

TRADEMETS.A v. CROSS INVESTMENT COMPANY LTD

[Rwanda Court of Appeal-RCOMAA 00116/2022/CA, (Ngagi, PJ.,) 28 February 2023

Commercial procedure – Caveat on immovable property – A caveat registered on the property can be cancelled in case it was registered on the property legally sold even if the seller failed to register the acquired property for the transfer purpose due to the reasons beyond his/her control.

Facts: Kalinda Valens and his wife Nyirahabufite Epiphannie have legally sold their immovable property to CROSS INVESTMENT COMPANY Ltd represented by Frank Lyonson and they signed a related agreement before the Notary, but they did not finalise with the registration of ownership transfer owing to reasons they termed to be beyond their control.

A company by the name of TRADEMET S.A lodged a summary procedure claim before the Commercial Court suing Kalinda Valens and requested for caveat on the property that Kalinda Valens sold to CROSS INVESTMENT COMPANY Ltd pending the ruling of the case opposing them.

CROSS INVESTMENT COMPANY Ltd filed the third party opposition against the judgment before the Commercial High Court and requested for the caveat cancellation, stating that it got informed by the National Land Authority that there is caveat on the properties registered on Kalinda upon by the court's ruling.

Kalinda pleaded by admitting that the caveat was registered after the property had already been sold off, and he added that the claim by CROSS INVESTMENT COMPANY has merit.

TRADEMETS.A pleaded requesting for the inadmissibility of the above claim, arguing that Kalinda Valens has been a litigant in all of the related cases and he has never indicated that the property under caveat was not his own. The Commercial High Court heard the case and ruled that the claim by CROSS INVESTMENT COMPANY Ltd has justification and that the caveat is cancelled.

TRADEMETS.A appealed the above ruling before the Court of Appeal and requested for maintaining the caveat on the property under litigation because it was legally registered.

CROSS INVESTMENT COMPANY Ltd pleaded by submitting that the land bought from Kalinda Valens belongs to it, and that it is not concerned with the case that exists between Kalinda Valens and TRADEMET S.A, and that any agreement that might be between the two parties has no effects on CROSS INVESTMENT COMPANY Ltd.

Kalinda Valens submits that the Commercial High Court did no err in cancelling the caveat on the property of CROSS INVESTMENT COMPANY Ltd arguing that they registered the caveat on the pretext that the property belongs to him while he had sold it because it was mortgaged with BRD and when the Bank started the process of auctioning it, he sold the property to CROSS INVESTMENT Ltd in a bid to repay BRD's loan, because the issue was about UPI's it was necessary to seize the National Land Authority for rectification, the reason why the procedure of ownership transfer was delayed and all the related cases were heard after the sale contract between KALINDA Valens and CROSS INVESTMENT COMPANY Ltd.

Held 1: A caveat registered on the property can be cancelled in case it was registered on the property legally sold even if the seller failed to register the acquired property for the transfer purpose due to the reasons beyond his/her control.

The appeal lacks merit.

Statutes referred to:

Law n^o 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure, articles 12 and 150.

No cases referred to.

Judgment

I. BACKGROUND OF THE CASE

[1] This case originates from a summary procedure claim that TRADEMET S.A lodged before the Commercial Court whereby it sued Kalinda Valens and requested for the registration of a caveat on his properties pending the ruling of the case RCOM 00104/2022/TC. The above case was appealed before the Commercial High Court and it was docketed as RCOMA 00214/2022/HCC and it was heard on 04/04/2022. After the pronouncement of the case RCOMA 00214/2022/HCC, CROSS INVESTMENT COMPANY Ltd opposed the ruling and submitted that on 09/09/2022, he got informed by the National Land Authority that properties registered under UPI: 1/01/04/03/2330 and UPI: 1/01/04/03/2335 are under caveat upon the ruling of the case RCOMA 00214/2022/HCC of 04/04/2022 which ruled that the caveat should be registered on all the properties belonging Kalinda Valens.

