

## Placing a Caveat as Security for Payment of a Debt

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The Deeds Registries Act [*Chapter 20:05*] empowers the Register of Deeds to place caveats on immovable properties in Zimbabwe. Simply put, a caveat is warning which is noted on the title deed of the property limiting the way in which the property can be dealt with. For example, a property with a caveat cannot be transferred until the caveat has been removed.

There are two main ways in which the Registrar is empowered to note a caveat over someone's property.

The first way is when the Registrar receives consent to the placement of the caveat from the registered owner of the property. This method is clear and straight forward as the property owner usually signs consent papers. This might be to secure the interests of a creditor they would have contracted with.

The second way is through a court order instructing the Registrar to place a caveat on the property, in absence of the property owner's consent. The person who intends to place a caveat over another's property can make a court application for an order placing a caveat. Of late many litigants have chosen this route ever so blindly.

This article seeks to briefly unpack the requirements of a court application for the placement of a caveat.

It is a settled principle of the Zimbabwean Law that courts will only order a caveat to be placed on the property of another if the Applicant demonstrates that he/she has a caveatable interest. In the case of **Stenhop Investments (Private) Limited v Blessing Mukoko and Registrar of Deeds HH 132-18**, the Court held that:

**“The law does not permit a person to lodge a caveat over another's property without good cause. An applicant who applies to place a caveat over a property must show that he has an interest in the property concerned. The interest claimed must exist at the time the caveat is lodged and should not be an interest that arises in the future. The caveator must show that his claim arises from some dealing with the registered property. It is only those interests that are connected to the land that can be subject of a caveat. The interest must attach to the property, thus, a person seeking to place a caveat over a property is required to show that he has a caveatable interest to lodge the caveat... The applicant has to show that he has a matter pending that concerns the property.”**

It is clear from the above case that in order to show good cause, any Applicant must show that:

- (a) He has an interest in the property itself;
- (b) The interest claimed must exist at the time the caveat is lodged;
- (c) His claim arises from some dealing with the registered property. The court goes further to emphasize that it is only interests shown to be connected to the land that can be subject of a caveat.

The above requirements seem clear but in practice they have proven to be very difficult to follow. Numerous creditors, in a panic mode, have rushed to bring applications for placement of caveats which have been dismissed by the courts. One example is the case of ***Moonrise Business Transactions v Shumayac Agencies & The Registrar of Deeds HC 3744/19***. In this case the Applicant issued and served summons against the Shumayac Agencies, then quickly filed a court application for the placement of caveat on property belonging to Shumayac Agencies.

In its submissions, the Applicant argued that the application was to protect its interests in the sense that should judgment be granted in its favour, it would have something to execute on. As the argument went, a caveat would encumber the property thereby protecting the interests of the applicant.

Although the reasons for the application sounds noble, they ignore the law. As mentioned earlier, one of the requirements for the application is that the interest of the applicant must exist at the time of making of the application. In this case, the Applicant's interest (execution of a court order) lay in the future, as it was depended upon the court ruling in its favour on the issued summons.

The other requirement which was ignored is that the summons filed by the Applicant was for a claim of money (a debt owed to the Applicant) which had nothing to do with the Respondent's property over which the Applicant sought to place caveat.

In delivering its judgment the Honourable Court lamented the application and stated that applications of this nature amounted to an abuse of court process. The court reiterated that the fact one has brought an application or issued summons against another person, does not mean that they automatically have a caveatable interest over the property of the person they are suing. Caveats cannot provide security for enforcement of debts not confirmed by a court of law. The law lays down requirements which must be met.

Therefore, it is important for litigants not to waste their money and the courts time by inquiring whether they in fact have a caveatable interest before bringing an application before the court. The requirements are crystallised and one has to objectively apply each one of

them to their facts. If one of the requirements is not met, it is wise not to bring the application before the court.

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