

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**LAND CASE NO 10 OF 2018**

**AMOS GISUNTE SERERYA .....PLAINTIFF**

**VERSUS**

**1. TARIME DISTRICT COUNCIL.....1<sup>ST</sup> DEFENDANT**

**2. ATHUMANI OMARY AKALAMA .....2<sup>ND</sup> DEFENDANT**

**R U L I N G**

30.11.2018 & 31.1.2019

**Matupa, J.**

After the close of the pleadings, the second defendant raised a preliminary objection on two points of law. The suit emanates from a caveat the second defendant has entered against the plaintiff in relation to a landed property no 12 Block "A" situated at Sirari minor settlement area within Tarime District with Certificate of title no 39 523 Mwanza Registry.

The plaintiff claims in paragraph 9.0 of his plaint that, he owns the plot in question. He also claims that he has owned it during all the time since he

was issued with the title deed on the 1<sup>st</sup> day of August, 2012 until in 2013 when he received notification from the Registrar of title that the defendants have entered a caveat in respect of the suit land for the reasons best known to themselves. The copy of the caveat, which the plaintiff claims is the subject of the dispute hasnot been pleaded. The plaint only makes reference to a notice of the Registrar of Tittles which was issued in terms of section 78 (3) of The Land Registration Act.

The defendant does not deny the fact that the caveat was indeed entered. In the course of arguing the objection, Mr. Robert Kidando learned State Attorney has reminded the court that the procedure, which the applicant has used to institute the application, is alien to section 78 of the Land Registration Act, Cap 344 of the 2002 Revised Edition of the laws of Tanzania. There was not much objection from the learned counsel for the Plaintiff, except his contention that his client was advised to adopt the procedure because he has suffered damages, which he has pleaded alongside the claim for withdrawal of the Caveat.

At the outset, I do not see much merit on the objection by the second respondent that he has been wrongly, impleaded in his personal capacity. This is because, as I have observed above, the said second defendant

entered the caveat in his personal capacity. The notice of the caveat in terms of section 78(3) of the Land Registration Act reads as follows:-

*"To Amosi Gisunte Sererya of  
P.O. box 326  
Tarime-Mara*

*Notice*

*TAKE NOTICE THAT pursuant to section 78 (3) of the above Act, a  
CAVAT has been entered in the Land Register as an incumbrance  
(sic) against the above mentioned tittle by ATHUMANI OMARY  
AKALAMA of P.O. Box 16 Tarime*

*DECLARED at MWANZA this 06<sup>th</sup> day of May, 2013*

*(sgd)*

*M.J.Mziray*

*Principal assistant*

*Registrar of titles*

*Mwanza*

*CC ATHUMANI OMARY AKALAMA OF  
P. O.BOX.16  
TARIME."*

From the foregoing, it is clear that the pleadings do not make reference to the caveat but to the notice of the Caveat, which the second defendant filed. Two, the notice that the plaintiff has pleaded which, forms the subject of the present suit, is in relation to the caveat, which Athuman Omary Akalama entered. There is no mention anywhere in the caveat, that the said caveator was acting in an official capacity, nor is his capacity otherwise than his personal name is pleaded. From the foregoing, it is clear that the objection by the second defendant is not misplaced. If one has to

argue on standing, one fails to understand on the facts, why the first defendant was impleaded in the first place, given the state of the pleadings.

There is another thing which has attracted my attention, and which I sought clarification from the parties. That is the competence of the suit in terms of limitation and validity of the claim in the first place. This is in the light of the fact that the notice was given by the Registrar of Titles on the 6<sup>th</sup> day of May, 2013. The question is whether the present suit discloses any cause of action.

The plaintiff has sued the Defendants on a caveat, which they have not pleaded. In a suit of the present nature, where the plaintiff sues on a caveat, he must conduct a search on the register in order to show the status of the register as on the day he files the suit. In the case of **Mayers and another v Akira Ranch Ltd** (No 3)[1973] 1 EA 431 which was a case for restoration of a caveat, sir William Duffus P. gave the following directive, which I find to be useful in the present case I have.

*"I agree that it is necessary to file an up to date search certificate in all appeals relating to title to land registered under the Registration of Titles Act (Cap. 281). This search certificate should be up to the date of the hearing of the appeal and should show all*

*entries affecting the land appearing on the register. An example of the necessity in this occurs in this case. This appeal seeks to set aside the order of the High Court removing a caveat and asks that this Court order the caveat to be restored on the register."*

One may appreciate that, the decision I have cited was on a case on appeal and it had a chequered history. The present case is on trial, and the issue is a caveat, which has not been pleaded by the plaintiff. As such, we are in the dark as to the terms and intent for which the second defendant entered it. Section 78 of the Land Registration Act, provides as follows:-

*"78. (1) Any person who claims an interest in any registered land, or any person who has presented a bankruptcy petition against the owner of any estate or interest, may present a caveat in the prescribed form.*

*(2) Every such caveat shall be supported by a statutory declaration stating the facts upon which the claim is based.*