[2] It supports that a decision concerning the land was taken in the judgment RCOMA 00214/2022/HCC of 04/04/2022 and it does no longer belong to KALINDA Valens because it was sold by CROSS INVESTMENT COMPANY Ltd and it took a decision on the property of CROSS INVESTMENT COMPANY Ltd which was not the party to the judgment, the reason why it requests that the judgment should be reversed as regards the caveat on the land.

[3] KARINDA Valens pleaded by admitting that the caveat was registered on the property after the property sale; therefore, the claim of CROSS INVESTMENT COMPANY Ltd is founded.

[4] TRADEMET S.A pleaded by requesting for the inadmissibility of the claim, arguing that Kalinda Valens has been litigant in all of the related cases and he has never indicated that the property under caveat does no longer belong to him. It is a maneuver to justify the lack of the payment for the owed loan.

[5] On 02/11/2022, the Commercial High Court heard the case RCOMA 00635/2022/HCC and ruled that the claim of CROSS INVESTMENT COMPANY Ltd has merit and the decision of the opposed case RCMA 00214/2022/HCC is reversed only on the caveat on the properties registered on UPI: 1/01/04/03/2330 and UPI: 1/01/04/03/2335 and it held that the caveat registered

on the properties UPI: 1/01/04/03/2330 and UPI: 1/01/04/03/2335 is hereby cancelled and it ordered to Kalinda Valens to pay to TRADEMET S.A and CROSS INVESTMENT COMPANY Ltd a sum of 600,000 Frw for each, and decided that the deposited court fee covers the expenses of the proceeding.

[6] TRADEMET S.A was not satisfied with the judgment ruling and it appealed against it before this very Court pleading for keeping the caveat on the properties registered under UPI: 1/01/04/03/2330 and UPI: 1/01/04/03/2335, and they requested for 5,000,000 Frw for the procedural and counsel fees because the fees awarded in the appealed judgment are few compared to the expenses it incurred in this case. The appeal was registered on RCOMAA 00116/2022/CA. CROSS INVESTMENT COMPANY Ltd pleaded by arguing that the land registered under UPI: 1/01/04/03/2330 and UPI: 1/01/04/03/2335 belongs to CROSS INVESTMENT COMPANY Ltd and that it is not concerned with the case between Kalinda Valens and TRADEMET S.A.

[7] The hearing of this case was fixed on 06/02/2023 but it was postponed on 14/02/2023 because Counsel Muhire Jean Marie Eugene was then sick. On that date, the case was not heard because the judge had lost a family member and the case was then adjourned to 21/02/2023. On that date, the case was heard in public, TRADEMET S.A represented by Counsel Uwizeyimana Jean Eric, Kalinda Valens represented by Counsel Nkanika Alimasi, while CROSS INVESTMENT COMPANY Ltd was represented by Counsel Muhire Jean Marie Eugene.

[8] The main issue to be examined is to determine whether the Commercial High Court erred by cancelling the caveat on the properties registered under UPI: 1/01/04/03/2330 and UPI: 1/01/04/03/2335, in addition to the issue of various damages.

II. ANALYSIS OF LEGAL ISSUES

1. Whether the Commercial High Court erred by cancelling the caveat on the properties registered under UPI: 1/01/04/03/2330 and UPI: 1/01/04/03/2335

[9] The Counsel of TRADEMET S.A submits that the defect of the appealed ruling is that it decided that the caveat should be cancelled while it was legally registered. He explains that the caveat is legally registered on the properties of KALINDA Valens and according to the judgments RCOM 00291/0222/TC and RCOMA 00214/2022/HCC, Kalinda Valens was party and the land titles indicate that he was the rightful owner of the concerned properties, he never indicated that among the properties under caveat, there was a property which does not belong to him, the caveat legally registered should not be cancelled.

