



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CASE NO. 1180 OF 2016(O.S)

**IN THE MATTER OF AN APPLICATION FOR THE REMOVAL OF A CAVEAT AND COURT
ORDER REGISTERED OVER L.R. NO. 209/2663**

AND

IN THE MATTER OF THE REGISTRATION OF TITLES ACT

BETWEEN

GALOT INDUSTRIES FLIMITED.....APPLICANT

AND

KENYA FINANCE BANK LIMITED

(IN LIQUIDATION).....1ST RESPONDENT

THE DEPOSIT PROTECTION FUND BOARD.....2ND RESPONDENT

JUDGEMENT

1. The Applicant brought the originating summons dated 21/9/2016 seeking orders for the removal of the caveat registered as entry no. I.R. 57338/2 on 14/7/1993 against L.R No. 209/2663. The Applicant also seeks the removal of the court order made Miscellaneous Civil Application no. 378 of 1994 registered as I.R. 57338/3 on 17/4/1994 against L.R. 209/2663. The Applicant asks the court to fix a time within which the Respondent should comply with the orders for removal of the caveat and the court order.

2. The application is supported by the affidavit of Mohan Galot and is based on the grounds that the mortgage debt in respect of which the caveat was registered is fully paid and the title was discharged and returned to the Applicant but the Respondents have failed to remove the caveat. The Applicant argues that the Respondents cannot hold the title over the Suit Property for any other reason other than the loan for which it was charged. It further argues that since High Court Misc. Civil No. 378 of 1994 was compromised, then a court order cannot survive the suit in which it was filed nor can it hang in a vacuum. The Applicant argues that the pendency of the caveat and the court orders continues to deny it the use and enjoyment of its property and is therefore unconstitutional and illegal.

3. The Applicant annexed a copy of the title in respect of L.R. No. 209/11610 (original 209/2663). The caveat placed by the 1st Respondent and the court order were registered against the Suit Property as entries Number 2 and 3 respectively. The Applicant also attached a copy of a mortgage dated 23/9/1982 between the Applicant and the 1st Defendant in which the 1st Defendant agreed to advance the loan of

Kshs. 5 million to the Plaintiff with the Suit Property being offered as security for the loan.

4. When the Applicant submitted the title over the Suit Property for extension of lease, the Registrar of Titles erroneously gave a new registration number for the Suit Property changing it from L.R. No. 209/2663 to L. R. No. 209/11610. The Registrar of Titles failed to register the mortgage against the new title prompting the 1st Respondent to file High Court Misc. Application No. 378 of 1994 to compel the Registrar to register the mortgage dated 23/9/1982 against the new grant, L.R. No. 209/2663. The court issued the order for mandamus and this order was registered against the Suit Property. That suit was compromised.

5. The 1st Respondent is in liquidation. Its Liquidation Agent swore the replying affidavit in opposition to the Originating Summons. The 1st Respondent argues that the Applicant had guaranteed Manchester Outfitters (Suiting Division) Ltd who secured advances from the 1st Respondent and Middle Africa Finance Company. That Manchester Outfitters (Suiting Division) Ltd changed its name to Kenya Woolen Mills Ltd and that the majority of the shares in Kenya Woolen Mills Ltd are owned by the Applicant.

6. The Respondents argue that there is a direct connection between the Applicant and Manchester Outfitters Ltd and that the Applicant had guaranteed the loan advanced by the 1st Respondent to Manchester Outfitters (Suiting Division) Ltd. Manchester Outfitters (Suiting Division Ltd) owed the 1st Respondent the sum of Kshs. 172,898,293.40 as at 11/12/2013.

7. The 1st Respondent argues that it has the statutory mandate to protect depositors' funds where it has been appointed liquidator. Pursuant to this obligation, it must ensure that outstanding funds are collected and safeguard depositors' funds. The Respondent argues that where it has been established that there is a relationship such as the instant case then it ought to recover the debt from the guarantor.

8. The question for determination is whether the caveat can be maintained if the debt has been fully paid simply because the Applicant is related to another company which owes the Respondent money.

9. The Respondent could only hold the title over the Suit Property in respect of the charge for which the title had been offered as security. Once the loan was paid, the charge discharged and the title deed returned by the Respondent to the Applicant, the caveat ought to have been removed. Similarly, once the case in court was compromised the court order registered against the Suit Property should have been removed.

10. At the time the Respondent discharged and released the title over the Suit Property to the Applicant in January, 2004 it knew about the debt owed by Manchester Outfitters (Suiting Division Ltd).

11. In any event a caveat is not a charge and the Respondents cannot realize the Suit Property since they do not hold a charge over it. Maintaining the caveat does not serve any useful purpose.

12. These companies are separate legal entities. The Respondents ought to pursue other legal means to enforce the guarantee given by the Applicant.

13. The court directs the Land Registrar to remove the caveat registered as entry number I.R 57338/2 and the court order registered as I. R 57338/3 both of which are registered against L. R. No. 209/11610 (Originally known as L.R. No. 209/2663) within 30 days of the date of this judgment.

14. The Respondents will pay the costs of this suit to the Applicant.

Dated and delivered at Nairobi this 26th day of September 2017.

K. BOR

JUDGE

In the presence of: -

Ms. Kimaru for the Applicant

No appearance for the Respondents

Mr V. Owuor- Court Assistant