*(3) Upon receipt of any such caveat, the Registrar shall enter the same in the land register as an in cumbrance and shall notify the same to the owner of the estate or interest thereby affected.*

*(7) The interest protected by a caveat may not be made the subject of a second caveat so as to defeat the provisions of subsection (6).*

Under sub-section (1) the caveat shall be in the prescribed form. The form of the caveat is provided in LR 27 of the Land Registration Rules. The

forms of the caveat direct a statement to be made by the caveator on the facts which the caveat is based. As one can see, in terms of subsection (1) of the section 78 aforesaid, only a person who claims to have an interest in the land, or who has filed a bankruptcy petition on the land can file a caveat. These are the reasons, which are to be shown in the caveat. Subsection (6) of the section directs the manner in which the caveat will serve its purpose, that is it only protects against registration being made on the document against the interest of the Caveator or the owner of the land. The subsection reads:-

*"(6) If a deed is presented for registration which purports or appears to affect any registered estate or interest in respect of which a caveat is entered, **the Registrar shall give notice thereof to the caveator and shall suspend registration of such deed for one month from the date of such notice. At the expiration of such period, the caveat shall lapse and the deed shall be registered as at the date of presentation, unless in the meanwhile the application for registration has been withdrawn or the High Court otherwise directs.**"*

The section is clear that, protection starts with the presentation of the objected registration and it ends one month after the notice, unless the adverse registration is withdrawn or the High court makes a contrary direction. From the section, once the notice was served on the plaintiff the

tenure of the caveat started to run, and it only subsisted for one month. After the month, it was the right of the caveator to move the court for redress or to cite the caveator. This was not done, the land was not encumbered by the caveat.

The caveat may also be considered in terms of subsection (4) of Section 78, to which the learned state attorney referred to the court, which provides as follows:

*(4) 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.*

The limitation of time for applications under this section will definitely be under general provisions of item 21 of the first schedule to the Law of Limitation Act, which states as follows:-

*"21. Application under the Civil Procedure Code, the Magistrates' Courts Act or other written law for which no period of limitation is provided in this Act or any other written law .....sixty days"*

As can one can see, the right of action to the plaintiff occurred on the day he was served with the notice of the existence of the Caveat. The

period of limitation in terms of the paragraph, in the absence of any other provision of the law to the contrary, was only sixty days.

Whichever the case, one approaches the case, the caveat in terms of section 32 of the Registration of Documents Act did not subsist after one year. On this, I am advised by the learned counsel for the plaintiff that the section applies only to non-registered land. If I consider the caveat in terms of section 78 (4) as read together with the provisions of Item 21, the right of action did not subsist after sixty days. Also, if I approach the caveat in terms of section 32, even if the sixty days were to run after one year of the subsistence of the caveat, this suit is hopelessly out of time.

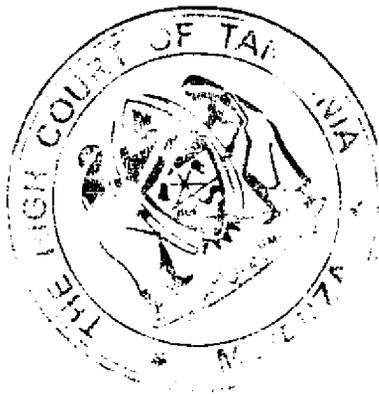
I need not go by way of section 32 of the Registration of Documents Act. Section 78 (6) came into play the moment the plaintiff was on notice and the notice had the effect of cutting off the limitation of the Caveat to thirty days after the date of the notice. From that date, the document was considered to be registered as presented.

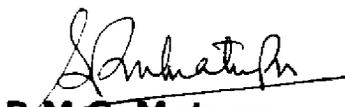
This brings me to order Vii r.1 (e), which directs that a plaint shall state the facts which disclose a cause of action. Here in this case, clearly the facts do not disclose the cause of action. The plaint has also not shown that his title has anyhow been diminished by the caveat, or that he has

attempted to register an interest on the land and the Registrar of Titles could not complete it due to the registered caveat, which does not subsist anyway.

The plaint which does not disclose a cause of action can only be rejected under order VII rule 11 (a) of the Civil Procedure Code. Accordingly, I will make an order in terms of rule 12 to reject the plaint.

Dated at Mwanza, this 31<sup>st</sup> day of January, 2019



  
**S.B.M.G. Matupa,**  
**Judge**

Date: 31.1.2019

Coram: Hon. Matupa, J

Plaintiff: Mr. Kassim Gilla Advocate

1. Defendant: Subira Mwandambo for 1<sup>st</sup> Defendant

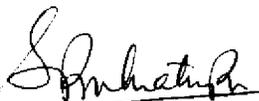
2. Defendant: Laurian Advocate for 2<sup>nd</sup> Defendant

B/c: Leonard

**Court:**

The Ruling has been delivered in chambers in the presence of counsel for the Respective parties and in the presence of the Plaintiff this 31<sup>st</sup> day of January, 2019.



  
**S.B.M.G. Matupa**  
**Judge**

**At Mwanza**  
**31<sup>st</sup> January, 2019**