[10] He explains the provisions of article 74 of the Law n^o 27/2021 of 10/06/2021 governing land in Rwanda and the provisions of article 213 of the Law n^o 22/2018 of 29/04/2018 relating to civil, commercial, labour and administrative procedure which provides that the application for a caveat on immovable properties is submitted to the Registrar of Land titles and within one month, a related claim is filed, have all been complied with and in consideration of the decision of the judgment RCOMA 00214/2022/HCC submitted to National Land Authority for registration of the caveat, they find that the caveat was legally registered on the properties belonging to Kalinda

Valens, the reason why the caveat remains valid, they request the appealed Court to decide that it remains valid.

[11] The Counsel of CROSS INVESTMENT COMPANY Ltd submits that the land registered under UPI: 1/01/04/03/2330 and UPI: 1/01/04/03/2335 belong to CROSS INVESTMENT COMPANY Ltd and it is not concerned with the case between Kalinda Valens and TRADEMET S.A. He explains that the statements of TRADEMET S.A should not be given any consideration because, as it was expounded in the appealed judgement, the decision on the land under UPI: 1/01/04/03/2330 and UPI: 1/01/04/03/2335 was taken in the judgment RCOMA 00214/2022/HCC of 04/04/2022 while it does no longer belong to Kalinda Valens since he sold it to CROSS INVESTMENT COMPANY Ltd as indicated by the agreement of 18/12/2020 and confirmed by the application of 15/03/2021 for land transfer.

[12] He adds that, according to the appealed judgement, the Court found that the ruling of the case RCOMA 00214/2022/HCC of 04/04/2022 made a decision concerning a property belonging to CROSS INVESTMENT COMPANY Ltd, without the latter being a litigant to the case; the Court therefore found that the above mentioned ruling should be reversed especially on matters pertaining to the caveat registered on UPI: 1/01/04/03/2330 and UPI: 1/01/04/03/2335 since the properties' owner has never been a party to the concerned case. Basing on the article 64 of the Law n^o 45/2011 of 25/11/2011 governing contracts which provides that contracts made in accordance with the law shall be binding between parties, they find that the requests made by TRADEMET S.A should not be accorded consideration since any agreement that might be concluded by TRADEMET S.A and Kalinda Valens has no effects on CROSS INVESTMENT COMPANY as provided under the above mentioned article.

[13] The Counsel for Kalinda Valens admits that the Commercial High Court did no err by cancelling the caveat on properties of CROSS INVESTMENT COMPANY Ltd because it was registered by considering the properties as belonging to him while he had sold it as it was mortgaged with BRD, and when the Bank initiated the procedure of mortgage auctioning, Kalinda Valens sold the properties to CROSS INVESTMENT COMPANY Ltd in a bid to repay a loan he owed to BRD; due to issue in UPI's of the concerned property, it was necessary to approach the National Land Authority for the rectification of the UPI's issue, the reason why the procedure of land transfer delayed.

[14] He goes on to add that both cases RCOM 00291/0222/TC and RCOMA 00214/204/2022/HCC were held after the sale contract between Kalinda Valens and CROSS INVESTMENT COMPANY Ltd, they ruled for the caveat on the properties that do no longer belong to him because by 18/12/2020, the concerned property had already been sold off, and the caveat was notified to him by 23/02/2022. Kalinda Valens argues that the claim by CROSS INVESTMENT COMPANY Ltd for the caveat cancellation had a justification and that is why the seized Court cancelled it; he therefore submits that the appeal by TRADEMET S.A is void since it seeks for a caveat on the property belonging to CROSS INVESTMENT COMPANY Ltd while Kalinda Valens is not concerned by it.

[15] He sustains that the statements of TRADEMET S.A that Kalinda Valens has never indicated that the concerned property does not belong to him, are unfounded, as he pleaded by indicating that the caveat is invalid.

DETERMINATION OF THE COURT

[16] Article 12, paragraph one of the Law n^o 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that “The claimant must prove a claim, failing which the respondent wins the case”. Article 150, paragraph 5 of the same Law provides that “The application for appeal is done by means of submissions filing the claim and containing: the list of grievances from the judgement and other issues to be analysed again”.

