

LENTON HOLDINGS LIMITED v AIRFORCE MOYO (1984) Z.R. 55 (S.C.)

SUPREME COURT
NGULUBE, D.C.J., MUWO, J.S., AND BWEUPE, A.J.S.
6TH JULY AND 2ND AUGUST, 1984
(S.C.Z. JUDGMENT NO. 9 OF 1984)

Flynote

Land Law - Caveat - Necessity to disclose interest claimed in - Registration - Presumption of interest arising from.

Headnote

The respondent, a squatter who developed a piece of land belonging to an absentee landlord, allowed the appellant to share the use of such land. When the appellant's Managing Director discovered that the land did not belong to the respondent, he fraudulently obtained a certificate of title in favour of the appellant on the strength of a forged assignment and attempted to sell the land to a third party. The respondent learnt about the fraud and took steps to have the fraudulent transaction set aside by the Lands Department. Thereafter, the respondent entered a caveat against the land. Meanwhile, the appellant's Managing Director sought, and found, the owner and, by misrepresentations, persuaded the latter to assign the property to the appellant. The appellant attempted to register the second, and otherwise lawful assignment without paying the full price but was prevented from doing so by the caveat lodged by the respondent. The appellant's action against the respondent for the removal of the caveat was dismissed by the High Court. On appeal to the Supreme Court, the appellant contended, among other things, that the respondent had failed to establish that he had any interest in the property to justify the lodging of a caveat.

Held:

To be effective, a caveat should disclose the interest claimed. Where a copy of the caveat is not produced in court to prove the interest claimed, its registration at the Lands and Deeds Registry will raise a presumption that it disclosed an interest in favour of the person lodging it.

Legislation referred to:

Lands and Deeds Registry Act, Cap. 287, ss. 76 (a) (b) (c), 77 (1).

For the appellant: R.K. Mushota, of Lusaka Partners.

For the respondent: E.A. Gani, of Gani and Company.

Judgment

NGULUBE, D.C.J.: delivered the judgment of the court.

This is an appeal against the determination by the High Court refusing to order the removal of a caveat entered by the respondent against Subdivision 8 of Farm No. 737, Emmasdale, Lusaka. The registered owner of the land is neither of the parties. Evidence disclosed the following state of affairs. In 1977 or thereabouts, the respondent purchased a business run on the property by someone said to have left the country. The respondent then made inquiries at the Lands Department with a

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view to acquiring title. To date, the respondent has no title to the land but has been in possession and he has developed the land. In the meantime, during 1981, a Mr Mwamba, the Managing Director of the appellant company, approached the respondent with a view to sharing the use of the land in consideration of an offer to the respondent to participate in a proposed transport

company. Mr Mwamba, it appears, discovered that the land did not belong to the respondent but that it belonged to a Mr Wadhusing and indeed, the land still belongs to the latter today. Mr Mwamba, thereafter, forged a number of documents, including an assignment allegedly from the owner to the appellant company, and fraudulently managed to obtain a certificate of title to the land. He went further and arranged to sell the property to another party. When Mwamba's fraud was detected, the certificate of title so obtained was quite properly cancelled. Mr Mwamba, then made efforts to find, and did find, Mr Wadhusing, the owner. He offered to buy the property falsely representing that he had developed the land. On this basis, the owner, who was a witness in the proceedings, agreed to sell the property to the appellant for K6,500. The advocates prepared the necessary documents and Mr Mwamba paid a deposit of K3,000 in cash and tendered a cheque for K3,500 for the balance. At Mr Mwamba's request, the assignment referred to K20,000 as the purchase price when in actual fact the sum agreed was K6,500. Mr Mwamba also stopped or caused to be stopped payment of the cheque of K3,500, the reason stated being that payment had been settled in cash, which was untrue. It is obvious that the appellant attempted to register a transfer of title without full payment to the vendor. However, the assignment could not be registered because the respondent had previously lodged a caveat. Though it is usually the vendor who is under obligation to give vacant possession and to make a good title, it was not the vendor, but the appellant who applied to the High Court for an order to remove the caveat. The learned trial judge found that Mr Mwamba was a fraudulent rogue and that the respondent, who had carried out the developments to the land, had a good interest in the land. He refused to grant the order and the appellant has appealed.

