

**PATIENT BANDA**

**Versus**

**QOKI ZINDLOVUKAZI INVESTMENTS  
(PRIVATE) LIMITED**

**And**

**MIKE BEKITHEMBA NCUBE**

**And**

**REGISTRAR OF DEEDS**

IN THE HIGH COURT OF ZIMBABWE  
KABASA J  
BULAWAYO 1 AND 31 OCTOBER 2024

**Opposed application**

*M. E. P Moyo*, for the applicant  
No appearance for the 1<sup>st</sup> respondent  
*N. Ndlovu*, for the 2<sup>nd</sup> respondent

No appearance for third respondent

**KABASA J:** This is an application wherein the applicant seeks to place a caveat on second respondent's property.

The applicant asserts that she is part of a consortium of women who in 2021 purchased an immovable property known as Lot 6 of Lower Nondwane measuring 102, 4835 hectares and held by second respondent under Deed of Transfer 257/2000. This consortium of women purchased the property using first respondent as a conduit and first respondent was to hold the property in its name as a Trustee. Misrepresentations had been made that the applicant and the other women who also contributed varying amounts would be included as shareholders in first respondent. It later turned out that neither the applicant nor any of the other women were shareholders in first respondent. There also was nothing to show that the applicant or any of

the other women had contributed to the purchase of the property. Efforts to regularize the matter have come to naught.

The applicant has lost faith in the first respondent after discovering anomalies regarding the purchase of the property. It is the applicant's intention to have the property sold so she and the other affected women can recover the funds they contributed.

The application is opposed by second respondent. First and third respondent did not file any papers, an indication that they intend to abide by the decision of the court.

In opposing the application second respondent had taken points *in limine* which were abandoned at the hearing of the matter. I therefore do not intend to detain myself stating what these points *in limine* were. I will therefore not make reference to them.

On the merits second respondent contended that the property is his and the applicant has no interest in that property. The first respondent with whom he has an Agreement of Sale has breached that agreement as the purchase price has not been paid in full. The sale is also tainted such that first respondent is unlikely to take transfer as the sale was concluded without a sub-division permit.

The applicant was duped by first respondent and must look to first respondent for relief without seeking to encumber his property. The sale was in any event of only half of the property and so applicant cannot seek to place a caveat on the entire property.

At the hearing of the application counsel for the applicant sought an amendment of the draft order so it would indicate that such caveat was to be in force pending the finalisation of HCBC 960/24. The amendment was granted by consent.

The facts of this matter are largely common cause. The issue I have to determine is whether the applicant has shown good cause entitling her to have a caveat placed on second respondent's property.

In *Stenhop Investments (Pvt) Ltd v Mukoko & Anor* HH 132-18 DUBE J (as she then was) had this to say:-

“The term ‘caveat’ is a Latin term which means ‘let a person beware’. It is a notice or warning that is registered over a property by a person who claims to have some interest in the property concerned. The purpose of a caveat is to preserve and protect the rights of a person who seeks to have a caveat placed on a property, known as a caveator. The

effect of a caveat on a property is that the property cannot be sold or disposed of without giving effect to the caveator's interest. Once a caveat is placed over a property, the said property cannot be transferred, mortgaged or disposed of without the caveator's consent."

Has the applicant shown good cause to place such a caveat on second respondent's property? I think not.

All the applicant has done is to depose to an affidavit which to all intents and purposes suggests that she and whoever else is part of this consortium of women were duped by the first respondent. There is absolutely nothing that links the applicant to first respondent except her say-so. There is equally nothing that speaks to her having contributed money towards the purchase of the property.

In the *Stenhop Investments (Pvt) Ltd* case (*supra*) the learned Judge put it thus:-

"The law does not permit a person to lodge a caveat over another's property without good cause. An applicant who applies to place a caveat over a property must show that he has an interest in the property concerned."

Such interest must be demonstrated by the facts upon which such applicant supports the quest to encumber another's property.

Granted a caveat is only but a temporary measure but I am persuaded by counsel for the second respondent's argument that the interest ought not to be a moral or remote one. The position would have been different had the applicant shown that she is a co-director in first respondent and so the first respondent's sale agreement concluded with the second respondent is of interest to her. *In casu* there is nothing at all linking the applicant to the first respondent and by extension to the purchase of second respondent's property.

Mr. Moyo for the applicant sought to rely on *Barclays Bank of Zimbabwe Limited v Reserve Bank of Zimbabwe & Anor* HH477-13 where Zhou J granted an application for joinder on the basis that the first respondent had issued directives ordering the applicant to transfer all corporate foreign currency accounts to it and on the basis of that order applicant had transferred second respondent's money which second respondent was now suing applicant for. The joinder of the first respondent was granted to obviate a multiplicity of actions and avoid having the parties prove the same facts over again. The facts *in casu* are different for the reason already alluded to. There is no link at all between the applicant and second respondent except an unsubstantiated assertion that some funds were given to the first respondent which funds were

used to purchase second respondent's property. There is equally no link on the papers before me, between the applicant and first respondent speaking to the applicant's interest in the property she seeks to encumber.

I will refrain from delving into the issue of whether the sale was for the entire property or half of it and equally whether the sale is tainted with illegality for failure to obtain a subdivision permit (*X-Trend-A-Home (Pvt) Ltd v Hoselaw (Pvt) Ltd* 2000 (2) ZLR 348 (S) as these are issues which are best left to the court which will be seized with the first and second respondent's tussle regarding transfer of the property to the first respondent.

The argument that only half of the property was sold is not a matter that has a bearing on the registration of a caveat as a caveat does not seek to alienate the property rights of the owner as it lapses upon the conclusion of the pending matter.

This does not mean a property owner cannot challenge the interest claimed by the one who seeks to place a caveat on their property.

In *Matewa v City of Harare* S 61-23 MUSAKWA JA had this to say:-

“The law of property gives the owner of the land the right to freely enjoy his or her property without the interference of third parties. The owner of a property has exclusive rights to deal with it as he or she wishes.”

An order encumbering the second respondent's property would diminish this right. A caveat ought therefore not to be placed on another's property unless a proper case has been made for it.

It is my considered view that the applicant's case falls at the first hurdle. She has not shown a direct interest in the property entitling her to encumber the second respondent's property. Whatever action the applicant intends to take against the first respondent such does not justify the placement of a caveat against the second respondent's property, based on the paucity of facts placed before me.

In the result I make the following order:-

1. The application to place a caveat over Lot 6 of Lower Nondwane held under Deed of Transfer 257/2000 be and is hereby dismissed.
2. The applicant shall pay costs of suit at the ordinary scale.

*Mathonsi Ncube Law Chambers*, applicant's legal practitioners  
*Cheda and Cheda Associates*, 2<sup>nd</sup> respondent's legal practitioners