[17] Putting together these two articles, the Court finds that they denote that the claimant has to provide the elements of evidence of his/her allegations, meaning the elements of evidence that prove that his/her claim is true, similarly, the appellant must indicate the defects of the appealed judgement and the elements of evidence supporting his/her appeal, meaning the elements of evidence indicating the defects of the judgment and the elements of evidence that might lead to the rectification of those defects.

[18] The case file contains a copy of an agreement about the sale of immovable properties registered under UPI: 1/01/04/03/187 and UPI: 1/01/04/03/190 concluded on 18/12/2020 between CROSS INVESTMENT COMPANY Ltd represented by Frank Lyonson and Kalinda Valens together with his wife Nyirahabufite Epiphanie.

[19] The case file contains a letter addressed by the National Land Authority / Office of Registrar of land titles to Kalinda Valens on 21/09/2021, indicating that the land registered under UPI: 1/01/04/03/2335 originates from UPI: 1/01/04/03/190 while the land with UPI: 1/01/04/03/2330 originates from UPI: 1/01/04/03/187. The very letter indicates that the mentioned land is demarcated out of the marshland boundaries and the land with UPI: 1/01/04/03/2335 and the land with UPI: 1/01/04/03/2330 are now registered under CROSS INVESTMENT COMPANY Ltd as per the sale agreement that Kalinda Valens together with his wife Nyirahabufite Epiphanie concluded with CROSS INVESTMENT COMPANY Ltd as witnessed by the Land Notary on 15/03/2021.

[20] The ruling of the judgment RCOMA 00214/2022/HCC rendered by the Commercial High Court on 04/04/2022 indicates that the Court sustained the judgement RCOM 00291/2022/TC and ordered for the execution of its ruling. The execution was about registration of caveat on the following immovable properties: UPI 1/01/04/03/2330, UPI 1/01/04/03/2335, UPI 1/01/04/03/1011, UPI 1/01/04/03/243, UPI 3/07/05/05/6377, UPI 3/07/05/05/6378, UPI 3/07/05/05/4871, UPI 3/07/05/05/6377, UPI 3/07/05/05/4862, UPI 3/07/05/05/3147 and UPI 03/07/05/05/4831 of Kalinda Valens, pending the ruling of the case RCOM 00104/2022/TC between Kalinda Valens and TRADEMET S.A.

[21] The ruling of the appealed case RCOMA 00635/2022/HCC rendered by the Commercial High Court on 02/11/2022 indicates that CROSS INVESTMENT COMPANY Ltd proved that it legally acquired the property registered on UPI: 1/01/04/03/2330 and UPI: 1/01/04/03/2335 from Kalinda Valens, and that due to circumstances beyond their control, they have not been able to proceed with the registration of ownership transfer. Besides, the ruling indicates that CROSS INVESTMENT COMPANY Ltd cannot secure ownership registration by National Land Authority owing to an order from the ruling of the case RCOMA 00214/2022/HCC that ordered the registration of caveat on the concerned properties. The Court found that TRADEMET S.A

produces no evidence to rebut the claimant's allegations and the Court decided that the caveat on properties with UPI: 1/01/04/03/2330 and UPI: 1/04/03/2335 by the ruling of the judgment 00214/2022/HCC should be cancelled.

[22] As it has been above highlighted, CROSS INVESTMENT COMPANY Ltd bought a property registered under UPI: 1/01/04/03/2330 and UPI: 1/01/04/03/2335 from Kalinda Valens, and the land transfer was witnessed by the Land Notary on 21/09/2021 and the registration of caveat was decided by the Commercial High Court on 04/04/2022. Therefore, the Court found that the caveat was registered after the property sale by CROSS INVESTMENT COMPANY Ltd from Kalinda Valens, meaning that the caveat was registered when the concerned properties no longer belonged to Kalinda Valens as they were possessed by CROSS INVESTMENT COMPANY Ltd.