By its memorandum of appeal, the appellant has advanced two grounds of appeal and these read:

- (a) That the learned judge erred in not deciding whether or not the respondent herein had any legal interest in the land in issue so as to sustain his caveat over it.
- (b) As a consequence of (a) above, the learned judge misdirected himself in holding that "as between Lenton Holdings Limited and Mr Moyo, Mr Moyo has a good interest in the property and I agree with Mr Wadhusing that with the facts at hand, it would be folly and inequitable to carry through the deal between him and Lenton Holdings Limited or Mr Mwamba. I refuse to issue an order for the cancellation, removal or other wise of the caveat properly entered against the property. Subdivision 8 of farm 737 Emmasdale Lusaka, "

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In support of the first ground, Dr Mushota has argued that, the learned trial judge ought to have decided whether or not the respondent had any interest in the land within the contemplation of Section 76 of the Lands and Deeds Registry, Act, Cap. 287, to entitle him to sustain a caveat; that the respondent did not prove that he had such an interest; and that in any case, the respondent's claim that he had carried out the developments ought not to have been sustained since the evidence on the point was contradicted and inconclusive. The argument on the second ground was to the effect that, as the respondent could not be regarded as having any legitimate right to the land in question, the appellant must be accepted to have a better right thereto under the second assignment to which the lawful owner was a party.

In reply to the submissions under the first ground, Mr Gani has argued that the learned trial judge was not required to decide what interest the respondent had and that the finding that he had an interest, without stating what that interest is, was sufficient having regard to the wide terms of Section 76 already referred to. It was Mr Gani's contention that the onus was upon the appellant to produce a copy of the caveat in support of its case and that it is now too late in the day to argue that whatever interest the respondent had did not fall within the ambit of the relevant section. Perhaps we should state at this juncture that Mr Gani's submission on this narrow issue appears to be supported by the law. The relevant Sections of Cap. 287 are Section 76, and Section 77 (1). These sections read:

"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 of other instrument or transmission, or of any trust expressed or implied, or otherwise howsoever; or
- (b) transferring any estate or interest in land to another 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.

"77 (1) Every caveat shall be signed by the caveator or by his attorney or agent, and shall state with sufficient certainty the nature of the estate or interest claimed by the caveator, with such other informations and evidence as maybe required by any regulation under this act, and shall appoint a place or give an address within three miles of the Registry at or to which notices and proceedings relating to such caveat may be served or addressed."

Although the terms of section 76(a) would appear to be very wide indeed, as can be seen, yet they would not, in our considered opinion, go so far as to cover rights other than those which are otherwise recognisable as being lawfully claimed or held. However, Section 77 (1) which

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we have set out would appear to require that the caveat should disclose the interest claimed. The document in question has never been produced and in the premises, it seems to us that we cannot now assume that it did not disclose the interest claimed. On the contrary, we do not see how the Registrar of Lands and Deeds could have accepted the document for registration if it did not specify some interest within the contemplation of section 76. We believe that we have just answered a question which Dr Mushota asked as to how an interest in the land should be evidenced in order to justify the lodging of a caveat; the interest must be disclosed in the caveat itself.

With regard to the appellant's submission challenging the finding that the respondent had carried out the improvements to the land, we agree with the respondent's objection that there is no ground of appeal before us in which that question is in issue. In any case, the evidence which was accepted established conclusively that it was the respondent who had carried out the developments on the land.

In relation to the second ground of appeal, Mr Gani sought to argue that, as a result of the evidence given by the owner to the effect that, he would wish to sell the plot to the developer, the respondent has acquired some rights under an alleged trust against the owner of the property. With this submission, we cannot possibly agree. It would be, in our opinion, totally against public policy as being against the interest of the proper administration of justice if anything said in court by a witness, not amounting to an undertaking properly given to the court, can be construed as creating new rights or new cause of action between the witnesses and one of the parties. It seems to us that the rights which the respondent must rely upon must be those existing prior to the litigation and independently of Mr Wadhusing's evidence and which the respondent had indicated in his caveat, whatever, those rights were.

However, the second ground of appeal was expressed to follow upon the first. As we see it, the appellant criticises the fact that the learned trial judge accepted the lawful owner's wishes to the effect that he would no longer proceed with the sale to the appellant. The wishes of the lawful owner must be respected in a case of this nature which, it should be noted as a novel point, involves two non-owners who are carrying on litigation over someone-else's land when there is very little visible merit or locus standi in either's case. The appellant's object was to have the caveat removed, no doubt in order to register an assignment without payment of the full price, in view of the owner's express wishes, as disclosed by his evidence we do not see how any court can grant the remedy sought by the appellant in the teeth of the owner's declared position to the contrary. Similarly, the respondent is a person who developed another's land without first attempting to acquire a proper title to it and who must be regarded, in law, in relation to the lawful owner, as a squatter.

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In a proper case, we would not be surprised if in future, the courts objected, on principle, to entertaining litigation between two wrong-doers, each seeking judicial support in these sort of circumstances.

It follows from what we have been saying that this appeal must fail with costs to be taxed in default of agreement.

Appeal dismissed
