

AGNES MARINGA

Versus

WILSON MUKANDATSAMA

And

DIRECTOR OF HOUSING (CITY OF GWERU)

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 18 & 28 FEBRUARY 2019

Opposed Application

Ms B. Makaripe for the applicant
K. Manika for the 1st respondent

MAKONESE J: For a party seeking the registration of a caveat to succeed in obtaining a court order for that purpose, he or she must establish that he/she has a legal interest in the property that needs to be protected by means of a caveat. A caveat is essentially an encumbrance placed on a property restricting any dealings in respect of and alienation of the property.

It is placed on the property by a designated officer upon notice by a party with an interest in the property or by means of a court order obtained by such an interested party restricting such dealings in or alienation of the property. It is meant to protect the interests of the party seeking the caveat, in such property.

Factual background

The applicant and the 1st respondent were parties to an unregistered customary law union which was entered into in August 1996 after the demise in April of that same year of applicant's husband, who was 1st respondent's brother. Applicant avers that her first husband's family insisted that she should be married to her late husband's brother, who is the 1st respondent in this matter. Applicant accepted that arrangement and a customary marriage was conducted before the

parties started living together as husband and wife. This marriage relationship did not last for long and the parties separated on 31st January 2018. The applicant alleges that the reason for the breakdown of the marriage was that 1st respondent had found another suitor whom he wanted to live with at stand 2067/1 Mkoba 14 in Gweru. The 1st respondent has since found new love and is in a relation with that woman and they reside at stand 2067/1, Mkoba 14 Gweru. This scenario has irked the applicant who has approached this court seeking the following relief:

- “1. That the 2nd respondent be and is hereby ordered to register a caveat against stand 2067/1 Mkoba 14, Gweru which is registered in the name of the 1st respondent.”

The applicant's claims are opposed by the 1st respondent.

The basis upon which the claim is founded according to the applicant is thus.

Applicant alleges that during the subsistence of the marriage with 1st respondent, the parties acquired two immovable properties, being stand 294 Mkoba 1, Gweru and stand 2067/1 Mkoba 14, Gweru. The applicant claims that stand 294 Mkoba 1 was purchased from the proceeds of the estate of her first husband. Applicant alleges that in respect of stand 2067/1 Mkoba 14, Gweru she contributed financially towards the purchase and renovation of the structure from the original two rooms to the current five rooms.

1st respondent refutes the applicant's version and avers that stand 2067/1 Mkoba 14 was acquired in the year 2000 using his own resources, whilst stand 294/1 Mkoba 13, was acquired in 2002 during the subsistence of the unregistered customary union between the parties. According to the 1st respondent, stand 294/1 Mkoba 13 Gweru was registered in 1st respondent as the head of the family. However, since he had already acquired stand 2067/1 Mkoba 14, Gweru in his name, stand 294/1 Mkoba 13 was subsequently ceded to the applicant, who is currently the registered owner of that property. Further, the 1st respondent contends that stand 294/1 Mkoba 13 was not acquired solely from the proceeds of the estate of the applicant's first husband. 1st respondent explains that of the purchase price of Z\$180 000, Z\$130 000 was secured from the deceased's estate and he settled the balance of Z\$50 000 in two equal instalments. The improvements made to the property at the time of its acquisition in 2002 to date were from the

financial contributions of both applicant and himself. At the time of acquisition of that property applicant was a cross-border trader and had an income from that undertaking from which she managed to contribute towards the improvements. 1st respondent was gainfully employed as a teacher and had a regular income from which he financed the improvements. Since its acquisition, the applicant and 1st respondent had lived on that property as their matrimonial home. 1st respondent contends that in the year 2000 he acquired stand 2067/1 Mkoba 14 in his name, as his sole property. There was no financial or other contribution from the applicant towards the acquisition of that property. From the year 2000 applicant has been undertaking studies, firstly to complete 'O' levels and subsequently to train as a teacher. At the time proceedings were commenced in this court applicant was still pursuing her studies to qualify as a teacher with the Zimbabwe Open University in Gweru. Between 2013 and 2014 she was nursing a minor child Praise Faith Mukandatsama. As a result, she had long stopped her cross-border activities and had no real income.

The reasons for the breakdown of the customary union between the parties are varied. The 1st respondent avers that with the passage of time, applicant became increasingly quarrelsome and argumentative. She was disrespectful and confrontational. This, according to 1st respondent led to the loss of love and affection. As a result, the 1st respondent admits, he had to move out of the matrimonial home being stand 294/1 Mkoba 13, Gweru. 1st respondent does not dispute that he had moved on with his life and now resides at 2067/1 Mkoba 14, Gweru with his new wife. 1st respondent contends that applicant has her own sole and exclusive property at stand 294/1 Mkoba 13, Gweru. She has no claim or interest in respect of stand 2067/1 Mkoba 14, Gweru. Consequently she is not entitled to a court order for the sale or division of any proceeds of stand 2067/1 Mkoba 14, Gweru. 1st respondent opposes the present application for a court order for the placement of a caveat on stand 2067/1 Mkoba 14, Gweru on the basis that he has no intention whatsoever to alienate the property and that in any event the applicant is not legally entitled to the order she is seeking.

Analysis of the law

By its very nature, a caveat has the same effect as an interim interdict. Therefore, the applicant in this matter must, in order to succeed, show that:

- (a) she has a *prima facie* right
- (b) she has a well-grounded apprehension of irreparable injury or prejudice;
- (c) she has no other remedy; and
- (d) the balance of convenience favours the granting of the order she seeks, that is, an order for the registration of the caveat.

See *Choruma Blasting & Earthmoving Services (Pvt) Ltd v Njainjai & Others* 2000 (1) ZLR 85 (5) at page 89E – H

It is clear that the applicant has not established any right to the property upon which she seeks to place a caveat against the property. The applicant has not established a well grounded apprehension of irreparable injury or prejudice. The 1st respondent has indicated that stand 2067/1 Mkoba 14, Gweru is the only home he has. He has no intention to sell the property. The applicant has no clear right. She has not instituted any legal action seeking any distribution of the property in question. As I have indicated in this judgment, the perceived rights in the property in dispute have not been established by the applicant. Applicant has not denied that she owns her own property at 294/1 Mkoba 13, Gweru.

The applicant's basis for seeking the registration of a caveat is not well founded. If anything it would seem that the application before the court is motivated by a desire to frustrate 1st respondent from moving own in with his life. The court should not be used by litigants to settle personal scores. If the applicant has any valid claims against the 1st respondent in respect of the property, she is open to seek redress through the court, either for damages or for distribution of a share in the property.

In the result, it is clear that the balance of convenience does not favour the placement of a caveat on the property in question.

Accordingly, the application is hereby dismissed with costs.

Mhaka Attorneys, applicant's legal practitioners
JumoMashoko & Partners, 1st respondent's legal practitioners