

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

2022/HP/0082

IN THE MATTER OF:

**SECTION 81 AND 82 OF THE LANDS AND
DEEDS REGISTRY ACT, CHAPTER 185 OF
THE LAWS OF ZAMBIA.**

AND IN THE MATTER OF:

**REMOVAL OF A CAVEAT PLACED ON
STAND NO. 772/4807, KAMWALA,
LUSAKA.**

BETWEEN:

VICTORIA THOLE



APPLICANT

AND

**LUSAKA CITY COUNCIL
MUBARAK ISA VALI PATEL**

**1ST RESPONDENT
2ND RESPONDENT**

Before:

The Hon. Mr. Justice Charles Zulu.

For the Applicant:

Mr. M. Munansangu, of Messrs
Munansangu & Company.

For the 1st Respondent:

Ms. C. Kabaso Mwembela, In House
Counsel.

For the 2nd Respondent:

Mr. A.M. Musoka, of Messrs Nahri
Advocates.

J U D G M E N T

Cases referred to:

- 1. *Sobek Lodges Limited v Wildlife Authority (2008/HP/ 668)*
(unreported).**
- 2. *Construction Investments Holdings Limited v William Jacks
and Company (Z) Limited (1972) Z.R. 55.***

Legislation referred to:

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

INTRODUCTION

This judgment is respect of an application dated January 23, 2023, by the Applicant, Victoria Thole, by way of originating summons for an order for the second Respondent, Mubarak Isa Vali Patel, to show cause why the caveat he placed on property known as Plot No. 772/4807, New Kamwala, Lusaka, should not be judicially removed.

THE PARTIES' AFFIDAVIT EVIDENCE

An affidavit in support of originating summons was deposed to by the Applicant. She stated that, she was the registered proprietor of the subject property namely, Plot No. 772/4807, Kamwala Lusaka. A copy of the Certificate of Title was exhibited dated June 10, 2005.

She stated that sometime in 2022, she discovered that her "absentee husband" fraudulently attempted to sale the subject property to the second Respondent. She said the matter was reported to the Police.

She added that on November 15, 2022, the first Respondent, the Lusaka City Council (LCC), allowed the second Defendant to enter a caveat on the property.

It should be noted that in the case of ***Sobek Lodges Limited v Wildlife Authority 2008/HP/ 668*** (unreported) Matibini J (as he then was) stated that:

Although the originating proceedings in an application for the removal of a caveat is at the instance of an applicant, section 81 of the Lands and Deeds Registry Act, places the burden of showing cause why a caveat should not be removed on the respondent.

Accordingly, the caveator, Mubarak Isa Vali Patel filed his affidavit. He recounted that, when the house was put up for sale, he viewed the house, and that the Applicant was the one that guided him at the time he conducted the site inspection. He said it was the Applicant who even directed him to see her husband to negotiate the price and the terms of the transaction.

He said a contract of sale dated November 8, 2018, was executed between the Applicant and he; accompanied by discharge of a mortgage placed on the property by Samasonji Kennedy Malundu. He said he paid off the mortgage, and that it was further agreed that the sum paid thereof was deductible from the purchase price.

He said after consent to assign was granted, he proceeded to pay property transfer tax. He said it was at the point the transaction was pending registration of the deed of transfer that the Applicant reported to the LCC and the Police that her husband was attempting to illegally sell the property.

The LCC through Anna Namwala, a legal assistant in the employ of the LCC filed an affidavit measurably supporting the affidavit of Mr. Patel.

SKELETON ARGUMENTS

The parties through Counsel filed their respective skeleton arguments, for and against the removal of the caveat. It was argued

in favour of the Applicant that, the caveat was irregularly entered for want of sufficient interest by the caveator.

The second Respondent's Counsel, Mr. Musoka made reference to section 76 ***Lands and Deeds Registry Act, Chapter 185, of the Laws of Zambia***, which provides:

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.

It was argued that the second Respondent has justified interest in the subject property; having relied on the representation by the Applicant, allowing him to deal with the Applicant's agent (the husband).

DETERMINATION

I have carefully considered the evidence and the parties' respective arguments. In the case of ***Construction Investment Holdings Limited v William Jacks and Company (Z) Limited (1972) Z.R. 55***, Scott J, posed the question: in what circumstances can another person have the right to place a caveat, and prevent the registered proprietor from freely dealing with the property registered in his name? And in answering this question, it was held:

Only if a person has or purports to have an enforceable interest in the land, may be justified in interfering with the rights of the registered proprietor by lodging a caveat.

The caveator's cause for lodging a caveat is dependant upon his claim to be entitled to an interest in the land and that "reasonableness", in this sense means justifiable.

Under the circumstances of this case, the inevitable question is whether the second Defendant has a justified interest in the subject land to warrant sustenance of the said caveat. The answer is not far-fetched. In ***Darshan Hal Ghamhirand and Another v. Ireen Tembo and Others (SCZ Appeal No. 32 of 2011)***, the Supreme Court held:

The gist of the decision was that in equity a person who has paid a deposit creates a special interest.

In the light of the above and section 76 of the ***Lands and Deeds Registry Act***, the second Defendant's justified interest in the subject land is clear and obvious, thus to protect his rights as purchaser of the property.

CONCLUSION

In the view of the foregoing, the second Respondent has ably demonstrated sufficient cause why the caveat should not be removed. Therefore, the application is dismissed with costs, to be taxed in default of agreement.

Leave to appeal is granted.

DATED THIS 9TH DAY OF NOVEMBER, 2023.



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**C. ZULU
JUDGE**