

**QOKI ZINDLOVUKAZI INVESTMENTS (PVT) LTD**

**And**

**HENRY NYIRONGO N.O.**

**Versus**

**ALICE NDLOVU**

**And**

**REGISTRAR OF DEEDS N.O.**

IN THE HIGH COURT OF ZIMBABWE  
NDUNA J  
BULAWAYO 15 NOVEMBER 2024

**Application for rescission of a default judgment**

*P.D. Sibanda* for the applicants

*M. E. P. Moyo* for the respondents

**NDUNA J:** This is an application for the rescission of a default judgment entered by the court whereby the court entered a caveat over certain property. The applicants filed their application in terms of Rule 27 of the High Court Rules, Zimbabwe. The terms of the default order which the applicants desire it to be set aside is as follows:

1. The application for a caveat be and is hereby granted
2. The third respondents is directed to place a caveat over a certain piece of land situate in the District of Bulawayo being the Remaining Extent of Subdivision E of Reigate measuring 51,9925 hectares held under Deed of Transfer Number 572/2012
3. The third respondent shall not transfer rights or title in the property described in clause (1) above without the express consent of the applicant or latter's behest.
4. There be no order as to costs.

In turn it becomes apposite to also state the terms of the order the applicants are seeking; they seek to continue with the litigation in which they are opposing the granting of the order as tabulated above.

Before the matter could be heard any further, the respondent raised a point *in limine* which he wants decided by the court ahead of everything else.

The term caveat was dealt with in the case of *Stenhop Investments (Pvt) Ltd versus Blessing Mukoko and Registrar of Deeds HH-132-2018*. It was held as follows: -

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. No further dealings over the property are allowed unless the caveator consents to the upliftment of the caveat, it lapses, is cancelled, withdrawn or removed. Any person who deals with the property does so at his own risk. 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. The interest claimed must exist at the time the caveat is lodged and should not be an interest that arises in the future. The caveator must show that his claim arises from some dealing with the registered property. It is only those interests that are connected to the land that can be subject of a caveat. The interest must attach to the property, thus, a person seeking to place a caveat over a property is required to show that he has a caveatable interest to lodge the caveat. A caveator does not have to show that the other party is about to dispose of the property. The applicant has to show that he has a matter pending that concerns the property. The moment that the pending matter is determined, the caveat lapses by operation of law. The caveat cannot continue in perpetuity. The interest claimed by the caveator may be challenged by the owner of the property. It is the duty of the court to determine the validity and correctness of the application for a caveat.

That is the requirements of a caveat.

What happened in this matter is that the Respondent elected to place a caveat over the property. The Respondent proceeded to make the application inviting the court for an appropriate order.

To such desire the Applicant registered its displeasure. It sought to submit its papers but failed to do so before they were barred. They have launched an application to be permitted to do so. That request is being resisted by the Respondents.

The respondent has raised some preliminary objections to which this ruling relates. They allege that the applicant is not a purchaser of the property in question, and therefore has no locus standi to sue.

A look at the papers filed of record will reveal that the action concerns itself with various persons who have acquired a big chunk of land and have gone ahead and allocate to each one a stand. The one which concerned the parties here has put some administration into their acquisition known as Qoki Zindlovukazi Investments (Pvt) Ltd. The litigant, Bridget Dube assets that she is the director and shareholder of the first applicant. The first applicant has purchased a piece of land from the 2<sup>nd</sup> Applicant. This is an application for rescission of a default judgment entered against it for the Respondents in the main matter. In that matter the respondents are the ones who had moved the court for a caveat. Therefore, it is ridiculous for the respondents to allege that the applicant has no locus standi to be sued in this matter.

It is quite clear that the first Respondent has just raised this point without having considered its relevance here. The point *in limine* as raised is therefore dismissed.

There is no order as to the costs.

The parties are hereby directed to set the main matter down for a hearing.

.....applicants' legal practitioners

.....respondents' legal practitioners