

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)



2017/HP/1110

IN THE MATTER OF:

PROPERTY NO. LUS/7246

IN THE MATTER OF:

**THE LANDS AND DEEDS REGISTRY ACT
CHAPTER 185 OF THE LAWS OF ZAMBIA,
SECTION 76(1) AND 81(1)**

AND

IN THE MATTER OF:

**ORDER XXX(11) OF THE HIGH COURT
RULES OF THE HIGH COURT ACT, CHAPTER
27 OF THE LAWS OF ZAMBIA****B E T W E E N :**

SUNRISE CARRIERS COMPANY LIMITED

APPLICANT

AND

ERNEST CHICHERA (Sued in his capacity as
Administrator of the estate of the late DICKSON
CHICHERA**RESPONDENT****Before Honourable Mrs. Justice M. Mapani-Kawimbe in Chambers on the
7th day of November, 2017**

For the Applicant : *Mr. D. Jere, Messrs Mvunga & Associates*
For the Defendant : *No Appearance*

J U D G M E N T

Cases Referred To:

1. *Macaura v Northern Assurance Limited* (1925) AC 619
2. *Construction and Investment Holdings Limited v William Jacks and Company Limited* (1972) ZR 66

3. *Lenton Holdings Limited v Moyo* (1984) Z.R 55

Legislation Referred To:

1. *High Court Act, Chapter 27*
2. *Companies Act, Chapter 388*
3. *Lands and Deeds Registry Act, Chapter 185*

By originating summons the Applicant seeks the following reliefs:

- (i) *An Order that the Respondent do show cause why the caveat placed on Property No. LUS/7246, Lusaka should not be removed on account of the fact that the Respondent is not entitled and or has no beneficial interest in the said property that belongs to the Company.*
- (ii) *An Order for the removal of the caveat placed on property No. LUS/7246, Lusaka upon failure by the Respondent to show the requisite cause why such should not be removed.*
- (iii) *Further or other relief as the Court may deem fit.*
- (iv) *Costs of and incidental to this action.*

It is supported by an Affidavit sworn by **Lydia Magonde**, a director in the Applicant Company. She deposes that on 4th August, 2000, the Respondent placed a caveat on the Applicant's property No. LUS/7246, Lusaka on his own behalf and the eight children of the late Henry Chichera. She also states that the late Henry Chichera was a director and shareholder in the Applicant Company

and that the property does not form part of the estate but belongs to the Applicant Company as shown in the exhibit marked "**LM1**."

The deponent further states that the Respondent has no beneficial interest in the property, whether in his own capacity or as a beneficiary of the late Henry Chichera's estate. That the Respondent's interest lies in the shares that were held by Henry Chichera and which were transferred to his personal representative by operation of the law. The deponent concludes with a prayer beseeching the Court to remove the caveat.

Learned Counsel for the Applicant filed skeleton arguments for which I am indebted. He submitted that Henry Chichera was a shareholder and director in the Applicant Company with two others. Upon his demise, one of his children, Dickson Chichera (now deceased) placed a caveat on the Applicant's property on the ground that it formed part of his father's estate. Counsel submitted that the Applicant owns the property in its own name and right and that the remaining shareholders and directors should be enabled to deal

with the property once the caveat which was wrongly registered is removed.

Counsel went on to submit that the Applicant Company has a Certificate of title as shown in the lands Register exhibit "**LM1**." Counsel placed reliance on the case of **Macaure v Northern Assurance Limited**¹, where the court held that a duly registered company can own property in its own name since it has distinct legal personality from that of its members or shareholders. A company survived its members.

Counsel further submitted that when a member of a company died, his/her shares were due to the estate and are transferred to a personal representative by the operation of law. Counsel cited section 70 of the Companies Act to buttress his assertion.

Counsel reiterated that the Respondent placed a caveat on a property that belonged to the Plaintiff as opposed to dealing with the shares left by the deceased in the company. He prayed to the Court to remove the caveat and for costs of the application.

The Respondent did not file an Affidavit in Opposition.

I have paid the closest attention to the Affidavit and skeleton arguments filed herein. The issue that arises for determination is whether I should order the removal of the caveat placed on No. LUS/7246, Lusaka. Section 76 of the Lands and Deeds Registry Act (the Act) provides that:

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

Section 77 of the Acts reads:

"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 information and evidence as may be required by any regulations under this Act, and shall appoint a place or give an address within 4.83 kilometres of the Registry of or to which notices and proceedings relating to such caveat may be served or addressed."

In the case of **Construction and Investment Holdings Limited v William Jacks and Company Zambia Limited**², Scott J. described the nature and effect of a caveat as follows:

"The effect of a caveat is that the Registrar of Lands and Deeds is forbidden to make any entry on the register having the effect of charging or transferring or otherwise affecting the estate or interest protected by the caveat. The registered proprietor is therefore prevented from showing a clear title."

Scott J. went on to state the circumstances upon which a person can register a caveat as follows:

"Only if a person has or purports to have an enforceable interest in land may he be justified in interfering with the rights of the registered proprietor by lodging a caveat. The caveator's cause for lodging a caveat is dependent upon his claim to be entitled to an interest in land and that "reasonable" in this sense means "justifiable."(underlining my own)

In the case of **Lenton Holdings Limited v Moyo**³, Ngulube D.CJ. as he then was, observed that:

"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, which are otherwise recognizable as being lawfully claimed or held. However, section 77(10, which we have set out would appear to require that the caveat should disclose the interest claimed."

From the authorities cited above, I find that it bears on a caveator to prove that he/she has beneficial interest in the land or

estate. The caveator must, demonstrate the nature of interest claimed in the land or estate.

Section 81(1) of the Lands and Deeds Registry Act, places the burden of proof on a caveator to show good reasons for maintaining a caveat. In other words, it is not for the Applicant to show why a caveat should not be removed but for a caveator to justify why it should not be removed. In this case, the caveator has not presented any challenge.

I am satisfied from the evidence on record that the Applicant Company owns No. LUS/7246, Lusaka in its name and right. On the other hand, it is undeniable that the Respondent's father was a shareholder in the Applicant Company and according to section 70(2) of the Companies Act, the estate is only entitled to his shares and not the company's property. After the death of a shareholder, a company property vests in the surviving shareholders and cannot be taken over by a personal estate.

I therefore hold that the Respondent has no interest in the Applicant Company's property. The caveat was wrongly registered on property No. LUS/7246, Lusaka, I order that the caveat be removed forthwith.

I award the Applicant costs to be taxed in default of agreement.

Dated this 7th day of November, 2017.

M. Mapani

M. Mapani-Kawimbe
HIGH COURT JUDGE