[23] The Court finds that the fact that TRADEMET S.A applied for the registration of caveat on the property with UPI: 1/01/04/03/2330 and UPI: 1/01/04/03/2335 considering it as belonging to Kalinda Valens while the latter had lawfully sold it to CROSS INVESTMENT COMPANY Ltd, the fact that the caveat was registered on a property that belongs to CROSS INVESTMENT COMPANY Ltd while the Company is not concerned with the case pending between Kalinda Valens and TRADEMET S.A, the fact that CROSS INVESTMENT COMPANY Ltd has not been a party to the case RCOMA 00214/2022/HCC that ordered the registration of caveat on the concerned property, it is obvious that the appealed ruling contains no defect, and the Court ruled that the appeal by TRADEMET S.A is unfounded.

2. Whether the damages charged to Kalinda Valens in the appealed judgment should be set aside

[24] The Counsel to Kalinda Valens submits that, before the High Court, KALINDA Valens was charged of unjustified damages while he had no intention to drag someone into unnecessary lawsuits, and he was unfairly charged of unjustified damages.

[25] The Counsel to TRADEMET S.A submits that when the Commercial Court ordered for the registration of caveat on the concerned properties, Kalinda Valens lodged a related appeal to the Commercial High Court, but in the course of the appeal, he only sustained that the Commercial Court disregarded the objection he raised and it ruled for the registration of caveat while he mortgaged the property, but he never indicated that he had sold such property; therefore, the damages charged to KALINDA Valens are grounded because he initiated the cases.

DETERMINATION OF THE COURT

[26] The case file contains the application for the caveat registration made on 07/02/2022 by Counsel Kayigirwa Viateur, professional bailiff, whereby he requested for the registration of caveat on all properties of Kalinda Valens. It also contains the letter that Counsel Kayigirwa Viateur addressed to Kalinda Valens notifying him of the caveat registered on his properties registered under UPI: 1/01/04/03/2330, UPI: 1/01/04/03/2335, UPI: 1/01/04/03/243, UPI: 3/07/05/05/6377/ UPI:1/01/04/03/1011, UPI: 3/07/05/05/6378, UPI: 3/07/05/05/4871, UPI: 3/07/05/05/5607, UPI 3/07/05/05/4862 and UPI 3/07/05/05/6377.

[27] The case file indicates that in the judgment RCOMA 00214/2022/HCC, Kalinda Valens appealed against the ruling for two reasons: the Commercial Court disregarded the objection he raised and it ordered for the registration of caveat on properties that were already loan mortgaged.

[28] [28] The ruling of the appealed judgment RCOMA 00635/2022/HCC indicates that Kalinda Valens has been a party to the judgments that ruled for the registration of caveat on his properties while he was well aware that the disputed properties had been sold off, but he never indicated that it in the cases between him and TRADEMET S.A, the caveat was registered on those properties while it was unnecessary, it decided that he should pay damages to TRADEMET S.A. and CROSS INVESTMENT COMPANY Ltd 100,000 Frw each for the incurred case-related expenses, and 500,000 Frw each for counsel fee.

[29] [29] Basing on the explanations provided in the preceding paragraph, the Court finds that it is Kalinda Valens who has unnecessarily initiated all these cases, and the Court finds that the Commercial High Court did not err by ordering to him to pay to TRADEMET S.A and CROSS INVESTMENT COMPANY Ltd 600,000 Frw to each one as damages for the incurred case-related expenses, the cross-appeal lodged by Kalinda Valens is unfounded.

3. Whether the damages, procedural fee and lawyer fee are founded

[30] The Counsel to TRADEMET S.A states that in the appealed judgment, TRADEMET S.A was only awarded 600,000 Frw for damages while basing on the fact that it is Kalinda Valens who dragged TRADEMET S.A in all these unnecessary lawsuits and it incurs losses for non-payment and follow up of its rights, they find that the damages awarded by the Court in the appealed judgment do not cover the expenses that TRADEMET S.A. continues incurring in the lawsuits, they request to the Court to order in its discretion to KALINDA Valens to pay 5,000,000 Frw as procedural and lawyer fees.

