

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CIVIL SUIT NO 998 OF 1976 (OS)

NYAKINYUA & KANG'EI FARMERS CO LTDAPPLICANT

VERSUS

KARIUKI RESOURCES LTD.....RESPONDENT

JUDGMENT

This is an application by the Nyakinyua & Kang'ei Farmers Co Ltd (to which I will refer as "the caveator") for an extension of the time of operation of a caveat lodged by it pursuant to section 116(1) of the Government Lands Act in the registry of Government Lands affecting the lands registered in that registry and known as L R 31 Ruaraka in the City of Nairobi, the property of the company known as Kariuki & Gathecha Resources Ltd (to which I will refer as "the caveatee"). It appears that the caveat was lodged by the caveator on 5th June 1974 claiming a purchaser's interest in the premises by virtue of an agreement for sale between the parties which agreement has not yet been implemented and which is the subject of an action for specific performance by the caveator now pending. The caveat has been registered in volume 6, folio 467/52.

Subsequent to its registration, the caveatee applied to the registrar under section 116(6) to have the caveat removed and, by a letter dated 2nd April 1976, the registrar informed the caveator of this application and gave it notice under section 116(6) to withdraw the caveat within twenty-eight days from the date of the service of the notice, failing which the caveat would be removed by the registrar at the expiry of that period unless it was extended by an order of the court. The present application is for such extension; the caveator by its counsel requesting that the caveat should be extended until either the premises shall have been transferred to the caveator or the pending suit for specific performance shall have been determined.

In an affidavit in support of the application the advocate for the caveator states that the notice dated 2nd April 1976 was posted on 7th April 1976 by registered post and served on the caveator on 13th April 1976. In an affidavit subsequently filed by the caveatee none of these facts is disputed but it is stated that a search of the title by the advocate for the caveatee disclosed that by 3rd May 1976 the caveat had already been removed and its removal recorded in an entry in volume 48, folio 397/56.

The application for extension of the caveat is opposed on two grounds, namely, that the period of twenty-eight days should be computed from the date of the notice rather than either the date of posting or the date of actual receipt and, secondly, that as the caveat has already been removed the Court has no power to extend the period given in the notice. In support of his first ground counsel for the caveatee relied upon the decision of this Court in *Khushal v Gilani* [1974] EA 370, in which I followed the earlier decision of Miles J in *Parmer v Singh* (unreported). I am satisfied, however, that those cases are readily distinguishable on the facts from the present case and that it would be impossible to hold that a notice in writing by the registrar under section 116(6) of the Act can be said to have been "given" to the addressee before it even leaves the hands of the giver. The first ground of objection to the application therefore fails.

The second ground must depend for its correctness upon the legality of the registrar's action in purporting to remove the caveat before the time specified in both the notice and section 116(6) had expired. Time is of the essence in relation to section 116(6) and just as a caveator who neglects to take the necessary steps to protect himself within the time prescribed by the subsection may find himself penalised for this delay, so also he is entitled to rely upon the time so prescribed as affording him full protection if he acts within

it. For this reason I am satisfied that the purported removal of the caveat on or before 3rd May 1976 was unlawful and of no legal effect and that I must regard the caveat as being still validly on the title. The second ground of objection to the application therefore also fails.

I am satisfied on the facts and the merits that the caveator's application must succeed and, accordingly, I direct that the operation of the caveat be extended until such time as either the premises in question shall have been transferred to and registered in the name of the caveator or the suit for specific performance now pending for the sale of the premises shall have been determined in favour of the caveatee or until further order of the court. The caveatee's objection to this application was quite unmeritorious and the caveator will have its costs when taxed.

Order accordingly.

Dated at Nairobi on this 6th Day of May 1976

L.G.E. HARRIS

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JUDGE