



**NENJY || NYAMAPFENE
LAW PRACTICE**



NEWSLETTER

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Dear Reader!

I am delighted to introduce our latest Newsletter. I hope all the previous Newsletters have helped you keep updated and educated on the various aspects of the law. Continue reading and sharing your valuable comments with us on issues you need clarity on.



Sonia Fashi

Pleasant Reading!

CAVEATS ON IMMOVABLE PROPERTY

Is there pending litigation? Do you feel like someone wants to dispose of their property in which you have certain interests to your detriment.? Well registering a caveat over the property can temporarily protect those interests until the matter is finalized

A caveat is a notice that certain actions may not be taken without informing the person who gave the notice. Or rather it is a formal notification to a court or official not to take a certain step until the notifier has been heard. This formal notice serves to tell the public that someone has an interest in the property and that such interest should be given priority.

Caveats can be placed over immovable property with the intention of preventing the registered owner of the immovable property from selling the property in question to the prejudice of a third party who would have interests in the property. One would then seek to know how someone can have interests in property that does not belong to them? A simple example would be that such title deeds to the immovable property would have been pledged to secure the repayment of a debt and in the event that the owner of the property decides to sell it, it will mean the security for the repayment of the debt would have fallen away and such person will then have to employ other means for the debt to be paid.

If a caveat is registered over a property, transfer of that property cannot pass to a third party without it having been cancelled or rather uplifted. Caveats are mainly effective where there is pending legal action as it can prevent the owner of the property from alienating or

disposing of the property until the matter is finalized. Caveats however should not be used to frustrate a third party's rights of executing judgment. It therefore follows that a caveat ensures that a third party's rights are protected until a matter is determined by the courts as it prohibits transfer of the property or any encumbrances to the property meaning one cannot dispose of or mortgage or pledge as security property wherein a caveat has been placed unless the caveat has been duly uplifted.

A caveat can also be used to protect a spouse's rights to matrimonial property or rather to immovable property registered in one spouse's name. This will prevent the spouse with registered title over the matrimonial property from disposing of it or rather selling the house. This caveat can only be placed on the property if there is impending legal action eg Divorce involving the dissolution of the matrimonial property. The reason for placing a caveat over the property in this instance would be to protect the interests of the spouse with no title to the property so that he/she does not stand prejudiced if the other spouse decides to sell the property without the matter having been fully determined by the court. Recording a caveat over property means your rights will be protected whilst the matter is being determined by the court.

NB. It should however be noted that caveats are temporary measures to protect a person's interest since the real rights to the property vests in the registered owner of the property.

WHAT DOES IT MEAN WHEN A PERSON BINDS HIMSELF AS SURETY AND CO-PRINCIPAL DEBTOR FOR THE REPAYMENT OF A DEBT?

Well you must be wondering why someone is giving you sleepless nights for the repayment of a debt that you do not owe, You might have bound yourself as surety and co-principal debtor for someone else's debt, And yes Whoever is after you has the legal right to do so.

Sandra (the principal debtor) decides to get a loan from the Bank (creditor), the Bank will require that someone (surety) steps in to help Sandra in the event she fails to repay the loan before it can advance the money, it will also require that such person should sign a surety agreement for the repayment of the loan. The question derived from this is what does it mean if a person binds himself or herself as surety and co-principal debtor for the repayment of someone else's debt/loan?

What is a surety?

A Surety can be in the form of money or something which a person gives to someone as assurance or as a guarantee to fulfilling an obligation.

A surety can also be a person who takes responsibility for another's performance of an obligation eg repayment of a debt. The Principal debtor is the person who is obligated to repay the person who advanced the money to him or her. The surety

therefore is the third party who undertakes to pay back the money if the principal debtor fails to pay back or fails to fulfill an obligation meant for the Principal Debtor.

The principal debtor is the one with the primary obligation to repay the debt and the surety is only liable secondarily. Once such principal debtor fails to meet the obligation, the creditor can proceed against the surety as he/she would have undertaken that in the event the principal debtor fails to pay, he will do so on his or her behalf.

What it therefore means binding oneself as a surety or co-principal debtor is that if the Principal debtor defaults in payment, the creditor can therefore proceed against the surety and co-principal debtor to pay that debt which was the liability of the Principal debtor. When making such moves people should be guided accordingly as to what certain terms and conditions of agreements mean before rushing on to append their signatures to documents they do not fully comprehend. It is important that one seeks legal advice for the interpretation of contractual terms and conditions so that they will be fully aware of whatever they will be getting themselves into.



THE IMPORTANCE OF REGISTERING A DECEASED ESTATE

When someone dies it doesn't follow that whatever properties they owned during their life time especially immovable property becomes yours by default. In fact there are legal processes that must be completed first for the title of the property to be transferred from the deceased estate to the next person.

An estate consists of what the deceased person owned and owed, these are assets and liabilities.

An estate is registered so that property which belonged to the deceased can be rightfully transferred or given to the rightful beneficiaries at law.

If an estate is not registered the property especially immovable property will still vest in the name of the deceased and at law will still be deemed to be the deceased estate property and at such point will not belong specifically to anyone and hence nobody can claim or protest that such property lawfully belongs to him or her

without registration of the estate and transfer of the property having been done and completed. A person is only considered as the legal owner of a property only after he/she gets the property registered in his or her name. If such is not done the previous owner retains the right of being the legal and rightful owner.

Under such circumstances it therefore follows that in the event one decides to sell such property, such sale will be invalid or rather unlawful and the process cannot be done successfully before the estate is wound up to finality and legal title of the property has passed to the seller.

Note that, such registration of estates is meant to protect the immediate family of the deceased from various persons who may want a share of that property or rather property grabbers hence it is important to register the estate to ensure that the lawful beneficiaries benefit and title is passed to the rightful person at law.

DID YOU KNOW that, a beneficiary to a Will should not sign as a witness to the document thereof.

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