ownership, the applicant in paragraph 3 stated clearly that she is the owner of the house situated on Plot No. 680 Block C, Sinza

Area, Kinondoni Municipality with Certificate of Title No. 186266/21. Annexue 'A' shows a copy of first page of the Certificate of Title No. 186266/21 and the Caveat, annexure B dated 25<sup>th</sup> June, 2018 bears the same Certificate of Title No. 186266/21. Therefore it is obvious that the applicant has proved that she is the lawful owner of the suit land.

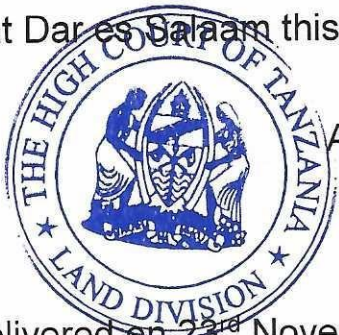
The record shows that the caveat was filed on 25<sup>th</sup> June, 2016. To support her claims she attached a copy of caveat (Annexure B). As rightly pointed out by Mr. Katemi from the date when the caveat was lodged on 25<sup>th</sup> June, 2016 to date, is more than five years. The interest of the applicant is clearly reflected in paragraphs 3 and 5 of the affidavit, however, the respondent filed a caveat and the applicant had no access to her property for five good years. The reason of filing the caveat was because there was a pending Misc. Land Application No. 504 of 2015 between Chiku Hussein Kunga v Jane Zablon Kiutesha & another. And the said case was concluded, the fact which is not disputed by the respondent in their written submission. Therefore, I agree that the applicant is suffering for being blocked to financially utilize her land for economic purposes. Therefore, it is clear that the applicant has demonstrated good reasons to move this Court to remove the caveat.



As the result, the application is granted. The Registrar of Titles, the 2 respondent is ordered to remove the caveat registered by DANIEL CLEMENT NEHEMIA MWAKASUNGULA, the 1<sup>st</sup>respondent in respect of Plot No. 680 Block C Sinza Area, Kinondoni Municipality under Certificate of Title No. 186266/21. No order as to costs.

Order accordingly.

DATED at Dar es Salaam this 23<sup>rd</sup> November, 2022.

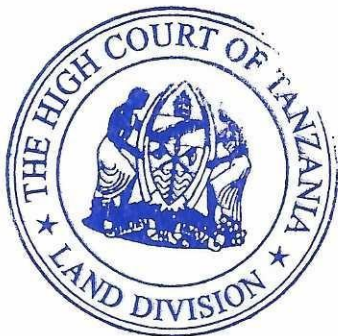


  
A.Z.MGEYEKWA

**JUDGE**

23.11.2022

Ruling delivered on 23<sup>rd</sup> November, 2022 via audio teleconference whereas Mr. Godian Mugusi, counsel holding brief for Mr. Katemi, counsel for the applicant.



  
A.Z.MGEYEKWA

**JUDGE**

23.11.2022

Right to appeal fully explained