[31] The Counsel to Kalinda Valens pleads by submitting that TRADEMET S.A deserves no damages because TRADEMET S.A applied for the registration of caveat on a property which does not belong to Kalinda Valens as indicated by the competent organs. He also adds that in case the Court finds that the appeal of TRADEMET S.A is unfounded, he should be charged of 800,000 Frw as procedural and lawyer fees.

[32] CROSS INVESTMENT COMPANY Ltd argues that the damages claimed by TRADEMET S.A concerns KALINDA Valens alone. It states that in the appealed judgement, the Court upheld that the caveat should not be registered on those properties, but TRADEMET S.A continued dragging CROSS INVESTMENT COMPANY Ltd into unnecessary lawsuits it had never been a party to the judgment RCOMA 00214/2022/HCC of 04/04/2022 between Kalinda Valens and TRADEMET S.A. Such situation caused to CROSS INVESTMENT COMPANY a related loss as it could not exploit their bought properties and it got dragged into unnecessary lawsuits. It therefore requests to the Court to order to TRADEMET S.A to pay to CROSS INVESTMENT COMPANY a sum of 20,000,000 Frw for non-exploitation of the property on which the caveat was registered, 5,000,000 Frw for being dragged into unnecessary lawsuits, 1,500,000 Frw as procedural and lawyer fees in addition to the damages awarded in the appealed judgment.

DETERMINATION OF THE COURT

[33] With regard to case-related expenses, article 111 of the Law n^o 22/2018 of 28/04/2018 relating to the civil, commercial, labour and administrative procedure provides that *“the claim for representation fees is an incidental claim to the principal claim aiming to repay expenses incurred during judicial proceedings. The claim for legal costs is adjudicated at the same time with the principal claim. It can also be admitted and adjudicated even if the principal claim has not been admitted”*

[34] The Court finds that due to the appeal by TRADEMET S.A, CROSS INVESTMENT COMPANY Ltd hired a lawyer to assist it at this level; therefore, the claimed procedural and lawyer fees are grounded, in its discretion, it awards 5,000,000 Frw for the lawyer fee and 200,000 Frw for the procedural fee to be paid by TRADEMET S.A.

[35] With regard to the damages for non-exploitation of the property on which the caveat was registered and for being dragged into different administrative organs as requested by CROSS INVESTMENT COMPANY Ltd, the Court finds that the damages should not be examined because it did not make a related request in the appealed judgement.

[36] The Court finds that the 600,000 including the procedural and lawyer fees awarded to TRADEMET S.A in the appealed judgment were awarded in the Court’s discretion, the statements of TRADEMET S.A that they are too few are baseless, especially that it does not challenge the Court’s discretion. The Court finds that TRADEMET S.A deserves no damages at this level, since its appeal is unfounded.

[37] The Court finds that Kalinda Valens does not deserve the procedural and lawyer fees in this case because, as above expounded, it is him who initiated the lawsuits and it does not take into consideration his cross-appeal seeking the revocation of damages of which he was charged.

III. DECISION OF THE CASE

[38] Holds that the appeal lodged by TRADEMET S.A lacks merit.

[39] Holds that the cross-appeal filed by Kalinda Valens lacks merit, while the appeal by CROSS INVESTMENT COMPANY Ltd has merit in parts.

[40] Holds that the judgment RCOMA 00635/2022/HCC rendered by the Commercial High Court on 02/11/2022 is sustained.

[41] Orders to TRADEMET S.A to pay to CROSS INVESTMENT COMPANY Ltd a sum of 500,000 Frw for counsel fee, and 200,000 Frw for procedural fee at this instance, in addition to 600,000 Frw awarded in the appealed judgment to be paid by KALINDA Valens.

[42] Holds that the court fee covers the expenses of the judicial proceedings.